



Draft Tree Code Amendments

Public Discussion Draft
April 27, 2016

Comments **due by May 18th**. See
inside cover for more information
on how to submit your comments.

HOW TO SUBMIT COMMENTS

Please submit comments by **5:00 pm on May 18, 2016**, in order to be considered by the Tree Committee prior to finalizing their draft recommendation to the City Council. There will be further opportunity for public comment at the public hearing before the City Council early this summer.

To submit comments on the Draft Tree Code Amendments, please mail or email comments to:

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A copy of this report and more information about this project can be found at:
<http://www.ci.oswego.or.us/planning/pp-15-0003-2015-tree-code-review>

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I. INTRODUCTION

Project Summary

This report is a public discussion draft for review of amendments to the Lake Oswego Tree Code (LOC Chapter 55) proposed by the Ad Hoc Tree Committee. The proposed amendments have been developed according to the objectives established by City Council through Resolution 15-32:

- Help implement the City Council goal to identify better ways to meet the intent of the Tree Code while responding to residents' desire for less stringent regulation.
- Where possible, reduce staff time and administrative overhead associated with tree regulations.
- Ensure that criteria prohibiting or allowing tree removal are clear and objective.
- Approach the project as amendments and revisions to the current code rather than a wholesale replacement or repeal.

Section III of this report includes the proposed amendments and relevant context within the code along with text boxes describing the rationale for the amendment. The proposed amendments are illustrated by ~~strikeout~~ for language that is proposed to be deleted and **bold double underline** for language that is proposed to be added.

Background

The Tree Code was originally adopted in 1971 and has been amended periodically over the past 40 years. In 2000, a Tree Code Task Force undertook a full review of the Tree Code under the direction of the City Council; however, no changes were ultimately adopted as part of that review. This project is the first major review of the Tree Code to occur since 2000.

The Tree Code Review Project was initiated by the City Council in May 2015 and was kicked off with an Urban Forestry Summit hosted by the Council in order to get comments and feedback on the Tree Code from the public. Staff also conducted focus group discussions with arboricultural and development professionals around the same time. In July 2015, the City Council appointed an Ad Hoc Committee comprised of 31 citizen volunteers to review the Tree Code and recommend amendments to the Council. The Tree Code review and update was originally scheduled for completion at the end of 2015; however, due to the size of the Committee and the importance of the issues, the City Council extended the timeline through June 2016. The Committee has been meeting monthly since July 2015.

An audit of the Tree Code was prepared in order to summarize and categorize input received on the Lake Oswego Tree Code, and examine tree regulation strategies used by similar cities in and near the Portland Metro Area. The Committee then examined the Tree Code by subject area to identify potential policy options for consideration. Options that were approved for consideration by a two-thirds majority of present Committee members were included in a Policy Options Report prepared by staff. The Policy Options Report addressed each of the proposed changes in terms of the objectives established by City Council. The Committee then readdressed the policy options, and items that received a two-thirds vote of present Committee members were used to create the proposed draft amendments in this document. In addition to the amendments developed by the Committee, staff has included several non-policy related amendments aimed at streamlining and clarifying code language. The Tree Code Audit, Policy Options Report, and action minutes of the Committee meetings are all available on the project website <http://www.ci.oswego.or.us/planning/pp-15-0003-2015-tree-code-review>.

During the course of the project, the Committee chair and staff have attended a Mayor's Neighborhood Association Chairs meeting, a Lake Oswego Neighborhood Action Coalition (LONAC) meeting, and two Natural Resources Advisory Board meetings in order to encourage participation in the Tree Code Review project and solicit feedback. Public comment is also accepted at all Committee meetings, and staff has sent periodic updates on the project through a subscription listserv.

II. CODE AMENDMENT PROCESS

Schedule

Key dates in the tentative project schedule are as follows:

- April 27, 2016: Release of the Public Discussion Draft of Tree Code Amendments, Public Open House.
- May 18, 2016: Last day to submit comments on the Public Discussion Draft of Tree Code Amendments in order to have comments considered by the Committee prior to finalizing the draft for the City Council study session.
- Late May 2016 (TBD): Ad Hoc Committee meeting to review public comments on draft amendments and direct staff to make revisions as necessary.
- June 21, 2016: City Council study session to review the draft amendments prior to the public hearing.
- July 2016 (TBD): City Council Public Hearing to receive public testimony, and either adopt, with any amendments, the Committee-recommended Tree Code Amendments, or provide further direction to the Committee or staff.

Community Involvement

This Public Discussion Draft reflects draft amendments developed by the Committee and staff and is not the final draft of the amendments. This draft allows for the items to be considered by the public and to submit comments to the Committee before the Committee finalizes its proposal to the City Council.

Written comments on the Public Discussion Draft are due by May 18, 2016, to be considered by the Committee before it finalizes its recommendation to Council. The public will have an additional opportunity to provide comments and feedback at the public hearing before the City Council. Staff is available to meet with neighborhood and business groups, or individuals by request (see contact information on the inside cover).

In late May, the Committee will meet to review the public comments prior to the City Council study session scheduled for June. Input received from the public will inform the draft amendments for the June study session.

III. DRAFT CODE AMENDMENTS

Article 55.02 Tree Removal.

55.02.010 Purpose.

The purpose of this chapter is to regulate the removal of trees, encourage and assist property owners in managing large forested properties, 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.

55.02.020 Definitions.

Arborist means a person who has met the criteria for certification from the International Society of Arboriculture and maintains his or her accreditation.

Basal Area means the cross-sectional area (in square ~~feet ft.~~ in. inches) of the trunk of a tree measured 54 ~~feet ft.~~ in. inches (four and one-half ~~feet ft.~~ in. inches) above mean ground level at the base of the trunk, calculated from the diameter at that height (DBH); basal area equals tree diameter squared, times 0.005454. This is the same as radius divided by 12, squared, times Pi (approximately 3.14159). For an explanation of how to calculate the tree diameter, see definition of "Caliper Inch" below.

Caliper Inch refers to a manner of expressing the diameter inches of a tree as calculated by measuring the tree's circumference and dividing by Pi (approximately 3.14159). Specially calibrated "diameter tapes" or "calipers" are used to determine caliper inches.

City Manager means the City Manager or the City Manager's designee.

Dead or Declining Tree means a tree is lifeless or is in a state of progressive and irreversible decline. Such evidence of Among the factors that could be considered to determine if the tree is lifelessness may include unseasonable lack of foliage, brittle dry branches, or lack of any growth during the growing season. Among the factors that could be considered to determine if the tree is in progressive and irreversible decline include chlorotic foliage, an overall thinning of the crown, significant branch mortality, top dieback, premature fall coloration and defoliation, or abnormally abundant fruit and flower production.

<p>ITEM 1: The definition of "dead tree" is expanded to include a tree that is in progressive and irreversible decline. This change permits property owners to remove trees that are dying, but not completely lifeless, with a dead tree removal permit. Trees that have entered this state will not recover, but may take years to become completely dead. They are often unsightly and have the potential to become a hazard. Diseased trees would not qualify based on that</p>
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consideration alone, since diseased trees may be physiologically sustainable. A professional arborist may be required to verify progressive and irreversible decline when it is not clear in the application materials (see item 13). The purpose of this amendment is to provide a more inclusive definition of “dead tree” in order to allow the removal of trees in a state of progressive and irreversible decline without the time and costs associated with a Type II permit.

Diameter at breast height or DBH means the diameter of the trunk, at its maximum cross section, measured 54 inches (~~four and one-half feet~~ 4.5 ft.) above mean ground level at the base of the trunk.

Dripline means an imaginary vertical line extending downward from the outermost tips of a tree’s branches to the ground.

Fruit Tree means a tree bearing an annual crop of edible fruit that is grown for human consumption. For the purposes of this chapter, trees that produce fruits comprised of a hard shell and a seed, commonly referred to as nuts, are excluded (e.g., walnut, chestnut, oak).

ITEM 2: This is a new definition. The definition will be used to allow any number of fruit trees of any size to be removed with a Type 1 permit (see item 12). Ornamental fruit trees, which often flower and may produce a small amount of fruit that is edible, are not considered “fruit trees” for the purpose of this tree code. Nut trees are specifically excluded from the definition to prevent the removal of larger stature trees, such as walnut trees, that may provide a substantial contribution to canopy cover, and to the character or aesthetics of a neighborhood.

Forest Management Professional means a certified or licensed (as applicable) arborist, forester, landscape architect, forest ecologist, or similar natural resource professional, with expertise in developing silvicultural prescriptions.

Forested Tract, Large means a lot, parcel, or tract, or a portion thereof, one acre or larger in area containing not less than one acre of tree canopy or meeting the applicable stocking level for high/medium/low site class(es), as applicable, under the Oregon Forest Practices Act (OFPA). Where stocking level is used (e.g., for a forest management permit) site class is determined by a qualified forest management professional at the time of application submittal. A property may have more than one large forested tract on it, and forest land on contiguous tracts under the same ownership may be considered together in calculating the minimum area of one acre.

Invasive Tree Species means a tree species listed on the Invasive Tree Species List on file with the Planning Department. The Invasive Tree Species List shall include:

- a. Tree species listed by resolution of the City Council; and

b. Tree species added by the City Manager from time to time, upon finding that the tree species has been introduced to locations outside of its native range, the tree species has spread and now persists over large areas, and the tree species negatively impacts natural ecosystems by displacing native species, reducing biological diversity and interfering with natural succession.

Native tree means a tree identified as native in the City’s Master Plant List (LOC 50.11.004 Appendix D)

ITEM 3: This is a new definition. The definition of “native tree” will be used for the purpose of requiring the use of a native tree for mitigation when a native tree is removed. Mitigation trees are not required to be native when the removed tree was non-native (see item 46). The City’s Master Plant List provides the common and scientific names of trees native to the area.

Person means any individual or legal entity.

Removal means to cut down a tree or remove all or 50% or more of the crown, trunk, or root system of a tree; or to damage a tree so as to cause the tree to decline and/or die. "Removal" includes but is not limited to topping, damage inflicted upon a root system by application of toxic substances, operation of equipment and vehicles, storage of materials, change of natural grade due to unapproved excavation or filling, or unapproved alteration of natural physical conditions. "Removal" does not include normal trimming or pruning of trees.

