

Urban Tree Conservation

(Ordinance Proposal)

1/2/2008 DRAFT

Value of Trees

Clackamas County is unique in Oregon, having both a large rural and growing urban environment. Natural growth of trees and the historical planting of trees by residents have produced significant innumerable environmental, social, economic, property value and aesthetic benefits to communities throughout the County. These benefits, particularly those related to the environmental quality, are extraordinarily important during this time of significant global climate change. A healthy urban forest, especially one having mature trees, is essential to maintaining a healthy community and a vibrant functioning ecosystem. A balance between population growth and conservation of our important natural resources, for current and future generations, is necessary to protect the vital resource of our urban forest. Responsible land development focusing on the conservation of trees is the foundation for this ordinance.

Purpose

- A. To establish a tree conservation policy in the unincorporated areas of Clackamas County within the Urban Growth Boundary in order to preserve the environmental benefits of trees, to protect the existing urban tree canopy, and to retain the maximum amount of trees while still achieving development or improvement of property.
- B. To encourage the preservation, planting, and replacement of trees in Clackamas County in support of Zoning and Development Ordinance ZDO 1001 and 1002.
- C. To provide tree cutting and remediation plans for developing properties that will promote practices to preserve and protect our existing tree environment.
- D. To help protect natural land features, such as bodies of water and wildlife habitat that could be negatively impacted by tree removal. Such protections are mandated in Zoning and Development Ordinance

- ZDO 1001 and 1002, as well as in Metro Title 13 Nature in Neighborhoods.
- E. To protect water quality and quantity and improve overall watershed health by helping manage the urban storm water run-off. This in turn supports compliance with Clean Water Act, Endangered Species Act, and other State and Federal environmental laws.
 - F. Safeguard the public health and safety benefits of urban trees and forest canopy by improving air and water quality, reducing urban heat island effect, providing access to nature in urban and suburban neighborhoods, reducing traffic accidents, and preventing crime through environmental design.
 - G. To help preserve and enhance the aesthetic, cultural or historic value of trees for neighboring properties, for community sense of place and neighborhood identity.
 - H. To accommodate provisions for protection of natural resources as part of OAR 660-015-000(5), Goal 5: Oregon Statewide Planning Goals and Guidelines and Chapter 9 of Clackamas County Comprehensive Plan, Open Spaces Policy 1.4. Also included here is the development of a Countywide natural resources inventory as part of the regulatory requirements.
 - I. To provide the basis for developing a public education program to:
 - 1. Increase public awareness of the benefits of trees and urban forests;
 - 2. Inform citizens and businesses about this Ordinance and its purpose; and
 - J. This Ordinance is not intended to regulate tree cutting on single-family dwelling lots containing an existing single-family dwelling, and which cannot be further divided.

Authority

This Tree Conservation Ordinance is not part of the Clackamas County Zoning and Development Ordinances, but rather is a separate Ordinance designed to work in conjunction with the Clackamas County Zoning and Development Ordinances to provide an opportunity for responsible and appropriate land development that acknowledges trees as a natural resource and an asset to the community. Should a situation arise where

this Ordinance conflicts with other County Ordinances, regulations or policies, the more restrictive provisions will take precedence to assure maximum tree and habitat protection.

Definitions

- A. Tree means any wooded plant having a trunk at least 12 inches in diameter as measured 36 inches from the ground level. Trees with diameters between 6 inches and 12 inches, as measured 36 inches from ground level, will not require a tree cutting permit prior to removal, but will be included within any proposed mitigation plan.
- B. Cutting of Trees means the removal or felling of a tree or any procedure in which the natural result will lead to the death or substantial destruction of the tree. Destruction by cutting also can include damage inflicted to a tree's root system.
- C. Development means site improvements to land, including buildings, structures, parking areas, landscaping and paved or gravel areas.
- D. Hazardous Tree means a tree, which, by reason of disease, infestation, age or other condition, presents a known or immediate hazard to people or property.
- E. Regulated Property in this Ordinance means any property, both public and private, in unincorporated areas of Clackamas County within the Urban Growth Boundary, which has any of the following conditions:
 - 1. Does not contain a single family dwelling;
 - 2. Can be further partitioned or subdivided pursuant to provisions in the Clackamas County Zoning and Development Ordinances;
 - 3. Is not solely used as a single family residence;
 - 4. Is adjacent to or contains sensitive areas such as wetlands, stream corridors, wildlife and bird habitat or any associated adjacent sensitive buffer areas; such areas may be identified by local (city or county) or regional (Metro) inventories of significant fish and wildlife habitat areas and their associated buffers;
 - 5. Has a single-family dwelling structure that is being renovated such that the County is applying System Development Charges and other building code requirements equivalent to that of new construction; or
 - 6. Contains a Heritage Tree, as defined in this Ordinance.

