

City of Durham

ORDINANCE 272-25

AN EMERGENCY ORDINANCE ADOPTING TREE REMOVAL REGULATIONS FOR DEVELOPMENT SITES IN THE DURHAM DEVELOPMENT CODE; AMENDING DURHAM DEVELOPMENT CODE CHAPTERS 5 AND 10; AND REPEALING ORDINANCES 254-12, 228-05, 246-08, AND ALL OTHER INCONSISTENT TREE ORDINANCES

WHEREAS, the City of Durham recognizes trees as a natural resource that provide aesthetic, economic, ecological, environmental, and health benefits to the City and members of the public; and

WHEREAS, the removal of trees, especially during development, can quickly diminish these benefits and adversely affect the City as a whole; and

WHEREAS, the City Council finds it necessary to adopt effective regulations within the Durham Development Code to govern tree removal associated with land use and development activity; and

WHEREAS, the City Council finds that prior tree ordinances are superseded or inconsistent with this framework and should be repealed to avoid confusion; and

WHEREAS, an emergency exists because delay in implementing development-related regulations risks immediate and irreparable canopy loss, affecting public health, safety, and welfare. Accordingly, the Durham City Council finds it advisable for this Ordinance to take effect immediately upon its enactment;

NOW, THEREFORE, THE CITY OF DURHAM, OREGON ORDAINS AS FOLLOWS:

- Section 1.** Subject to Section 4, the regulations regarding tree removal associated with land use and development activity set forth in Exhibit “A”, and the regulations regarding minor and major development approval modifications in the context of tree removal set forth in Exhibit “B”, are hereby adopted as amendments to the Durham Development Code and incorporated into this Ordinance by reference. The City Administrator is authorized to correct any scrivener’s errors in Exhibit “A” during codification.
- Section 2.** Subject to Section 4, ordinances 254-12, 228-05, and 246-08 are repealed in their entirety. All other ordinances or parts of ordinances regulating trees that conflict with or are duplicative of this Ordinance or the regulations adopted herein are repealed to the extent of the conflict or duplication.
- Section 3.** The City Administrator is directed to codify the amendments to the Durham Development Code adopted by Section 1, making any non-substantive edits necessary for organization, formatting, and consistency.
- Section 4.** Notwithstanding anything else contained herein, the terms and conditions of the Durham Development Code Chapter 5 existing immediately prior to the date of

this ordinance shall continue in full force and effect with respect to all tree removals not covered by this ordinance, until such time as the City Council adopts an ordinance expressly regulating such tree removals.

Section 5. The repeal of ordinances under Section 2 does not affect any rights or liabilities accrued, or any proceedings begun, under those ordinances prior to repeal. Such matters may be continued and completed under the provisions in effect at the time they were initiated.

Section 6. If any provision, section, phrase, or word of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

Section 7. The City Council finds that an emergency exists because immediate regulation of development-related tree removal is necessary to protect public health, safety, and welfare by preventing irreparable canopy loss. This Ordinance takes effect immediately upon its enactment.

PASSED AND ADOPTED by the City of Durham, Oregon, this 28th day of October 2025.

First Reading: October 28, 2025

Second Reading: October 28, 2025

CITY OF DURHAM

By: _____

Joshua Drake, Mayor

ATTEST:

Jordan Parente, City Administrator/Recorder

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, limited land use, and expedited 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.

5.2.3 All calculations and measurements taken pursuant to this chapter shall be completed prior to any land division or lot line adjustment, utilizing the square footage of the parent property.

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 or parcel 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 or parcel. In general, the formula grants bonus tree canopy credit based on the existing tree canopy of preserved trees, and grants additional tree canopy credit

Exhibit "A"

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.

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 subject 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

Exhibit “A”

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 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 subject lot or parcel 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, that consists of the following:

5.5.1.2.1 A map drawn to scale of the subject lot or parcel and any lots or parcels resulting from a land division, 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);

Exhibit "A"

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

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 subject lot or parcel 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 subject lot's or parcel'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 subject lot or parcel 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 Applicant's payment of any tree removal application fee established via resolution.

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

5.5.4 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.

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. If the cutting or pruning is likely to result in a dead or dying tree, then the applicant shall mitigate the tree in accordance with Section 5.7.

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 two 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 two 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.

Exhibit "A"

- 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 subject lot or parcel, 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 subject lot would require 3,500 square feet of canopy. An existing Black 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 one and three quarters inches (1 3/4") 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).

Exhibit "A"

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 subject lot or parcel 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 resulting 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 subject lot or parcel.
- 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 subject lot or parcel (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 in violation of this Chapter shall be 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 through mitigation;
 - 5.8.3.2** Assess a penalty in the amount established by ordinance or 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.

Exhibit "A"

- 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 subject lot or parcel. Major changes include:
- 5.9.1.1** An increase in the removal of trees exceeding standards outlined in the outlined in Section 5.5.1.3.1; or
 - 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;

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; or

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

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.