Significant Tree means a healthy, non-invasive tree over 12 in. DBH that is considered significant due to size, species, or distinctive character, or the only remaining tree on a property.

ITEM 4: This is a new definition. The definition establishes the elements that typically indicate a tree contributes significantly to the character or aesthetics of a neighborhood. The term “Significant tree” is included with the considerations of “significant negative impact...” in the Type II criteria of review (see item 30). Environmental factors such as the tree’s location that are considered when addressing “significant negative impact...” are addressed in the Type II permit criteria. Where only one healthy, non-invasive tree over 12 inches DBH remains on a property, the definition ensures that tree will always be considered significant. The new definition is also referenced in the removal of “significant trees” to establish extra mitigation requirements as a disincentive to removing significant trees (see item 45).

Single-family dwelling for the purpose of this chapter means any of the following: a detached home, a townhouse or rowhouse, a zero-lot line dwelling, duplex, or a condominium unit where the tree cutting permit relates to a tree located in the private yard of such a unit.

Stand (of trees) means a group of trees (of the same species or a mixture) that form a visual and biological unit, at least 15 ft. in height with a contiguous crown width of at least 120 ft.

ITEM 5: This is a new definition. The definition is derived from the definition of “tree grove” in the Community Development Code (LOC 50.10.003) and the definition of a “stand” used by the City of Tigard. Trees that grow as a stand, either planted purposefully or naturally occurring, develop such that the removal of one or more may affect the viability of others. The removal of large portions of stands of trees is considered a “significant negative impact” on the character and aesthetics of a neighborhood. The term is used in the criteria for issuance of a Type II permit (see item 30).

Stocking means the number of trees on a given area, as in the case of trees per acre required to be retained or planted after removal under a forest management permit. Restocking means trees planted under a forest management permit for reforestation. Stocking counts trees of all sizes and ages, including seedlings and young trees.

Street tree means a tree 1.5 in. or larger in diameter at breast height (DBH) located within the public right-of-way, a pedestrian easement abutting a right-of way, or within a street tree easement, or used to meet the street tree requirements for a prior development permit.

ITEM 6: This is a new definition. The definition is adapted from the City of Tigard tree code. The removal of street trees is considered a “significant negative impact” on the character and aesthetics of a neighborhood. The term is used as a consideration in the review of Type II permit applications (see item 30).

Stump means a tree of six ~~feet~~ ft. in height or less whose top was removed either under a tree removal permit or by an act of nature.

Topping means the severe cutting back of a tree’s limbs to stubs three ~~in. inches~~ or larger in diameter within the tree’s crown to such a degree so as to remove the natural canopy and disfigure the tree.

Tree means any woody plant having a trunk ~~five- six in. caliper inches~~ or larger in diameter at breast height (DBH), except that for purposes of restocking, "tree" means a woody perennial plant, often but not always with one dominant trunk, with the capacity to achieve a mature height greater than 16 ft., ~~and primarily referred to in the latest edition of Trees to Know in Oregon (Oregon State University Extension Agency).~~ If a tree splits into multiple trunks above ground, but below 4.5 ft., ~~four and one half feet~~, the trunk is measured at its most narrow point beneath the split, and is considered one tree. If the tree splits into multiple trunks below ground, each trunk shall be considered one tree. For the purposes of this chapter, stumps, **shrubs, and hedges that otherwise meet the above description (common examples include Rhododendrons, camellia,** English laurel, Portuguese laurel, photinia, arborvitae, **and hazelnuts)** ~~poison oak, and English ivy,~~ shall not be considered a "tree."

ITEM 7: The definition of tree is amended to exclude trees under six inches DBH, to remove the reference to “Trees to Know in Oregon”, and to specifically exclude shrubs and hedges. The definition of “tree” establishes the size at which trees are regulated by the Tree Code.

Research indicated that six inches DBH was a more common threshold for tree regulation in nearby jurisdictions. The reference to “Trees to Know in Oregon” has been removed because some trees identified on the City’s invasive tree list and other uncommon non-native species of trees are not included in the publication. There has been confusion in the past as to whether woody perennial plants with multiple trunks, such as Rhododendrons are considered a tree. These plants are not included in the latest edition of “Trees to Know in Oregon” and the general consensus is that they should not be regulated. The previous definition of “tree” listed specific shrubs that were excluded, but did not provide a general exclusion of all shrubs. The definition of “street trees” (see item 6) ensures trees that meet the definition may be subject to stricter regulation.

Tree Canopy means the total ground area covered by a tree or a stand of trees, as measured at the outer limit of tree branches or crown, projected to the ground. This is also referred to as the tree dripline

Tree Cutting Permit means written authorization from the City for a tree removal to proceed as described in an application, such authorization having been given in accordance with this chapter.

Tree Protection Zone means the area reserved around a tree or group of trees in which no grading, access, stockpiling or other construction activity shall occur as determined by the City Manager to be appropriate based on review of the tree and site conditions.

Tree Risk Assessor Qualified Arborist means a person who has met the criteria for qualification in tree risk assessment from the International Society of Arboriculture and maintains accreditation.

ITEM 8: This is a new definition. The definition is added in order to require arborists who conduct hazard tree evaluations to have valid and current accreditation (see item 14). This definition is added to reflect this change.

Utilities mean water, sewer, gas, electric, and telecommunications services, including all infrastructure required for an exchange.

ITEM 9: This is a new definition. The definition is adapted from the definition of “utility” in the Community Development Code (LOC 50.10.003). The definition is used to permit tree removal when necessary for the protection or restoration of utility services to a home (see items 17, 31).

55.02.025 Exempt Activities.

This chapter does not apply to the removal of trees less than six in. ~~five inches~~ DBH.

ITEM 10: Amended to reflect the change in the definition of “tree” (see Item 7).

55.02.030 Prohibited Activities.

1. No person shall remove a tree without first obtaining a tree cutting permit from the City pursuant to this chapter.
2. No person shall top a tree without first obtaining a topping permit from the City pursuant to this chapter.
3. No person who is required to install or maintain tree protection measures per LOC Article 55.08 shall do any development activities including, but not limited to clearing, grading, excavation or demolition work on a property or site ~~which that~~ requires ministerial, minor or major development approval, or a public improvement, or a plumbing permit for water or sewer connection, without approved tree protection measures properly installed and maintained pursuant to this chapter.

ITEM 11: Amended to add certain plumbing permits to the types of development that require tree protection measures. Trenching to install plumbing features has the potential to damage tree roots and may result in the death of trees. These types of plumbing permits cover water and sewer laterals and irrigation systems. A tree protection plan will now be required to prevent irreversible damage to tree roots (see items 65, 67, 72).

55.02.035 Tree Removal in Conjunction with Major or Minor Development Permit.

1. If a major or minor development permit applied for pursuant to LOC 50.07.003.15 or 50.07.003.14, respectively, would require or result in tree removal and/or a tree cutting permit as defined in this chapter, compliance with LOC 55.02.080 shall be a criterion of approval of such development permit. Tree removals in conjunction with a major or minor development permit shall be considered in conjunction with such permit and shall be subject to the application, notice, hearing and appeal procedures applicable to the proposed major or minor development pursuant to LOC 50.07.003.3.e, 50.07.003.7.a, 50.07.003.15.b, and 50.07.003.7. The required notice for major or minor developments that would require or result in tree removals shall include a site plan indicating the location of any trees proposed for removal on the subject site. The proposed trees shall also be flagged with yellow flagging tape on site. Such flagging shall be maintained until a final decision on the proposal is rendered. The remaining, notice, hearing and appeal procedures in LOC Chapter 55 shall not apply to tree removals considered in conjunction with a major or minor development request. Subsequent tree removals that have not been reviewed through either major or minor development procedures shall be reviewed as provided in this chapter.
2. Once a final decision has been rendered on the major or minor development permit, trees that have been approved for removal as part of that decision shall be subject to the verification permit process. Applications for verifications shall be made on the application forms as prescribed by the City Manager and be accompanied by an application fee as established by resolution of the City Council. The purpose of the verification process is to ensure that the trees

approved for removal are properly identified for removal in the field and that the trees that were not approved for removal are not inadvertently removed. Removal of trees in violation of such land use approval will be considered a violation of this chapter. The criteria contained in LOC 55.02.080 shall not apply to verification applications for tree cutting permits.

3. If a tree proposed to be removed has been specifically required to be preserved or protected as a condition of approval of a land use action pursuant to the Lake Oswego Community Development Code, the tree removal application shall be processed as a modification to that land use action and shall be reviewed subject to the criteria of LOC 55.02.080 by the body responsible for reviewing such land use actions. Such modification procedure shall not be required in cases of an emergency as provided in LOC 55.02.042(3), or when the tree is dead as provided in LOC 55.02.080(1) or is a hazard as provided in LOC 55.02.080(2).

55.02.042 Permit Classifications and Review Procedures.

A person who desires to remove a tree shall first apply for and receive one of the following tree cutting permits before tree removal occurs:

1. Type 1 Permit is required for:

a. A property that is located in a residential zone and is occupied by a single-family dwelling;

b. Removal of up to two trees, ~~10-inch~~ **12 in. DBH-caliper** or less per tree ~~at DBH~~ within a calendar year, **and removal of any number of fruit trees regardless of size;** and

ITEM 12: The upper limit of tree removal permitted under a Type I permit is increased to 12 inches. This change allows slightly larger trees to be removed under the Type I permit, reducing the cost and time spent by property owners, residents, and the City for the removal of trees 10-12 inches in size. Fruit trees are exempted from the number and size limitations of the Type I permit. A definition of fruit tree has been added for this purpose (see item 2). Fruit trees can be particularly problematic for property owners in terms of ongoing maintenance and the potential to attract insects and other pests, and are generally smaller stature trees. This change provides residents with the ability to remove these trees from a property through a simpler and less burdensome process. The Type I permit application will be revised to indicate that the applicant must present photos or other evidence that proves trees are “fruit trees”.

c. A tree that is not:

i. Protected by a condition of approval of a development permit pursuant to the Lake Oswego Community Development Code;

- ii. Located within an area or parcel that has been placed on the Historic Landmark Designation List pursuant to LOC 50.06.009;
- iii. A heritage tree per LOC Article 55.06;
- iv. Located within an RC or RP district or an HBA protection area;
- v. Located within the Willamette River Greenway (WRG) overlay district;
- vi. Located within the 25-foot Oswego Lake Special Setback;
- vii. Located on property owned by the City of Lake Oswego or dedicated to the public, including parks, open space and public rights-of-way.

