

Work Session

WS

Milwaukie City Council

COUNCIL WORK SESSION

City Hall Council Chambers, 10501 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

AGENDA

NOVEMBER 19, 2024

Council will hold this meeting in-person and by video conference. The public may come to City Hall, join the Zoom webinar, or watch on the [city's YouTube channel](#) or Comcast Cable channel 30 in city limits. For Zoom login visit <https://www.milwaukieoregon.gov/citycouncil/city-council-work-session-360>. Written comments may be delivered to City Hall or emailed to ocr@milwaukieoregon.gov.

Note: agenda item times are estimates and are subject to change.

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| 1. Natural Resource Code Update – Discussion (4:00 p.m.)
Staff: Laura Weigel, Planning Manager, and
Brett Kelper, Senior Planner | 1 |
| 2. Tree Code Update – Discussion (5:30 p.m.)
Staff: Courtney Wilson, Urban Forester, and
Tim Salyers, Code Compliance Coordinator | 18 |
| 3. Adjourn (6:00 p.m.) | |

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The City Council may meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660(2); all discussions are confidential; news media representatives may attend but may not disclose any information discussed. Final decisions and actions may not be taken in executive sessions.



COUNCIL WORK SESSION

City Hall Council Chambers, 10501 SE Main Street
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MINUTES

NOVEMBER 19, 2024

Council Present: Councilors Will Anderson, Adam Khosroabadi, Rebecca Stavenjord, and Council President Robert Massey, and Mayor Lisa Batey

Staff Present: Joseph Briglio, Assistant City Manager
Katie Gavares, Climate & Natural Resources Manager
Justin Gericke, City Attorney
Brett Kolver, Senior Planner
Peter Passarelli, Public Works Director

Emma Sagor, City Manager
Tim Salyers, Code Compliance Coordinator
Scott Stauffer, City Recorder
Laura Weigel, Planning Manager
Courtney Wilson, Urban Forester

Mayor Batey called the meeting to order at 4:07 p.m. and noted that Councilor Stavenjord was joining the meeting via Zoom.

1. Natural Resource Code Update – Discussion

Kolver noted that the updated code adoption was planned for early 2025 and provided background on how and where the natural resource code had been implemented and applied in Milwaukie thus far. The group discussed how properties were delineated when following water quality resource (WQR) and habitat conservation area (HCA) codes.

Kolver explained how Milwaukie's existing code and the natural resource code changes overlapped and shared tentative plans for reviewing procedures for housing development or construction that results in a WQR disturbance. **Mayor Batey, Kolver** and **Weigel** discussed the frequency and type of permits submitted with WQR disturbance. **Kolver** presented other recommendations for code changes that included removing unused developer options, clarifying water quality mitigation, and a review of the Federal Emergency Management Agency (FEMA) Floodplain & Endangered Species Act overlay.

Kolver discussed efforts to improve the city's mapping of HCA, focusing on streamlining the verification process for correcting inaccuracies. The proposed changes were aimed at making it easier for staff and applicants to update maps, particularly when discrepancies arise. The group discussed what technology was being used to update aerial maps. **Kolver** explained the plan to review stormwater facilities on the map to ensure consistency in how these were treated, particularly in terms of their classification as wetlands or secondary water features, noting the goal was to improve clarity and reduce unnecessary regulatory burdens for property owners, particularly when minor updates to maps were needed.

Kolver outlined next steps and asked if Council had further questions. **Councilors Anderson and Khosroabadi** expressed interest in exploring how residential cluster development variances could apply to affordable housing. **Councilor Massey** and **Kolver** discussed the concept of primary protected water features based on drainage area size. **Weigel, Massey, and Kolver** commented on the complicated nature of the natural resource code topic. The group discussed neglected parking lots that are no longer subject to HCA guidelines and the challenges they pose for enforcing water quality conservation on those types of sites.

2. Tree Code Update – Discussion

Wilson provided an overview of the current tree code, including regulations on public and private trees, and specific permit requirements for private residential development and private residential non-development. **Salyers** and **Wilson** reviewed the history of implementing the tree code and noted the changes made to remove redundancy and improve clarity. **Councilor Massey** asked where staff obtained the definitions for damaged and unhealthy trees. **Wilson** advised that the definitions came from the International Society of Arboriculture (ISA) best management practice manual.

Salyers explained how the violation section of the tree code was updated for easier and clearer citing of violations. **Wilson** presented the administrative changes and **Councilor Anderson** asked for clarification on replanting requirements. **Mayor Batey** and **Wilson** commented on the invasive species list and Type B non-development tree removal noticing.

Wilson presented changes related to the private residential canopy credit. The group discussed concerns around the complexity of the bonding process requirement.

Wilson emphasized that the goal of the amendments was to refine the tree code for better enforcement, clearer organization, and greater consistency with original objectives. **Wilson** asked Council for feedback and noted the final draft would be presented to Council for adoption next month, with updates to informational materials accordingly.

Mayor Batey appreciated the reorganized structure, particularly the decision to align the Tree Board’s regulations with other city codes. **Batey** and **Salyers** discussed Tree Board term limits. **Salyers** highlighted those parts of the tree code now referenced in other sections of the municipal code to avoid duplication. **Councilor Massey** and **Wilson** discussed tree code infographic materials available to the public. The group discussed how to improve outreach efforts for tree code compliance, particularly through welcome packets for new residents, to better inform the community about tree regulations.

Passarelli thanked staff and summarized that the tree code changes would help improve communication with residents and make the code more accessible to the public.

Council Reports (added to the agenda)

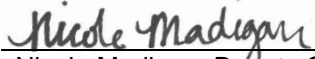
Councilor Anderson noted conflicting times for the Clackamas County Coordinating Committee (C4) meeting and the Transportation System Plan Advisory Committee (TSPAC) as well as a Transportation System Plan (TSP) community listening session on December 5.

Mayor Batey shared photos and details from a tour with the North Clackamas Parks and Recreation District (NCPRD) District Advisory Committee (DAC) and the Library Planning Task Force of the Concord Site. **Councilor Massey** and **Batey** discussed what kind of activities and programming would be offered at the community center, how many phases there were to the project, and the cost of the total project.

3. Adjourn

Mayor Batey adjourned the meeting at 5:55 p.m.

Respectfully submitted,



Nicole Madigan, Deputy City Recorder

COUNCIL STAFF REPORT

To: Mayor and City Council
Emma Sagor, City Manager

Reviewed: Joseph Briglio, Acting Assistant City Manager

From: Laura Weigel, Planning Manager, and
Brett Kelper, Senior Planner

Subject: **Natural Resources Code Update**

Date Written: Nov. 7, 2024

ACTION REQUESTED

None. This work session is for informational purposes, to prepare Council for an upcoming zoning code amendment application that will update the city's natural resource regulations.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[August 18, 2020](#): Council adopted the [2040 Comprehensive Plan](#), including many goals and policies regarding natural resources and environmental quality.

[September 19, 2023](#): Council reviewed the staff approach to needed amendments to the natural resource regulations in the zoning code.

Staff also discussed the approach with the Planning Commission during three work sessions:

- [April 9, 2024](#)
- [July 9, 2024](#)
- [September 10, 2024](#)

ANALYSIS

An update to the city's natural resource regulations is part of the continued implementation of the Comprehensive Plan, which includes goals and policies related to natural resources (Section 3 of the Comp Plan). Many of these goals and policies are already being actualized or will be further addressed by the proposed code update, including requirements for analysis of proposed development impacts to natural resources, mitigation that enhances riparian vegetation to improve water quality and provide habitat, and updates to the city's inventory of natural resource features.

Background

Natural resources are regulated by Milwaukee Municipal Code (MMC) Section 19.402 (Natural Resources (NR) code). The regulations seek to minimize adverse impacts to riparian, wildlife, and wetland resources, many of which have been negatively affected by development over time. The regulations also seek to restore and improve natural resources where possible, while balancing property rights and development needs of the city. Natural resources are distinguished as water quality resources (WQRs) and habitat conservation areas (HCAs); they are identified on an administrative natural resources map (NR map) and shown as an overlay on the city's zoning map).

WQRs include wetlands, rivers, lakes, streams, springs, and other landscape features with a watershed area of at least 50 acres, as well as a vegetated buffer along or around each protected water feature. The width of the vegetated corridor varies depending on the type of feature, the upstream drainage area served, and the adjacent slope. Adopted in 2002, the WQR regulations require all but a handful of restoration activities and maintenance of existing development in WQR areas to go through a discretionary review process (not clear and objective).

HCA's include wetland and riparian areas as well as fish and wildlife habitat. HCA's were initially designated by Metro based on a combination of vegetative cover inventory and analysis of habitat value and urban development value. Adopted in 2011, the HCA regulations include a clear and objective review option for residential development that allows some by-right disturbance of HCA's.

For an outline overview of the history and evolution of the City's natural resource regulations, see Attachment 1.

The NR map is maintained as a collection of geographic image system (GIS) data layers that are overlaid with the zoning map (via the Milwaukie Map tool) for clearer communication with property owners and the public (see Figure 1). For WQR features, the NR map serves as a general indicator of the WQR boundary; for HCA resources, the map is intended to show the specific location. See Attachment 2 for the current version of the NR map for the entire city.¹

Elements of the NR code update

In lining out the tasks for this effort to update the NR code, staff have focused on three areas: (1) ensuring alignment with the residential tree code; (2) amending the NR code for improved clarity and navigation, as well as to ensure continued compliance with state laws related to housing development; and (3) improving the accuracy of the NR map and the process for identifying and verifying resources.

Alignment with tree code

Since 1998, [MMC Chapter 16.32](#) (the tree code) has provided rules for trees in the public right-of-way (ROW); protections for trees on city-owned properties were added in 2016. In May 2022, new regulations went into effect for trees on private property in residential zones, codified in MMC Section 16.32.042. Now with over two years of experience with the new regulations, the urban forestry team is working through an amendment process to clarify the rules and improve their enforceability. This has presented an opportunity to better align the tree code and NR

Figure 1. Natural resources map



¹ For more detail, turn on the various NR layers in the [Milwaukie zoning map online](#) and zoom in.

code. Attachment 3 presents a more detailed explanation of the tree code, including a comparison of the NR code's tree removal provisions.

The tree code applies in the public ROW, on city-owned properties, and in residential zones. It is focused on preserving existing tree canopy and expanding canopy coverage for the future, recognizing the role that canopy plays in improving water and air quality, absorbing carbon, mitigating urban heat, and managing stormwater. The NR code is concerned primarily with protecting water quality and wildlife habitat and is applicable in all zones. The tree code distinguishes between development² and non-development situations, with a different review process and mitigation structure for each. The NR code looks to the level of disturbance to WQR and/or HCA resources as the measure of whether a land use review is needed (regardless of whether trees are removed). Where the two codes overlap, it would be ideal to use a single permit or review process, so staff are proposing to adjust the NR code to reduce the need for duplicative oversight. One key adjustment is to allow the NR code to take precedence for limited tree removal in WQR and HCA areas. Since the non-development tree code would require a permit anyway (in residential zones), a decision to pull more previously exempt situations into the NR code's Type I review process will allow it to match what is already covered by the tree code.

Understandably, there are still some scenarios where the differing goals of the two codes are not fully aligned, and two separate review processes and/or permits are needed. For example, where development of a new dwelling unit occurs in an NR area and requires NR land use review, the development tree code will also assess any proposed tree removal and require planting to meet the 40% canopy standard (with mitigation fees as applicable). Likewise, a natural resource management plan approved through the NR review process may also require a tree permit if any proposed tree removal would exceed the level allowed by Type I NR review.

Overall, staff (both planning and urban forestry) believe the proposed amendments will greatly improve consistency between the two codes.

NR Code Amendments

Beyond the necessary synchronization with the tree code, staff have been tracking other areas over time where the NR code needs revision to function more efficiently.

- **Clear & objective path for housing in WQR** – As noted above, the WQR regulations generally require discretionary review for proposals involving more than very minor disturbance. There are few exemptions from process-heavy review and no clear and objective review path for housing development, which is now a state mandate. A clear and objective path is available where HCA-only resources are concerned, and staff are developing a similar option for sites that are especially encumbered by WQR areas. The idea is to continue limiting new WQR disturbance where there is ample room on a site to avoid it, while allowing it in minimal amounts where the property is heavily constrained by the WQR designation. The proposed caveat is that the disturbance must involve the creation of a new primary dwelling unit and will be capped at a specific square footage or percentage of the total WQR area on the site, whichever is less.
- **Residential cluster option (eliminate)** – [MMC Subsection 19.402.14.C](#) was originally established in 2011 to allow property owners to develop their natural resource-

² The tree code specifies that "development" situations involve the establishment of a new dwelling unit with an increase in building footprint.

encumbered sites to the maximum residential density while minimizing WQR and HCA impacts by using housing types that would not otherwise be permitted in the underlying zone. To date, no one has attempted to exercise that option. As Council is aware, the zoning code has recently been updated to allow a broad suite of middle housing options (duplexes, triplexes, quadplexes, cottage clusters—attached or detached) that provide essentially the same options without needing a special NR-based adjustment. NR review is still needed where the proposed level of disturbance requires it, but there is no longer the same need for a Type III request just to be able to build multiple primary units on the same lot. Staff is proposing to eliminate the residential cluster option.

- **Mitigation for WQR disturbance** – Just as the review of proposed WQR disturbance is typically discretionary (instead of clear and objective), the corresponding mitigation requirements also do not follow a prescribed path (see [MMC Table 19.402.11.C](#)). The condition of a WQR area is categorized as Class A (Good), Class B (Marginal), or Class C (Poor), based on percentages of existing tree canopy and vegetative cover; mitigation measures are set accordingly. Disturbance of Marginal or Poor WQR areas requires replanting disturbed areas with native trees and shrubs in accordance with the vegetative composition that would naturally occur on the site. When Good WQR areas are disturbed, the mitigation involves developing a more complex plan that assesses the project’s impacts to water quality. This difference in mitigation measures is an acknowledgment that Good WQRs are high functioning areas for purposes of maintaining water quality and that a simple replanting with native species may not be sufficient to uphold that existing function. But given the NR code’s expressed intention to restore impacted resources (including improving Poor and Marginal WQR areas to Good status), staff are exploring opportunities to make the required mitigation more consistent among the WQR categories.
- **Updates related to NFIP-ESA integration** – Staff is making a separate presentation to Council on November 19 regarding newly released requirements by the Federal Emergency Management Agency (FEMA) to ensure that the National Flood Insurance Program (NFIP) appropriately integrates key aspects of the Endangered Species Act (ESA) to ensure “no net loss” of critical floodplain functions. The associated staff report provides more in-depth information on the NFIP-ESA integration project and how it may impact the City’s flood hazard regulations established in MMC Title 18. Staff are assessing the code revisions proposed by FEMA and will determine whether the overlap with WQR and HCA resources requires any adjustments to MMC 19.402 as well.

Improving the NR Map

As noted above, the NR map shows WQRs and HCAs with different degrees of specificity. For WQRs, the NR map serves as a general indicator; the specific WQR location must be determined in the field in accordance with [MMC Table 19.402.15](#), usually by engaging a professional natural resource specialist who can find the top-of-bank location or work through the state’s wetland delineation process. For HCAs, the NR map shows the specific location of the resource and is understood to be correct unless demonstrated otherwise. Minor adjustments to HCA boundaries can be made with simple documentation of discrepancies between the map and on-the-ground conditions, while more detailed verifications require a complete reassessment of the site using the methodology originally applied by Metro.

Staff have identified a few key needs for this part of the update project.

- **Detailed verification of HCA boundaries** – For detailed verifications of HCA boundaries, the provisions of [MMC Subsection 19.402.15.A.2.b](#) outline the process of reassessing the resource based on the methods and maps used by Metro when the HCA designation was initially established in 2011. However, the Metro maps were not very detailed to begin with, have not been maintained or updated, and are not readily available. As a result, applicants and staff alike have not had a clear path to navigate when a detailed HCA verification is requested or proposed.

Staff have reviewed the verification methodology and noted that it was based in part on the designation of High, Moderate, and Low value HCAs. But for purposes of administrative simplicity and because most of the HCAs identified in Milwaukie were either High or Moderate, when adopting the new HCA rules the City opted to recognize only a single HCA type (comprised of the High and Moderate HCAs). This means distinguishing classes of riparian areas and cross-checking that with an urban development value does not matter as much for Milwaukie’s HCA identification as whether the area is riparian or upland. Instead, staff recommend removing much of the existing language and tables related to detailed verification of HCA boundaries and replacing it with a simpler methodology and clearer means for identifying vegetated cover.

- **Stormwater facilities as protected water features** – Stormwater facilities and retention areas—including natural wetlands, constructed wetlands or detention facilities, and “daylighted” storm pipes—present challenges with respect to natural resource protection. Some stormwater facilities in the city are currently categorized on the NR map as WQRs while others are not. The code does not provide considerations for assessing stormwater facilities as protected water features, so it is unclear whether the NR map consistently and accurately represents these various types of facilities as natural resources.

For example, as recently as 2022 a storm pipe that daylights into a ditch along Stanley Avenue was shown on the NR map as a primary protected water feature with a vegetated corridor width of 50 feet on each side. Over time, the ditch has developed the types of vegetation found in a riparian corridor, and it runs west and south into an area that was officially delineated as a wetland (see Figure 2). Yet the source of the intermittent water in the ditch is the storm pipe and not a natural spring. When the applicant for a proposed development on an adjacent property conducted a formal reassessment of the ditch as a protected water feature, the

Figure 2. WQR feature on Stanley



conclusion was that it should have secondary and not primary status, which reduced the regulatory vegetated corridor width from 50 feet to only 15 feet.

The definition of “protected water feature” in MMC Section 19.201 considers the acreage that drains into the water feature, but it does not specify whether or how much human manipulation should factor into a determination. Staff have discussed the issue with the city’s on-call natural resources consultant and are working to identify thresholds for when constructed or engineered stormwater facilities should be regulated as protected water features.

For wetland-type facilities, one key consideration is whether there was originally a natural wetland that was modified or joined to the engineered stormwater facility. Another is whether the facility was constructed to compensate for the loss of a natural wetland. In either of those cases, it is reasonable to regulate the facility as a protected water feature. Otherwise, it is hard to justify treating what amounts to a constructed stormwater facility as a natural resource.

Where piped storm features are concerned, it seems reasonable to consider the upstream “drainage shed” and determine whether day-lit storm channels constitute primary or secondary protected water features. If so, WQR boundaries should be adjusted accordingly on the NR map; if not, the WQR designation should be removed from that portion of the NR map.

Staff are identifying existing stormwater facilities that may need a reassessment of status and will also review the NR code language to determine whether there should be any clarification of the principles noted above regarding stormwater facility regulation.

- **Wetland mapping** – Wetlands that have been formally delineated (including a review and confirmation by the Department of State Lands) are shown on the NR map with relative precision. For non-delineated wetland areas, the map uses a combination of data from Metro and the state and national wetland inventories to show approximate locations. The current code requires that a wetland be formally delineated when development activity is proposed within 100 feet of the wetland or its 50-foot vegetated buffer.

The city’s planning manager is empowered to waive the delineation requirement, depending on the scale and impacts of a proposed activity in addition to its proximity to a wetland. This waiver option is useful for those situations when the vegetated corridor extends beyond the boundary of the wetland property. Not only is the formal delineation process time-consuming and expensive, but an adjacent property owner may not have permission to access the wetland property and would be paying to evaluate a resource that is not under their ownership or control.

The delineation requirement aside, a proposed development can be pulled into the NR review process in situations where it may not be warranted because the actual location of the wetland is significantly different than what is shown on the NR map. There are a few wetland features shown quite grossly on the map, where it would be useful for both the wetland property owner and adjacent property owners to have the wetland more accurately identified (if not formally delineated). Staff propose to identify key undelineated wetland areas that impact multiple lots and arrange for an assessment to improve the accuracy of the NR map.

- **Relationship of NR map to zoning map** – With the incorporation of HCA resources into the regulations of MMC 19.402 in 2011, staff’s understanding that the HCA mapping was imperfect (due to the high-level nature of the data obtained from Metro) made it seem wise to create some separation between the NR map and the zoning map (as is stated in [MMC Subsection 19.402.15.B.1](#)). The code establishes a clear process for administering and updating the map and is set up to avoid the need for a formal zoning map amendment process every time the city obtains new or revised natural resource data.

With the current NR code update project, staff is coordinating with the city attorney and checking with other local jurisdictions to confirm that the approach of maintaining the NR map as a separate entity from the zoning map remains a defensible one. Especially if the city takes opportunities in the future to proactively update the NR map to improve its accuracy (whether on public or private properties), the procedure should align with the appropriate public involvement aspects of the land use review process. Ideally, the NR map can be maintained accurately without requiring an extensive process for updates.

BUDGET IMPACT

This code update project will have no direct impacts to the budget. Planning had included at least \$75,000 in the budget to hire consultants to do the work that staff is currently undertaking. Staff did issue a request for qualifications for the natural resources code update but did not receive any proposals. Staff is conducting the work with the help of an on-call consultant contract that was established prior to this project.

WORKLOAD IMPACT

Impacts from the natural resources code update have been accounted for in the department work program.

CLIMATE IMPACT

The city’s natural resource protections help preserve, restore, and enhance tree canopy and other vegetation in riparian and wetland areas. These features play a vital role in absorbing carbon, mitigating urban heat, managing stormwater, and improving air quality, all of which are critical for climate resilience. Updating the existing regulations will ensure that adequate protections remain in effect and strengthen the City’s climate resilience.

EQUITY IMPACT

The natural resource protections apply to properties that include or are within a certain distance of a mapped WQR or HCA. Issues of race, ethnicity, gender identity, socioeconomic status, able-bodied-ness, and other like considerations do not factor directly into the establishment or implementation of the rules. However, where development projects are not able to meet established clear and objective standards and may require costly analyses and expert consultants, there could be a disproportionate impact on WQR/HCA property owners with limited financial means.

COORDINATION, CONCURRENCE, OR DISSENT

The natural resource code update is being led by staff from the planning department. The effort includes consultation with the city attorney to ensure that any proposed new regulations do not represent takings or otherwise disproportionately impact the owners of property with WQR

and/or HCA resources. In addition, planning staff and the urban forestry team have coordinated on issues related to the tree code.

STAFF RECOMMENDATION

Staff will initiate the process to amend the natural resource code, with a proposal moving forward to the planning commission and then to Council in early 2025.

ALTERNATIVES

Not applicable.

ATTACHMENTS

1. History of natural resources regulations
2. NR map (current version, overall city view)
3. Comparison of tree code and NR code

Attachment 1.1.

History of Natural Resource Regulations

CONTEXT

Many of Milwaukie's riparian, wildlife, and wetland resources have been adversely affected by development over time. Natural resource regulations seek to minimize additional adverse impacts and to restore and improve resources, where possible, while balancing property rights and development needs of the city. The City's natural resource protections are established in Milwaukie Municipal Code (MMC) Section 19.402 (the NR code). Natural resources are distinguished as water quality resources (WQRs) and habitat conservation areas (HCAs); they are identified on an administrative natural resources map (NR map) and shown as an overlay on the City's zoning map.

Oregon has two statewide land use planning goals that relate to natural resources:

- Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces)
- Goal 6 (Air, Water, and Land Resources Quality)

To ensure that local jurisdictions establish regulations that are consistent with the state law and administrative rules, Metro incorporated the natural resource aspects of these goals into two parts of its Urban Growth Management Functional Plan:

- Metro Title 3 (Water Quality and Flood Management¹)
- Metro Title 13 (Nature in Neighborhoods)

WQRs are Goal 6 resources (Metro Title 3) and include wetlands, rivers, lakes, streams, springs, and other features with a watershed area of at least 50 acres, as well as a mapped vegetated corridor that buffers each protected water feature. HCAs are Goal 5 resources (Metro Title 13) and include wetlands, riparian areas, and fish and wildlife habitat. The two resource types do overlap one another and serve many of the same functions, though it is important to remember that the designations represent two different protective aims. Disturbance of WQRs raises concerns about potential impacts to water quality (e.g., water temperature, turbidity, sediment load); HCA disturbance presents direct impacts to habitat. There are qualitative aspects to habitat as well, of course, but when riparian habitat is replaced by structures or other development it is gone—water quality can still be addressed within a certain distance of a stream or wetland, though it is more challenging when natural features are replaced by constructed ones.

LOCAL REGULATORY HISTORY

- **1989**—The Natural Resource Overlay Zone (NR) was adopted ([Ordinance 1667](#)) as Section 3.21 in the code, renumbered in 1991 to 19.322. This was an implementation of Goal 6.
 - Included a map and list of NR sites recognizing riparian areas, wetland areas, and habitat areas.

¹ MMC Title 18 establishes the City's flood hazard management standards, which were most recently updated in 2021 to ensure continued consistency with the relevant requirements of the Federal Emergency Management Agency (FEMA).

- Applied to entire properties near water bodies and wetlands (e.g., Kellogg Lake, Kellogg Creek, Johnson Creek, Willamette River, Minthorn Springs, etc.) without more specific distinction of the resources themselves.
 - Required a land use application for regulated activities anywhere on a property with the NR designation, unless a more specific delineation was completed (minor quasi-judicial review process).
 - Provided development standards and requirements for site surveys. Allowed natural resource management plans for long-term developments. Allowed on-site density transfer and clustering, within maximum density standards of the underlying zone.
 - Allowed off-site transfer of density as well as variances from various standards (setbacks, building height, lot coverage, etc.) for density transfer or clustering. Modifications to NR designations were allowed as part of the application review process; otherwise, proposed changes had to go through the standard amendment procedure.
- **2002**—The Water Quality Resource (WQR) regulations were adopted ([Ordinance 1912](#)) to replace the NR overlay zone (Section 19.322).
- Reduced application requirements for projects that will not have an impact on water resources.
 - Allowed different activities with different levels of review:
 - Permitted Outright = activities with no adverse impact on protected water features such as resource enhancement, change of use, normal maintenance and review, and activities not located within the floodplain or vegetated area.
 - Staff Review (Type I or Type II) = activities that do not disturb the vegetated corridor, removal of invasive nonnative vegetation, removal of dangerous trees, placement of stormwater facilities designed in accordance with city standards, partitions, and modification of nonconforming structures.
 - Planning Commission Review (Type III) = activities that may impact protected water features such as new roads and accessways, new public facility construction, other new development, increases in the footprint of structures located in the vegetated corridor, subdivisions, and variance requests.
- **2011**—The Habitat Conservation Area (HCA) regulations were adopted ([Ordinance 2036](#)) to incorporate Metro’s Title 13 regulations (Nature in Neighborhoods) and implement Goal 5. *[Note: Metro adopted Title 13 in 2005 and established a timeline for compliance by local jurisdictions. The City began implementing the Title 13 model code on an interim basis in June 2009 while developing more permanent regulations.]*
- Designated HCAs with mapping intended to show actual resource locations. City staff corrected the map in some areas where it was clear there was no natural resource (such as where the overlay covered parking areas or existing structures).

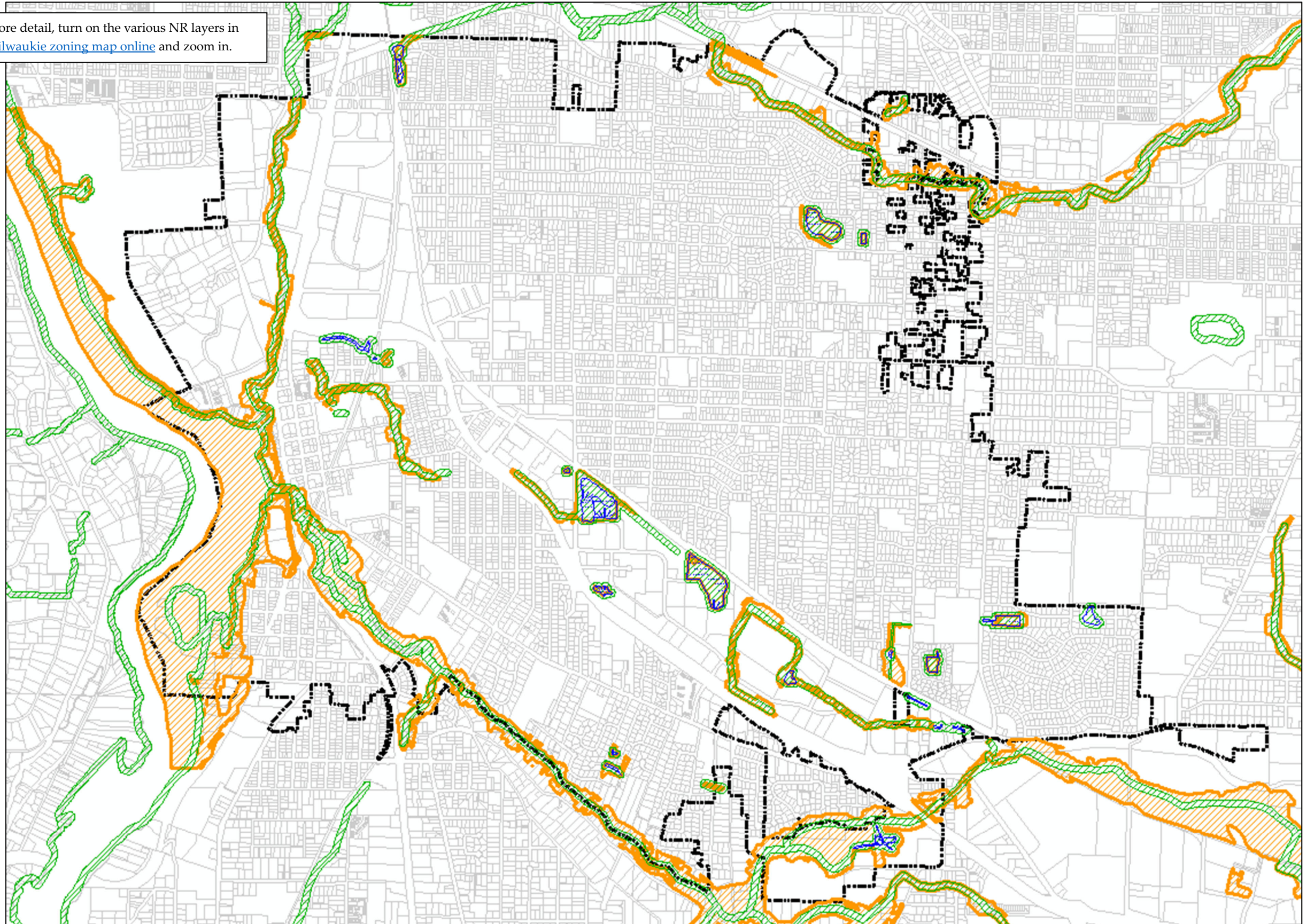
- Established a clear and objective track for review of proposed HCA disturbance (an alternative to discretionary review). This includes an outright allowance of some limited disturbance of HCA, with a prescribed ratio for mitigation plantings.
- Retained the requirement for discretionary review for most disturbances of WQR areas, beyond a few 150-sq-ft exemptions.

Attachment 1.2. NR Map

For more detail, turn on the various NR layers in the [Milwaukie zoning map online](#) and zoom in.

Legend

- Vegetated Corridors
- Habitat Conservation Areas
- Wetlands



Attachment 1.3.

Tree Code—Background and Comparison with Natural Resources Code

Milwaukie's Residential Tree Code

In May 2022, new regulations went into effect for trees on private property in residential zones. The new rules are a result of implementing the City's Urban Forest Management Plan, which was adopted in 2019. The regulations are codified in Milwaukie Municipal Code (MMC) Section 16.32.042 (the tree code) and are overseen by the City's Urban Forester, with some involvement by the City's Tree Board.

The tree code regulates private residential trees in development and non-development situations.

