



TO: Kent Studebaker, Mayor
Members of the City Council

FROM: Scot Siegel, Director
Planning and Building Services

SUBJECT: PP 14-0005 – Tree Code Amendment for Management of Large Forested Tracts
(Ordinance 2664)

DATE: March 11, 2015 **DATE OF MEETING:** March 17, 2015

ACTION

Conduct a public hearing on Ordinance 2664, for Tree Code (LOC 55) amendments implementing the City Council goal of addressing forest management on large land parcels.

INTRODUCTION AND BACKGROUND

A City Council goal from 2014 is to “Amend the tree code to more appropriately address large land parcels, both private and public, for forest management.” (A related goal for 2015 is to initiate a community dialogue on other aspects of the Tree Code.) On October 7, 2014 the City Council received a staff presentation on the Tree Code with respect to large forested parcels.¹ At that study session, Council directed staff to proceed in developing code amendments. On March 10, 2015, the Council held a study session to review a draft of Ordinance 2664, the Tree Code (LOC 55) amendments implementing the above goal.

Attachment 1 contains the proposed ordinance and code amendments. It is based on input from a technical advisory committee comprised of City residents and staff in Planning, Parks, and the City Attorney’s office. The advisory committee included residents Todd Prager, a professional arborist and planning commission member; Craig Chisholm, an OSU Master Woodland Manager; and Gary Buford, a land surveyor and forest land owner.

The committee’s charge was to closely follow the City Council’s direction in providing a more flexible permit process, one that moves away from regulating individual trees and focuses more on urban forestry principles, while maintaining the wooded character of the city. This is not a rewrite of the Tree Code. The changes do not address residential lots or new construction.

¹ The City Council Report dated September 30, 2014 (Study Session on October 7, 2014) contains background and detailed analysis of the existing code with respect to large forested properties.

Rather, it is an attempt to improve the existing code and to facilitate urban forest management on large tracts of land.

The proposed code amendment would apply to a limited number of properties, only “large forested tracts”. These are lots, parcels or tracts one acre or larger in size containing at least one acre of tree canopy, or an equivalent stocking level (basal area of trees) based on guidelines contained in the Oregon Forest Practices Act.

A City GIS analysis conducted in September 2014 found there are approximately 141 private properties one acre or larger and containing at least 50% tree canopy inside the city limits; of those, approximately 111 properties are 1-2 acres in size; 18 properties are 2-3 acres; 4 are 3-4 acres; and 8 are greater than 4 acres. By contrast, there are approximately 12,000 houses in Lake Oswego, not including multifamily dwellings.

The proposed code is based on the following objectives:

1. Maintain forest cover, consistent with the current Tree Code purpose², while minimizing the risk of catastrophic events such as wildfire, drought, infestations, storms/tree blow-down, and landslides.
2. Create a separate permitting process for forested properties of one acre or larger, leaving intact the existing Tree Code for residential lots and new development.
3. Provide for removal of a small number of trees with a simple, over-the-counter permit process that is scalable (e.g., based on forested acres) and uses objective criteria.
4. Allow for the removal of a greater number of trees (e.g., thinning) subject to approval of a forest management plan prepared by a qualified professional. Consider existing models for establishing tree stocking levels, such as the Oregon Forest Practices Act.
5. Encourage and assist owners of large forested tracts in managing their property, while providing safeguards for neighborhood character, protection of water quality, and erosion control.
6. Provide for public comment prior to approval of major forest management activities.

On February 4, Morgan Holen, the City’s Contract Arborist, presented the draft code amendments to the Natural Resources Advisory Board (NRAB). Committee member Gary Buford was also present and contributed to the discussion. The purpose of the presentation was for the NRAB to become familiar with the proposal and to provide input to staff and City Council. The board was supportive of the proposed changes and agreed that the draft is well constructed. The board made a motion and unanimously supported the proposed draft.

Attachment 1 includes the entire Tree Code for context, however, only some code sections are to be amended. The changes are noted with track changes, and commentary is provided throughout. Key policy issues and options are noted in the commentary boxes.

² The purpose of the Tree Code is “... to regulate the removal of trees and prescribe preventative protection measures to avoid damage to trees during site development in order to preserve the wooded character of the City of Lake Oswego and to protect trees as a natural resource of the City.” (LOC 55.02.010)

OPTIONS PROVIDED IN RESPONSE TO CITY COUNCIL INPUT

Topic 1: Erosion Control and Hillsides

At its March 10 study session, City Council asked staff to determine whether additional criteria focused on erosion control and unstable soils should be provided for tree removal from hillsides. The existing thresholds for requiring an Erosion Control Permit (LOC 52.02.040) follow:

52.02.040 Erosion Control Permit Required.

An erosion control permit approved by the City Manager shall be required prior to conducting the following activities on a property or site:

1. Activities including, but not limited to: construction, landscaping, removal of vegetation, stockpiling of soil or construction debris, grading, filling, excavating, trenching, drilling, transport of fill, utility work, etc. that disturb 500 square foot or more of land surface area, and.
2. Activities as described in subsection 1 or this subsection that disturb less than 500 square feet of land surface and are within 50 feet of any pond, lake, river, stream corridor, canal, or wetland.
3. Exemptions: Landscaping activities in conjunction with a single family residence shall be exempt from compliance with this Chapter. For purposes of this Subsection, "landscaping activities" means the installation or removal of vegetation and minor landscaping features. It does not include installation or removal of more than 50 cubic yards of fill, or installation of large site features like parking pads, swimming pools or structures as defined in LOC Chapter [50](#), which are not exempt if the activity involved would otherwise require an erosion control permit under this Section.

