



**Regular Session**

**RS**

# **Milwaukie City Council**

**This packet was revised on December 16, 2024.**

**COUNCIL REGULAR SESSION**

City Hall Council Chambers, 10501 SE Main Street  
& Zoom Video Conference ([www.milwaukieoregon.gov](http://www.milwaukieoregon.gov))

**REVISED AGENDA**

DECEMBER 17, 2024

(1<sup>st</sup> Revised December 13, 2024)

(2<sup>nd</sup> Revision December 16, 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-regular-session-385>.  
Written comments may be delivered to City Hall or emailed to [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov).

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

Page #

1. **CALL TO ORDER** (6:30 p.m.)
  - A. Pledge of Allegiance
  - B. Native Lands Acknowledgment
2. **ANNOUNCEMENTS** (6:31 p.m.) 2
3. **PROCLAMATIONS AND AWARDS**
  - A. None Scheduled.
4. **SPECIAL REPORTS**
  - A. None Scheduled.
5. **COMMUNITY COMMENTS** (6:35 p.m.)  
To speak to Council, please submit a comment card to staff. Comments must be limited to city business topics that are not on the agenda. A topic may not be discussed if the topic record has been closed. All remarks should be directed at the whole Council. The presiding officer may refuse to recognize speakers, limit the time permitted for comments, and ask groups to select a spokesperson. **Comments may also be submitted in writing before the meeting, by mail, e-mail (to [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov)), or in person to city staff.**
6. **CONSENT AGENDA** (6:40 p.m.)  
Consent items are not discussed during the meeting; they are approved in one motion and any Council member may remove an item for separate consideration.
  - A. **Approval of Council Meeting Minutes of:** 5
    1. November 12, 2024, special session,
    2. ~~November 19, 2024, work session, and~~
    3. ~~November 19, 2024, regular session.~~ (removed on December 13)
  - B. **Certification of the November 5, 2024, Election Results – Resolution** 7
  - C. **Authorization of an Intergovernmental Agreement (IGA) with the North Clackamas School District (NCSD) for a School Resource Officer (SRO) at Milwaukie High School (MHS) – Resolution** 16
7. **BUSINESS ITEMS**
  - C. **Downtown Open Container Policy – Discussion** (6:45 p.m.) 133-1  
(added to the agenda on December 16)  
Staff: Ryan Burdick, Police Chief

- 7. **BUSINESS ITEMS (continued)**
  - A. **Tree Code Amendments Adoption – Ordinance (7:45 p.m.)** **33**  
 Staff: Katie Gavares, Climate & Natural Resources Manager, and Courtney Wilson, Urban Forester
  - B. **Sparrow Site Goals and Next Steps – Discussion (8:15 p.m.)** **130**  
 Staff: Joseph Briglio, Assistant City Manager
- 8. **PUBLIC HEARINGS**
  - A. **None Scheduled.**
- 9. **COUNCIL REPORTS (moved to the December 17, 2024, work session)**
- 10. **ADJOURNMENT (8:45 p.m.)**

**Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice**

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov) or phone at 503-786-7502. To request Spanish language translation services email [espanol@milwaukieoregon.gov](mailto:espanol@milwaukieoregon.gov) at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the [city’s YouTube channel](#) and Comcast Channel 30 in city limits.

**Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)**

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov) o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a [espanol@milwaukieoregon.gov](mailto:espanol@milwaukieoregon.gov) al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el [canal de YouTube de la ciudad](#) y el Canal 30 de Comcast dentro de los límites de la ciudad.

**Executive Sessions**

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 REGULAR SESSION

City Hall Council Chambers, 10501 SE Main Street  
& Zoom Video Conference ([www.milwaukieoregon.gov](http://www.milwaukieoregon.gov))

2416<sup>th</sup> Meeting

## MINUTES

DECEMBER 17, 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  
Ryan Burdick, Police Chief  
Katie Gavares, Climate & Natural Resources Manager  
Justin Gericke, City Attorney  
Emma Sagor, City Manager  
Scott Stauffer, City Recorder  
Courtney Wilson, Urban Forester

**Mayor Batey** called the meeting to order at 6:32 p.m.

### 1. CALL TO ORDER

**A. Pledge of Allegiance.**

**B. Native Lands Acknowledgment.**

### 2. ANNOUNCEMENTS

**Mayor Batey** announced upcoming activities including a free drop-in flu shot clinic, the city's annual Winter Solstice and Christmas Ships viewing event, and the annual Bing in the New Year event. **Batey** noted that the city was accepting nominees for the 2024 volunteer of the year award and would be recruiting for Planning Commissioners.

**Councilor Stavenjord** announced the Longest Night of the Year Vigil in honor of houseless individuals event in Oregon City the same evening as the Winter Solstice.

**Mayor Batey** read a Council service themed Haiku.

### 3. PROCLAMATIONS AND AWARDS

**A. None Scheduled.**

### 4. SPECIAL REPORTS

**A. None Scheduled.**

### 5. COMMUNITY COMMENTS

**Mayor Batey** reviewed the comment procedures. **Sagor** reported on staff follow-up to December 3 comments regarding an ongoing code enforcement case. No audience member wished to address Council.

### 6. CONSENT AGENDA

**It was moved by Councilor Anderson and seconded by Council President Massey to approve the Consent Agenda as presented.**

**A. City Council Meeting Minutes:**

- 1. November 12, 2024, study session,**
- ~~**2. November 19, 2024, work session, and** (removed from the agenda)~~
- ~~**3. November 19, 2024, regular session.** (removed from the agenda)~~

- B. Resolution 64-2024: A resolution of the City Council of the City of Milwaukie, Oregon, certifying the results of the November 5, 2024, election.
- C. Resolution 65-2024: A resolution of the City Council of the City of Milwaukie, Oregon, acting as the Local Contract Review Board, authorizing the city manager to enter into an intergovernmental agreement (IGA) with the North Clackamas School District (NCSD) for school resource officer (SRO) services.

Motion passed with the following vote: Councilors Anderson, Khosroabadi, Massey, and Stavenjord and Mayor Batey voting “aye.” [5:0]

**7. BUSINESS ITEMS**

**C. Downtown Open Container Policy – Discussion** (added, moved up the agenda)

**Mayor Batey** explained when public comment would be taken during this agenda item and clarified that the proposal was to allow individuals to walk around with open containers of alcohol in downtown Milwaukie.

**Burdick** provided an overview of the proposed open container policy, noting public safety, health, and legal concerns and the benefits of encouraging a vibrant downtown environment. How event permits for open container activities in Milwaukie had been processed to date were reviewed and it was noted that the only city in Oregon with an open container policy was Hood River.

**Councilor Anderson** and **Burdick** remarked on the lack of data regarding open container policies given there were few cities with an open container policy. **Sagor** suggested this was the beginning of a conversation and that there was a belief that such a policy could increase pressures on public safety resources.

**Council President Massey** remarked on the importance of knowing the policy details when preparing to implement it and was skeptical about adopting a wide-open policy.

**Councilor Khosroabadi** asked if an open container policy would lead to more impaired driving. **Burdick** remarked that there would likely be an increase in the number of driving under the influence (DUI) incidents with such a policy and explained how the Milwaukie Police Department (MPD) generally handles intoxicated individuals.

**Councilor Stavenjord, Burdick,** and **Sagor** noted that the proposal was to identify a specific area where individuals could carry around open alcoholic beverages in the public right-of-way (ROW). They remarked on how Hood River’s policy functioned.

**Councilor Stavenjord** and **Burdick** commented on how such a policy could be implemented for a trial period and then revisited by Council. **Mayor Batey, Burdick,** and **Sagor** discussed whether the Oregon Liquor and Cannabis Commission (OLCC) would allow such policies and noted the need for special event insurance and that insurance requirements would impact the implementation of an open container policy.

**Sagor** asked community members to speak about their vision of the proposed policy.

**Mayor Batey** reviewed the comment procedures.

**Mike Lesch,** Beer Store Milwaukie owner, remarked on the benefits of allowing the open drinking and carrying of store-bought alcoholic beverages to support downtown events such as First Friday.

**Karen Baranick,** Downtown Association of Milwaukie (DAM) representative and Milwaukie Sport and Spine owner, supported implementing an open container policy.

**Tyler King**, unincorporated Clackamas County resident, supported implementing an open container policy by allowing the policy for specific times and events at first.

**Shalena Havens**, Havens Acupuncture owner, supported implementing an open container policy to encourage a vibrant downtown area.

**Councilor Stavenjord** and **Burdick** noted that it was possible to get a DUI for drinking while riding a bicycle and the group discussed how MPD enforces public intoxication laws during such events as the citywide Porchfest concert.

**Council President Massey** appreciated that the community proposal focused on events and encouraged the city to take baby steps if the policy is implemented.

**Councilor Anderson** supported an open container policy and revisiting the special events permit policy to allow for open container and consider removing the financial impact of open container citations. **Anderson** suggested the concerns about the policy was more about society at-large's attitude toward drinking and **Mayor Batey** noted public health aspects of drinking on a daily basis.

**Councilor Khosroabadi** remarked on the public safety and health aspects of drinking in public and asked if the benefits of allowing increased public drinking were worth it given the health effects.

**Councilor Stavenjord** appreciated the discussion, remarked on the benefits and concerns about allowing increased alcohol consumption in public, and suggested the conversation continue with public health and economic experts invited to participate. **Mayor Batey** and **Councilor Stavenjord** noted that Stavenjord supported exploring the policy on an event-basis.

**Mayor Batey** summarized there was Council support for exploring an event-based approach to an open container policy. **Councilor Anderson** and **Batey** noted that staff had heard Anderson's request to look at removing the financial penalty of open container citations.

**Mayor Batey** expressed support for exploring an event-based approach to such a policy and remarked on the challenges of drawing a line around an open container area and suggested insurance requirements could stop the implementation of such a policy.

**Sagor** thanked the community for coming to the meeting and confirmed staff had enough Council input to further develop policy implementation options, including MPD's enforcement of open container laws. **Councilor Anderson** expressed discomfort with having a financial penalty if MPD was not actively enforcing the open container citation. **Mayor Batey** supported MPD's work to avoid issuing an open container citation.

**Rod Smith**, Milwaukie resident, remarked on the open container policy in the City of New Orleans, Louisiana, whether an open alcoholic beverage container policy would lead to an open marijuana use policy, and suggested such a policy would require additional law enforcement services.

**Mayor Batey** suggested staff would bring the issue back to Council in earl 2025.

#### **A. Tree Code Amendments Adoption – Ordinance**

**Sagor** reported that comments about the tree code changes had been received, and staff would like additional time to review those before Council adopts the code changes.

**Stauffer** noted that the agenda item was a business item and not a public hearing.

**Wilson** reviewed the proposed tree code amendments, noting that the changes would provide organizational clarity and enhance enforcement capabilities.

**Gavares** noted the code amendments had been presented to Council at a previous meeting. **Mayor Batey, Sagor, and Gericke** explained that comments from Mayor Batey had been received just before the present meeting and staff needed time to review those comments. **Batey** observed that no public comments had been received.

The group noted that the Mayor’s comments would be reviewed, and the tree code amendment ordinance would be rescheduled to a future meeting.

**B. Sparrow Site Goals and Next Steps – Discussion**

**Briglio** noted previous Council discussion on the project and asked for Council to confirm that the development goal was to build affordable homeownership units for buyer who could afford 80-to-100 percent of area median income (AMI).

The group discussed the project affordability goal, how a request for proposals (RFP) process that aimed for different AMI percentages, and noted that an RFP process with multiple rounds, if no developer bids at lower AMI percents, could take a long time. **Briglio** was confident it would take a long time to get houses built on the site.

**Mayor Batey** summarized that it was Council consensus to prepare the first RFP for a homeownership model with a cap at 80-percent of AMI. The group acknowledged there was more than one land trust model the city could pursue to secure an initial developer, owners, and maintain affordability on the site into the future.

**Sagor and Briglio** reviewed the other project goals Council had agreed to at previous meetings and it was Council consensus that the goals had been agreed to.

**Councilor Anderson and Mayor Batey** remarked on how the city works with the county to improve county owned roads adjacent to city properties.

**Briglio** noted next steps in releasing an RFP for the Sparrow Site in early 2025.

**Briglio** asked for Council input on whether construction excise tax (CET) funds should be used on the project. It was Council consensus to wait until bids had been received on the project to determine if CET funds should be used.

**8. PUBLIC HEARING**

**A. None Scheduled.**

**9. COUNCIL REPORTS** (moved to the December 17, 2024, work session agenda)

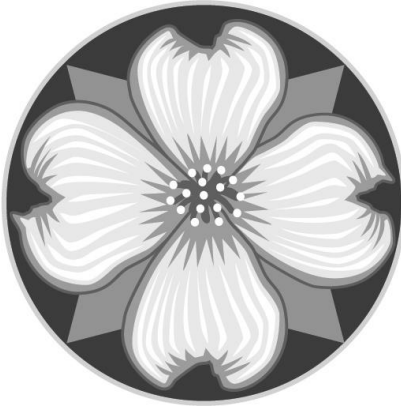
**10. ADJOURNMENT**

It was moved by **Councilor Anderson** and seconded by **Council President Massey** to adjourn the Regular Session. Motion passed with the following vote: **Councilors Anderson, Khosroabadi, Massey, and Stavenjord** and **Mayor Batey** voting “aye.” [5:0]

**Mayor Batey** adjourned the meeting at 8:17 p.m.

Respectfully submitted,

  
\_\_\_\_\_  
Scott Stauffer, City Recorder



**RS Agenda Item**

**2**

# **Announcements**





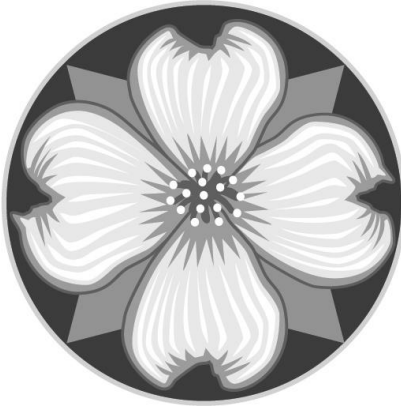
# Mayor's Announcements – December 17, 2024

- **Free Drop-In Flu Shots at Ledding Library – Fri., Dec. 20 (10:30 AM – 2 PM)**
  - Clackamas County Public Health will be offering free flu shots on a drop-in basis
  - Ledding Library (Study Room 2), 10660 SE 21<sup>st</sup> Ave.
- **Winter Solstice and Christmas Ships Viewing – Sat., Dec. 21 (4:30 – 7:30 PM)**
  - Warm by a fire and watch the ships from Milwaukie Bay Park
  - Food and hot beverages for sale from the Lewelling Neighborhood to help raise funds for concerts in the park
  - Craft adult beverages for sale from Beer Store Milwaukie
- **Bing in the New Year – Tue., Dec. 31 (6 – 9 PM)**
  - Milwaukie Arts Committee hosts this 2<sup>nd</sup> annual free, family friendly New Year's eve event
  - Event includes a beer garden, food vendors, live music, lion dancers, and other Chinese performance artists
  - Lowering of a 7-foot, lighted Bing cherry at 9 p.m. (East coast midnight)
  - Event takes place in the parking lot at SE Main St. and SE Harrison St.
  - Learn more at [binginthenewyear.com](http://binginthenewyear.com)
- **2024 Volunteer of the Year – Nominations Accepted Until Wed., Feb. 12**
  - Nominees can include anyone who resides in Milwaukie or is a member of a non-profit organization or business that serves the Milwaukie community
  - Nominations can be submitted on Engage Milwaukie at [engage.milwaukieoregon.gov](http://engage.milwaukieoregon.gov)
- **LEARN MORE AT [WWW.MILWAUKIEOREGON.GOV](http://WWW.MILWAUKIEOREGON.GOV) OR CALL 503-786-7555**

**City Council folks  
toiling for the well-being  
of what we call home**

**- AV Tech Josh Reynolds**

Share your Milwaukie Haiku!  
Email yours to [bateyl@milwaukieoregon.gov](mailto:bateyl@milwaukieoregon.gov)



**RS Agenda Item**

**6**

# **Consent Agenda**

**COUNCIL SPECIAL SESSION**

City Hall Council Chambers, 10501 SE Main Street  
& Zoom Video Conference ([www.milwaukieoregon.gov](http://www.milwaukieoregon.gov))

**MINUTES****NOVEMBER 12, 2024**

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

**Staff Present:** Joseph Briglio, Acting Assistant City Manager     Michael Osborne, Finance Director  
Ryan Burdick, Chief of Police     Peter Passarelli, Public Works Director  
Justin Gericke, City Attorney     Emma Sagor, City Manager  
Brent Husher, Library Director     Scott Stauffer, City Recorder  
Nicole Madigan, Deputy City Recorder

**Mayor Batey** called the meeting to order at 5:21 p.m.

**1. Small Business Saturday**

**Mayor Batey** introduced Kelli Keehner of K.Marie and the Business of Milwaukie (BOM) to introduce fellow Milwaukie business owners and comment on Small Business Saturday and the importance of small businesses in the community.

**Keehner** thanked Councilors Stavenjord and Anderson for their articles in the October and November Pilots and stated that the BOM would be hosting an event called Sip.Shop.Support on Small Business Saturday to encourage community members to participate in supporting their local small businesses.

**Keehner** introduced Ray Peck, owner of Wind Horse Coffee and Tea. **Peck** shared how Wind Horse was conceived and explained how the business operates. **Mayor Batey** and **Peck** commented on other coffee shops that have joined the community.

**Keehner** introduced Michael Calcagno, co-owner and operator of a new business in downtown Milwaukie, Sauna Glo. **Calcagno** shared how Sauna Glo came to Milwaukie and what will be offered at the new business. **Mayor Batey** and **Keehner** noted their excitement for the new business.

**Keehner** introduced Mike Lesch, co-owner of Beer Store Milwaukie. **Lesch** shared a bit about the Beer Store and commented on the Sip.Shop.Support event and the importance of supporting small businesses.

**Keehner** explained a bit about BOM and the Sip.Shop.Support event.

**Mayor Batey** and **Councilors Khosroabadi** and **Stavenjord** remarked on the importance of small businesses. **Stavenjord** read the Small Business Saturday proclamation and **Batey** proclaimed November 30 to be Small Business Saturday.

**Mayor Batey** recessed the meeting at 5:52 p.m. and noted the second topic would not be aired live or recorded.

**Mayor Batey** reconvened the meeting at 6:07 p.m.

**2. Council Mini-Retreat**

The group participated in a Council retreat.

**Sagor** provided handouts that reviewed Council's current goals, presented Council goals of neighboring cities, and started a group discussion about goal setting and identifying values versus goals.

### **3. Adjourn**

**Mayor Batey** adjourned the meeting at 7:50 p.m.

Respectfully submitted,

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Nicole Madigan, Deputy City Recorder

**COUNCIL STAFF REPORT**

**To:** Mayor and City Council  
Emma Sagor, City Manager

**Date Written:** Dec. 3, 2024

**Reviewed:** Nicole Madigan, Deputy City Recorder

**From:** Scott Stauffer, City Recorder

**Subject:** **Certification of the November 2024 Election Results**

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**ACTION REQUESTED**

As required by the Milwaukie City Charter, Council is asked to acknowledge and certify the results of the election held on Tuesday November 5, 2024, as reported by the Clackamas County Elections Office.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

Milwaukie City Councilors and the Mayor are elected to four-year terms that end at staggered times so that every two years either two or three positions appear on the ballot. When a Council member resigns before the end of their term, a special election is triggered as required by Charter Chapter V. On December 31, 2024, the four-year terms for Council positions 1 and 3 will expire. To fill these positions for new four-year terms beginning January 1, 2025, an election was held on November 5, 2024.

To qualify to serve on Council, an individual must be a registered voter in the State of Oregon and have resided within the city limits for at least six months prior to the election. For the November 2024 election, the deadline to reside in city limits was May 5, 2024.

Individuals interested in running for Council positions begin the process by filing candidate and petition forms with the city's elections officer during the 30-day filing period as outlined in the Charter. As of the November 2024 election filing deadline, August 27, four individuals had filed and qualified to run for the two Council positions. For position 1, Adam Khosroabadi and Camden McKone qualified and appeared on the ballot; for position 3, Will Anderson and Teresa Bresaw qualified and appeared on the ballot.

In Oregon, counties administer all elections. Therefore, the Clackamas County Elections Office distributed, collected, and counted all ballots issued to Milwaukie voters. Historically, there have been a handful of registered voters who live in the Multnomah County part of the city. However, as of the 2022 election the only property within city limits located in Multnomah County is an industrial building, therefore there are no registered Milwaukie voters in Multnomah County. Canvass reports submitted by the counties are attached to this staff report as Attachment 1. As shown in the canvass reports, Adam Khosroabadi was (re)elected to position 1 and Will Anderson was (re)elected to position 3.

**ANALYSIS**

Per chapter IV, section 13 of the City Charter, election results “shall be made a matter of record in the record of the proceedings of the Council.” Accordingly, the city elections officer asks that Council adopt a resolution acknowledging and certifying the results of the November 5, 2024, election.

Further, the City Charter also directs that a certificate of election be issued to each elected person. Therefore, the city elections officer will issue the attached certificate to the elected individual.

**BUDGET & WORKLOAD IMPACTS**

None.

**CLIMATE & EQUITY IMPACTS**

In recent years, Council has adopted climate and equity related goals, and elected members of Council decide what their goals and policies focus areas are. Any given elected Council member therefore carries influence on the climate and equity goals and objectives set for the city.

**COORDINATION, CONCURRENCE, OR DISSENT**

The city elections officer worked with the Clackamas County Elections Office to ensure smooth administration of the election. The Clackamas County Elections Office provided the election results attached to this staff report.

**STAFF RECOMMENDATION**

Staff recommend that Council accept and certify the results of the November 5, 2024, general election in accordance with the City Charter directive to make the results a part of the record.

**ALTERNATIVES**

None.

