

Clackamas County Trees Task Force
Draft Proposed Tree Ordinance
September 10, 2009

1020 **TREES**

1020.01 PURPOSE

Section 1020 is adopted to:

- A. Balance the goal of maintaining, preserving, and enhancing the urban tree canopy with the reasonable removal of trees for development, solar access, view protection, health, and safety;
- B. Advance the County’s sustainability objectives by protecting wildlife habitat, air and water quality, and ground water recharge; controlling surface water run-off; and reducing the urban heat island effect;
- C. Preserve trees for their contribution to property values, and for their natural beauty and historical significance;
- D. Encourage mitigation of negative impacts of authorized tree removal to maintain and enhance the tree canopy in urban unincorporated Clackamas County;
- E. Contribute to County compliance with federal, state, and regional environmental regulations;
- F. Increase public awareness of the benefits of a healthy urban tree canopy;
- G. Allow farming practices and farm uses in zoning districts where agricultural uses are a primary use;
- H. Allow the continued management of commercial forestlands for forest uses, including the harvesting of forest tree species; and
- I. Implement the Oregon Forest Practices Act in certain areas inside the Portland Metropolitan Urban Growth Boundary.

1020.02 AREA OF APPLICATION

Section 1020 applies to all land inside the Portland Metropolitan Urban Growth Boundary, including rights-of-way and easements, except:

- A. A lot of record that is:
 - 1. Located in an urban low density residential zoning district;
 - 2. Developed with a single-family dwelling; and

3. Not divisible. A lot of record is “not divisible” if:
 - a. It is not divisible under Section 1012; or
 - b. It is not divisible because division is prohibited by a deed restriction, or by conditions, covenants, or restrictions; and
- B. Land that is receiving a farm or forest property tax deferral, or a lot of record that complies with Subsections 1020.02(A)(1) and (2) but does not comply with Subsection 1020.02(A)(3), provided that:
 1. If a tree that would otherwise be regulated under Section 1020 is removed pursuant to this exemption, no application for a partition, subdivision, or conditional use shall be approved on the subject property for a period of *five/10** years after the last such tree is removed, and the property shall be prohibited from being developed with anything other than a single-family dwelling, or a use accessory to a single-family dwelling, for a period of *five/10** years after the last such tree is removed; and
 - * ***The Trees Task Force was evenly divided on whether to impose a five- or 10-year restriction.***
 2. Prior to the removal of a tree that would otherwise be regulated under Section 1020, the property owner shall record a deed restriction acknowledging these development limitations.

1020.03 DEFINITIONS

Unless specifically defined in Subsection 1020.03, words or phrases used in Section 1020 shall be interpreted to give them the same meaning as they have in common usage and to give Section 1020 its most reasonable application.

- A. Caliper: A tree’s diameter at six inches above grade. On multi-stem trees, the largest diameter stem shall be measured.
- B. Christmas Tree: A tree of a marketable species and evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control, and one or more of the following practices: basal pruning, fertilizing, insect and disease control, and soil cultivation.
- C. Critical Root Zone: The area where a tree’s roots are located. This root zone is generally the area surrounding a tree trunk at a distance equal to one foot for every inch of d.b.h. This area is described as the radius of a circle around the tree.
- C. Diameter Breast Height (d.b.h.): A tree’s diameter measured by diameter tape at four and one-half feet above grade. On multi-stem trees, the largest diameter stem shall be measured.

- D. Emergency: Any manmade or natural event or circumstance causing or threatening loss of life, or injury to person or property.
- E. Hazardous Tree: A tree that, by reason of disease, infestation, age, or other condition, presents a known or immediate hazard to people or property.
- F. Nuisance Tree: Any tree of the following species: single seed hawthorn (*Crataegus monogyna*), English holly (*Ilex aquifolium*), plums (*Prunus* hybrids), sweet cherry (*Prunus avium*), English laurel (*Prunus laurocerasus*), and Portuguese laurel (*Prunus lusitanica*).
- G. Orchard Tree: A fruit or nut tree.
- H. Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose.
- I. Solar Energy System: Any solar collector or other solar energy device or any structural design feature of a building whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, for water heating, or for electricity.
- J. Tree: Any woody plant with at least one well-defined stem of at least eight inches d.b.h., or any woody plant with at least one well-defined stem and planted as a mitigation requirement of Subsection 1020.08.
- K. Tree Removal: The act of removing a tree by digging up or cutting down, or the effective removal through damage to a tree or its root system. Effective removal shall include any procedure the natural result of which is to cause the death or substantial destruction of a tree, including topping and severe cutting back of limbs to such a degree as to destroy or adversely affect the normal growth pattern of the tree. Tree removal does not include routine pruning or trimming.