Development Tree Code

The development tree code applies when a new dwelling unit is established by increasing a building footprint. Existing healthy trees on the site that are at least 6 inches (6-in) in diameter at breast height (DBH), along with rare or threatened trees of any size, are required to be preserved unless the proposed development requires their removal (e.g., conflict with the building footprint, access, utilities, etc.). Invasive species trees and unhealthy trees of any size, as well as healthy non-rare trees less than 6-in DBH are not required to be preserved.

In conjunction with the City's goal of establishing 40% tree canopy in the community by 2040, residential development sites are required to provide a minimum of 40% tree canopy by either preserving existing healthy trees¹ or planting new trees.² Existing invasive species trees do not count in the canopy calculation, nor do existing trees smaller than 6-in DBH (unless a bond is provided to ensure their protection). The development tree code also includes standards for tree protection and requirements for soil volume when planting new trees.

The Urban Forester determines compliance as part of the building permit review process. A complete inventory of existing trees is required from the applicant, including measures for tree protection and planting. If existing healthy trees are removed below 30% canopy coverage, the applicant must pay mitigation fees. Likewise, if the 40% canopy minimum cannot be met, an additional mitigation fee must be paid—\$5 per square foot of canopy, for as many square feet are as needed to hit the 40% minimum.

It is important to remember that the development tree code only applies in residential zones and only when at least one new dwelling unit is being established by expanding the building

¹ Preserved trees count 100% of their existing or projected canopy at maturity (whichever is greater) according to the City's Tree Crown Area Reference List. Larger preserved trees (12-in DBH and greater) receive additional canopy credit, from 125% up to 175% depending on the size.

² Newly planted trees get credit for only 75% of their projected canopy at maturity. The discounting factor is based on an assumption that growing conditions in the urban environment are less than ideal for the new trees to reach their full growth potential.

footprint. A home addition for a new bedroom or bathroom, conversion of existing floor area into an accessory dwelling unit, a new accessory structure, or other site work with earth disturbance (e.g., driveways, patios, decks, etc.) would not be reviewed under the development tree code—those situations would be subject to the non-development tree code, discussed below.

Non-development Tree Code

When the development tree code is not triggered, proposals to remove healthy trees in residential zones that are 6-in DBH or greater (or any size tree on the City’s Rare or Threatened Tree list) require a permit for removal (Type A or Type B).³ The non-development tree code (currently codified as MMC Subsection 16.32.042.I but proposed to be renumbered as MMC Section 16.32.044) has a free Type A permit for the following tree removal situations:

- Dead or dying (if confirmed by arborist)
- Damaged and will die or decline
- Adverse effect on adjacent infrastructure or buildings
- Unreasonable risk to occupants, property, or the public
- Noxious or invasive species
- Too large to remain in stormwater facility
- Street widening, construction, or extension
- Construction (building, utility, infrastructure)
- Fire risk
- Approved thinning (to 80% canopy)
- Healthy tree less than 12-in DBH (one per year)

Replanting on a one-for-one basis is required for these allowed removals, except for noxious/invasive species and thinning situations. There has been some discussion among the Tree Board and City Council about requiring replanting for noxious/invasive species (weighing the cost to property owners against the City’s canopy goals), but it appears that the exemption will remain in place.

When the Type A circumstances cannot be met, a Type B tree permit is available that involves more discretion. The number of replacement trees required with a Type B permit is dependent on the size of the removed tree. Approval of either permit is a decision by the Urban Forester, with a Type B permit application being the effective appeal of a Type A denial; the denial of a Type B permit can be appealed to the City Manager.

Intersection with NR Code

The City’s natural resource protections are established in MMC Section 19.402 (the NR code), with some provisions related to tree removal. The NR code and tree code have many areas of

³ The current tree code labels these as Type 1 and Type 2 tree permits, but due to possible confusion with Type I and Type II land use review, staff are proposing to relabel the tree permits as Type A or Type B.

overlap but also several key differences. Table 1 compares the two codes, revealing similarities and variations in values and goals.

Table 1	
Comparison: Tree Removal in Tree Code & NR Code	
Tree Code (16.32.042 & 16.32.044)	Natural Resources Code (19.402)
Only applies in residential zones.	Applies to resource areas in all zones.
Different rules and review process for development vs. non-development situations, depending on creation of a new dwelling unit.	One set of rules, with level of review determined by scale of activity/disturbance (independent of dwelling unit creation).
Canopy is paramount (40% goal).	Canopy is not a direct factor (but comes into play for WQR classification).
For tree protection, distinguishes healthy and rare/threatened trees from those that are dead/dying, in decline, or noxious/invasive species.	Concerned with preserving and establishing native species; does not focus on “healthy” trees but distinguishes dead/dying and nuisance/invasive species.
Species matters (rare, invasive). <i>Invasives do not count for canopy but can remain.</i>	Species matters (native, nuisance/invasive). <i>Invasives must be removed as part of mitigation for disturbance.</i>
Size matters (6-in DBH minimum for protection in most cases).	Size does not currently matter (6-in DBH was minimum prior to tree code).
Not directly concerned with habitat or water quality—focused on retaining healthy tree canopy.	Habitat and water quality are key—e.g., earth disturbance is discouraged, downed trees are encouraged to remain as habitat.
Emergencies (immediate) need retroactive permit. <i>Hazard/risk trees need Type A permit.</i>	Emergencies (immediate) are exempt. <i>Non-emergency hazard trees need Type I review.</i>
Major pruning is not a concern for private trees.	Major pruning is limited in WQR/HCA.
Root protection is important, but earth disturbance is not a factor otherwise.	Earth disturbance is a factor in review type.
Replanted trees must be at least 1.5-in caliper (for broadleaf trees) or minimum 5 ft tall (for conifers); no minimum survival requirement.	Replacement trees must be at least 0.5-in caliper or 6 ft tall and must survive for at least 2 years.
Utilizes the Oregon State Noxious Weed List and Milwaukie Invasive Plant List.	Utilizes the same lists, but neither list includes native species (critical for NR mitigation).
No fee for Type A permit application; \$50 fee for Type B permit application; fees for removal based on DBH (non-development) or in lieu of preservation (development); penalties for unpermitted removal.	No fee for Type I review of tree removal.

Table 2 compares the exempt allowances for tree removal in the two codes.

Table 2	
Comparison: Exempt Tree Removal	
(no permit or review needed)	
Non-Development Tree Code (16.32.044.A) (no replanting requirement)	Natural Resources (19.402.4.A.6) (no replanting requirement)
Trees less than 6-in DBH <i>(except Rare/Threatened trees¹ or required trees)</i>	—
	Downed trees (<150 sq ft of earth disturbance)
	Nuisance species (<i>limit of 3 per year, <150 sq ft of earth disturbance</i>)
	Emergency situations (immediate)
	As per approved natural resources mgmt plan
	Major pruning within 10 ft of structure

¹ The Urban Forestry program is in the process of developing the Rare and Threatened Tree List.

Summary of exemptions:

- Trees of any size, including trees less than 6-in DBH, are only exempt from NR review if they fit one of the particular situations outlined in the code ([MMC Subsection 19.402.4.A.6](#)).
- The tree code is not concerned with downed trees or major pruning, so there is no issue with the NR code’s exemption of those situations.
- The tree code requires a Type A tree permit for removal of any number of nuisance or invasive species but does not require replanting. The NR code exempts the removal of up to three invasive trees per year (no replanting required) but requires a Type I NR review and replanting for removal of more than three invasive trees per year.
- For immediate emergencies, the NR code has maintained an exemption because those situations were deemed too urgent to allow time for review, so no replanting is required. The tree code requires a Type A tree permit (retroactive) and replanting.
- Type I or Type II NR review is required to approve a natural resource management plan (such as for restoration or enhancement projects), which then allows related tree removal without the need for additional review. The tree code does not currently provide an exemption for these situations and would require at least a Type A tree permit.

Table 3 compares the administrative-review allowances for tree removal in the two codes.

Table 3	
Comparison: Tree Removal w/ Administrative Review	
(Type A tree permit or Type I NR review)	
Non-Development Tree Code (16.32.044.D) (1:1 replanting requirement) ¹	Natural Resources (19.402.6.A) (1:1 replanting requirement)
Dead or dying (<i>per certified arborist</i>)	Dead, diseased, or dying (<i>per certified arborist</i>)
Damaged and will die or decline	
Adverse effect on adjacent infrastructure/buildings	
Unreasonable risk to occupants/property/public	Non-emergency hazard
Noxious or invasive species	Nuisance/invasive species (<i>more than 3 per year, or requiring >150 sq ft of earth disturbance</i>)
Too large to remain in stormwater system	
Street widening, construction, or extension	
Construction (building, utility, infrastructure)	
Fire risk	
Approved thinning (to 80% canopy)	
Healthy tree less than 12-in DBH (<i>1 per year</i>)	Non-nuisance, non-native, not in Good WQR (<i>limit of 3 per year</i>)
	Downed tree (<i>with >150 sq ft of earth disturbance</i>)
	Major pruning in general (<i>OK per certified arborist</i>)

¹ No replacement required if invasive species or if part of approved thinning. Replacement tree must substantively replace the function and values of the removed tree (where practicable). If replacement is not practicable, applicant can pay a fee in lieu of replanting.

Summary of administrative review:

- There is significant overlap between the two codes’ lists of situations that require administrative review. There may be opportunities to eliminate redundancies, particularly in situations where the NR review could do the work of the tree permit.
- Where the NR code requires Type I review for the removal of up to three trees if non-native and not in a “Good” WQR area,” the tree code requires a Type B tree permit.⁴
- For activities of no concern to the tree code (e.g., major pruning and removal of downed trees with significant earth disturbance), the Type I NR review process appears adequate.
- As noted in Table 1, there are some discrepancies in the size and survival expectation of replacement trees, with the NR code allowing a smaller caliper tree (but taller, if measured that way) and requiring two years of minimum survival.⁵

⁴ The Type B permit involves some discretion and a potentially greater replanting requirement, but it is still an administrative review by the Urban Forester.

⁵ There is a bonding requirement for survival with the development tree code, but the non-development tree code does not include a minimum survival requirement.

WS 1. 11/19/24
Presentation

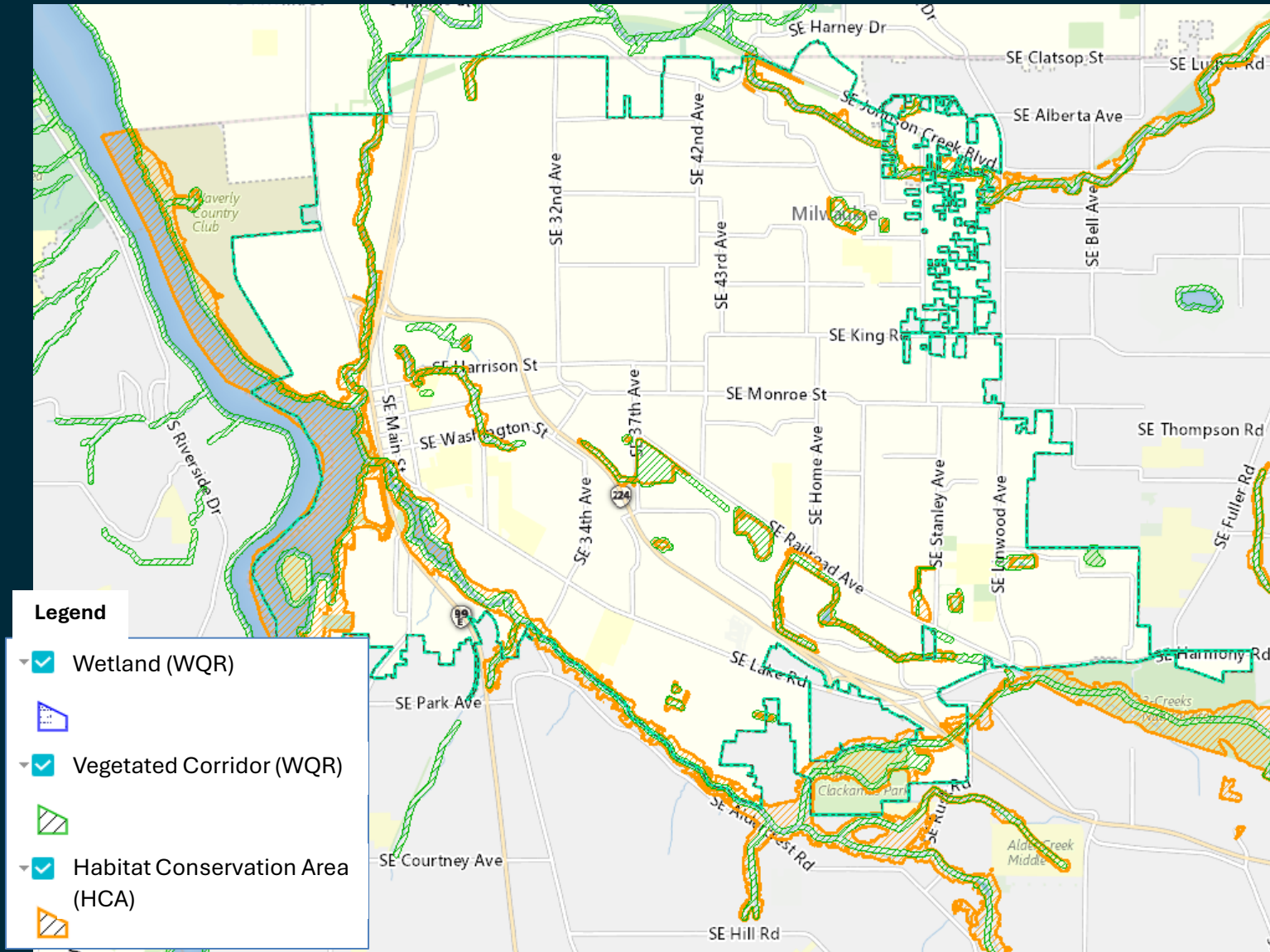
NATURAL RESOURCES CODE UPDATE

City Council Regular Session
November 19, 2024

Brett Kelter, Senior Planner
Laura Weigel, Planning Manager



NATURAL RESOURCES IN MILWAUKIE



- Water Quality Resource (WQR)
- Habitat Conservation Area (HCA)
- Focused on creeks, streams, wetlands
- Standards established in MMC 19.402

BACKGROUND—WQR AND HCA RESOURCES

- WQR = Goal 6 (water quality), mapped generally
- HCA = Goal 5 (habitat), mapped specifically



PROPOSED UPDATES TO NR CODE

- Comp Plan implementation
- Better integration with tree code
- General code fixes—including clear & objective WQR standards for housing development
- Natural resources mapping adjustments



ALIGNMENT WITH RESIDENTIAL TREE CODE

- Tree code applies in residential zones, in public ROW, or on City-owned properties
- Distinguishes development & non-development situations
- Primary goal is to preserve existing tree canopy and increase to 40%, recognizing how canopy improves water & air quality, absorbs carbon, mitigates urban heat, and manages stormwater



CLEAR & OBJECTIVE STANDARDS FOR WQR DISTURBANCE



- Remove barriers to housing development
- Maintain integrity of WQR areas
- Provide a Type I option for WQR disturbance (for housing)
- Can be a limited or narrow path

TYPE I WQR DISTURBANCE

PROPOSED STANDARDS

- Disturbance must be related to construction of a new primary or accessory dwelling unit
- Limited to situations where there is little area to develop outside the WQR
- WQR is not categorized as Class A (“Good”)
- At least 30-ft separation from top of bank of a stream (or 50 ft from edge of wetland)
- No removal of native-species trees
- No increase in direct stormwater discharges to the WQR

OTHER RECOMMENDATIONS

- Eliminate residential cluster adjustment option
- Make mitigation standards more consistent for various WQR classifications (Good/Marginal/Poor)
- Identify any adjustments needed due to NFIP-ESA integration requirements

IMPROVING THE NR MAP

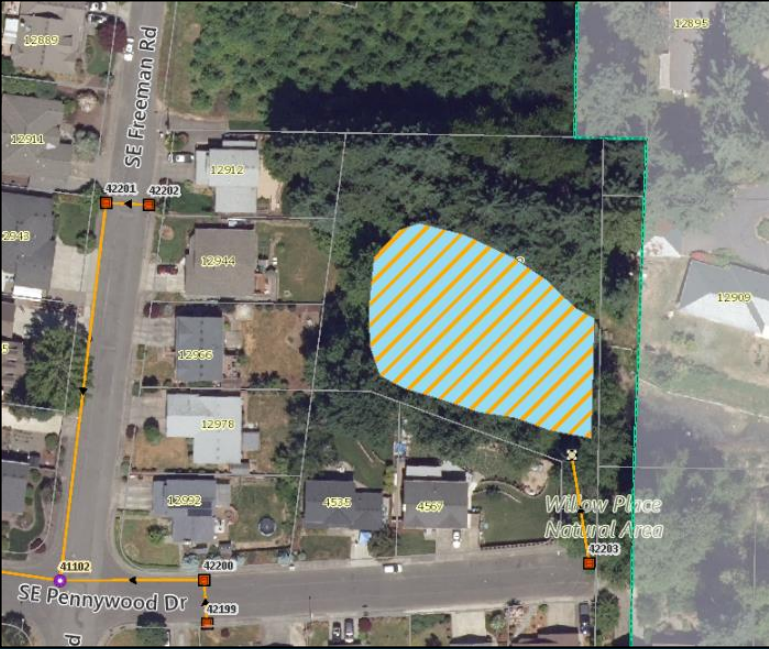


DETAILED VERIFICATION OF HCA BOUNDARIES

**Table 19.402.15.A.2.b.(2).(c)
Identifying Habitat Conservation Areas (HCAs)**

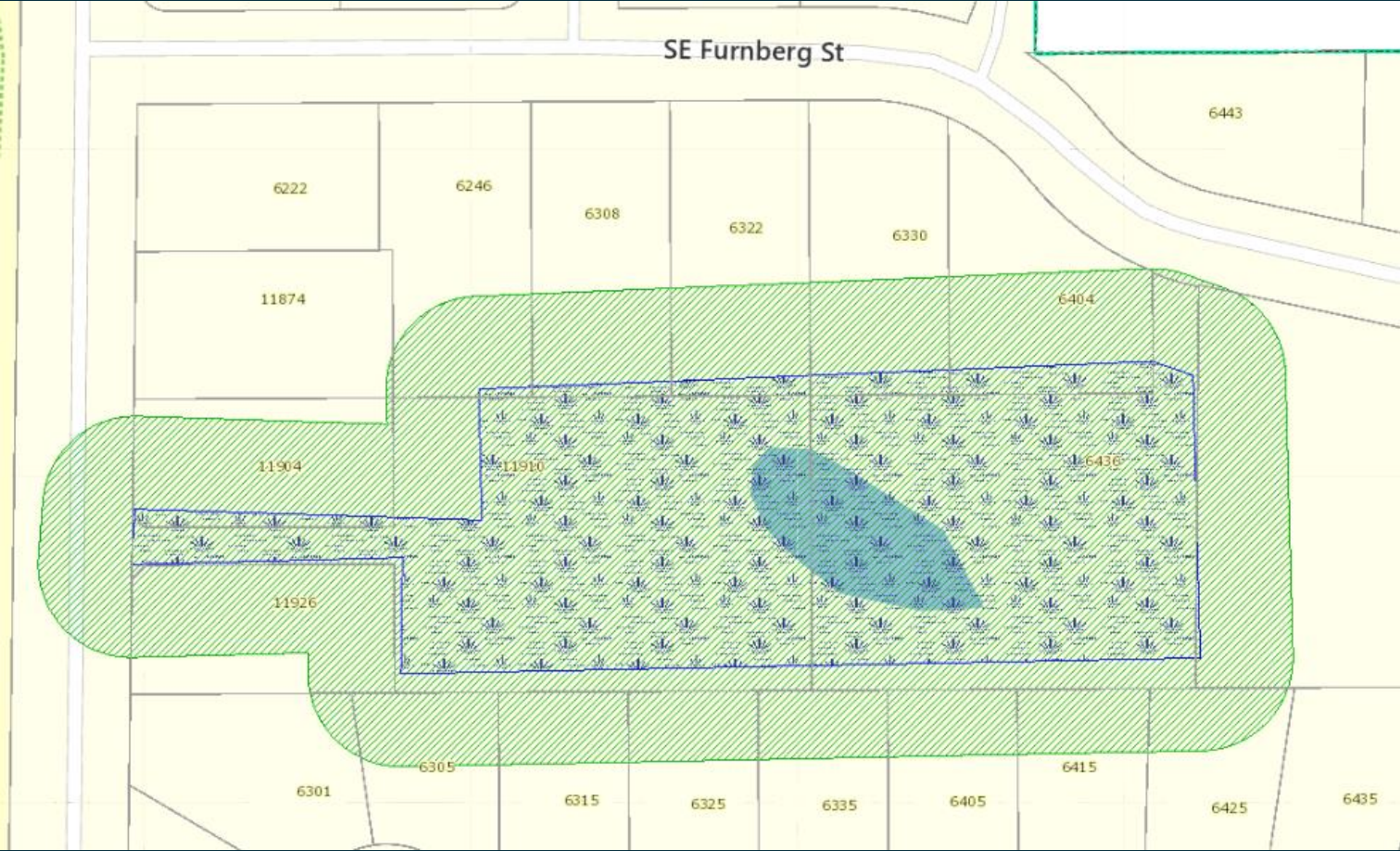
<u>Distance from Protected Water Feature</u>	<u>Vegetation Status of Undeveloped Riparian Area</u>		
	<u>Low Structure Vegetation or Open Soils</u>	<u>Woody Vegetation (shrub and scattered forest canopy)</u>	<u>Forest Canopy (closed to open forest canopy)</u>
<u>Surface Streams</u>			
<u>0 ft – 100 ft</u>	<u>HCA</u>	<u>HCA</u>	<u>HCA</u>
<u>101 ft – 200 ft</u>	<u>HCA if slope >25%¹ (otherwise not HCA)</u>	<u>HCA if slope >25%¹ (otherwise not HCA)</u>	<u>HCA²</u>
<u>Wetlands (wetland feature itself is an HCA)</u>			
<u>0 ft – 100 ft</u>	<u>HCA</u>	<u>HCA</u>	<u>HCA</u>
<u>101 ft – 150 ft</u>	<u>Not HCA</u>	<u>Not HCA</u>	<u>HCA</u>

STORMWATER FACILITIES AS WQRs



IMPROVING THE NR MAP

MORE ACCURATE WETLAND MAPPING



RELATIONSHIP OF NR MAP TO ZONING MAP

Goals:

- Maintain an up-to-date map of WQR and HCA resources.
- Show WQR & HCA info in conjunction with zoning information.
- Avoid having to formally update the zoning map with every boundary verification.
- Provide necessary public notice when appropriate.

NEXT STEPS

- Begin formal code amendment process with PC (Jan/Feb 2025).
- Address map corrections in tandem with code amendments.

Questions?



COUNCIL STAFF REPORT

To: Mayor and City Council
Emma Sagor, City Manager

Date Written: Nov. 7, 2024

Reviewed: Peter Passarelli, Public Works Director,
Katie Gavares, Climate and Natural Resources Manager, and
Gabriela Santoyo Gutierrez, Equity & Inclusion Coordinator

From: Courtney Wilson, Urban Forester, and
Tim Salyers, Code Compliance Coordinator

Subject: Tree Code Amendments

ACTION REQUESTED

Council is asked to review and consider adopting proposed amendments to Milwaukie Municipal Code (MMC) Chapter 16.32 Tree Code.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

November 17, 2020: Council adopted the public tree code.

Following three work sessions in August 2021, the Planning Commission held three public hearings on the proposed housing and tree code amendments ([October 12](#), [October 26](#), and [November 9](#)) and voted 5-2 to recommend approval of the amendments with specific revisions and recommendations.

Following work sessions in December 2021 and [January 2022](#), Council held seven public hearings in early 2022 on the tree and housing code implementation process and draft code language ([January 18](#), [February 1](#), [February 15](#), [March 15](#), [March 29](#), and [April 5](#)).

[April 19, 2022](#): Council voted 5-0 to adopt the residential tree code.

[April 4, 2023](#): Staff updated council on tree code implementation and provided an overview of the proposed tree code amendments for council discussion.

[July 18, 2023](#): Staff provided an overview of additional proposed tree code amendments for council discussion.

[March 5, 2024](#): Staff updated council on the proposed tree code amendments.

ANALYSIS

Before the adoption of the residential tree code in April 2022, only trees in the public right-of-way (ROW) or on city-owned public property required permits before removal. To meet the city's goal of a 40 percent tree canopy, as identified in the [Climate Action Plan](#) (CAP), the [Urban Forest Management Plan](#) (UFMP), and the 2020 [Comprehensive Plan](#) policies, it was determined that trees on private residential property were a conservation priority as canopy over private property accounted for the majority of Milwaukie canopy cover. Residential tree code was included in the [2021-2022 Comprehensive Plan implementation process](#) to complement new

housing code, with the final residential tree code being adopted in April 2022 and implemented in May 2022. Through implementation, staff have identified code revisions that would improve clarity of code language, streamline implementation, and assist in enforcement of the adopted code and permitting program as originally intended.

The proposed amendments included reorganizing the existing code to improve readability and remove some redundancies. The Tree Board section of the code has been moved to Title 2 Administration and Personnel. Definitions were also changed to align with zoning code and to further clarify existing definitions. Type 1 and Type 2 tree removal permits have been renamed to Type A and Type B permits, respectively, to eliminate duplicative names between Land Use and Tree permits.

Mitigation fees and performance bonds are now referred to in the code. Both provisions have always been required and have been outlined in the Consolidated Fee Schedule but are now codified. To encourage a diversity of age in our urban forest, public and private trees less than six-inch diameter at breast height (DBH) can now be counted for canopy coverage with a performance bond. Once bonded, public and private trees no longer qualify for a removal based on the criteria outlined in MMC 16.32.044.D.2(11). This provision will protect public and private trees under six-inch DBH after the performance bond expires. Finally, replanting street trees along the right-of-way now requires written notice to adjacent property owners instead of written permission. This will ensure replanting requirements are implemented when the city does street improvement projects.

After incorporating any feedback from Council, staff will return in December with a revised code for adoption.

BUDGET IMPACT

None.

CLIMATE IMPACT

Tree preservation and canopy expansion is critical for climate mitigation and adaptation in Milwaukie. The Tree Code is essential to tree protection, and the proposed revisions will help ensure optimal ongoing implementation.

EQUITY IMPACT

The proposed amendments are primarily functional updates designed to improve clarity, ensure compliance, and support greater tree preservation. The proposed amendments include simplified language and reorganization to improve readability, making the Tree Code more accessible to residents and property owners. Additionally, many lower-income neighborhoods and communities of color experience disproportionately lower tree canopy cover, contributing to higher urban heat exposure and reduced air quality. By strengthening requirements for canopy preservation and replanting, especially on private residential properties, the amendments aim to increase canopy citywide, aligning with the city's CAP and UFMP goals.

WORKLOAD IMPACT

Code revisions could reduce workload for administration and enforcement of tree code for public works and code enforcement staff.

COORDINATION, CONCURRENCE, OR DISSENT

Public works natural resources staff worked with code compliance and planning staff on the proposed code revisions.

STAFF RECOMMENDATION

Staff recommends that Council receive the update and provide feedback to staff if needed.

ALTERNATIVES

Not applicable.

ATTACHMENTS

1. Tree Code Organizational Outline
2. Title 2 Administration and Personnel Cleanup – Proposed Amendments (Redline)
3. Title 2 Administration and Personnel Cleanup – Proposed Amendments (Clean)
4. Title 16 Tree Code Cleanup – Proposed Amendments (Redline)
5. Title 16 Tree Code Cleanup – Proposed Amendments (Clean)

CHAPTER 16.32 TREE CODE

Article I General Provisions

16.32.005 PURPOSE

16.32.010 DEFINITIONS

16.32.012 ADMINISTRATION

- A. City Manager
- B. City Authority

16.32.014 CREATION OF A TREE FUND

- A. Establishment
- B. Funding Sources
- C. Funding Purposes

Article II Street Trees and Public Trees

16.32.020 PLANTING STREET TREES AND PUBLIC TREES

- A. Species
- B. Spacing, size, and placement
- C. Permit

16.32.026 MAJOR PRUNING OR REMOVAL OF STREET TREES AND PUBLIC TREES

- A. Applicability
- B. Permit Review Process
 - 1. Application
 - 2. Public Notice and Permit Meeting
 - 3. Declaration
- C. Review Criteria and Approval Standards
 - 1. Review Criteria
 - 2. Approval Standards
- D. Removal of Stumps
- E. Performance of Permitted Work
- F. Replanting

16.32.028 EMERGENCY REMOVAL OF HAZARDOUS TREES

16.32.030 EXEMPTIONS

- A. Permit Exemptions
- B. Public Notice Exemptions
- C. Removal Fee Exemptions
- D. Topping Exemptions
- E. Replanting Exemptions

16.32.032 LOW INCOME ASSISTANCE

Article III Private Trees in Residential Zones

16.32.042 TREE PRESERVATION AND PLANTING WITH DEVELOPMENT IN RESIDENTIAL ZONES

- A. Applicability
- B. Tree Preservation Standards
- C. Tree Planting Standards
- D. Tree Canopy Calculations and Credits
- E. Mitigation Fees
- F. Variance Procedure
- G. Tree Protection Standards
 - 1. Prescriptive Path for Tree Protection
 - 2. Performance Path for Tree Protection
- H. Soil Volume Standards
 - 1. General Standards
 - 2. Prescriptive Path for Soil Volume
 - 3. Performance Path for Soil Volume
- I. Application Requirements
 - 1. Tree Inventory
 - 2. Tree Preservation Plan
 - 3. Tree Planting Plan
 - 4. Arborist Report

16.32.044 NON-DEVELOPMENT PRIVATE TREE REMOVAL IN RESIDENTIAL ZONES

- A. Applicability
- B. Permit Exemptions
- C. Applications
- D. Type A Tree Removal Permit
 - 1. Application Requirements
 - 2. Approval Criteria
 - 3. Mitigation Requirements
 - 4. Decision by the Urban Forester
- E. Type B Tree Removal Permit
 - 1. Application Requirements
 - 2. Review and Approval Criteria
 - 3. Mitigation Requirements
 - 4. Decision by the Urban Forester
 - 5. Appeals

Article IV Miscellaneous Provisions

16.32.080 PROGRAMMATIC PERMITS

- A. Applicability
- B. Application Requirements
- C. Permit
- D. Completeness
- E. Notice of Complete Application
- F. Review Criteria
- G. Decision
- H. Revocation

16.32.082 COORDINATION WITH OTHER REGULATIONS

- A. Street, Sidewalk, Traffic Control Devices, and Vision Clearance
- B. Dead, Decaying, Dangerous, Diseased, or Infested Tree or Tree Limb Removal
- C. Business Tax or Metro License Required
- D. Zoning Code
 - 1. Willamette Greenway
 - 2. Natural Resources
 - 3. Parking Lot Standards
 - 4. Transportation Facility Requirements
- E. Tree Board

Article V ENFORCEMENT AND PENALTIES

16.32.100 ENFORCEMENT

- A. Interpretation
- B. Violations
- C. Penalties

TITLE 2 ADMINISTRATION AND PERSONNEL

2.10.010 APPLICABILITY

This chapter applies to all City boards, commissions, and committees unless mandated otherwise by State statute or City ordinance, including but not limited to the following boards, commissions and committees:

- A. Budget Committee (ORS 294.336 and MMC 2.14, exclusive from monthly meetings);
- B. Center/Community Advisory Board (MMC 2.20 and IGA);
- C. Citizens Utility Advisory Board (MMC 2.11);
- D. Library Board (ORS 357.400 to 357.621 and MMC 2.28);
- E. Park and Recreation Board (MMC 2.12);
- F. Planning Commission (ORS 227.010—227.030 and MMC 2.16);
- G. Public Safety Advisory Committee (MMC 2.24); ~~and~~
- H. Milwaukie Arts Committee (MMC 2.17); ~~and~~
- I. [Tree Board \(MMC 2.18\)](#).