**ATTACHMENTS**

1. Resolution
2. Election Results
3. Certificates of Election

**COUNCIL RESOLUTION No.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
CERTIFYING THE RESULTS OF THE NOVEMBER 5, 2024, ELECTION.**

**WHEREAS** Chapter IV, Section 13 of the Milwaukie City Charter requires election results to be included in the proceedings of the City Council, and

**WHEREAS** the election results from the November 5, 2024, general election have been certified by the Clackamas County Elections Office.

**Now, Therefore, be it Resolved** by the City Council of the City of Milwaukie, Oregon, that the certified election results attached to this resolution as “Exhibit A” are now made a part of the record of proceedings of the City Council.

Introduced and adopted by the City Council on **December 17, 2024.**

This resolution is effective immediately.

\_\_\_\_\_  
Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott S. Stauffer, City Recorder

\_\_\_\_\_  
Justin D. Gericke, City Attorney



**Canvass Results Report**

Official Ballots

Run Time 3:18 PM  
Run Date 12/02/2024

**Clackamas County**

November 5, 2024 General Election

11/5/2024

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**Official Results**

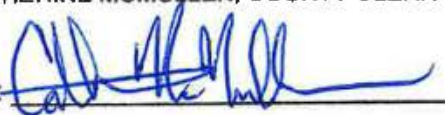
Registered Voters  
248910 of 319822 = 77.83%

Precincts Reporting  
119 of 119 = 100.00%

**City of Milwaukie, Councilor, Pos. 1 - Vote for one**

Precinct	Adam Khosroabadi	Camden McKone	Cast Votes	Undervotes	Overvotes	Miscellaneous Write-In	Vote by Mail Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
622	977	780	1,757	612	0	21	2,390	2,390	2,992	79.88%
626	1,745	1,343	3,088	1,075	2	39	4,204	4,204	5,386	78.05%
628	406	275	681	235	0	4	920	920	1,227	74.98%
630	2,351	1,619	3,970	1,343	1	64	5,378	5,378	6,750	79.67%
<b>Totals</b>	<b>5,479</b>	<b>4,017</b>	<b>9,496</b>	<b>3,265</b>	<b>3</b>	<b>128</b>	<b>12,892</b>	<b>12,892</b>	<b>16,355</b>	<b>78.83%</b>

**CERTIFIED COPY OF THE ORIGINAL**  
CATHERINE MCMULLEN, COUNTY CLERK

BY: 



**Canvass Results Report**

Official Ballots

Run Time 3:18 PM  
Run Date 12/02/2024

**Clackamas County**

November 5, 2024 General Election

11/5/2024  
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**Official Results**

Registered Voters  
248910 of 319822 = 77.83%  
Precincts Reporting  
119 of 119 = 100.00%

**City of Milwaukie, Councilor, Pos. 3 - Vote for one**

Precinct	Teresa A Bresaw	Will Anderson	Cast Votes	Undervotes	Overvotes	Miscellaneous Write-In	Vote by Mail Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
622	490	1,252	1,742	635	0	13	2,390	2,390	2,992	79.88%
626	837	2,278	3,115	1,065	1	23	4,204	4,204	5,386	78.05%
628	223	456	679	239	0	2	920	920	1,227	74.98%
630	1,201	2,785	3,986	1,337	0	55	5,378	5,378	6,750	79.67%
<b>Totals</b>	<b>2,751</b>	<b>6,771</b>	<b>9,522</b>	<b>3,276</b>	<b>1</b>	<b>93</b>	<b>12,892</b>	<b>12,892</b>	<b>16,355</b>	<b>78.83%</b>

**CERTIFIED COPY OF THE ORIGINAL**  
CATHERINE MCMULLEN, COUNTY CLERK

BY: 



**Multnomah County Official Precinct Results**  
**November 2024 General Election**  
 All Precincts, All Districts, All Counter Groups, All ScanStations, All Contests, All Boxes  
 Total Ballots Cast: 418947, Registered Voters: 576399, Overall Turnout: 72.68%

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 2024-12-02  
 12:42:44

**City of Milwaukie, Councilor, Position 1 (Vote for 1)**

Precinct	Ballots Cast	Reg. Voters	Total Votes	Adam Khosroabadi	Camden McKone	Write-in	Over Votes	Under Votes
Precinct 4101	0	0	0	0 0.00%	0 0.00%	0 0.00%	0	0
Total	0	0	0	0 0.00%	0 0.00%	0 0.00%	0	0

Multnomah County Official Precinct Results  
 November 2024 General Election  
 All Precincts, All Districts, All Counter Groups, All ScanStations, All Contests, All Boxes  
 Total Ballots Cast: 418947, Registered Voters: 576399, Overall Turnout: 72.68%

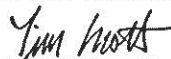
Page: 71 of 151  
 2024-12-02  
 12:42:44

**City of Milwaukie, Councilor, Position 3 (Vote for 1)**

Precinct	Ballots Cast	Reg. Voters	Total Votes	Teresa A Bresaw	Will Anderson	Write-in	Over Votes	Under Votes
Precinct 4101	0	0	0	0 0.00%	0 0.00%	0 0.00%	0	0
Total	0	0	0	0 0.00%	0 0.00%	0 0.00%	0	0

**Certificate**

I certify that the votes recorded on this abstract correctly summarize the tally of votes cast at the election indicated.



Tim Scott, Director of Elections  
 Multnomah County, Oregon

# CERTIFICATE OF ELECTION



This certifies that at the **November 5, 2024**, General Election held in the City of Milwaukie, County of Clackamas, State of Oregon,

## Adam Khosroabadi

was elected to the **Office of City Council Position No. 1** for a term beginning **January 1, 2025**, and ending **December 31, 2028**.

As directed by the City Charter, I have placed the seal of the City of Milwaukie and signed this certificate, on **December 17, 2024**.

---

Scott S. Stauffer, City Recorder



# CERTIFICATE OF ELECTION



This certifies that at the **November 5, 2024**, General Election held in the City of Milwaukie, County of Clackamas, State of Oregon,

## Will Anderson

was elected to the **Office of City Council Position No. 3** for a term beginning **January 1, 2025**, and ending **December 31, 2028**.

As directed by the City Charter, I have placed the seal of the City of Milwaukie and signed this certificate, on **December 17, 2024**.

---

Scott S. Stauffer, City Recorder



**COUNCIL STAFF REPORT**

**To:** Mayor and City Council  
Emma Sagor, City Manager

**Date Written:** Dec. 6, 2024

**Reviewed:** Ryan Burdick, Chief of Police,  
Greg Elkins, Police Captain, and  
Justin Gericke, City Attorney

**From:** Joseph Briglio, Assistant City Manager

**Subject:** **School Resource Officer Agreement with the North Clackamas School District**

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**ACTION REQUESTED**

Council is asked to authorize the city manager to sign an intergovernmental agreement (IGA) with the North Clackamas School District (NCSD) regarding the city's participation in the district's school resource officer (SRO) program.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

Since 1995 the city has dedicated a Milwaukie Police Department (MPD) officer to the SRO program at Milwaukie High School (MHS). For the first 26 years there was no formal contract for the MHS SRO program.

April 20, 2021: Following staff discussions with NCSD, Council approved an IGA with NCSD for SRO services at MHS.

December 31, 2024: The current SRO IGA is scheduled to expire.

**ANALYSIS**

Beginning in 2021, NCSD engaged its students, families, and staff about the purpose and structure of SRO programs. As part of its efforts to standardize services and clarify roles and expectations within the program, the district entered into IGAs with all SRO providers.

The IGAs included the following details:

- The role of an SRO.
- The rights and responsibilities of the district.
- SRO training requirements (does not replace city training requirements).
- Schedule and communication expectations.
- Scope of work duties for the SRO.
- The rights and responsibilities of the city.
- Applicable district policies.
- Payment for services.

The proposed IGA (attached), which would be the city's second such agreement with NCSD, was drafted during a time of intense national discussion about the role of SRO programs. While these discussions continue to evolve nationally, at the regional and statewide level, city staff sees value in continuing to formalize the scope and duties of an SRO for however long, and in whatever form, the program continues. Section B of the IGA references compliance with

applicable laws. Should legislation pass that directly pertains to the SRO program, the parties to the agreement will work to remain in compliance.

City leadership has found the SRO program to be highly beneficial in developing a productive relationship between MHS and the MPD. Ongoing involvement in the program by a dedicated officer allows them to know the students and provide customized services to help meet individual needs.

The city does not currently have an SRO but is actively recruiting for one.

### **BUDGET IMPACT**

The proposed agreement would result in a potential reimbursement for the city of up to \$168,000 to support the city's role in the SRO program.

### **CLIMATE IMPACTS**

Not applicable.

### **WORKLOAD IMPACTS**

The Police Department will add the SRO position as soon as operationally possible. The workload for this position will be managed on a day-to-day basis or according to call load and staffing needs of the agency.

### **EQUITY IMPACT**

The IGA includes provisions that discuss a commitment to equity and ways the SRO can help promote a safe and inclusive environment. For example: Section 1 states the SRO needs to be "empathetic and knowledgeable in equity and diversity issues, juvenile restorative justice principles, and trauma-informed investigatory practices."

Section 3 states the SRO "will participate in training as identified by the Agency which may include the same, "Public School Work" courses (30-40 minutes in duration) required of Agency staff, along with training covering equity, trauma-informed care, and restorative justice."

### **COORDINATION, CONCURRENCE, OR DISSENT**

Police department leadership worked with NCSO staff to review the city's current IGA in preparation of proposing a new agreement. The proposed IGA is based on the original 2021 agreement which had been developed by NCSO and city staff from the city manager's office and the finance and police departments. The city attorney also provided critical legal review of the proposed IGA.

### **STAFF RECOMMENDATION**

Staff recommends that Council approve the IGA.

### **ALTERNATIVES**

Council could choose not to approve the agreement. Declining to adopt the IGA would result in the discontinuation of Milwaukie's participation in the SRO program.

### **ATTACHMENTS**

1. Resolution
2. IGA



**COUNCIL RESOLUTION No.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE NORTH CLACKAMAS SCHOOL DISTRICT (NCSD) FOR SCHOOL RESOURCE OFFICER (SRO) SERVICES.**

**WHEREAS** the city has provided a dedicated police officer to serve as a school resource officer (SRO) to Milwaukie High School (MHS) since 1995; and

**WHEREAS** the city and NCSD believe it is important that SROs provide consistent service in alignment with both city and district policies and procedures; and

**WHEREAS** in 2021 the city and district entered into a mutually beneficial agreement which is set to expire on December 31, 2024; and

**WHEREAS** the city and NCSD have agreed to a new agreement for SRO services that requires NCSD to reimburse the city for SRO program costs up to \$168,000 per year.

**Now, Therefore, be it Resolved** by the City Council of the City of Milwaukie, Oregon, acting as the Local Contract Review Board, that the city manager is authorized to execute an intergovernmental agreement with NCSD related to SRO services.

Introduced and adopted by the City Council on **December 17, 2024.**

This resolution is effective immediately.

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Lisa Batey, Mayor

ATTEST:

APPROVED AS TO FORM:

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Scott S. Stauffer, City Recorder

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Justin D. Gericke, City Attorney

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN CITY OF MILWAUKIE  
AND THE NORTH CLACKAMAS SCHOOL DISTRICT**

THIS AGREEMENT (this "Agreement") is entered into and between the City of Milwaukie ("City"), an Oregon municipal corporation, and the North Clackamas School District ("Agency"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

**RECITALS**

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

The Agency has requested, and the City has agreed, that the City provide a police officer ("Officer") who will act as a school resource officer ("SRO") to work in Milwaukie High School. SROs fulfill a vital role in promoting communication and cooperation between the school district and law enforcement to support safe school communities and contribute to the learning process.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**TERMS**

1. **Term.** This Agreement shall be effective as of January 1, 2025, upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2028, whichever is sooner.
2. **Scope of Work.** The City agrees to provide the services ("Work") further identified in the Scope of Work and Additional Terms and Conditions, attached hereto as Exhibit A and incorporated herein. Parties will meet prior to the start of each school year to discuss anticipated needs, within the Scope of Work, in the upcoming school year.
3. **Consideration.** The Agency agrees to pay City, from available and authorized funds, the amount set forth on the schedule attached hereto as Exhibit B for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the City shall submit quarterly invoices for Work performed and shall include the total amount billed to date by the City prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to City following the Agency's review and approval of invoices submitted by City. City shall not submit invoices for, and the Agency will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties.**
  - A. *Agency Representations and Warranties:* Agency represents and warrants to City that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
  - B. *City Representations and Warranties:* City represents and warrants to Agency that City has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of

City enforceable in accordance with its terms.

- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**6. Termination.**

- A. Either the City or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the City or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to affect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The City or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either Party may terminate this Agreement in the event it fails to receive expenditure authority sufficient to allow the Party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work to be performed under this Agreement is prohibited or the Party is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

- 7. **Indemnification.** Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to

control.

However, neither Agency nor any attorney engaged by Agency shall defend the claim in the name of City or any department of City, nor purport to act as legal representative of City or any of its departments, without first receiving from the Milwaukie City Attorney the authority to act as legal counsel for City, nor shall Agency settle any claim on behalf of City without the approval of the Milwaukie City Attorney. City may, at its election and expense, assume its own defense and settlement.

8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

Assistant City Manager or their designee will act as liaison for the City.

**Contact Information:**

Joseph Briglio, Assistant City Manager  
Desk: 503-786-7616  
10501 SE Main St.  
Milwaukie, OR 97222

The Agency's Director of Risk Management or their designee will act as liaison for the Agency.

**Contact Information:**

David Kruse  
Phone: 503.353.1909  
Email: [krused@nclack.k12.or.us](mailto:krused@nclack.k12.or.us)  
12400 SE Freeman Way  
Milwaukie OR 97222

10. **Control of Personnel.** The SRO is solely the employee of the City of Milwaukie. Control of personnel, supervision, standards of performance, discipline, and all other aspects of performance shall be governed entirely by the City. Allegations of misconduct shall be investigated in accordance with City Policy and Procedures related to administrative investigations, corrective action, and discipline. All liabilities for salaries, wages, any other compensation, injury, or sickness arising from performance of the law enforcement services provided by the SRO shall be that of the City. While

the City controls all aspects of job performance and assumes all liabilities for compensation, the Agency has exclusive control over all student records and the Agency determines when, how, and the extent to which the SRO will have access to student records.

## 11. General Provisions.

A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the Milwaukie Municipal Code without giving effect to the conflict of law provisions thereof. Any claim between City and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the City of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state, and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.

Contractor must comply with all Senate Bill 155 requirements, including, but not limited to, providing District requested information for any of Contractor's employees, volunteers, or agents, who have the potential for unsupervised contact with District students, and providing requested information for new employees, volunteers, or agents before they begin work with District.

C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the City's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.

E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon

Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** Agency and City are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- K. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- L. **Survival.** All provisions in Sections 5, 7, and 11 (A), (C), (D), (E), (F), (G), (I), (J), (L), (Q), and (R) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- M. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- N. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- O. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

- P. **Force Majeure.** Neither Agency nor City shall be held responsible for delay or default caused by events outside of the Agency or City's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- Q. **Confidentiality.** Subject to public records law, the City acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by City or its employees or agents in the performance of this Agreement shall be deemed confidential information of the Agency ("Confidential Information"). City agrees to hold Confidential Information in strict confidence, using at least the same degree of care that City uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.
- R. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

**IN WITNESS HEREOF**, the Parties have executed this Agreement by the date set forth opposite their names below.

**City of Milwaukie**

**North Clackamas School District**

\_\_\_\_\_

\_\_\_\_\_

City Manager, City of Milwaukie

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date

Date

Exhibit A  
SCOPE OF WORK & ADDITIONAL TERMS AND CONDITIONS

**Section 1. RESPONSIBILITIES OF SCHOOL RESOURCE OFFICER (SRO)**

1. **Role.** The assigned SRO provides law enforcement expertise and resources to assist school administrators and staff in providing a safe school environment. The SRO is empathetic and knowledgeable in equity and diversity issues, juvenile restorative justice principles, and trauma-informed investigatory practices. In this role the School Resource Officer:
  - 1.1 Promotes safety in and around the school by using crime prevention strategies geared toward positive student behavior;
  - 1.2 Builds trust and respect between law enforcement and students by mentoring and providing guidance, and connects students to resources to resolve concerns affecting youth safety and security;
  - 1.3 Provides schools with additional educational resources about law enforcement related topics;
  - 1.4 Works collaboratively with school staff and administrators, and community stakeholder groups;
  - 1.5 Support school in emergency management.
2. **School Discipline.** Agency's school administrators and teachers are solely responsible for school discipline. The SRO is not involved with enforcement of school rules or disciplinary infractions unless they are also violations of law.
3. **Agency Policies & Training**
  - 3.1 **Training.** The SRO will participate in training as identified by the Agency which may include the same, "Public School Work" courses (30-40 minutes in duration) required of Agency staff, along with training covering equity, trauma-informed care, and restorative justice.
  - 3.2 **Agency Policy.** The SRO will have a working knowledge of Agency policies and procedures as identified by the Agency in Exhibit A, Appendix I. The SRO will comply with Agency policies and procedures to the extent consistent with applicable law. If at any time the SRO believes an Agency policy or



procedure cannot be complied with, the SRO will promptly advise the Agency and the City. The parties will confer and strive to attain a mutually agreeable understanding. Agency will promptly provide the City with any changes to policies or administrative regulations that may impact SRO responsibilities.

4. **School Work Schedule.** When school is in session, the SRO will work a schedule determined by the City and the Agency. The SRO will attend faculty meetings and PTA meetings that are related to SRO responsibilities, and will assist in providing security at certain evening or weekend school functions, such as athletic events, dances, field trips, and/or special events, when requested by the school administrator
5. **Communication.** A cooperative relationship and collaborative communication between the SRO and school administration is central to the role. The SRO will meet with school administrators regularly in the coordination of SRO activities, and to exchange information to address safety, student conflicts, and/or situations that may cause disorder at the school or in the community.
6. **Scope of Work.** The duties of the SRO involve the following activities in addition to other duties as assigned:
  - 6.1 Establishes rapport and builds relationships with students;
  - 6.2 Works to support effective communication between law enforcement officials, school staff and students;
  - 6.3 Works closely with school staff and administrators to identify and provide preventive assistance and services to students and families;
  - 6.4 In collaboration with school administrators helps parents and students, which may involve referral to an appropriate agency;
  - 6.5 Refers student violations of Agency policy to school administration;
  - 6.6 Notifies the building principal as soon as practicable of any significant law enforcement event or public safety threat;
  - 6.7 Investigates and takes appropriate action in consultation with school administration regarding suspected law violations that occur within the school and/or in association with school activities;
  - 6.8 Assists school administration in the proper collection and disposal of illegal substances, weapons and other prohibited items recovered by the school, when they are not needed for criminal prosecution;
  - 6.9 Presents information on law enforcement and related criminal justice topics to relevant classes, student assemblies, and clubs;

- 6.10 Makes presentations to stakeholder groups regarding the operations of the Milwaukie Police Department and the School Resource Officer Program.

## **Section 2. SEARCH AND SEIZURE**

### **2.1 Student Conduct Occurring Under Agency Jurisdiction**

- 2.1.1 **School Administrative Search.** Unless assistance is specifically requested by school administration the SRO is not involved in Agency’s administrative searches. Administrative searches are at the exclusive direction and control of the Agency. (Reference: NCSD Policy, JFG; JFG-AR)
- 2.1.2 **School Resource Officer Search.** In accordance with Agency policy, students may be searched by law enforcement officials on school property, or when the student is under the jurisdiction of the Agency. This authority is balanced by collaboration between the SRO and school administration as they work cooperatively to protect staff and students, maintain a safe environment in the school, and safeguard Agency property. In furtherance of these objectives, and as permitted by law, the SRO may search students and property, seize evidence, conduct interviews and engage in other law enforcement actions. In the exercise of duties, the SRO will confer with school administration unless circumstances do not allow
- 2.2 **Student Conduct Occurring Outside of Agency Jurisdiction.** When requests by law enforcement are made to the SRO to interview a student or to conduct an investigation for conduct occurring outside Agency jurisdiction, the SRO will promptly contact school administration with the request and refer the requesting agency to school administration. Interviews may be permitted upon request and with administrator approval in accordance with Agency Policy. (NCSD Policy: JFG, JFG-AR; KN; KN-AR)
- 2.3 **Exigent Circumstances.** In the event of an emergency, as determined by the SRO in its reasonable discretion, the SRO will perform such searches consistent solely with applicable law and not in accordance with Agency’s policies and regulations JFG, KN, and KN-AR.

## **Section 3. STUDENT INFORMATION ACCESS & DISCLOSURE**

- 3.1 **Privacy Restrictions.** The access to and release of student information by the SRO under this Agreement is governed by ORS 336.187 and ORS 326.565 – 326.580, and the Family Education Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, and its implementing regulations. For purposes of access to student records, the

SRO is considered a “school official”. In accordance with FERPA, “school officials” may access and disclose student records only as authorized by FERPA. Subject to any exceptions under applicable law, the SRO will not disclose records, or information contained within those records, without permission from Agency administration.

