

City of Durham, Oregon

ORDINANCE 273-26

AN ORDINANCE REGULATING THE REMOVAL OF TREES ON PRIVATE PROPERTY AND NOT CONNECTED TO THE DEVELOPMENT OF LAND

WHEREAS, the City Council of the City of Durham recognizes trees as natural resources that provide aesthetic, economic, ecological, environmental, and health benefits to those who live in, work in, and visit the City; and

WHEREAS, the City Council of the City of Durham finds that the unregulated destruction, cutting, and removal of trees results in the loss of those benefits and the reduction in the overall quality of the City; and

WHEREAS, the City Council of the City of Durham finds that the treatment of trees on private properties within the City impacts private properties and the entire City; and

WHEREAS, the City Council of the City of Durham also recognizes that falling trees present serious risks to the public health and safety and to property, as evidenced by the harms to public health, safety, and property caused by falling trees during extreme weather events; and

WHEREAS, the City Council of the City of Durham finds that permitting the removal of certain trees is necessary to protect the public health and safety and is necessary to protect property; and

WHEREAS, in order to protect public health, safety, and property, and to preserve the benefits provided by trees in the City and prevent the uncontrolled destruction, cutting, and removal of trees on private properties within the City, the City Council of the City of Durham finds it necessary to regulate the removal of trees on private properties within the City; and

WHEREAS, The City Council of the City of Durham finds it advisable that this Ordinance take effect immediately upon its enactment.

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

Section 1. The regulations regarding the removal of trees on private property as set forth in Exhibit A are hereby adopted and incorporated into this Ordinance by reference. The City Administrator is directed to codify this Exhibit A in conformance with the City's existing codification of ordinances, to make non-substantive edits necessary for organization, formatting, and consistency, and to correct any scrivener's errors that may be found in Exhibit A during codification.

Section 2. 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 any other provision that can be given effect without the invalid provision or application.

Section 3. This Ordinance shall take effect immediately upon its enactment because delay in implementing regulations regarding the removal of trees risks immediate and irreparable harm to public health, safety, and property.

PASSED AND ADOPTED by the City of Durham, Washington County, Oregon this [DAY] day of [MONTH], 2026.

CITY OF DURHAM
BY:

Joshua Drake, Mayor

ATTEST:

Jordan Parente, City Administrator / Recorder

DRAFT

EXHIBIT A

CHAPTER 162: TREE CODE

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162.01. Purpose.

The purpose of this chapter is to permit and regulate the removal of trees on private property in order to protect public health and safety and to protect property from the risks of harm presented by certain trees while protecting trees as an important natural resource of the City.

162.02. Scope.

- A. This chapter shall apply to the removal of trees from private property located within the City of Durham.
- B. This chapter does not apply to the following:
 - i. The removal of a plant that does not meet the definition of tree under this chapter.
 - ii. The removal of a tree approved by a land action pursuant to the Durham Development Code.
 - iii. The removal of a tree from property owned by the City of Durham.

162.03. Definitions.

The following definitions apply to this chapter:

Applicant: An owner of a property within the City who applies for a tree removal permit under this Chapter.

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 prior to tree removal. 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.

City 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.

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

Diameter at Breast Height ("DBH"): The tree trunk diameter measured at 4.5 ft. (54 in.) above mean ground level at the base of the trunk. If a tree splits into multiple trunks above ground but below 4.5 ft., the trunk diameter is measured at its most narrow point beneath the split. The diameter is calculated by dividing the circumference by π (3.14).

Dead or Declining Tree: A tree that is lifeless or is in a state of progressive and irreversible decline. 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.

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

Improved Surface: A surface that has been improved with asphalt, concrete, or other paved surface of similar characteristics.

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 topping or damage to a tree so as to cause the tree to decline, die, or to qualify as a hazard tree. "Removal" does not include the normal trimming, pruning, or other maintenance of trees that does not have the effect of causing the tree to decline, die, or to qualify as a hazard tree.

Structure: A building or structure constructed pursuant to a building permit.

Tree: A woody plant having a DBH of six inches or larger, or any mitigation tree required by the City to be planted under this chapter. If a tree splits into multiple trunks above

ground, it is considered one tree. If the tree splits into multiple trunks below ground, each trunk shall be considered one tree.

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

Utility Service: The physical systems and infrastructure providing utility services including, but not limited to water, sewer, electricity, natural gas, and communications.

162.04. Tree Removal Permit Required.

- A. Except as provided by Section 162.05(E) of this chapter, no person may remove a tree from private property within the City without first obtaining a tree removal permit. A separate tree removal permit is required for each tree to be removed.
- B. The removal of a tree without a tree removal permit is a violation of this chapter and is subject to the penalties set forth herein.

162.05. Tree Removal Permit Classifications

Applicants may apply for a tree removal permit under the following classifications:

A. Hazard Tree Removal Permit

The City shall issue a hazard tree removal permit if the City Arborist determines that the tree is a hazard tree as defined by this chapter.