Tree Cutting Without A Permit is Prohibited

- A. No person, business entity or public or private organization shall cut down a tree on regulated property without first obtaining a tree cutting permit from the County pursuant to this Ordinance.
- B. In any action under this Ordinance, or to enforce a provision of this Ordinance, the property owner has the burden to prove that the criteria for granting a permit has been satisfied, or that the cutting of the tree or trees is allowed without a permit. Failure to do so will result in the tree cutting to be in violation of this Ordinance.

Application For Permits

An application for tree cutting or removal shall be made on a permit form provided by the Clackamas County Planning Department. The application fee is \$25.

The application shall contain the following information:

- A. Name, address, phone number and email address of the applicant, and if different from the applicant, the name, address and phone number of the owner of the land upon which trees are located.
- B. Location of the property that is the subject of the application.
- C. A description of the number of trees to be removed, their species, size, and location on the land.
- D. A statement identifying the reason for cutting or removal of said tree or trees. Such statement must include any future development plans on the property for residential or other purposes.
- E. A map showing the location of any proposed structures to be built on the property. The map must show the location of any natural features such as trees, bodies of water, and known wildlife habitat.
- F. A tree protection plan to control potential damage prior to, during, and after any development activities by:
 - 1. Minimizing damage to trees caused by clearing, grading, excavation or demolition, including landscaping and irrigation; and
 - 2. Proper fencing off of all tree protection zones and the preparation of buffer zones to avoid any injurious effects to the trees caused by toxic chemicals, construction debris or construction activities.

3. Identification of the individual that will be responsible for the implementation and maintenance of the tree protection plan.
- G. Any planned mitigation activities involving planting new trees to replace trees proposed to be cut. For each 12-inch diameter tree removed, two comparable trees at least 8 feet tall must be planted on the subject property as replacements. For the removal of each tree between 6 inches and 12 inches in diameter, one tree 8 feet tall must be replanted on the subject property as a replacement. All other mitigation activities must conform to known regulations including those mandated within Title 13, Nature in Neighborhoods.
 - H. Any other information deemed necessary by the County Planning Department to allow adequate review and implementation of the proposed tree removal plan in conformance with the intent of this Ordinance, and to assure compliance with the County Zoning and Development Ordinance ZDO 1001 and 1002. In addition to tree protection, identification and location of buffer areas and other plan information related to the property development may be required.

Application Evaluation

- A. The County Planning Staff and the County Forester will review all tree cutting permit applications. A final decision on the permit application will require an on-site inspection by the County or the appropriate Community Planning Organization (CPO). In certain circumstances additional information may be required of the applicant in the form of a report from a certified arborist.
- B. All tree cutting applications, except for emergency applications, will be submitted to the appropriate jurisdictional CPO by the County Planning Staff for review prior to a final decision on accepting or rejecting the application. The CPO will review the application, inspect the site and submit a recommendation to the County Planning Department within 10 days after the CPO members vote on the application. When the tree cutting application is submitted with a development application the CPO will approve or disapprove the two applications separately.
- C. If the permit application is accepted as complete, and is determined to be in conformance with the provisions of this Ordinance, the application may be approved with a positive finding that:

1. The removal of trees will not have a significant immediate or a cumulative negative impact on erosion, soil stability, surface water flows, water quality, health of adjacent trees, existing tree windbreaks or wildlife habitat (ZDO 1001 and 1002); and
2. The removal of trees will not adversely affect the character, aesthetics, property values, or property uses of adjacent property or the neighborhood (ZDO 1001.01).

If the County Staff determines that the plan will result in the destruction of more trees than deemed necessary to achieve the proposed development, or the proposed mitigation plan is not sufficient to accommodate for the loss of trees, the application will be denied. A revised plan may be submitted for consideration or an appeal may be filed under this Ordinance.

- D. Emergency tree cutting permits will be approved on a priority basis by the County Planning Department if it is determined that the condition of the tree or trees presents an immediate danger of falling, and thus can be classified as a Hazardous Tree. Proper consideration may be given for ways to mitigate the hazard through pruning or other treatments.
- E. Any permit granted under this Ordinance shall expire one year after the date of issuance. The applicant may submit a written request for an extension.
- F. If a tree cutting permit is required as part of the County's Zoning and Development Ordinances, as a condition of land use approval, the tree cutting permit shall be processed as an amendment to the land use application for consideration by the Clackamas County Planning Department.
- G. No work may commence on an approved permit, except for that stipulated for an emergency permit, until the application appeal time has expired.

Appeal

Within 15 days of the acceptance or denial of a tree cutting permit, the applicant, or the responsible Community Planning Organization (CPO), may file a written appeal with the County Planning Department. A letter explaining the basis for the appeal should be attached to the permit application decision and forwarded to the County Planning Department.