- 3.1.1 For purposes of access to student records, the SRO as a “school official” may be provided students’ personally identifiable information (“PII”) on an as-needed basis in the performance of SRO duties for legitimate educational purposes, and to promote school safety and physical security. *The SRO may only use PII for the purpose for which the disclosure was made.*
- 3.1.2 Without prior consent by an Agency administrator, the SRO acting as a school official, may not disclose PII obtained from student records, to others including other law enforcement officials who are not acting in the capacity as school officials, unless the disclosure fits within one of the exceptions to consent in FERPA and/or ORS 336.187 and ORS 326.565 – 326.580.
- 3.2 **FERPA Training.** Agency will provide SRO training necessary to comply with applicable Agency policies, and state and federal student privacy laws.
- 3.3 **Student Directory Information.** Information that is designated as student “directory information” is identified by Agency policy, and is generally information that would not be considered harmful or an invasion of privacy if disclosed. Administration may disclose directory information unless a parent has opted-out of disclosure. The SRO or other law enforcement officials seeking access to student directory information may request access from the school building principal. (Reference: NCSD policy, JOA)
- 3.4 **Security Cameras.** The SRO may access campus security cameras and recordings for purposes of school safety and other law enforcement purposes with prior Agency consent, or upon execution of a search warrant. Consent is not required in the event of an active violent crisis or other exigent circumstances. (Reference: NCSD policy, ECAC; ECAC-AR)
- 3.5 **Law Violations Exchange of Information.** The SRO and the building principal will promptly exchange information regarding any possible law violation that may have occurred on and around school grounds, or during school activities. (Reference: NCSD policy, KN & KN-AR, “Relations with Law Enforcement Agencies”)

EXHIBIT A – Appendix I  
North Clackamas School District Policies  
Relating to SRO Scope of Work

**Law Enforcement Interactions:**

- [KN-AR1 Relations with Law Enforcement Agencies](#)
- [KN-AR2 Relations with Law Enforcement Agencies](#)
- [GHFE/JHFE-AR\(2\) - Abuse of a Child Investigations Conducted on School Premises](#)
- [GBJ - Weapons in Schools–Staff](#)
- [JFCJ - Weapons - Students](#)
- [JFG - Student Searches\\*\\*](#)
- [JFG-AR - Student Searches\\*\\*](#)

**Staff/Students:**

- [GCCB/GDCB/IKAAA - District Equity Policy](#)
- [GHFE/JHFE Reporting of Suspected Abuse of a Child](#)
- [GHFE/JHFE-AR\(1\) Reporting of Suspected Abuse of a Child](#)
- [GHFF/JHFF - Reporting Requirements Regarding Sexual Conduct with Students](#)
- [JBA/GBN - Sexual Harassment\\*\\*](#)
- [JBA/GBN-AR\(1\) - Sexual Harassment Complaint Procedure\\*\\*](#)
- [JBA/GBN-AR\(2\) - Sexual Harassment Complaint Form](#)
- [GBEC Drug-Free Workplace](#)
- [GBH/JECAC - School and Custodial/Noncustodial Parent Relations\\*\\*](#)
- [GBK/KGC - Prohibited Use, Distribution or Sale of Tobacco Products or Inhalant Delivery Systems\\*\\*](#)
- [GBNA - Hazing/Harassment/Intimidation/Bullying/Menacing - Staff\\*\\*](#)
- [GBNA-AR - Hazing/Harassment/Intimidation/Bullying/Menacing Complaint Procedures - Staff](#)
- [GBNA/JFCF-AR - Hazing/Harassment/Intimidation/Bullying/Menacing/Cyberbullying/Teen Dating Violence/Domestic Violence Complaint Procedures\\*\\*](#)
- [GBNAA/JHFF - Reporting Requirements for Suspected Sexual Conduct with Students](#)
- [GBNAA/JHFF-AR Suspected Sexual Conduct Report Procedures and Form](#)
- [GBO - Staff and Volunteer - Student Relations\\*\\*](#)
- [JEA - Compulsory Attendance\\*\\* JEDA - Truancy](#)
- [JFCG/JFCH/JFCI - Use of Tobacco Products, Alcohol, Unlawful Drugs, Inhalant Delivery Systems or Mind-Altering Substances](#)
- [JFCG/JFCH/JFCI-AR - Student Use, Possession, Sale or Distribution of Tobacco Products, Alcohol, Unlawful Drugs, Inhalant Delivery Systems or Mind-Altering Substances](#)
- [JFCJ - Weapons - Students](#)
- [JFCM - Threats of Violence\\*\\*](#)

- [JOA - Directory Information\\*\\*](#)
- [JOB - Personally Identifiable Information\\*\\*](#)

**District-Community Relations/Facility Use & Access:**

- [KAB - Parental Rights\\*\\*](#)
- [KAB-AR - Parental Rights\\*\\*](#)
- [KG - Community Use of District Facilities](#)
- [KG-AR\(1\) - Community Use and Rental of District Facilities](#)
- [KG-AR\(2\) - District Facility Use Fee Schedule](#)
- [KDA – Firearms Prohibited](#)
- [KK - Visitors to District Facilities\\*\\*](#)
- [KK-AR - Procedures in Dealing with Disruptive Visitors\\*\\*](#)

Exhibit B  
COMPENSATION

**BILLING FOR THE SERVICES OF THE SRO**

**I. Compensation & Invoices**

During the 2024-25 academic year, the North Clackamas School District (NCSD) will compensate the City as described by the calculations listed in Section II. The compensation rate will be adjusted to reflect current rates for each subsequent year remaining in the term of this agreement. A revised compensation schedule will be provided to NCSD prior to the beginning of the given school year.

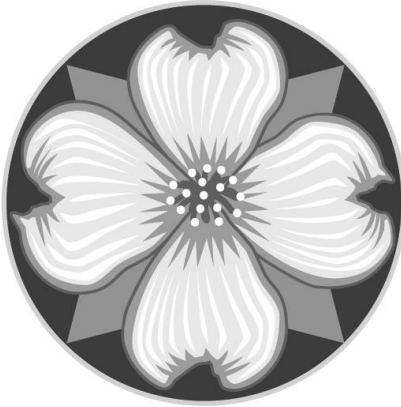
The City agrees to bill NCSD each quarter. NCSD agrees to pay each invoice within 45 days of receipts.

**II. Estimated Cost per Officer**

The estimated cost per each Milwaukie Police Officer serving as a School Resource Officer follows:

Estimated Salary and Benefits:	\$165,000
<u>Uniform, Equipment, Vehicle Fuel &amp; Maintenance:</u>	<u>\$3,000</u>
Total Estimated Cost per Officer	\$168,000

The rate reflected is based upon a 1.0 full-time equivalent position for a four-year officer. Cost will be reconciled each quarter based upon the actual salary and benefits of the Milwaukie Police Officer and actual hours worked during the quarter.



**RS Agenda Item**

**7**

**Business Items**

## COUNCIL STAFF REPORT

**To:** Mayor and City Council  
Emma Sagor, City Manager

**Reviewed:** Peter Passarelli, Public Works Director, and  
Gabriela Santoyo Gutierrez, Equity & Inclusion Coordinator

**From:** Courtney Wilson, Urban Forester, and  
Katie Gavares, Climate & Natural Resources Manager

**Subject:** **Tree Code Amendments**

**Date Written:** Dec. 5, 2024

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### ACTION REQUESTED

Council is asked to adopt the ordinance making tree code amendments.

### 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 a work session in [January](#), 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 initial tree code amendments.

[November 19, 2024](#): Staff updated Council on the proposed tree code amendments.

### ANALYSIS

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.



While Council did not have any specific changes to the tree code amendments, a few questions were posed in the Staff update in November.

In the recent update, Council asked about the effectiveness of performance tree bonds for preservation and planting, and challenges property owners might have in acquiring bonds. Staff relayed that it has been a learning process for all parties, but the private tree code has not been in place long enough for staff to evaluate the effectiveness. The city currently has 1 tree planting bond and 1 protection bond (counted per address) that begin to expire in 2025. After which, staff will evaluate the effectiveness of performance bonds and other tree preservation tools used in the private tree code.

The proposed code amendments extend the use of performance bonds by allowing private trees to be less than six-inch diameter-at-breast-height (DBH) to be counted for canopy coverage for residential development projects with a performance bond. This change encourages age and species diversity in our urban forest and could also be a tool for the developer to reduce mitigation fees. Until further data can be collected on the effectiveness of performance bond, Staff recommend this small change to the use of performance bond to align the tree code with the UFMP goals.

The council also inquired about the status of Milwaukie's Invasive Tree List, which is currently listed in the tree code. While the city does not currently have an invasive tree list, the natural resource staff are coordinating with the planning department to update and potentially consolidate a Milwaukie plant list in tandem with the natural resource code update. Having a list that is consistent with both the tree code and natural resources code will streamline both the tree and planning permitting process.

One of the proposed changes is to move the Tree Board section of the code to Title 2 Administration and Personnel. To reduce redundancies in that section, language about term limits was removed from section 2.18.010.A., as it is already covered in 2.10.030.D.2.

Finally, Council provided good feedback about the need to reinvigorate the urban forestry programs community education and engagement about tree code. Staff noted the suggestions and are developing an equity and engagement plan for 2025 that incorporates this feedback.

#### **BUDGET IMPACT**

None.

#### **CLIMATE IMPACT**

Tree preservation and canopy expansion are 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 adopt the attached ordinance.

**ALTERNATIVES**

Not applicable.

**ATTACHMENTS**

1. Ordinance

Exhibit A: Strikeout version of Code Title 2 and Tree Code chapters

Exhibit B: Clean version of Code Title 2 and Tree Code chapters

**COUNCIL ORDINANCE No.****AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MUNICIPAL CODE (MMC) CHAPTER 2.10 BOARDS, COMMISSIONS, AND COMMITTEES GENERALLY AND CHAPTER 16.32 TREE CODE FOR THE PURPOSE OF IMPROVING READABILITY AND CODE ENFORCEMENT.**

**WHEREAS**, on October 2, 2018, the City Council adopted the Milwaukie Climate Action Plan (CAP), which included two relevant urban forest strategies that will significantly contribute to Milwaukie’s ability to adapt to the changing climate; and

**WHEREAS**, on March 19, 2019, the City Council adopted the Urban Forest Management Plan (UFMP), which set goals and policies and identified actions that are crucial to maximizing the benefits of Milwaukie’s trees and meeting Milwaukie’s climate goals; and

**WHEREAS** it is the city’s intent to increase Milwaukie’s tree canopy and preserve existing trees to support efforts to achieve a 40% city-wide tree canopy; and

**WHEREAS** the city has adopted a tree code per Milwaukie Municipal Code (“MMC”) Chapter 16.32 for establishing processes and standards that ensure the city maximize environmental, economic, health, community and aesthetic benefits provided by its urban forest located in Milwaukie, Oregon; and

**WHEREAS** the proposed code amendments implement several of the goals and policies of the city’s CAP and UFMP related to tree preservation.

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1. Amendments. The Milwaukie Municipal Code (MMC) is amended as described in Exhibit A Chapter 2.10 Boards, Commissions, and Committees Generally (strikeout/clean versions) and Exhibit B Chapter 16.32 Tree Code (strikeout/clean versions).

Section 2. Effective Date. This ordinance will become effective on January 17, 2024.

Read the first time on \_\_\_\_\_ and moved to second reading by \_\_\_\_\_ vote of the City Council.

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

ATTEST:

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Lisa M. Batey, Mayor

APPROVED AS TO FORM:

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Scott S. Stauffer, City Recorder

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Justin D. Gericke, City Attorney

**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.

## **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);
- 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:

- 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;
- B. Provide advice to City Council on policy and regulatory issues involving trees, including climate adaptation and mitigation efforts;
- 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;
- F. Provide leadership in planning the City's Arbor Day/Week proclamation and celebration; and
- 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

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.

## CHAPTER 16.32 TREE CODE

## EXHIBIT B

### 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.



**DRAFT MILWAUKIE TREE CODE – STRIKETHROUGH/UNDERLINE**

Suggested Revisions Winter 2024

“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.

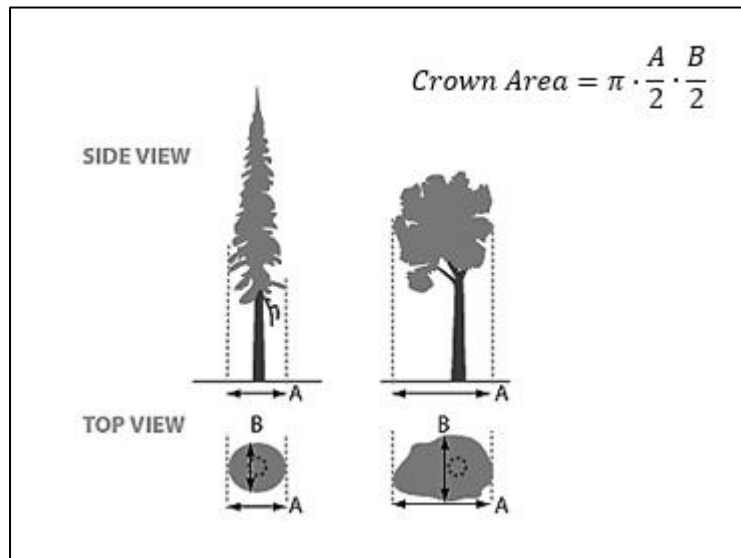
“Consolidated Fee Schedule” is the schedule of City fees and charges adopted by City Council for the services provided by the City.

“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.

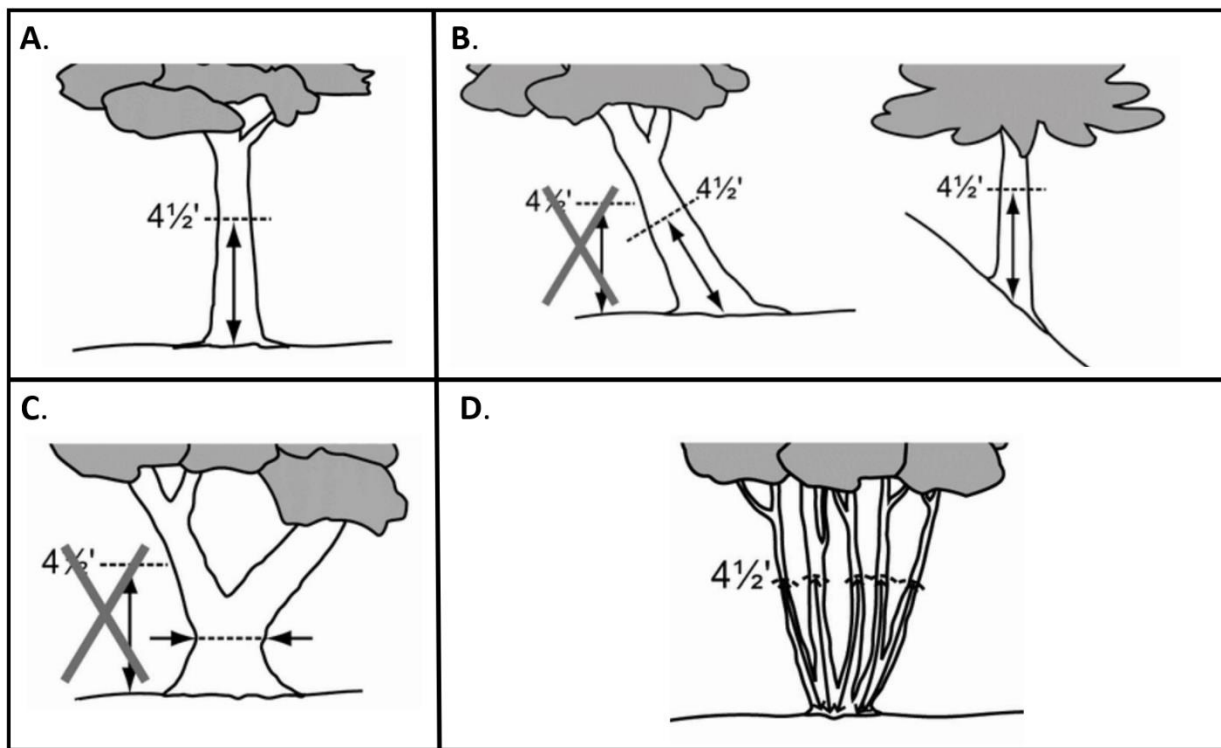
**DRAFT MILWAUKIE TREE CODE – STRIKETHROUGH/UNDERLINE**

Suggested Revisions Winter 2024

“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.

## DRAFT MILWAUKIE TREE CODE – STRIKETHROUGH/UNDERLINE

Suggested Revisions Winter 2024

“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.

**DRAFT MILWAUKIE TREE CODE – STRIKETHROUGH/UNDERLINE**

Suggested Revisions Winter 2024

“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.

## DRAFT MILWAUKIE TREE CODE – STRIKETHROUGH/UNDERLINE

Suggested Revisions Winter 2024

“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;

## DRAFT MILWAUKIE TREE CODE – STRIKETHROUGH/UNDERLINE

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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~~Tree or ~~p~~Public ~~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~~Public ~~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;<sub>;</sub>
- 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~~ street tree or public tree 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.~~  
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.~~  
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.~~

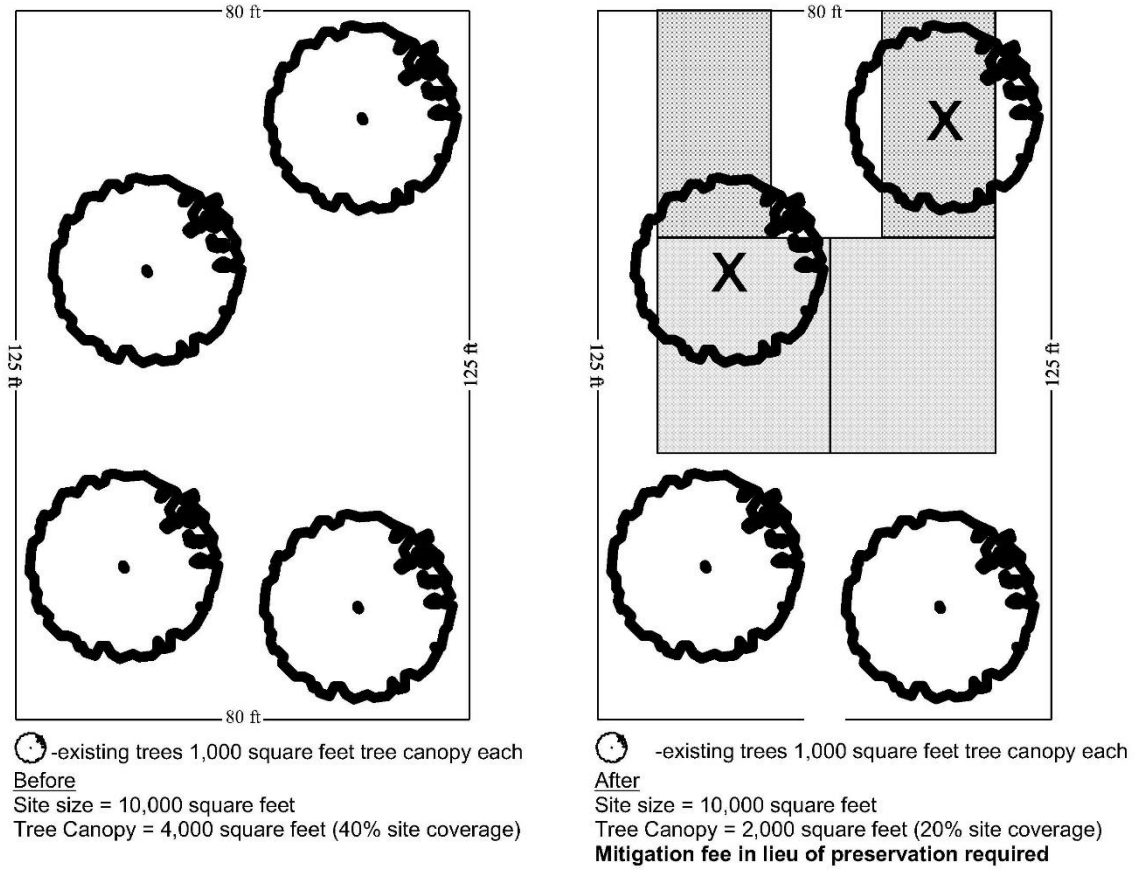
45. ~~Non-Unhealthy trees and trees species on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List are not required to be preserved in conjunction with applicable development as established in Subsection 16.32.042.A.~~

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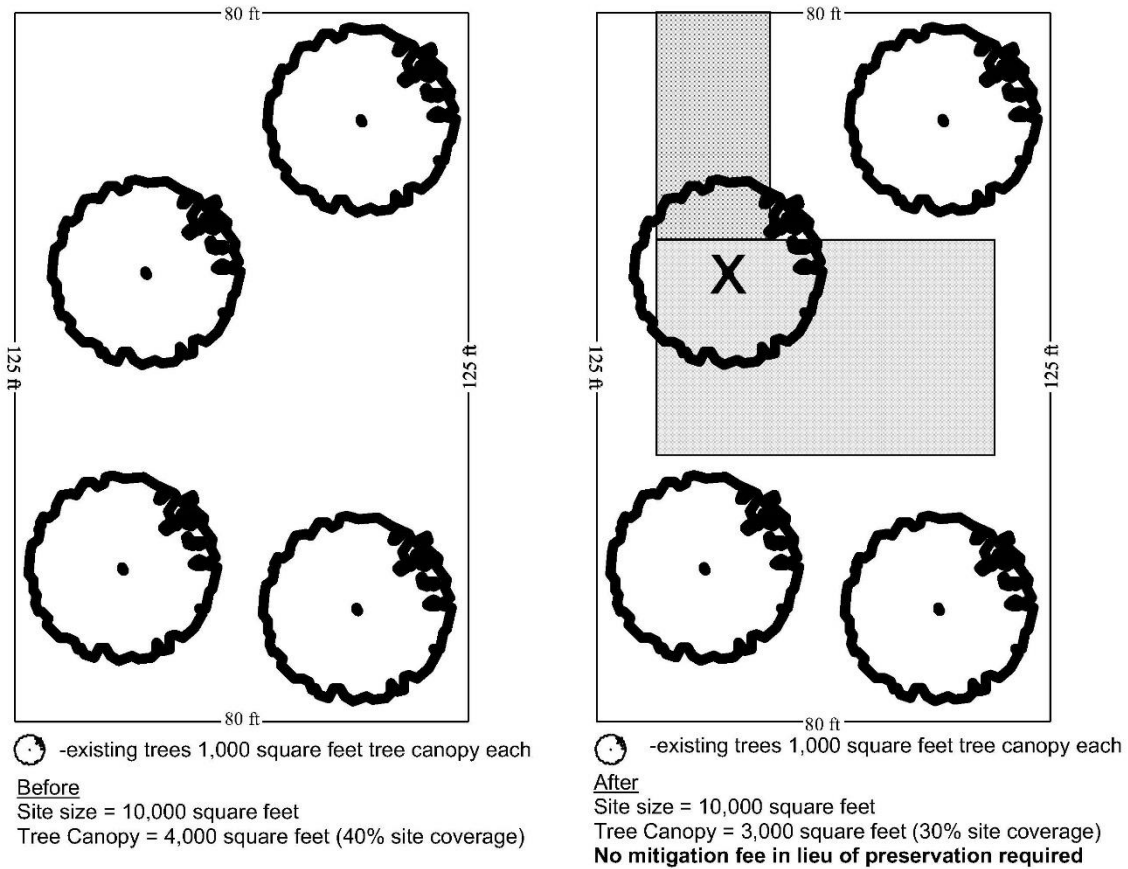
**Figure 16.32.042.B.2-a – Tree removal with mitigation**