Type I permits shall be issued without further review upon application and demonstration by the applicant that the request qualifies as a Type I permit pursuant to this subsection.

2. Type II Permit:

- a. A Type II permit is required prior to any tree removal application that does not qualify for issuance of a Type I permit, dead tree removal permit, hazard tree removal permit, emergency permit, verification permit, topping permit, invasive tree species removal permit, or forest management permit as described in this section.
- b. Type II permits shall be reviewed and approved by the City Manager pursuant to LOC 55.02.080 (approval criteria) and 55.02.082 (notice requirements).

3. Dead Tree Removal Permit:

- a. The City shall issue a tree cutting permit for a dead tree, except as provided by subsection (3)(b) of this section, if the applicant demonstrates that a tree is dead **or is in progressive and irreversible decline** and warrants removal. **The City may require the applicant to submit a report from an arborist substantiating that the tree is dead or in progressive and irreversible decline.**

ITEM 13: Amended to address declining trees, and to establish that a report from an arborist may be required if the state of the tree is in question.

- b. In order to provide for wildlife habitat and natural processes, the City Manager may require the retention of a dead tree. Dead trees shall not be removed if located in wetlands, RC protection areas (LOC 50.05.010.5.b), HBA protection areas, stream corridors, parks or open space areas required to be preserved as a condition of development approval unless the tree presents a potential hazard to persons or property.

4. Hazard Tree Removal Permit: The City shall issue a tree cutting permit for a hazard tree if the applicant demonstrates that a tree is a hazard and warrants removal.

a. A hazard tree is a tree that is ~~cracked, split, leaning or physically damaged to the degree that it is clear that it is likely to fall and injure persons or property~~ **as evidenced by cracking, splitting, leaning or physical damage**. A hazard tree may also include a tree that is ~~located within a public right-of-way and is causing damage to existing public or private facilities or services~~ **or public facilities** and such facilities or services cannot **reasonably** be relocated **or repaired**. The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard or a foreseeable danger of property damage to an existing structure and such hazard or danger cannot reasonably be alleviated by treatment or pruning **or moving the service or facility**.

ITEM 14: Amended to include trees on private property (not only those in the public right-of-way) causing damage to public or private services, even though not cracked, split, leaning or physically damaged, and trees causing damage to public facilities (e.g., public sidewalks) that may or may not be in the public right-of-way.

b. The City may require the applicant to submit ~~an arborist's report~~ **from a Tree Risk Assessor Qualified Arborist** confirming the hazard potential of the tree, **indicated by a high or extreme hazard rating in the International Society of Arboriculture qualitative tree risk assessment**, along with an analysis of alternative methods to alleviate the hazard without removal, and submit a completed hazard evaluation form as provided by the City.

ITEM 15: The hazard tree evaluation is amended to implement the qualitative methodology to tree risk assessment taught by the International Society of Arboriculture. The current evaluation itself was not viewed as problematic, rather the change is intended to help ensure a more consistent application of hazard tree evaluations with more predictable outcomes, while protecting against abuses of the hazard permit. The ISA provides a certification program and ongoing training for the qualitative technique. This amendment establishes the use of the qualitative approach for hazard tree evaluations, which require Tree Risk Assessor Qualified Arborists to conduct the evaluation (see item 8).

5. Emergency Permit:

a. If the condition of a tree presents an immediate danger of collapse, and represents a clear and present hazard to persons or property, an emergency tree cutting permit may be issued ~~and the payment of a fee may be waived~~. For the purposes of this subsection, "immediate danger of collapse" means that the tree is already leaning, ~~with the surrounding soil heaving,~~ and there is a significant likelihood that the tree will topple or otherwise fail and cause damage before a tree cutting permit could be obtained

through the nonemergency process. "Immediate danger of collapse" does not include hazardous conditions that can be alleviated by pruning or treatment.

ITEM 16: Amended to remove the heaving soil test since a tree that poses an "immediate danger of collapse" may not always present heaving soil. The fee for emergency permits is always waived. It is recommended that City Council simply eliminate the fee and the code language that refers to it.

b. An emergency permit shall be issued if a tree is leaning such that it rests either:

i. On a structure; or

ii. On another tree and there is a significant likelihood that the tree will topple or otherwise fail.

ITEM 16: Amendment added to allow emergency permits for trees that are leaning onto a structure or another tree. Trees that are leaning against a building or another structure may not present an "immediate danger of collapse", and therefore could currently require a Type II permit to remove. This allows property owners to respond quickly to these situations, without the costs and regulatory burdens of the Type II permit, in order to prevent further danger or damage. Trees that have naturally fallen to the ground do not require a tree removal permit for their removal.

c. If a utility service has been interrupted such that the applicant can demonstrate that repairs cannot be completed without the removal of a tree, an emergency permit shall be issued. If the tree is a significant tree or a heritage tree, the applicant must also demonstrate that the utility cannot practicably be relocated.

ITEM 17: Amendment added to allow emergency permits in cases where a tree must be removed to resolve an interruption in service, such as a broken water or sewer line. Utility service, or "utilities", has been defined for this purpose (see item 9). This allows property owners to respond to service interruptions quickly without the costs and regulatory burdens of the Type II permit.

ed. Emergency tree cutting permits must be approved by the City Manager. If an emergency situation arises at a time when the City Manager is unavailable, and such emergency creates a significant likelihood that the tree will topple or otherwise fail before such official becomes available, the owner of the tree shall, ~~if practical and reasonable, first notify the City Tree Hotline phone number and state the address where the tree is being removed, the company performing the removal, along with the property owner's name, address, and telephone number. The owner shall~~ photograph the tree showing emergency conditions and then may proceed with removal of the tree to the extent necessary to avoid the immediate hazard. Within seven days of such removal, the owner of the tree shall apply for a retroactive emergency tree cutting

permit and shall submit with the application, evidence to demonstrate the emergency nature of the tree.

ITEM 18: Removed because the City Tree Hotline does not exist.

~~ee.~~ The City may require the applicant to hire an arborist to review the evidence to ascertain whether the tree presented an immediate danger of collapse. The person or entity performing the removal shall not be eligible to provide this review. If the evidence shows that the tree did not satisfy the emergency tree removal standards set forth in this chapter, the application shall be denied and the owner of the tree shall be subject to penalties pursuant to LOC 55.02.130 and the mitigation requirements of LOC 55.02.084.

ITEM 19: Amended for clarity.

6. Invasive Tree Species Removal Permit: The City may issue a tree cutting permit for a tree that is on the Invasive Tree Species List upon the applicant's compliance with the requirements of LOC 55.02.050(1)(a).

7. Verification Permit:

a. If a site has received development approval through a major or minor development process, then a verification permit shall be issued for those trees approved for removal through that process. To obtain a verification permit, an applicant must clearly identify in the field the trees to be removed by tying yellow tagging tape around each tree and submitting a site plan indicating the location of the requested trees. The City Manager may require the building footprint of the development to be staked to allow for accurate verification of the permit application. The City Manager will then verify that the requested trees match the site plan approved through the major or minor development process. The City shall require the applicant to mitigate for the removal of each tree pursuant to LOC 55.02.084. Such mitigation requirements shall be a condition of approval of the original development permit.

b. Any tree not approved for removal through the original major or minor development review process shall not be approved as part of the verification permit process, unless the subject tree is located within an approved building footprint, public/private utility or improvement area, and no feasible alternative exists to preserve the tree. In such cases, the City may allow the tree to be removed without a Type II tree cutting permit process; however, the mitigation requirements of LOC 55.02.084 shall still apply.

c. Verification permits shall be issued upon application and demonstration by the applicant that the request complies with this section. Verification permits shall not be

issued prior to the issuance of a building permit for the subject property without prior authorization by the City Manager.

8. Topping Permit:

a. A topping permit may be issued only if the following apply:

i. A utility, public agency, or other person who routinely tops trees in furtherance of public safety, may apply for a topping permit pursuant to this section based upon an arborist or forester report establishing a methodology for topping in compliance with this subsection.

ii. Trees under utility wires may be topped only where other pruning practices are impractical.

b. The City, in granting approval for tree removal in an open space or undeveloped area, may allow a tree to be topped to a designated height in order to maintain a "snag" for wildlife habitat.

c. A tree cutting permit obtained for tree removal shall not authorize topping unless said tree cutting permit specifically authorizes such action.

9. Forest Management Permit, Minor or Major: The City shall issue a permit for tree cutting on a large forested tract upon the applicant's compliance with the requirements of LOC 55.02.072.