1020.04 EXEMPT TREES

The following trees are exempt from the requirements of Section 1020:

- A. Two trees on a lot of record, or 10 percent of the total number of trees on a lot of record, whichever is greater, per two-year period. The two-year period shall commence with the removal of the first tree. Trees exempt under Subsection 1020.04(A) shall be in addition to any that are exempt under Subsections 1020.04(B) through (L). However, this exemption shall not apply to tree removal by a utility company in a utility easement;
- B. Trees with a d.b.h. of less than eight inches. However, this exemption shall not apply to trees planted either to remedy a violation pursuant to Subsection 1020.10 or as part of a mitigation plan approved pursuant to Subsection 1020.08;
- C. Trees required to be removed by state or federal law or regulation, or by a fire official;

- D. Orchard trees;
- E. Christmas trees;
- F. Trees planted on the site of a commercial nursery and grown for commercial purposes;
- G. Nuisance trees;
- H. Dead trees, where death resulted from an accident or non-human cause;
- I. Diseased or hazardous trees, where the condition resulted from an accident or non-human cause, if the property owner first provides a report to the County Planning Division from an International Society of Arboriculture (ISA) Certified Arborist verifying that the tree qualifies under this exemption. If a hazardous tree is removed in response to an emergency, the property owner may provide the required arborist's report, or other credible evidence that the tree was hazardous, within 30 days after the tree's removal;
- J. *Trees to be removed by a public utility company in order to maintain, repair, or replace an existing utility line, if the utility company first provides credible written evidence to the County Planning Division of the need for tree removal; and**
- K. *Trees to be removed by a public agency in order to maintain, repair, or replace an existing road located in a public right-of-way, if the public agency first provides credible written evidence to the County Planning Division of the need for tree removal. This exemption shall not apply to the widening of an existing road.**

* **The Task Force members who were present for the vote were evenly split on a vote of five for and five against on the question of whether to require utilities and public agencies to mitigate for trees removed to maintain utility lines and roads. This draft does not include a requirement for mitigation, but one easily could be added.**

- L. Trees required to be removed by the terms of a view easement established prior to the adoption of Section 1020, if the property owner first provides a copy of the easement document to the County Planning Division.

1020.05 TREE REMOVAL PERMIT REQUIRED

- A. No tree shall be removed without a Tree Removal Permit (TRP), unless such removal is exempt pursuant to Subsection 1020.04.
- B. No building or grading permit shall be issued prior to the approval of a TRP if the proposed development requires removal of a nonexempt tree.
- C. Section 1020 shall be applied to an application for design review, a subdivision, a partition, or a conditional use. If a TRP is approved as a result of this review, it shall be issued as part of the design review, subdivision, partition, or conditional use approval.

- D. Except as provided in Subsection 1020.05(C), a TRP requested on the basis of Subsection 1020.07(A), (B), or (C) shall be subject to Planning Director Review pursuant to Subsection 1305.02. Except as provided in Subsection 1020.05(C), a TRP requested on the basis of Subsection 1020.07(D), (E), or (F) shall be subject to Planning Staff Review pursuant to Subsection 104.01(C).
- E. A TRP shall be valid for two years from the date of the final written decision, except that if a TRP is approved as part of a design review, subdivision, partition, or conditional use approval, it shall be valid for the same period of time as that approval, including any time extension thereof. If the tree is not removed prior to the expiration of the TRP, removal shall require the filing of a new TRP application.

1020.06 TREE REMOVAL PERMIT APPLICATION SUBMITTAL REQUIREMENTS

An application for a Tree Removal Permit shall include:

- A. A completed land use application on a form provided by the County Planning Division;
- B. A site plan of the subject property, drawn approximately to scale and identifying the following as relevant:
 - 1. Location and type of existing and proposed development, including but not limited to, building footprints, roads, driveways, parking areas, utilities, onsite sewage disposal systems, wells, landscaping, and filling or grading. Label each element as existing or proposed;
 - 2. Location and width of existing adjacent roads and road rights-of-way;
 - 3. Location and purpose of existing or proposed easements;
 - 4. Location of any rivers, streams, wetlands, or areas of special flood hazard;
 - 5. The site ingress and egress proposed to be used by construction vehicles; and
 - 6. Proposed equipment and material staging and stockpile areas;
- C. A statement explaining why tree removal is necessary and addressing one or more of the approval criteria identified in Subsection 1020.07;
- D. A mitigation plan that addresses the requirements of Subsection 1020.08 to the extent applicable;
- E. A tree protection and maintenance plan that addresses the requirements of Subsection 1020.09; and
- F. For a TRP requested on the basis of Subsection 1020.07(A), a tree survey;