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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.~~

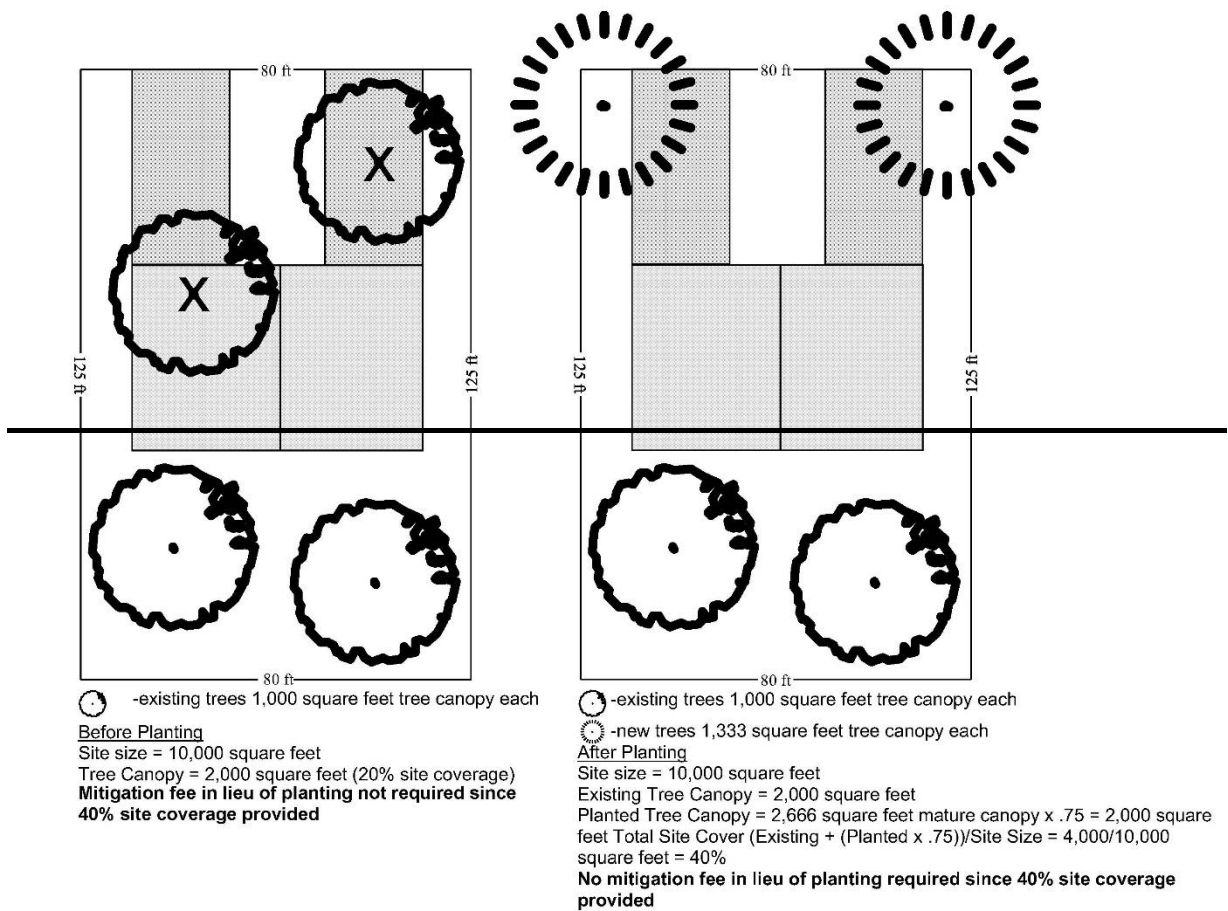
- ~~1. In addition to including the preservation of on-site healthy trees, a~~ At least forty percent (40%) tree canopy is required for a development site from existing healthy trees or new tree plantings unless mitigation is provided according to Subsection 16.32.042.ED. See Figure 16.32.042.C.1 for 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~~ planted or preserved in accordance with applicable City of Milwaukee standards:

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

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

<sup>1</sup> 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 ~~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:

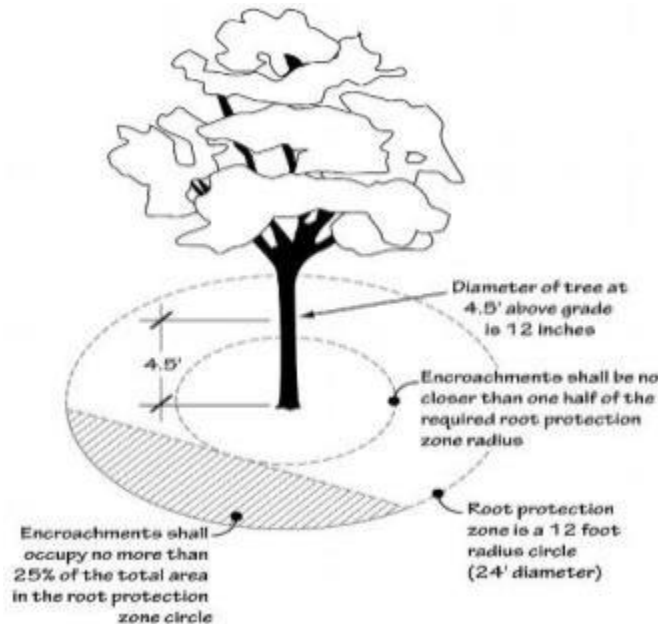
(a) The area of all new encroachments is less than twenty-five percent (25%) of the remaining root protection zone area when existing encroachments are subtracted; and

(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 eCertified ~~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.~~ 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~~igh 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 †Qualified eeducation (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 eOn-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)<sup>2</sup> x  $\pi$ .
- ~~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)
  - (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 Permits are not required in residential zones when:

- 1. ~~#Tree 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 31<sup>st</sup> 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 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 A†~~ 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. 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 <del>Type 2 Permit</del>



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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.~~ 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 fine ~~Up~~ 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 ~~Certified~~ Arborist plus the arborist's reasonable appraisal fee.;

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

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

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

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

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

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

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

~~(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 Milwaukie.

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

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

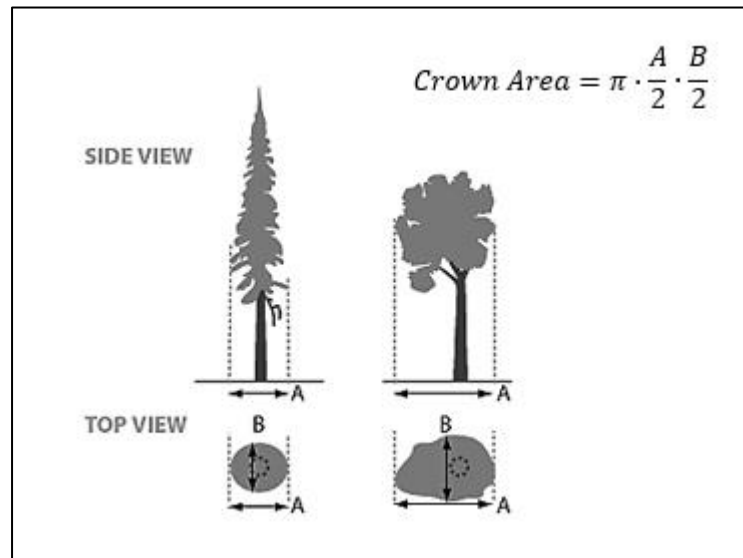
“Consolidated Fee Schedule” is the schedule of City fees and charges adopted by City Council for the services provided by the City.

“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.

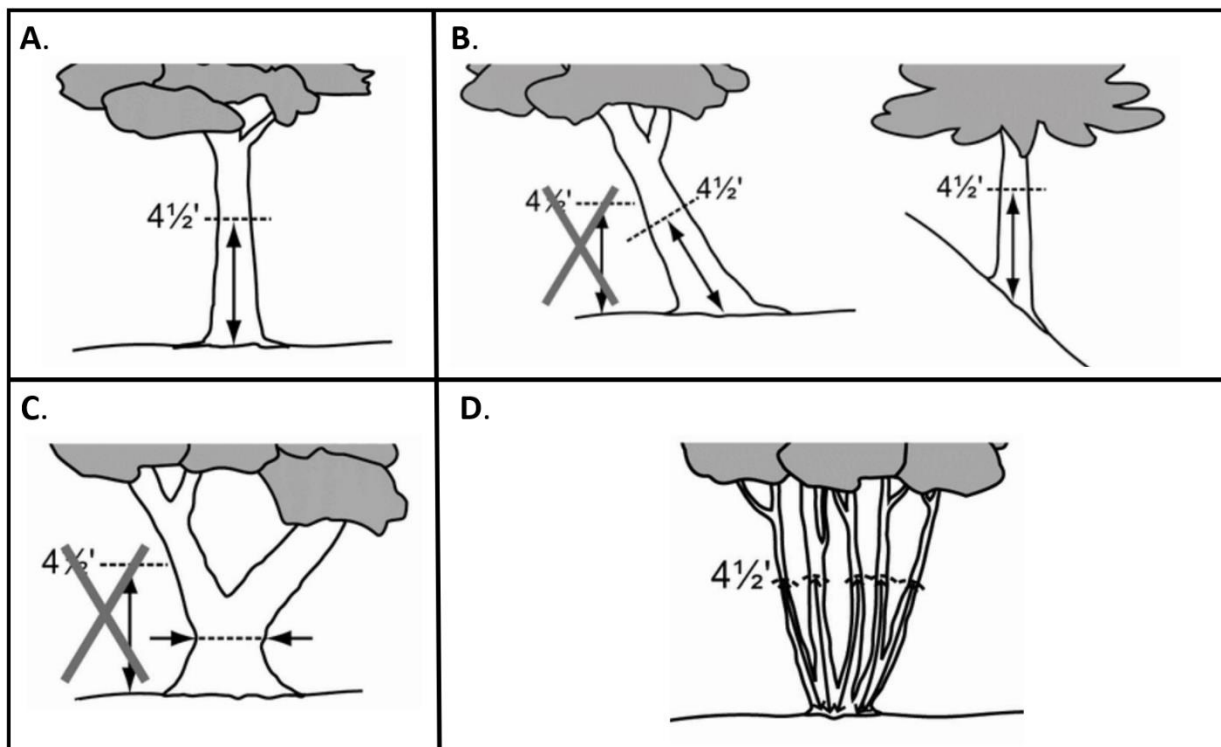
“Dead tree” means a tree that is dead or has been damaged beyond repair or where not enough live tissue, green leaves, limbs, or branches exist to sustain life.

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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**

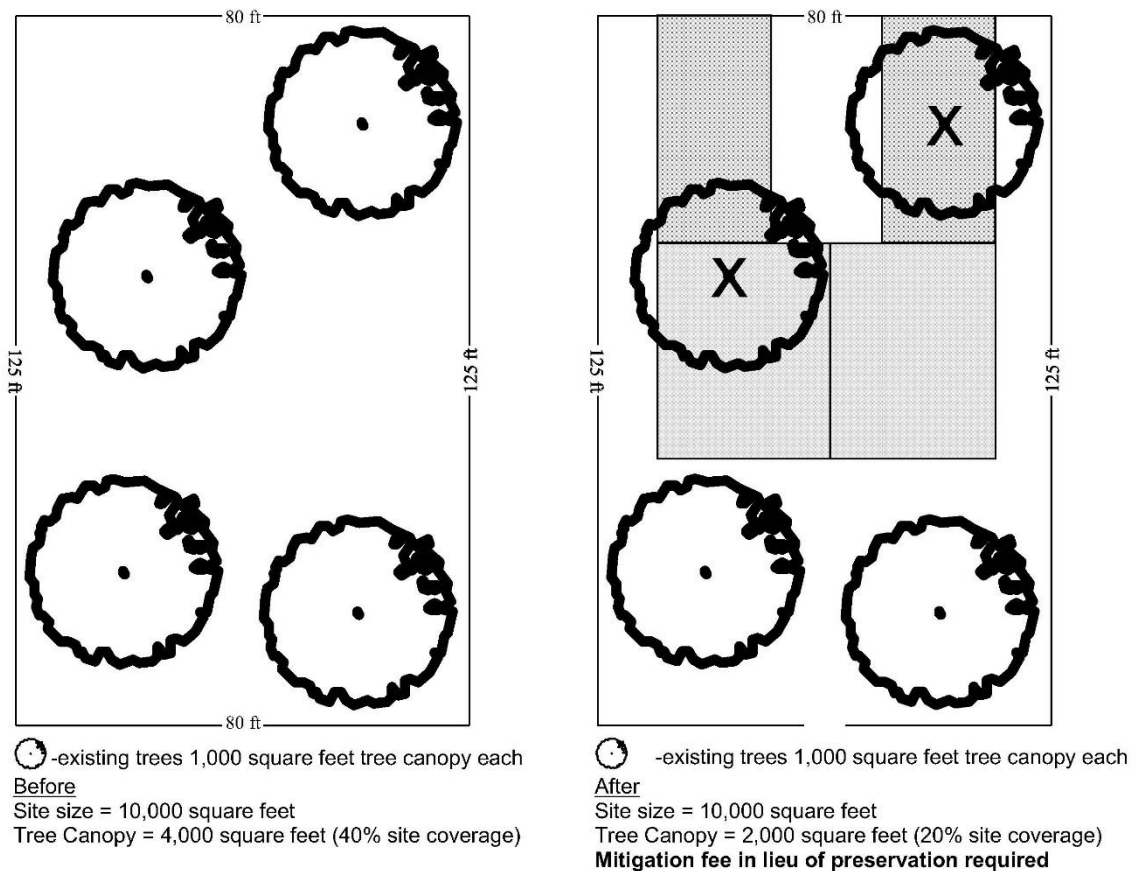
1. Healthy trees at least 6-in DBH are required to be preserved except when their removal is required for construction, demolition, grading, utilities, and other development impacts.
2. Preservation of at least thirty percent (30%) on-site healthy private tree canopy coverage is required unless mitigation 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).

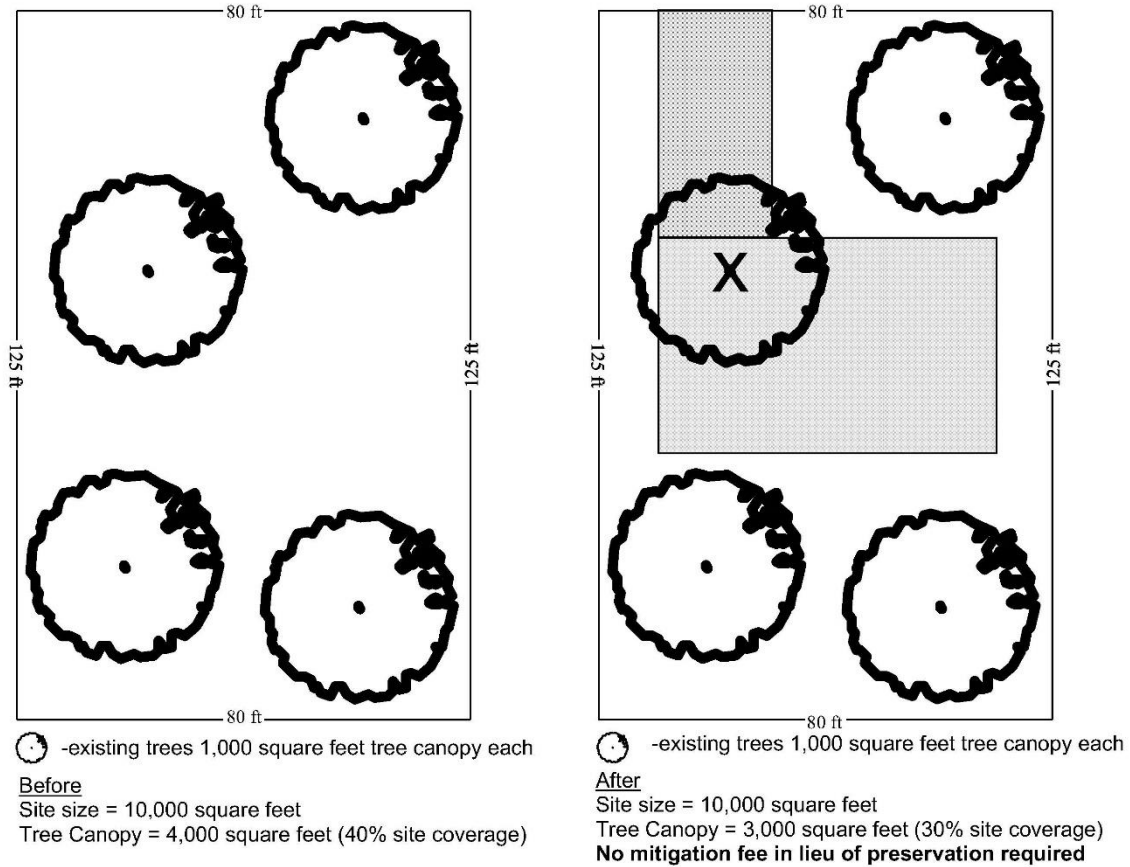
**Figure 16.32.042.B.2-a – Tree removal with mitigation**





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



**C. Tree Planting Standards**

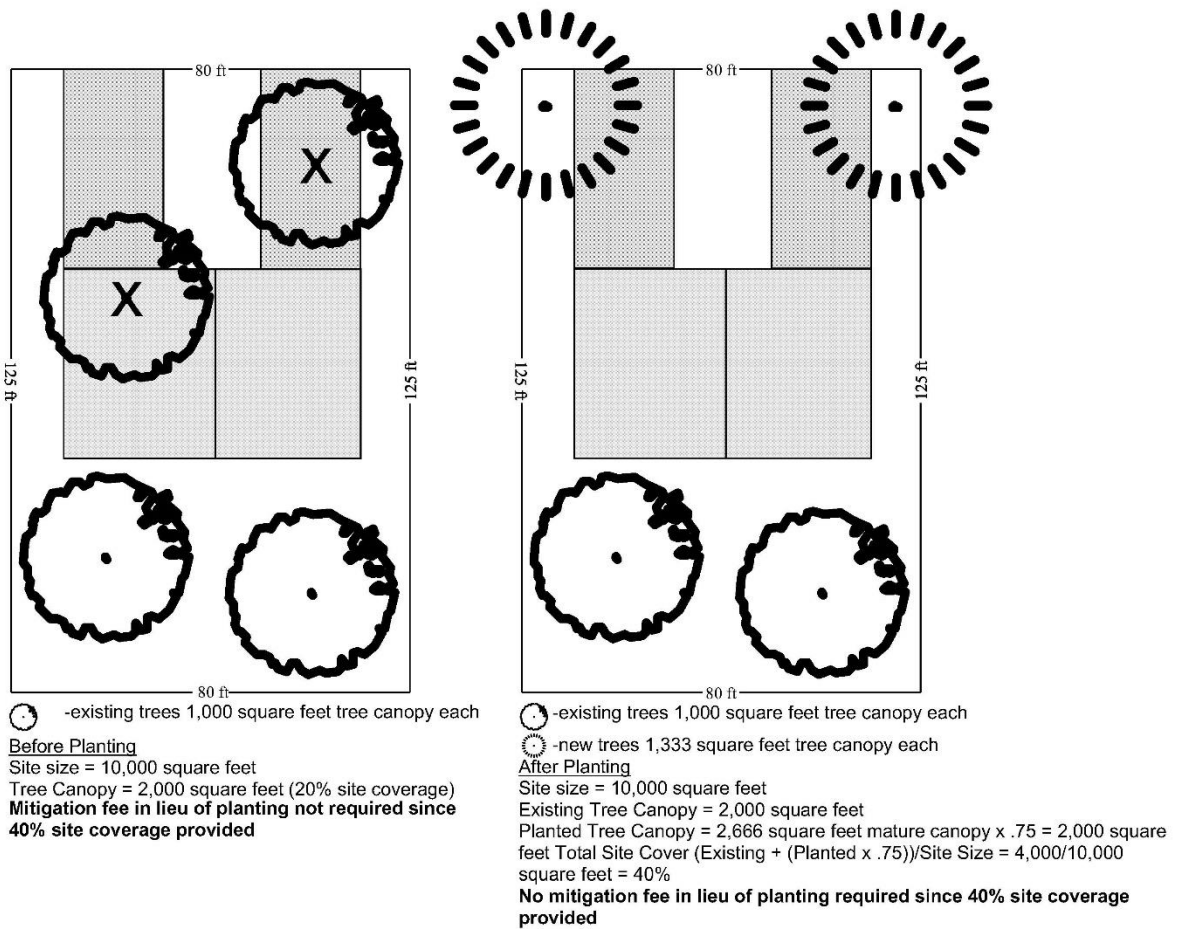
1. At least forty percent (40%) tree canopy is required for a development site from existing healthy trees or new tree plantings unless mitigation is provided according to Subsection 16.32.042.E. See Figure 16.32.042.C.1 for an example of tree planting where mitigation is not required.
2. The minimum 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**

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

<sup>1</sup> 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.