[2.18 TREE BOARD](#)

~~2.18.010A.~~ Tree Board Composition

The Tree Board will consist of seven members, at least five of which must be residents of the City, one must be an ISA Certified Arborist, and all seven must be appointed by the Mayor with approval of the City Council.

~~2.18.020B.~~ Term of Office

~~A.~~ The term of the seven persons appointed by the Mayor will be three years. ~~except that the term of two of the members appointed to the initial Tree Board will serve a term of only one year, and two members of the initial Tree Board will be for two years.~~

~~B.~~ ~~In the event that~~ if a vacancy occurs during the term of any member, their successor will be appointed for the unexpired portion of the term. ~~Tree Board members will be limited to serving three consecutive terms.~~

~~2.18.030C.~~ Compensation

Members of the Tree Board will serve without compensation.

2.18.040D Duties and Responsibilities

The Tree Board will serve in an advisory capacity to the City Council. Its responsibilities include the following:

1. A. Study, investigate, develop, update, and help administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of the Urban Forest. The plan will be presented to the City Council for approval every five years and will constitute the official Urban Forestry Management Plan for the City;
2. B. Provide advice to City Council on policy and regulatory issues involving trees, including climate adaptation and mitigation efforts;
3. C. Provide outreach and education to the community on tree-related issues and concerns;
4. D. Organize and facilitate the City's tree planting events and other public events involving trees and Urban Forestry education;
5. E. Assist City staff in preparing recommendations regarding the application, membership, and ongoing participation by the City in the Tree City USA Program;
6. F. Provide leadership in planning the City's Arbor Day/Week proclamation and celebration; and
7. G. Provide recommendations to City Council on the allocation of funds from the Tree Fund.
8. H. The Tree Board, when requested by the City Council, will consider, investigate, make findings, report, and make recommendations on any special matter or question coming within the scope of its work.

2.18.050E Operation

The Tree Board will choose its own officers, make its own rules and regulations, and keep minutes of its proceedings. A majority of the members will constitute a quorum necessary for the transaction of business.

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- F. Planning Commission (ORS 227.010—227.030 and MMC 2.16);
- G. Public Safety Advisory Committee (MMC 2.24);
- H. Milwaukie Arts Committee (MMC 2.17); and
- I. Tree Board (MMC 2.18),

2.18 TREE BOARD

2.18.010 Tree Board Composition

The Tree Board will consist of seven members, at least five of which must be residents of the City, one must be an ISA Certified Arborist, and all seven must be appointed by the Mayor with approval of the City Council.

2.18.020 Term of Office

- A. The term of the seven persons appointed by the Mayor will be three years.
- B. If a vacancy occurs during the term of any member, their successor will be appointed for the unexpired portion of the term.

2.18.030 Compensation

Members of the Tree Board will serve without compensation.

2.18.040 Duties and Responsibilities

The Tree Board will serve in an advisory capacity to the City Council. Its responsibilities include the following:

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- C. Provide outreach and education to the community on tree-related issues and concerns;
- D. Organize and facilitate the City's tree planting events and other public events involving trees and Urban Forestry education;
- E. Assist City staff in preparing recommendations regarding the application, membership, and ongoing participation by the City in the Tree City USA Program;
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- G. Provide recommendations to City Council on the allocation of funds from the Tree Fund.
- H. The Tree Board, when requested by the City Council, will consider, investigate, make findings, report, and make recommendations on any special matter or question coming within the scope of its work.

2.18.050 Operation

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DRAFT MILWAUKIE TREE CODE – STRIKETHROUGH/UNDERLINE

Suggested Revisions Winter 2024

CHAPTER 16.32 TREE CODE**Article I General Provisions****16.32.005 PURPOSE**

The purpose of this chapter is to establish processes and standards that ensure the City maximizes the environmental, economic, health, community, and aesthetic benefits provided by its urban forest. It is the intent of this code to establish, maintain, and increase the quantity and quality of tree cover ~~in the City residential zones and on land owned or maintained by the City and within rights-of-way~~, and to ensure our urban forest is healthy, abundant, and climate resilient.

This code is designed to:

1. Foster urban forest growth to achieve 40% canopy coverage by 2040.
2. Maintain trees in a healthy condition through best management practices.
3. Manage the urban forest for a diversity of tree ages and species.
4. Manage street trees appropriately to maximize benefits and minimize hazards and conflicts with infrastructure.
5. Ensure the preservation and planting of tree canopy with development and redevelopment of housing in residential zones.
6. Regulate the removal, replanting, and management of trees prior to and following development and redevelopment in residential zones.
7. Implement applicable urban forest goals, policies, objectives, and action items in the Comprehensive Plan, Climate Action Plan, and Urban Forest Management Plan.

16.32.010 DEFINITIONS

The following definitions will apply for terminology used in this chapter. If a definition is not listed in this chapter, the definition in Title 19 will apply. Where definitions are not provided in this chapter or Title 19, their normal dictionary meaning will apply:

“Arbor Day/Week” means a day/week designated by the City to celebrate and acknowledge the importance of trees in the urban environment.

“Arboriculture” means the practice and study of the care of trees and other woody plants in the landscape.

“Building footprint” means the area covered by the outer structural walls of a building, measured in sq ft. Included in the calculation of footprint are: roofed structures that are not fully enclosed; building features such as patio covers, roofed porches, and decks; or similar features with a surface height of more than 18 in above average grade. Footprint does not include eaves.

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“Canopy” is the layer of leaves, branches and stems of trees that cover the ground when viewed from above. Canopy cover is measured as the proportion of a fixed area of the ground covered by tree crowns.

“City” means the City of Milwaukee.

“City Engineer” means the city engineer of the City of Milwaukee or designee.

“City Manager” means the city manager or the city manager’s authorized representative or designee.

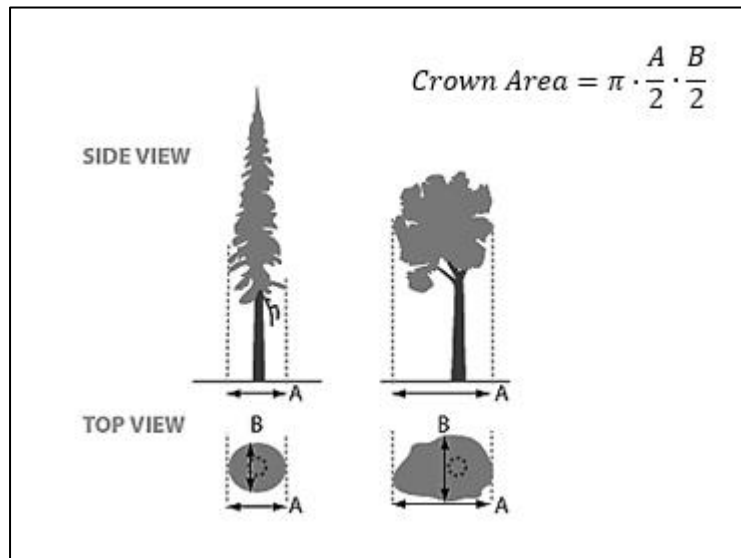
“Consolidated Fee Schedule” is the schedule of City fees and charges adopted by City Council for the services provided by the City.

“Council of Tree and Landscape Appraisers (CTLA)” means the publishers of the Guide for Plant Appraisal.

“Crown” means area of the tree above the ground, measured in mass, volume, or area extending from the trunk and including the branches, stems, leaves, and reproductive structures.

“Crown Area” means the average area in square feet that the tree crown covers (see Figure 16.32.010-1).

Figure 16.32.010-1 – Measuring Crown Area



“Cutting” means the felling or removal of a tree, or any procedure that naturally results in the death or substantial destruction of a tree. Cutting does not include normal trimming or pruning but does include topping of trees.

“Damaged tree” means a tree that is ~~damaged~~ injured or knocked down by human activity to the extent that mortality or serious deterioration is likely to occur or partially pushed over so as to result in a permanent lean or ~~visible damage~~ injury to the root system.

“DBH” means the diameter at breast height.

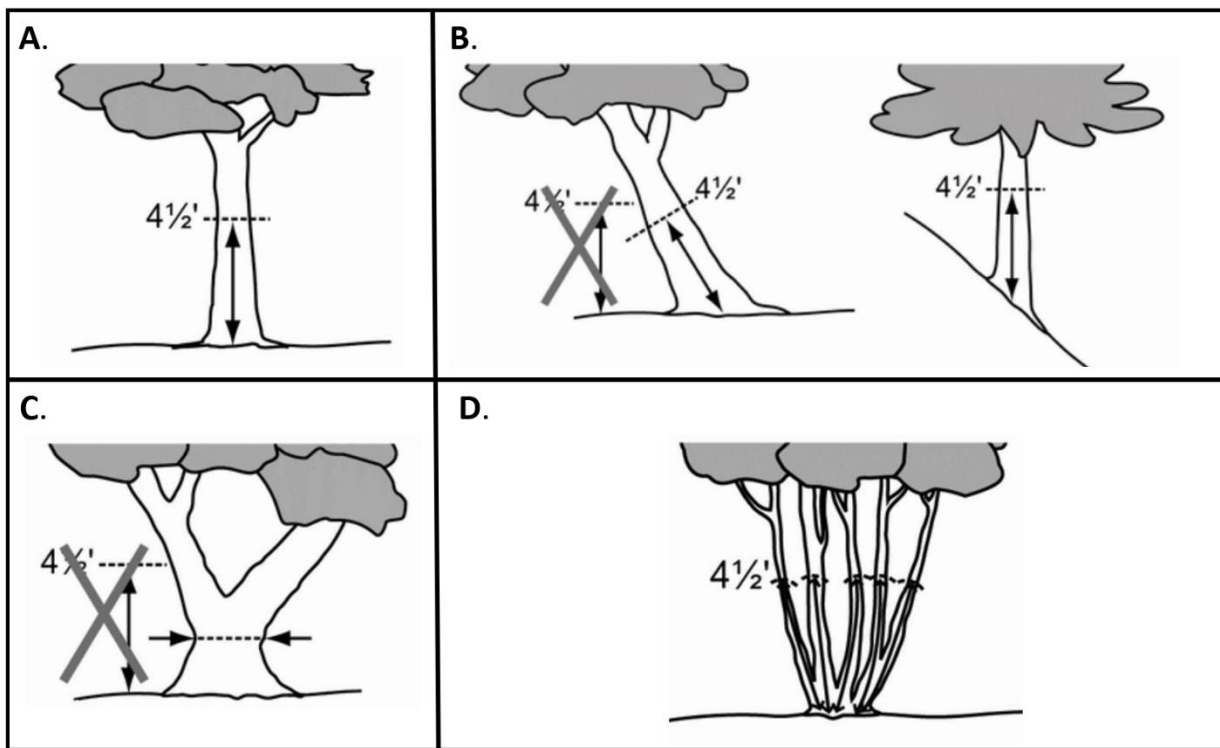
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“Dead tree” means a tree that is dead or has been damaged beyond repair or where not enough live tissue, green leaves, limbs, or branches exist to sustain life.

“Diameter at breast height” or “DBH” means the measurement of mature trees as measured at a height 4.5 feet above the mean ground level at the base of the tree (Figure 16.32.010-2A). The DBH may be determined by measuring the circumference of the tree trunk 4.5 feet above the mean ground level at the base of the tree and dividing by 3.14. Trees existing on slopes are measured at the lowest point of ground at the base of the tree (Figure 16.32.010 – 2B). When the trunk branches or splits less than 4.5 feet from the ground, measure the smallest circumference below the lowest branch and divide by 3.14 (Figure 16.32.010 – 2C). For multi-stemmed trees, the size is determined by measuring all the trunks, and then adding the total diameter of the largest trunk to one-half the diameter of each additional trunk. A multi-stemmed tree has trunks that are connected above the ground and does not include individual trees growing close together or from a common root stock that do not have trunks connected above the ground (see Figure 16.32.010-2D).

Figure 16.32.010-2 – Measuring Diameter at Breast Height



“Drip line” means the perimeter measured on the ground at the outermost crown by drawing an imaginary vertical line from the circumference of the crown, straight down to the ground below.

“Dying tree” means a tree that is diseased, infested by insects, deteriorating, or rotting, as determined by a professional certified in the appropriate field, and that cannot be saved by reasonable treatment or pruning, or a tree that must be removed to prevent the spread of infestation or disease to other trees.

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“Hazardous tree” means a tree or tree part the condition or location of which presents a public safety hazard or an imminent danger of property damage as determined by an ISA Qualified Tree Risk Assessor, and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

“Healthy tree” means a tree that is rated by a professional with expertise in the field of forestry or arboriculture as being in fair or better good health condition using International Society of Arboriculture (ISA) Best Management Practices and the rating system in this Chapter.

“Invasive species” means a tree, shrub, or other woody vegetation that is on the Oregon State Noxious Weed List or listed on the ~~City of Milwaukie~~ Invasive Tree List in the Public Works Standards.

“ISA” means the International Society of Arboriculture.

“ISA Best Management Practices” means the guidelines established by ISA for arboricultural practices for use by arborists, tree workers, and the people who employ their services.

“Major tree pruning” means the trimming or removal of ~~over twenty percent (20%) or more~~ of the live crown, or removal of or injury to roots within a radial distance from the tree of six times the tree's DBH or over 25% of the root protection zone (see Figure 16.32.042.G.1.b)~~over 15% of the root system~~ during any 12-month period.

~~“Master Fee Schedule” is the schedule of City fees and charges adopted by City Council for the services provided by the City.~~

“Minor tree pruning” means the trimming or removal of less than twenty percent (20%) of any part of the live crown, or removal of or injury to roots beyond a radial distance from the tree of six times the tree's DBH or less than 25% of the root protection zone (see Figure 16.32.042.G.1.b)~~less than 15% of the root system~~ during a 12-month period.

“NDA” means Neighborhood District Association.

“Noxious weed” means a terrestrial, aquatic, or marine plant designated by the State Weed Board under ORS 569.615.

“Owner” means any person who owns land, or a lessee, agent, employee, or other person acting on behalf of the owner with the owner's written consent.

“Park tree” means a tree, shrub, or other woody vegetation within a City park.

“Person” means any natural person, firm, partnership, association, social or fraternal organization, corporation, estate, trust, receiver, syndicate, branch of government, or any other group or combination acting as a unit.

“Public agency” means any public agency or public utility as defined in ORS 757.005, or a drainage district organized under ORS Chapter 547.

“Public tree” means a tree, shrub, or other woody vegetation on land owned or maintained by the City, but does not include a tree, shrub, or other woody vegetation in the right-of-way.

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“Private tree” means a tree, shrub, or other woody vegetation on land not owned or maintained by the City and the trunk of the tree does not cross a public right-of-way or public property line.

“Right-of-way” means an area that allows for the passage of people or goods. Right-of-way includes passageways such as freeways, pedestrian connections, alleys, and all streets. A right-of-way may be dedicated or deeded to the public for public use and under the control of a public agency, or it may be privately owned. A right-of-way that is not dedicated or deeded to the public is usually in a tract or easement.

“Shrub” means any plant with multiple woody stems that does not have a defined crown and does not grow taller than a height of 16 feet.

“Street tree” means a tree, shrub, or other woody vegetation on land within the right-of-way. When any portion of the trunk of a tree crosses a public right-of-way line at ground level, it is considered a street tree.

“Street Tree List” is the list of tree and shrub species approved by the City for planting within the right-of-way.

~~“Topping” means a pruning technique that cuts branches and/or the main stem of a tree to reduce its height or width.~~

“Topping” means the inappropriate pruning practice used to reduce tree height by cutting to a predetermined crown limit without regard to tree health or structural integrity. Topping does not include acceptable pruning practices as described in the American National Standards Institute (ANSI) “A-300 Pruning Standards” and companion “Best Management Practices” for Tree Pruning published by the International Society of Arboriculture, such as crown size reduction, utility pruning clearance, or crown cleaning risk mitigation to remove a safety hazard, dead or diseased material. Topping is considered “tree removal”.

“Tree” means any living woody plant characterized by one main stem or trunk and many branches, or a multi-stemmed trunk system with a defined crown, that will obtain a height of at least 16 feet at maturity.

“Tree Board” means the city of Milwaukie Tree Board.

“Tree Canopy” means the aggregate or collective tree crowns.

“Tree Fund” means the Tree Fund as created by this chapter.

“Tree removal” means the cutting or removal of fifty percent (50%) or more of the crown, trunk, or root system of a plant, the uprooting or severing of the main trunk of the tree, topping, or any act that causes, or may reasonably be expected to cause the tree to die as determined by an ISA Certified Arborist.

“Unhealthy tree” means a tree that is rated by a professional with expertise in the field of forestry or arboriculture as being in poor or very poor/dead health condition using International Society of Arboriculture (ISA) Best Management Practices and the rating system in this Chapter.

“Urban forest” means the trees that exist within the City.

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“Urban Forester” means the Urban Forester of the City of Milwaukie, or designee.

“Urban Forest Management Plan” is the management plan adopted by City Council for the management of the City’s urban forest.

“Utility” is a public utility, business, or organization that supplies energy, gas, heat, steam, water, communications, or other services through or associated with telephone lines, cable service, and other telecommunication technologies, sewage disposal and treatment, and other operations for public service.

16.32.0124 ADMINISTRATION

A. City Manager

1. The City Manager is authorized to administer and enforce the provisions of this chapter.
2. The City Manager is authorized to adopt procedures and forms to implement the provisions of this chapter.
3. The City Manager may delegate as needed any authority granted by this chapter to a designee as deemed appropriate by the City Manager.

B. City Authority

The City has the ultimate authority to:

1. Interpret the provisions of Chapter 16.32 and determine whether code criteria have been met.
2. Establish conditions of permit and land use approval to ensure Chapter 16.32 is properly implemented.
3. Create rules and procedures as needed to implement Chapter 16.32. #Rules and procedures may include but are not limited to:
 - a. City of Milwaukie tree lists;:
 - b. Tree protection standards, specifications, and procedures;:
 - c. Tree planting standards, specifications, and procedures;:
 - d. Tree establishment and maintenance standards, specifications, and procedures;:
 - e. Performance bonding, letters of credit, and cash assurances to help ensure proper tree protection, planting, and establishment;:
 - f. Tree protection inspections and oversight;:
 - g. Soil protection inspections and oversight;:
 - h. Performance path tree protection standards and specifications;:

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- i. Performance path soil volume standards and specifications; and
- j. Fees for permit applications, reviews, mitigation, inspections, and violations.

~~16.32.015 CREATION AND ESTABLISHMENT OF THE TREE BOARD~~

~~A. Tree Board Composition~~

~~The Tree Board will consist of seven members, at least five of which must be residents of the City, one must be an ISA Certified Arborist, and all seven must be appointed by the Mayor with approval of the City Council.~~

~~B. Term of Office~~

~~The term of the seven persons appointed by the Mayor will be three years except that the term of two of the members appointed to the initial Tree Board will serve a term of only one year, and two members of the initial Tree Board will be for two years. In the event that a vacancy occurs during the term of any member, their successor will be appointed for the unexpired portion of the term. Tree Board members will be limited to serving three consecutive terms.~~

~~C. Compensation~~

~~Members of the Tree Board will serve without compensation.~~

~~D. Duties and Responsibilities~~

~~The Tree Board will serve in an advisory capacity to the City Council. Its responsibilities include the following:~~

- ~~1. Study, investigate, develop, update, and help administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of the Urban Forest. The plan will be presented to the City Council for approval every five years and will constitute the official Urban Forestry Management Plan for the City;~~
- ~~2. Provide advice to City Council on policy and regulatory issues involving trees, including climate adaptation and mitigation efforts;~~
- ~~3. Provide outreach and education to the community on tree-related issues and concerns;~~
- ~~4. Organize and facilitate the City's tree planting events and other public events involving trees and Urban Forestry education;~~
- ~~5. Assist City staff in preparing recommendations regarding the application, membership, and ongoing participation by the City in the Tree City USA Program;~~
- ~~6. Provide leadership in planning the City's Arbor Day/Week proclamation and celebration; and~~
- ~~7. Provide recommendations to City Council on the allocation of funds from the Tree Fund.~~

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~~The Tree Board, when requested by the City Council, will consider, investigate, make findings, report, and make recommendations on any special matter or question coming within the scope of its work.~~

~~E. Operation~~

~~The Tree Board will choose its own officers, make its own rules and regulations, and keep minutes of its proceedings. A majority of the members will constitute a quorum necessary for the transaction of business.~~

16.32.0146 CREATION OF A TREE FUND

A. Establishment

A City Tree Fund is hereby established for the collection of any funds used for the purpose and intent set forth by this chapter.

B. Funding Sources

The following funding sources may be allocated to the Tree Fund:

1. Tree permit revenue;
2. Payments received in lieu of required and/or supplemental plantings;
3. Civil penalties collected pursuant to this chapter;
4. Agreed-upon restoration payments or settlements in lieu of penalties;
5. Sale of trees or wood from City property;
6. Donations and grants for tree purposes;
7. Sale of seedlings by the City; and
8. Other monies allocated by City Council.

C. Funding Purposes

The Tree Board will provide recommendations to the City Council during each budget cycle for how the fund will be allocated. The City will use the Tree Fund for the following purposes:

1. Expanding, maintaining, and preserving the urban forest within the City;
2. Planting and maintaining trees within the City;
3. Establishing a public tree nursery;
4. Supporting public education related to urban forestry;
5. Assessing urban forest canopy coverage; or
6. Any other purpose related to trees, woodland protection, and enhancement as determined by the City Council.

Article II Street Trees and Public Trees

16.32.02017 PLANTING STREET TREES AND PUBLIC TREES PLANTING ON LAND OWNED OR MAINTAINED BY THE CITY AND WITHIN THE PUBLIC RIGHT-OF-WAY

A. Species

Any street tree or public tree, shrub, or other woody vegetation to be planted on land owned or maintained by the City or within the public right-of-way must be a species listed on the Street Tree List unless otherwise approved by the Urban Forester.

B. Spacing, size, and placement

The spacing, size, and placement of street trees and public trees, shrubs, and other woody vegetation must be in accordance with a permit issued by the City under this section. -The City may approve special plantings designed or approved by a landscape architect, or for ecological restoration projects where trees are likely to be planted at a much higher density to mimic natural conditions in forest regeneration and account for expected mortality.

C. Permit

No person may plant a street tree without first obtaining a permit from the City. A permit application must be submitted in writing or electronically on a form provided by the City. This permit is at no cost.

16.32.018 STREET AND PUBLIC TREE CARE

The City will have the right to plant, prune, maintain and remove trees, shrubs, and other woody vegetation on land owned or maintained by the City and within the right-of-way as may be necessary to ensure public safety or that poses a risk to sewers, electric power lines, gas lines, water lines, or other public improvements, or is infested with any injurious fungus, insect, or other pest as determined by the Urban Forester. Unless otherwise exempted in this chapter, the City must obtain a permit for any activities performed under this section.

16.32.019 TREE TOPPING

No person will top any street tree, park tree, or other tree on public property. Trees severely damaged by storms or other causes, or trees existing under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this section at the determination of the Urban Forester. Topping a public tree is considered 'Tree Removal'.

16.32.020 PRUNING, CORNER CLEARANCE

~~Subject to enforcement under Section 12.12.010, any tree, shrub, or other woody vegetation overhanging any street or right of way within the City must be maintained by the owner to ensure that no vegetation obstructs the right of way.~~

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~~16.32.021 DEAD OR DISEASED TREE REMOVAL ON PRIVATE LAND~~

~~The City may require the removal of any tree, shrub, or other woody vegetation that is dead, diseased, or infested and that poses a significant risk to the public or the urban forest as determined by the Urban Forester. The City or its agents will notify the owners of such trees in writing.~~

~~Removal under this section must be completed within the time period specified in the written notice unless extended in writing by the Urban Forester. The owner must notify the City in writing when the required removal has been completed. If the owner does not remove the dead, diseased, or infested vegetation within the time period specified in the notice or extension granted in writing by the Urban Forester, the City will have the right to remove the dead, diseased, or infested vegetation and charge the cost of removal to the owner pursuant to MMC Chapter 8.04. In cases where the owner demonstrates extreme financial hardship, the City Manager may grant a cost waiver in accordance with Section 16.32.038.~~

~~16.32.022 REMOVAL OF STUMPS~~

~~All stumps of street trees must be removed by the adjacent property owner below the surface of the ground so that the top of the stump does not project above the surface of the ground.~~

~~16.32.024 ARBORISTS LICENSE~~

~~All businesses doing arboricultural work within the City must have paid the Milwaukie business tax or have a current business license with the Metropolitan Service District. A Certified Arborist must be on-site for the duration of any arboricultural work being performed on a public tree or street tree and is responsible for certifying that all arboricultural work is performed in accordance with ISA Best Management Practices.~~

~~16.32.026 PERMIT FOR MAJOR PRUNING OR REMOVAL OF STREET TREES OR PUBLIC TREES ON LAND OWNED OR MAINTAINED BY THE CITY~~

A. Applicability

1. No person will perform major tree pruning or remove any street tree or public tree in a public right-of-way or on public land, without first obtaining a permit issued by the City.
 - a. For public trees, only the City, a public agency charged with maintaining the property, or a utility may submit a permit application.
 - b. For street trees, the applicant must be the City, the owner of the adjacent property, or be authorized in writing by the owner of the adjacent property, where the tree will be pruned or removed.

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~~c. No person can remove a street tree without first obtaining a permit from the City. Permit approval may be conditioned upon either replacement of the street tree with a tree listed on the Street Tree List or a requirement to pay to the City a fee as provided in the master fee schedule.~~Consolidated Fee Schedule.

2. For public trees on land owned or maintained by the City, this chapter will be applied in conjunction with any applicable standards in Title 19 Zoning.

B. Permit Review Process

1. Application

A permit application must be submitted in writing or electronically on a form provided by the City and be accompanied by the correct fee as established in the ~~Master Fee Schedule~~Consolidated Fee Schedule.

2. Public Notice and Permit Meeting

Upon the filing of a permit application, the applicant must post notice, unless otherwise exempted in Section 16.32.030, of the major pruning or tree removal permit application on the property in a location that is clearly visible from the public right-of-way. The applicant must mark each street tree or public tree, ~~shrub, or other woody vegetation~~ proposed for major pruning or removal by tying or attaching ~~orange~~ plastic tagging tape to the vegetation. -The City will provide the applicant with at least one sign containing adequate notice for posting, tagging tape, and instructions for posting the notice. The notice must state the date of posting and that a major pruning or tree removal permit application has been filed for the vegetation marked by ~~orange~~ plastic tagging tape. The notice must state that any person may request a meeting with the City within 14 days from the date of posting to raise questions or concerns about the proposed pruning or tree removal prior to issuance of the permit.

If a meeting is requested, it must be held within 14 days of the request. The City will consider all concerns raised at the meeting but will have final decision-making authority over issuance of the permit based on the criteria and approval standards set forth in ~~Subsection 16.32.026.C below~~.

3. Declaration

The applicant will file a declaration on a form provided by the City stating that notice has been posted and that the vegetation proposed for major pruning or removal has been marked.

Once a declaration is filed with the City, the City will provide notice of the application to the appropriate NDA.

~~4. Exemptions from Public Notice~~

~~The following street trees and public trees, shrubs, or other woody vegetation may be removed without public notice subject to the City's review of the application:~~

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- a. ~~A tree, shrub, or other woody vegetation that is considered an unreasonable risk to the occupants of the property, the adjacent property, or the general public as determined by an ISA Certified Arborist in accordance with current ISA Tree Risk Assessment standards.~~
- b. ~~A tree, shrub, or other woody vegetation that is an invasive species and that is less than 8 inches in diameter at breast height.~~
- c. ~~A street tree or public tree that is less than 2 inches in diameter at breast height.~~

C. Review Criteria and Approval Standards

The City may issue the permit, deny the permit, or ~~may~~ issue the permit subject to conditions of approval. The City's decision will be final and valid for a period of one year after issuance unless a different time period is specified in the permit. Nothing prevents an applicant~~application~~ from requesting an amendment to an unexpired permit if the conditions and circumstances have changed.

1. Review Criteria

The City will not permit the major pruning or removal of a healthy, functioning ~~s~~Street ~~t~~ree or ~~p~~ublic ~~t~~ree without a demonstration by the applicant that extraordinary circumstances exist. Maintenance or the replacement of sidewalks or curbs, removal of tree litter, or other minor inconveniences do not constitute extraordinary circumstances. Decisions regarding major pruning or removal of healthy, functioning ~~s~~Street ~~t~~rees or ~~p~~ublic ~~t~~rees are fact-specific and are made on a case-by-case basis by the Urban Forester. In determining whether extraordinary circumstances exist that warrant the major pruning or removal of a healthy tree, the Urban Forester will consider:

- a. Whether the species of tree is appropriate for its location;_;
- b. Whether the species of tree is an invasive species;
- c. Whether the crown, stem, or root growth has developed in a manner that would prevent continued healthy growth or is negatively impacting other trees;
- d. Whether maintenance of the tree creates an unreasonable burden for the property owner; and
- e. Whether the major pruning or removal will have a negative impact on the neighborhood streetscape and any adopted historic or other applicable design guidelines or public utilities.

2. Approval Standards

A permit will be issued only if the following ~~criteria~~ standards are met as determined by the Urban Forester:

- a. The proposed major pruning or tree removal will be performed according to current ISA Best Management Practices, ~~and a~~ An ISA Certified Arborist will be on site for the duration of any major pruning~~the tree~~ work.

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- b. The ~~tree, shrub, or other woody vegetation~~ street tree or public tree proposed for major pruning or removal meets one or more of the following criteria:
- (1) The ~~street tree or public tree~~ tree, shrub, or other woody vegetation is dead or dying and cannot be saved as determined by an ISA Certified Arborist in accordance with ISA standards.
 - (2) The ~~street tree or public tree~~ tree, shrub, or other woody vegetation is having an adverse effect on existing adjacent infrastructure that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.
 - (3) The ~~street tree or public tree~~ tree, shrub, or other woody vegetation has sustained physical damage that will cause the vegetation to die or enter an advanced state of decline. The City may require additional documentation from an ISA Certified Arborist to demonstrate that this criterion is met.
 - (4) The ~~street tree or public tree~~ tree, shrub, or other woody vegetation poses an unreasonable risk to the occupants of the property, the adjacent property, or the general public, as determined by an ISA Certified Arborist that is Tree Risk Assessment Qualified (TRAQ) in accordance with current ISA Tree Risk Assessment standards ~~standards~~ Best Management Practices.
 - (5) Major pruning or removal of the ~~street tree or public tree~~ tree, shrub, or other woody vegetation is necessary to accommodate improvements in the right-of-way or on City-owned land, and it is not practicable to modify the proposed improvements to avoid major pruning or removal.
 - (6) The ~~street tree or public tree~~ tree, shrub, or other woody vegetation is on the Oregon State Noxious Weed List.
 - (7) The ~~street tree or public tree~~ tree, shrub, or other woody vegetation is part of a stormwater management system and has grown too large to remain an effective part of the system.
- c. Any approval for the removal of a healthy ~~street tree or public tree~~ tree, shrub, or other woody vegetation must require the applicant to pay a fee as established in the ~~Master Fee Schedule~~ Consolidated Fee Schedule.

D. Removal of Stumps

All stumps of street trees and public trees must be removed below the surface of the ground so that the top of the stump does not project above the surface of the ground, unless otherwise approved to remain by the City.

ED. Performance of Permitted Work

1. All work performed pursuant to a permit issued by the Urban Forester must be completed within the time period specified in the permit unless a different time period is authorized in writing by the Urban Forester.

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2. An ISA Certified Arborist must be on site for the duration of any major pruning permit being performed on a public tree or street tree and is responsible for certifying that all arboricultural work is performed in accordance with ISA Best Management Practices.

EF. Replanting

The City will require replanting as a condition of permit approval for the major pruning or removal of a street tree or public tree.

