



# City of Durham

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Durham, Oregon, 97224  
**Jordan Parente - City Administrator**

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**Wyatt Bean - Administrative Assistant**

## **PLANNING COMMISSION AGENDA** *City Hall, Tuesday, October 7<sup>th</sup>, 2025, at 7:00 p.m.*

### **A. CALL TO ORDER**

### **B. ROLL CALL**

(Chair Susan Deeming, Vice Chair Winkler, Commissioners: Pat Saab, Krista Bailey, Cheri Frazell, Andrew Mast & Forrest Boleyn)

### **C. APPROVAL OF MEETING MINUTES**

The Planning Commission will consider adopting meeting minutes from September 9<sup>th</sup>, 2025, meeting (pages 1-3)  
*Motion required*

### **D. PUBLIC FORUM**

For matters not appearing elsewhere on the agenda. Matters requiring further investigation or detailed answers will be referred to City Staff for follow-up at a future meeting. Please limit comments to less than five minutes.

### **E. DURHAM DEVELOPMENT CODE UPDATE PUBLIC HEARING (pages 4-19)**

Planning Commission shall conduct a public hearing to provide an opportunity for public comment on the proposed changes to the Durham Development Code.

### **F. COMMISSIONER COMMENTS / REPORTS / STAFF UPDATES**

- Metro Mixer
- Durham Estates Addition

### **G. NEXT REGULARLY SCHEDULED MEETING OF THE PLANNING COMMISSION**

- Tuesday, November 4<sup>th</sup>, 2025, Regular Meeting of the Planning Commission at 7:00 p.m. (Durham City Hall)

### **H. ADJOURN**

The Durham City Planning Commission meets regularly on the first Tuesday of every month at 7:00 p.m. at Durham City Hall, 17160 SW Upper Boones Ferry Rd., Durham, Oregon. Items requiring Planning Commission action should be submitted in writing to the Durham City Administrator no later than 4:00 p.m. on Friday two weeks prior to the meeting date, or at least twenty days for items requiring public notice.

**EXECUTIVE SESSION** – The Durham City Planning Commission may hold an Executive Session under the provisions of ORS 192.660 (2) labor negotiations, ORS 192.660 (1) (h) to consult with counsel regarding legal rights related to current or probable litigation, and ORS 192.660 (1) (a) to consider the employment of the chief executive officer.

All discussions within this session are confidential; therefore, nothing from this session may be disclosed by those present. Representatives of the news media are allowed to attend this session but must not disclose any information discussed during this session.



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**1. CALL TO ORDER.**

Chair Susan Deeming called the meeting to order at 7:02 PM.

**2. ROLL CALL.**

Commissioners Present: Chair Susan Deeming, Vice Chair Matt Winkler, Commissioners Krista Bailey and Cheri Frazell.

Commissioners Absent: Commissioners Forrest Boleyn, Pat Saab, and Andrew Mast

Staff Present: City Administrator Jordan Parente and Administrative Assistant Wyatt Bean

Public: None

**3. APPROVAL OF MEETING MINUTES.**

The Commissioners reviewed the minutes from the July 8, 2025, Planning Commission meeting. Chair Deeming asked if there were any additions or corrections. None were noted. Commissioner Bailey moved to approve the minutes as written. Commissioner Frazell seconded. The vote passed unanimously (4-0).

**MO 090925-1**

**4. PUBLIC FORUM.**

No members of the public were present. No comments were offered.

**5. SIGN PERMIT BRIGHT STAR KIDS 18115 SW LOWER BOONES FERRY ROAD**

The Commissioners reviewed an application submitted by Bright Star Kids for a new wall-mounted sign on the building located at 18115 SW Lower Boones Ferry Road. No representative from the applicant was present; however, application materials and an example of the sign material were provided.

Chair Deeming stated that, upon site inspection, it appeared the proposed sign would essentially replace the existing sign, though with a white background instead of the current gray. She noted this seemed unusual given the building's exterior color of gray. Chair Deeming also observed that a monument-style sign with the previous business name, Learning Tree School, also remained in front of the property. She questioned whether the applicant intended to remove it, as the name is no longer applicable.

Commissioner Bailey asked City Administrator Parente whether removal of the monument sign would require a separate permit. Mr. Parente explained that the code allows both monument and wall-mounted signs and that separate applications would be necessary if the applicant intended to replace or modify the monument sign. He noted that the existing sign does not have a permit record. Commissioners discussed whether the approval of the sign permit at hand could be conditioned on removal of the monument sign but ultimately agreed that it was not their role to compel action unless the sign was clearly noncompliant or unsafe.

Discussion also addressed the proposed sign materials. Mr. Parente clarified that the sign would be constructed of aluminum composite material (ACM) with a laminated vinyl overlay. The applicant reduced the size of the new sign to comply with the maximum 30-square-foot code requirement.