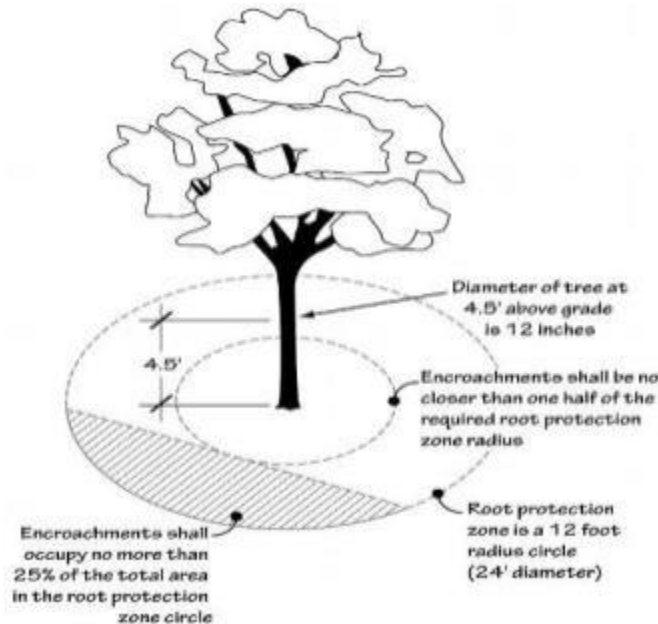
##### b. Encroachments into a root protection zone

- (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.

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**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 31<sup>st</sup> 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**

<b>Diameter at Breast Height (DBH) of Tree Removed</b>	<b>Number of Additional Trees Required Beyond 1:1 Replacement</b>	<b>Total Replacement Trees Required</b>
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

## DRAFT MILWAUKIE TREE CODE – CLEAN

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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.

## **DRAFT MILWAUKIE TREE CODE – CLEAN**

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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.

**DRAFT MILWAUKIE TREE CODE – CLEAN**

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



# Tree Code Adoption

December 17, 2024

**Courtney Wilson**

Urban Forester

**Katie Gavares**

Climate and Natural Resources Manager



# Purpose of code changes:

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- Improve overall organization and readability.
- Align impact of the code with its original intention.
- Reduce loopholes in enforcement.
- Align with Natural Resources Code.



# 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.
  - Added and revised 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.



# Thank you!



## Questions?

**Courtney Wilson**

Urban Forester

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**Katie Gavares**

Climate and Natural Resources Manager

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**COUNCIL STAFF REPORT**

**To:** Mayor and City Council  
Emma Sagor, City Manager

**Date Written:** Dec. 4, 2024

**Reviewed:** Joseph Briglio, Assistant City Manager

**From:** Mandy Byrd, Development Project Manager

**Subject:** **Sparrow Site Project Goals**

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**ACTION REQUESTED**

Council is asked to finalize the project goals for the Sparrow Site in preparation for a request for qualifications/proposal (RFQ/RFP) solicitation.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

June 20, 2018: Staff met with the Island Station Neighborhood District Association (NDA) to provide an in-person update of city plans to land bank property for the purpose of housing development opportunities.

March 19, 2019: Council delegated signing authority to the city manager to purchase the Sparrow Site from TriMet for \$33,287.

February 18, 2020: Council reviewed and provided input on development goals and received an update on the proposed project community engagement plan.

January 19, 2021: Council received an update on the Sparrow Site and reviewed project goals.

March 16, 2021: Council received an update on the Sparrow Site, the Site Access Study, and reviewed project goals.

April 6, 2021: Council received an update on the Sparrow Site, the Site Access Study, and reviewed project goals.

May 18, 2021: Council considered a resolution to approve the project goals for the TriMet Remnant Lot (Sparrow Site).

June 1, 2021: Council adopted a resolution to approve the project goals for the TriMet Remnant Lot (Sparrow Site).

June 8, 2021: Council held an executive session and received an update on the Sparrow Site, the results of the Site Access Study, and reviewed property acquisition options.

[June 21, 2022](#): Council delegated signing authority to the city manager to purchase the 0.30-acre site at 12302 SE 26<sup>th</sup> Ave (Tax Lot No. 11E36CC05100) (the "Sparrow Auxiliary Site") from the Tri-County Metropolitan Transportation District (TriMet) within the incorporated area of Milwaukie for the agreed amount of \$84,000. The deed for this purchase was recorded on January 17, 2023.

[September 17, 2024](#): Council received a project update and provided general direction on the project goals for Sparrow.

[December 10, 2024](#): Council held a study session to learn more about ownership models for affordable housing.

## ANALYSIS

### Background

The Sparrow Site is located at the corner of Sparrow Street and 25<sup>th</sup> Avenue in the Island Station neighborhood. In March 2019, the city acquired the Sparrow Main Lot from TriMet for \$33,287 for the development of housing to meet the city’s affordable housing goals as outlined in the Milwaukie Housing Affordability Strategy (MHAS). In 2022, the city acquired the Sparrow Auxiliary Lot from Tri-Met, to assist with site access improvements along 26<sup>th</sup> Avenue between Lark Street and Sparrow Street. In October 2024, Clackamas County, in partnership with the city, applied for a United States (US) Department of Housing and Urban Development (HUD) Pathways to Removing Obstacles (PRO) Housing grant funds to assist with financing the street access improvements. HUD is supposed to provide the results to applicants in February 2025.

The Sparrow Main Lot is considered a brownfield and will require clean-up to comply with the purchase agreement. Per the purchase agreement, a remedial action plan is due to Oregon Department of Environmental Quality (DEQ) by August 5, 2025.

### Draft Project Goals (per Council discussion on September 17, 2024), for Approval:

1. **Affordable Homeownership.** Affordable homeownership opportunities that serve households earning 60-80% of Area Median Income (AMI) with preference (in scoring) for:
  - Proposals that serve households at the 60% AMI level, and
  - Proposals that use a land trust model to keep the sales price down and to maintain long-term affordability beyond the first sale.
2. **Unit Mix.** Preference for the project to include family-size units.
3. **Equity in Contracting and Workforce Development.** Preference for a development team that will utilize hiring tools and contracting strategies that reflect the city’s equity goals.
4. **Preservation of Tree Canopy.** Project design that will minimize the impact of development on the tree canopy.
5. **Sustainable Design.** Project that uses sustainable and energy efficient design and construction methods.
6. **Affirmative outreach.** Development team that will create an affirmative outreach plan to provide information and attract eligible persons to live in the development from all racial, ethnic, and gender groups in the housing market area.
7. **City of Milwaukie Financing.** Project team that would work collaboratively with the city to leverage State funding as needed, to minimize the need for city financing.
8. **Project Delivery.** Development team with experience in project delivery and that can begin construction as soon as practicable.

At the September 17 meeting, Council agreed with most of the goals listed above; however, Council was not ready to confirm the preferred AMI level and housing model (renter- versus owner- occupied). Those are the two outstanding items that need to be finalized from the staff’s perspective. The other item that would be useful to staff is whether Council would like to use the city’s construction excise tax (CET) funds (all or a portion) to further help incentivize and prepare the site for development.

## Next Steps

Once goals are finalized, the next steps in the disposition process would be a Council hearing to declare both the Sparrow Main Lot (Lot 0300) and the Sparrow Auxiliary Lot (Lot 5100) as surplus property, after which the city would issue an RFQ/RFP.

Potential Timeline:

February 2025	Surplus Hearing
Spring 2025	Issue RFP/Q
Summer 2025	Award RFP/Q and sign Disposition and Development Agreement (DDA)

## BUDGET IMPACT

The city used general funds within the community development department budget to acquire the Sparrow Site (Lot 0300). The city used budgeted general funds within the community development department budget to acquire the Sparrow Auxiliary Site (Lot 5100). The Site Access Study determined that access to the site will require capital improvement resources. As the city moves forward with an RFP/Q process in search of a development partner, it is also possible for Construction Excise Tax (CET) and HUD PRO grant funds to be utilized to further support and incentivize affordable housing development on the site.

## CLIMATE IMPACT

The city's 2023 climate goals update indicated that transportation emissions amount to 52% of Milwaukee's total emissions. Transit Oriented Development (TOD) housing projects, like the Sparrow Site have the potential to mitigate transportation-related carbon emissions by promoting access to alternative and public transportation. Street and pedestrian improvements provided by the Safe Access for Everyone program that are a part of the project also mitigate greenhouse gas emissions through increased access to alternative transportation infrastructure.

Environmental remediation may improve the possibility of healthy vegetation on the site, which could align with city canopy goals if appropriate tree preservation and arboricultural construction practices are followed. The Sparrow Site development will help implement the city's Comprehensive Plan, which includes the city's climate action goals.

Additionally, two of the proposed project goals are specifically targeted at increasing the project's climate impact including: 1) preservation of the tree canopy, and 2) sustainable and energy efficient design and construction methods.

## EQUITY IMPACT

The housing crisis has a disproportional impact on marginalized populations. If the Sparrow Project comes to fruition, it could potentially create much needed affordable housing for underserved community members. This will promote the city's equity goals by creating housing units affordable to a more diverse population.

Additionally, two of the proposed project goals are specifically targeted at increasing the project's equity impact including: 1) good faith efforts to diversify contracting, and 2) affirmative outreach to diversify future residents of the property.

**WORKLOAD IMPACT**

The assistant city manager, community development director, and development project manager, as well as public works, planning, and engineering staff will work together to facilitate this project.

**COORDINATION, CONCURRENCE, OR DISSENT**

The city manager, assistant city manager, city attorney, community development director, and development project manager have coordinated on this effort.

**STAFF RECOMMENDATION**

Staff recommends approval of the Sparrow Project Goals.

**ALTERNATIVES**

Council could decide to take the Sparrow properties in a different direction other than affordable homeownership.

**ATTACHMENTS**

None.



RS 7. B. 12/17/24  
PRESENTATION

# SPARROW SITE Development Goals

City Council  
December 17, 2024

Joseph Briglio, Assistant City Manager,  
Acting Community Development Director  
[briglioj@milwaukieoregon.gov](mailto:briglioj@milwaukieoregon.gov)

and

Mandy Byrd, Development Project Manager  
[byrdm@milwaukieoregon.gov](mailto:byrdm@milwaukieoregon.gov)



# Sparrow Site – Background

## Sparrow Site - Main Lot

- Lot 0300
- 1.96 acres (1.09 acres developable)
- Purchased from TriMet in 2019

## Sparrow - Auxiliary Lot

- Lot 5100
- 0.29 acres (needed for ROW access)
- Purchased from TriMet in 2022



# Sparrow Site - Constraints

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- **Density**

- Zoned Moderate Density Residential (R-MD)
- Upzone would be challenging
- CFEC/Middle Housing Code will help developability
- RFQ/P to shed more light on feasibility

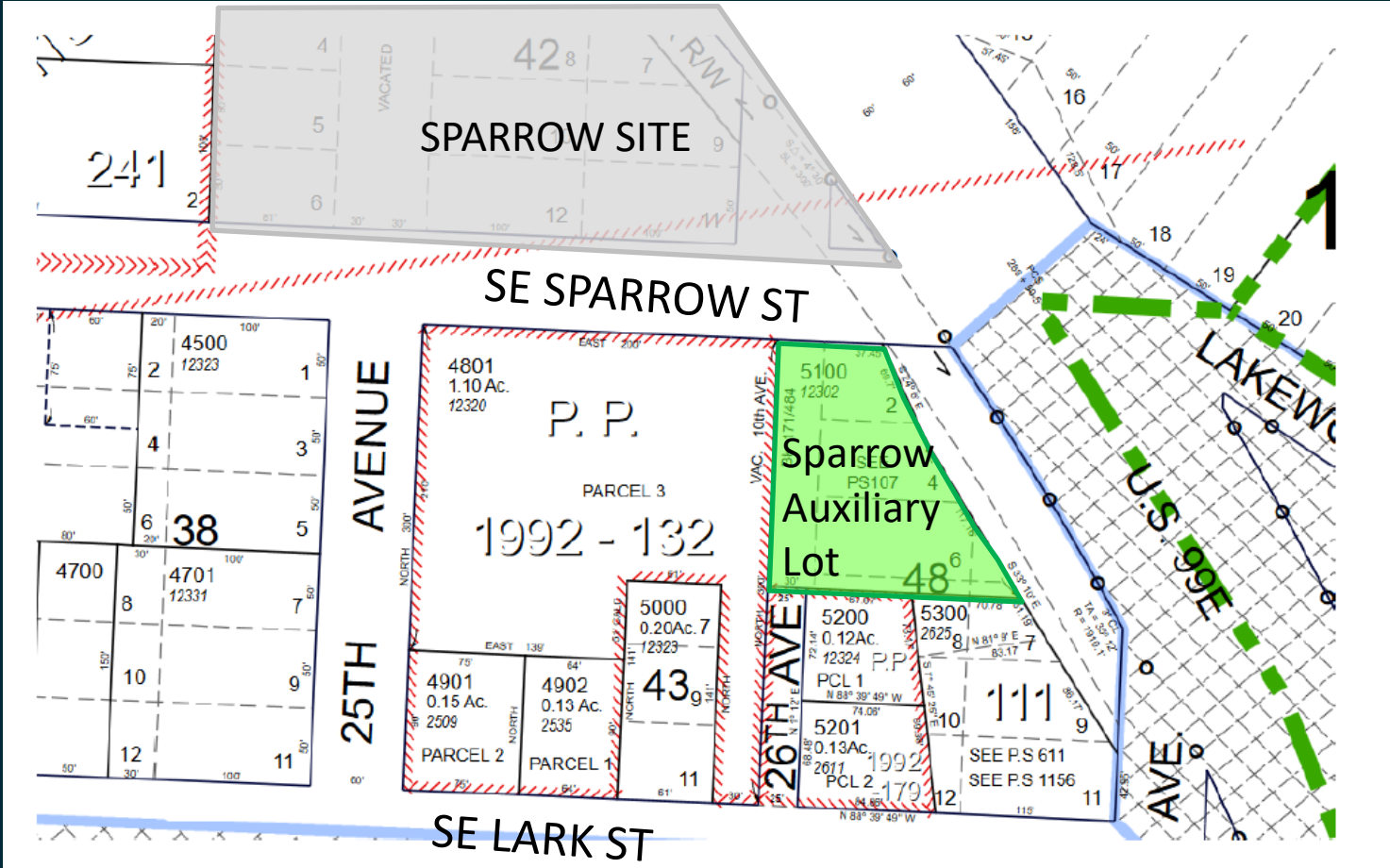
- **Brownfield**

- Metro Brownfield Program – Environmental Phase I & II
- Soil removal and/or surface capping will be incorporated to the future site plan (Remedial Action Plan)

- **Access**

- 2021 Site Access Study found that expansion of the right-of-way is required to provide access to any future proposed development

# Sparrow Site – Auxiliary Lot



Pictured above: Expansion of SE 26<sup>th</sup> Ave is needed for access/ROW to the site

# Sparrow Site – Context Photo



Entrance - looking north

# Proposed Development Goals

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(1-4 of 8)

- 1. Affordable Housing.** Income restricted rental units or affordable homeownership opportunities that serve households earning 60% or less of AMI. Preference for a project that serves lower income and 0-30% households.
- 2. Unit Size.** Preference for the project to include 2-bedroom and 3-bedroom units.
- 3. Minority / Women Business Enterprise Contracting.** Development team that will make a good faith effort to utilize Minority / Women Business Enterprises (M/WBE) in contracting.
- 4. Preservation of Tree Canopy.** Project design that will minimize the impacts to the tree canopy by development on the site.

# Proposed Development Goals

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(5-8 of 8)

- 5. Sustainable Design.** Project that uses sustainable and energy efficient design and construction methods.
- 6. Affirmative outreach.** Development team that will create an affirmative outreach plan to provide information and attract eligible persons to live in the development from all racial, ethnic, and gender groups in the housing market area.
- 7. City of Milwaukie Financing.** Project that minimizes the need for City of Milwaukie financing while delivering on project goals.
- 8. Project Delivery.** Development team with experience in project delivery and can commence construction as soon as practicable.

# Proposed Development Goals

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1. **Affordable** – Income Restricted preference for 30% and below AMI, but no more than 60%
2. **Unit Size** – 2 to 3 bedroom
3. **Minority / Women Business Enterprise Contracting** – Good faith efforts to assemble a development team that encompasses minority and/or women owned businesses
4. **Tree Preservation** – Minimize impacts to the tree canopy
5. **Sustainable Design** – Use sustainable and energy efficient design methods and construction materials
6. **Affirmative Outreach** – Ensure diverse marketing efforts are provided to persons of all racial, ethnic, and orientations
7. **City Financing** – Minimize the need for City funding for delivering project goals
8. **Project Delivery** – Pick a team that can do it as fast as possible



# Sparrow Site Goals Discussion

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## Discussion:

### Affordability Goal Preferences

- Rental vs Ownership Units - Ownership Models appear preferred
- Affordability level – Preference for lowest AMI possible with the highest acceptable level being 80% or 100%

# Sparrow Site - Next Steps

## 2024

- HUD PRO Application Submittal
- Confirm Project Goals

## 2025

- HUD PRO Application Results
- City Council Hearings
  - Declare Surplus
  - RFP Authorization
- Release RFP
- Developer/Owner Selection
- Public Engagement
- Site Design
- Remedial Action Plan

## 2026

- Permitting
- Access/ROW Improvements
- Brownfield Mitigation
- Construction



# Milwaukie Affordable Housing Pipeline

Rental Units		
Name	# Units	% AMI
Hillside Manor	100	60% (or lower)
Hillside Phase I	275	30-60%
Hillside Phase II	229	mix
Coho Point	20	80% (or lower)
Walsh Commons	28	60% and 80%
North Main Village	64	80%
<b>TOTAL</b>	<b>716</b>	
Ownership Units		
Name	# Units	% AMI
Shortstack Milwaukie	15	80%
<b>TOTAL</b>	<b>15</b>	



**This item was added to the agenda on 12/16/24.**

**It was moved from the 12/17/24 work session.**

**RS 7. C.  
12/17/24**

**OCR USE ONLY**

## COUNCIL STAFF REPORT

**To:** Mayor and City Council

**Date Written:** Dec. 5, 2024

**Reviewed:** Dan Harris, Events & Emergency Management Coordinator, and Tim Salyers, Code Compliance Coordinator

**From:** Ryan Burdick, Chief of Police

**Subject:** **Open Container Discussion**

### ACTION REQUESTED

Council is asked to receive a public safety review for allowing open containers of alcohol in the downtown Milwaukie business area.

### HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

1993: Milwaukie Municipal Code (MMC) 9.06 Alcohol Regulations is adopted by ordinance. This code states:

“It is unlawful for any person to drink or consume any alcoholic liquor or have in their possession any bottle, can, or other receptacle containing any alcoholic liquor which has been opened, or unsealed, or the contents of which have been partially removed, while in or upon any public street or sidewalk, school, park, public boat landing, dock, and other attendant facilities, municipal building, and premises used in connection with public passenger transportation. However, the City Council or its designee may permit the service and consumption of alcoholic liquors in any public place or within designated municipal buildings on such terms and conditions as the Council may provide. Nothing in this section shall be deemed to prohibit drinking or alcoholic liquor in any establishment wherein the same may be sold for on-premises consumption under the laws of the State, or when a permit has been granted by the City Council, or its designee.”

### ANALYSIS

In September 2024, City Council received a public comment asking the city to consider allowing “open container” alcoholic beverages in downtown, particularly as more businesses open in the city’s core.

In response, Council asked that staff put a discussion of open container policy on an upcoming agenda. The idea of allowing open containers of alcohol in the downtown area may seem attractive for promoting a vibrant atmosphere, but it also comes with significant risks and challenges. The proximity to Portland also creates potential issues we will be evaluating as it pertains to this issue. In addition, follow up is being conducted with our law enforcement partners who have experience with open container related zones and their potential impacts. Outreach is ongoing with

communities like Hood River to see what the potential impacts are as it pertains to public safety.

To inform this discussion, staff from the city's public safety department summarized some potential challenges and concerns for Council to consider:

### 1. Public Safety Concerns

- **Increased Risk of Disorderly Behavior:** Open consumption of alcohol can lead to public intoxication, fights, or disruptive behavior, potentially creating an unsafe environment for residents and visitors.
- **Strain on Law Enforcement:** Monitoring and managing alcohol-related incidents will likely require additional police presence, increasing costs and diverting resources from other areas.

### 2. Impact on Business Environment

- **Deterring Family-Friendly Atmosphere:** Businesses aiming to attract families or non-drinking clientele may suffer if the area is perceived as alcohol-centric or unsafe.
- **Potential Damage to Property:** Alcohol consumption in public spaces can lead to littering, vandalism, and damage to property, negatively affecting businesses and requiring more maintenance.

### 3. Public Health Implications

- **Alcohol Abuse Concerns:** Open container policies can contribute to excessive drinking and normalize alcohol consumption in public spaces, raising public health concerns.
- **Risk to Vulnerable Populations:** An open container policy may exacerbate challenges faced by vulnerable groups, such as those struggling with addiction or experiencing homelessness.

### 4. Noise and Nuisance Issues

- **Increased Noise Levels:** Public drinking can lead to louder gatherings, which may disturb nearby residents and businesses.
- **Complaints from Community Members:** Noise, rowdiness, and a general decline in perceived quality of life could result in pushback from the community.

### 5. Legal and Liability Concerns

- **Compliance Challenges:** Enforcing boundaries and ensuring responsible consumption may prove difficult, potentially leading to liability issues for the city and businesses.

- **Potential Increase in Litigation:** Incidents related to alcohol consumption in open container areas could lead to legal disputes or claims against the municipality.

## 6. Perception and Reputation Risks

- **Negative Public Image:** If poorly managed, the area could develop a reputation as disorderly or unsafe, discouraging investment and tourism.
- **Conflict with Community Values:** Some community members may view such a policy as incompatible with their cultural or social values.