1. The replanted tree must be a species included on the Street Tree List unless otherwise approved by the Urban Forester.
2. The City will consider alternative planting locations for street trees when replanting at the location of removal conflicts with surrounding infrastructure and the interference would impair the replanted tree.
 - a. For street trees, replanted trees must be planted within the right-of-way fronting the property for which the permit was issued or, subject to the approval of the Urban Forester and give written notice to ~~with permission in writing from~~ the adjacent property owner, within the right-of-way fronting the adjacent property.
 - ~~b. In lieu of replanting and subject to approval of the Urban Forester, the City can require the owner to pay a fee as established in the Master Fee Schedule~~ Consolidated Fee Schedule.
 - be. For public trees, replanted trees must be planted on the land from which the tree was removed unless a different location is approved by the Urban Forester.
3. In lieu of replanting and subject to approval of the Urban Forester, the City can require the applicant to pay a fee as established in the Consolidated Fee Schedule.
- ~~34.~~ The optimal time of year for planting is from September through April. If planting is necessary in other months, the City may condition permit approval to require extra measures to ensure survival of the newly planted tree.

16.32.028 EMERGENCY REMOVAL OF PERMIT FOR OF HAZARDOUS STREET TREES OR PUBLIC TREES

If a street tree or public tree is determined to be a hazardous tree by the Urban Forester, the City may issue an emergency removal permit. The removal must be in accordance with ISA Best Management Practices and be undertaken with the minimum necessary disturbance to eliminate the imminent danger.

16.32.028 PROGRAMMATIC PERMITS

Programmatic permits may be issued by the Urban Forester for routine public facility or utility operation, planned repair and replacement, and on-going maintenance

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~~programs on street trees, public trees, and private trees. public properties and rights-of-way. The purpose of a programmatic permit is to eliminate the need for individual permits for tree removal, pruning, or for ongoing activities that cover a wide geographic area and may include the pruning or removal of numerous street trees, public trees, and private trees.~~ public and street trees. Programmatic permits are evaluated to prevent cumulative adverse impacts to the urban forest and ensure that any permitted activities meet the goals and objectives of the Urban Forest Management Plan.

A. Application Requirements

Applications for programmatic permits must be submitted in writing or electronically on forms provided by the City and be accompanied by the correct fee.

B. Applicability

~~Programmatic permits may only be issued to a public agency or a utility as defined in this chapter.~~

C. Completeness

1. ~~If the Urban Forester determines an application is incomplete, the Urban Forester will provide written notice to the applicant that describes the additional information needed.~~

2. ~~The applicant must submit the additional information within 30 days from the date of the notice unless extended in writing by the Urban Forester.~~

3. ~~If the applicant does not furnish the additional information within 30 days from the date of the notice or any extension granted in writing by the Urban Forester, the application will be denied.~~

D. Notice of Complete Application

~~When the Urban Forester determines that the application is complete, the Urban Forester must provide written notice that the application is complete to the applicant and the Tree Board. The notice must provide instructions for how to obtain additional information about the application, comment on the application, and request notification of the Urban Forester's decision.~~

E. Review Criteria

~~The Urban Forester may approve a programmatic permit upon a determination that the following criteria are satisfied or will be satisfied with conditions:~~

1. ~~The proposed activity will result in a net gain to the urban forest functions and benefits described in the purpose statement in Section 16.32.005 considering the applicant's proposed performance measures, proposed tree planting, and other activities proposed to improve the overall health of the urban forest.~~

2. ~~The applicant's proposed outreach and notification program provides adequate notice to residents, businesses, and the City prior to performing work authorized under the programmatic permit.~~

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F. ~~Decision~~

The Urban Forester must issue the permit, ~~issue the permit with conditions of approval, or deny the permit,~~ or may issue the permit subject to conditions of approval within 120 days of determining the application is complete. The Urban Forester's decision will be final and, if approved, the permit will be valid for a period of up to two years. Nothing prevents an applicant from requesting an amendment to an unexpired permit if the conditions and circumstances have changed. The Urban Forester's decision will be based on an evaluation of the application against the applicable review criteria in Subsection 16.32.028.E.

G. ~~Permit~~

Approved permits must include the following required information. The Urban Forester may modify the permit at any time to respond to any questions, changes in regulations, or previously unforeseen issues, provided the applicant is notified in writing.

1. ~~Duration~~

The Urban Forester may approve a programmatic permit for a period of up to 2 years;

2. ~~Geographic area covered by the permit;~~

3. ~~Permitted activities and any restrictions on the method, number, type, location, or timing of activities;~~

4. ~~Procedures and thresholds for providing notice to residents, businesses, and the City impacted by the performance of work under the permit;~~

5. ~~Monitoring, Performance Tracking, and Reporting Requirements~~

The Urban Forester may prescribe rules or procedures that specify the manner in which such tracking and reporting occur; and

6. ~~Traffic control requirements.~~

7. ~~Annual Report~~

On the anniversary of permit issuance, the applicant must submit an annual report on a form supplied by the City detailing any work performed under the permit and any work scheduled to be performed.

8. ~~Tree Size Limits~~

a. ~~The programmatic permit will not allow the removal of trees 6 or more inches in diameter at breast height, except as provided in this section.~~

b. ~~If an applicant requests removal of a healthy tree 6 or more inches in diameter at breast height at time of application or during the period in which the programmatic permit is in effect, an opportunity for public comment will be provided in accordance with Subsection 16.32.026 B.2~~

c. ~~For any request, the Urban Forester may further limit allowed tree removal in order to meet the review criteria in Subsection 16.32.028.E.~~

9. ~~Tree Work~~

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~~All work performed under a programmatic permit must be performed in accordance with ISA arboricultural practices.~~

H. ~~Revocation~~

~~The Urban Forester may revoke a programmatic permit upon a determination that the applicant is not adhering to the terms of the permit or is acting beyond the activities authorized by permit.~~

16.32.030 PERMIT AND FEE EXEMPTIONS ON LAND OWNED OR MAINTAINED BY THE CITY AND WITHIN THE PUBLIC RIGHT-OF-WAY

A. ~~Hazardous Tree~~

~~If a tree on public properties and rights-of-way is determined to be a hazardous tree by the Urban Forester, the City may issue an emergency removal permit. The removal must be in accordance with ISA best management practices, and be undertaken with the minimum necessary disturbance to eliminate the imminent danger.~~

B. ~~The following exemptions apply:~~

A. Permit Exemptions

1. Maintenance

A permit for a trees on public properties and rights-of-way street tree or public tree is not required for regular maintenance or minor tree pruning that does not require removal of overis less than twenty percent (20%) of the crown, tree topping, or disturbance of roots within a radial distance from the tree of six times the tree's DBH or less than 25% of the root protection zone (see Figure 16.32.042.G.1.b) more than 10% of the root system during any 12-month period.

2. Removal

A permit for a street or public tree is not required when it is on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List and less than 2 inches DBH.

B. Public Notice Exemptions

The following street trees and public trees may be removed without public notice subject to the City's review of the application:

1. A street tree or public tree that is dead or infested dying.
2. A street tree or public tree that is on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List.
3. A street tree or public tree that is considered an unreasonable risk to the occupants of the property, the adjacent property, or the general public as determined by an ISA Certified Arborist that is Tree Risk Assessment Qualified (TRAQ) in accordance with current ISA Tree Risk Assessment standards Best Management Practices.
4. A street tree or public tree that is less than 2 inches DBH.

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C. Removal Fee Exemptions

A permit for any of the following tree removal situations will not be subject to a removal fee:

C.1. Public Infrastructure Improvements

~~Any tree on land owned or maintained by the City and requires removal or pruning to accommodate a city public infrastructure improvement project will require a permit and must meet replanting requirements imposed by this chapter. The removal of a street tree or public tree during a city public infrastructure improvement project, if it is demonstrated that tree planting, establishment, and tree care-related project costs exceed the tree removal fee costs, the permit will not be subject to a removal fee.~~
Any tree on land owned or maintained by the City and requires removal or pruning to accommodate a city public infrastructure improvement project will require a permit and must meet replanting requirements imposed by this chapter. The removal of a street tree or public tree during a city public infrastructure improvement project, if it is demonstrated that tree planting, establishment, and tree care-related project costs exceed the tree removal fee costs, the permit will not be subject to a removal fee.

D. 2. Private Utility Services and Dwelling Units

A street tree or public tree that the Urban Forester determines to have an adverse effect on adjacent private utility services.

3. Hazard to Dwelling Units

~~If the Urban Forester determines that a tree, shrub, or other woody vegetation proposed for removal on public properties and rights-of-way has an adverse effect on adjacent private utility services or A street tree or public tree that the Urban Forester determines to threatens the structural integrity of a dwelling unit in a manner that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices, the permit will not be subject to a removal fee.~~
If the Urban Forester determines that a tree, shrub, or other woody vegetation proposed for removal on public properties and rights-of-way has an adverse effect on adjacent private utility services or A street tree or public tree that the Urban Forester determines to threatens the structural integrity of a dwelling unit in a manner that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices, the permit will not be subject to a removal fee.

4. Noxious or Invasive Trees

A street tree or public tree that is on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List and is 2 inches DBH or greater.

D. Topping Exemptions

Topping of a street tree or public tree may be exempted only if a determination has been made by the Urban Forester for these instances:

1. ~~Crown restoration consistent with ISA Best Management Practices for trees severely damaged by storms or other causes, or~~
2. ~~Crown clearance, crown reduction, or risk mitigation consistent with ISA Best Management Practices for ~~trees existing under or adjacent to utility wires or other obstructions where other pruning practices are impractical.~~~~

Topping is not considered tree removal when approved by the Urban Forester.

E. Replanting Exemptions

The replanting requirement in Subsection 16.32.026.F is not ~~required~~ applicable when the permitted tree that was removed ~~was any of the following:~~

- ~~1. ~~As a species on the Oregon State Noxious Weeds List or Milwaukie Invasive Tree List.~~~~

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~~2. A tree that is dead, hazardous, diseased, or infested or dying.~~

16.32.0382 LOW INCOME ASSISTANCE

To the extent that City funds are available, the City Manager may grant a property owner an exemption or a reduction in permit fees, removal fees, replanting fees and/or may provide assistance in removing a dead or diseased ~~street trees within in the right of way and in~~ residential zones. Eligibility and extent of assistance will be based on a percentage of the property owner’s median household income for the Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area. A schedule of different fee reductions and exemptions will be determined by the City Manager.

~~16.32.040 PENALTY~~

~~A person who removes a street tree or public tree without first obtaining the necessary permit from the City, removes a tree in violation of an approved permit, or violates a condition of an approved permit must pay a fine in an amount established in the Master Fee Schedule.~~

Article III Private Trees in Residential Zones

16.32.042 TREE PRESERVATION AND PLANTING WITH DEVELOPMENT IN RESIDENTIAL ZONES

A. Applicability

The tree preservation and planting standards in this subsection apply in residential zones to the following types of development in residential zones:

- ~~1. Land Divisions.~~
- ~~2. Construction of a new residential dwelling unit(s) that results in an increase of building footprint.~~
- ~~3. Construction of a new residential dwelling unit that does not result in an increase of building footprint. For applications meeting this criteria, only Subsections 16.32.042.F, 16.32.042.H and 16.32.042.J will apply.~~

B. ~~Clear and Objective~~ Tree Preservation Standards

- ~~1. Healthy trees at least 6-in DBH are required to be preserved except when their removal is required for construction, demolition, grading, utilities, and other development impacts.~~
- ~~2. Not more than 25% of tree removal is not allowed to reduce the Preservation of at least thirty percent (30%) on-site existing healthy private tree canopy coverage may be removed below the overall 40% site canopy coverage standard thirty percent (30%) is required unless mitigation is provided according to Subsection 16.32.042.ED. Preservation of at least thirty percent (30%) on-site healthy private tree canopy coverage is required unless mitigation is provided according to~~

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Subsection 16.32.042.E. See Figures 16.32.042.B.2-a and B.2-b for examples of when mitigation is or is not required. (See Subsection 16.32.042.D.3 for information on calculating tree canopy coverage.)

3. For development sites with thirty percent (30%) or less on-site healthy private tree canopy coverage, the removal of healthy private tree canopy is not allowed unless mitigation is provided according to Subsection 16.32.042.E.

~~Tree species on the Oregon Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy coverage calculations. Public right of way is not considered part of the development site for the purposes of these calculations.~~

34. Trees listed on the City of Milwaukie Rare or Threatened Tree List must be prioritized for preservation; if removed, healthy trees from this list and will incur an additional fee if removed as listed on the Master Fee Schedule Consolidated Fee Schedule. When the trunk of a tree crosses a property line at ground level it is considered an onsite tree for the purposes of these tree preservation standards.

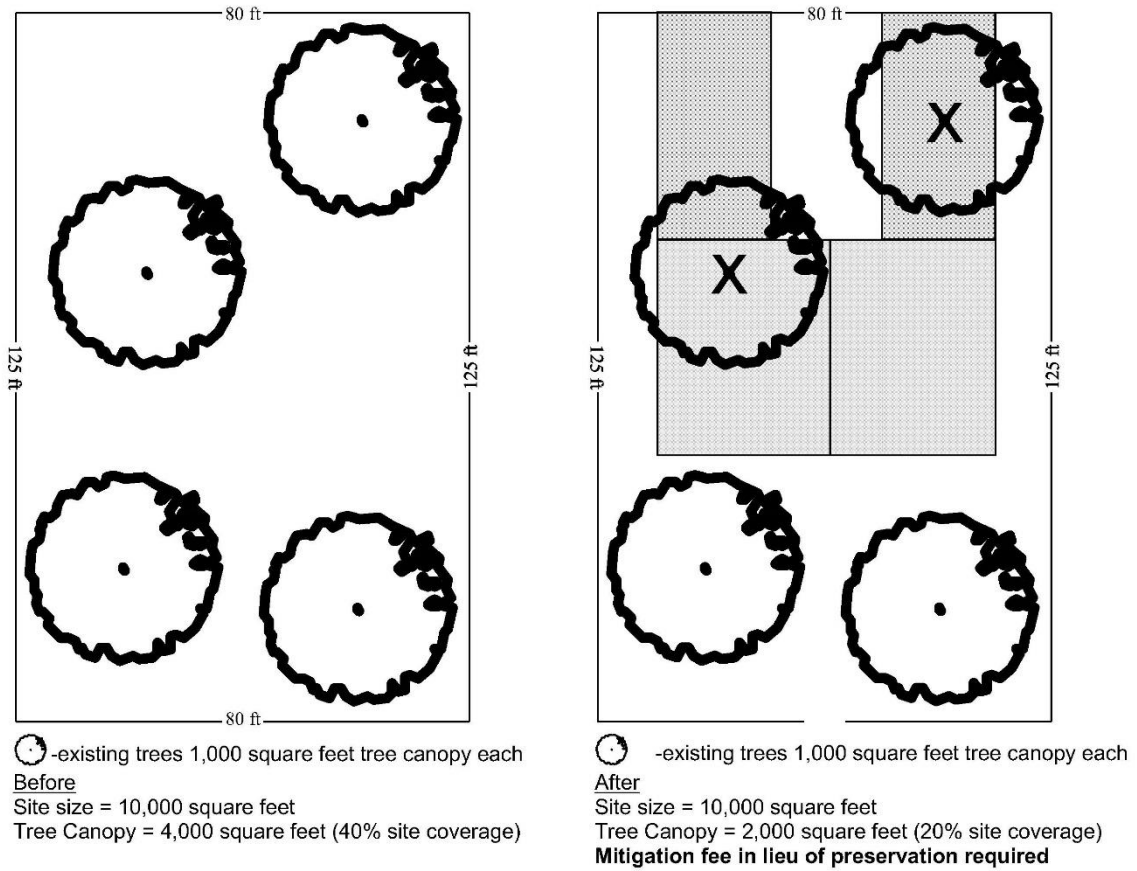
45. Non-Unhealthy trees and trees species on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List are not required to be preserved in conjunction with applicable development as established in Subsection 16.32.042.A.

~~Healthy trees with DBH of 12" or greater may receive additional canopy credits for existing tree crown area to be factored into preservation calculations as defined in the Master Fee Schedule.~~

- 6. Existing trees that are preserved for purposes of addressing the 30% canopy coverage standard must each provide a performance bond to ensure their survival for such period of time as identified in the Consolidated Fee Schedule. All existing trees used for canopy credit would not qualify for removal based on the criteria outlined in 16.32.044 D.2.(11).

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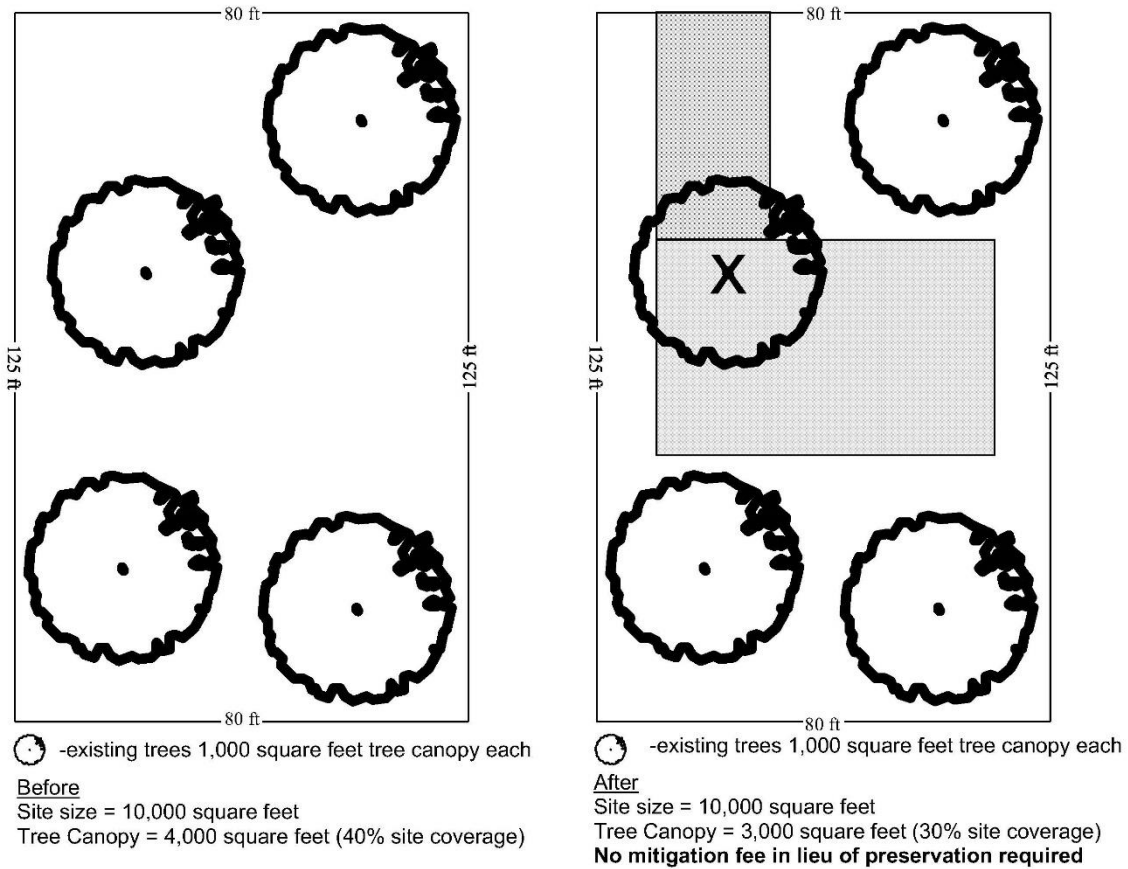
Figure 16.32.042.B.2-a – Tree removal with mitigation



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Figure 16.32.042.B.2-b – Tree removal without mitigation



C. Clear and Objective Tree Planting Standards

~~40% canopy coverage is the standard site canopy coverage for residential developed lots.~~

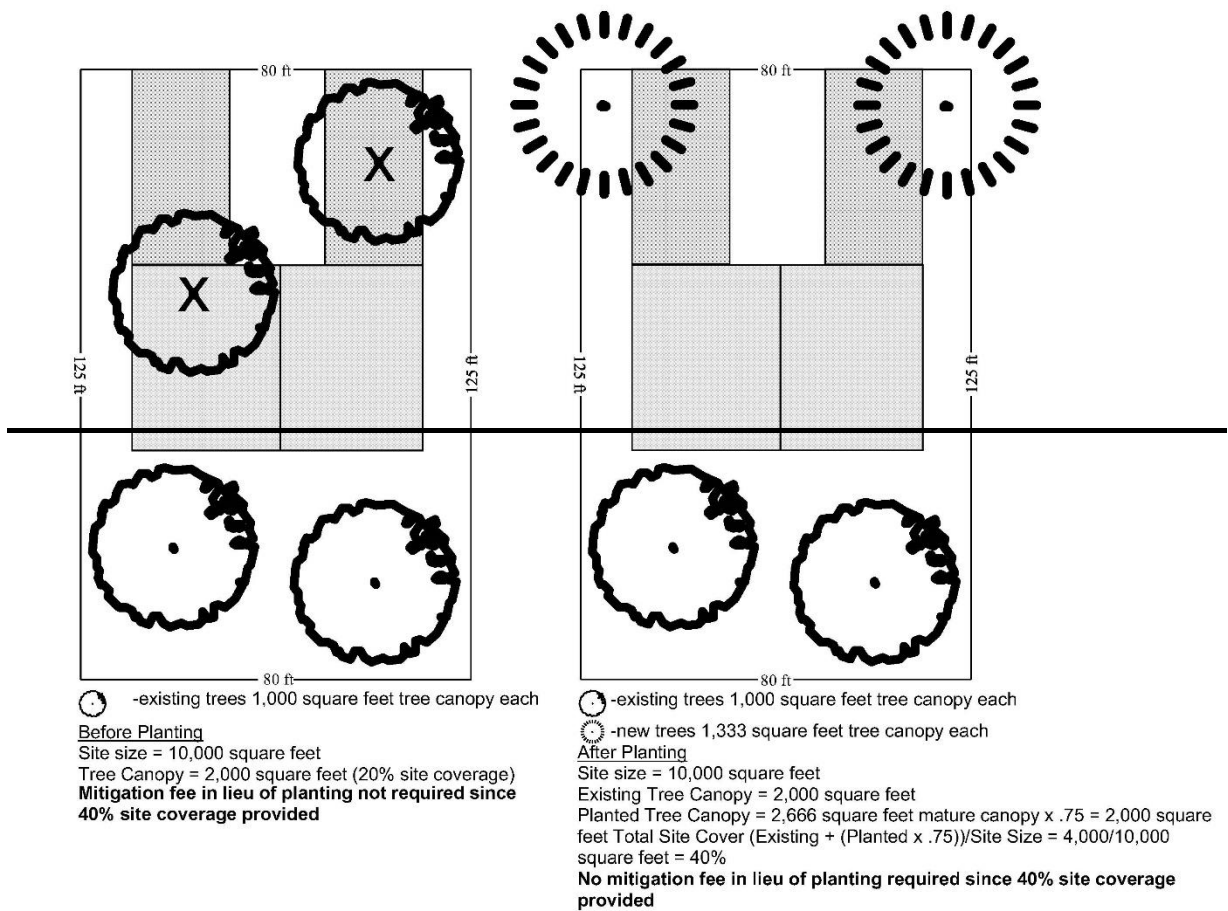
- ~~1. In addition to including the preservation of on-site healthy trees, a~~ At least forty percent (40%) tree canopy is required for a development site from existing healthy trees or new tree plantings unless mitigation is provided according to Subsection 16.32.042.ED. See Figure 16.32.042.C.1 for an example of tree planting where mitigation is not required. Public right-of-way will be considered off-site for the purpose of these planting standard calculations. Tree species on the Oregon Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy coverage calculations.
- ~~2. The minimum size of newly planted trees is 1.5-inch caliper for broadleaf trees and 5-foot tall for conifers unless otherwise approved by the Urban Forester. Nursery stock~~ Newly planted trees must be in good health with the size and quality consistent with ISA Best Management Practices and ANSI Z60.1 standards.

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3. The species selection and spacing of trees to be planted must be such that it provides for the eventual mature size of the trees. Soil type, soil conditions and other site constraints must be considered when selecting species for planting.
4. Root barriers must be installed according to the manufacturer's specifications when a tree is planted within 5 feet of pavement or an underground utility box unless otherwise approved by the Urban Forester.
5. Where there are overhead high voltage utility lines, the tree species selected must be of a type that, at full maturity, will not require pruning to avoid interference with the lines.
6. Newly planted trees must survive a minimum number of years beyond the date of planting, with a performance bond to ensure that each new tree is replaced if it does not survive through the minimum period. See the Consolidated Fee Schedule for details. All trees planted for canopy credit would not qualify for removal based on the criteria outlined in 16.32.044 D.2.(11).

Figure 16.32.042.C.1 – Tree planting without mitigation



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D. Tree Canopy Calculations and Credits

The following situations ~~is~~ are eligible for credit towards tree canopy requirements when trees ~~are~~ are planted or preserved in accordance with applicable ~~City of Milwaukee~~ standards:

Tree Location	Existing Trees	Newly Planted Trees
On-Site Trees (Trees located within the tax lot)	100% of the existing or future mature crown area, whichever is greater <i>*Significant tree credit for large DBH trees – see Master Fee Schedule*</i>	75% of the future mature crown area
Off-Site Trees (Street trees within the adjacent ROW)	50% of the existing or future mature crown area, whichever is greater	50% of the future mature crown area

- ~~1. 75% of the mature crown area of planted on-site trees.~~
- ~~2. 50% of the mature crown area of planted street trees in the public right-of-way directly abutting the development site.~~

3. On-Site Trees

a. One hundred percent (100%) of the existing crown area or mature crown area of on-site healthy private trees that are preserved, whichever is greater.

(1) In cases where a portion of the crown area of an on-site healthy private trees extends off site, the entire crown area is eligible for credit towards the tree canopy requirements.

(2) In cases where a portion of the crown area of an off-site private trees extends on site, the crown area is not eligible for credit towards the tree canopy requirements.

(3) Healthy on-site trees with DBHs of 12 inches or greater may receive additional canopy credits for existing or future mature crown area to be factored into preservation calculations as defined in the Master Fee Schedule Consolidated Fee Schedule.

b. Seventy-five percent (75%) of the future mature crown area of planted on-site private trees.

~~4. 50% of the existing crown area of street trees that are preserved in the public right-of-way directly abutting the development site.~~

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2. Street Trees

- a4. Fifty percent (50%) of the existing crown area of street trees that are preserved in the public right-of-way directly abutting the development site.
- b. Fifty percent (50%) of the mature crown area of newly planted street trees in the public right-of-way directly abutting the development site.

3. Interpretations

- a. When the trunk of a tree crosses a property line at ground level it is considered an on-site tree; except that when the trunk crosses a public right-of-way line at ground level, it is considered a street tree for the purposes of these tree planting standards.
- b. Public right-of-way will be considered off-site for the purposes of these planting standard calculations.
- c. Tree species on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy calculations.
- d. Trees of any species that are less than 6-in DBH are not to be included in the total canopy calculations unless a bond is provided
- ~~c. Tree species on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy calculations.~~
- ~~ee. The Milwaukie Mature Tree Crown Area Reference List is the primary resource for determining the estimated tree canopy area for various species.~~

Table 16.32.042.D summarizes the credits eligible for the tree canopy requirements of Section 16.32.042.

Table 16.32.042.D Eligible Credits for Tree Canopy Requirements

Tree Location	Existing Preserved Trees	Newly Planted Trees
On-Site Trees (Trees located within the tax lot)	100% of the existing or future mature crown area, whichever is greater ¹ <i>*Significant tree credit for large DBH trees – see Master Fee Schedule*</i>	75% of the future mature crown area
Off-SiteStreet Trees (Street tees within the adjacent ROW)	50% of the existing or future mature crown area, whichever is greater	50% of the future mature crown area

¹ Healthy on-site trees with DBH of 12 inches or greater may receive additional canopy credits for existing or future mature crown area—see Consolidated Fee Schedule.

ED. Mitigation StandardsFees

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If the tree preservation and/or tree planting standards are not met, mitigation fees must be provided to the Tree Fund as follows:

1. The fee in lieu of preservation standard in the ~~Master Fee Schedule~~Consolidated Fee Schedule, based on the percentage of removed onsite healthy private canopy coverage below the thirty percent (30%) minimum tree canopy preservation standard as defined established in Subsection 16.32.042.B.
2. The fee in lieu of planting standard in the ~~Master Fee Schedule~~Consolidated Fee Schedule, based on the square footage of tree ~~crown area~~canopy that would be required to meet the forty percent (40%) tree planting standard established in Subsection 16.32.042.C.

EE. Variance Procedure

~~1.~~An applicant may apply for a variance to the tree preservation and/or tree planting standards. An application for a variance will be heard and decided by the Planning Commission in accordance with the provisions of Section 19.1006 (Type III review) according to Section 19.911. In addition to meeting the Type III variance approval criteria established in Subsection 19.911.4.B, ~~the~~ applicant is required to demonstrate that equivalent or greater environmental benefits are provided as preserving or planting the required tree ~~crown area~~canopy.

Examples of activities that may justify a variance include but are not limited to:

- ~~e~~1. Use of techniques that minimize hydrological impacts beyond regulatory requirements (examples include porous pavement, green roofs, infiltration planters/rain gardens, flow through planters, LIDA (low impact development approach) swales, vegetated filter strips, vegetated swales, extended dry basins, and constructed water quality wetlands).
- ~~e~~2. Use of techniques that minimize reliance on fossil fuels and production of greenhouse gases beyond regulatory requirements through the use of energy efficient building technologies, on-site energy production technologies, and green buildings standards (Section 19.510).
- ~~e~~3. Use of techniques that preserve and enhance wildlife habitat beyond regulatory requirements, including, but not limited to, the use of native plant species in landscape design, ~~removal of invasive plant species,~~ and restoration of native habitat and preservation of habitat through the use of conservation easements or other protective instruments.
- ~~e~~4. Use of techniques that preserve open space for sustainable urban agriculture through the use of conservation easements or other protective instruments at sites that are not compatible with tree canopy preservation or planting.

EF. Tree Protection Standards

Trees to be retained must be protected from development impacts according to the standards in this subsection to be eligible for tree preservation and tree canopy

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credit. ~~For applications meeting criteria as outlined in Subsections 16.32.042.A.1 and 16.32.042.A.2, a~~ A tree protection plan prepared by an ISA ~~e~~Certified a ~~r~~Arborist that demonstrates adequate protection of the trees to be preserved is required. ~~The tree protection plan must be as~~ approved by the Urban Forester is required. Tree protection methods and specifications must be consistent with ISA ~~b~~Best m ~~Management p~~Practices using either the ~~following~~ prescriptive path or performance path tree protection methods as described below:

1. Prescriptive Path for Tree Protection:

a. ~~Establish a r~~Root protection zone:

(1) For on-site trees and off-site trees with root protection zones that extend into the site, provide— a minimum of ~~one~~1-foot radius (measured horizontally away from the center of the tree trunk) for each inch of trunk diameter at breast height. Root protection zones for off-site trees may be estimated.

(2) For street trees, ~~the Urban Forester may will~~ prescribe greater or lesser protection than the required root protection zone after reviewing the applicant's proposed root protection zone for on-site and off-site trees.

b. Encroachments into a root protection zone

~~(3)~~ Existing encroachments into the root protection zone, including structures, paved surfaces and utilities, may remain.