After discussion, Vice Chair Winkler moved to approve Sign Permit #477-25 as submitted, with a request for clarification on the applicant's plans for the existing monument sign. Commissioner Bailey seconded. The vote passed unanimously (4-0).

**MO 090925-2**



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Chair Deeming raised a separate concern regarding the long-pending Durham Dental sign replacement, noting it has been nearly two years without action. Mr. Parente explained that the most recent permit, approved in April, was valid through October 2025. He stated the property owner had delayed work due to difficulties sourcing matching bricks but had assured him the project would be completed before the permit expired. Mr. Parente committed to following up.

#### **6. DURHAM DEVELOPMENT CODE WORK SESSION**

The Commission continued its work session reviewing the proposed amendments to the City's Development Code relating to tree preservation requirements for new development. Chair Deeming opened discussion by noting that some revisions were made to address concerns raised in May, such as perimeter-only tree preservation. However, other issues appeared unresolved, such as broader aesthetic and ecological impacts of tree removal on neighboring sites, for example wind exposure and stormwater runoff.

Commissioner Bailey expressed that it would have been helpful to receive a redlined copy of the revisions for comparison. She further stated that uncertainty about what revisions had been made remained without side-by-side review of old versus new provisions.

City Administrator Parente explained that the revisions represented a significant departure from the existing ordinance, shifting tree regulation into the Development Code and tying tree preservation directly to land use decisions. He highlighted new provisions requiring that at least 20% of healthy trees and 40% of existing canopy be preserved, and that preserved trees be dispersed across 50% of non-developable area. He also noted a proposed mechanism for minor modifications, allowing administrative approval for cumulative tree removals up to 24 inches in diameter, intended to provide flexibility without requiring full land use review.

Commissioners discussed whether the terms "lot" and "site" were being used consistently and recommended clarifying definitions to avoid confusion when reviewing subdivision versus single-lot development. They also discussed how "dispersed" should be interpreted in practice, and whether mitigation requirements were sufficient to ensure trees are preserved across all lots rather than concentrated in one area.

Commissioner Frazell raised a concern about language in Section 5.6.1.5 regarding root cutting, noting that it only required applicants to notify the City if root pruning was likely to result in tree death, without further consequence. She recommended stronger language treating such actions as tree removal subject to replacement requirements.

The Commissioners agreed to forward their comments to the City's planning attorney for clarification and potential implementation prior to the scheduled public hearing in October. Mr. Parente confirmed that the draft ordinance had been noticed to DLCD and would be posted publicly prior to the hearing. He emphasized that the Commission's October meeting would include a public hearing to take testimony. The Commission would make a recommendation to Council or implement any pertinent changes suggested by the public and could hold another hearing in November if needed.

#### **7. COMMISSIONER COMMENTS / REPORTS / STAFF UPDATES**

Mr. Parente informed the Commission of several upcoming events and updates:

- **Metro Mixer:** A Metro-hosted networking event for regional elected officials and staff will be held at the Bay Club on September 18 from 4:00–6:00 PM. Mr. Parente noted that Metro has been



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trying to boost relations with cities in the region, and that he had passed along the invite to Washington County leadership, specifically on the bureaucratic side. Commissioners were invited to attend as well.

- **Metro Trails Easement:** Metro is moving forward with acquisition of a trail easement through Durham Heights, intended to provide a future connection to Durham Park. While funding for construction has not been identified, Mr. Parente noted the action aligns with community goals for improved trail networks in the Comprehensive Plan. No immediate actions are required from the City.
- **Rivian EV Chargers:** Rivian's previously approved EV charging station project continues to raise issues with parcel consolidation requirements dating back to original approvals and the site currently existing across two lots. The applicant may either consolidate the lots or shift the project design to avoid conflicts.
- **Code Enforcement:** A patio cover recently constructed without permits on Upper Boones Ferry Road was identified as a violation of both zoning and building codes. Mr. Parente stated that enforcement action will be pursued.
- **Development Updates:** Durham Heights is nearly built out, with only a few lots remaining. Durham Estates has submitted a building permit application for a townhouse development, marking the City's first middle-housing projects under new state law. The Durham Estates land use application is also in the process of being approved and building permits will not be issued until there is land use approval. Southwest Ellman Lane's three-lot partition is also nearing final recording following completion of roadway improvements.

**8. NEXT REGULARLY SCHEDULED MEETING OF THE PLANNING COMMISSION.**

- Tuesday, October 7, 2025, Regular Meeting of the Planning Commission at 7:00 PM.