55.02.050 Application for Permits.

1. An application for a tree cutting permit shall be made upon forms prescribed by the City.

a. Invasive Tree Species Removal Permit. An application for an invasive tree species removal permit shall contain:

i. Photograph(s) that positively identify the tree species;

ii. The number, DBH, species, and location of the trees proposed to be cut on a site plan of the property. For large forested tracts, the City Manager may accept an estimate of the number of invasive trees to be removed with a site plan indicating the estimated number, location, DBH, and species;

iii. Information as to whether the tree is located in a public right-of-way, is within a Resource Conservation or Resource Protection Overlay District, or a required protection area for a Habitat Benefit Area Overlay District, or is part of an approved landscape or mitigation plan;

ITEM 20: Amended to add Habitat Benefit Areas to the list of information required with an Invasive Tree Species Removal Permit. This reflects the inclusion of this District in recent amendments to the Sensitive Lands code. The amendment only applies to Habitat Benefit Areas where a required protection area was established through a land division.

iv. A mitigation plan, if required pursuant to LOC 55.02.084(1), with information showing proposed planting of any new trees to replace the invasive trees to be removed; and

v. Any other information reasonably required by the City.

b. Other Tree Removal Permits. An application for a tree cutting permit that is not for an invasive tree species removal permit shall contain:

i. The number, DBH, species and location of the trees proposed to be cut on a site plan of the property, except as provided for a major forest management permit application under LOC 55.02.072(4);

ii. A forest management plan, where an application is for a major forest management permit under LOC 55.02.072(4). The application shall provide an estimate of current and proposed stocking levels (number and basal area) of trees ~~five inches~~ **six in.** or greater DBH by general categories of trees (e.g., Evergreen-Conifer, Evergreen-Broadleaf, Deciduous, etc.), and identify the names of the predominate tree species representing each category;

ITEM 21: Amended to reflect the definition of “tree” (see item 7).

iii. The anticipated date(s) of removal (starting and stopping dates);

iv. A statement of the reason(s) for removal;

vi. **A landscape plan for Type II tree removal if the purpose is to carry out the plan; and**

ITEM 22: Amended to require landscaping plans to be submitted with Type II applications when the purpose of the tree removal is to carry out said plan.

vii. Any other information reasonably required by the City.

2. The applicant shall have the burden of proving that ~~his or her~~ **the** application complies with the criteria for approval of the applicable class of permit.

3. Misrepresentation of any fact necessary for the City’s determination for granting a tree cutting permit shall invalidate the permit. The City may at any time, including after a removal has occurred, independently verify facts related to a tree removal request and, if found to be false or misleading, may invalidate the permit and process the removal as a violation. Such misrepresentation may relate to matters including, without limitation, tree size, location, health or hazard condition, and owner’s authorized signature.

55.02.060 Fees.

An application for a tree cutting permit shall be accompanied by a filing fee as established by resolution of the City Council.

55.02.072 Forest Management Permit.

1. Purpose. The criteria for approval of forest management permits are intended to sustain forest cover and health, and assist property owners in managing forested properties, while minimizing the risk of catastrophic events such as wildfire, drought, pest and disease infestations, storms (tree blow-down), and landslides. In addition, large forested tracts can provide thermal comfort and energy conservation (where stands of trees provide summer shade and windbreaks); water quality (through reduced storm water runoff and erosion); air quality; noise reduction (e.g., in areas of dense trees and shrubs); wildlife and biodiversity; income for property owners; and aesthetics, which can contribute positively to community identity, real estate values, commerce, recreation, and individual health and well-being.

2. Applicability. An owner of a large forested tract or the owner’s authorized agent may apply for removal of one or more trees from the subject tract provided the tract is not subject to a pending application for minor or major development, and the subject trees are not:

~~a. Protected by a condition of approval of a development permit pursuant to the Lake Oswego Community Development Code (LOC Chapter 50.06.009);~~

ITEM 23: Amended to permit the owners of properties with large forested tracts that were subject to conditions of approval of a development permit to utilize the major forest management permit. Some properties such as large apartment or condominium complexes and commercial or institutional campuses may contain large forested tracts that include trees protected by a condition of approval of a development permit. Forest management permits may be the most efficient and effective way for these large forested tracts to be managed. When applying for major forest management permits, these properties will be required to substantially conform to the intent of the conditions of approval of the development permit (see item 26). The applicants will be required to provide a forest management plan prepared by a forest management professional, and the City will determine if the plan substantially conforms to the condition of approval for a development permit. This change is intended to provide flexibility to the owners of properties with large

forested tracts while ensuring that the intent of any condition of approval for a minor or major development approval is met.

ba. **Noteworthy landscape features included on the Cultural Resources Inventory Field Form for** ~~Located on~~ a property that has been placed on the Historic Landmark Designation List pursuant to LOC 50.06.009, **except if the “Statement of Significance” indicates the features are not significant to the landmark.**

ITEM 24: Amended to allow owners of a historic landmarks to apply for a forest management permit. A landmark (Historic Preservation) is defined in the Community Development Code as “any site, object or structure, and the property surrounding it, if so designated pursuant to this Code, that is identified as a landmark pursuant to the provisions of this Code.” Some historic landmarks exist on property with a large forested tract that is not relevant to the landmark itself. Forest management permits may be the best way for these properties to manage their trees.

eb. A heritage tree per LOC Article 55.06;

ec. Located within a Resource Conservation Overlay District, ~~or~~ a Resource Protection Overlay District, **or HBA protection area;**

ed. Located within the Greenway Management (GM) overlay district (LOC 50.05.009);
or

fe. Located within the 25-foot Oswego Lake Special Setback (LOC 50.04.002).

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:

a. Removal of up to six trees or four square ~~feet ft.~~ of basal area, whichever is greater, within one calendar year for every one acre (43,560 sq. ft.) of a large forested tract (round to the closest whole number of trees).

b. Removal of any number of trees that meet the criteria in LOC 55.02.042 for a dead tree removal permit, hazard tree removal permit, emergency permit, topping permit, or invasive tree species removal permit may be combined in one minor forest management permit. The City Manager may require a report from a qualified forest management professional to ~~substantiate~~ **address** that the respective criteria ~~are met~~.

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 Chapter 52 is required prior to tree removal activities that disturb 500 **sq.**

~~ft. square feet~~ or more of land surface area, or any land area within 50 ~~feet~~ft. of a stream corridor boundary.

d. If the site was subject to a development permit, the removal of trees shall not be contrary to the development permit pursuant to LOC Chapter 50.

ITEM 25: Amendment added to ensure that any minor forest management permits issued do not contradict an approved development permit.

Minor forest management permits shall be issued without further review upon application and demonstration by the applicant that the request qualifies as a minor forest management permit pursuant to this subsection.

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:

- a. The forest management plan shall include a description of the existing conditions and identify and describe the forest management objectives that it is intended to implement for each tree stand type proposed for treatment. Forest management objectives include pest management; disease prevention and treatment; protection against catastrophic events, such as wildfire and storms (tree blow-down); removal of individual hazard trees; water quality protection or improvement; removal of invasive species; and routine pruning, thinning, and replanting of trees for forest health and diversity;
- b. Forest management shall not include the felling and removal of all trees from a stand (clearcutting), except where a stand is predominately comprised of diseased trees, treatment by other means is not practicable, and the forest management plan provides for restocking with nonsusceptible species;
- c. Forest management activities will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks;
- d. Forest management activities will not result in removal of more than 50% of the basal area of trees within a required setback yard under the applicable zoning district (LOC Chapter 50). 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;

e. Removal of the tree(s) is not for the sole purpose of providing or enhancing views. Thinning and pruning of trees to provide a fuel break next to an existing dwelling is allowed subject to compliance with the criteria of this section;

f. Removal of trees shall substantially conform to any development permit issued for the site pursuant to LOC Chapter 50.

ITEM 26: Amendment added to ensure that any major forest management issued substantially conforms to any development permits issued for the site. Major Forest Management Permits require a forest management plan prepared by a qualified professional and approved by the City. The City and owners of properties with over an acre of tree coverage are provided the flexibility to develop a forest management plan that involves the removal of trees that were a condition of approval for a development permit, if the plan conforms to the intent of said condition of approval.

fg. The application shall contain a forest management plan (narrative and site plan) that:

- i. Identifies all proposed areas of tree removal, stocking, and other forest practices, as applicable;
- ii. Identifies all proposed forest management activities, including timing, duration, method of application (e.g., manual or equipment), temporary and permanent disturbance areas (e.g., any roads, stockpiles, etc.), and, where applicable, erosion control measures under LOC Chapter 52;
- iii. Describes how existing trees to be retained, including trees not in the area to be thinned, and those on abutting property, will be protected during all proposed forest management activities;
- iv. Demonstrates how any adverse impacts, per subsections (4)(c) and (4)(d) of this section, will be avoided; or, where impacts are unavoidable, how they will be minimized or mitigated;
- v. Provides silvicultural prescriptions and maintains site-appropriate stocking levels as recommended by a qualified forest management professional, to achieve the stated forest management objectives. The reviewing authority may refer to the Oregon Forest Practices Act for guidance on recommended stocking levels, as applicable; and

- vi. Preserves exemplary specimen trees for their aesthetic or educational value where preservation does not conflict with the proposed forest management objectives.

55.02.080 Criteria for Issuance of Type II Tree Cutting Permits.

An applicant for a Type II tree cutting permit shall demonstrate that the following criteria are satisfied. The City Manager may require an arborist’s report to ~~substantiate~~ address the criteria for a permit.

1. The tree is proposed for removal ~~for landscaping purposes~~ **because it has outgrown its landscape area or the removal is part of a landscape plan,** or in order to construct development approved or allowed pursuant to the Lake Oswego Code or other applicable development regulations.

a. For the purposes of this section, a tree that has outgrown its landscape area may include, but is not limited to, a tree that has grown such that damage to a structure or facility cannot be avoided by pruning or other maintenance, a tree that has grown too large within a constrained space such as a deck or other built feature that was constructed around the tree, or thinning to improve the health of other trees.

b. For purposes of this section, a “landscape plan” shall consist of plantings but may also include walkways, patios and other landscape features; the plan must include more than removing the tree for which the Type II permit is requested and planting required mitigation trees. The City Manager may require the building footprint of the development to be staked to allow for accurate verification of the permit application;

ITEM 27: Amended to specify the criteria for tree removal under a Type II permit. Type II permits may be issued for trees that have outgrown their landscape area, including consideration of roots or crown, and examples are provided. Type II Permits may also be issued if tree removal is part of a landscaping plan. The landscape plan must include more than the requested tree removal, and/or planting a mitigation tree.

2. Removal of the tree, **considering proposed mitigation measures,** will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks; and

ITEM 28: Amended to specify that potential mitigation actions may be considered when addressing significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.