City staff appreciate local business' interest in identifying ways to revitalize downtown, activate main street, and encourage community building. To mitigate the concerns above while supporting these goals, staff would recommend exploring a way to permit specific events within the city to allow for alcohol consumption in defined right-of-way or public areas and within defined times. For example, First Fridays or other festivals could be designed and permitted to allow certain blocks to have open container provisions during the course of the event, with proper protocols taken to ensure safety and compliance with other nuisance codes and regulations.

Staff would also like to better understand what problem this proposal is trying to solve and what behaviors are not currently allowed via the city's event permitting process to better inform what potential solutions we could develop.

## **BUDGET, CLIMATE & EQUITY IMPACTS**

Not applicable.

## **WORKLOAD IMPACT**

Increasing rates of houselessness and behavioral health challenges in our community put a strain on limited city resources and staff workload. The above-mentioned concerns will impact the police department resulting in increased calls for service.

Current projects such as Clackamas County's Hillside Park redevelopment, the Clackamas County Sheriff Office's (CCSO's) 23 Hour Stabilization Center, and additional apartment complexes in Milwaukie will continue to push the limited resources of staff at the police department. Additional enforcement requirements in the downtown business area for open container related enforcement will add to this workload and can lead to public safety related issues.

## **COORDINATION, CONCURRENCE, OR DISSENT**

The events and emergency management coordinator broadly concurs with the content of this staff report. The event permitting process has been intentionally designed to have low barriers to compliance. Past street festivals, including last spring's Shamrockin' Good Times Fest, have been able to operate safely and successfully without an open container area.

## **STAFF RECOMMENDATION**

While fostering a prosperous and business friendly downtown area is an important goal, the potential drawbacks of implementing an open container policy for alcohol would likely outweigh the benefits. Alternative strategies, such as organizing controlled, licensed events or promoting responsible drinking within existing establishments, may achieve the same goals with decreased risk. Permitted events which serve alcohol are preferred to open container zones.

## **ALTERNATIVES**

Council could direct staff to do further research or develop draft proposals for code amendments that are more permissive of open container consumption.

## **ATTACHMENTS**

1. Council Comments
2. Article on Open Container Laws and Alcohol Involved Crashes
3. Article related to California SB 76 regarding Alcoholic Beverages
4. SF Entertainment Zone Article
5. Public comment received earlier this year on this topic



## Scott Stauffer

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**From:** Mike Lesch <mikelesch@hotmail.com>  
**Sent:** Friday, September 20, 2024 12:18 PM  
**To:** \_City Council  
**Cc:** Lesch, Michael; Nate Noble  
**Subject:** Milwaukie Open Container Proposal

Hello Milwaukie City Council,

Thank you for allowing us (Beer Store Milwaukie) the opportunity to provide you with this proposal to allow “Open Container” alcoholic beverages in Downtown Milwaukie. We initially brought this proposal to City Counsel a few years ago during a regular session monthly meeting however, the idea did not seem to gain any traction when first proposed. In the time since our initial proposal, our city leadership team has evolved and changed. Perhaps the environment is right to make this proposal again and see if there are opportunities to at least entertain certain aspects of this proposal for the city’s future.

The City of Hood River Oregon does not have an ordinance making the consumption of alcohol in public spaces illegal. This means a person inside the Hood River City limits can legally walk down the street, enjoy time in the waterfront park, or take their dog for a walk with an open container of alcohol. All Oregon Liquor and Cannabis Commission (OLCC) laws and rules still apply. A person cannot take their pint glass of beer from a restaurant and simply walk away with it. Alcohol must be purchased in a sealed package like a can or bottle, the purchaser must leave the premises from which the alcohol was purchased, and then the purchaser may open and consume the product as they go about their business on foot.

Nuisance laws do still exist in Hood River to discourage public drunkenness and offensive behavior so the idea is not to remove all boundaries but to instill responsible guidelines that allow people to move about on foot, from business to business, while enjoying an alcoholic beverage.

We would like to propose that the City of Milwaukie review Hood River’s ordinances and adopt similar legislation to allow open container and public consumption of alcohol in downtown Milwaukie and Milwaukie Bay Park. As the City of Milwaukie evolves with new residential buildings, new business construction, and improved infrastructure projects, so should the laws that guide our use of these areas and how we enjoy our open spaces.

During current Milwaukie First Friday events, anyone wishing to consume an alcoholic beverage must do so while remaining in one place – the place in which the alcoholic beverage was purchased. This limits movement between venues and reduces the flow of people throughout the city during an event that, by nature, is designed to bring people to the downtown area to showcase our local businesses. Switching to a model that more closely resembles Hood River’s open container policies would allow people with alcoholic beverages in hand to move freely throughout the downtown Milwaukie area during events such as First Friday and could improve participation (turnout) and encourage attendees to explore the entire downtown business section, not just the areas that cater to food and beverages.

As we develop the Milwaukie Bay Park waterfront area, we should consider new legislation that allows visitors the option to bring their own alcohol to enjoy responsibly while attending events or when picnicking on the grass. This natural area has so much potential and the mixed use opportunities are endless. We should employ every available resource and open our waterfront with more progressive and inclusive designs that allow for open consumption of alcoholic beverages.

A member of the Hood River community is slated to become a member of our Milwaukie community as well – pFriem Family Brewers. pFriem has operated in Hood River for more than ten years and would be a great resource for developing a legislative plan that provides for Milwaukie's growing needs and addresses concerns for public safety. We will have an organization with firsthand experience in an open container environment located in the heart of our downtown. We should glean as much information from pFriem as they are willing to contribute and develop an encompassing implementation plan. We may be able to learn a lot from pFriem's experiences.

Thank you again for considering this proposal. We appreciate the opportunity to present this idea again to the City Counsel and perhaps we are ready to take a closer look at the pros and cons of allowing open containers in the Milwaukie downtown area.

Best regards,

Mike Lesch

Nate Noble

Beer Store Milwaukie

503.799.3581

**From:** [Justin Gericke](#)  
**To:** [Lisa Batey](#); [\\_City Council](#); [Joseph Briglio](#); [Ryan Burdick](#)  
**Subject:** RE: views of the Mayor of Hood River on their open container alcohol policy  
**Date:** Wednesday, October 2, 2024 2:09:19 PM

---

[PLEASE DO NOT REPLY]

All,

In addition to not replying to the Mayor's email (not just a Do Not Reply All), please do not discuss this issue among yourselves until the item is presented on the dais. Serial conversations (email and otherwise) about city business, even among less than a quorum, are a violation of the public meetings law if multiple conversations have occurred. Please help me to keep us in compliance with the public meetings law.

Scott – please make sure the Mayor's email makes it into the record when this item is placed on the agenda.

Best,

Justin

**JUSTIN D. GERICKE**

City Attorney  
o: 503.786.7529  
City of Milwaukie  
10501 SE Main St • Milwaukie, OR 97222

---

**From:** Lisa Batey <BateyL@milwaukieoregon.gov>  
**Sent:** Wednesday, October 2, 2024 11:47 AM  
**To:** \_City Council <CityCouncil@milwaukieoregon.gov>; Joseph Briglio <BriglioJ@milwaukieoregon.gov>; Ryan Burdick <BurdickR@milwaukieoregon.gov>  
**Subject:** views of the Mayor of Hood River on their open container alcohol policy

All: [Informational only – please do not reply all]

As noted last night, I asked that the Beer Store's request be added to some future agenda. As we're going into the wet season, I don't see this as pressing, but it's an interesting conversation to have as next spring we will have two new watering holes opening in town. It

does occur to me that the food cart pods, both old and new, might not like the idea as it could cut into their on-site alcohol sales.

I did reach out to Mayor Paul Blackburn of Hood River about their experience. Blackburn has been on and off the Council over the past 20 years, and has been mayor since 2014 with a three-year break in there. For simplicity, I am going to refer to the Beer Store's proposal as an "open container" law/policy.

First off, Blackburn clarified that Hood River (HR) did not make an affirmative decision to allow open containers. Rather, at some point the city discovered that they had no ordinance on the books and in the absence of any prohibition, open containers were allowed. He emphasized the same OLCC limitation mentioned in the Beer Store's request – that people cannot leave a bar/restaurant with a glass of beer or other alcoholic drink, that it only applied to beverages in cans/bottles, which are sold sealed and opened by the purchaser off-premises of the seller. Which, of course, is a big part of Beer Store's business model.

Blackburn said that eight years ago, the HR Council started talking about an ordinance that would have restricted the open container practice. But a lot of members of the community came out in opposition, and they dropped that effort.

Blackburn recommended against opening the open container Pandora's box, although he did acknowledge that they haven't had any major New Orleans-style public drunkenness problems. He felt that the city shouldn't be promoting/facilitating broader alcohol use from a public health perspective, more than any particular law enforcement concerns. Apparently their PD remained fairly neutral at the time of those discussions eight years ago.

**Lisa M. Batey, Mayor (she/her)**  
City of Milwaukie  
E-mail: [bateyl@milwaukieoregon.gov](mailto:bateyl@milwaukieoregon.gov)  
Message line: 503-786-7512

**From:** [William Anderson](#)  
**To:** [City Council](#)  
**Subject:** Something to Include in the Packet on Open Containers  
**Date:** Wednesday, October 2, 2024 8:09:27 PM

---

Hi Y'all,

FOR SUBMISSION TO THE FUTURE PACKET, PLEASE DO NOT REPLY

In the spirit of data driven policy making, I spent some time today looking into some academic articles about the impacts of open container laws. I'll be frank, I was a bit disappointed with the studies (or lack there of) that I found. Nevertheless, I wanted to submit this to the record for our packet when we do eventually discuss this in a meeting. Here is a quick summary.

If you poke around yourself, you might be excited to see studies about open container laws and their impact on drunk driving ([there is no statistically significant change](#)); however these the open container laws in these studies are not what we would consider. These laws allow for open containers of alcohol while driving, not in public spaces.

The [one study](#) I could find was quite comprehensive. The study found street drinking bans can bring negative consequences: they negatively impact marginalized groups and are enforced inconsistently. However they do improve perceptions of neighborhoods and are supported by police, traders and older people. There was no clear impact on the amount of alcohol-related crime or harm. The one clear problem of this study is that it does not bring ing evidence from the United States, instead drawing from the UK, New Zealand and Australia, with very different drinking cultures.

California recently passed [a law](#) allowing cities to create "Entertainment Zones" in which, amongst other provisions, would allow for open containers. [San Fransisco recently became the first city in California](#) to create an entertainment zone. This raises the question of wether or not Milwaukie would consider an open container provision within a specific zone (GMU/downtown) or city wide. This law was passed with broad support from California restaurant, entertainment, and commercial interests, as well as many local governments who saw it as a stimulus for downtown economic activity.

If other folks can find studies to expand our understanding of this topic, I would encourage them to bring it forward to our eventual work session on this topic. Cheers!

**Will Anderson** • City Councilor  
City of Milwaukie

**RS133-9**

he•him•his [Learn why pronouns matter](#)  
o: 503.786.7510 • c: 541.480.9204



U.S. Department  
of Transportation  
**National Highway  
Traffic Safety  
Administration**



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DOT HS 809 426

April 2002

# **Open Container Laws & Alcohol Involved Crashes:**

## **Some Preliminary Data**

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15. Supplemental Notes Paul J. Tremont, PhD was the Contracting Officer's Technical Representative (COTR) for this project.		16. Abstract	
<p>This report presents the results of a study conducted for the National Highway Traffic Safety Administration (NHTSA) to assess the highway safety effects of laws that prohibit open containers of alcoholic beverages to be located in the passenger compartment of motor vehicles operated on public roadways. These laws are commonly referred to as "Open Container Laws." The Transportation Equity Act for the 21st Century (TEA-21), H.R. 2400, P.L. 105-178, was passed by the Senate and the House of Representatives on 22 May 1998, signed into law on 9 June 1998, and amended by a technical corrections bill, entitled the TEA-21 Restoration Act, P.L. 105-206, on 22 July 1998. The TEA-21 Restoration Act established a program to encourage states to enact and enforce open container laws that conform to a Federal Standard. States without conforming Open Container laws are subject to a transfer of highway construction funds.</p> <p>Four states passed legislation in 1999 in response to the TEA-21 Restoration Act (Iowa, Maine, Rhode Island, and South Dakota). Analyses indicated that three of the four states appeared to decline in their proportions of alcohol-involved fatal crashes during the first six months after enforcement of the conforming laws; however, the declines were not statistically significant.</p> <p>In addition to the before and after analyses, crash data (from 1999) were compared among states that have had fully-conforming laws since the enactment of the TEA-21 Restoration Act on July 22, 1998; states that enacted fully-conforming laws as of October 1, 2000, the date on which the first transfer of funds took effect; states that had partially-conforming laws as of October 1, 2000; and, states that had no Open Container laws at all, as of October 1, 2000. This analysis showed that states without Open Container Laws experienced significantly greater proportions of alcohol-involved fatal crashes than states with partially-conforming or fully-conforming laws. Also, it was noted that survey data show support for Open Container laws by a substantial majority of the general public, even in states without such laws.</p>			
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Form DOT 1700.7



# OPEN CONTAINER LAWS AND ALCOHOL INVOLVED CRASHES

## SOME PRELIMINARY DATA

### EXECUTIVE SUMMARY

This report presents the results of a study conducted for the National Highway Traffic Safety Administration (NHTSA) to assess the highway safety effects of laws that prohibit open containers of alcoholic beverages to be located in the passenger compartment of motor vehicles operated on public roadways. These laws are commonly referred to as "Open Container laws." The Transportation Equity Act for the 21st Century (TEA-21), H.R. 2400, P.L. 105-178, was passed by the Senate and the House of Representatives on 22 May 1998, signed into law on 9 June 1998, and amended by a technical corrections bill, entitled the TEA-21 Restoration Act, P.L. 105-206, on 22 July 1998. The TEA-21 Restoration Act established a program to encourage states to enact and enforce open container laws that conform to a Federal standard. A percentage of a state's Federal-aid highway construction funds will be transferred for use in drinking and driving countermeasures programs, law enforcement, and hazard elimination if the state fails to enact and enforce a conforming "Open Container law." To avoid the transfer of funds, a state must enact and enforce a law that prohibits the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway, or the right-of-way of a public highway, in the state.

Four states passed legislation in 1999 following enactment of the TEA-21 Restoration Act (Iowa, Maine, Rhode Island, and South Dakota). Analyses of data obtained from the states found that three of the four states appeared to decline in the proportions of all fatal crashes that were alcohol-involved during the first six months following the beginning of enforcement of the compliant laws. The changes were in the direction expected; however, the differences were not statistically significant.

In addition to the before and after analyses, crash data (from 1999) were compared among states that had fully-conforming laws (as of the enactment of the TEA-21 Restoration Act on July 22, 1998), states that enacted fully-conforming laws as of October 1, 2000, the date on which the first transfer of funds took place; states that had partially-conforming laws, as of October 1, 2000 and states that had no Open Container laws at all, as of October 1, 2000. This analysis showed that states without Open Container laws experienced significantly greater proportions of alcohol-involved fatal crashes than states with partially conforming or fully conforming laws.

It is also noted that NHTSA's 1999 national survey on drinking and driving revealed that a substantial majority of the general public supports Open Container laws, even in states without such laws.

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## OPEN CONTAINER LAWS AND ALCOHOL INVOLVED CRASHES

### SOME PRELIMINARY DATA

This report presents the results of a study conducted for the National Highway Traffic Safety Administration (NHTSA) to assess the highway safety effects of laws that prohibit open containers of alcoholic beverages to be located in the passenger compartment of motor vehicles operated on public roadways. These laws are commonly referred to as Open Container laws.

### BACKGROUND

The Transportation Equity Act for the 21st Century (TEA-21), H.R. 2400, P.L. 105-178, was passed by the Senate and the House of Representatives on 22 May 1998 and signed into law on 9 June 1998. On 22 July 1998, a technical corrections bill, entitled the TEA-21 Restoration Act, P.L. 105-206, was enacted to restore provisions that were agreed to by the conferees to H.R. 2400, but were not included in the TEA-21 conference report.<sup>1</sup> Section 1405 of the Act amended chapter 1 of title 23, United States Code (U.S.C.), by adding Section 154, which established a transfer program under which a percentage of a state's Federal-aid highway construction funds will be transferred to the state's apportionment under Section 402 of Title 23 of the United States Code, if the state fails to enact and enforce a conforming Open Container law. The transferred funds are to be used for alcohol-impaired driving countermeasures or the enforcement of drinking and driving laws, or states may elect to use all or a portion of the funds for hazard elimination activities, under 23 U.S.C. Section 152.

To avoid the transfer of funds, Section 154 requires that a state must enact and enforce a law that prohibits the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the state.

### PURPOSE OF SECTION 154

The TEA-21 Restoration Act added Section 154 to Chapter 1 of Title 23, United States Code (U.S.C.), to reduce alcohol-impaired driving, a serious national public safety problem. Nearly 1.4 million people have died in traffic crashes in the United States since 1966, the year the National Traffic and Motor Vehicle Safety Act was passed. During the late 1960s and early 1970s more than 50,000 people lost their lives each year on our

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<sup>1</sup> Prior to TEA-21, Congress had enacted 23 U.S.C. Section 410 (the Section 410 program) to encourage states to enact and enforce effective impaired driving measures (including open container laws). Under this program, states could qualify for supplemental grant funds if they were eligible for a basic Section 410 grant, and they had an open container law that met certain requirements. TEA-21 changed the Section 410 program and removed the open container incentive grant criterion. The conferees to that legislation had intended to create a new open container transfer program to encourage states to enact open container laws, but the new program was inadvertently omitted from the TEA-21 conference report; the program was included instead in the TEA-21 Restoration Act. (Information presented in this report about TEA-21 and the open container regulations, was obtained from the TEA-21 website, maintained by the U.S. Department of Transportation, [www.fhwa.dot.gov/tea21](http://www.fhwa.dot.gov/tea21).)

nation's public roads and more than half of the motorists killed had been drinking. Traffic safety has improved considerably since that time: the annual death toll has declined to about 40,000, even though the numbers of drivers, vehicles, and miles driven all have greatly increased. The improvements in traffic safety are reflected in the change in fatality rate per 100 million vehicle miles traveled: The rate fell from 5.5 in 1966 to 1.5 in 1998 (FARS—Fatality Analysis Reporting System—98), a 73 percent improvement. When miles traveled are considered, the likelihood of being killed in traffic in 1966 was more than three times what it is today.

Despite the significant improvements in traffic safety during the past two decades, an average of more than 115 people still die each day from motor vehicle crashes in the United States. In addition to the human costs, the economic losses from crashes are estimated to be more than \$150 billion annually, including \$19 billion in medical and emergency expenses, \$42 billion in lost productivity, \$52 billion in property damage, and \$37 billion in other crash-related costs (FARS—98). It is estimated that approximately 40 percent of fatal crashes involve a drinking driver and 29 percent of the drivers who die in crashes have blood alcohol concentrations (BACs) of 0.10 percent or greater.

Drinking and driving laws and the efforts of law enforcement personnel have contributed to the substantial decline in the incidence of alcohol-involved crashes (Stuster & Burns, 1998). The enactment and enforcement of uniformly strong Open Container laws provides another potential means to help reduce drinking and driving, and could lead to further reductions in the numbers of alcohol-involved crashes. Previous research on the relationship between Open Container laws and traffic safety is limited; however, there is evidence that, from a traffic safety perspective, the most dangerous form of alcohol-consumption is drinking in a vehicle (Ross, 1992). For example, a study of drivers who were arrested for DWI in San Diego, California, found that more than half of the violators had consumed alcohol in their vehicles soon after purchasing it from liquor stores, convenience stores, or gasoline minimarts.<sup>2</sup> The study found that the incidence of alcohol drinking in cars was nearly three times greater when the beverages were purchased at gas stations, compared to all other outlets (Segars & Ryan, 1986; Wittman, 1986). Similarly, a study of DWI offenders in Santa Fe County, New Mexico found that 37 percent of the offenders who bought package liquor prior to arrest bought their alcohol at a drive-up window, compared to 14 percent at a convenience/drug store. Further, the offenders who bought at a drive-up window were 67 percent more likely to have been drinking in their vehicle prior to arrest, and 67 percent more likely to be problem drinkers, than those who bought package liquor elsewhere (Lewis, Lapham, & Skipper, 1998).

In addition to problem drinkers, officers report that underage youth exhibit a preference for drinking in vehicles. The danger associated with underage drinking and driving is compounded by a tendency to consume all of the alcoholic beverage available (because usually it cannot be stored). Other factors, including a lack of driving experience and skill, exacerbate this problem.

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<sup>2</sup> Various terms are used throughout the United States for offenses involving drinking and driving. In this report, Driving While Impaired (DWI) is used to refer to all occurrences of driving at or above the legal blood alcohol concentration (BAC) of a jurisdiction.

## OPEN CONTAINER LAW INCENTIVES

According to Section 154, if a state does not meet the statutory requirements by October 1, 2000 or October 1, 2001, an amount equal to one and one-half percent of the funds apportioned to the state on those dates under each of Sections 104(b)(1), (3) and (4) of title 23 of the United States Code will be transferred to the state's apportionment under Section 402 of that title to be used for alcohol-impaired driving countermeasures or enforcement, hazard elimination, or related administration and planning.<sup>3</sup> If a state does not meet the statutory requirements by October 1, 2002, an amount equal to three percent of the funds apportioned to the state on that date under Sections 104(b)(1), (3) and (4) will be transferred. An amount equal to three percent will continue to be transferred on October 1 of each subsequent fiscal year, if the state does not meet the requirements on those dates.<sup>4</sup>

## OPEN CONTAINER LAW CONFORMANCE CRITERIA

The regulations resulting from the TEA-21 Restoration Act specify six elements that state Open Container laws must include to conform to the Federal Standard and to enable a state to avoid the transfer of Federal-aid highway construction funds. The required elements are described in the following paragraphs.<sup>5</sup>

*To fully conform to the federal requirements, an Open Container law must...*

### ***1. Prohibit possession of any open alcoholic beverage container and the consumption of any alcoholic beverage in a motor vehicle.***

A state's open container law must prohibit the possession of any open alcoholic beverage container and the consumption of any alcoholic beverage in the passenger area of any motor vehicle that is located on a public highway or right-of-way. However, state laws and proposed legislation that prohibit possession without prohibiting consumption also have been found to be in conformance with the

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<sup>3</sup> The Act also provides that states may elect to use all or a portion of the transferred funds for hazard elimination activities under 23 U.S.C. 152.