**9. ADJOURN.** Chair Deeming adjourned the meeting at 8:31 PM.

**Approved:**

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**Susan Deeming, Chair**

**Attest:**

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**Jordan Parente, City Administrator/Recorder**



# City of Durham

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**Jordan Parente - City Administrator**

**Wyatt Bean - Administrative Assistant**

**TO:** Durham Planning Commission

**FROM:** Alice Cannon AICP, Contract Planner, Cannon Planning Services  
Jordan Parente, City Administrator

**DATE:** September 24, 2025 for the October 7, 2025 meeting

## CITY STAFF REPORT

**Proposal:** Amend the Durham Development Code (DDC) to:

- Update Chapter 5 “Tree Protection”.
- Update Chapter 10 “Adjustment, Variance, Non-Conforming Use, Major Modification”.

**Applicant:** City of Durham

**Case No.** 596-25 (LUC001-25)

**Property Location:** Legislative hearing – Amendment to city-wide regulations for tree protection related to new development.

**Approval Criteria:** The approval criteria for evaluating the proposed DDC amendments are found in DDC Section 9.10.5:

- Is the amendment consistent with the City’s Comprehensive Land Use Plan?
- Is the amendment consistent with federal, state, and local law (including the Statewide Planning Goals, State law, State administrative rules, Metro Code, and Clean Water Services resolutions and orders)?
- Will adequate public facilities be available to support the land uses that will be allowed on the property if the amendments are approved?
- Will the amendments promote the public health, safety, and welfare of the city?

## **I. BACKGROUND**

The City of Durham has regulated tree removal for more than 50 years. House Bill 2138 from the 2025 session requires that all development requirements relating to tree removal must be clear and objective.

To comply with this state directive, the city received a grant from the Department of Land Conservation and Development (DLCD) that was used to compensate the Durham's contract City Planner Alice Cannon with Cannon Planning, to assist with the necessary changes of the Durham Development Code (DDC) amendments. Cannon Planning began work on the project in August 2025 and will conclude with hearings before the Planning Commission and City Council on October 7, 2025, and October 28, 2025, respectively. The Planning Commission will be asked to review the proposed DDC amendments, consider any public testimony, and make a recommendation to the City Council. The City Council will review the amendment package, consider public testimony, the Planning Commission recommendation, and render a decision.

## **II. DDC AMENDMENT PACKAGE**

**Exhibit A** Findings of Fact and Conclusions to support proposed amendments.

**Exhibit B** DDC Amendments proposed in Chapters 5 and 10 to support this ordinance.

## **III. SUMMARY OF CHAPTER 5 TREE PROTECTION CHAPTER 10 MAJOR MODIFICATION**

The proposed amended DDC Chapter 5 "Tree Protection" establishes a process and standards for property owners proposing to remove a tree or trees in connection with land use or development proposals. The standards and processes seek to protect Durham's urban forest concurrently with new development. New state law that became effective in summer 2025 requires tree protection ordinances for housing development to be written in a manner that is clear and objective. Below is a summary of the amendment to Chapter 5. The Ordinance includes the following sections:

### **Definitions**

This section defines key terms used throughout Chapter 5.

### **Tree Removal Requirements**

Applicants proposing to remove a tree during land development must submit a report identifying existing trees and a tree preservation plan consisting of items outlined in Exhibit B -- Section 5.5.1.2. In addition, the applicant must demonstrate compliance with the following tree preservation percentage requirements:

- Preserve at least 20% of the trees on the lot, excluding dead, declining, or hazard trees; and
- Preserve at least 40% of the lot's existing canopy coverage; and

- Ensure that preserved trees are dispersed across at least 50% of the lot area, subtracting existing and proposed building footprint(s) and hard surfaces.

If the applicant is unable to demonstrate compliance with these standards, the applicant must submit a tree mitigation plan.

### **Means of Preserving Trees**

This section outlines city-approved methods for preserving trees during construction such as tagging trees, installing protective fencing, and having a Project Arborist oversee excavation within a defined perimeter of the existing tree.

### **Mitigation**

Mitigation is required for any tree removed, with replacement trees needed to match the canopy coverage of removed trees or 35% of the lot's square footage, whichever is less. Mitigation trees must be selected from the City's tree list and planted according to specified spacing guidelines.

### **Violations and Penalties**

Violations include unauthorized tree removal or failure to comply with land use conditions, leading to potential penalties, stop work orders, or revocation of approvals. Each day of non-compliance constitutes a separate violation.

### **Tree Removal Modifications**

Major modifications to land use decisions that affect tree removal must follow specific procedures as outlined in DDC Section 10.5 "Major Modifications to Existing or Approved Land Use." Major modifications are identified as more than a combined total diameter of tree removal exceeding 24 inches, or an increase in the removal of trees exceeding the percentage preservation requirements, whichever is less.

As a cross-reference and also included in this package of amendments, are modifications to Chapter 10 "Adjustment, Variance, Non-conforming Use, Major Modification Amendment." The amendment to this section is minor, simply calling out that modifications to tree preservation approvals are subject to the major modification process and standards.