(Ord. No. 2132, Enacted, 07/02/96) (Ord. 2316, Amended, 03/05/2002)

Based on input from the Engineering Department, staff believes the existing (above) thresholds for erosion control permits are appropriate, and that it is not necessary to modify them to address the types of forest management activities allowed by Ordinance 2664. Instead, the Forest Management Permit criteria should address erosion and surface water concerns, generally, regardless of the number trees to be removed or the area disturbed.

In the draft ordinance presented to Council on March 10, the criteria for a Major Forest Management Permit contain such criteria. Staff recommends adding similar, but narrower (and more specific) language for Minor Forest Management Permits, as follows:

(The regular text below is from the draft previously presented, and the double-underline text is the recommended modification.)

LOC 55.02.070

3. Minor Forest Management Permit. An owner of a Large Forested Tract or the owner's authorized agent may apply for a Minor Forest Management Permit to remove trees under the following criteria:

c. Soil, felled trees, and debris shall be contained within the subject tract; forest management activities shall not cause erosion or alter the flow of surface waters onto an adjacent property. An erosion control permit approved by the City Manager pursuant to LOC Ch. 52 is required prior to tree removal activities that disturb 500 square feet or more of land surface area, or any land area within 50 feet of a stream corridor boundary.

(Note: The application form will provide check-box or ask for description of proposed tree removal methods and erosion control measures, as applicable.)

Topic 2: Objective Criteria, Predictability, and Wooded Character

At the March 10 study session, some members of Council expressed concern about the following criterion pertaining to “wooded character”, below, which incorporates text from the Tree Code purposes statement. The concern centers on the subjectivity of this code provision, its lack of predictability, and potential for appeals through the permit process.

Options to address this legitimate concern include: 1) Removal of criterion ‘d’, or 2) Replacement of ‘d’ with language that is more objective. The Council may also decide to retain the discretionary language as initially proposed. If the Council prefers Option 2 (replacement language), the following double-underline text is suggested:

4. Major Forest Management Permit (Forest Management Plan). An owner of a Large Forested Tract or the owner’s authorized agent may apply for a Major Forest Management Permit to remove more trees than would be permitted under a Minor Forest Management Permit. An application for a Major Forest Management Permit shall be accompanied by a Forest Management Plan prepared by a qualified forest management professional, which shall be reviewed and approved by the City Manager pursuant to the notification requirements in LOC 55.02.082 and the following criteria:

d. Forest management activities will not result in removal of more than fifty percent of the basal area of trees within a required setback yard under the applicable zoning district (LOC 50). ~~have a significant negative impact on the wooded character of the neighborhood, including maintenance of tree canopy cover and protection of views from adjacent public ways.~~ The reviewing authority may grant an exception to this criterion when alternatives to tree removal have been considered and no reasonable alternative exists but to allow the proposed forest management activities. In making this determination, the reviewing authority shall consider the advice of a qualified forest management professional;

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Finally, City Council asked staff to provide information or guidelines to applicants encouraging the use of proper equipment and methods when removing trees, particularly large trees, to avoid damage to property, erosion, etc. This is an excellent idea. Staff can prepare an informational handout to accompany the application form that will be required for Forest Management Permits.

ALTERNATIVES & FISCAL IMPACT

1. Adopt ordinance as recommended by Natural Resources Advisory Board (NRAB).
2. Adopt ordinance as recommended by NRAB with modifications as presented in this Council Report.
3. Further modify and tentatively approve the ordinance. (Staff returns with a final ordinance.)
4. Decline to adopt the ordinance.

The overall fiscal impact to the City should be small. However, it is not possible to forecast property owner participation. As described above, the number of potentially eligible properties/applicants relative to the total number of properties in the City is not great, and the proposed permit process, as compared to the current Tree Code procedure, is streamlined. It allows one combined application for multiple types of tree removal/forest management, which should reduce the burden on property owners and save administrative costs.

As an interim proposal for 2015, staff recommends the City Manager establish the following fee structure. The proposed fee is based on the current fee levels for Type I tree removal and Type II tree removal³ but with a not-to-exceed cap. The on-site consultation would be a new service offered to owners of large forested tracts.

Minor Forest Management Permit:	\$16
Major Forest Management Permit:	\$146 + \$16 per tree, not to exceed \$300
on-site pre-application consultation:	No charge for first 2 hours
Erosion Control Permit (if required):	varies
Records Retention Fee:	\$21 (include in not-to-exceed amount)

The fee structure should be reviewed with other fees in December.

RECOMMENDATION

Conduct the public hearing and consider adoption of Ordinance 2664.

ATTACHMENTS

1. Ordinance No. 2664: Amend LOC 55 Tree Code for Large Forested Tracts (Draft 2-19-15)

³ Source: 2015 Master Fees and Charges, Resolution #14-63.