~~(2)~~ New encroachments into the root protection zone are allowed provided:

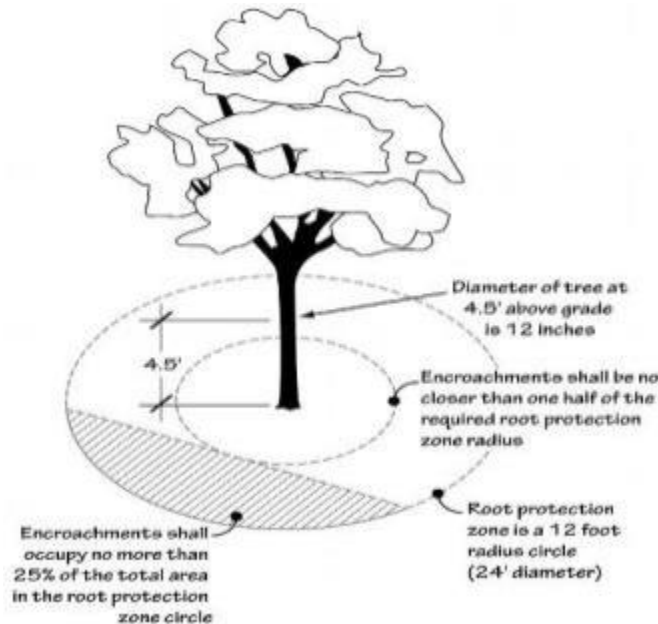
(a) The area of all new encroachments is less than twenty-five percent (25%) of the remaining root protection zone area when existing encroachments are subtracted; and

(b) No new encroachment is closer than ~~1/2~~half the required radius distance from the trunk (see Figure 16.32.042.FG.1.b).

~~(3)~~ Installation of landscaping ~~landscape planting is not an encroachment.~~

~~(4)~~ Any in-ground irrigation systems are considered encroachments.

Figure 16.32.042.FG.1.b
Example of Permissible RPZ Encroachments



c.b. Protection fencing:

- (1) Protection fencing consisting of a minimum 4-foot-high metal chain link or no-climb horse fence, and secured with 6-foot metal posts must be established at the edge perimeter of the root protection zone and permissible encroachment area on the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve as the required protective fencing. Protection fencing (new or existing) must be sturdy, highly visible, and not easily movable.
- (2) When a root protection zone extends beyond the development site, protection fencing for private trees is not required to extend beyond the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve as the required protective fencing. If prescribed by the Urban Forester, protection fencing for street trees may extend beyond the development site.
- (3) Protection fencing is required to be installed before any ground disturbing activities or construction begins, including clearing and grading, and must remain in place until final inspection.
- ~~e.~~(4) Signage designating the protection zone and penalties for violations must be secured displayed in a prominent location on each protection fence.
- ~~d.~~ Installation of landscaping is not an encroachment. Any in-ground irrigation systems are considered encroachments.

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de. Prohibitions within the root protection zone

Except as allowed by Subsection 16.32.042.G.1.b, the following are prohibited within the root protection zone of each tree: ground disturbance or construction activity including vehicle or equipment access (but excluding access on existing streets or driveways), storage of equipment or materials including soil, temporary or permanent stockpiling, proposed buildings, impervious surfaces, underground utilities, excavation or fill, trenching or other work activities.

~~f. The fence is required to be installed before any ground disturbing activities or construction begins, including clearing and grading, and will remain in place until final inspection.~~ Variances from the prescriptive path protection standards for off-site trees are prohibited. The Urban Forester's determination of whether the prescriptive path standards are met is final and not subject to appeal.

2. Performance Path for Tree Protection-

When the standards of the prescriptive path for tree protection cannot be met for ~~on-site trees as determined by the Urban Forester~~, the applicant may propose alternative measures to modify the prescriptive root protection zone and use a performance path for tree protection, provided the following ~~standards criteria~~ are met as approved by the Urban Forester:

a. ~~The~~ An alternative root protection zone plan is prepared by an ISA ~~e~~Certified ~~e~~Arborist who has examined the specific tree's size, location, and extent of root cover, evaluated the tree's tolerance to construction impacts based on its species and health, and identified any past impacts that have occurred within the root zone.

b. ~~The arborist has prepared a~~ alternative root protection zone plan ~~providing~~ includes the rationale used to demonstrate that the alternate method provides an adequate level of protection based on the findings from ~~the~~ a site visit by the project arborist.

c. ~~If the alternative tree protection method involves alternative construction techniques,~~ the project arborist has provided an explanation of the techniques and materials used.

de. The protection zone is marked with signage, stating that penalties will apply for violations, and providing contact information for the arborist.

~~d. If the alternative tree protection method involves alternative construction techniques, an explanation of the techniques and materials used must be provided by the arborist.~~

~~e. Variances for the Tree Protection standard for off-site trees are prohibited.~~

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~~G~~H. Soil Volume Standards

1. General Standards

~~a.~~ To be eligible for tree canopy credit as outlined in Subsection 16.32.042.D, ~~planted trees to be planted~~ must be provided access to at least 1,000 cubic feet of soil volume according to the standards in this subsection ~~to be eligible for tree canopy credit~~. A soil volume plan ~~prepared~~ prepared by an ISA ~~e~~Certified ~~e~~Arborist is required ~~that and must demonstrate that at least~~ that at least 1,000 cubic feet of soil volume is available per tree as determined by the Urban Forester or designee. Soil volume methods and specifications must be consistent with ISA ~~b~~Best ~~m~~Management ~~p~~Practices using either the prescriptive path or performance path soil volume methods. The project arborist must verify with the Urban Forester in writing that the soil volume plan has been successfully implemented prior to tree planting.

~~1. Prescriptive Path for Soil Volume.~~

~~b~~a. If the existing soils at the site and abutting sites are determined by the project arborist or Urban Forester to be adequate to support healthy tree growth to maturity based on factors including but not limited to compaction levels, drainage, fertility, pH, and potential contaminants, the existing soils may be used to meet the soil volume requirements.

~~c~~b. The assumed soil volume depth for planting will be 3 feet unless otherwise determined by the project arborist or Urban Forester.

~~d~~e. A soil volume area of at least 333 square feet must be accessible to each tree when the assumed soil volume depth is 3 feet.

~~e~~f. The soil volume areas must be continuous and within a 50-foot radius of the tree to be planted. Continuous soil volumes areas must be at least 3 feet wide for the entire area.

~~f~~e. Trees may share the same soil volume area provided that all spacing requirements of this subsection are met.

g. Soil contaminants are prohibited from the soil volume areas.

2. Prescriptive Path for Soil Volume

~~a~~f. Soil volume areas must be protected from construction impacts through any combination of the following methods:

(1) Protection fencing:

(a) Fencing consisting of a minimum 4-foot-~~h~~high metal chain link or no-climb horse fence, secured with 6-foot metal posts established at the edge of the soil volume area on the development site. Existing secured fencing at least 3.5 feet tall can serve as the required protective fencing.

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- (b) When a soil volume area extends beyond the development site, protection fencing is not required to extend beyond the development site. Existing or new secured fencing at least 3.5 feet tall can serve as the required protective fencing.
- (c) Signage designating the protection zone and penalties for violations must be secured in a prominent location on each protection fence.
- (2) Compaction prevention options for encroachment into soil volume areas:
 - (a) Steel plates placed over the soil volume area, or
 - (b) A 12-inch layer of coarse wood chips over geotextile fabric continuously maintained over the soil volume area, or
 - (c) A 6-inch layer of crushed gravel over geotextile fabric continuously maintained over the soil volume area.

~~g. Soil contaminants are prohibited from the soil volume areas.~~

Variations from the prescriptive path soil volume standards for off-site trees are prohibited. The Urban Forester's determination of whether the prescriptive path standards are met is final and not subject to appeal.

32. Performance Path for Soil Volume:

- a. When the standards of the prescriptive path for soil volume cannot be met; or if the existing soils at the site and abutting sites are determined by the Urban Forester to be inadequate to support healthy tree growth to maturity based on factors such as compaction levels, drainage, fertility, pH, and potential contamination prior to or resulting from development, a performance path soil volume plan is required.
- b. Soils in areas of construction access that do not receive compaction prevention treatment and soils in areas of grading, paving, and construction are considered inadequate for tree growth unless a performance path soil volume plan is provided.
- c. ~~The performance path soil volume plan is required to demonstrate the methods that will be used to provide at least 1,000 cubic feet of soil volume with the capacity to support healthy growth to maturity per tree to be planted.~~
- d. ~~The soil volume areas must be continuous and within a 50-foot radius of the tree to be planted. Continuous soil volumes must be at least 3 feet wide for the entire area.~~
- e. ~~Trees may share the same soil volume area provided that all spacing requirements are met.~~
- cf. The following ~~items~~ methods may be addressed in performance path soil volume plans but are dependent on specific site conditions and should be

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submitted by the applicant on a project basis in coordination with other professionals such as civil and geotechnical engineers, landscape architects, and soil scientists as needed:

(1) Compaction Reduction

- (a) tilling
- (b) backhoe turning
- (c) subsoiling

(2) Soil Amendments

- (a) organic amendments
- (b) mineral amendments
- (c) biological amendments
- (d) chemical amendments

(3) Topsoil Replacement (when soil contamination or soil removal occurs)

(4) Soil Under Pavement

- (a) structural soil cells
- (b) structural tree soils
- (c) soil vaults
- (d) soils under suspended pavement

H. Submittal Application Requirements

~~For applications for construction of a new residential dwelling unit that does not result in an expansion of building footprint (Subsection 16.32.042.A.3), applicants must demonstrate compliance with the applicable provisions of Subsection 16.32.042.F by submitting a report including elements outlined in Subsection 16.32.042.H.2. For applications for land subdivision (Subsection 16.32.042.A.1) or construction of a new residential dwelling unit that results in an expansion of the building footprint (Subsection 16.32.042.2) For all applicable developments, applications must be submitted by an ISA eCertified eArborist that is also has the ISA †Tree †Risk †Assessment †Qualifiedcation (TRAQ). Applications must demonstrate compliance with the applicable provisions of Subsections 16.32.042.B through HG. Other professionals such as engineers, landscape architects, soil scientists, and surveyors may assist the project arborist as needed in preparing the required information, but the arborist must organize, review, and approve the final product. The minimum submittal requirements include an inventory of existing trees, tree preservation plan (if applicable), tree canopy planting plan (if applicable), and arborist report, and payment of review fee as established in the Consolidated Fee Schedule.~~

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~~with~~ The following ~~elements~~ establishes requirements for the various submittal components:

1. ~~Tree Inventory Requirements~~

- a. ~~Survey the locations of all trees~~ Trees with any of the following characteristics must be inventoried:
 - (1) at least 6-inch DBH or greater;
 - (2) all trees at least 2-inch DBH or greater that are listed on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List; and/or
 - (3) trees less than 6-inch DBH as specified for species listed on the City of Milwaukie Rare or Threatened Tree List; and/or
 - (4) less than 6-inch DBH that will be preserved and included in the calculation of required canopy.
- b. The location of all trees meeting the requirements of 16.32.042.1.1.a. must be identified, including:
 - (1) Trees that must be surveyed include those that are On-site trees;
 - (2) Trees within abutting public rights-of-way; and
 - (3) Trees on abutting sites and in the abutting right-of-way with root protection zones that extend into the site.

The locations and information for trees on abutting sites may be estimated.

- ~~c~~. Number each inventoried tree for identification at the site and on the plans.
- ~~d~~. Identify the common name and scientific name of each inventoried tree.
- ~~e~~. Measure the DBH of each inventoried tree in inches according to accepted ISA standards.
- ~~f~~. Measure the approximate average crown radius of each inventoried tree in feet.
- ~~g~~. Provide the crown area of each inventoried tree using the following formula:
(crown radius)² x π .
- ~~h~~. Assess the health condition of each inventoried tree using the following categories:
 - (1) Good (no significant health issues)
 - (2) Fair (moderate health issues but likely viable for the foreseeable future)
 - (3) Poor (significant health issues and likely in decline)
 - (4) Very Poor or Dead (in severe decline or dead)
- ~~i~~. Identify whether the inventoried tree is on the Milwaukie Rare or Threatened Tree List.

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- ij. Identify whether the inventoried tree is proposed for removal or ~~retained~~retention.
 - jk. Organize the tree inventory information in a table or other format approved in writing by the Urban Forester.
2. Tree Preservation Plan ~~Requirements~~
- a. Provide a site plan drawn to scale.
 - b. Include the existing tree locations and corresponding tree numbers from the tree inventory and identify which trees are subject to potential impacts identified in 16.32.042.I.2.d.
 - c. Identify rare or threatened trees as described in the ~~City of Milwaukee~~ Rare or Threatened Tree List.
 - d. Identify the following site disturbances to scale:
 - (1) Demolition
 - (2) Tree removal
 - (3) Staging, storage, and construction access
 - (4) Grading and filling
 - (5) Paving
 - (6) Construction of structures, foundations, and walls
 - (7) Utility construction
 - (8) Trenching and boring
 - (9) Excavation
 - (10) Any other demolition or construction activities that could result in ground disturbances and/or tree damage
 - e. Locate tree and soil protection fencing to scale.
 - f. Locate soil compaction prevention methods to scale.
 - g. Identify prescriptive/performance path tree protection and soil volume areas.
 - h. Include tree and soil volume protection specifications from the arborist report on the plans including a detailed ~~and~~ description of tree and soil volume protection fencing and signage.
 - i. The elements of the tree preservation plan may be included on multiple plan sheets for clarity.
 - j. The final approved set of construction drawings must include the tree preservation plan to ensure contractors, inspectors, and other professionals have access to the information.
3. Tree Planting Plan
- a. Provide a site plan drawn to scale.

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- b. Include the existing trees to be retained and their crown areas to scale.
 - c. Include the trees to be planted and their mature crown areas to scale based on the ~~City of Milwaukie~~ Mature Tree Canopy Crown Area List.
 - d. Identify the soil volume areas for each tree to be planted to scale.
 - e. For prescriptive/performance path soil volume areas, identify the methods and specifications as applicable for:
 - (1) Protection fencing (including signage details);
 - ~~(12)~~ Compaction Reduction;
 - ~~(23)~~ Soil Amendments;
 - ~~(34)~~ Topsoil Replacement; and/or
 - (45) Soil Under Pavement
 - f. ~~Include a diagram depicting the tree planting that is~~ should demonstrate consistency with ISA ~~Best Management Practices~~.
 - ~~g. The minimum size of planted trees is 1.5-inch caliper for broadleaf trees and 5-foot tall for conifers unless otherwise approved by the Urban Forester. Nursery stock must be in good health with the size and quality consistent with ISA best management practices and ANSI Z60.1 standards.~~
 - ~~h. The species selection and spacing of trees to be planted must be such that it provides for the eventual mature size of the trees. Soil type, soil conditions and other site constraints shall be considered when selecting species for planting. Final site plans must be approved by the Urban Forester.~~
 - ~~i. Root barriers must be installed according to the manufacturer's specifications when a tree is planted within 5 feet of pavement or an underground utility box unless otherwise approved by the Urban Forester.~~
 - ~~j. Where there are overhead high voltage utility lines, the tree species selected must be of a type that, at full maturity, will not require pruning to avoid interference with the lines.~~
 - ~~lg.~~ The elements of the tree canopy planting plan may be included on multiple plan sheets for clarity.
 - ~~mh.~~ The final approved set of construction drawings must include the tree canopy plan to ensure contractors, inspectors, and other professionals have access to the information.
4. Arborist Report
- a. Provide a written narrative that summarizes the information from the tree inventory, tree preservation plan, and tree canopy planting plan.

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- b. Provide findings and calculations that demonstrate whether the tree preservation standards in Subsection 16.32.042.B have been met.
- c. Provide findings and calculations that demonstrate whether the tree planting standards in Subsection 16.32.042.C have been met.
- d. If the tree preservation and/or tree planting standards have not been met, provide calculations for the applicable tree mitigation fees as required by Subsection 16.32.042.~~ED~~.
- e. If the applicant is seeking a variance to the tree preservation and/or tree planting standards in place of providing mitigation fees, provide findings that demonstrate the proposal provides equivalent or greater environmental benefits as preserving or planting the required tree canopy consistent as required by Subsection 16.32.042.~~EE~~.
- f. Provide findings that demonstrate compliance with the tree protection standards in Subsection 16.32.042.~~GF~~.
- g. Provide findings that demonstrate compliance with the soil volume standards in Subsection 16.32.042.~~HG~~.

I. ~~Non-Development Tree Permit Requirements~~ 16.32.044 NON-DEVELOPMENT PRIVATE TREE REMOVAL IN RESIDENTIAL ZONES

The City encourages retention of healthy private trees where practical alternatives to removal exist, and where those alternatives meet the owner's objectives for reasonable use and enjoyment of the property. Where there is discretion in a decision about non-development private tree removal, various factors are considered to ensure that significant adverse impacts are avoided or mitigated, weighing the broader economic, ecological, and community concerns.

A. ~~1.~~ Applicability

A permit is required prior to the removal of the following private trees in residential zones ~~on property that is outside the right-of-way and not owned or maintained by the City:~~

- 1. ~~a.~~ Trees that are at least 6-inch DBH.
- 2. ~~b.~~ Trees that are less than 6-inch DBH as specified on the ~~City of Milwaukie~~ Rare or Threatened Tree List.
- 3. ~~c.~~ Trees that were planted to meet any requirements in ~~Subsections 16.32.042 and 16.32.044.~~

B. Permit Exemptions

Tree removal ~~P~~ermits are not required in residential zones when:

- 1. ~~T~~ree removal is approved with development ~~listed as provided~~ in Subsection 16.32.042.A.

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- ~~2. Permits are also not required in residential zones for~~ The removal of trees that are grown for commercial agricultural or horticultural purposes including fruit trees, nut trees, or holiday trees.

C. Applications

An application for a tree removal permit must be made upon forms prescribed by the City and contain the following:

1. Photograph(s) that clearly identify the tree(s) proposed for removal.
2. The number, DBH, species, and location of the trees proposed to be cut on a site plan of the property drawn to scale.
3. Information as to whether the tree is within a Habitat Conservation Area overlay district or is part of an approved landscape or mitigation plan.
4. Any additional information required by the City.
5. An application for a tree cutting permit must be accompanied by the correct fee as established in the Consolidated Fee Schedule.

~~D2.~~ Type A+ Tree Removal Permit

Type A+ tree removal permits are technical determinations regarding the facts of a particular request and the application of City standards to ensure that work is performed in accordance with ISA ~~Best~~ Management Practices to protect trees, the public, and public infrastructure, and to ensure appropriate tree replacement. Type A+ permits are reviewed administratively by the Urban Forester without public notice, and the decision may be appealed to the City Manager by the applicant.

1. Application Requirements

- a. Applications for a Type A+ tree removal permit must meet the submittal requirements of Subsection 16.32.044.C.
- b. Additional information may also be required.
 - 1) If the Urban Forester requires additional information to review an application, the Urban Forester will send a notice to the applicant requesting the additional information.
 - 2) The applicant will have a maximum of 30 days from the date of the Urban Forester's notice to submit the additional information.
 - 3) If the additional information is not received by the Urban Forester within 30 days from the date of the Urban Forester's notice, the application will be voided on the 31st day, with no refund of the filing fee.

~~The following approval standards will be applied to type 1 tree removal permits by the Urban Forester:~~

~~2a.~~ Approval StandardsCriteria

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A ~~tree~~ tree permit will be issued only if the following criteria are met, as determined by the Urban Forester:

- ~~a.(1)~~ The proposed tree removal will be performed according to current ISA Best Management Practices.
- ~~b.(2)~~ The tree proposed for removal meets one or more of the following criteria:
 - ~~(a1)~~ The tree is dead or dying and cannot be saved as determined by an ISA Certified Arborist in accordance with ISA standards.
 - (2) The tree has sustained physical damage that will cause it to die or enter an advanced state of decline. The City may require additional documentation from an ISA Certified Arborist to demonstrate that this criterion is met.
 - ~~(b3)~~ The tree is having an adverse effect on adjacent infrastructure or buildings that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.
 - ~~(c) The tree has sustained physical damage that will cause it to die or enter an advanced state of decline. The City may require additional documentation from an ISA Certified Arborist to demonstrate that this criterion is met.~~
 - ~~(d4)~~ The tree poses an unreasonable risk to the occupants of the property, the adjacent property, or the general public, as determined by an ISA Certified Arborist that is Tree Risk Assessment Qualified (TRAQ) in accordance with current ISA tree risk-Risk assessment-Assessment standardsBest Management Practices.
 - ~~(e5)~~ The tree is on the Oregon State Noxious Weed List or the Milwaukie Invasive Tree List.
 - ~~(f6)~~ The tree is part of a stormwater management system and has grown too large to remain an effective part of the system.
 - ~~(g7)~~ The tree location conflicts with areas of public street widening, construction, or extension as shown in the Transportation System Plan and there is no practicable alternative to removing the tree.
 - ~~(h8)~~ Tree removal is required for the purposes of a building or land use permit, utility or infrastructure installation, or utility or infrastructure repair and there is no practicable alternative to removing the tree.
 - ~~(i9)~~ The tree is recommended for removal by a designated fire marshal for Clackamas County because it presents a significant fire risk to habitable structures or limits emergency access for rescue workers, and the risk or access issue cannot be abated through pruning or other means that would results in tree retention.

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(j)10) An ISA ~~e~~Certified ~~a~~Arborist determines that thinning of interior trees within a stand of trees is necessary for overall stand health, the thinning will result in no less than eighty percent (80%) canopy cover at maturity for the area to be thinned, and that thinning of non-native trees is maximized prior to thinning of native trees.

(k)11) Healthy trees. One (1) healthy tree may be removed per tax lot per 12-month period if the tree ~~meets the following~~:

- ~~i. The tree~~ is less than 12 inches in diameter at breast height; and is not
- ~~ii. None of the trees are~~ required to be preserved by a condition of a land use review, a provision of ~~this e~~Chapter 16.32 or Title 19, or as part of a required stormwater facility.

3.3) Mitigation Requirements

Unless removed for thinning purposes (Subsection ~~16.32.042.1.2.a.j~~ 16.32.044.D.2.b(10)) or invasive species status (Subsection ~~16.32.042.1.2.a.e~~ 16.32.044.D.2.b(5)), replacement of a removed tree is required as mitigation. ~~†~~The Urban Forester will condition the removal of each healthy tree upon the planting of a replacement tree as follows:

a.(a) The minimum size of replacement trees is 1.5-inch caliper for broadleaf trees and 5-foot tall for conifers unless otherwise approved by the Urban Forester. ~~Nursery stock~~Trees planted must be in good health with the size and quality consistent with ISA ~~b~~Best mManagement ~~p~~Practices and ANSI Z60.1 standards.

b.(b) Replacement trees must be planted in a manner consistent with ISA ~~b~~Best mManagement ~~p~~Practices.

c.(c) The replacement tree must substantively replace the function and values of the tree that was removed wherever practicable. For example, a long-lived evergreen native tree that abuts a designated Nnatural Resources Overlay Zone area (as per Section 19.402) must be replaced with a long-lived evergreen native tree that abuts a designated Nnatural Resources Overlay Zone area.

d.(d) If planting a replacement tree is not practicable, the Urban Forester may allow a tree replacement fee in lieu according to the ~~Master Fee~~ Schedule Consolidated Fee Schedule ~~based on the cost of planting and maintaining a replacement tree for 3 years.~~

4. Decision by the Urban Forester

a. The Urban Forester's decision will be based on an evaluation of the facts and applicable standards and review criteria in Subsection 16.32.044.D.2.

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- b. The Urban Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review criteria and standards.
- c. Any work done under a permit must be performed in strict accordance with the terms and provisions of this chapter and conditions of approval of the permit.
- d. The Urban Forester must notify the applicant of the decision in writing.
- e. If no appeal is filed as specified in Subsection 16.32.044.H, the decision of the Urban Forester is final.

E3. Type B2 Tree Removal Permit

A ~~†Type B2~~ tree removal permit may be approved by the Urban Forester if the ~~†Type A+~~ tree removal approval standards cannot be met. Type B2 permits involve the consideration of relevant technical and qualitative factors to prevent risks to public health and safety and to ensure that the impacts of tree removal are mitigated. Type B2 permits are reviewed administratively by the Urban Forester. The †Type B2 process is more discretionary than the †Type A+ process and may consider a range of options for approving, approving with conditions, or denying a tree removal permit application.

1. Application Requirements

- a. Applications for a Type B2 tree removal permit must meet the submittal requirements of Subsection 16,32.044.C.
- b. Additional information may also be required.
 - 1) If the Urban Forester requires additional information to review an application, the Urban Forester will send a notice to the applicant requesting the additional information.
 - 2) The applicant will have a maximum of 30 days from the date of the Urban Forester's notice to submit the additional information.
 - 3) If the additional information is not received by the Urban Forester within 30 days from the date of the Urban Forester's notice, the application will be voided on the 31st day, with no refund of the filing fee.
 - 4) Public notice is required if the tree is healthy and larger than 12 inches DBH.

2.a. Review and Approval Criteria

~~The City encourages retention of healthy private trees where practical alternatives to removal exist, and where those alternatives meet the owner's objectives for reasonable use and enjoyment of the property. Factors are considered to ensure that significant adverse impacts are avoided or mitigated, weighing the broader economic, ecological, and community concerns. These decisions are fact-specific and are made on a case-by-case basis. The City will~~

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not issue a ~~†~~ Type B2 permit for the removal of a healthy, functioning tree without a demonstration by the applicant that extraordinary circumstances exist. Maintenance or the replacement of pavement, removal of tree litter, or other minor inconveniences ~~do~~ may or may not constitute extraordinary circumstances.

Decisions regarding removal of healthy, functioning trees are fact-specific and are made on a case-by-case basis by the Urban Forester. In determining whether extraordinary circumstances exist that warrant the major pruning or removal of a healthy tree, the Urban Forester will consider:

- ~~a.(1)~~ Whether the species of tree is appropriate for its location;
- ~~b.(2)~~ ~~Whether the species of tree is an invasive species;~~
- ~~c.(3)~~ Whether the crown, stem, or root growth has developed in a manner that would prevent continued healthy growth or is negatively impacting other trees;
- ~~d.(4)~~ Whether maintenance of the tree creates an unreasonable burden for the property owner; and
- ~~e.(5)~~ Whether the removal will significantly affect public safety or neighborhood character based on the following:
 - ~~(a1)~~ The age, size, form, species, general condition, pruning history and any unique qualities or attributes of the trees;
 - ~~(b2)~~ The cumulative impacts of current and prior tree removals in the area; and
 - ~~(c3)~~ When the tree is associated with a grove, whether removal of the tree will have a significant adverse impact on the viability of other trees or make other trees considerably more vulnerable to windthrow.

3.b. Approval Standards Mitigation Requirements

a. Replacement of a removed tree is usually required as mitigation.

~~A.~~ The Urban Forester will at a minimum condition the removal of a tree based on Subsection 16.32.042.1.2.a.3 16.32.044.D.3 (planting standards and exceptions for thinned or invasive-species trees). In addition, and the Urban Forester will condition the removal of each tree upon the planting of additional replacement tree(s) as outlined in Table 16.32.042.1.3.b 16.32.044.E.3:

Table		Replacement Tree
Diameter at Breast Height (DBH) of Tree Removed	Number of Additional Replacement Trees Required: <u>Beyond 1:1 Replacement</u>	Total Replacement Trees Required for Type 2 Permit

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6" DBH to <12" DBH	--	1 tree
12" DBH to <24" DBH	1 tree	2 trees
24" DBH to <36" DBH	2 trees	3 trees
36" DBH or greater	3 trees	4 trees

b. In addition, mitigation fees must be provided to the Tree Fund for each healthy private tree removed in conjunction with an approved Type B permit. See the Consolidated Fee Schedule for details.

4. Applications

~~An application for a tree removal permit must be made upon forms prescribed by the City and contain the following:~~

- ~~a. Photograph(s) that clearly identify the tree(s) proposed for removal.~~
- ~~b. The number, DBH, species, and location of the trees proposed to be cut on a site plan of the property drawn to scale.~~
- ~~c. Information as to whether the tree is within a Habitat Conservation Area overlay district or is part of an approved landscape or mitigation plan.~~
- ~~d. Any additional information required by the City.~~
- ~~e. An application for a tree cutting permit must be accompanied by the correct fee as established in the Master Fee Schedule.~~

4. Decision by the Urban Forester

- a. The Urban Forester's decision must be based on an evaluation of the facts and applicable standards and review factors in Subsection 16.32.044.E.2.
- b. The Urban Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review factors and standards.
- c. Any work done under a permit must be performed in strict accordance with the terms and provisions of this chapter and conditions of approval of the permit.
- d. The Urban Forester must notify the applicant of the decision in writing.
- e. If no appeal is filed as specified in Subsection 16.32.044.E.5, the decision of the Urban Forester is final.

5. Appeals

The applicant may appeal the Urban Forester's decision.

- a. Appeals must be:

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- 1) Filed with the Urban Forester on forms prescribed by the City;
- 2) Filed within 14 days from the date of the Urban Forester's decision; and
- 3) Specifically identify how the Urban Forester erred in applying the standards or review criteria.

b. Appeals are heard by the City Manager.

- 1) The City Manager will consider the application against the applicable standards or review criteria, taking into consideration information provided by the applicant and City staff.
- 2) The City Manager may affirm or reverse the Urban Forester's decision or remand the decision to the Urban Forester to determine appropriate mitigation actions.
- 3) The appeal decision of the City Manager is final and may not be appealed to another review body within the City.

5. ~~Application Procedures Type 1 Tree Removal Permit~~

~~Type 1 permits are technical determinations regarding the facts of a particular request, and applications of city standards to ensure that work is performed in accordance with best management practices to protect trees, the public, or public infrastructure, and to ensure appropriate tree replacement. Type 1 permits are reviewed administratively by the Urban Forester without public notice, and the decision may be appealed to the City Manager by the applicant.~~

a. ~~Application Procedures Type 1 Tree Removal Permit~~

- (1) ~~Applications for a Type 1 Tree Removal Permit must meet the requirements of Subsection 16.32.042.1.4.~~
- (2) ~~Additional information required.~~
 - (a) ~~If the Urban Forester requires additional information to review an application, the Urban Forester will send a notice to the applicant requesting the additional information.~~
 - (b) ~~The applicant will have a maximum of 30 days from the date of the Urban Forester's notice to submit the additional information.~~
 - (c) ~~If the additional information is not received by the Urban Forester within 30 days from the date of the Urban Forester's notice, the application will be voided on the 31st day. The City will not refund the filing fee.~~

b. ~~Decision by the Urban Forester~~

- (1) ~~The Urban Forester's decision will be based on an evaluation of the facts and applicable standards and review criteria in Subsection 16.32.042.1.2.a.~~

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- ~~(2) The Urban Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review criteria and standards.~~
- ~~(3) Any work done under a permit must be performed in strict accordance with the terms and provisions of this chapter and conditions of approval of the permit.~~
- ~~(4) The Urban Forester must notify the applicant of the decision in writing.~~
- ~~(5) If no appeal is filed as specified in subsection 7, the decision of the Urban Forester is final.~~

6. Application Procedures Type 2 Tree Removal Permit

~~Type 2 Tree Removal permits involve the consideration of relevant technical and qualitative factors to prevent risks to public health and safety and to ensure that the impacts of tree removal are mitigated and may require public notice as set forth below. Type 2 permits are reviewed administratively by the Urban Forester, and the decision may be appealed to the City Manager by the applicant.~~

a. Application

- ~~(1) Generally. Applications for a Type 2 Tree Removal Permit must meet the requirements of Section 16.32.042-1.4.~~
- ~~(2) Additional information required:
 - ~~(a) If the Urban Forester requires additional information to review an application, the Urban Forester will send a notice to the applicant requesting the additional information.~~
 - ~~(b) The applicant will have a maximum of 30 days from the date of the Urban Forester's notice to submit the additional information.~~
 - ~~(c) If the additional information is not received by the Urban Forester within 30 days from the date of the Urban Forester's notice, the application will be voided on the 31st day. The City will not refund the filing fee.~~
 - ~~(d) Public notice is required if the tree is healthy and larger than 12 inches in diameter at breast height.~~~~

b. Decision by the Urban Forester

- ~~(1) The Urban Forester's decision must be based on an evaluation of the facts and applicable standards and review factors in Subsection 16.32.042-1.3.~~
- ~~(2) The Urban Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review factors and standards.~~

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~~(3) Any work done under a permit must be performed in strict accordance with the terms and provisions of this chapter and conditions of approval of the permit.~~

~~(4) The Urban Forester must notify the applicant of the decision in writing.~~

~~(5) If no appeal is filed as specified in Subsection 16.32.042.1.6.c below, the decision of the Urban Forester is final.~~

~~c. Appeal~~

~~The applicant may appeal the Urban Forester's decision. Appeals must be:~~

~~(1) Filed with the Urban Forester on forms prescribed by the City;~~

~~(2) Filed within 14 days from the date of the Urban Forester's decision; and~~

~~(3) Specifically identify how the Urban Forester erred in applying the standards or review criteria.~~

~~(4) Appeals are heard by the City Manager.~~

~~(5) The City Manager will consider the application against the applicable standards or review criteria, taking into consideration information provided by the applicant and City staff.~~

~~(6) The City Manager may affirm or reverse the Urban Forester's decision or remand the decision to the Urban Forester to determine appropriate mitigation.~~

~~(7) The appeal decision of the City Manager is final and may not be appealed to another review body within the City.~~

Article IV Miscellaneous Provisions

16.32.080 PROGRAMMATIC PERMITS

Programmatic permits may be issued by the Urban Forester for routine public facility or utility operation, planned repair and replacement, and on-going maintenance programs on street trees, public trees, and private trees. The purpose of a programmatic permit is to eliminate the need for individual permits for tree removal, pruning, or for ongoing activities that cover a wide geographic area and may include the pruning or removal of numerous street trees, public trees, and private trees. Programmatic permits are evaluated to prevent cumulative adverse impacts to the urban forest and ensure that any permitted activities meet the goals and objectives of the Urban Forest Management Plan.