#### **IV. PUBLIC NOTICE AND COMMENT**

As required by DDC Section 9.10.3:

- A notice of public hearing must be sent to Oregon Department of Land Conservation and Development Department (DLCD) at least 35 days prior to the first Planning Commission hearing. Staff provided this notice to DLCD on September 2, 2025.
- City staff are also required to provide notice of the amendment to all public agencies providing transportation facilities and services in Durham, such as Metro and ODOT. The contract planner provided this notice on September 25, 2025.
- Staff will provide notice of the project on the Planning Commission agenda, to be posted on the City's website and in City Hall. This notice will be available on September 30, 2025.

The Planning Commission held two work sessions to discuss the proposed draft amendment on June 3, 2025, and September 9, 2025.

#### **V. FINDINGS OF FACT**

Staff finds the proposed amendments consistent with criteria DDC Section 9.10.5 – Type 4 Criteria for Approval. Full findings of act are included in Attachment A.

#### **VI. RECOMMENDATION**

Based on the findings of fact, staff suggest that the Planning Commission recommend approval of the proposed amendments to DDC Chapter 5 -- Tree Protection and Section 10.5 -- Major Modification to Existing or Approved Land Use to the City Council

#### **VII. NEXT STEPS**

The October 7 Planning Commission hearing will be followed by:

City Council Hearing:                      October 28, 2025, (staff presentation, public comment, and if approved, first reading of the ordinance)

November 25, 2025, (second reading of the ordinance and public hearing)



## **ATTACHMENT A**

### **Findings of Fact for Durham Development Code Amendment to Chapter 5 – Tree Protection & Section 10.5 -- Major Modification to Existing or Approved Land Use**

**Criteria for approval of Type 4 (Legislative) applications are:**

#### **Section 9.10.5.1**

**Is the amendment consistent with the City’s Comprehensive Land Use Plan?**

Tree protection is an important value in Durham. The Comprehensive Plan highlights the variety of trees and forested areas found throughout the city. The Growth and Development Policies emphasize the importance of protecting the city’s tree canopy. This proposal is consistent with the City’s Comprehensive Land Use Plan

#### **Section 9.10.5.2**

**Is the amendment consistent with federal, state, and local law that the City has identified as applicable to the proposed amendment (including the Statewide Planning Goals, State law, Oregon Administrative Rules, Metro Code, and Clean Water Services resolution and orders)?**

The City of Durham has regulated tree removal for more than 50 years. Oregon House Bill 2138 from the 2025 legislative session requires that all development regulations relating to tree removal must be clear and objective.

To comply with this state directive, the city received a grant from the Department of Land Conservation and Development (DLCD) to complete the proposed DDC amendments. Chapter 5 – Tree Protection is currently written with discretionary standards. The proposal rewrites Chapter 5 to include clear and objective standards, consistent with State law.

#### **Section 9.10.5.3**

**Will adequate public facilities be available to support the land uses that will be allowed on the property if the amendments are approved?**

This criterion does not apply to this amendment. The proposed amendments relate to tree protection and mitigation for properties in the development process.

#### **Section 9.10.5.4**

**Will the amendment promote the public health, safety, and welfare of the city?**

Tree protection promotes public health, safety, and general welfare in Durham. The amendments are written in a manner that will be clear, objective, and easier for developers to understand/comply.

## **EXHIBIT B**

### **5 TREE PROTECTION**

#### **5.1 Purpose.**

The purpose of this Chapter is to establish processes and standards to preserve Durham's prominent and historic tree canopy. Trees contribute to community health, air quality, and healthy streams. A tree canopy provides habitat for birds and other urban wildlife. Trees also shade properties and public open spaces, enhancing outdoor activities and maintaining livable temperatures during the summer season. The Ordinance is intended to promote tree preservation, replanting and management of the urban forest.

#### **5.2 Scope.**

**5.2.1** This Chapter 5 shall apply to the proposed removal of trees in connection with Type II, Type III, expedited land division, and middle housing land division applications under the Durham Development Code.

**5.2.2** This Chapter does not apply to the following:

**5.2.2.1** The removal of plants that do not meet the definition of tree under this Chapter.

**5.2.2.2** The removal of trees governed by Durham Municipal Code.

#### **5.3 Definitions.**

The following definitions apply to this Chapter:

**Applicant:** The individual person or entity, or persons or entities, applying to remove a tree. If the trunk of the tree proposed to be removed straddles multiple property lines, an application for the removal of that tree must be signed by the owner of each property straddled by the tree's trunk.

**Arborist, Project:** An arborist who is engaged by an applicant to prepare and implement a Tree Preservation Plan.

**Arborist:** An individual who has met the criteria for certification from the International Society of Arboriculture and maintains accreditation and who possesses and maintains a Tree Risk Assessment Qualification.

**Canopy:** the area above ground that is covered by the trunk, branches, and foliage of a tree crown or group of tree crowns.