3. Removal of the tree will not have a significant negative impact on the character, or aesthetics, ~~or property values~~ of the neighborhood. **This standard is met when the tree(s) is not:**

ITEM 29: Amended to remove the requirement that applicants demonstrate tree removal will not have a significant negative impact on property values. This criteria is not only difficult to prove, but any evidence provided could easily be argued against during an appeal based on speculative real estate prices. Applications are rarely, if ever, denied based on a significant negative impact on property values. Working to preserve the character or aesthetics of the neighborhood helps protect property values.

a. A significant tree;

b. A prominent tree by stature in the neighborhood skyline, as viewed from all public streets and properties within 300 ft. of the property;

c. A tree that serves as a visual screen between a residential zone and an abutting non-residential zone, or between a low density residential zone and a medium or high density residential zone, or between a medium and high density residential zone;

d. A street tree; or

e. Greater than 50% of a stand of trees

ITEM 30: Amendment added to provide clarity by changing “Significant negative impact on the character or aesthetics of the neighborhood” to a purpose clause, and then stating the alternative subcriteria (a) – (e) that can be used to meet criterion #3. Significant trees provide a substantial contribution to the character and aesthetics of a neighborhood in and of themselves. A definition of “significant tree” has been provided to further qualify the term (see item 4). Trees that represent a prominent feature of the skyline, trees that act as privacy barriers between dissimilar zones and street trees can also be important to the character or aesthetics of a neighborhood as a result of their place within the natural and built environment. Three hundred feet is a commonly referenced impact area in the LOC, and is used to indicate visual prominence in the neighborhood skyline. Privacy barriers, for the purpose of the code, have been described as visual screens between properties residential zones and non-residential zones, as well as between residential zones based on density category. Street trees are considered significant due to their location, and the term has been defined for this purpose (see item 6). The removal of large portions of stands of trees was also determined to have a significant negative impact on the character or aesthetics of a neighborhood, and a “stand of trees” has been defined for this purpose (see item 5). The review authority has the discretion to grant an exception to this criterion, indicating that these factors may be used to deny a permit application, but do not necessarily prevent a property owner from obtaining a tree cutting permit. An applicant need not meet this criterion #3 if the removal qualifies for an exception.

Exceptions: This subsection (3) is not applicable when:

a. A tree is likely to or will continue to cause damage to a permanent, viable existing structure, or to infrastructure, such as utilities or built walkways, that cannot be remedied through reasonable tree maintenance or pruning: or

ITEM 31: Amendment adds exceptions to the criteria for issuance of a Type II permit. The exceptions are criteria for consideration that may result in the approval of a permit application, even if the application review finds that the tree removal could have a significant negative impact on the character or aesthetics of the neighborhood by meeting one of the subcriteria (a) – (e). These exceptions, along with the subcriteria used to meet the “significant negative impact on the character or aesthetics of the neighborhood” purpose are meant to help improve the clarity and objectivity of Type II permit application reviews and allow residents and property owners to understand why permits are approved or not. A definition of utilities has been added for this purpose (see item 9).

b. A alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone. In making this determination, the City may consider alternative site plans or placement of structures (**development purpose**) or alternate landscaping designs (**outgrown landscape area; landscape plan**) that would lessen the impact on trees, so long as the alternatives continue to comply with other provisions of the Lake Oswego Code.

ITEM 32: Amended to clarify when alternative site plans and landscaping designs are considered.

4. Removal of the tree is not for the sole purpose of providing or enhancing views.
5. The City shall require the applicant to mitigate for the removal of each tree pursuant to LOC 55.02.084. Such mitigation requirements shall be a condition of approval of the permit.

55.02.082 Staff Decision and Notice Requirements for Type II Permits and Major Forest Management Permits.

1. An applicant for a Type II tree cutting permit or a major forest management permit shall:
 - a. Complete a ~~written~~ **public** notice form ~~to be mailed by the City via regular mail.~~ **City staff shall distribute the notice** to the neighborhood associations whose boundaries include the proposed tree removal site;

ITEM 33: Amended to allow the City to provide hard copy or electronic notification of Type II permit applications to neighborhood associations. Removing the requirement that the notice be written will allow applicants to use any future online systems to complete the forms, which can then be automatically sent to the proper neighborhood association.

b. Complete a ~~written~~ certification that the property will be posted and the trees will be marked pursuant to this section;

ITEM 34: Amended to allow electronic or hard copy forms.

c. Within 24 hours of applying for a tree cutting permit, post a public notice sign of a pending tree cutting permit as provided by the City on the subject property or associated access easement in a location ~~which~~ that is clearly visible and readable to vehicles traveling on a public street and to pedestrians walking or biking by the property. The public notice sign shall state that a tree cutting permit is pending for trees on the property marked by yellow plastic tagging tape (or other means approved by the City, in the case of forest management permits), and shall include:

ITEM 35: Amended to clarify sign placement for lots that may not be clearly visible from the public right-of-way.

i. The date of posting and the pending permit number as assigned by the City Manager, and state that City staff will consider any comments on the pending permit that are received within 14 days of the date of posting. For pending forest management permits, the notice shall include a brief summary of the proposed tree removal and forest management activities;

ii. The following dates regarding the application:

(1) Last date to submit written comments;

(2) Expected date for issuance of Tentative Decision;

iii. Telephone number, city website address, and Planning Department location and hours to obtain information about the application, submit comments, obtain the Tentative Decision, and determine the last date to request a hearing.

ITEM 36: Amendment added to reflect changes to the notification, comment, and appeal process. One sign will be posted at the beginning of the process and will contain all the relevant information about the process up to the deadline for requesting a hearing (see items 37, 38, 39). Interested parties are provided the information needed to comment, learn of the Tentative Decision,

and request a hearing. This will eliminate the need for a second staff visit to the site unless the Tentative Decision is appealed by requesting a hearing. If a request for a hearing is filed, staff will post a second sign on the property containing the relevant information (see item 40).

d. Mark each tree proposed to be removed by tying or attaching a yellow plastic tagging tape to the tree at ~~four and one-half feet~~ **4.5 ft.** above mean ground level at the base of the trunk, on or prior to the same day that the property is posted; and

i. Exception: For tree removal under a forest management permit, trees may be identified with tree marking paint, flagging, or other methods recommended by a forest management professional and identified in the permit; ~~and~~

e. Maintain the tree marking ~~for 14 consecutive days following the posting of the property.~~ until the Final Decision is issued.

ITEM 37: Amended to reflect the elimination of the “Tentative Decision” sign posting (see items 36, 38, 39). Establishes that the sign posted by the property owner on the date of the application shall remain until the tree removal decision is final, or the City Council has closed the record on any appeal hearing.

2. Within two business days of the close of the comment period, City staff shall make a Tentative Decision approving the permit, approving the permit with conditions, or ~~shall deny~~ denying the permit;:

a. The Tentative Decision shall be posted on a Planning Department internet case file webpage, referencing the address stated in the posted notice. A Notice of Tentative Decision shall state the deadline to file a Request for Hearing.

b. The Notice of Tentative Decision shall be given to the applicant, neighborhood association, and persons that submitted written comments. The Notice of Tentative Decision shall be provided by email to the person’s / association’s submitted email address, or if no email address is provided by a person but a mailing address is provided, then by first class mail.

ITEM 38: Amended to detail the City’s responsibility and method to notify the applicant, neighborhood association, and commenters of the Tentative Decision on a permit application.

3. If a permit is tentatively approved, staff shall immediately post a yellow sign stating the tentative approval and also stating the method and deadline for requesting the hearing pursuant to LOC ~~55.02.085~~. The applicant shall maintain the posting of this sign, together with the tree marking, for at least 14 consecutive days. If no Request for Hearing is received within seven days after the Tentative Decision is issued and Notice of Tentative Decision is given to

the applicant, neighborhood association, and to persons that submitted written comments pursuant to ~~meeting the requirements of~~ LOC 55.02.085, the approval of the permit shall be final. **Tentative Decision shall be the Final Decision.**

ITEM 39: Amended to remove the requirement that city staff make a second site visit in order to post a second sign following all Tentative Decisions, and to set up the same procedure for both an applicant and an opponent to a tree removal permit. (see items 36, 37).

4. ~~If the applicant appeals the denial of a permit, or appeals conditions imposed on a tentatively approved permit,~~ **a Request for Hearing is timely filed,** City staff shall immediately post a red sign on the subject property in the same manner as the posted notice under subsection (c), stating a Tentative Decision on an application for tree removal was issued, a timely request for hearing was filed, and the location, time and date of the hearing. The applicant shall maintain the posting of this sign and the tree marking until the date of the hearing.

ITEM 40: Amended to establish a uniform procedure for requesting a hearing following a Tentative Decision, regardless of the party requesting. Also states the content for the second sign, including the hearing information.

5. Failure to install or maintain the required notice and marking may result in denial or delay in issuance of the permit or revocation of an approved permit.

55.02.084 Mitigation Required.

1. An applicant shall provide mitigation for any tree permitted for removal, with the exception of the following:

- a. Dead trees;
- b. Hazard trees;
- c. **Emergency trees;**
- d. ~~Trees that are ten inches or less in diameter removed from developed single family lot~~ **removed under a Type I permit;**

ITEM 41: Amended for clarification that Emergency Permits and Type I Permits do not require mitigation.

- ~~de.~~ Invasive tree species, except as provided in subsection (2) of this section;

ef. Tree removal under an approved minor forest management permit pursuant to LOC 55.02.072; restocking may be required for major forest management permit under LOC 55.02.072(4).

2. Mitigation for invasive tree species removal is required when:

- a. The removal is from a public right-of-way;
- b. The removal is from an RP or RC district, or HBA protection area; or
- c. The tree was planted as part of a previously approved ~~landscape or~~ mitigation plan **or landscaping.**

ITEM 42: Amended to clarify that not all approved landscaping requires a landscaping plan.

3. Mitigation shall be required for any tree removal in violation of the Tree Code, excluding trees removed without permit by topping.

ITEM 43: Amendment added to require mitigation when trees are removed without a permit or otherwise in violation of the tree code. Topping violations are excluded due to the frequently high number of trees involved, and because the “removed” tree is still in place.

34. The mitigation requirement shall be satisfied as follows:

- a. Replanting on Site. The applicant shall plant, for each tree removed:
 - i. Invasive Tree Species Removal Permit: Removal from a public right-of-way or from an approved landscape plan, either a minimum ~~two~~ **1.5 in. inch** caliper deciduous tree (**measured six in. above the rootball**) or a **minimum** ~~six to eight~~ foot-tall evergreen tree for each tree removed. Removal from a Resource Conservation or Resource Protection Overlay District, or Habitat Benefit Area, either a minimum ~~one-half inch~~ **0.5 in.** caliper deciduous tree or a minimum two-foot-tall evergreen tree.