1. Where three or fewer trees are proposed for removal, the tree survey shall include, as part of the required site plan, the location of the trees proposed for removal and a brief description of those trees, including common name, approximate height, d.b.h., and apparent health.
2. Where more than three trees are proposed for removal, the tree survey shall be prepared by an International Society of Arboriculture (ISA) Certified Arborist. The tree survey shall include an accurate map of the subject property that locates all trees and identifies their common name, botanical name, approximate height, approximate canopy spread, d.b.h., health, and condition. It also shall identify the tree(s) proposed for removal. The tree survey shall include an accurate topographic survey stamped by a surveyor or engineer registered in the State of Oregon. Where a stand of five or more contiguous trees exists on the subject property and the applicant proposes neither removal of any of those trees nor construction in proximity to those trees, the tree survey may be simplified to accurately show only the perimeter area of that stand of trees, including its drip line.

1020.07 TREE REMOVAL PERMIT APPROVAL CRITERIA

A Tree Removal Permit shall be approved if the applicant provides evidence substantiating compliance with at least one of the following criteria:

- A. Tree removal is necessary for the construction of a structure or other improvement, including landscaping within 50 feet of a single-family dwelling, and there is no practicable location alternative on the subject property—or, in the case of tree removal in a public right-of-way, elsewhere in the right-of-way—for the proposed structure or other improvement. In considering whether tree removal is necessary, factors that may be considered include whether the tree is located within the footprint of the proposed structure or other improvement, whether it is too close to the proposed structure or other improvement, and whether it will violate the corner vision standards of this Ordinance or obstruct required sight distance under the County Roadway Standards. If tree removal is proposed in conjunction with an application for a subdivision or partition, it also must be demonstrated that there is no practicable and reasonable access, utility, or lot design alternative.
 1. In applying Subsection 1020.07(A), alternatives that also would result in tree removal shall be preferred where such alternatives would minimize the significance of the tree loss. Factors in determining relative significance include such characteristics as number of trees to be removed, tree health, tree size (i.e. height, trunk diameter, canopy spread), historic value of the trees to be removed, erosion prevention, preservation of wildlife habitat, and maintaining a diversity of tree species with an emphasis on retaining native trees appropriate to the proposed construction.
 2. Application of Subsection 1020.07(A) shall not require a reduction of the square footage of a proposed structure or a reduction in the number of lots or dwelling units that would otherwise be permitted.

- B. The tree proposed for removal interferes with the healthy growth of other trees, unless such trees are nuisance trees, and it is not practicable to preserve the tree.
- C. The tree proposed for removal is located too close to an existing structure or other improvement, and it is not practicable to preserve the tree.
- D. The tree proposed for removal interferes with existing utility service or drainage, and it is not practicable to preserve the tree.
- E. The tree proposed for removal violates the corner vision standards of this Ordinance; or obstructs required sight distance under the County Roadway Standards, and it is not practicable to preserve the tree.
- F. Tree removal is reasonably necessary to allow solar access for the efficient operation of a solar energy system. The applicant shall provide supporting documentation from a solar energy system installer, a government agency with expertise in solar energy systems, or another credible source (e.g. Energy Trust of Oregon, an architect registered to practice architecture in the State of Oregon, an engineer registered to practice engineering in the State of Oregon).

1020.08 MITIGATION FOR REMOVED TREES

If a Tree Removal Permit is approved pursuant to Subsection 1020.07, compliance with the following mitigation standards shall be required.