**Canopy coverage:** the amount of tree canopy that will be provided for a given lot through any combination of preserved trees and planting new trees, expressed as the sum of all the canopy coverage of all preserved trees and newly planted trees, divided by the total canopy coverage for the entire lot. In general, the formula grants bonus tree canopy credit based on the existing tree canopy of preserved trees, and grants additional tree canopy credit based on the projected mature tree canopy of newly planted trees. Individual tree canopy coverage is identified in the City's tree list.

**City:** The City Administrator of the City of Durham or designee.

## EXHIBIT B

**Crown:** The branches and leaves of a tree extending from the trunk.

**Dead or Declining Tree:** A tree that is lifeless or is in a state of progressive and irreversible decline, as determined by the project arborist. Among the factors that could be considered to determine if the tree is lifeless 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 evidence of disease likely to lead to death.

**Diameter at Breast Height (“DBH”):** The tree trunk diameter measured at four and a half feet (4.5’) above mean ground level at the base of the trunk, except that if a tree splits into multiple trunks above ground but below four and a half feet (4.5’), the trunk is measured at its most narrow point beneath the split. The diameter is calculated by dividing the circumference by 3.14. For trees with multiple stems, the DBH shall be the average diameter of all stems measured at a point no more than six inches (6”) above the surrounding grade or measured six inches below the point from which all stems digress from the trunk, whichever is larger.

**Distribution area:** The total lot or parcel area of the lot or parcel contemplated to be developed subtracting the building footprint and hard surfaces.

**Hard surface:** A man-made surface that reduces or prevents the absorption of water.

**Hazard Tree:** A tree that presents a high or extreme on the International Society of Arboriculture qualitative tree risk assessment, as determined by the project arborist.

**Owner:** Any person who owns a property within the City of Durham upon which a tree’s trunk is located.

**Removal:** The cutting down of a tree or removing of more than half of the crown, trunk, or root system of a tree; or to damage a tree so as to cause the tree to become a dead or declining tree, or to qualify as a hazard tree, each as determined by an arborist. “Removal” does not include the normal trimming, pruning, or other maintenance of trees that does not have the effect of causing the tree to qualify as a hazard tree or dead or declining tree, as determined by an arborist.

**Structure:** A building having walls and a roof, whether or not it is erected or set upon an individual foundation or slab constructed base which is designed or used for the housing, shelter, enclosure, or support of persons, animals, or property of any kind.

**Tree:** A woody plant having a DBH of six inches (6”) or larger. If a tree splits into multiple trunks above ground, but below four and a half feet (4.5’), it is considered one tree. If the tree splits into multiple trunks below ground, each trunk shall be considered one tree.

**Tree Grove.** A group of six or more trees at least 12 inches in diameter, or Oregon white oak trees or Pacific madrone trees that are at least 6 inches in diameter and that form a generally continuous canopy, or are spaced as appropriate for that species or species assemblage. Groves are generally non-linear. Other trees and understory vegetation located within the grove are considered part of the grove and are counted as part of the canopy area. A tree grove may be identified by an arborist, based on the types, configuration, or functions of a grouping of trees. Functions include structural

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support and wind protection for the trees within the grove, microclimate and shade, and habitat such as nesting, foraging, and cover for birds and other wildlife.

**Tree Protection Zone:** An area around the trunk of each preserved tree measured from the trunk of the preserved tree outwards at a distance of an additional one foot (1') for each inch at DBH of such preserved tree.

**Trunk:** The main stem of a tree that connects the roots to the branches.

**Preserved Tree.** A tree that has been designated in a Tree Preservation Plan to be preserved.

**Tree Preservation Plan.** A document describing the scope of work to identify, protect, and manage preserved trees, created by a Project Arborist.

### **5.4 Tree Removal Compliance Required.**

No person may remove a tree without first demonstrating compliance with the terms of this Chapter.

### **5.5 Tree Removal Requirements.**

**5.5.1** An application that contemplates removing a tree or trees as further identified in Section 5.2 of this Chapter shall include a report identifying the following:

**5.5.1.1** An inventory of all trees on the lot listing all of the following:

**5.5.1.1.1** An assigned number for each tree;

**5.5.1.1.2** The tree type or common name, genus, and species for each tree;

**5.5.1.1.3** DBH for each tree; and

**5.5.1.1.4** For each tree, whether that tree is proposed to be preserved or removed.

**5.5.1.2** A Tree Preservation Plan, prepared by the Project Arborist, consists of the following:

**5.5.1.2.1** A map drawn to scale of the lot, indicating the location, size, species, and tag identification number for all trees on-site. Trees proposed for preservation and trees proposed for removal must be clearly labeled on the map, as well as all existing and proposed public and private improvements and or easement(s);

**5.5.1.2.2** A tree assessment report prepared by the Project Arborist that includes an inventory of trees proposed for preservation and removal, indicating species, condition, diameter DBH, estimated canopy square footage, and likelihood of survival in light of the development proposed; and

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**5.5.1.2.3** The specific steps that the Applicant will take for tree preservation and protection during all phases of construction, including, but not limited to, excavation, grading, filling, cutting, augering, trenching, digging, tree repair and removal, pruning and structural support, fertilization, and aeration.