The fee for such an appeal is \$100 and this fee will be refunded if the permit denial is overturned. The appeal fee is waived if the CPO is the appeal applicant. An independent panel represented as the Urban Forestry Commission will hear all appeals. Decisions by this Commission are final with regard to any tree cutting permits.

Violation

- A. A violation shall be deemed to have occurred if it is determined that a tree, or trees, have been cut down or otherwise destroyed contrary to the specific requirements of this Ordinance. Evidence of such violation will be from the physical appearance of the land from which the tree or trees have been cut, as well as testimony from any witnesses. Removal of stump material that would otherwise prove or disprove a violation of this Ordinance will be deemed to be prima facia evidence that such a violation has happened. It will then be the landowner's burden to prove that an Ordinance violation has not occurred.
- B. Removal of trees in violation of the conditions of approval of a tree cutting permit (e.g., more trees were cut than were approved, inadequate buffers around retained trees, damage to root systems, etc.) will be treated the same as if the trees were cut without a permit.
- C. If it is found that the applicant for a tree-cutting permit misrepresented any material fact in the tree cutting permit application, the approved permit will be revoked. Trees cut based on misrepresentations in the application will be viewed as having been removed in violation of the Ordinance.

Remedies

A violation of this Ordinance will result in any or all of the following actions by the County:

- A. Denial of the tree cutting application.
- B. Revocation of an approved tree-cutting permit.
- C. Possible revocation of an application for land development if there are violations of this Ordinance that otherwise would be a condition of approval for any such land development application.

- D. Institution of appropriate action by Clackamas County in the courts to enjoin any violation of this Ordinance, or of a condition of a permit issued under this Ordinance.

Fines

Any party found to be in violation of this Ordinance will be subject to any or all of the following actions:

- A. A civil penalty of \$2,500 per violation. A violation will be assessed for each separate tree cut down or damaged beyond repair.
- B. A mitigation plan must be filed with the County Planning Department within thirty days of the violation. Such plan must show where replacement trees are to be planted. Such replacement trees must be comparable to the trees cut and must be the largest trees available through local nurseries. Such a mitigation plan will be drawn up by a certified arborist, and must be executed within ninety days after approval by the County. The intent of the mitigation plan is to rehabilitate the property to the condition it was in prior to the illegal tree removal.
- C. Payment of any additional civil penalties representing the estimated value of any unlawfully removed or damaged trees, as determined using the most current International Society of Arboriculture Guide for Plant Appraisals.
- D. Recordation of any violation with assessed penalties as a deed restriction, with any such unresolved penalties accruing to subsequent property owners.
- E. Initiation by Clackamas County of legal proceedings to compel compliance or to restrain, by injunction, the identified violator of this Ordinance in the event of failure to pay any fines levied, or failure to file and execute a mitigation plan submitted by the applicant.

Heritage Trees

- A. Clackamas County recognizes that certain trees within the County are deserving of special status as Heritage Trees due to one or more of the following characteristics:
1. The size of the tree having a trunk diameter of 36 inches as measured 36 inches above the base at ground level;
 2. The tree possesses a distinctive size, shape, or is a unique species;

3. The tree has historical significance in relation to a person, place or historical event;
 4. The tree is distinctive due to its functional or aesthetic relationship to a natural resource, such as a body of water or stream bank, one or more wildlife species; or
 5. The tree is part of a grove of more than one tree having unusual characteristic such as age, size or species. All trees in such a grove are eligible for designation as Heritage Trees.
- B. Any person may nominate a designated tree or trees for consideration as a Heritage Tree, providing there is consent to this action by the property owner. The nomination shall include all relevant information necessary for evaluation, including the items listed in paragraph A, above. The Urban Forestry Commission will receive the nomination and make a decision on the nomination within 60 days of receipt. Once a tree receives a Heritage Tree designation it may not be removed or pruned without filing an application for a tree-cutting permit as stipulated in this Tree Conservation Ordinance. In the application for the permit the subject tree or trees must be identified as Heritage Trees if they have been previously designated as such.
- C. All Heritage Trees shall be subject to the provisions of this Tree Conservation Ordinance.
- D. A Heritage Tree may be removed from the designation only if the tree is damaged beyond repair or dies as the result of age, disease or acts of nature. The owner or any citizen must report any changes in the condition of the tree to the Urban Forestry Commission. Any determination of change in the Heritage Tree designation will be made by the Commission. A change of ownership of the Heritage Tree will not cause it to be removed from the Heritage Tree designation.
- E. When development is proposed for property which contains a Heritage Tree or Trees, and where the planning official determines that proposed development may affect said Tree or Trees, the property owner must submit a tree preservation plan prepared by a certified arborist demonstrating how the Heritage Tree or Trees will be protected and preserved. All reasonable effort will be utilized to save Heritage Trees, including but not limited to site line adjustments.