ITEM 44: Amended to reduce the size requirements for deciduous mitigation trees. 1.5 inch trees have a wider availability, particularly for native trees, generally establish in a new location faster, and have higher rates of survival than two-inch caliper trees. The six to eight foot height range for evergreen trees is modified to simply establish the minimum height. Larger trees may be planted at the applicant’s discretion.

ii. Type II Permit: Either a minimum 1.5-in. caliper deciduous tree or a six-foot-tall evergreen tree for each tree removed. Mitigation for the removal of a native tree shall be of a native species.

(1) Exception: Removal of a tree identified as a significant tree for development purposes shall require two minimum 1.5-in. caliper deciduous trees (measured six inches above the root ball) or a minimum of two six-foot-tall evergreen trees for each tree removed.

(2) Exception: If tree removal is for the landscaping purpose of thinning to improve the health of other trees, mitigation shall be reduced to the extent there is insufficient space to replant elsewhere on the site and maintain tree health.

ITEM 45: Amendment added to establish that when native trees (see item 3) are removed, native trees will be required to fulfill the corresponding mitigation requirements. In addition, exception #1 establishes that to property owners who remove significant trees for development purposes will have extra mitigation requirements, creating a disincentive for the removal of significant trees. Exception #2 establishes that mitigation will not be required when property owners are thinning to improve the health of other trees.

iii. Other Tree Cutting Permits: Either a minimum ~~two~~ 1.5 in. inch caliper deciduous tree or a six-~~to eight~~ foot-tall evergreen tree for each tree removed. Mitigation for the removal of a native tree shall be with a native species.

ITEM 46: Amended to reflect the changes made to the minimum size of mitigation trees (see item 44), and to require the use of a native tree to mitigate the removal of a native tree.

The tree shall be planted according to the specifications in the City Tree Planting and Maintenance Guidelines as approved by the City Council.

b. Replanting off Site. If in the City's determination there is insufficient available space on the subject property, the replanting required in ~~subsection (1) of this section~~ shall occur on other property in the applicant's ownership or control within the City, or in an open space tract that is part of the same subdivision, ~~or in a City owned or dedicated open space or park~~. Such mitigation planting is subject to the approval of the authorized property owners. ~~If planting on City owned or dedicated property, t~~The City may specify the species and size of the tree. ~~Nothing in this section shall be construed as an obligation of the City to allow trees to be planted on City owned or dedicated property.~~

ITEM 48: Amended to reflect that planting requirements are detailed throughout this section of the Tree Code, and to remove provisions that allow off site replanting to occur on City property. The Parks, Recreation, and Natural Resources Advisory Board (PNAB) indicated that coordinating the replanting and maintenance of the trees was a substantial administrative burden, and that it would be more efficient to have the property owners pay into the tree fund and use the fund to engage in larger scale replanting or tree maintenance efforts.

c. Payment in Lieu of Planting. If in the City's determination no feasible alternative exists to plant the required mitigation, the applicant shall pay into the tree fund an amount as established by resolution of the City Council.

45. Trees identified as invasive on the Invasive Tree Species List are prohibited as mitigation trees.

55.02.085 Request for Public Hearing on a Type II Tree Cutting Permit.

1. **The applicant, neighborhood association, or** ~~Any person~~ **who submitted written comments** may request a hearing on a Type II tree cutting permit **following issuance of the Tentative Decision** by filing a written Request for Hearing, along with the applicable hearing fee as established by resolution of the City Council, with the City Recorder, within ~~14~~**seven** days of the date the ~~a~~**Notice of Tentative Decision** was ~~posted~~**given** pursuant to LOC 55.02.082. Failure to file within the ~~14~~**seven**-day period shall preclude such a request.

ITEM 49: Amended to reduce the appeal period to seven days. The reduced appeal period decreases the time required to issue a Type II permit. The comment period remains two weeks to maintain the current timeframe for interested parties to provide input. A written comment must have been submitted for a party to request a hearing. A Notice of Tentative Decision will be issued (email or mail) to notify the applicant, neighborhood association, and persons who made comments of a Tentative Decision, and the Tentative Decision will be posted on the website. The sign posted on the property will direct interested parties to the website for further information.

~~2. An applicant for a tree cutting permit may appeal denial of a permit or conditions imposed on an approved permit by filing a written notice of intent to appeal, along with the applicable filing fee as established by resolution of the City Council, with the City Recorder within 14 days of the date of decision on the permit.~~

ITEM 50: Subsection removed because an appeal is a request for hearing covered in subsection 1.

~~32.~~ Requests for hearing ~~and appeals~~ shall be heard by the Development Review Commission (DRC), which shall hold a public hearing on the application for tree removal. The City shall send notice of the hearing to the **applicant, neighborhood association, and** ~~Any person~~ **who**

submitted written comments. The notice shall be sent at least 10 days in advance of the hearing.

43. The DRC shall hear testimony from the applicant, followed by those in favor of the application, those opposed to the application (beginning with the person who requested the hearing if different from the applicant), and concluding with rebuttal by the applicant. Any person may testify before the DRC. Following the close of the public testimony, the DRC shall determine, based upon the evidence and testimony in the record, whether or not the application complies with the criteria contained in LOC 55.02.080. The findings, conclusions, and order shall contain the DRC's reasons for approving, **approving with conditions, or** denying ~~or modifying~~ the permit.

ITEM 51: Amended to parallel the Community Development Code text for Development Review Commission decisions

54. A decision of the DRC shall not become final for 10 days from the date of adoption of written findings. Any person who appeared before the DRC either orally or in writing may appeal the decision of the DRC to the City Council by filing a written notice of intent to appeal, along with an appeal fee as established by resolution of the Council, with the City Recorder within 10 days of the date of adoption of the DRC's written findings, conclusions and order. The findings, conclusions, and order and minutes of the DRC's meeting, along with any written staff reports or testimony, shall be forwarded to the City Council. Written notice of the appeal hearing shall be sent at least 10 days in advance of the Council hearing to those persons who appeared before the DRC. The hearing before the City Council shall be on the record established before the DRC and only persons who appeared before the DRC orally or in writing may testify. The appellant shall testify first, followed by persons in favor of the appeal, persons in opposition to the appeal (beginning with the applicant if different from the appellant), and concluding with rebuttal by the appellant. The Council's hearing and decision shall otherwise comply with subsection (4) of this section. The decision of the Council shall be final.

55.02.092 Expiration of Tree Cutting Permits.

1. ~~**Dead and An**~~ **invasive tree species removal permits** shall have no expiration date.

ITEM 52: Amended to prevent the expiration of dead tree permits since the condition of the tree is not going to change if it is dead, and it is an unnecessary hassle for property owners to have to reapply if the permit expires.
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2. A properly issued tree cutting permit, other than an ~~an~~ **dead or** ~~invasive tree species removal permit,~~ and forest management permit, shall remain valid for no more than 60 days from the date of issuance or date of final decision by a hearing body, if applicable. A 60-day extension shall be automatically granted by the City Manager if requested in writing before the expiration of the permit. No additional extensions beyond the first extension shall be granted. Permits

that have lapsed are deemed void. Trees removed after a tree cutting permit has expired shall be considered a violation of this chapter.

ITEM 53: This section is amended to exempt dead tree permits from the 60-day expiration period (see item 52).

3. A minor forest management permit shall remain valid for no more than 180 days from the date of issuance.
4. A major forest management permit shall remain valid for the period specified by the approved forest management plan, except as required under subsection (5) of this section.
5. Minor and major forest management permits automatically expire upon approval of an application for a land division or development on the tract subject to forest management activities such that the tract would no longer meet the criteria for a large forested tract.

55.02.094 Conditions of Approval for Tree Cutting Permits.

1. The City-reviewing authority may impose conditions of approval on any tree cutting permit if the condition is reasonably related to preventing, eliminating or mitigating a negative impact or potential impact on natural features or processes or on the built environment of the neighborhood which is as created or contributed to by the approved tree removal.

ITEM 54: Amended for clarity.

2. Conditions of approval may include, but are not limited to:
 - a. Cutting a tree or stump flush with the grade instead of grinding or fully removing a stump;
 - b. Requiring modifications in the location, design or intensity of a development or activities on a site or to require or prohibit certain construction methods;
 - c. Requiring vegetation not requiring a tree removal permit to remain in place or be planted;
 - d. Requiring the removal of injurious vegetation, (e.g. English Ivy) from other trees on the property.

ITEM 55: Amended to allow staff to require the removal of other forms of injurious vegetation.

55.02.125 Evidence of Violation.

1. If a tree is removed without a tree cutting permit, a violation shall be determined by measuring the stump. A stump that is ~~seven~~ eight caliper ~~in. inches~~ or more in diameter shall be considered prima facie evidence of a violation of this chapter.

ITEM 56: Amended to reflect the increase in the size of trees regulated under the tree code. Prima facie evidence of a violation is the standard used to identify a suspected violation. If action is taken against a suspected violation, a formula is used to calculate the DBH of the removed tree. There are variables within the formula based on tree species, so the standard for prima facie evidence is an estimate that may be applied across tree species.

2. Removal of the stump of a tree removed without a tree cutting permit prior to the determination provided in subsection (1) of this section is a violation of this chapter.

3. Proof of violation of this chapter shall be deemed prima facie evidence that such violation is that of the owner of the property upon which the violation was committed. Prosecution of or failure to prosecute the owner shall not be deemed to relieve any other responsible person.

4. Tree removal ~~or topping~~ caused by natural weather conditions shall not be deemed a violation of this chapter and shall be exempt from all penalties set forth in LOC 55.02.130.

ITEM 57: Amended to clarify that, for the purpose of the code, topping is considered tree removal.