A. Applicability

Programmatic permits may only be issued to a public agency or a utility as defined in this chapter.

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B. Application Requirements

Applications for programmatic permits must be submitted in writing or electronically on forms provided by the City and be accompanied by the correct fee.

C. Permit

Approved permits must include the following required information. The Urban Forester may modify the permit at any time to respond to any questions, changes in regulations, or previously unforeseen issues, provided the applicant is notified in writing.

1. Duration. The Urban Forester may approve a programmatic permit for a period of up to 2 years;
2. Geographic area covered by the permit;
3. Permitted activities and any restrictions on the method, number, type, location, or timing of activities;
4. Procedures and thresholds for providing notice to residents, businesses, and the City impacted by the performance of work under the permit;
5. Monitoring, performance tracking, and reporting requirements. The Urban Forester may prescribe rules or procedures that specify the manner in which such tracking and reporting occur; and
6. Traffic control requirements.
7. Annual Report

On the anniversary of permit issuance, the applicant must submit an annual report on a form supplied by the City detailing any work performed under the permit and any work scheduled to be performed.

8. Tree Size Limits

- a. The programmatic permit will not allow the removal of trees 6-inch" or more in diameter at breast height, except as provided in this section.
- b. If an applicant requests removal of a healthy tree 6-inch " or more in diameter at breast height at time of application or during the period in which the programmatic permit is in effect, an opportunity for public comment will be provided in accordance with Subsection 16.32.026 B.2
- c. For any request, the Urban Forester may further limit allowed tree removal in order to meet the review criteria in Subsection 16.32.028F.

9. Tree Work

All work performed under a programmatic permit must be performed in accordance with ISA ~~arboricultural practices~~Best Management Practices.

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D. Completeness

1. If the Urban Forester determines an application is incomplete, the Urban Forester will provide written notice to the applicant that describes the additional information needed.
2. The applicant must submit the additional information within 30 days from the date of the notice unless extended in writing by the Urban Forester.
3. If the applicant does not furnish the additional information within 30 days from the date of the notice or any extension granted in writing by the Urban Forester, the application will be denied.

E. Notice of Complete Application

When the Urban Forester determines that the application is complete, the Urban Forester must provide written notice that the application is complete to the applicant and the Tree Board. The notice must provide instructions for how to obtain additional information about the application, comment on the application, and request notification of the Urban Forester's decision.

F. Review Criteria

The Urban Forester may approve a programmatic permit upon a determination that the following criteria are satisfied or will be satisfied with conditions:

1. The proposed activity will result in a net gain to the urban forest functions and benefits described in the purpose statement in Subsection 16.32.005 considering the applicant's proposed performance measures, proposed tree planting, and other activities proposed to improve the overall health of the urban forest.
2. The applicant's proposed outreach and notification program provides adequate notice to residents, businesses, and the City prior to performing work authorized under the programmatic permit.

G. Decision

The Urban Forester must issue the permit, issue the permit with conditions of approval, or deny the permit within 120 days of determining the application is complete. The Urban Forester's decision will be final and, if approved, the permit will be valid for a period of up to two years. An applicant may request an amendment to an unexpired permit if the conditions and circumstances have changed. The Urban Forester's decision will be based on an evaluation of the application against the applicable review criteria in Subsection 16.32.028 F.

H. Revocation

The Urban Forester may revoke a programmatic permit upon a determination that the applicant is not adhering to the terms of the permit or is acting beyond the activities authorized by permit.

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16.32.082 COORDINATION WITH OTHER REGULATIONS

A. ~~16.32.020 PRUNING, CORNER CLEARANCE~~ Street, Sidewalk, Traffic Control Devices, and Vision Clearance

Subject to enforcement under Section Chapters ~~12.12.010~~ and 12.24, property owners for public trees and private trees, and adjoining property owners for street trees, must not allow ~~any tree, shrub, or other woody vegetation~~ any tree to ~~overhanging any street, sidewalk or right-of-way~~ or obstruct traffic control devices or inhibit the safe use at intersections ~~within the City must be maintained by the owner to ensure that no vegetation obstructs the right-of-way.~~

B. Dead, Decaying, Dangerous, Diseased, or Infested Tree or Tree Limb Removal

Subject to enforcement under Subsection 8.04.110B,

~~16.32.021 DEAD OR DISEASED TREE REMOVAL ON PRIVATE LAND~~

~~The City may require the removal of any tree, shrub, or other woody vegetation or tree limb that is dead, decaying, dangerous, diseased, or infested and that poses a significant risk to the public, adjoining property or the urban forest as determined by the Urban Forester.~~

~~The City or its agents will notify the owners of such trees in writing.~~

~~Removal under this section must be completed within the time period specified in the written notice unless extended in writing by the Urban Forester.~~

~~The owner responsible party must notify the City in writing when the required removal has been completed.~~

~~If the owner responsible party does not remove the dead, decaying, dangerous, diseased, or infested vegetation tree or tree limb within the time period specified in the notice or extension granted in writing by the Urban Forester, the vegetation will be declared a nuisance and will be subject to further enforcement pursuant to MMC Chapter 8.04. the City will have the right to remove the dead, diseased, or infested vegetation and charge the cost of removal to the owner pursuant to MMC Chapter 8.04.~~

~~In cases where the owner demonstrates extreme financial hardship, the City Manager may grant a cost waiver in accordance with Section ~~16.32.0382~~.~~

C. Business Tax or Metro License Required

Subject to enforcement under Chapter 5.08, all businesses doing arboricultural work within the City must have paid the Milwaukie business tax or have a current business license with the Metropolitan Service District.

D. Zoning Code

In addition to Chapter 16.32 and subject to enforcement under Section 8.04.135, trees are required to be preserved, planted, and permitted for removal under:

1. Section 19.401 Willamette Greenway
2. Section 19.402 Natural Resources

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3. Section 19.606 Parking Lot Standards

4. Section 19.708 Transportation Facility Requirements

E. Tree Board

The Tree Board is an advisory board to the City Council, with duties and responsibilities established in Section 2.18.

Article V Enforcement and Penalties

16.32.100 J. Enforcement~~ENFORCEMENT~~

~~1. City Authority: The City has the ultimate authority to:~~

~~a. Interpret the provisions of this section and determine whether code criteria have been met.~~

~~b. Establish conditions of permit and land use approval to ensure this section is properly implemented.~~

~~c. Create rules and procedures as needed to implement this section. Rules and procedures may include but are not limited to:~~

~~(1) City of Milwaukie tree lists.~~

~~(2) Tree protection standards, specifications, and procedures.~~

~~(3) Tree planting standards, specifications, and procedures.~~

~~(4) Tree establishment and maintenance standards, specifications, and procedures.~~

~~(5) Performance bonding, letters of credit, and cash assurances to help ensure proper tree protection, planting, and establishment.~~

~~(6) Tree protection inspections and oversight.~~

~~(7) Soil protection inspections and oversight.~~

~~(8) Performance path tree protection standards and specifications.~~

~~(9) Performance path soil volume standards and specifications.~~

~~(10) Fees for permit applications, reviews, mitigation, inspections, and violations.~~

A. Interpretations

1. A tree that is removed without an approved removal permit will be considered an unpermitted healthy tree removal.

2. Tree topping, unless otherwise permitted, will be an unpermitted healthy tree removal.

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3. If a tree is removed without a permit, a violation will be determined by measuring the stump. A stump that is eight (8) caliper inches or more in diameter will be considered prima facie evidence of a violation of this chapter.
4. Proof of violation of this chapter will be deemed prima facie evidence that such violation is that of the owner of the property upon which the violation was committed.

B. Violations

The following are considered violations of the tree code (Chapter 16.32).

1. Removal or Topping. Removal or topping of a tree regulated by Chapter 16.32 without an approved permit from the City.
2. Removal – Approved Permit. ~~Removal of a tree in violation of an approved permit.~~
3. Damaging a Tree. Willfully or negligently damaging a tree regulated by Chapter 16.32.
4. ~~Failure to Comply with Permit. Failure to meet a condition of an approved permit.~~
5. Major Pruning without a Permit. Major pruning of a street tree or public tree without an approved permit from the City.

~~16.32.023 INTERFERENCE WITH CITY~~

6. Interference with the City. No person will prevent, delay, or interfere with the Urban Forester or designee while they are engaged in work activities including, but not limited to inspection of trees subject to the provisions of this chapter, planting, cultivating, mulching, pruning, spraying, or removing any street tree, public tree, or private tree.
7. Removal of Stump. Removal of the stump of a tree removed without a tree removal permit.
8. Root Protection Zone Disturbance. Willfully or negligently do the following in the Root Protection Zone (RPZ): unauthorized ground disturbance or construction activity including vehicle or equipment access (but excluding access on existing streets or driveways), storage of equipment or materials including soil, temporary or permanent stockpiling, proposed buildings, impervious surfaces, underground utilities, excavation or fill, trenching or other work activities.
9. Soil Contamination. Willfully or negligently allow soil contaminants in the soil volume area.

C2. Penalties

The following penalties may apply to violations of the provisions of ~~this section~~Chapter 16.32:

1. a. A person who ~~removes a tree regulated by this section without first obtaining the necessary permit from the City, removes a tree in violation of an approved~~

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~~permit, or violates Chapter 16.32 a condition of an approved permit will, upon conviction thereof, be punished by a fine not to exceed must pay a fine in an amount established in the Master Fee Schedule~~Consolidated Fee Schedule.

~~2b.~~ 2b. Topping, pruning, or otherwise inflicting willful and negligent damage to a tree crown or roots in a manner that is inconsistent with ISA ~~b~~Best ~~m~~Management ~~p~~Practices:

~~a.(1)~~ a.(1) A fine ~~U~~up to the amount established in the ~~Master Fee Schedule~~Consolidated Fee Schedule or up to the appraised loss in value of the illegally topped or pruned tree as determined by an ISA ~~e~~Certified ~~a~~Arborist plus the arborist's reasonable appraisal fee.;

~~b.(2)~~ b.(2) Restoration of the tree crown, trunk, or root system as prescribed by an ISA ~~e~~Certified ~~a~~Arborist and approved by the Urban Forester.

~~3c.~~ 3c. Tree protection zone violations:

~~a.(1)~~ a.(1) A fine ~~U~~up to the amount established in the ~~Master Fee Schedule~~Consolidated Fee Schedule.

~~b.(2)~~ b.(2) Restoration of the tree protection zone as prescribed by an ISA ~~e~~Certified ~~a~~Arborist and approved by the Urban Forester.

~~4d.~~ 4d. ~~Evidence of Violation~~General Penalty

~~a.(1)~~ a.(1) ~~If a tree is removed without a type 1 or 2 tree removal permit, a violation will be determined by measuring the stump. A stump that is eight (8) caliper inches or more in diameter will be considered prima facie evidence of a violation of this chapter. A person violating any of the provisions of this chapter must will, upon conviction thereof, be punished by a fine not to exceed one thousand dollars (\$1,000.00), if there is not a corresponding fine in the Consolidated Fee Schedule.~~

~~b.~~ b. ~~Each day's violation of a provision of this chapter constitutes a separate offense.~~

~~(2)~~ (2) ~~Removal of the stump of a tree removed without a tree removal permit is a violation of this chapter.~~

~~(3)~~ (3) ~~Proof of violation of this chapter will be deemed prima facie evidence that such violation is that of the owner of the property upon which the violation was committed.~~

CHAPTER 16.32 TREE CODE

Article I General Provisions

16.32.005 PURPOSE

The purpose of this chapter is to establish processes and standards that ensure the City maximizes the environmental, economic, health, community, and aesthetic benefits provided by its urban forest. It is the intent of this code to establish, maintain, and increase the quantity and quality of tree cover in the City, and to ensure our urban forest is healthy, abundant, and climate resilient.

This code is designed to:

1. Foster urban forest growth to achieve 40% canopy coverage by 2040.
2. Maintain trees in a healthy condition through best management practices.
3. Manage the urban forest for a diversity of tree ages and species.
4. Manage street trees appropriately to maximize benefits and minimize hazards and conflicts with infrastructure.
5. Ensure the preservation and planting of tree canopy with development and redevelopment of housing in residential zones.
6. Regulate the removal, replanting, and management of trees prior to and following development and redevelopment in residential zones.
7. Implement applicable urban forest goals, policies, objectives, and action items in the Comprehensive Plan, Climate Action Plan, and Urban Forest Management Plan.

16.32.010 DEFINITIONS

The following definitions will apply for terminology used in this chapter. If a definition is not listed in this chapter, the definition in Title 19 will apply. Where definitions are not provided in this chapter or Title 19, their normal dictionary meaning will apply:

“Arbor Day/Week” means a day/week designated by the City to celebrate and acknowledge the importance of trees in the urban environment.

“Arboriculture” means the practice and study of the care of trees and other woody plants in the landscape.

“Building footprint” means the area covered by the outer structural walls of a building, measured in sq ft. Included in the calculation of footprint are: roofed structures that are not fully enclosed; building features such as patio covers, roofed porches, and decks; or similar features with a surface height of more than 18 in above average grade.

Footprint does not include eaves.

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“Canopy” is the layer of leaves, branches and stems of trees that cover the ground when viewed from above. Canopy cover is measured as the proportion of a fixed area of the ground covered by tree crowns.

“City” means the City of Milwaukee.

“City Engineer” means the city engineer of the City of Milwaukee or designee.

“City Manager” means the city manager or the city manager’s authorized representative or designee.

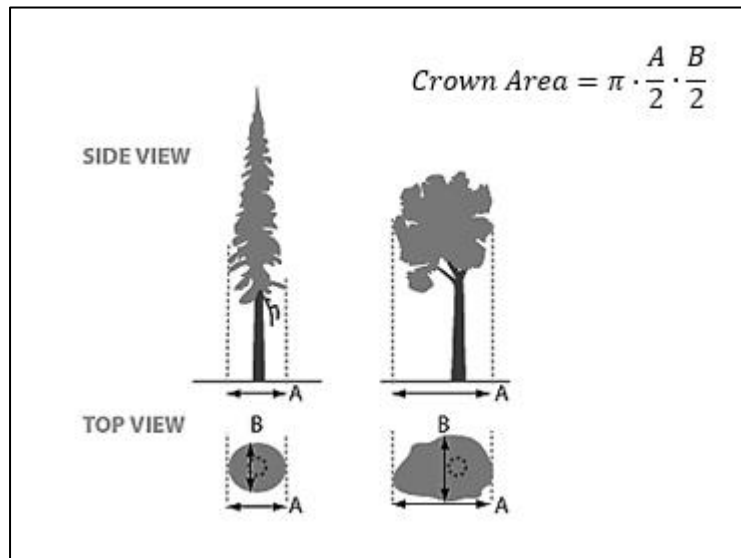
“Consolidated Fee Schedule” is the schedule of City fees and charges adopted by City Council for the services provided by the City.

“Council of Tree and Landscape Appraisers (CTLA)” means the publishers of the Guide for Plant Appraisal.

“Crown” means area of the tree above the ground, measured in mass, volume, or area extending from the trunk and including the branches, stems, leaves, and reproductive structures.

“Crown Area” means the average area in square feet that the tree crown covers (see Figure 16.32.010-1).

Figure 16.32.010-1 – Measuring Crown Area



“Cutting” means the felling or removal of a tree, or any procedure that naturally results in the death or substantial destruction of a tree. Cutting does not include normal trimming or pruning but does include topping of trees.

“Damaged tree” means a tree that is injured or knocked down by human activity to the extent that mortality or serious deterioration is likely to occur or partially pushed over so as to result in a permanent lean or injury to the root system.

“DBH” means the diameter at breast height.

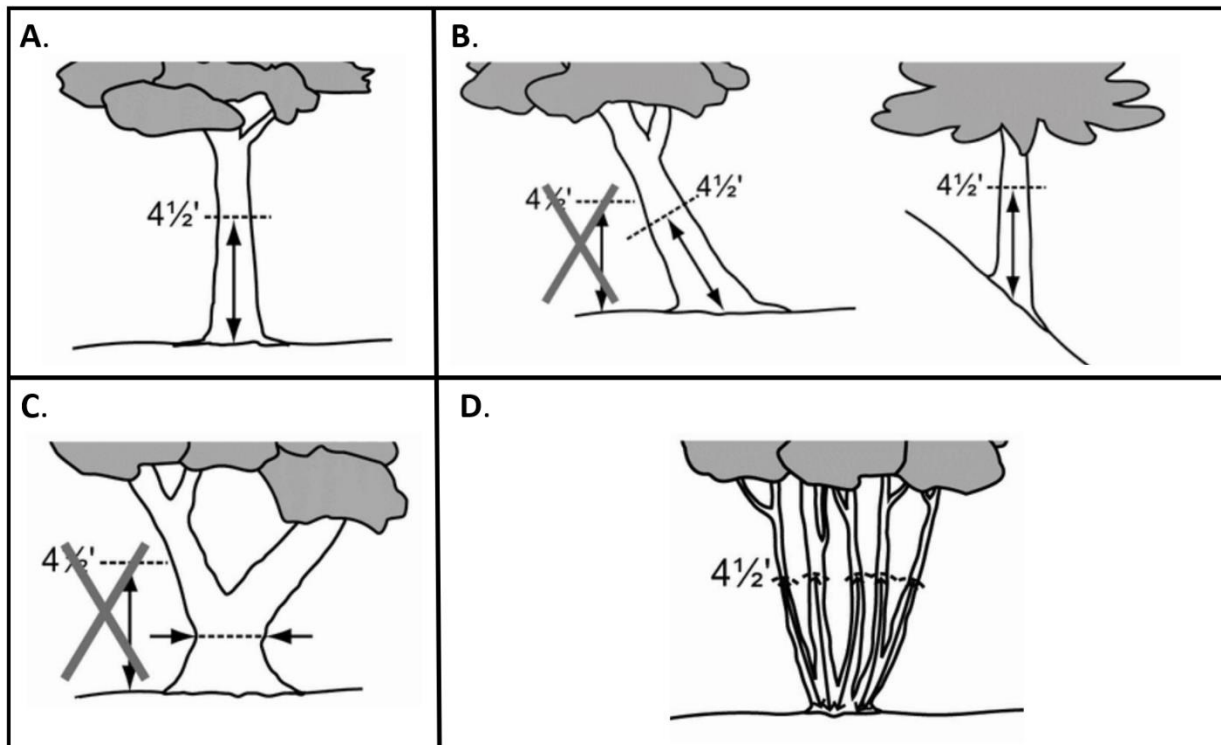
“Dead tree” means a tree that is dead or has been damaged beyond repair or where not enough live tissue, green leaves, limbs, or branches exist to sustain life.

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“Diameter at breast height” or “DBH” means the measurement of mature trees as measured at a height 4.5 feet above the mean ground level at the base of the tree (Figure 16.32.010-2A). The DBH may be determined by measuring the circumference of the tree trunk 4.5 feet above the mean ground level at the base of the tree and dividing by 3.14. Trees existing on slopes are measured at the lowest point of ground at the base of the tree (Figure 16.32.010 – 2B). When the trunk branches or splits less than 4.5 feet from the ground, measure the smallest circumference below the lowest branch and divide by 3.14 (Figure 16.32.010 – 2C). For multi-stemmed trees, the size is determined by measuring all the trunks, and then adding the total diameter of the largest trunk to one-half the diameter of each additional trunk. A multi-stemmed tree has trunks that are connected above the ground and does not include individual trees growing close together or from a common root stock that do not have trunks connected above the ground (see Figure 16.32.010-2).

Figure 16.32.010-2 – Measuring Diameter at Breast Height



“Drip line” means the perimeter measured on the ground at the outermost crown by drawing an imaginary vertical line from the circumference of the crown, straight down to the ground below.

“Dying tree” means a tree that is diseased, infested by insects, deteriorating, or rotting, as determined by a professional certified in the appropriate field, and that cannot be saved by reasonable treatment or pruning, or a tree that must be removed to prevent the spread of infestation or disease to other trees.

“Hazardous tree” means a tree or tree part the condition or location of which presents a public safety hazard or an imminent danger of property damage as determined by

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an ISA Qualified Tree Risk Assessor, and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

“Healthy tree” means a tree that is rated by a professional with expertise in the field of forestry or arboriculture as being in fair or good health condition using International Society of Arboriculture (ISA) Best Management Practices and the rating system in this Chapter.

“Invasive species” means a tree, shrub, or other woody vegetation that is on the Oregon State Noxious Weed List or listed on the Milwaukie Invasive Tree List in the Public Works Standards.

“ISA” means the International Society of Arboriculture.

“ISA Best Management Practices” means the guidelines established by ISA for arboricultural practices for use by arborists, tree workers, and the people who employ their services.

“Major tree pruning” means the trimming or removal of twenty percent (20%) or more of the live crown, or removal of or injury to roots within a radial distance from the tree of six times the tree’s DBH or over 25% of the root protection zone (see Figure 16.32.042.G.1.b) during any 12-month period.

“Minor tree pruning” means the trimming or removal of less than twenty percent (20%) of the live crown, or removal of or injury to roots beyond a radial distance from the tree of six times the tree’s DBH or less than 25% of the root protection zone (see Figure 16.32.042.G.1.b) during a 12-month period.

“NDA” means Neighborhood District Association.

“Noxious weed” means a terrestrial, aquatic, or marine plant designated by the State Weed Board under ORS 569.615.

“Owner” means any person who owns land, or a lessee, agent, employee, or other person acting on behalf of the owner with the owner’s written consent.

“Park tree” means a tree, shrub, or other woody vegetation within a City park.

“Person” means any natural person, firm, partnership, association, social or fraternal organization, corporation, estate, trust, receiver, syndicate, branch of government, or any other group or combination acting as a unit.

“Public agency” means any public agency or public utility as defined in ORS 757.005, or a drainage district organized under ORS Chapter 547.

“Public tree” means a tree, shrub, or other woody vegetation on land owned or maintained by the City, but does not include a tree, shrub, or other woody vegetation in the right-of-way.

“Private tree” means a tree, shrub, or other woody vegetation on land not owned or maintained by the City and the trunk of the tree does not cross a public right-of-way or public property line.

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“Right-of-way” means an area that allows for the passage of people or goods. Right-of-way includes passageways such as freeways, pedestrian connections, alleys, and all streets. A right-of-way may be dedicated or deeded to the public for public use and under the control of a public agency, or it may be privately owned. A right-of-way that is not dedicated or deeded to the public is usually in a tract or easement.

“Shrub” means any plant with multiple woody stems that does not have a defined crown and does not grow taller than a height of 16 feet.

“Street tree” means a tree, shrub, or other woody vegetation on land within the right-of-way. When any portion of the trunk of a tree crosses a public right-of-way line at ground level, it is considered a street tree.

“Street Tree List” is the list of tree and shrub species approved by the City for planting within the right-of-way.

“Topping” means the pruning practice used to reduce tree height by cutting to a predetermined crown limit without regard to tree health or structural integrity. Topping does not include acceptable pruning practices as described in the American National Standards Institute (ANSI) “A-300 Pruning Standards” and companion “Best Management Practices” for tree pruning” published by the International Society of Arboriculture, such as size reduction, utility clearance, or risk mitigation to remove a safety hazard, dead or diseased material. Topping is considered “tree removal”.

“Tree” means any living woody plant characterized by one main stem or trunk and many branches, or a multi-stemmed trunk system with a defined crown, that will obtain a height of at least 16 feet at maturity.

“Tree Board” means the city of Milwaukie Tree Board.

“Tree canopy” means the aggregate or collective tree crowns.

“Tree Fund” means the Tree Fund as created by this chapter.

“Tree removal” means the cutting or removal of fifty percent (50%) or more of the crown, trunk, or root system of a plant, the uprooting or severing of the main trunk of the tree, topping, or any act that causes, or may reasonably be expected to cause the tree to die as determined by an ISA Certified Arborist.

“Unhealthy tree” means a tree that is rated by a professional with expertise in the field of forestry or arboriculture as being in poor or very poor/dead health condition using International Society of Arboriculture (ISA) Best Management Practices and the rating system in this Chapter.

“Urban forest” means the trees that exist within the City.

“Urban Forester” means the Urban Forester of the City of Milwaukie, or designee.

“Urban Forest Management Plan” is the management plan adopted by City Council for the management of the City’s urban forest.

“Utility” is a public utility, business, or organization that supplies energy, gas, heat, steam, water, communications, or other services through or associated with telephone lines,

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cable service, and other telecommunication technologies, sewage disposal and treatment, and other operations for public service.

16.32.012 ADMINISTRATION

A. City Manager

1. The City Manager is authorized to administer and enforce the provisions of this chapter.
2. The City Manager is authorized to adopt procedures and forms to implement the provisions of this chapter.
3. The City Manager may delegate as needed any authority granted by this chapter to a designee as deemed appropriate by the City Manager.

B. City Authority

The City has the ultimate authority to:

1. Interpret the provisions of Chapter 16.32 and determine whether code criteria have been met.
2. Establish conditions of permit and land use approval to ensure Chapter 16.32 is properly implemented.
3. Create rules and procedures as needed to implement Chapter 16.32. Rules and procedures may include but are not limited to:
 - a. City of Milwaukie tree lists;
 - b. Tree protection standards, specifications, and procedures;
 - c. Tree planting standards, specifications, and procedures;
 - d. Tree establishment and maintenance standards, specifications, and procedures;
 - e. Performance bonding, letters of credit, and cash assurances to help ensure proper tree protection, planting, and establishment;
 - f. Tree protection inspections and oversight;
 - g. Soil protection inspections and oversight;
 - h. Performance path tree protection standards and specifications;
 - i. Performance path soil volume standards and specifications; and
 - j. Fees for permit applications, reviews, mitigation, inspections, and violations.

16.32.014 CREATION OF A TREE FUND

A. Establishment

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A City Tree Fund is hereby established for the collection of any funds used for the purpose and intent set forth by this chapter.

B. Funding Sources

The following funding sources may be allocated to the Tree Fund:

1. Tree permit revenue;
2. Payments received in lieu of required and/or supplemental plantings;
3. Civil penalties collected pursuant to this chapter;
4. Agreed-upon restoration payments or settlements in lieu of penalties;
5. Sale of trees or wood from City property;
6. Donations and grants for tree purposes;
7. Sale of seedlings by the City; and
8. Other monies allocated by City Council.

C. Funding Purposes

The Tree Board will provide recommendations to the City Council during each budget cycle for how the fund will be allocated. The City will use the Tree Fund for the following purposes:

1. Expanding, maintaining, and preserving the urban forest within the City;
2. Planting and maintaining trees within the City;
3. Establishing a public tree nursery;
4. Supporting public education related to urban forestry;
5. Assessing urban forest canopy coverage; or
6. Any other purpose related to trees, woodland protection, and enhancement as determined by the City Council.

Article II Street Trees and Public Trees

16.32.020 PLANTING STREET TREES AND PUBLIC TREES

A. Species

Any street tree or public tree, must be a species listed on the Street Tree List unless otherwise approved by the Urban Forester.

B. Spacing, size, and placement

The spacing, size, and placement of street trees and public trees, must be in accordance with a permit issued by the City under this section. The City may approve special plantings designed or approved by a landscape architect, or for ecological restoration projects where trees are likely to be planted at a much higher

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density to mimic natural conditions in forest regeneration and account for expected mortality.

C. Permit

No person may plant a street tree without first obtaining a permit from the City. A permit application must be submitted in writing or electronically on a form provided by the City. This permit is at no cost.

16.32.026 MAJOR PRUNING OR REMOVAL OF STREET TREES AND PUBLIC TREES

A. Applicability

1. No person will perform major tree pruning or remove any street tree or public tree without first obtaining a permit issued by the City.
 - a. For public trees, only the City, a public agency charged with maintaining the property, or a utility may submit a permit application.
 - b. For street trees, the applicant must be the City, the owner of the adjacent property, or be authorized in writing by the owner of the adjacent property, where the tree will be pruned or removed.
2. For public trees, this chapter will be applied in conjunction with any applicable standards in Title 19 Zoning.

B. Permit Review Process

1. Application

A permit application must be submitted in writing or electronically on a form provided by the City and be accompanied by the correct fee as established in the Consolidated Fee Schedule.

2. Public Notice and Permit Meeting

Upon the filing of a permit application, the applicant must post notice, unless otherwise exempted in Section 16.32.030, of the major pruning or tree removal permit application on the property in a location that is clearly visible from the public right-of-way. The applicant must mark each street tree or public tree proposed for major pruning or removal by tying or attaching plastic tagging tape to the vegetation. The City will provide the applicant with at least one sign containing adequate notice for posting, tagging tape, and instructions for posting the notice. The notice must state the date of posting and that a major pruning or tree removal permit application has been filed for the vegetation marked by plastic tagging tape. The notice must state that any person may request a meeting with the City within 14 days from the date of posting to raise questions or concerns about the proposed pruning or tree removal prior to issuance of the permit.

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If a meeting is requested, it must be held within 14 days of the request. The City will consider all concerns raised at the meeting but will have final decision-making authority over issuance of the permit based on the criteria and approval standards set forth in Subsection 16.32.026.C.

3. Declaration

The applicant will file a declaration on a form provided by the City stating that notice has been posted and that the vegetation proposed for major pruning or removal has been marked. Once a declaration is filed with the City, the City will provide notice of the application to the appropriate NDA.

C. Review Criteria and Approval Standards

The City may issue the permit, deny the permit, or issue the permit subject to conditions of approval. The City's decision will be final and valid for a period of one year after issuance unless a different time period is specified in the permit. Nothing prevents an applicant from requesting an amendment to an unexpired permit if the conditions and circumstances have changed.

1. Review Criteria

The City will not permit the major pruning or removal of a healthy, functioning street tree or public tree without a demonstration by the applicant that extraordinary circumstances exist. Maintenance or the replacement of sidewalks or curbs, removal of tree litter, or other minor inconveniences do not constitute extraordinary circumstances. Decisions regarding major pruning or removal of healthy, functioning street trees or public trees are fact-specific and are made on a case-by-case basis by the Urban Forester. In determining whether extraordinary circumstances exist that warrant the major pruning or removal of a healthy tree, the Urban Forester will consider:

- a. Whether the species of tree is appropriate for its location;
- b. Whether the species of tree is an invasive species;
- c. Whether the crown, stem, or root growth has developed in a manner that would prevent continued healthy growth or is negatively impacting other trees;
- d. Whether maintenance of the tree creates an unreasonable burden for the property owner; and
- e. Whether the major pruning or removal will have a negative impact on the neighborhood streetscape and any adopted historic or other applicable design guidelines or public utilities.

