

CITY OF DURHAM
COUNTY OF WASHINGTON, STATE OF OREGON
ORDINANCE NUMBER 228-05

An Ordinance Relating to Tree Preservation and Repealing Ordinance 189-97

Whereas, the city continues to benefit from a large number of trees, both natural growth and those that have been planted and grown throughout the years; and

Whereas, the preservation and maintenance of trees and wooded areas adds to the scenic beauty of the city, is necessary to preserve the ecology of the city, to retain a livable environment through the filtering effect of trees on air pollution and to provide noise barriers; and

Whereas, the uncontrolled Cutting or destruction of trees and wooded areas will increase erosion of topsoil, create flood hazards and the risk of landslides, reduce windbreaks and shaded areas, reduce property values through encouragement of substandard development, and result in the destruction of existing aesthetic qualities; and

Whereas, the city of Durham intends to preserve as many trees as possible on developed and undeveloped lands; and

Whereas, the council finds it in the public interest and safety to enact this ordinance to resolve issues of interpretation that arose out of ordinance 189-97,

Now, therefore, the City of Durham, Oregon ordains as follows

Section 1. Definitions

As used in this ordinance, the following mean:

City Arborist. A licensed tree care consultant who is certified as an Arborist by the International Society of Arboriculture and is engaged as required by the City to perform the functions delegated to the City Arborist in this ordinance.

Project Arborist. A licensed tree care consultant who is certified as an Arborist by the International Society of Arboriculture and engaged by a property owner to prepare and implement a Tree and Plant Protection Plan.

Cut. To fell or remove a tree or to do anything that has the natural result of causing the death or substantial destruction of a tree, including Girdling and Topping as defined herein

Girdling. The cutting or removal of the outer bark and conducting tissues of a tree potentially causing death by interrupting the circulation of water and nutrients.

Hazardous Tree. A dead tree, or tree so affected by a significant structural defect or disease that falling or failure and a threat of bodily injury or property damage, impairment of vision or traffic flow in the public right of way is imminent .

Preserved Tree. A tree that has been so designated in a Tree and Plant Protection Plan approved by the City pursuant to the issuance of a land use permit.

Topping. The severe cutting back of the tree's crown limbs to stubs three (3) inches or smaller in diameter to such a degree so as to remove the natural canopy and disfigure the tree.

Tree Care Provider. A person registered with the Oregon Construction Contractors Board to perform tree preservation, tree maintenance and/or tree removal activities, including but not limited to pruning, tree limb removal, tree or limb guying, and tree fertilization.

Section 2. Performance Requirements for Tree Preservation and Review for Property within the City.

Scope. This ordinance applies to all trees within the City, no matter where located, having a diameter of five (5) inches or greater diameter measured at 24" above grade; or, for species trees with multiple main stems (e.g. hazelnut, vine maple) the average diameter of all stems of the tree measured at a point no more than six inches above the surrounding grade or measured six (6) inches from the point where the stems digress from the trunk, whichever produces the larger measurement. If a tree has been removed and only the stump remains, diameter shall be measured as the diameter of the top of the stump.

1. **Tree Care Provider.** No person other than a Tree Care Provider or property owner shall perform significant tree preservation, tree protection, tree maintenance or tree removal services within the incorporated boundaries of the city.
2. **Standard of Care.** Every property owner and Tree Care Provider shall perform all work within the City in accordance with the American National Standards Institute A-300 standards. Any work done in violation of those standards constitutes a Violation of this ordinance.
3. **Permit Required.** No person shall Cut a tree without first submitting an application for and obtaining both the City's permission to Cut the tree and a second, written City permit setting the terms and conditions for Cutting. The provisions of this ordinance apply in addition to the provisions of any other federal, state and local law. Permission granted under authority of any other law shall not be deemed to require the Cutting of any tree.

4. **Tree Protection for New Construction.** Whenever construction of new buildings or structures, construction of impervious surfaces or a ground level expansion of the total floor area of an existing building occurs on property, the tree preservation and protection measures identified in **Section 7** shall be applicable.