<sup>4</sup> The amount of the apportionment to be transferred may be derived from one or more of the apportionments under Sections 104(b)(1), (3) and (4). In other words, the total amount to be transferred from a non-conforming state will be calculated based on a percentage of the funds apportioned to the state under each of Sections 104(b)(1), (3) and (4). However, the actual transfers need not be evenly distributed among these three sources. The transferred funds may come from any one or a combination of the apportionments under Sections 104(b)(1), (3) or (4), as long as the appropriate total amount is transferred from one or more of these three sections. The rule specifies that all of the affected state agencies should participate in deciding how transferred funds should be directed.

<sup>5</sup> Section 154 provides that nonconforming states will be subject to the transfer of funds beginning in fiscal year 2001. To avoid the transfer, each state must submit a certification demonstrating conformance. The certifications submitted by the states under this Part will provide the National Highway Traffic Safety Administration and the Federal Highway Administration with the basis for finding states in conformance with the Open Container requirements. Until a state has been determined to be in conformance with these requirements, it must submit a certification by an appropriate state official that the state has enacted and is enforcing a conforming open container law. Once a state has been determined to be in conformance with the requirements, the state would not be required to submit certifications in subsequent fiscal years, unless the state's law had changed or the state had ceased to enforce the open container law. States are required only to submit a certification that they are enforcing their laws to demonstrate enforcement under the regulation.



possession and consumption criterion because in order to consume an alcoholic beverage, an individual must first have that beverage in their possession.

**2. *Specify the passenger area of any motor vehicle.***

The open container law must apply to the passenger area of any motor vehicle. "Passenger area" is defined as the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment. Vehicles without trunks may have an open alcoholic beverage container behind the last upright seat or in an area not normally occupied by the driver or passengers. A law that permits the possession of open alcoholic beverage containers in an unlocked glove compartment, however, will not conform to the requirements. "Motor vehicle" is defined in the regulation to mean a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways. The term does not include a vehicle operated exclusively on a rail or rails.

**3. *Apply to all alcoholic beverages.***

The open container law must apply to all alcoholic beverages. "Alcoholic beverage" is defined in the regulation to include all types of alcoholic beverages, including beer, wine and distilled spirits. Beer, wine, and distilled spirits are covered by the definition if they contain one-half of one percent or more of alcohol by volume. An "open alcoholic beverage container" is any bottle, can, or other receptacle that contains any amount of alcoholic beverage, and that is open or has a broken seal, or the contents of which are partially removed.

**4. *Apply to all occupants.***

The open container law must apply to all occupants of the motor vehicle, including the driver and all passengers. The statute provides for two exceptions, however, to the all-occupant requirement. A law will be deemed to apply to all occupants if the law prohibits the possession of any open alcoholic beverage container by the driver, but permits possession of alcohol by passengers in "the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation" (e.g., buses, taxis, limousines) and passengers "in the living quarters of a house coach or house trailer."

**5. *Specify on a public highway or the right-of-way of a public highway.***

The open container law must apply to a motor vehicle while it is located anywhere on a public highway or the right-of-way of a public highway. The agencies have defined "public highway or the right-of-way of a public highway" to include a roadway and the shoulder alongside of it.

**6. *Specify primary enforcement.***

A state must provide for primary enforcement of its open container law. Under a primary enforcement law, officers have the authority to enforce the law without the need to show that they had probable cause to believe that another violation had been committed. An open container law that provides for secondary enforcement does not conform to the requirements of the regulation.

## STATUS OF CONFORMANCE: OCTOBER 2000

The overall status of states' conformity to the Federal Standard is constantly changing. However, the status of conformance as of October 2000 is presented below.<sup>6</sup>

### Fully Conforming States Before Enactment of the TEA 21 Restoration Act

The following States had in effect open container laws that conformed fully with the Federal open container requirements contained in 23 U.S.C. § 154 and the agency's implementing regulations, 23 CFR Part 1270, as of October 1, 2000. Accordingly, these States were not subject to a transfer of funds under the Section 154 program on that date. The laws were in effect in these states and the District of Columbia before July 22, 1998, when the Section 154 program was established by the Transportation Equity Act for the 21<sup>st</sup> Century (TEA 21) Restoration Act, and have not been amended since.

California	Michigan	Ohio	Washington
District of Columbia	Nevada	Oklahoma	Wisconsin
Illinois	New Hampshire	Oregon	
Kansas	North Dakota	Utah	

### States that Became Fully Conforming Since Enactment of the TEA-21 Restoration Act

The following States had open container laws in effect that conformed fully with the Federal open container requirements contained in 23 U.S.C. § 154 and the agency's implementing regulations, 23 CFR Part 1270, as of October 1, 2000. Accordingly, these States were not subject to a transfer of funds under the Section 154 program on that date. The laws in these states were amended since July 22, 1998, when the Section 154 program was established by the Transportation Equity Act for the 21<sup>st</sup> Century (TEA 21) Restoration Act.

Alabama	Iowa	Nebraska	Pennsylvania
Arizona	Kentucky	New Jersey	Rhode Island
Florida	Maine	New York	South Carolina
Hawaii	Minnesota	North Carolina	South Dakota
Idaho			

### States with Open Container Laws that Did Not Fully Conform as of October 1, 2000

The following States did not have open container laws in effect that complied fully with the Federal open container requirements contained in 23 U.S.C. § 154 and the agency's implementing regulations, 23 CFR Part 1270, as of October 1, 2000. Accordingly, these States were subject to a transfer of funds under the Section 154 program on that date.

Alaska	Indiana	Missouri	Texas
Arkansas	Louisiana	Montana	Vermont
Colorado	Maryland	New Mexico	Virginia
Delaware	Massachusetts	Tennessee	West Virginia
Georgia			

### States With No Open Container Laws as of October 1, 2000

The following States and the Commonwealth of Puerto Rico did not have any open container laws in effect, as of October 1, 2000. Accordingly, these States were subject to a transfer of funds under the Section 154 program on that date.

Connecticut	Mississippi	Puerto Rico	Wyoming
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<sup>6</sup>This information was provided by NHTSA's Office of the Chief Counsel.

## EVALUATION OF THE EFFECTS OF OPEN CONTAINER LAWS

Two methods were used to assess the effects of Open Container laws on traffic safety: 1) A before and after comparison of data from the four states that enacted legislation in 1999 to modify their Open Container laws to be in conformance with the Federal Standard; and 2) A comparison of data from states that had conforming laws when the TEA-21 Restoration Act was enacted; adopted fully conforming laws by October 1, 2000; had partially-conforming laws by October 1, 2000; and had no Open Container laws at all as of October 1, 2000.

### BEFORE AND AFTER COMPARISON OF THE FOUR STATES

Four states (IA, ME, RI, SD) modified existing Open Container laws in 1999 to be in conformance with the Federal requirements established in Section 154 of Chapter 1 of Title 23, United States Code (U.S.C.), and the Act's implementing regulations, 23 CFR Part 1270. As of January 2000, only these four states had enacted Open Container legislation in response to the TEA-21 Restoration Act. One of the states enacted its legislation in May of 1999 and the other three states enacted their legislation in July of 1999. All four states had Open Container laws when the TEA-21 Restoration Act was enacted, but each of those laws contained deficiencies that prevented them from fully conforming with the new Federal requirement. Table 1 summarizes the extent to which those states' previous open container laws complied with the six elements of the Federal requirements. South Dakota had not demonstrated that its law covered all alcoholic beverages and all public highways and rights-of-way; Iowa, Rhode Island, and Maine had not demonstrated that their laws prohibited both possession and consumption, and that they covered the entire passenger area and all occupants of a vehicle. Maine, in addition, had not demonstrated that its law covered all public highways.

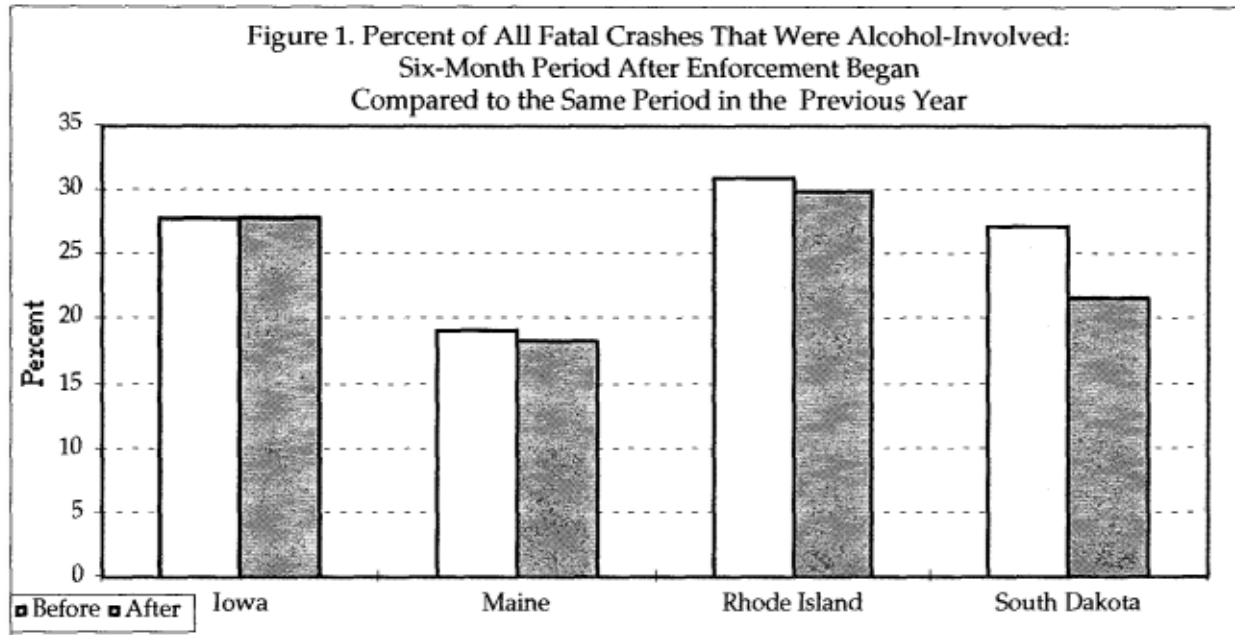
TABLE 1  
SUMMARY OF PREVIOUS OPEN CONTAINER LAWS IN THE FIRST FOUR STATES  
TO ENACT LAWS TO CONFORM WITH TEA-21 REQUIREMENTS

State	Element Required by TEA-21					
	Possession & Consumption	Passenger Area	All Alcoholic Beverages	All Occupants	All Public Highways	Primary Enforcement
Iowa	no	no	yes	no	yes	yes
Maine	no	no	yes	no	no	yes
Rhode Island	no	no	yes	no	yes	yes
South Dakota	yes	yes	no	yes	no	yes

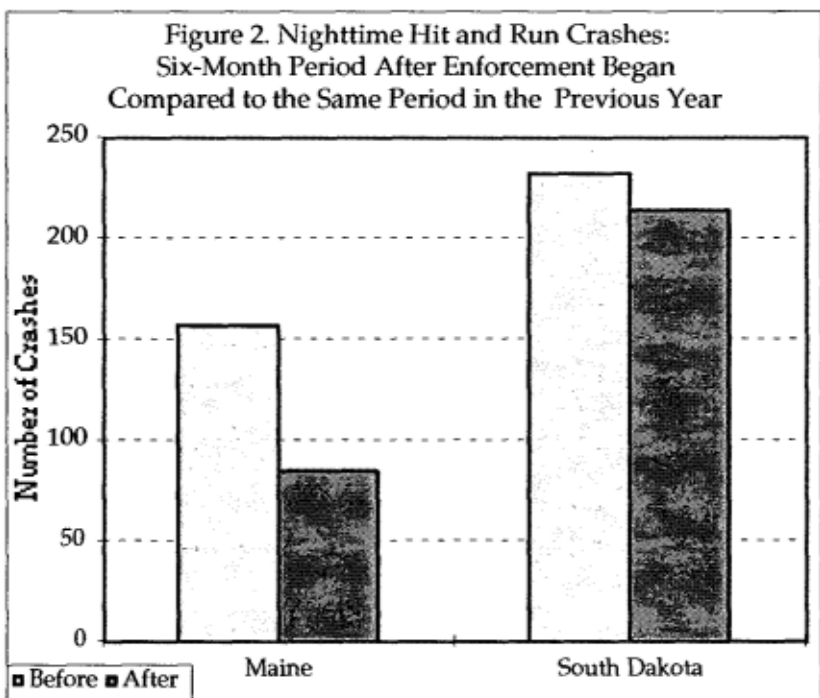
Enforcement of the new conforming laws began on 1 July 1999 in Iowa and South Dakota, on 1 October in Maine, and on 1 January 2000 in Rhode Island. Data were obtained from agencies of the four states to identify effects on traffic safety that might be attributable to changes in the states' Open Container laws. The hypothesis of the evaluation is that conformance with the Federal requirements is associated with a lower incidence of alcohol-involved crashes.

Figure 1 presents the proportions of all fatal crashes that were alcohol-involved in the four states during the six-month periods following the beginning of enforcement of the states' conforming laws, compared to data from the same six-month periods in

the previous year. The figure suggests that the alcohol-involved proportion of fatal crashes in three of the four states was lower during the first six months following enforcement of conforming Open Container laws.<sup>7</sup> Iowa had no apparent change; however, the apparent change observed in the other three states is in the direction expected if the laws had an impact; however, the declines were not statistically significant (z test at 0.05).



Hit-and-run crashes, particularly during nighttime hours, provide an indirect measure of the incidence of drinking and driving; it is well-known to law enforcement that many drivers flee the scene of a nighttime crash to conceal their alcohol-impairment. Figure 2 presents the numbers of nighttime hit and run crashes (in the two states for which data are available) during the six-month periods following the beginning of enforcement of the states' conforming laws, compared to data from the same six-month



<sup>7</sup> Data illustrated in all figures are presented in Appendix A.

periods in the previous year.<sup>8</sup> The figure shows that the numbers of hit-and-run crashes declined in both states during the first six months after enforcement of their conforming laws began, compared to the same six-month periods one year earlier. Chi Square tests found the difference to be statistically significant for Maine, but not for South Dakota ( $p=0.05$ ).

**COMPARISONS AMONG STATES THAT HAD CONFORMING LAWS PRIOR TO TEA-21, STATES THAT ENACTED CONFORMING LAWS BY OCTOBER 1, 2000, STATES WITH PARTIALLY-CONFORMING LAWS BY OCTOBER 1, 2000, AND STATES WITH NO OPEN CONTAINER LAWS BY OCTOBER 1, 2000**

The previous section compared measures of traffic safety before and after changes to Open Container laws took effect in the four states that enacted TEA-21 conforming legislation in 1999. Another method for assessing the effects of Open Container laws is to compare traffic safety data from states that had conforming laws prior to the amendment of the TEA-21 Restoration Act to data from other states, including states that adopted fully conforming laws, states with only partially-conforming laws, and states with no Open Container laws at all, as of October 1, 2000.

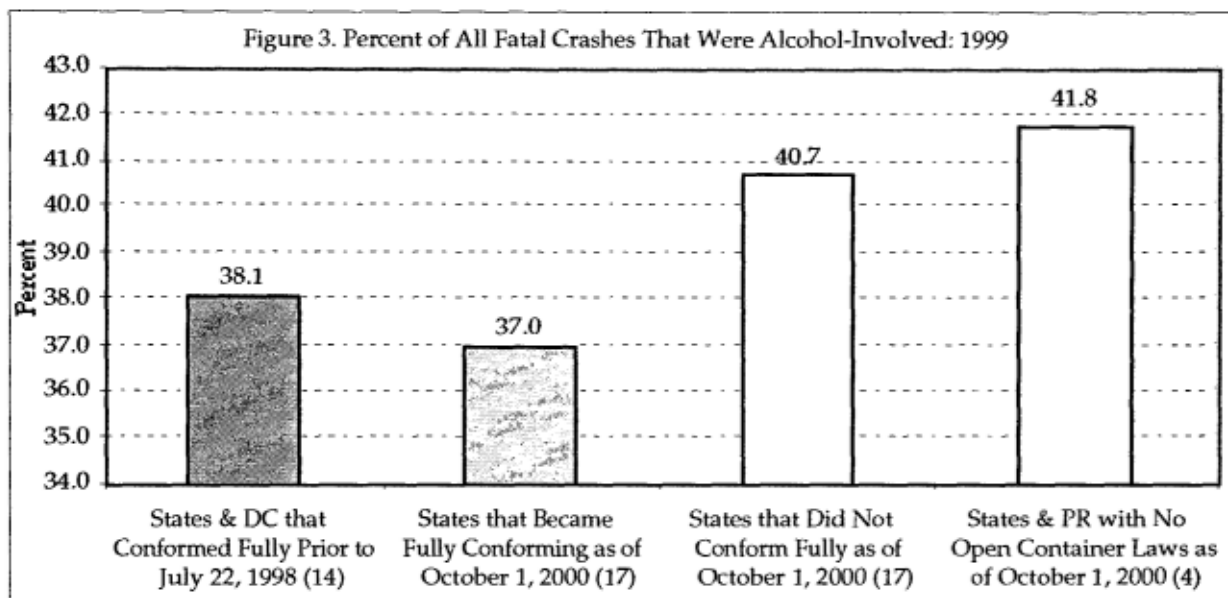
Thirteen states and the District of Columbia had laws that conformed fully with the Federal Standard prior to July 22, 1998, when the Section 154 program was established by the TEA-21 Restoration Act. Seventeen states amended their laws to become fully conforming between July 1998 and October 2000; the first four of those states to amend their laws were the subjects of the previous analysis. Twenty states and the Commonwealth of Puerto Rico had not amended their laws to conform to the Federal Standard by October 2000. Seventeen of those states had partially-conforming laws; three of those states (CT, MS, WY) and Puerto Rico had no Open Container laws at all.

Figure 3 shows the percentages of alcohol-involved fatal crashes during 1999 in the four categories: 1) States with Open Container laws that conformed fully to the Federal requirements prior to July 22, 1998 (13 states and the District of Columbia); 2) States that became fully-conforming by October 1, 2000 (17 states); 3) States with laws that did not fully conform by October 2000 (17 states); and 4) States with no Open Container laws at all as of October 1, 2000 (three states and Puerto Rico).

Figure 3 shows that states without laws prohibiting the possession and consumption of alcoholic beverages in a motor vehicle have higher proportions of alcohol-involved fatal crashes than states with either partially-conforming or fully-conforming laws. The differences illustrated in the figure amount to ten percent more alcohol-involved fatal crashes in states without Open Container laws, compared to states with either partially or fully-conforming laws. The differences between the No Law states and the other states, combined, are statistically significant ( $z$  test at 0.05). The figure also shows that states that became fully-conforming in response to the TEA-21 Restoration Act (i.e., between July 22, 1998 and October 1, 2000) experienced alcohol involvement rates in fatal crashes in 1999 that were comparable to the states that had fully-conforming laws in effect prior to July 22, 1998. The results of the analysis illustrated in Figure 3 are consistent with the expectation that conformity to the Federal requirements has an effect on the incidence of alcohol-involved crashes.

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<sup>8</sup> Data for Iowa and Rhode Island are not available; the states' crash investigation forms lack data fields for hit and run crashes.



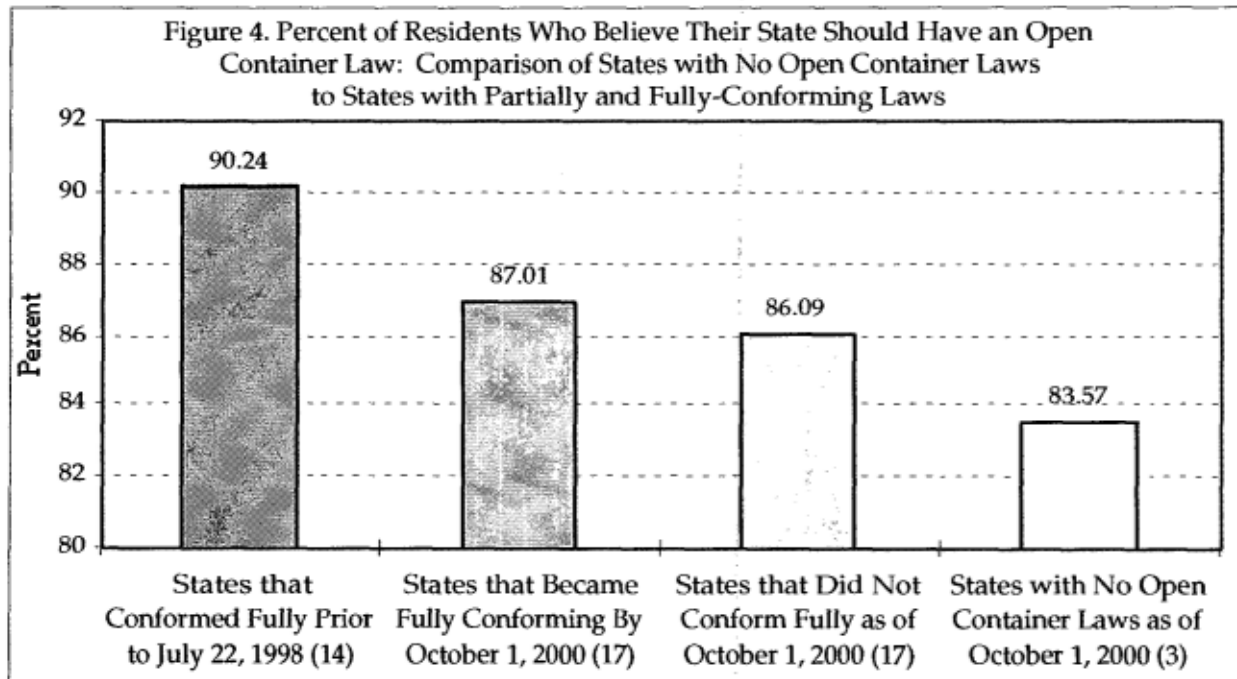
Of course, focusing exclusively on the presence or absence of Open Container laws does not permit a complete understanding of the many issues that contribute to drinking while driving. In particular, many of the states that lacked fully-conforming Open Container laws in 1999 had laws that contained many elements of a law that met the Federal requirements. In addition, some cities and counties in states that lack Open Container laws have their own regulations prohibiting open containers, which contribute to public perceptions that open containers of alcoholic beverages are prohibited on all roads and highways in the state, despite the absence of state Open Container laws. Other factors that may contribute include other state laws currently in effect and the level of enforcement and publicity dedicated to state and local laws.