2. Approval Standards

A permit will be issued only if the following standards are met as determined by the Urban Forester:

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- a. The proposed major pruning or tree removal will be performed according to current ISA Best Management Practices. An ISA Certified Arborist will be on site for the duration of any major pruning work.
- b. The street tree or public tree proposed for major pruning or removal meets one or more of the following criteria:
 - (1) The street tree or public tree is dead or dying and cannot be saved as determined by an ISA Certified Arborist in accordance with ISA standards.
 - (2) The street tree or public tree is having an adverse effect on existing adjacent infrastructure that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.
 - (3) The street tree or public tree has sustained physical damage that will cause the vegetation to die or enter an advanced state of decline. The City may require additional documentation from an ISA Certified Arborist to demonstrate that this criterion is met.
 - (4) The street tree or public tree poses an unreasonable risk to the occupants of the property, the adjacent property, or the general public, as determined by an ISA Certified Arborist that is Tree Risk Assessment Qualified (TRAQ) in accordance with current ISA Tree Risk Assessment Best Management Practices.
 - (5) Major pruning or removal of the street tree or public tree is necessary to accommodate improvements in the right-of-way or on City-owned land, and it is not practicable to modify the proposed improvements to avoid major pruning or removal.
 - (6) The street tree or public tree is on the Oregon State Noxious Weed List.
 - (7) The street tree or public tree is part of a stormwater management system and has grown too large to remain an effective part of the system.
- c. Any approval for the removal of a healthy street tree or public tree must require the applicant to pay a fee as established in the Consolidated Fee Schedule.

D. Removal of Stumps

All stumps of street trees and public trees must be removed below the surface of the ground so that the top of the stump does not project above the surface of the ground, unless otherwise approved to remain by the City.

E. Performance of Permitted Work

- 1. All work performed pursuant to a permit issued by the Urban Forester must be completed within the time period specified in the permit unless a different time period is authorized in writing by the Urban Forester.

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2. An ISA Certified Arborist must be on site for the duration of any major pruning permit being performed on a public tree or street tree and is responsible for certifying that all arboricultural work is performed in accordance with ISA Best Management Practices.

F. Replanting

The City will require replanting as a condition of permit approval for the major pruning or removal of a street tree or public tree.

1. The replanted tree must be a species included on the Street Tree List unless otherwise approved by the Urban Forester.
2. The City will consider alternative planting locations for street trees when replanting at the location of removal conflicts with surrounding infrastructure and the interference would impair the replanted tree.
 - a. For street trees, replanted trees must be planted within the right-of-way fronting the property for which the permit was issued or, subject to the approval of the Urban Forester and give written notice to the adjacent property owner, within the right-of-way fronting the adjacent property.
 - b. For public trees, replanted trees must be planted on the land from which the tree was removed unless a different location is approved by the Urban Forester.
3. In lieu of replanting and subject to approval of the Urban Forester, the City can require the applicant to pay a fee as established in the Consolidated Fee Schedule.
4. The optimal time of year for planting is from September through April. If planting is necessary in other months, the City may condition permit approval to require extra measures to ensure survival of the newly planted tree.

16.32.028 EMERGENCY REMOVAL OF HAZARDOUS STREET TREES OR PUBLIC TREES

If a street tree or public tree is determined to be a hazardous tree by the Urban Forester, the City may issue an emergency removal permit. The removal must be in accordance with ISA Best Management Practices and be undertaken with the minimum necessary disturbance to eliminate the imminent danger.

16.32.030 EXEMPTIONS

The following exemptions apply:

A. Permit Exemptions

1. Maintenance

A permit for a street tree or public tree is not required for regular maintenance or minor tree pruning that is less than twenty percent (20%) of the crown or disturbance of roots within a radial distance from the tree of six times the tree's

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DBH or less than 25% of the root protection zone (see Figure 16.32.042.G.1.b) during any 12-month period.

2. Removal

A permit for a street or public tree is not required when it is on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List and less than 2 inches DBH.

B. Public Notice Exemptions

The following street trees and public trees may be removed without public notice subject to the City's review of the application:

1. A street tree or public tree that is dead or dying.
2. A street tree or public tree that is on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List.
3. A street tree or public tree that is considered an unreasonable risk to the occupants of the property, the adjacent property, or the general public as determined by an ISA Certified Arborist that is Tree Risk Assessment Qualified (TRAQ) in accordance with current ISA Tree Risk Assessment Best Management Practices.
4. A street tree or public tree that is less than 2 inches DBH.

C. Removal Fee Exemptions

A permit for any of the following tree removal situations will not be subject to a removal fee:

1. Public Infrastructure Improvements

The removal of a street tree or public tree during a city public infrastructure improvement project if it is demonstrated that tree planting, establishment, and tree care-related project costs exceed the tree removal fee costs.

2. Private Utility Services

A street tree or public tree that the Urban Forester determines to have an adverse effect on adjacent private utility services.

3. Hazard to Dwelling Units

A street tree or public tree that the Urban Forester determines to threaten the structural integrity of a dwelling unit in a manner that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.

4. Noxious or Invasive Trees

A street tree or public tree that is on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List and is 2 inches DBH or greater.

D. Topping Exemptions

Topping of a street tree or public tree may be exempted only if a determination has been made by the Urban Forester for these instances:

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1. Crown restoration consistent with ISA Best Management Practices for trees severely damaged by storms or other causes, or
2. Crown clearance, crown reduction, or risk mitigation consistent with ISA Best Management Practices for trees existing under or adjacent to utility wires or other obstructions where other pruning practices are impractical.

Topping is not considered tree removal when approved by the Urban Forester.

E. Replanting Exemptions

The replanting requirement in Subsection 16.32.026.F is not applicable when the permitted tree that was removed is a species on the Oregon State Noxious Weeds List or Milwaukie Invasive Tree List.

16.32.032 LOW INCOME ASSISTANCE

To the extent that City funds are available, the City Manager may grant a property owner an exemption or a reduction in permit fees, removal fees, replanting fees and/or may provide assistance in removing a dead or diseased street trees in residential zones. Eligibility and extent of assistance will be based on a percentage of the property owner's median household income for the Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area. A schedule of different fee reductions and exemptions will be determined by the City Manager.

Article III Private Trees in Residential Zones

16.32.042 TREE PRESERVATION AND PLANTING WITH DEVELOPMENT IN RESIDENTIAL ZONES

A. Applicability

The tree preservation and planting standards in this subsection apply in residential zones to the construction of a new residential dwelling unit(s) that results in an increase of building footprint.

B. Tree Preservation Standards

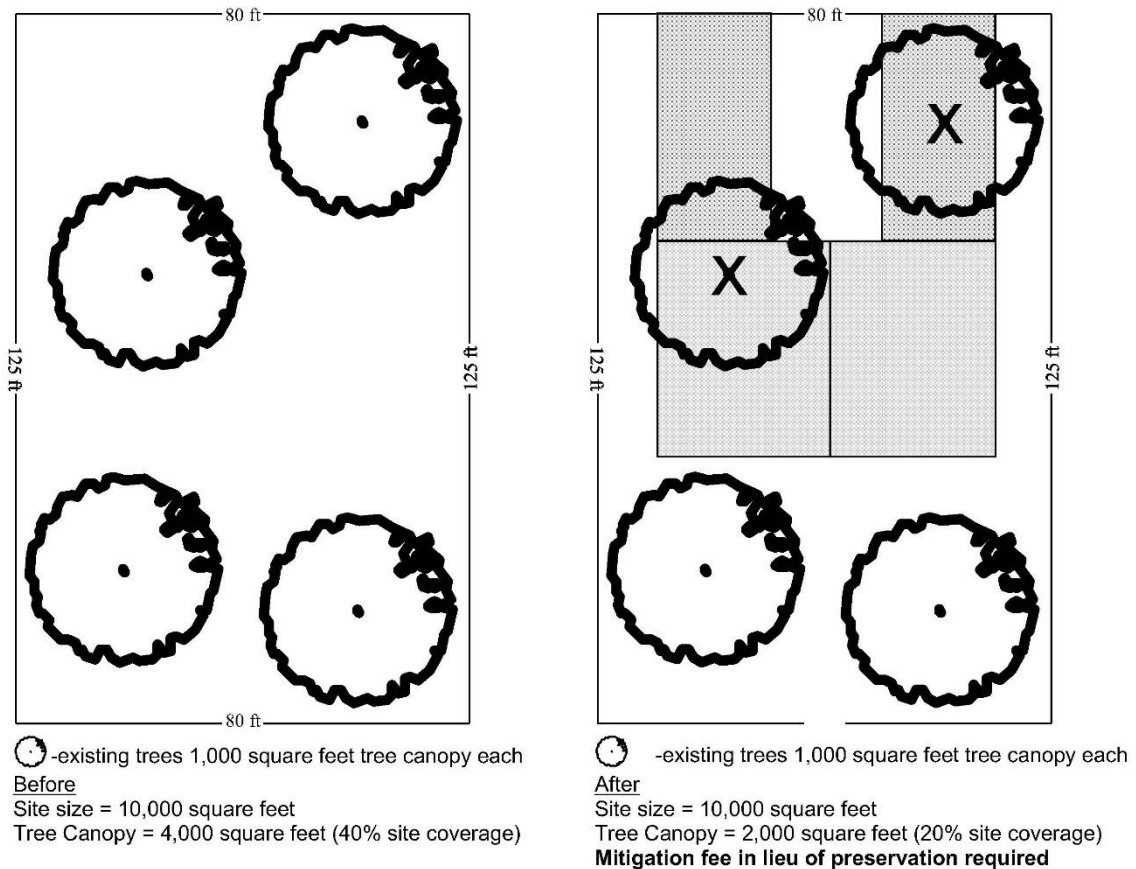
1. Healthy trees at least 6-in DBH are required to be preserved except when their removal is required for construction, demolition, grading, utilities, and other development impacts.
2. Preservation of at least thirty percent (30%) on-site healthy private tree canopy coverage is required unless mitigation is provided according to Subsection 16.32.042.E. See Figures 16.32.042.B.2-a and B.2-b for examples of when mitigation is or is not required. (See Subsection 16.32.042.D.3 for information on calculating tree canopy coverage.)
3. For development sites with thirty percent (30%) or less on-site healthy private tree canopy coverage, the removal of healthy private tree canopy is not allowed unless mitigation is provided according to Subsection 16.32.042.E.

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4. Trees listed on the Milwaukie Rare or Threatened Tree List must be prioritized for preservation; if removed, healthy trees from this list will incur an additional fee as listed on the Consolidated Fee Schedule.
5. Unhealthy trees and trees species on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List are not required to be preserved in conjunction with applicable development as established in Subsection 16.32.042.A.
6. Existing trees that are preserved for purposes of addressing the 30% canopy coverage standard must each provide a performance bond to ensure their survival for such period of time as identified in the Consolidated Fee Schedule. All existing trees used for canopy credit would not qualify for removal based on the criteria outlined in 16.32.044 D.2.(11).

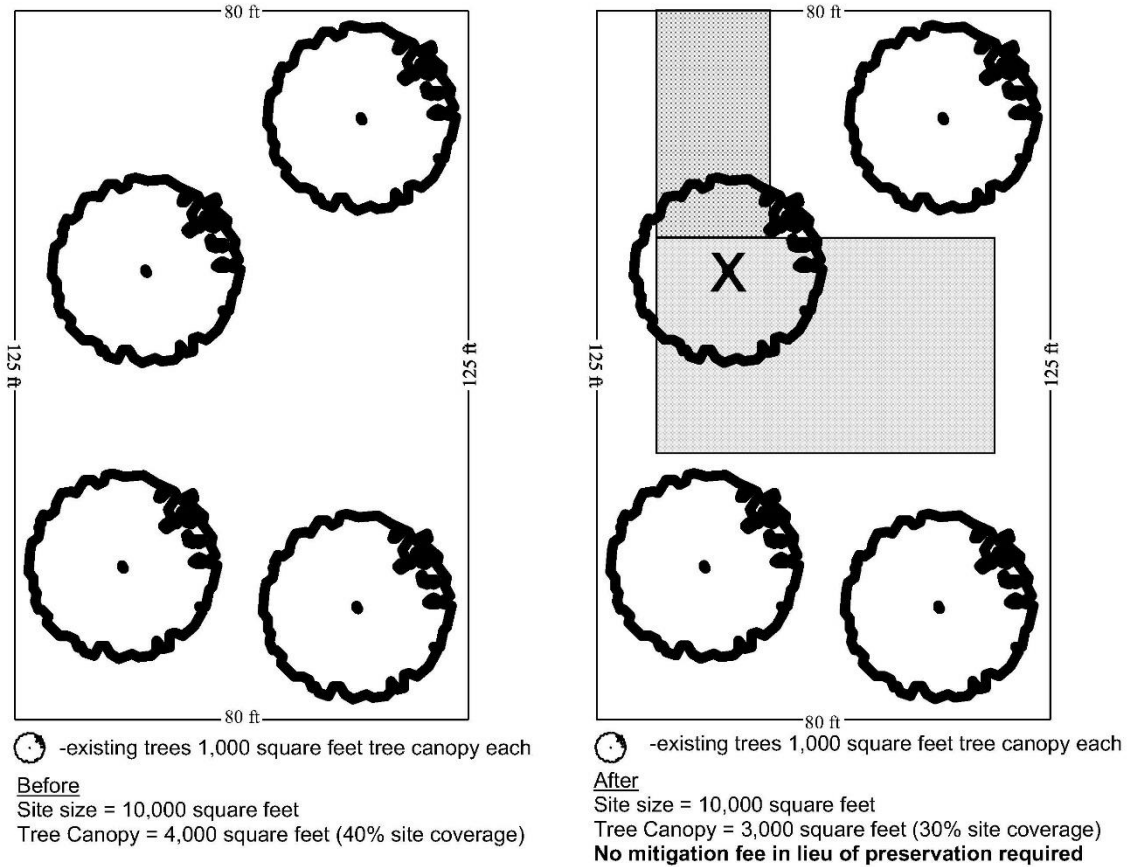
Figure 16.32.042.B.2-a – Tree removal with mitigation



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Figure 16.32.042.B.2-b – Tree removal without mitigation



C. Tree Planting Standards

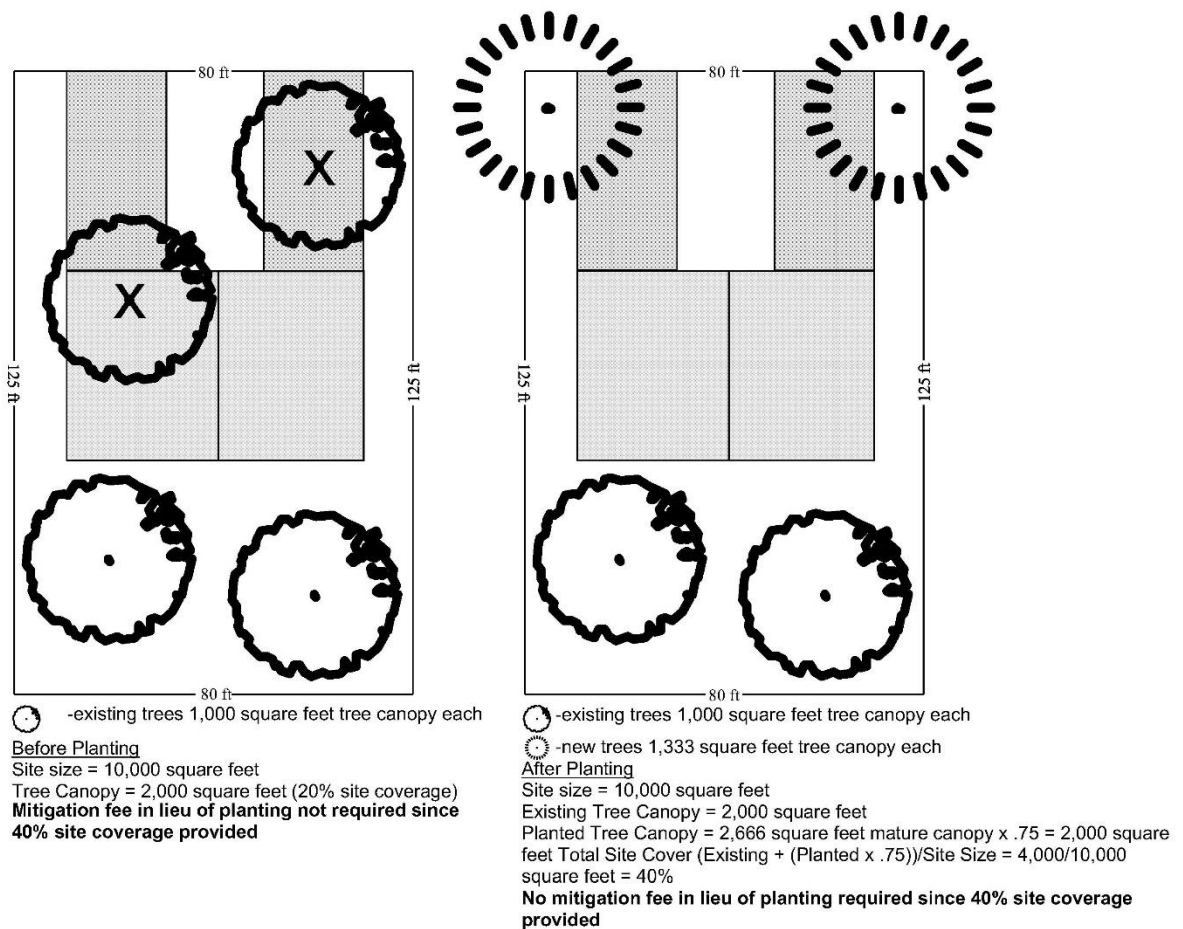
1. At least forty percent (40%) tree canopy is required for a development site from existing healthy trees or new tree plantings unless mitigation is provided according to Subsection 16.32.042.E. See Figure 16.32.042.C.1 for an example of tree planting where mitigation is not required.
2. The minimum size of newly planted trees is 1.5-inch caliper for broadleaf trees and 5-feet tall for conifers unless otherwise approved by the Urban Forester. Newly planted trees must be in good health with the size and quality consistent with ISA Best Management Practices and ANSI Z60.1 standards.
3. The species selection and spacing of trees to be planted must be such that it provides for the eventual mature size of the trees. Soil type, soil conditions and other site constraints must be considered when selecting species for planting.
4. Root barriers must be installed according to the manufacturer's specifications when a tree is planted within 5 feet of pavement or an underground utility box unless otherwise approved by the Urban Forester.

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5. Where there are overhead high voltage utility lines, the tree species selected must be of a type that, at full maturity, will not require pruning to avoid interference with the lines.
6. Newly planted trees must survive a minimum number of years beyond the date of planting, with a performance bond to ensure that each new tree is replaced if it does not survive through the minimum period. See the Consolidated Fee Schedule for details. All trees planted for canopy credit would not qualify for removal based on the criteria outlined in 16.32.044 D.2.(11).

Figure 16.32.042.C.1 – Tree planting without mitigation



D. Tree Canopy Calculations and Credits

The following situations are eligible for credit towards tree canopy requirements when trees are planted or preserved in accordance with applicable City standards:

1. On-Site Trees
 - a. One hundred percent (100%) of the existing crown area or mature crown area of on-site healthy private trees that are preserved, whichever is greater.

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- (1) In cases where a portion of the crown area of an on-site healthy private tree extends off site, the entire crown area is eligible for credit towards the tree canopy requirements.
 - (2) In cases where a portion of the crown area of an off-site private tree extends on site, the crown area is not eligible for credit towards the tree canopy requirements.
 - (3) Healthy on-site trees with DBHs of 12 inches or greater may receive additional canopy credits for existing or future mature crown area to be factored into preservation calculations as defined in the Consolidated Fee Schedule.
- b. Seventy-five percent (75%) of the future mature crown area of planted on-site private trees.
2. Street Trees
 - a. Fifty percent (50%) of the existing crown area of street trees that are preserved in the public right-of-way directly abutting the development site.
 - b. Fifty percent (50%) of the mature crown area of newly planted street trees in the public right-of-way directly abutting the development site.
3. Interpretations
 - a. When the trunk of a tree crosses a property line at ground level it is considered an on-site tree; except that when the trunk crosses a public right-of-way line at ground level, it is considered a street tree for the purposes of these tree planting standards.
 - b. Public right-of-way will be considered off-site for the purposes of these planting standard calculations.
 - c. Tree species on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy calculations.
 - d. Trees of any species that are less than 6-in DBH are not to be included in the total canopy calculations unless a bond is provided
 - e. The Milwaukie Mature Tree Crown Area Reference List is the primary resource for determining the estimated tree canopy area for various species.

Table 16.32.042.D summarizes the credits eligible for the tree canopy requirements of Section 16.32.042.

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Table 16.32.042.D Eligible Credits for Tree Canopy Requirements

Tree Location	Existing Preserved Trees	Newly Planted Trees
On-Site Trees (Trees located within the tax lot)	100% of existing or future mature crown area, whichever is greater ¹	75% of future mature crown area
Street Trees (Street trees within the adjacent ROW)	50% of existing or future mature crown area, whichever is greater	50% of future mature crown area

¹ Healthy on-site trees with DBH of 12 inches or greater may receive additional canopy credits for existing or future mature crown area—see Consolidated Fee Schedule.

E. Mitigation Fees

If the tree preservation and/or tree planting standards are not met, mitigation fees must be provided to the Tree Fund as follows:

1. The fee in lieu of preservation standard in the Consolidated Fee Schedule, based on the percentage of removed onsite healthy private canopy coverage below the thirty percent (30%) minimum tree canopy preservation standard established in Subsection 16.32.042.B.
2. The fee in lieu of planting standard in the Consolidated Fee Schedule, based on the square footage of tree canopy that would be required to meet the forty percent (40%) tree planting standard established in Subsection 16.32.042.C.

F. Variance Procedure

An applicant may apply for a variance to the tree preservation and/or tree planting standards. An application for a variance will be heard and decided by the Planning Commission in accordance with the provisions of Section 19.1006 (Type III review) according to Section 19.911. In addition to meeting the Type III variance approval criteria established in Subsection 19.911.4.B, the applicant is required to demonstrate that equivalent or greater environmental benefits are provided as preserving or planting the required tree canopy.

Examples of activities that may justify a variance include but are not limited to:

1. Use of techniques that minimize hydrological impacts beyond regulatory requirements (examples include porous pavement, green roofs, infiltration planters/rain gardens, flow through planters, LIDA (low impact development approach) swales, vegetated filter strips, vegetated swales, extended dry basins, and constructed water quality wetlands).
2. Use of techniques that minimize reliance on fossil fuels and production of greenhouse gases beyond regulatory requirements through the use of energy efficient building technologies, on-site energy production technologies, and green buildings standards (Section 19.510).

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3. Use of techniques that preserve and enhance wildlife habitat beyond regulatory requirements, including, but not limited to, the use of native plant species in landscape design, restoration of native habitat and preservation of habitat through the use of conservation easements or other protective instruments.
4. Use of techniques that preserve open space for sustainable urban agriculture through the use of conservation easements or other protective instruments at sites that are not compatible with tree canopy preservation or planting.

G. Tree Protection Standards

Trees to be retained must be protected from development impacts according to the standards in this subsection to be eligible for tree preservation and tree canopy credit. A tree protection plan prepared by an ISA Certified Arborist that demonstrates adequate protection of the trees to be preserved is required. The tree protection plan must be approved by the Urban Forester. Tree protection methods and specifications must be consistent with ISA Best Management Practices using either the prescriptive path or performance path tree protection methods as described below.

1. Prescriptive Path for Tree Protection

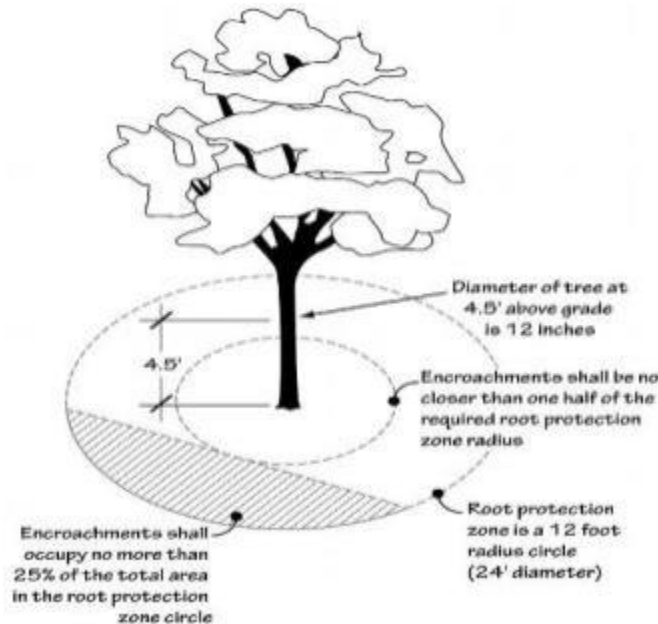
a. Root protection zone

- (1) For on-site trees and off-site trees with root protection zones that extend into the site, provide a minimum 1-foot radius (measured horizontally away from the center of the tree trunk) for each inch of trunk diameter at breast height. Root protection zones for off-site trees may be estimated.
- (2) For street trees, the Urban Forester will prescribe the required root protection zone after reviewing the applicant's proposed root protection zone.

b. Encroachments into a root protection zone

- (1) Existing encroachments into the root protection zone, including structures, paved surfaces and utilities, may remain.
- (2) New encroachments into the root protection zone are allowed provided:
 - (a) The area of all new encroachments is less than twenty-five percent (25%) of the remaining root protection zone area when existing encroachments are subtracted; and
 - (b) No new encroachment is closer than half the required radius distance from the trunk (see Figure 16.32.042.G.1.b).
- (3) Installation of landscape planting is not an encroachment.
- (4) Any in-ground irrigation systems are considered encroachments.

Figure 16.32.042.G.1.b
Example of Permissible RPZ Encroachments



c. Protection fencing

- (1) Protection fencing consisting of a minimum 4-foot-high metal chain link or no-climb horse fence and secured with 6-foot metal posts must be established at the perimeter of the root protection zone and permissible encroachment area on the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve as the required protective fencing. Protection fencing (new or existing) must be sturdy, highly visible, and not easily movable.
- (2) When a root protection zone extends beyond the development site, protection fencing for private trees is not required to extend beyond the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve as the required protective fencing. If prescribed by the Urban Forester, protection fencing for street trees may extend beyond the development site.
- (3) Protection fencing is required to be installed before any ground disturbing activities or construction begins, including clearing and grading, and must remain in place until final inspection.
- (4) Signage designating the protection zone and penalties for violations must be displayed in a prominent location on each protection fence.

d. Prohibitions within the root protection zone

Except as allowed by Subsection 16.32.042.G.1.b, the following are prohibited within the root protection zone of each tree: ground disturbance or construction activity including vehicle or equipment access (but excluding access on existing streets or driveways), storage of equipment or materials

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including soil, temporary or permanent stockpiling, proposed buildings, impervious surfaces, underground utilities, excavation or fill, trenching or other work activities.

Variances from the prescriptive path protection standards for off-site trees are prohibited. The Urban Forester's determination of whether the prescriptive path standards are met is final and not subject to appeal.

2. Performance Path for Tree Protection

When the standards of the prescriptive path for tree protection cannot be met, the applicant may propose alternative measures to modify the prescriptive root protection zone and use a performance path for tree protection, provided the following criteria are met as approved by the Urban Forester:

- a. An alternative root protection zone plan is prepared by an ISA Certified Arborist who has examined the specific tree's size, location, and extent of root cover, evaluated the tree's tolerance to construction impacts based on its species and health, and identified any past impacts that have occurred within the root zone.
- b. The alternative root protection zone plan includes the rationale used to demonstrate that the alternate method provides an adequate level of protection based on the findings from a site visit by the project arborist.
- c. If the alternative tree protection method involves alternative construction techniques, the project arborist has provided an explanation of the techniques and materials used.
- d. The protection zone is marked with signage, stating that penalties will apply for violations, and providing contact information for the arborist.

H. Soil Volume Standards

1. General Standards

- a. To be eligible for tree canopy credit as outlined in Subsection 16.32.042.D, planted trees must be provided access to at least 1,000 cubic feet of soil volume according to the standards in this subsection. A soil volume plan prepared by an ISA Certified Arborist is required and must demonstrate that at least 1,000 cubic feet of soil volume is available per tree as determined by the Urban Forester or designee. Soil volume methods and specifications must be consistent with ISA Best Management Practices using either the prescriptive path or performance path soil volume methods. The project arborist must verify with the Urban Forester in writing that the soil volume plan has been successfully implemented prior to tree planting.
- b. If the existing soils at the site and abutting sites are determined by the project arborist or Urban Forester to be adequate to support healthy tree growth to maturity based on factors including but not limited to compaction levels,

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drainage, fertility, pH, and potential contaminants, the existing soils may be used to meet the soil volume requirements.

- c. The assumed soil volume depth for planting will be 3 feet unless otherwise determined by the project arborist or Urban Forester.
 - d. A soil volume area of at least 333 square feet must be accessible to each tree when the assumed soil volume depth is 3 feet.
 - e. The soil volume areas must be continuous and within a 50-foot radius of the tree to be planted. Continuous soil volume areas must be at least 3 feet wide for the entire area.
 - f. Trees may share the same soil volume area provided that all spacing requirements of this subsection are met.
 - g. Soil contaminants are prohibited from the soil volume areas.
2. Prescriptive Path for Soil Volume
- a. Soil volume areas must be protected from construction impacts through any combination of the following methods:
 - (1) Protection fencing:
 - (a) Fencing consisting of a minimum 4-foot-high metal chain link or no-climb horse fence, secured with 6-foot metal posts established at the edge of the soil volume area on the development site. Existing secured fencing at least 3.5 feet tall can serve as the required protective fencing.
 - (b) When a soil volume area extends beyond the development site, protection fencing is not required to extend beyond the development site. Existing or new secured fencing at least 3.5 feet tall can serve as the required protective fencing.
 - (c) Signage designating the protection zone and penalties for violations must be secured in a prominent location on each protection fence.
 - (2) Compaction prevention options for encroachment into soil volume areas:
 - (a) Steel plates placed over the soil volume area, or
 - (b) A 12-inch layer of coarse wood chips over geotextile fabric continuously maintained over the soil volume area, or
 - (c) A 6-inch layer of crushed gravel over geotextile fabric continuously maintained over the soil volume area.

The Urban Forester's determination of whether the prescriptive path standards are met is final and not subject to appeal.

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3. Performance Path for Soil Volume

- a. When the standards of the prescriptive path for soil volume cannot be met; or if the existing soils at the site and abutting sites are determined by the Urban Forester to be inadequate to support healthy tree growth to maturity based on factors such as compaction levels, drainage, fertility, pH, and potential contamination prior to or resulting from development, a performance path soil volume plan is required.
- b. Soils in areas of construction access that do not receive compaction prevention treatment and soils in areas of grading, paving, and construction are considered inadequate for tree growth unless a performance path soil volume plan is provided.
- c. The following methods may be addressed in performance path soil volume plans but are dependent on specific site conditions and should be submitted by the applicant on a project basis in coordination with other professionals such as civil and geotechnical engineers, landscape architects, and soil scientists as needed:

(1) Compaction Reduction

- (a) tilling
- (b) backhoe turning
- (c) subsoiling

(2) Soil Amendments

- (a) organic amendments
- (b) mineral amendments
- (c) biological amendments
- (d) chemical amendments

(3) Topsoil Replacement (when soil contamination or soil removal occurs)

(4) Soil Under Pavement

- (a) structural soil cells
- (b) structural tree soils
- (c) soil vaults
- (d) soils under suspended pavement

I. Application Requirements

For all applicable developments, applications must be submitted by an ISA Certified Arborist that also has the ISA Tree Risk Assessment Qualification (TRAQ). Applications must demonstrate compliance with the applicable provisions of Subsections 16.32.042.B through H. Other professionals such as engineers, landscape architects,

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soil scientists, and surveyors may assist the project arborist as needed in preparing the required information, but the arborist must organize, review, and approve the final product. The minimum submittal requirements include an inventory of existing trees, tree preservation plan (if applicable), tree planting plan (if applicable), arborist report, and payment of review fee as established in the Consolidated Fee Schedule.