B. Dead or Declining Tree Removal Permit

The City shall issue a dead or declining tree removal permit if the City Arborist determines that the tree is a dead or declining tree as defined by this chapter.

C. Property Damage Tree Removal Permit

- i. The City shall issue a permit for the removal of a tree causing material damage to property if the applicant demonstrates that the tree is causing material damage or is reasonably likely to cause material damage to an existing structure or utility service; and
 - 1. The City determines that such existing structure or utility service cannot be reasonably moved without further material damage to the existing structure or utility service; and
 - 2. The City Arborist determines that the damage cannot be reasonably prevented or alleviated by measures including, but not limited to, root pruning or installation of root barriers.

D. One Tree Per Year Removal Permit

The City shall issue, once per year per physical address, a permit for the removal of a tree between six inches (6”) and ten inches (10”) DBH.

E. Emergency Tree Removal Permit

- i. The City shall issue an emergency tree removal permit if the applicant demonstrates that the condition of a tree presents an immediate danger to persons or property. For the purposes of this section, “immediate danger to persons or property” shall include any of the following:
 1. The tree begins uprooting, or is starting to progressively lean;
 2. There are cracks in the tree where the main branches connect to the trunk;
 3. The tree is leaning on a structure;
 4. The tree is leaning on another tree; or
 5. The tree is in immediate danger of collapse such that a nonemergency tree removal permit could not first be obtained.
- ii. The City shall review and issue or deny an emergency tree removal permit within two (2) business days of the city’s acceptance of an application.
- iii. If the owner determines that a tree presents an immediate danger to persons or property, the owner may remove the tree prior to the issuance of an emergency tree removal permit if the owner applies for an emergency tree removal permit within five (5) business days of the tree’s removal. If the City determines that the tree does not qualify for an emergency tree removal permit, the removal of the tree is a violation of this chapter and is subject to the penalties set forth herein.

F. Removal of Trees Pursuant to Issued Building Permits

- i. The City shall issue a permit for the removal of trees that must be removed in order to execute an issued building permit under the following conditions:
 1. At least 20% of all trees on the property must be preserved;
 2. At least 40% of all the property’s existing canopy coverage must be preserved; and

3. The preserved trees must be dispersed across at least 50% of the total area of the property, less the building footprint and any man-made surface that reduces or prevents the absorption of water.
 - ii. If an applicant under this Section is unable to comply with the requirements of Section 162.05(F)(i), above, then the applicant must submit a written narrative and supporting information demonstrating that compliance with ~~either one or both of these subsections~~any of Section 162.05(F)(i) is not possible and that removing more trees than allowed by these subsections is necessary due to one or more of the following:
 1. Removal is necessary due to existing or proposed utilities that cannot be relocated to an alternative location; or
 2. Removal is necessary due to the topography of the subject lot or parcel and the tree or trees to be removed are located within or abutting areas of cuts or fills that are deemed threatening to the life of the tree, as determined by the City Arborist.
- 162.06. Permit Application Requirements.
- A. An application for a tree removal permit may only be submitted by the owner of the property, as defined by this chapter. If the trunk of the tree proposed to be removed straddles multiple property lines, an application for the removal of that tree must be joined by the owner of each property straddled by the tree's trunk.
 - B. An application for a tree removal permit shall be made on forms prescribed by the City.
 - C. An application for a tree removal permit shall contain, at minimum, the following information:
 - i. The applicant's name, phone number, mailing address, email address, and address of the property from which tree removal is proposed;
 - ii. The applicant's statement that the applicant is the owner of the property from which tree removal is proposed;
 - iii. The ~~number~~, DBH, and species of the tree proposed to be removed;
 - iv. The location of the tree proposed to be removed marked on a site plan of the property;

- v. A statement of the reason(s) for proposed removal of the tree and the type of tree removal permit sought;
- vi. Photographic or video evidence of the tree proposed to be removed that clearly demonstrates that the condition of the tree meets the requirements of the tree removal permit classification;
- vii. If applicable, information regarding the non-feasibility of replanting on-site as required mitigation planting, if applicant alleges that on-site mitigation planting is not feasible;
- viii. The applicant's consent for City officials, including the City Arborist, to enter the property to conduct a ~~tree~~ assessment ~~of the tree~~ for which a removal permit is sought;
- ix. The applicant's signed statement affirming that all information submitted with the tree removal application is complete, accurate, and true;
- x. All applicable fees established by City council resolution; and
- xi. Any other information reasonably required by the City.

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162.07. Permit Application Review Procedures.

- A. The City shall not review an application until the application contains all the information and the permit fee required by this chapter.
- B. Within two (2) business days of receipt of an emergency tree removal application, or within ten (10) business days of receipt of a hazard tree application, or within fifteen (15) business days of receipt of an application for all other application types, except under extenuating circumstances, as determined by the City in its sole discretion, the City shall do one of the following:
 - i. Determine ~~that if~~ the application for the proposed tree removal permit satisfies the requirements of this chapter and issue the permit;
 - ii. Determine ~~that if~~ the application for the proposed tree removal permit does not satisfy the requirements of this chapter and deny the permit; or
 - iii. Determine ~~that if~~ additional information is required to determine whether the application satisfies the requirements of this chapter and make a written request for additional information to the applicant.