**5.5.1.2.4** The proposed mitigation plan demonstrating compliance with Section 5.7.

**5.5.1.3** Demonstration of compliance with one of the following tree preservation requirements:

**5.5.1.3.1** Percentage Compliance.

**5.5.1.3.1.1** At least 20% of all trees on the lot must be preserved, excluding any dead or declining tree or any hazard tree; AND

**5.5.1.3.1.2** At least 40% of the lot's existing canopy coverage must be preserved; AND

**5.5.1.3.1.3** The preserved trees must be dispersed across at least 50% of the distribution area (see definitions).

**5.5.1.3.2** Discretionary Compliance. If an applicant under this Section is unable to comply with the requirements of 5.5.1.3.1, then the applicant must submit a written narrative and supporting information demonstrating that compliance with either one or both of these subsections is not possible and that removing more trees than allowed by these subsections is necessary due to one or more of the following:

**5.5.1.3.2.1** Removal is necessary due to existing or proposed utilities that cannot be relocated to an alternative location.

**5.5.1.3.2.2** Removal is necessary due to the topography of the lot and the tree(s) is located within or abutting areas of cuts or fills that are deemed threatening to the life of the tree, as determined by the Project Arborist.

**5.5.2** The removal of trees under this Section shall be subject to mitigation under Section 5.7.

**5.5.3** The city will deny any application contemplated in Section 5.2 unless the applicant submits all materials identified in this Section 5.5.

## **5.6 Means of Preserving Trees.**

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**5.6.1** The city shall include the following provisions as conditions of approval for any decision contemplated in Section 5.2:

**5.6.1.1** Mark all trees with a tagging system that corresponds to the applicant's Tree Preservation Plan.

**5.6.1.2** Install construction fencing at least four feet (4') high around each tree protection zone.

**5.6.1.3** Within each tree protection zone, install a layer of wood chips or mulch at least four inches (4") deep and, on top of the layer of wood chips or mulch, install three-quarter inch (3/4") plywood.

**5.6.1.4** The Project Arborist shall oversee all excavation within each tree protection zone.

**5.6.1.5** Prior to the cutting or pruning of any preserved tree's root that is two inches (2") in diameter or greater, the Project Arborist shall evaluate the root to be pruned or cut and inform the City if such cutting or pruning is, in the Project Arborist's opinion, likely to result in a dead or dying tree.

**5.6.1.6** All pruned or cut roots shall be immediately covered with soil or mulch and watered.

**5.6.1.7** Immediately repair or mitigate and report to the City any damage to a preserved tree.

**5.6.1.8** Water preserved trees in accordance with the preserved trees' needs, as identified by the Project Arborist.

**5.6.2** The City shall have the right to inspect the preserved trees for three years following the issuance of a land use approval under Section 5.2. If any preserved tree becomes a dead or declining tree prior to the expiration of the three years, the preserved tree shall be replaced by the applicant in accordance with Sections 5.7.3 and 5.7.4 of this Chapter.

### **5.7 Mitigation.**

**5.7.1** The applicant shall perform mitigation for any tree removed pursuant to this Chapter. Mitigation shall also be required for any tree removed in violation of this Chapter.

**5.7.2** Removed trees shall be replaced with mitigation trees to the extent that, at maturity, the mitigation trees shall equal the canopy coverage of the removed trees or canopy coverage equivalent to 35% of the square footage of the lot, whichever is less. Mature canopy coverage shall be as set forth on the City's tree list based on the tree species.

**5.7.3** The canopy of each preserved tree can receive credit for 130% of its existing canopy size. The total credit of all existing canopies shall be counted toward the 35% coverage requirement. For example, a 10,000 square foot lot would require 3,500 square feet of canopy. An existing Black

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Hawthorne has 314 square feet of existing canopy. This lot would receive a credit of 408.2 square feet, leaving 3,091.8 square feet that will need to be mitigated by mitigation trees.

**5.7.4** The species of mitigation trees shall be selected from the City's tree list. The minimum size of a mitigation tree at time of planting shall be two inches (2") in diameter when measured from the top of the root ball for deciduous trees. Evergreen trees shall be a minimum of six feet (6') tall measured from the top of the root ball, excluding the leader.

**5.7.5** Mitigation trees shall be located as follows, except to the extent that the mitigation trees or trees naturally grow in a tree grove, as identified by the Project Arborist:

**5.7.5.1** Trees categorized as small on the City's tree list shall be spaced no closer than fifteen feet (15') on center from other trees and no closer than ten feet (10') measured from the foundation of any existing or contemplated structure.