55.02.130 Penalties.

1. Civil Violation. A violation of any provision of this chapter, or the breach of any condition of a permit granted under this chapter shall be a civil violation as defined by LOC 34.04.105, enforceable pursuant to LOC Article 34.04. The unlawful removal of each individual tree shall be a separate offense hereunder. Failure to comply with the provisions of this chapter or a condition of approval shall be a separate offense each day the failure to comply continues. The violation shall be punishable by a fine set forth by the municipal court and the enforcement fee and restoration requirements as set forth in LOC 55.02.130(3) and (4).

2. Nuisance Abatement. The removal of a tree in violation of this chapter is hereby declared to be a public nuisance, and may be abated by appropriate proceedings pursuant to LOC Article 34.08.

3. Enforcement Fee. A person who removes a tree without first obtaining a tree cutting permit ~~for~~ from the City pursuant to this chapter, removes a tree in violation of an approved tree cutting permit, or violates a condition of an approved tree cutting permit shall pay an enforcement fee to the City in an amount as established by resolution of the City Council.

ITEM 58: Amended to correct a typo.

4. Restoration.

a. A person who removes a tree without first obtaining a required tree cutting permit from the City pursuant to this chapter, removes a tree in violation of an approved tree cutting permit, or violates a condition of such a permit shall pay into the City's tree fund a standard fee per caliper inch for the total number of caliper inches of the tree removed in violation of this chapter in an amount as established by resolution of the City Council.

b. The City may require the person to pay into the City's tree fund an increased fee per caliper inch for the total number of caliper inches of the tree removed in violation of this chapter in an amount as established by resolution of the City Council or the value of the tree as determined by an arborist in accordance with the methods set forth in the "Guide for Plant Appraisal," an official publication of the International Society of Arboriculture, whichever is greater, if any of the following apply:

- i. The person has committed a previous violation of a provision of this chapter, or
- ii. Tree protection measures as required by LOC Article 55.08 were not installed or maintained, or
- iii. The tree removed was any of the following:
 - (A) Thirty-six in. caliper ~~inches~~ in diameter or greater,
 - (B) A heritage tree, per LOC Article 55.06,
 - (C) Expressly protected or required to be preserved as a condition of approval of ~~any development~~ permit pursuant to the Lake Oswego Community Development Code, or of this Tree Code.

ITEM 59: Amended to permit fines to be issued for the removal of any tree that was meant to be protected under a condition of approval for any permit.

- (D) Located within the Willamette River Greenway per LOC 50.05.009,
- (E) Part of an RP or RC district, or HBA protection area, per LOC 50.05.010,

(F) Located on public right-of-way, City-owned or dedicated property, a public or private open space area or conservation easement.

5. Injunction. Upon request of the City Manager or direction from Council, the City Attorney may institute appropriate action in any court to enjoin the removal of trees in violation of this chapter.

6. Loss of City Privileges.

a. A person hired to perform tree removal within the City, upon request shall provide evidence to the City Manager that he or she possess a valid license to conduct business in Lake Oswego. The person is subject to business license revocation pursuant to LOC 20.02.085 if the person violates any provision of this chapter.

b. Any arborist, builder, landscaper, contractor, or tree service that has performed any tree removal in violation of this chapter or submitted a falsified report for the criteria required in this chapter, shall not be considered a responsible bidder for any City contracts for a period of two years from the date of violation or report.

7. Arborist Report and Required Treatment. Upon request by the City, a person who violates any provision of this chapter shall submit a report prepared by an arborist or qualified forest management professional, as applicable, to evaluate the damage to a tree and/or make recommendations to remedy the violation. The City upon evaluating these recommendations may, at the City's discretion, require that the recommended measures be implemented.

8. Cumulative Remedies. The rights, remedies, and penalties provided in this chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law.

Article 55.06 Heritage Trees.

55.06.010 Purpose; Definition.

1. The purpose of LOC Article 55.06 is to recognize, foster appreciation and provide for voluntary protection of Heritage Trees.
2. For the purpose of this Article, a "Heritage Tree" is a tree or stand of trees that is of landmark importance due to age, size, species, horticultural quality or historic importance.

55.06.020 Nomination.

1. Any person may nominate a particular tree or trees as a Heritage Tree. If the proposed Heritage Tree is located on property other than City property or public right-of-way under City or County jurisdiction, the nomination shall be submitted by the property owner or accompanied by the property owner's written consent. If the proposed Heritage Tree is located on City property or public right-of-way under City or County jurisdiction, the nomination shall be submitted to the City Manager or County Administrator, as appropriate; if the nomination is consented to by the City or County, the City Manager or County Administrator shall submit the nomination to the ~~Natural Resources Advisory Board (NRAB)~~ **Parks, Recreation and Natural Resources Advisory Board (PNAB)** pursuant to LOC 55.06.030.

ITEM 60: Amended to reflect the proper advisory board. Amendment is reflected in section 55.06.030, below, as well.

2. Nomination shall be made on such form as required by the City Manager. The nomination form shall include a narrative explaining why the tree qualifies for Heritage Tree status pursuant to the description in LOC 55.06.010 and the written consent of the property owner as described in subsection (1) of this section.

55.06.030 Review Process.

1. The ~~NRAB~~ **PNAB** shall review all Heritage Trees nominations at a public meeting. Notice of the meeting shall be provided to the nominating applicant, the property owner (unless the nominated tree is located on public right-of-way under City or County jurisdiction, in which event notice shall be given to the respective City Manager or County Administrator) and the Chair of any recognized neighborhood association in which the tree is located.

2. Staff shall prepare a report for the ~~NRAB~~ **PNAB** analyzing whether the tree complies with the requirements for designation.

3. After considering the staff report and any testimony by interested persons, the ~~NRAB~~ **PNAB** shall vote on the nomination. The ~~NRAB~~ **PNAB** may designate a tree as a Heritage Tree if the Board determines that the following criteria are met:

a. The tree or stand of trees is of landmark importance due to age, size, species, horticultural quality or historic importance; and

b. The tree is not irreparably damaged, diseased, hazardous or unsafe, or the applicant is willing to have the tree treated by an arborist and the treatment will alleviate the damage, disease or hazard;

4. Following approval of the nomination by the ~~NRAB~~ **PNAB**:

a. If the tree is located on private property, the designation shall be complete upon the Property Owner's execution of a covenant running with the land suitable for

recordation by the City. The covenant shall describe the subject property, generally describe the location of the heritage tree, and covenant that the tree is protected as a "Heritage Tree" by the City of Lake Oswego and is therefore subject to special protection as provided in LOC Chapter 55.

b. If the tree is located on public right-of-way, the designation shall be complete upon the Staff's listing of the tree on the City Heritage Tree records.

5. If the tree is located on the public right-of-way, the City or County, as appropriate, shall condition any future Property Owner-requested vacation of the public right-of-way upon the execution of a covenant in accordance with section (4) above, which shall be recorded by the City upon the vacation of the right-of-way.

55.06.040 Protection of Heritage Trees.

1. Unless the tree qualifies for an emergency, dead or hazard tree removal permit, a permit to remove a designated Heritage Tree shall be processed as a Type II Tree Removal Permit subject to the criteria contained in LOC 55.02.080, as modified by subsection (2) of this section.

ITEM 61: Amended to allow emergency permits to be issued for Heritage Trees.

2. If an application to remove a Heritage Tree is sought pursuant to LOC 55.02.080 the applicant shall demonstrate that the burden imposed on the property owner, or, if the tree is located within the public right-of-way under City or County jurisdiction, then the burden imposed on the respective City or County by the continued presence of the tree outweighs the public benefit provided by the tree in order to comply with 55.02.080 (3). For the purposes of making this determination, the following tree impacts shall not be considered unreasonable burdens on the property owner, or if appropriate, the City or County:

- a. View obstruction;
- b. Routine pruning, leaf raking and other maintenance activities; and
- c. Infrastructure impacts or tree hazards that can be controlled or avoided by appropriate pruning or maintenance.

3. Unless the permit is to remove an emergency, dead, or hazard tree pursuant to LOC 55.02.042 (3) or (4), the applicant to remove a heritage tree shall be required to mitigate for the loss of the tree pursuant to LOC 55.02.084.

ITEM 62: Amended to eliminate mitigation requirements for heritage trees removed with an emergency tree removal permit.

4. Any person who removes a Heritage Tree in violation of LOC Article 55.06 shall be subject to the penalties provided in LOC 55.02.130. In addition, the violator shall be subject to double the enforcement fee established pursuant to LOC 55.02.130(3).

55.06.050 Recognition of Heritage Trees.

1. A Heritage Tree plaque shall be designed and may be furnished by the City to the property owner, or if the tree is in the public right-of-way, to the appropriate City or County official, of a designated Heritage Tree. The City may charge a fee to cover the costs of the providing the plaque. The plaque shall be posted at a location at or near the tree and, if feasible, visible from a public right-of-way.

2. The Planning Department shall maintain a list and map of designated Heritage Trees.

55.06.060 Removal of Heritage Tree Designation.

A Heritage Tree shall be removed from designation if it ~~dies~~ falls, or is removed pursuant to LOC 55.06.040. If removed from private property, the City shall record a document extinguishing the covenant.

<p>ITEM 63: Amended to clarify that a Heritage tree that has fallen does not require a permit for removal, and the City will remove the Heritage Tree designation. If a Heritage Tree dies, it must be removed pursuant to LOC 55.06.040.</p>
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**Article 55.08
Tree Protection.**

55.08.010 Applicability.

This article is applicable to any ~~ministerial, minor, or major~~ development **that requires a development permit, pursuant to LOC Ch. 50, and to any activity related to stormwater structures, water and sewer lines/laterals, or irrigation that requires a plumbing permit, pursuant to LOC Ch. 46.**

ITEM 64: Amended to establish tree protection measures for activities that require a plumbing permit, and any activity requiring a development permit.

55.08.020 Tree Protection Plan Required.

1. A Tree Protection Plan approved by the City Manager shall be required prior to conducting any development activities including, but not limited to clearing, grading, excavation, **trenching or tunneling**, or demolition work on a property or site, ~~which~~ **that** requires ~~ministerial, minor, or major~~ **a development approval permit pursuant to LOC Ch. 50, and to any activity related to stormwater structures, water and sewer lines/laterals, or irrigation that requires a plumbing permit, pursuant to LOC Ch. 46.**

ITEM 65: Amended to require tree protection plans with applications for plumbing permits involving exterior work. Activities related to these types of plumbing permits often involve trenching, and can have a high potential to damage tree roots. Requiring a tree protection plan in these situations will help protect trees.