- A. Except as provided in Subsection 1020.08(C)(2), each tree approved for removal shall be replaced as follows:
 - 1. If the tree to be removed has a d.b.h. of less than 16 inches, one replacement tree shall be planted.
 - 2. If the tree to be removed has a d.b.h. of at least 16 inches but less than 24 inches, two replacement trees shall be planted.
 - 3. If the tree to be removed has a d.b.h. of 24 inches or greater, three replacement trees shall be planted.
- B. To the extent practicable, the replacement tree shall be planted on the subject property and within the same general area as the removed tree. In determining whether such planting is practicable, consideration shall be given to such factors as terrain, difficulty of replacement, and impact on adjacent property.
- C. When it is not practicable to relocate or replace the tree on the subject property, the applicant shall:
 - 1. Relocate or replace the tree at another location approved by the Planning Director. The alternate location shall be within the portion of the County that is inside the Portland Metropolitan Urban Growth Boundary; or

2. Pay into the County Tree Fund, which fund is hereby created, an amount of money established by separate order of the Board of County Commissioners.
 - a. The County shall use the County Tree Fund within the portion of the County that is inside the Portland Metropolitan Urban Growth Boundary for planting trees and for producing, maintaining, and preserving wooded areas and heritage trees.
 - b. In addition, and as funds allow, the County Tree Fund shall provide educational materials to assist with tree planting, mitigation, and relocation.
- D. A replacement tree shall be appropriately chosen for the site from an approved tree species list supplied by the County. Diversity of tree species shall be maintained where essential to preserving a wooded area or other habitat.
- E. A replacement tree shall have a minimum caliper of two inches or a minimum height of eight to ten feet by nursery industry standards.
- F. A replacement tree shall be staked, fertilized, and mulched.
- G. Planting of required replacement tree(s) shall occur within one year of tree removal.
- H. A replacement tree shall be guaranteed by the applicant for two years after the planting date. A guaranteed tree that dies, or acquires a disease that necessitates removal, shall be replaced, and that replacement tree shall in turn be guaranteed by the applicant for two years after the planting date.

1020.09 TREE PROTECTION DURING CONSTRUCTION

If a Tree Removal Permit (TRP) is approved pursuant to Subsection 1020.07(A), or if construction is authorized on the subject property pursuant to the approval of an application for design review, a subdivision, a partition, or a conditional use, compliance with the following tree protection standards shall be required.

- A. Unless a tree is exempt pursuant to Subsection 1020.04 or has been authorized for removal by a TRP, it shall be protected. If no trees that require protection pursuant to this provision exist on the subject property, the provisions of Subsection 1020.09 are not applicable.
- B. Trees that require protection shall be clearly labeled as such for the duration of construction activity.
- C. Construction activity likely to be injurious to a tree designated to remain, including, but not limited to, placing solvents, building material, construction equipment, or depositing soil, or placing irrigated landscaping, within the drip line, shall be prohibited, unless a plan for such construction activity has been approved by the Planning Director based upon the recommendations of an arborist.

- D. Notwithstanding the requirement of Subsection 1020.09(B), no device or wire shall be attached to any protected tree unless needed for tree protection.
- E. Prior to the commencement of construction activity, the applicant shall erect and maintain readily visible protective tree fencing along the outer edge and completely surrounding the critical root zones of all protected trees or groups of trees. Fences shall be constructed of chain link and at least four feet high, unless another type of fencing is authorized by the Planning Director. The protective fencing shall remain in place until the County authorizes its removal or issues a final certificate of occupancy, whichever occurs first. Protective fencing is required for all protected trees, except in the following cases:
 - 1. Rights-of-Way and Easements. Street rights-of-way and utility easements may be cordoned by placing stakes a minimum of 50 feet apart and tying ribbon, plastic tape, rope, or similar material from stake to stake along the outside perimeters of areas to be cleared.
 - 2. Any property area separate from the construction or land clearing area and onto which no equipment will venture may also be cordoned off as described in Subsection 1020.09(E)(1), or by other reasonable means.

1020.10 VIOLATIONS

- A. Removal of a non-exempt tree without first obtaining a Tree Removal Permit (TRP) is a violation of this Ordinance. If more than one non-exempt tree is removed without a TRP, each removed tree shall constitute a separate violation.
- B. A violation resulting from the removal of a non-exempt tree without first obtaining a TRP shall be remedied by:
 - 1. Obtaining a TRP, in which case the TRP approval criteria will be applied as though the removed tree(s) were still in place; or
 - 2. Replacing the removed tree(s), subject to the following criteria:
 - a. Twice as many trees shall be planted as would ordinarily be required by Subsection 1020.08.
 - b. The County may use any reasonable means to estimate the number of trees removed if destruction of the illegally removed tree(s) prevents an exact count.
 - c. Except as modified by Subsection 1020.10(B)(2)(a), compliance with Subsections 1020.08 and 1020.09 shall be required.
- C. Subsection 1020.10 applies in addition to any enforcement action the County may take pursuant to Subsection 102.03 of this Ordinance and Chapter 2.07 of the County Code.