**5.7.5.2** Trees categorized as medium on the City's list shall be spaced no closer than twenty feet (20') on center from other trees and no closer than ten feet (10') measured from the foundation of any existing structure or structure contemplated within the proposed development application or future phases.

**5.7.5.3** Trees categorized as large on the City's tree list shall be spaced no closer than thirty feet (30') on center from other trees and no closer than fifteen feet (15') from the foundation of any existing structure or structure contemplated within the proposed development application or future phases.

**5.7.5.4** A mitigation tree shall be planted no less than six feet (6') from any existing hard surface or hard surface contemplated within the proposed development application or future phases.

**5.7.5.5** Mitigation trees shall be distributed across at least 50% of the distribution area (see definitions).

**5.7.5.6** The City shall identify trees as "small," "medium," and "large" on the City's tree list.

**5.7.6** When the lot from which trees are removed cannot accommodate the required number and spacing of mitigation trees, the applicant shall pay the City a fee in lieu of replacement. The fee in lieu shall be in amount set by resolution.

**5.7.7** Trees removed for the purpose of installation of infrastructure upon a division of land may be mitigated by planting the required mitigation trees upon any lot or parcel within the same land division. Such trees will be required to be planted outside the anticipated footprint of any future structure or within required structural setback areas. When vertical construction commences on-site, the developer shall receive a credit of 100% for each species planted towards the required canopy coverage for the lot.

## **EXHIBIT B**

- 5.7.8** Mitigation planting must be completed and proof of mitigation planting must be submitted to the City within six (6) months of the issuance of a land use approval under Section 5.2 or prior to the issuance of any building permits for the lot (if required), whichever is later. The City may grant a sixty (60) day extension if the City finds abnormal weather conditions require delay. Additional time beyond the sixty (60) day extension shall be subject to Planning Commission approval.

### **5.8 Violations and Penalties.**

- 5.8.1** Any person who removes a tree in violation of this chapter shall be subject to the provisions of this Section.
- 5.8.2** Any person who fails to comply with any land use approval condition relating to tree removal shall be in violation of this Chapter and subject to the provisions of this Section.
- 5.8.3** In the event of a violation of this Chapter, the City may proceed with any one or more of the following:
- 5.8.3.1** Issue a stop work order for the property upon which the violation allegedly occurred, which shall remain in place until the violation is resolved;
  - 5.8.3.2** Assess a penalty in the amount established by resolution;
  - 5.8.3.3** Pursue any other remedy available to the City at law or in equity, including but not limited to revoking the associated land use approval.
- 5.8.4** Violations of this Chapter are continuing in nature and shall be deemed to occur for each day that the violation exists until the violation is resolved. Each tree removal or other instance of non-compliance shall constitute a separate violation.
- 5.8.5** The City Administrator is authorized to enforce the provisions of this Chapter and to adopt, implement and update all staff policies, tree lists, and other documents required to carry out the provisions of this Chapter.

### **5.9 Tree Removal Modifications.**

- 5.9.1** A major modification to a land use decision that contemplates removing a tree or trees as further identified in Section 5.2 of this Chapter is one that will have significant impacts on the development or on the lot. Major changes include:
- 5.9.1.1** An increase in the removal of trees exceeding standards outlined in Section 5.5.1.3.1 “Percentage Compliance”.; or



## **EXHIBIT B**

**5.9.1.2** More than a combined total diameter of 24 inches of additional tree removal, whichever is less

**5.9.2** A minor modification to a land use decision that contemplates removing a tree or trees as further identified in Section 5.2.2.2 “Scope” of this Chapter is one that is not a major modification. A minor modification shall follow Section 9.5 “Type 1 Process.”

**5.9.3** Major modifications shall proceed in accordance with Section 10.5 “Major Modifications to Existing or Approved Land Use.”

## EXHIBIT B

**10.5 Major Modification to Existing or Approved Land Use.** An application for a major modification of an existing, conforming land use or land use approval is required for the following actions; middle housing is exempt:

**10.5.1** any change in land use;

**10.5.2** a density increase greater than 10 percent or up to the density limit allowed in the underlying district, whichever is less;

**10.5.3** a change in lot dimension area, setback greater than 10 percent or to the minimum or maximum applicable dimension allowed in the underlying district, whichever is less;

**10.5.4** a change in the type or location or both of access ways or parking areas that will affect off-site traffic;

**10.5.5** an increase in floor area more than 15 percent or up to the floor area allowed in the underlying district, whichever is less;

**10.5.6** a reduction of more than 10 percent in the area reserved for open space; or,

**10.5.7** a change to a condition of land use or land division approval that the City finds to have a potential adverse effect on adjoining property.