2. In order to obtain approval of a Tree Protection Plan; an applicant shall submit a plan to the City, which clearly depicts all trees to be ~~preserved~~ **protected** on the site. The plan must be drawn to scale and include the following:

- a. Location, species, and diameter of each tree on site and within 15 ~~feet~~ **ft.** of the site;
- b. Location of the drip line of each tree;
- c. Location of existing and proposed roads, ~~water, sanitary and storm~~ **water structures, water and sewer lines/laterals**, irrigation, and other utility lines/facilities and easements;
- d. Location **of stormwater facilities** ~~of dry wells and soakage trenches;~~

ITEM 66: Amended terminology to improve clarity regarding the utilities shown on the plan submitted to the city.

- e. Location of proposed and existing structures;

- f. Grade change or cut and fill during or after construction;
- g. Existing and proposed impervious surfaces;
- h. Identification of a contact person and/or arborist who will be responsible for implementing and maintaining the approved tree protection plan; and
- i. Location and type of tree protection measures to be installed per LOC 55.08.030.

3. For minor or major development, the Tree Preservation Plan shall be prepared by an arborist and shall include an inventory of all trees on site, their health or hazard condition, and recommendations for treatment for each tree.

4. The City Manager may impose conditions of approval on any tree protection plan if the condition is reasonably related to preventing, eliminating or mitigating a negative impact on protected trees that is created or contributed to by the approved development activity. Conditions of approval may include, but are not limited to:

a. Report from an arborist outlining the protection measures proposed to prevent and/or mitigate construction impacts to protected trees;

b. Oversight by a certified arborist of all excavation beneath the canopies of protected trees (inside and outside protection fencing);

c. Status reports from a certified arborist documenting the number, size and actions taken when roots were encountered during development activity;

d. Material transport limited to hand work only;

e. Use of a pier and grade beam design, or other techniques to protect tree roots;

f. Limits on excavation depth to the removal of the vegetative layer only, with the construction subgrade built-up from grade;

g. Arborist assessment of likely tree impacts resulting from changes in hydrology;

h. Phasing of demolition to limit impacts to protected trees during demolition and the early stages of construction;

i. Limits on the type and location of permanent irrigation beneath mature tree species; and

j. Inspection reports from a certified arborist.

ITEM 67: Amendment added to allow City staff to issue conditions of approval for tree protection plans. The conditions of approval will help ensure tree protection plans and all appropriate measures are followed. This provides more tools for staff to help prevent costly enforcement actions resulting from tree protection violations. Having a certified arborist on site to document tree protection measures and compete status reports during the project can help identify, prevent, and respond to potential damage to trees. Conditions related to construction activities such a pathway construction, excavation, pier and grade beams, hand work, etc. are direct instructions that lessen impacts during construction. Staff will review tree protection applications and attach conditions of approval at their discretion. The violation of a condition of approval will result in a fine paid to the City.

55.08.030 Tree Protection Measures Required.

1. Except as otherwise determined by the City Manager, all required tree protection measures set forth in this section shall be instituted prior to any development or plumbing activities, including, but not limited to clearing, grading, excavation or demolition work, and shall be removed only after completion of ~~all~~ **the major construction activities outside of the building or completion of the plumbing work. Fencing may be removed at the time of,** including landscaping and irrigation installation.

ITEM 68: Amended to allow the removal of fencing to complete landscaping or install irrigation. The amendment also allows fencing to be removed if the only remaining construction on-site is occurring inside the building. This change reflects the current code enforcement activity.

2. ~~Chain link~~ **Protection** fencing, a minimum of ~~6 feet~~ **four ft.** tall with steel posts placed no farther than ten ~~feet~~ **ft.** apart, shall be installed at:

a. The edge of the tree protection zone or dripline, whichever is greater, or

b. Within the tree protection zone or dripline, provided the locations are found by the project arborist that construction activities will not damage the trees, and the arborist's findings are approved by the City Manager; and

c. and ~~a~~ **At** the boundary of any open space tracts or conservation easements that abut the parcel being developed.

ITEM 69: Amended to reduce the fencing height in tree protection areas, to allow multiple types of fencing, and to allow fencing to be placed within the tree protection zone or dripline if the decision is approved by the City Manager. Four-foot fencing of any type provides the same effective barrier as six-foot chain link fencing. Four-foot fencing is easier to keep in place because it is less likely to wobble, tilt, and/or fall. If the project arborist determines that fencing within the tree protection zone or

dripline will adequately protect trees, the City Manager may approve the alternative placement of the protection fencing. Fencing height requirements for Sensitive Lands Districts are established in the Community Development Code, LOC 50.05.010.4.d(i)(1). Since amendments to the Community Development Code fall outside the scope of the Committee work a similar amendment is suggested for the Community Development Code.

3. The fencing shall be flush with the initial undisturbed grade.
4. **The applicant shall obtain City-issued tree protection signs for the site and** ~~Approved signs shall be attached~~ **the sign(s)** ~~to the chain link~~ **protection** ~~fencing that inside the fencing is a tree protection zone, not to be disturbed unless prior approval has been obtained from the City Manager and arborist for the project.~~

ITEM 70: Amended to allow the city to ensure signs reflect the conditions of approval for a tree protection plan (see item 67).

5. ~~No construction activity shall occur within the tree protection zone,~~ **Activities that are prohibited in a tree protection zone** ~~including,~~ but **are** not limited to dumping or storage of materials such as building supplies, soil, waste items, or parked vehicles or equipment.

ITEM 71: Amended to reflect current code enforcement activities.

6. The tree protection zone shall remain free of chemically injurious materials and liquids such as paints, thinners, cleaning solutions, petroleum products, and concrete or dry wall excess, construction debris, or run-off.
7. No excavation, trenching, grading, root pruning or other activity shall occur within the tree protection zone unless directed by an arborist present on site and approved **as part of the Tree Protection Plan** ~~by the City Manager.~~

ITEM 72: Amended to reference the conditions of approval for a tree protection plan (see item 67).

55.08.040 Inspection.

The applicant shall not proceed with any construction activity, except installation of erosion control measures, until the City has inspected and approved the installation of the required tree protection measures and a building and/or grading permit has been issued by the City.

55.08.050 Penalties.

- 1. Civil Violation. A violation of this Article, or the breach of any condition of a tree protection plan shall be a civil violation as defined by LOC 34.04.105, enforceable pursuant to**

LOC Article 34.04. Failure to comply with the provisions of this Article or a condition of approval shall be a separate offense each day the failure to comply continues. The violation shall be punishable by a fine set forth by the municipal court and the enforcement fee. (If a tree removal occurs due to the violation, the removal would be enforced by Article 55.02.)

2. Nuisance Abatement. The removal of a tree in violation of this chapter is hereby declared to be a public nuisance, and may be abated by appropriate proceedings pursuant to LOC Article 34.08.

3. A person who violates this Article or condition of a tree protection plan shall pay an enforcement fee to the City in an amount as established by resolution of the City Council.

ITEM 73: Amendment added to establish penalties for violating a tree protection plan in the form of an enforcement fee paid to the City. Penalties are established in LOC 55.02.130 for tree removal in violation of the Tree Code. The language establishing penalties for a violation of a tree protection plan is adapted from and enforced by that section of Article 55.02.

IV. OTHER RECOMMENDATIONS

The Committee has elected to make additional recommendations to the City Council that fall outside of the Tree Code and/or the scope of review established by the Council. These recommendations were considered important aspects of addressing issues that the Council charged the Committee to address as well as other issues that go beyond the Council charge, but that have a significant impact on the urban forest. The recommendations are as follows:

1. Create an interactive website for people to obtain information about trees, tree maintenance, and tree removal, apply for permits, and provide comments on pending permit applications.

ITEM 74: The Committee recommends that the City develop a website for the public to access information about trees, tree maintenance, and tree removal in Lake Oswego. Residents and property owners who are considering tree removal would be provided an opportunity to answer a series of question, resulting in the site indicating the necessary permit type, cost, and required information. Staff is currently assessing the feasibility of establishing online applications and payment. Members of the public who are interested in tree removal activity in the City would be able to access information about pending applications for Type II Permits, including the time and date of any public hearing, and provide any comments they have. The webpage would also act as a source of information about planting and maintaining trees, including educational material and seasonal reminders of important maintenance activities.

2. Begin collecting data on tree removal and replenishment within City boundaries.

ITEM 75: In order to monitor the results of the Tree Code Amendments and guide future changes to tree regulation, it is recommended that the City implement a strategy for collecting, analyzing, and monitoring data about tree removal and the overall impact on the urban forest. This was also a recommendation of the 2007 Lake Oswego Urban and Community Forestry Plan and the 2009 Lake Oswego's State of the Urban Forest Report, which also provided baseline data on a number of variables. Improved tracking of this data is necessary for future efforts at regulating trees and tree removal to establish clear regulatory objectives based on analysis of scientific data and identification of long term trends. In addition, the collection of this data would allow the City to assess the impacts of changes to the Tree Code on the urban forest.

3. Review the Community Development Code as it relates to tree protection and preservation.

ITEM 76: Many of the concerns expressed by the public and members of the Committee were related to the Community Development Code. Development is perceived to be the reason for most of the controversial tree removal in the City. The Committee recommends

that aspects of the Community Development Code impacting the urban forest be reviewed and that changes be considered in order to:

- Encourage new development to preserve significant trees and tree groves
- Plant street trees
- Meet canopy contribution goals or requirements
- Reduce the amount of lot coverage by impervious surfaces
- Increase setbacks
- Require arborist oversight of tree cutting and planting

4. Increase fees for Dead and Hazard Tree permits, and tree protection inspections

ITEM 77: The Committee recommends increasing the fees for Dead and Hazard Tree permits from \$17 to \$25, and tree protection inspection fee from \$80 to \$100.