- C. The City shall send written notice of its determination under Section 162.07(B) to the mailing address or email address listed on the application.

162.08. Mitigation.

- A. Mitigation shall be required for any trees removed pursuant to a tree removal permit issued under this chapter and any trees removed in violation of this chapter.
- B. The mitigation requirement shall be satisfied by one of the following:
 - i. If the City Arborist determines that mitigation planting on the property from which the tree was removed is feasible, then the applicant shall plant a tree of a species from the City's approved tree species list on the property that, at maturity, would provide at least as much canopy coverage as the tree that was removed; or
 - ii. If the City Arborist determines that mitigation planting on the property from which the tree was removed is not feasible, then the applicant shall pay an in lieu of fee in the amount established by resolution of the City Council instead of planting a mitigation tree. Payment of the in lieu of fee must be made within thirty (30) calendar days of the issuance of the tree removal permit under this chapter.
- C. Mitigation planting must be completed and proof of mitigation planting, including the species of tree planted, must be submitted to the City within six months of the issuance of the tree removal permit under this chapter. Any tree planted as mitigation under this chapter shall be subject to all permit removal conditions, even after transfers of underlying property. Notwithstanding anything to the contrary contained within this chapter, any tree planted as mitigation under this chapter that dies within the first two years following its planting must be replaced and the replacement tree shall be subject to the requirements of 162.08(B)(i), above. The City may, at its discretion, review the status of any tree planted as mitigation under this chapter.
- D. The City Administrator is hereby authorized to administratively adopt and maintain an approved mitigation tree species list for replacement planting. Such list shall not include any invasive tree species.

162.09. Appeal.

The City's decision regarding a tree removal permit or penalty may be appealed to the City Council in accordance with the following process:

- A. The applicant must submit a written notice of appeal to the City within ten (10) calendar days of the date of mailing of the City's determination under Section 162.07(C). The written notice of appeal must be accompanied by the appeal fee in the amount established by resolution of the City Council. Appeals received more than ten (10) calendar days after the date of mailing of the City's determination under Section 162.07(C) will be dismissed without review by the City Council.
 - B. Technical reports supporting the appeal, such as those written by an arborist or engineer, and all other ancillary evidence for City Council consideration, shall be submitted to the City no later than ten (10) business days prior to the date of the hearing.
 - C. The applicant's written notice of appeal must contain the following information. Appeals lacking any of the required information will be dismissed without review by the City Council.
 - i. The applicant's name and contact information;
 - ii. A statement of the facts; and
 - iii. A statement of the grounds for the applicant's appeal.
 - D. Except as described in Section 162.09(E), below, the appeal will be heard at the first regular City Council meeting following the City's receipt of the applicant's written notice of appeal but not sooner than fourteen (14) calendar days after the City's receipt of the applicant's written notice of appeal. The applicant shall be provided written notice of the appeal hearing date at least fourteen (14) calendar days before the scheduled hearing.
 - E. If an applicant appeals the denial of a hazard tree removal permit, then the appeal will be heard at the first regular Council meeting following the date of the applicant's written notice of appeal. As soon as reasonably practicable, the applicant shall be provided written notice of the appeal hearing date.
 - F. The City may grant a request to continue the hearing for good cause.
 - G. The City Council's review of a denial shall be limited to determining whether the applicant's tree removal permit application meets the requirements of this chapter. The City Council shall make its decision based on the applicant's application, the applicant's written appeal, and any evidence presented by City staff and the applicant at the appeal hearing. The City Council's decision shall be final.
- 162.10. Violations; Enforcement.

- A. Any violation of this chapter shall be a civil violation and subject to enforcement in accordance with the Durham Municipal Code. Except as otherwise noted, violations are continuing in nature.
- i. Violations of Section 162.04(B) of this chapter shall be assessed a penalty in an amount not more than four thousand dollars (\$4,000). Violations of Section 162.04(B) are not continuing in nature.
 - ii. Any violation of Section 162.08 of this chapter shall be assessed a penalty in an amount not more than five hundred dollars (\$500) for each month that the violation exists until proof that the applicable requirements of Section 162.08 are satisfied. ~~Upon such submission, the City shall waive the most recently assessed five hundred dollar (\$500) penalty. However, the remainder of the total cumulative penalty, if any, shall remain owing to the City.~~
 - iii. Violations of any other section of this chapter shall be assessed a penalty in an amount not more than four thousand dollars (\$4,000) for each month that the violation exists until proof that the applicable requirements of the Chapter are satisfied.
- B. If the owner fails to pay any penalty imposed under this chapter, the City may impose a lien upon the owner's real property on which the violation occurred to recover the amount of the penalty.
- C. The rights, remedies, and penalties provided in this chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies, and penalties available to the City under any other provisions of law.
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