The following establishes requirements for the various submittal components:

1. Tree Inventory

- a. Trees with any of the following characteristics must be inventoried:
 - (1) 6-inch DBH or greater;
 - (2) 2-inch DBH or greater listed on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List;
 - (3) less than 6-inch DBH for species listed on the Milwaukie Rare or Threatened Tree List; and/or
 - (4) less than 6-inch DBH that will be preserved and included in the calculation of required canopy.
- b. The location of all trees meeting the requirements of 16.32.042.I.1.a. must be identified, including:
 - (1) On-site trees;
 - (2) Trees within abutting public rights-of-way; and
 - (3) Trees on abutting sites and in the abutting right-of-way with root protection zones that extend into the site.

The locations and information for trees on abutting sites may be estimated.
- c. Number each inventoried tree for identification at the site and on the plans.
- d. Identify the common name and scientific name of each inventoried tree.
- e. Measure the DBH of each inventoried tree in inches according to accepted ISA standards.
- f. Measure the approximate average crown radius of each inventoried tree in feet.
- g. Provide the crown area of each inventoried tree using the following formula:
 $(\text{crown radius})^2 \times \pi$.
- h. Assess the health condition of each inventoried tree using the following categories:
 - (1) Good (no significant health issues)
 - (2) Fair (moderate health issues but likely viable for the foreseeable future)

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- (3) Poor (significant health issues and likely in decline)
 - (4) Very Poor or Dead (in severe decline or dead)
 - i. Identify whether the inventoried tree is on the Milwaukie Rare or Threatened Tree List.
 - j. Identify whether the inventoried tree is proposed for removal or retention.
 - k. Organize the tree inventory information in a table or other format approved in writing by the Urban Forester.
2. Tree Preservation Plan
- a. Provide a site plan drawn to scale.
 - b. Include the existing tree locations and corresponding tree numbers from the tree inventory and identify which trees are subject to potential impacts identified in 16.32.042.I.2.d.
 - c. Identify rare or threatened trees as described in the Milwaukie Rare or Threatened Tree List.
 - d. Identify the following site disturbances to scale:
 - (1) Demolition
 - (2) Tree removal
 - (3) Staging, storage, and construction access
 - (4) Grading and filling
 - (5) Paving
 - (6) Construction of structures, foundations, and walls
 - (7) Utility construction
 - (8) Trenching and boring
 - (9) Excavation
 - (10) Any other demolition or construction activities that could result in ground disturbances and/or tree damage
 - e. Locate tree and soil protection fencing to scale.
 - f. Locate soil compaction prevention methods to scale.
 - g. Identify prescriptive/performance path tree protection and soil volume areas.
 - h. Include tree and soil volume protection specifications from the arborist report on the plans including a detailed description of tree and soil volume protection fencing and signage.
 - i. The elements of the tree preservation plan may be included on multiple plan sheets for clarity.

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- j. The final approved set of construction drawings must include the tree preservation plan to ensure contractors, inspectors, and other professionals have access to the information.
3. Tree Planting Plan
- a. Provide a site plan drawn to scale.
 - b. Include the existing trees to be retained and their crown areas to scale.
 - c. Include the trees to be planted and their mature crown areas to scale based on the Milwaukie Mature Tree Crown Area List.
 - d. Identify the soil volume areas for each tree to be planted to scale.
 - e. For prescriptive/performance path soil volume areas, identify the methods and specifications as applicable for:
 - (1) Protection fencing (including signage details);
 - (2) Compaction Reduction;
 - (3) Soil Amendments;
 - (4) Topsoil Replacement; and/or
 - (5) Soil Under Pavement
 - f. | The tree planting should demonstrate consistency with ISA Best Management Practices.
 - g. The elements of the tree planting plan may be included on multiple plan sheets for clarity.
 - h. The final approved set of construction drawings must include the tree canopy plan to ensure contractors, inspectors, and other professionals have access to the information.
4. Arborist Report
- a. Provide a written narrative that summarizes the information from the tree inventory, tree preservation plan, and tree planting plan.
 - b. Provide findings and calculations that demonstrate whether the tree preservation standards in Subsection 16.32.042.B have been met.
 - c. Provide findings and calculations that demonstrate whether the tree planting standards in Subsection 16.32.042.C have been met.
 - d. If the tree preservation and/or tree planting standards have not been met, provide calculations for the applicable tree mitigation fees as required by Subsection 16.32.042.E.
 - e. If the applicant is seeking a variance to the tree preservation and/or tree planting standards in place of providing mitigation fees, provide findings that demonstrate the proposal provides equivalent or greater environmental

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benefits as preserving or planting the required tree canopy consistent as required by Subsection 16.32.042.F.

- f. Provide findings that demonstrate compliance with the tree protection standards in Subsection 16.32.042.G.
- g. Provide findings that demonstrate compliance with the soil volume standards in Subsection 16.32.042.H.

16.32.044 NON-DEVELOPMENT PRIVATE TREE REMOVAL IN RESIDENTIAL ZONES

The City encourages retention of healthy private trees where practical alternatives to removal exist, and where those alternatives meet the owner's objectives for reasonable use and enjoyment of the property. Where there is discretion in a decision about non-development private tree removal, various factors are considered to ensure that significant adverse impacts are avoided or mitigated, weighing the broader economic, ecological, and community concerns.

A. Applicability

A permit is required prior to the removal of the following private trees in residential zones:

- 1. Trees that are at least 6-inch DBH.
- 2. Trees that are less than 6-inch DBH as specified on the Milwaukie Rare or Threatened Tree List.
- 3. Trees that were planted to meet any requirements in Sections 16.32.042 or 16.32.044.

B. Permit Exemptions

Tree removal permits are not required in residential zones when:

- 1. Tree removal is approved with development as provided in Subsection 16.32.042.A.
- 2. The removal of trees that are grown for commercial agricultural or horticultural purposes including fruit trees, nut trees, or holiday trees.

C. Applications

An application for a tree removal permit must be made upon forms prescribed by the City and contain the following:

- 1. Photograph(s) that clearly identify the tree(s) proposed for removal.
- 2. The number, DBH, species, and location of the trees proposed to be cut on a site plan of the property drawn to scale.
- 3. Information as to whether the tree is within a Habitat Conservation Area overlay district or is part of an approved landscape or mitigation plan.

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4. Any additional information required by the City.
5. An application for a tree cutting permit must be accompanied by the correct fee as established in the Consolidated Fee Schedule.

D. Type A Tree Removal Permit

Type A tree removal permits are technical determinations regarding the facts of a particular request and the application of City standards to ensure that work is performed in accordance with ISA Best Management Practices to protect trees, the public, and public infrastructure, and to ensure appropriate tree replacement. Type A permits are reviewed administratively by the Urban Forester without public notice, and the decision may be appealed to the City Manager by the applicant.

1. Application Requirements

- a. Applications for a Type A tree removal permit must meet the submittal requirements of Subsection 16.32.044.C.
- b. Additional information may also be required.
 - 1) If the Urban Forester requires additional information to review an application, the Urban Forester will send a notice to the applicant requesting the additional information.
 - 2) The applicant will have a maximum of 30 days from the date of the Urban Forester's notice to submit the additional information.
 - 3) If the additional information is not received by the Urban Forester within 30 days from the date of the Urban Forester's notice, the application will be voided on the 31st day, with no refund of the filing fee.

2. Approval Criteria

A Type A permit will be issued only if the following criteria are met, as determined by the Urban Forester:

- a. The proposed tree removal will be performed according to current ISA Best Management Practices.
- b. The tree proposed for removal meets one or more of the following criteria:
 - (1) The tree is dead or dying and cannot be saved as determined by an ISA Certified Arborist in accordance with ISA standards.
 - (2) The tree has sustained physical damage that will cause it to die or enter an advanced state of decline. The City may require additional documentation from an ISA Certified Arborist to demonstrate that this criterion is met.
 - (3) The tree is having an adverse effect on adjacent infrastructure or buildings that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.

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- (4) The tree poses an unreasonable risk to the occupants of the property, the adjacent property, or the general public, as determined by an ISA Certified Arborist that is Tree Risk Assessment Qualified (TRAQ) in accordance with current ISA Tree Risk Assessment Best Management Practices.
- (5) The tree is on the Oregon State Noxious Weed List or the Milwaukie Invasive Tree List.
- (6) The tree is part of a stormwater management system and has grown too large to remain an effective part of the system.
- (7) The tree location conflicts with areas of public street widening, construction, or extension as shown in the Transportation System Plan and there is no practicable alternative to removing the tree.
- (8) Tree removal is required for the purposes of a building or land use permit, utility or infrastructure installation, or utility or infrastructure repair and there is no practicable alternative to removing the tree.
- (9) The tree is recommended for removal by a designated fire marshal for Clackamas County because it presents a significant fire risk to habitable structures or limits emergency access for rescue workers, and the risk or access issue cannot be abated through pruning or other means that would result in tree retention.
- (10) An ISA Certified Arborist determines that thinning of interior trees within a stand of trees is necessary for overall stand health, the thinning will result in no less than eighty percent (80%) canopy cover at maturity for the area to be thinned, and that thinning of non-native trees is maximized prior to thinning of native trees.
- (11) Healthy trees. One (1) healthy tree may be removed per tax lot per 12-month period if the tree is less than 12 inches in diameter at breast height and is not required to be preserved by a condition of a land use review, a provision of Chapter 16.32 or Title 19, or as part of a required stormwater facility.

3. Mitigation Requirements

Unless removed for thinning purposes (Subsection 16.32.044.D.2.b(10)) or invasive species status (Subsection 16.32.044.D.2.b.(5)), replacement of a removed tree is required as mitigation. The Urban Forester will condition the removal of each tree upon the planting of a replacement tree as follows:

- a. The minimum size of replacement trees is 1.5-inch caliper for broadleaf trees and 5-foot tall for conifers unless otherwise approved by the Urban Forester. Trees planted must be in good health with the size and quality consistent with ISA Best Management Practices and ANSI Z60.1 standards.

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- b. Replacement trees must be planted in a manner consistent with ISA Best Management Practices.
- c. The replacement tree must substantively replace the function and values of the tree that was removed wherever practicable. For example, a long-lived evergreen native tree that abuts a designated natural resources area (as per Section 19.402) must be replaced with a long-lived evergreen native tree that abuts a designated natural resources area.
- d. If planting a replacement tree is not practicable, the Urban Forester may allow a tree replacement fee in lieu according to the Consolidated Fee Schedule.

4. Decision by the Urban Forester

- a. The Urban Forester's decision will be based on an evaluation of the facts and applicable standards and review criteria in Subsection 16.32.044.D.2.
- b. The Urban Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review criteria and standards.
- c. Any work done under a permit must be performed in strict accordance with the terms and provisions of this chapter and conditions of approval of the permit.
- d. The Urban Forester must notify the applicant of the decision in writing.
- e. If no appeal is filed as specified in Subsection 16.32.044.H, the decision of the Urban Forester is final.

E. Type B Tree Removal Permit

A Type B tree removal permit may be approved by the Urban Forester if the Type A tree removal approval standards cannot be met. Type B permits involve the consideration of relevant technical and qualitative factors to prevent risks to public health and safety and to ensure that the impacts of tree removal are mitigated. Type B permits are reviewed administratively by the Urban Forester. The Type B process is more discretionary than the Type A process and may consider a range of options for approving, approving with conditions, or denying a tree removal permit application.

1. Application Requirements

- a. Applications for a Type B tree removal permit must meet the submittal requirements of Subsection 16.32.044.C.
- b. Additional information may also be required.
 - 1) If the Urban Forester requires additional information to review an application, the Urban Forester will send a notice to the applicant requesting the additional information.

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- 2) The applicant will have a maximum of 30 days from the date of the Urban Forester's notice to submit the additional information.
- 3) If the additional information is not received by the Urban Forester within 30 days from the date of the Urban Forester's notice, the application will be voided on the 31st day, with no refund of the filing fee.

2. Review and Approval Criteria

The City will not issue a Type B permit for the removal of a healthy, functioning tree without a demonstration by the applicant that extraordinary circumstances exist. Maintenance or the replacement of pavement, removal of tree litter, or other minor inconveniences may or may not constitute extraordinary circumstances.

Decisions regarding removal of healthy, functioning trees are fact-specific and are made on a case-by-case basis by the Urban Forester. In determining whether extraordinary circumstances exist that warrant the major pruning or removal of a healthy tree, the Urban Forester will consider:

- a. Whether the species of tree is appropriate for its location;
- b. Whether the crown, stem, or root growth has developed in a manner that would prevent continued healthy growth or is negatively impacting other trees;
- c. Whether maintenance of the tree creates an unreasonable burden for the property owner; and
- d. Whether the removal will significantly affect public safety or neighborhood character based on the following:
 - (1) The age, size, form, species, general condition, pruning history and any unique qualities or attributes of the trees;
 - (2) The cumulative impacts of current and prior tree removals in the area; and
 - (3) When the tree is associated with a grove, whether removal of the tree will have a significant adverse impact on the viability of other trees or make other trees considerably more vulnerable to windthrow.

3. Mitigation Requirements

- a. Replacement of a removed tree is usually required as mitigation.

The Urban Forester will at a minimum condition the removal of a tree based on Subsection 16.32.044.D.3 (planting standards and exceptions for thinned or invasive-species trees). In addition, the Urban Forester will condition the removal of each tree upon the planting of additional replacement tree(s) as outlined in Table 16.32.044.E.3:

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Table 16.32.044.E.3 Required Replacement Trees for Type B Permits

Diameter at Breast Height (DBH) of Tree Removed	Number of Additional Trees Required Beyond 1:1 Replacement	Total Replacement Trees Required
6" DBH to <12" DBH		1 tree
12" DBH to <24" DBH	1 tree	2 trees
24" DBH to <36" DBH	2 trees	3 trees
36" DBH or greater	3 trees	4 trees

b. In addition, mitigation fees must be provided to the Tree Fund for each healthy private tree removed in conjunction with an approved Type B permit. See the Consolidated Fee Schedule for details.

4. Decision by the Urban Forester

- a. The Urban Forester's decision must be based on an evaluation of the facts and applicable standards and review factors in Subsection 16.32.044.E.2.
- b. The Urban Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review factors and standards.
- c. Any work done under a permit must be performed in strict accordance with the terms and provisions of this chapter and conditions of approval of the permit.
- d. The Urban Forester must notify the applicant of the decision in writing.
- e. If no appeal is filed as specified in Subsection 16.32.044.E.5, the decision of the Urban Forester is final.

5. Appeals

The applicant may appeal the Urban Forester's decision.

- a. Appeals must be:
 - 1) Filed with the Urban Forester on forms prescribed by the City;
 - 2) Filed within 14 days from the date of the Urban Forester's decision; and
 - 3) Specifically identify how the Urban Forester erred in applying the standards or review criteria.
- b. Appeals are heard by the City Manager.
 - 1) The City Manager will consider the application against the applicable standards or review criteria, taking into consideration information provided by the applicant and City staff.

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- 2) The City Manager may affirm or reverse the Urban Forester's decision or remand the decision to the Urban Forester to determine appropriate actions.
- 3) The appeal decision of the City Manager is final and may not be appealed to another review body within the City.

Article IV Miscellaneous Provisions

16.32.080 PROGRAMMATIC PERMITS

Programmatic permits may be issued by the Urban Forester for routine public facility or utility operation, planned repair and replacement, and on-going maintenance programs on street trees, public trees, and private trees. The purpose of a programmatic permit is to eliminate the need for individual permits for tree removal, pruning, or for ongoing activities that cover a wide geographic area and may include the pruning or removal of numerous street trees, public trees, and private trees. Programmatic permits are evaluated to prevent cumulative adverse impacts to the urban forest and ensure that any permitted activities meet the goals and objectives of the Urban Forest Management Plan.

A. Applicability

Programmatic permits may only be issued to a public agency or a utility as defined in this chapter.

B. Application Requirements

Applications for programmatic permits must be submitted in writing or electronically on forms provided by the City and be accompanied by the correct fee.

C. Permit

Approved permits must include the following required information. The Urban Forester may modify the permit at any time to respond to any questions, changes in regulations, or previously unforeseen issues, provided the applicant is notified in writing.

1. Duration. The Urban Forester may approve a programmatic permit for a period of up to 2 years;
2. Geographic area covered by the permit;
3. Permitted activities and any restrictions on the method, number, type, location, or timing of activities;
4. Procedures and thresholds for providing notice to residents, businesses, and the City impacted by the performance of work under the permit;
5. Monitoring, performance tracking, and reporting requirements. The Urban Forester may prescribe rules or procedures that specify the manner in which such tracking and reporting occur; and

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6. Traffic control requirements.

7. Annual Report

On the anniversary of permit issuance, the applicant must submit an annual report on a form supplied by the City detailing any work performed under the permit and any work scheduled to be performed.

8. Tree Size Limits

- a. The programmatic permit will not allow the removal of trees 6-inch or more in diameter at breast height, except as provided in this section.
- b. If an applicant requests removal of a healthy tree 6-inch or more in diameter at breast height at time of application or during the period in which the programmatic permit is in effect, an opportunity for public comment will be provided in accordance with Subsection 16.32.026 B.2
- c. For any request, the Urban Forester may further limit allowed tree removal in order to meet the review criteria in Subsection 16.32.028F.

9. Tree Work

All work performed under a programmatic permit must be performed in accordance with ISA Best Management Practices.

D. Completeness

1. If the Urban Forester determines an application is incomplete, the Urban Forester will provide written notice to the applicant that describes the additional information needed.
2. The applicant must submit the additional information within 30 days from the date of the notice unless extended in writing by the Urban Forester.
3. If the applicant does not furnish the additional information within 30 days from the date of the notice or any extension granted in writing by the Urban Forester, the application will be denied.

E. Notice of Complete Application

When the Urban Forester determines that the application is complete, the Urban Forester must provide written notice that the application is complete to the applicant and the Tree Board. The notice must provide instructions for how to obtain additional information about the application, comment on the application, and request notification of the Urban Forester's decision.

F. Review Criteria

The Urban Forester may approve a programmatic permit upon a determination that the following criteria are satisfied or will be satisfied with conditions:

1. The proposed activity will result in a net gain to the urban forest functions and benefits described in the purpose statement in Subsection 16.32.005 considering the applicant's proposed performance measures, proposed tree planting, and other activities proposed to improve the overall health of the urban forest.

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2. The applicant's proposed outreach and notification program provides adequate notice to residents, businesses, and the City prior to performing work authorized under the programmatic permit.

G. Decision

The Urban Forester must issue the permit, issue the permit with conditions of approval, or deny the permit within 120 days of determining the application is complete. The Urban Forester's decision will be final and, if approved, the permit will be valid for a period of up to two years. An applicant may request an amendment to an unexpired permit if the conditions and circumstances have changed. The Urban Forester's decision will be based on an evaluation of the application against the applicable review criteria in Subsection 16.32.028 F.

H. Revocation

The Urban Forester may revoke a programmatic permit upon a determination that the applicant is not adhering to the terms of the permit or is acting beyond the activities authorized by permit.

16.32.082 COORDINATION WITH OTHER REGULATIONS

A. Street, Sidewalk, Traffic Control Devices, and Vision Clearance

Subject to enforcement under Chapters 12.12 and 12.24, property owners for public trees and private trees, and adjoining property owners for street trees, must not allow any tree to overhang any street, sidewalk or obstruct traffic control devices or inhibit the safe use at intersections within the City.

B. Dead, Decaying, Dangerous, Diseased, or Infested Tree or Tree Limb Removal

Subject to enforcement under Subsection 8.04.110B, the City may require the removal of any tree or tree limb that is dead, decaying, dangerous, diseased, or infested and that poses a significant risk to the public, adjoining property or the urban forest as determined by the Urban Forester.

Removal under this section must be completed within the time period specified in a written notice unless extended in writing by the Urban Forester.

The responsible party must notify the City in writing when the required removal has been completed.

If the responsible party does not remove the dead, decaying, dangerous, diseased, or infested tree or tree limb, the vegetation will be declared a nuisance and will be subject to further enforcement pursuant to Chapter 8.04.

In cases where the owner demonstrates extreme financial hardship, the City Manager may grant a cost waiver in accordance with Section 16.32.032.

C. Business Tax or Metro License Required

Subject to enforcement under Chapter 5.08, all businesses doing arboricultural work within the City must have paid the Milwaukie business tax or have a current business license with the Metropolitan Service District.

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D. Zoning Code

In addition to Chapter 16.32 and subject to enforcement under Section 8.04.135, trees are required to be preserved, planted, and permitted for removal under:

1. Section 19.401 Willamette Greenway
2. Section 19.402 Natural Resources
3. Section 19.606 Parking Lot Standards
4. Section 19.708 Transportation Facility Requirements

E. Tree Board

The Tree Board is an advisory board to the City Council, with duties and responsibilities established in Section 2.18.

Article V Enforcement and Penalties

16.32.100 ENFORCEMENT

A. Interpretations

1. A tree that is removed without an approved removal permit will be considered an unpermitted healthy tree removal.
2. Tree topping, unless otherwise permitted, will be an unpermitted healthy tree removal.
3. If a tree is removed without a permit, a violation will be determined by measuring the stump. A stump that is eight (8) caliper inches or more in diameter will be considered prima facie evidence of a violation of this chapter.
4. Proof of violation of this chapter will be deemed prima facie evidence that such violation is that of the owner of the property upon which the violation was committed.

B. Violations

The following are considered violations of the tree code (Chapter 16.32).

1. Removal or Topping. Removal or topping of a tree regulated by Chapter 16.32 without an approved permit from the City.
2. Removal – Approved Permit. Removal of a tree in violation of an approved permit.
3. Damaging a Tree. Willfully or negligently damaging a tree regulated by Chapter 16.32.
4. Failure to Comply with Permit. Failure to meet a condition of an approved permit.
5. Major Pruning without a Permit. Major pruning of a street tree or public tree without an approved permit from the City.

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6. Interference with the City. No person will prevent, delay, or interfere with the Urban Forester or designee while they are engaged in work activities including, but not limited to inspection of trees subject to the provisions of this chapter, planting, cultivating, mulching, pruning, spraying, or removing any street tree, public tree, or private tree.
7. Removal of Stump. Removal of the stump of a tree removed without a tree removal permit.
8. Root Protection Zone Disturbance. Willfully or negligently do the following in the Root Protection Zone (RPZ): unauthorized ground disturbance or construction activity including vehicle or equipment access (but excluding access on existing streets or driveways), storage of equipment or materials including soil, temporary or permanent stockpiling, proposed buildings, impervious surfaces, underground utilities, excavation or fill, trenching or other work activities.
9. Soil Contamination. Willfully or negligently allow soil contaminants in the soil volume area.

C. Penalties

The following penalties may apply to violations of the provisions of Chapter 16.32:

1. A person who violates Chapter 16.32 will, upon conviction thereof, be punished by a fine not to exceed an amount established in the Consolidated Fee Schedule.
2. Topping, pruning, or otherwise inflicting willful and negligent damage to a tree crown or roots in a manner that is inconsistent with ISA Best Management Practices:
 - a. A fine up to the amount established in the Consolidated Fee Schedule or up to the appraised loss in value of the illegally topped or pruned tree as determined by an ISA Certified Arborist plus the arborist's reasonable appraisal fee.
 - b. Restoration of the tree crown, trunk, or root system as prescribed by an ISA Certified Arborist and approved by the Urban Forester.
3. Tree protection zone violations:
 - a. A fine up to the amount established in the Consolidated Fee Schedule.
 - b. Restoration of the tree protection zone as prescribed by an ISA Certified Arborist and approved by the Urban Forester.
4. General Penalty
 - a. A person violating any of the provisions of this chapter will, upon conviction thereof, be punished by a fine not to exceed one thousand dollars (\$1,000.00), if there is not a corresponding fine in the Consolidated Fee Schedule.

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- b. Each day's violation of a provision of this chapter constitutes a separate offense.

Tree Code Update

November 19, 2024

Courtney Wilson

Urban Forester

Tim Salyers

Code Compliance Coordinator



Milwaukie's regulated tree types:

PUBLIC TREES



- Reg. at $\geq 2''$ DBH*
1. Major pruning permit
 2. Removal permit

PRIVATE RESIDENTIAL DEVELOPMENT TREES



- Reg. w/ additional dwelling unit*
1. Applicants must meet 4 development standards

PRIVATE RESIDENTIAL NON-DEVELOPMENT TREES



- Reg. at $\geq 6''$ DBH*
1. Type 1 'qualified' permit
 2. Type 2 'discretionary' permit

Overview of code changes:

- Overall Look and Organization
 - Added “Articles” for better organization.
 - Removed redundancies.
 - Provided space for potential growth.
 - Moved Tree Board to Title 2.
- Improve clarity of code language.
 - Expanded definitions.
 - Renamed Type 1 & Type 2 permits to Type A and Type B permits.
 - Clarified what trees can be used towards private development canopy credit.
- Enforcement Improvement
 - Consolidated enforcement codes.
 - Violations are now clearly stated.



Overview of code changes:

- New Definitions:

- Building footprint
- Private tree
- Unhealthy tree

- Revised Definitions:

- Consolidated Fee Schedule
- Damaged tree
- Healthy tree
- Topping



TOPPING

*Damaging removal
of tree canopy,
improper pruning*



POLLARDING

*Pruning technique
started at young age*

Violations:

Public tree code example MMC 16.32.040

16.32.040 PENALTY

A person who removes a street tree or public tree without first obtaining the necessary permit from the City, removes a tree in violation of an approved permit, or violates a condition of an approved permit must pay a fine in an amount established in the Master Fee Schedule. (Ord. 2216 § 2, 2022; Ord. 2197 § 1, 2020; Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016; Ord. 2022 § 1, 2011)

Creating separate
violations and penalty
sections

1. Violations: The following are considered violations of the tree code MMC 16.32.017-16.32.030. A tree that is removed without an approved removal permit will be considered an unpermitted healthy tree removal:

- a. Removal or topping of a street tree or public tree without an approved permit from the City; or
- b. Removal of a street tree or public tree in violation of an approved permit; or
- c. Willfully or negligently damaging a street tree or public tree; or
- d. Failure to meet a condition of an approved permit.

2. Penalties:

A person who violates MMC 16.32.017-16.32.030 or 16.32.040.1.a-d. must pay a fine in an amount established in the Fee Schedule.

Administrative changes

- Removed public notice requirement for public tree removals that meet the following criteria:
 - Dead
 - Infested
 - Listed on Oregon Noxious Weed list or Milwaukie Invasive Tree List
- Renamed Type 1 and Type 2 private tree permits to Type A and Type B
- Removed public notice requirements for Type B tree removals over 12" DBH

B. Public Notice Exemptions

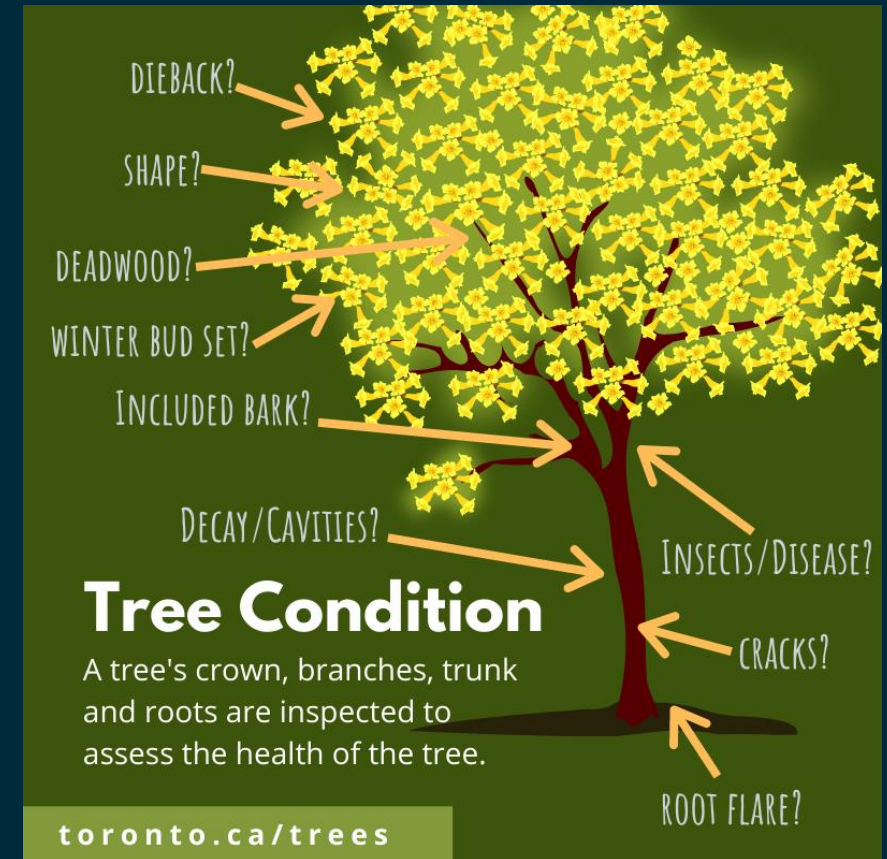
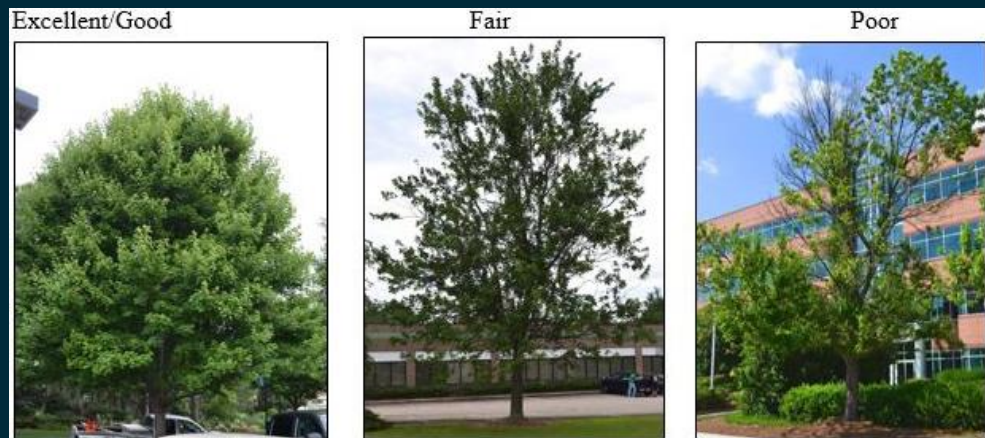
The following street trees and public trees may be removed without public notice subject to the City's review of the application:

1. A street tree or public tree that is dead or infested.
2. A street tree or public tree that is on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List.

~~4) Public notice is required if the tree is healthy and larger than 12 inches DBH.~~

Overview of code changes:

- Private residential development tree code:
 - Only trees in healthy condition can count towards planting standard (40% canopy coverage) requirement
 - Trees <6" DBH can count towards planting standard
 - Removal of private development code application when there is no building footprint expansion
 - *Non-development tree code still applies*



Next steps for code amendment adoption

- Accept any feedback and translate into code changes
 - Review with code compliance
- Bring back to council on 12/17/24 for adoption
- Modify existing outreach/informational materials on website



Thank you!



Questions?

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