**10.5.8** a tree removal modification that exceeds the standards outlined in Section 5.9.1 “Tree Removal Modification.”

**10.5.8****10.5.9** An applicant for a major modification shall submit the same material as required for an original application for the same use or land division. The City shall review the application by the same process type as would apply to an original application, except that a major modification that constitutes a conditional use under this Code shall require a Type 3 review process. The City may approve an application for a major modification with conditions.



# City of Durham

17160 SW Upper Boones Ferry Road  
Durham, Oregon 97224

**Jordan Parente - City Administrator**

website: durham-oregon.us  
e-mail: cityofdurham@comcast.net  
phone: 503.639.6851

**Wyatt Bean - Administrative Assistant**

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September 2, 2025

Oregon Dept of Land Conservation and Development  
c/o Plan Amendment Specialist  
635 Capital Street NE, Suite 150  
Salem, OR 97301-2540

**RE: Post Acknowledgement Plan Amendment – Durham Development Code Chapter 5  
“Tree Protection”**

Dear Plan Amendment Specialist:

As required in Oregon Revised Statute (ORS) 197.610 to 197.625, City of Durham is proposing to amend the Durham Development Code Chapter 5 to make this section applicable only to tree removals in connection with Type II, Type III, expedited land division, and middle housing land division applications. All other tree removals not associated with development will be moved to a new section in the Durham Municipal Code. Attached is a copy of the text changes currently proposed. Minor modifications to this draft are possible prior to adoption, following public hearings.

The first evidentiary public hearing is tentatively scheduled for October 7, 2025, before the City of Durham Planning Commission.

No staff report is included in this notice but will be prepared and available at least one week in advance of the first public hearing.

If you have any questions or would like additional information related to this project, please do not hesitate to give me a call at 503-298-5456 or send me an email at [alice@cannonplanning.com](mailto:alice@cannonplanning.com).

Sincerely,

Alice Cannon  
City of Durham Contract Planner

Attachments: Draft Revisions to Durham Development Code Chapter 5

## CITY OF DURHAM PUBLIC NOTICE

NOTICE IS HERE GIVEN THAT Public Hearings will be held by the Durham Planning Commission and Durham City Council regarding potential amendments to the Durham Development Code (DDC). The City of Durham has regulated tree removal for more than 50 years. House Bill 2138 from the 2025 session requires that all development requirements relating to tree removal must be clear and objective. The Planning Commission will hold its hearing at or shortly after 7:00 P.M. on October 7, 2025, at Durham City Hall, 17160 S.W. Upper Boones Ferry Road, Durham, OR to consider the DDC amendments and public testimony to make a formal recommendation about the draft amendments to the City Council.

The City Council will hold its hearing at or shortly after 7:30 P.M. on October 28, 2025, at the above location to consider the amendments, the Planning Commission recommendation, and public testimony prior to making a decision regarding adoption of the DDC amendments.

Proposal:	Amend the DDC to: <ul style="list-style-type: none"><li>• Update Chapter 5 “Tree Protection”.</li><li>• Update Chapter 10 “Adjustment, Variance, Non-Conforming Use, Major Modification”.</li></ul>
Applicant:	City of Durham
Case No.	596-25 (LUC001-25)
Property Location:	Legislative hearing – Amendment to city-wide regulations for tree protection related to new development.

- Approval Criteria: The approval criteria for evaluating the proposed DDC amendments are found in DDC § 9.10.5:
- Is the amendment consistent with the City’s Comprehensive Land Use Plan?
  - Is the amendment consistent with federal, state, and local law (including the Statewide Planning Goals, State law, State administrative rules, Metro Code, and Clean Water Services resolutions and orders)?
  - Will adequate public facilities be available to support the land uses that will be allowed on the property if the amendments are approved?
  - Will the amendments promote the public health, safety, and welfare of the city?

The public hearings on this matter will be conducted pursuant to rules of procedure adopted by the City Council. Oral and written testimony in favor of or in opposition to the proposed will be received during the hearing. Written testimony may also be submitted in advance of the Planning Commission hearing to the City Administrator no later than 4:30 P.M. October 7, 2025, by. The corresponding written testimony deadline for the City Council hearing will be 4:30 P.M. October 28, 2025.

Failure to raise an issue in person or by letter, or failure to provide sufficient specificity to afford the decision-makers an opportunity to respond to the issue precludes appeal on said issue to the State Land Use Board of Appeals.

The pertinent documents are available for inspection at no cost at Durham City Hall, 17160 S.W. Upper Boones Ferry Road, Durham, OR, during normal business hours. Contact Jordan Parente, City Administrator, at (503) 639-6851 for additional information. A staff report will be available for inspection on or about September 25, 2025, at City Hall. This hearing may be continued without additional public notice. All interested parties are invited to attend and be heard.

**CITY OF DURHAM**

**By: Jordan Parente  
City Administrator**