Section 3. Application Requirements and Fees

1. **Requirements.** Applications shall be made on forms to be prescribed and furnished by the City. The application shall contain a plot plan of the applicable property showing the number, size, species and location of all trees on the property; the tree(s) to be Cut; the reason the tree(s) is/are to be Cut [based on the criteria set forth in **Section 4 (1)**]; the time and method of Cutting or removal; and information concerning any proposed landscaping or planting of new trees to replace the trees to be Cut. In addition, the applicant shall furnish other information as reasonably may be required by the city. If a permit is issued for tree removal, the City may impose replacement requirements as provided under **Section 7** and **Section 8** of this ordinance.
2. **Fees.** An application to Cut or remove a tree shall not be complete unless accompanied by a payment of the prescribed application fee. The application fee schedule shall be adopted by resolution of the City Council and the application shall include the applicant's written undertaking to pay all of the City's professional fees (arborist, attorney, planner, etc. as City deems necessary) incurred in reviewing the application. No application fee shall be required for an application filed by a governmental agency.
Upon City's approval of an application for a permit, the applicant may obtain the permit by paying an additional fee in an amount determined by Resolution of the City Council.

If an improvement is to be constructed on the premises, the tree removal permit shall not be valid until a building or grading permit has been issued for construction of the improvement.

Section 4. Criteria for Issuance of Tree Cutting Permits

1. **Normal Conditions.** A tree Cutting permit, as requested in the application, may be issued in part or denied in part, or it may be issued subject to compliance by the applicant with reasonable conditions to promote the purposes of this ordinance. A permit shall state the period of time for which it is valid. The burden is on the applicant to show that granting a permit will be consistent with the stated purpose of this ordinance. The following criteria shall be considered:
 - a. The condition of the trees with respect to danger of falling, proximity to existing or proposed structures, interference with utility services or traffic safety, and hazards to life or property.
 - b. The necessity to remove trees to construct proposed improvements or to otherwise utilize the applicant's property in an economically beneficial manner.

- c. The topography of the land and the effect of tree removal on erosion, soil retention, stability of earth, flow of surface water, protection of nearby trees, windbreaks and a desirable balance between shade and open space.
 - d. The number of trees existing in the neighborhood, the character and property uses in the neighborhood, and the effect of tree removal on neighborhood characteristics, beauty and property values.
 - e. The adequacy of the applicant's proposals to plant new trees as a substitute for the trees to be Cut in accord with **Section 7** and **Section 8** of this ordinance.
 - f. The tree is diseased.
 - g. The tree is dead.
2. **Emergency Conditions.** In emergency conditions that require the immediate Cutting or removal of trees to avoid danger or hazard to persons or property, an emergency permit may be issued by the City Administrator, the Mayor, the President of Council, the Planning Commission Chair or Vice-Chair, without payment of fee at that time and without formal application. If after diligent inquiry, none of those city officials is available, it shall be lawful to Cut trees without a permit but only to the extent necessary to avoid an immediate danger or hazard to life or property. If a tree is Cut under the provisions of this section without an application having been filed with the City Administrator, the person Cutting the tree shall report the action taken to the City Administrator, or in his or her absence to one of the City officials listed above, within 48 hours or the first work day following a weekend or holiday, pay the required application and permit fees, and provide information and evidence as may be reasonably required by the City Administrator to explain and justify the action taken.
3. **Determination by City Administrator.** Tree Cutting applications based on the tree or trees being diseased, dead, or dangerous may be determined by the City Administrator without formal Planning Commission review. In lieu of making such a determination the City Administrator may refer the application to the Planning Commission for determination. Except in cases of emergency, the City Administrator shall refer all applications for removal of more than a single tree on a single lot to the Planning Commission.
4. **Determination by Planning Commission.** Except as otherwise provided in this **Section 4**, a tree cutting or removal application shall be reviewed and either approved or denied by the Planning Commission. The City Administrator shall conduct an investigation, furnish information developed by the investigation to the Planning Commission and may make a recommendation to the Planning Commission. Approval by the Planning Commission shall constitute authorization for the City Administrator to issue a tree cutting permit upon payment of the required permit fee. Tree cutting permits shall be valid for no more than six (6) months.

In the event the Planning Commission is unable to reach a decision within 45 days and upon showing of proof by the property owner that further delay would cause undue hardship, the City Administrator shall render a decision as to whether or not a permit may be issued. The City Administrator shall provide a written report to the

Planning Commission at its next regularly scheduled meeting setting forth the basis of the determination.

5. Replacement of Removed Trees on Developed Property.

If tree removal has a significant impact or substantially reduces the tree canopy, mitigation shall be required. If the tree (s) being removed is dead, dying, diseased or dangerous to life or property mitigation shall be encouraged but not required. If removal is for the purpose of landscaping or esthetics only and does not relate to the condition of the tree or the tree's adverse impact on a surrounding grove, mitigation shall be judged based on the uniqueness of the tree, number of other trees on the property and surrounding area, or other factors pertinent to the particular situation.

- a. It is the policy of the Planning Commission to emphasize a preference for native conifers when requiring the planting of a mitigation tree. However, the Planning Commission shall take into consideration site compatibility as well as the property owner's preference so long as the species of replacement tree is expected to mature to approximately the same environmental and esthetic value as the tree being removed. The minimum caliper size of a replacement tree shall be 2.5" as measured at a height 24" above mean grade. The Planning Commission or City Administrator may waive the size requirement for tree species wherein a 2.5" caliper size would be unreasonable or impractical.
- b. The preferred replacement site shall be on the property from which a tree is being removed. Provided one or more of the replacement trees cannot be located viably on the property from which a tree is removed, the Planning Commission or City Administrator may require payment to the City of an amount set by annual resolution of the Council equivalent to the average cost of a replacement trees and the cost of labor for planting.
- c. The in-lieu payment so received shall be used by the City for planting of mitigation trees on City owned property but such planting shall not necessarily be on a one for one basis. The City's accounting records shall separately track all in-lieu payments received as well as expenditures for mitigation plantings. Any unspent funds shall be carried forward from year to year for the purpose of meeting the intent of this Ordinance to maintain the City's urban forest. The exact placement of mitigation trees on City property shall be determined by the City Administrator and coordinated with the City Arborist.
- d. The planting of replacement trees shall take place in such a manner as to reasonably insure that the trees grow to maturity. Any mitigation tree planted on private property dying within one year of the date of planting shall be replaced by the owner of the property.
- e. Replacement trees, including trees meant to replace a previously planted mitigation tree that has died within one year, shall be planted within 6 months of the date of issuance of a tree removal permit or death of a mitigation tree, unless

granted a 3 months extension by the City Administrator due to season or unforeseen circumstances. Failure to complete mitigation within the allotted time frame shall be considered a violation of this Ordinance and subject to the penalties provided for herein.

Section 5. Appeal

A decision made by the City Administrator may be appealed to the Planning Commission. A decision made by the Planning Commission may be appealed to the City Council. A notice of appeal must be submitted in writing to the City Administrator within ten days after the date that the decision being appealed was reduced to writing and mailed to the applicant. Said appeal notice shall briefly state the facts and the grounds of appeal, and shall be signed by the applicant. Following receipt of the notice of appeal, the matter shall be set for hearing by the Planning Commission or the City Council, as the case may be, for hearing at a regular or special meeting no later than 60 days from the date of filing the appeal. The applicant shall be notified of the hearing date, time and place and shall be entitled to be heard at the hearing.

Section 6. Notice of Hearings.

1. **Notice Requirements.** Notice of a public hearing shall be given by posting the property in question at least twenty (20) days before a hearing or appeal hearing before the Planning Commission or a hearing before the City Council on appeal from a decision of the Planning Commission.

Section 7. Tree Preservation and Replacement Measures Required as a Condition for Issuance of a Land Use Permit.

1. **Tree Preservation Plan.** An application for a land use permit shall show how preservation of existing trees shall be incorporated into the proposed development.
2. **Protection of Preserved Trees.** Trees to be Preserved shall be protected in the following manner:
 - a. The services of a Project Arborist shall be provided by the property owner to oversee that construction activities do not harm Preserved trees. The Project Arborist shall prepare and implement a Tree and Plant Protection Plan for the proposed development and shall coordinate tree protection efforts closely with the City Arborist at the expense of the property owner.
 - b. At a minimum, the Tree and Plant Protection Plan shall incorporate the following provisions:
 1. Provide specific measures for tree preservation and protection during all phases of construction, including excavation around trees, grading and

filling around trees, repair and removal of trees, pruning and structural support, and fertilization/aeration.

- II. Require Tree Protection Zone or Construction Zone tape to be used with tree fencing.
 - III. Require all tree related decisions and activities referred to in the plan to be approved by the City Arborist.
 - IV. Require all Preserved Tree health determinations, other than construction damage, to be made by taking core samples or performing other non harmful procedures to document the health of the tree.
 - V. Provide the City Arborist and/or the City Administrator with authority to stop work for any violations of the approved plan.
- c. *A Certificate of Recognition and Acceptance of Special Tree Preservation and Protection Requirements*, as provided by city staff, shall be signed by the General Contractor and the Owner of the property prior to any on-site tree removal and a copy of the certificate provided to the City Administrator.
 - d. Negligence of sub-contractors and utility installation crews shall be the responsibility of the Owner and the General Contractor.
 - e. The Owner shall be responsible for the cost of repairing damage to any Preserved Trees during construction as directed by the City Arborist and/or the City Administrator. Failure to repair the tree damage in a timely manner shall be cause for the City to withhold any land use- or building- permits or certificates for the property until the necessary tree repair is accomplished to City's satisfaction.
3. **Permit Required for Tree Removal.** A Tree Removal Permit shall be required prior to any tree removal within the project. Before issuance of a permit, the applicant shall coordinate the project grading with the City Arborist to identify the possible preservation of additional trees not shown on the site plan. Said permit application shall comply with Section 4 of this Ordinance.
 4. **Standards for Replacement of Preserved Trees**
 - a. Preserved Trees which have to be removed prior to building occupancy and Preserved Trees which die within one year of building occupancy shall be replaced by the owner at a 1:1 ratio for eight inch or smaller diameter trees, a 2:1 ratio for 8" to 18" diameter trees, and a 3:1 ratio for trees larger than eighteen inches in diameter as determined by the City Administrator.
 - l. The minimum trunk diameter (caliper size) for replacement trees shall be three (3) inches at a point 24 inches above mean ground level at the base of the trunk.

- II. The total caliper size of replacement trees shall be not less than 50% of the total caliper size of the Preserved Trees removed per Section 7(4)(a).
- b. Preserved Trees which die from year two (2) through year five (5) of building occupancy, shall be replaced at a 1:1 ratio with a minimum five (5) inch diameter tree. This replacement requirement shall only apply to the preserved trees that are identified on the project site plan.
 - c. Replacement of trees removed in conformity with the issuance of a land use permit shall be completed within six months of permit approval and made with disease resistant and/or adaptive tree(s) as approved for the replacement site by the City Administrator, City Arborist, Planning Commission or the City Council, as the case may be. The replacement site must be in the City of Durham but need not be on the same property as the property on which the trees were removed.
 - d. Prior to the issuance of a certificate of permission for occupancy, the applicant shall execute and file with the City Recorder a Guarantee Bond in favor of the City issued by a surety authorized to do business in the State of Oregon, which Guarantee Bond shall provide for the replacement of all preserved and replacement trees as noted in the approved Tree and Plant Protection Plan. Such Guarantee Bond shall be for a sum determined by the Design Review Board at the time of approval of the Tree and Plant Protection Plan to be equal to 120 percent of the project landscape architect's and engineer's cost estimate for replacing trees that die during the first five years of occupancy.

Section 8. Penalties

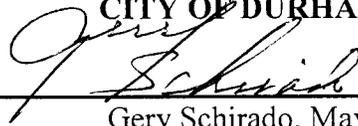
- 1. A person who causes or allows a tree to be Cut without a current, valid city permit or who Girdles or Tops a tree commits a Violation for each tree so Cut, Girdled or Topped.
- 2. A person who performs significant tree preservation, -protection, -maintenance or -removal not in accordance with ANSI A-300 standards commits a Violation.
- 3. A person who fails or refuses to comply with any condition of a tree removal permit, including but not limited to a condition as to replacement tree(s), commits a Violation.
- 4. The City may require as a condition of any permit to develop or use property on which a violation of this Ordinance is alleged to have occurred, that no grading- or other site development- or building permit issue for any work on the property and that no such work shall proceed until the violation finally is resolved. The City may stop any work that is proceeding on real property under the terms of any grading-, site development- or building permit within City's discretion or control if a violation of this Ordinance is alleged to occur during the course of such work, and in such case the order to stop work shall remain in effect until the violation finally is resolved.

5. The city in its discretion may enforce any and all of the terms of this Ordinance by a civil action for injunctive relief or for damages or both. In any such action the City shall be entitled to recover as damages its reasonable costs to replace any tree damaged or destroyed in violation of this Ordinance and the value of the timber removed.
6. In addition to and not in lieu of any other remedies available to it for a violation of this Ordinance by a Tree Care Provider, the City Council may revoke the right of that Provider to do business as such within the city for a period not to exceed two years following the violation.
7. In any civil action the city brings to enforce this Ordinance, the City shall be entitled to recover its reasonable costs incurred, including attorneys fees and fees for services of professionals offering evidence, as well as any other costs and fees allowed to prevailing parties under state law.

PASSED AND ADOPTED by the City of Durham, Oregon this 28 day of March, 2006.

First Reading: February 28, 2006

Second Reading: March 28, 2006

CITY OF DURHAM
By: 
Gery Schirado, Mayor

ATTEST:


Roland Signett, City Administrator/Recorder