### PUBLIC OPINION CONCERNING OPEN CONTAINER LAWS

NHTSA's most recent biennial National Survey of Drinking and Driving, conducted in 1999 by The Gallup Organization (Royal, 2000) included two questions concerning Open Container laws. The first question asked, "To the best of your knowledge, does your state have any law that makes it illegal to have an open container of alcohol inside a car while someone is driving?" The percentage of respondents who believed that their states had such laws ranged from a high of 95 percent to a low of 56 percent. Overall, 86 percent of the people surveyed believed their states to have Open Container laws, including a majority of those surveyed in states that did not have Open Container Laws at the time (i.e., 82% in CT, 76% in MS, 73% in LA, and 56% in WY).

The second survey question asked, "Do you think your state should have this type of open container law?" The responses to this question are presented in Figure 4 according to the categories of states used in the previous analyses. The figure shows that more than 90 percent of respondents from states that had fully-conforming Open Container laws prior to the enactment of the TEA-21 Restoration Act, believed their states should have those laws. Similarly, 87 percent of the respondents from states that had enacted fully conforming laws between 22 July 1998 and 1 October 2000 and 86

percent of the respondents from states with partially-conforming laws as of 1 October 2000 agreed that Open Container laws are appropriate. Perhaps most important, more than 83 percent of the people surveyed in states without Open Container laws reported that their states should have Open Container laws. The data presented in the figure show support for Open Container laws by a vast majority of citizens, including the residents of states that lack Open Container laws.



(Note: Data from Puerto Rico were not available to include in this analysis, therefore, n=3 in the No Open Container law category in Figure 4.)

## CONCLUSIONS

The analysis of data from the first four states that enacted Open Container laws in 1999 in response to the TEA-21 Restoration Act, found that measures of alcohol-involvement in crashes appeared to decline during the six-month periods following the beginning of enforcement, compared to the same six-month periods one year earlier. The changes were in the direction expected if the laws have an impact; however, the differences were not statistically significant.

Comparisons of crash data showed that states that lacked Open Container laws had significantly greater percentages of alcohol-involved fatal and single-vehicle crashes than the states with partially or fully-conforming laws. Although the differences cannot be attributed with certainty to the presence or absence of Open Container laws, the results of the analyses suggest that conformance with some or all of the six elements of the Federal requirements contributes measurably to traffic safety.

Further, states that enacted conforming laws in 1999 and 2000 experienced the lowest proportion of alcohol-involved fatal crashes of the four categories of states, suggesting that public consideration and subsequent adoption of proposed laws may increase awareness of the issues and lead to safety benefits. Perhaps equally important

when considering whether such laws should be enacted, the national survey found that a substantial majority of the driving-age public support Open Container laws, and thus, appears to recognize their value in contributing to traffic safety.

#### **ACKNOWLEDGMENTS**

We are grateful for the cooperation and crash data provided by Scott Falb, Iowa Office of Driver Services, Research and Training Division; Greg Costello, Maine Department of Transportation, Accident Records Section, and Sandra Carroll, Maine Judicial Branch, Violations Bureau; Joseph A. Bucci and Michael Sprague, Rhode Island Department of Transportation, Engineering Division; and, Pat Winters, South Dakota Department of Transportation, Accident Records Section.



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## APPENDIX A

### DATA TABLES

FIGURE 1 DATA  
 PERCENT OF ALL FATAL CRASHES THAT WERE ALCOHOL-INVOLVED:  
 SIX-MONTH PERIOD AFTER ENFORCEMENT BEGAN  
 COMPARED TO THE SAME PERIOD IN THE PREVIOUS YEAR

State	Before Enforcement			After Enforcement			Percent Change
	Fatal Crashes	Alcohol-Involved	Percent AI-Involved	Fatal Crashes	Alcohol-Involved	Percent AI-Involved	
Iowa	263	74	28.1	277	78	28.2	0
Maine	73	14	19.2	49	9	18.4	-4.0
Rhode Island	45	14	31.1	43	13	30.2	-2.8
South Dakota	121	33	27.3	115	25	21.7	-20.5

Source: State agencies/FARS

FIGURE 2 DATA  
 NIGHTTIME HIT-AND-RUN CRASHES:  
 SIX-MONTH PERIOD AFTER ENFORCEMENT BEGAN  
 COMPARED TO THE SAME PERIOD IN THE PREVIOUS YEAR

State	Crashes Before Enforcement	Crashes After Enforcement	Percent Change
Iowa	n/a	n/a	n/a
Maine	158	85	-46.2
Rhode Island	n/a	n/a	n/a
South Dakota	233	215	-7.7

Source: State agencies

**FIGURE 3 DATA**  
**PERCENT OF ALL FATAL CRASHES THAT WERE ALCOHOL-INVOLVED:**  
**COMPARISON OF STATES WITH FULLY-CONFORMING LAWS ON 22 JULY 1998,**  
**STATES THAT BECAME FULLY-CONFORMING BETWEEN 22 JULY 1998 AND 1 OCTOBER 2000,**  
**STATES WITH PARTIALLY-CONFORMING LAWS ON 1 OCTOBER 2000, AND**  
**STATES WITH NO OPEN CONTAINER AND NO ALCOHOL CONSUMPTION LAWS**  
**AS OF 1 OCTOBER 2000**

Category	Total Crashes	1999 Alcohol-Involved	Percent Alcohol-Involved
Full Law on July 22, 1998 (13 states & DC)	11907	4542	38.1
Became Fully Conforming Since TEA-21 (17 states)	14393	5321	37.0
Partial Law on October 1, 2000 (17 states)	13794	5619	40.7
No Law on October 1, 2000 (3 states & PR)	1975	825	41.8

Source: FARS

**FIGURE 4 DATA**  
**PERCENT OF RESIDENTS WHO BELIEVE THEIR STATE SHOULD HAVE AN OPEN CONTAINER LAW:**  
**COMPARISON OF STATES WITH FULLY-CONFORMING LAWS ON 22 JULY 1998,**  
**STATES THAT BECAME FULLY-CONFORMING BETWEEN 22 JULY 1998 AND 1 OCTOBER 2000,**  
**STATES WITH PARTIALLY-CONFORMING LAWS ON 1 OCTOBER 2000, AND**  
**STATES WITH NO OPEN CONTAINER AND NO ALCOHOL CONSUMPTION LAWS**  
**AS OF 1 OCTOBER 2000**

Category	Percent Responding "Yes"
Full Law on July 22, 1998 (13 states & DC)	90.24
Became Fully Conforming Since TEA-21 (17 states)	87.01
Partial Law on October 1, 2000 (17 states)	86.09
No Law on October 1, 2000 (3 states)	83.57

Source: NHTSA's National Survey of Drinking and Driving, 1999

DOT HS 809 426  
April 2002



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Bills

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# SB 76: Alcoholic beverages: music venue license: entertainment zones: consumption.

**Session Year:** 2023-2024

**House:** Senate

**Current Status:**

**PASSED** ✓

(2023-10-10: Chaptered by Secretary of State. Chapter 700, Statutes of 2023.)

- ✓ Introduced
- ✓ First Committee Review
- ✓ First Chamber
- ✓ Second Committee Review
- ✓ Second Chamber
- ✓ Enacted

[Summary](#) [Bill Text](#) [Status](#) [Votes](#) [Supporters & Opponents](#) [Analysis](#)

Version:

**RS133-33**

(1)The Alcoholic Beverage Control Act contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon alcoholic beverage licenses by the Department of Alcoholic Beverage Control. Existing law provides for various annual fees for the issuance of alcoholic beverage licenses, depending upon the type of license issued. Existing law authorizes the department to issue a music venue license, as defined, that allows the licensee to sell beer, wine, and distilled spirits at retail for consumption on the premises in a music entertainment facility, as defined. Existing law makes selling, giving, delivering, or purchasing an alcoholic beverage between the hours of 2 a.m. and 6 a.m. of the same day a misdemeanor. Existing law further limits a music venue licensees authorization to sell, serve, and permit consumption of alcoholic beverages to the time period from 2 hours before a live performance until one hour after the live performance. Existing law authorizes the department to make any examination of the books and records of any licensee and makes any person who fails to preserve the books for inspection guilty of a misdemeanor.

This bill would authorize a licensee under a music venue license to apply to the department for a duplicate license or licenses, as prescribed. The bill would also authorize a music venue licensee to sell, serve, and permit consumption of alcoholic beverages during private events or private functions not open to the general public within any hours of operation permitted by its license, regardless of whether any live performance occurs. The bill would exempt the licensee from having to meet certain requirements generally imposed on a music entertainment facility in connection with and during a private event or private function if specified conditions are met. The bill would require the licensee to keep records demonstrating compliance with these provisions for the preceding 3 calendar years and to provide these records to the department upon request. The bill would make a licensees failure to keep the required records or provide them to the department grounds for disciplinary action punishable as a misdemeanor and would, therefore, expand the scope of a crime, thereby imposing a state-mandated local program.

(2)Under existing law, any person possessing an open container of an alcoholic beverage in any city, county, or city and county-owned public place, as specified, or any regional park or recreation and park district, is guilty of an infraction if the city or county has enacted an ordinance that prohibits the possession of those containers or the consumption of alcoholic beverages in those areas, except as specified.

Existing law, the Planning and Zoning Law, authorizes the legislative body of any city or county to adopt ordinances regulating zoning within its jurisdiction, as specified.

Existing law authorizes a licensed beer manufacturer, a licensed winegrower, and any on-sale licensee to sell certain alcoholic beverages for consumption on or off the premises, as specified.

This bill, additionally, would authorize a licensed beer manufacturer, a licensed winegrower, and any on-sale licensee to permit consumers to leave the premises with open containers of alcoholic

beverages for consumption off the premises within an entertainment zone, subject to certain conditions. The bill would define entertainment zone for purposes of the Alcoholic Beverage Control Act as a zone created by ordinance on or after January 1, 2024, in the City and County of San Francisco, that authorizes consumption of one or more types of alcoholic beverages on public streets, sidewalks, or public rights-of-way adjacent to and during a special event permitted or licensed by the department. The bill would require the City and County of San Francisco, if it establishes an entertainment zone, to provide specified information relating to the entertainment zone to the department and establish a process or procedure by which persons in possession of alcoholic beverages in the entertainment zone may be readily identifiable as being 21 years of age or older.

This bill would make legislative findings and declarations as to the necessity of a special statute for City and County of San Francisco.

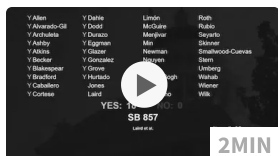
(3) This bill would incorporate additional changes to Section 23357 of the Business and Professions Code proposed by SB 788 to be operative only if this bill and SB 788 are enacted and this bill is enacted last.

This bill would incorporate additional changes to Section 23358 of the Business and Professions Code proposed by AB 1704 to be operative only if this bill and AB 1704 are enacted and this bill is enacted last.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

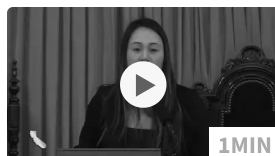
This bill would provide that no reimbursement is required by this act for a specified reason.

## Discussed in Hearing



Sep 14, 2023

Senate Floor



Sep 13, 2023

Assembly Floor



Sep 7, 2023

Assembly Floor



Jul 12, 2023

Assembly Standing Committee on Governmental Organization

**RS133-35**

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News

# San Francisco to Become First City in California to Create New Entertainment Zones

Authorized under new state law, the first Entertainment Zone will be in Downtown San Francisco on Front Street under Mayor Breed's legislation approved today. Other EZ locations being considered include Union Square, Mid-Market, and Thrive City.

June 25, 2024

**San Francisco, CA** – Today, the Board of Supervisors gave final approval to Mayor London N. Breed's legislation to make San Francisco the first city in the state to create new Entertainment Zones in Downtown and neighborhoods across the City. The legislation is authorized under Senate Bill 76, a bill authored by State Senator Scott Wiener that went into effect this year. Within the new EZs, restaurants and bars will be permitted to sell alcoholic beverages for consumption during outdoor events and activations.

In May, Mayor Breed announced Front Street, between California and Sacramento streets, as the first entertainment zone to be designated in San Francisco. Today's approval expands the pilot program to bring additional entertainment zones across the City to permit the operation of the sale of alcohol within the zones. Businesses and organizations across San Francisco have expressed interest in establishing entertainment zones in their areas, including in Union Square, Mid-Market, and Thrive City in Mission Bay.

"We are focused on bringing opportunities that are good for business but that are also exciting for residents and visitors across our City," **said Mayor London Breed.**

"Entertainment Zones bring new economic opportunities that will help strengthen San Francisco's Downtown and neighborhoods citywide. Our local bars and restaurants are an important part of what makes this City unique and fun, and as the first and only city in California to work with this concept, we are thrilled to bring new energy to our City while supporting our small businesses. I want to thank Senator Wiener and all of our partners involved to make this happen."

"Our downtown thrives when we bring people into the streets and support the small businesses that make it such a vibrant space," **said Senator Scott Wiener.** "We should have a space where San Franciscans can enjoy drinks outside with their loved ones. Entertainment Zones are an idea whose time has come, and I'm delighted to see Mayor Breed and the Board of Supervisors prioritize them so highly."

"The approval of the City's first Entertainment Zone is a major boost for our downtown revitalization efforts," **said Sarah Dennis Phillips, Executive Director of the Office of the Economic and Workforce Development.** "This legislation sends a strong signal to our local bars and restaurants that the City is poised to support them as they experiment with new strategies to grow their businesses while bringing more vitality to our public spaces. I can't wait to see the Front Street Entertainment Zone in full effect and for residents and visitors to experience our Downtown in new and exciting ways."

The legislation would designate an approved area to become an entertainment zone, allowing restaurants and bars to sell open beverages for consumption during special events within the zone. Per the ordinance, the designated zone must comply with certain parameters, including

- Open beverages sold within the zone must be in an approved non-metal or non-glass container. If authorized by the Board, a zone could include sales of cocktails, beer, and wine.
- Only restaurants, bars, breweries, and wineries can sell open containers within an entertainment zone. Liquor stores may not sell open beverages for consumption within the zone and the consumption of alcoholic beverages not purchased from a restaurant or bar within the zone is not permitted.

San Francisco's proposed Entertainment Zones build off of Senate Bill (SB) 76, introduced by Senator Wiener and passed at the California Legislature last year. The Entertainment Zone Act paved the way for San Francisco, currently the only city in California to designate entertainment zones to operate during special events permitted by the California Department of Alcoholic Beverage Control (ABC). Under the bill, San Francisco could establish entertainment zones through the adoption of a local ordinance by the Mayor and the Board of Supervisors.

Currently, the Mayor's legislation enables three bars along Front Street (Schroeder's, Harrington's, and Royal Exchange) to sell open beverages for consumption during special events in the zone. These bars, along with the Downtown SF Partnership and BOMA San Francisco, are working to launch a new recurring street closure on this block that could involve live entertainment and other activities during the zone's operation. Similar programs have been successful in supporting small businesses and commercial districts in other states, including Michigan, Ohio, and North Carolina.

"Seeing small businesses like ours working together on our block to organize new activities and events that will attract people to our local spots is a major milestone," **said Ben Bleiman**, Owner of Harrington's Bar & Grill and President of the Entertainment Commission. "We are telling residents, visitors, and businesses that we are ready to see Downtown San Francisco activated with exciting public spaces because when people have fun it benefits local businesses, Downtown, and the entire city."

"Downtown San Francisco needs a nightlife renaissance post-pandemic. Launching California's first ever entertainment zone on Front Street is significant and will catalyze more reasons to come downtown," **said Robbie Silver, Executive Director of the Downtown SF Partnership**. "Rethinking the use of public space by opening streets for pedestrians is a proven economic strategy to reinvigorate downtown. The Downtown SF

Partnership will optimize Front Street with fun programming, building off its signature activations like Let's Glow SF, Drag Me Downtown, and Landing at Leidesdorff."

The Office of Economic Workforce and Development (OEWD) will continue to engage with stakeholders, including Market Street Arts, Thrive City and the Union Square Alliance, who have expressed significant interest in pursuing entertainment zones, across City agencies, and with ABC to ensure the successful implementation of this groundbreaking program.

"Creating an Entertainment Zone in Mid-Market will support local businesses, including large cultural venues, small businesses, and arts organizations by drawing foot traffic, positive media attention, and new programming to the neighborhood," **said Steve Gibson, Executive Director of the Mid-Market Foundation.** "Spanning the wide sidewalks on Market Street between 5th and 6th, the Entertainment Zone would add another layer to our larger collective effort, Market Street Arts, a multi-year, public-private initiative working to uplift Mid Market as a world-class arts and entertainment district, a place where creatives from the region, country and around the world come together to inspire joy and connection among the diverse communities that intersect at the center of the City."

"Union Square is the heart of San Francisco's Downtown and we are seeing a wave of energy pour in that is undeniable," **said Marisa Rodriguez, CEO, Union Square Alliance.** "Union Square is already a magnet for nightlife and outdoor dining, and with upgrades coming to Powell Street, we are building back stronger than ever. We are excited for the opportunity to explore how entertainment zones can work for Union Square. But if it's good for our businesses and visitors, then we are all in. The possibilities are endless when you have creative policies that are working for this City."

To support activations in entertainment zones and throughout Downtown, Mayor Breed has also directed OEWD to partner with San Francisco New Deal to launch the Downtown ENRG (Entertainment & Nightlife Revitalization Grant) Program, a program that will offer up to \$50,000 to fund new economic revitalization projects to support new activities, events, and campaigns to attract patrons and increase downtown activity.

The creation of entertainment zones and grants program are components of the Mayor's Roadmap to San Francisco's Future, and build on a series of recently announced entertainment initiatives designed to showcase and support the

San Francisco music and entertainment sector, boost neighborhood vitality, activate open spaces and enhance the City's economic revitalization through arts and culture. Combined, the goal is to secure an important new source of revenue to boost San Francisco restaurants and bars while transforming Downtown as a 24/7 destination.

Mayor Breed's two-year budget proposes investing \$15 million for the revitalization of the Union Square and Yerba Buena hospitality districts and the continuation of the Vacant to Vibrant program to address storefront vacancies, which expanded this month to include 11 new pop-up businesses in the East Cut, Financial District, and Yerba Buena.

In April, Mayor Breed announced the City's SF Live Concert Series, which debuted on May 4 at the Golden Gate Park Bandshell. Additional events will take place at locations citywide through November. More information about all upcoming SF Live events may be found at [www.sflivefest.com](http://www.sflivefest.com). The first event as part of the Bhangra and Beats Night Market series this year took place on May 10 and will be back for three additional dates: July 12, September 13, and November 15.

###

## **Departments**

[Office of the Mayor](#)

[Office of Economic and Workforce Development](#)

[Roadmap to San Francisco's Future](#)

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City and County  
of San Francisco



**CITY OF MILWAUKIE  
CITY COUNCIL**

10722 SE Main Street  
P) 503-786-7502  
F) 503-653-2444  
ocr@milwaukieoregon.gov

# Speaker Card

The City of Milwaukie encourages all residents to express their views to their city leaders in a **respectful** and **appropriate** manner. If you wish to speak before the City Council, fill out this card and hand it to the City Recorder. Note that this Speaker Card, once submitted to the City Recorder, becomes part of the public record.

**Name:** Mike Lesch

**Address:**

**Organization:**

**Phone:**

**Email:**

**Meeting Date:** 12-17-24 **Topic:** Open Container Policy

**Agenda Item You Wish to Speak to:**

#5 Community Comments

**Note:** Council generally does not respond to comments during this meeting. The city manager will respond to comments at the next regular session.

#7 Other Business, Topic: Open Container Policy

#8 Public Hearing, Topic: \_\_\_\_\_

**You are Speaking...**

in Support

in Opposition

from a Neutral Position

to ask a Question

**Comments:**





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**Name:** Karen Baranick **Address:** 16205 SE McKinley  
**Organization:** Downtown Association of Milwaukie **Phone:**  
**Email:** drbaranick@gmail  
**Meeting Date:** 12/17/2024 **Topic:** Open Container

**Agenda Item You Wish to Speak to:**

- #5 Community Comments  
**Note:** Council generally does not respond to comments during this meeting. The city manager will respond to comments at the next regular session.
- #7 Other Business, Topic: C
- #8 Public Hearing, Topic: \_\_\_\_\_

**You are Speaking...**

- in Support
- in Opposition
- from a Neutral Position
- to ask a Question

**Comments:**



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**Name:** Tyler King

**Address:** 3708 SW Alderwood Rd.

**Organization:** \_\_\_\_\_

**Phone:** 503-735-5868

**Email:** tking@mac.com

**Meeting Date:** 12/17/24

**Topic:** Open Container Policy

**Agenda Item You Wish to Speak to:**

#5 Community Comments

**Note:** Council generally does not respond to comments during this meeting. The city manager will respond to comments at the next regular session.

#7 Other Business, Topic: Open Container

#8 Public Hearing, Topic: \_\_\_\_\_

**You are Speaking...**

in Support

in Opposition

from a Neutral Position

to ask a Question

**Comments:**



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**Name:** SHALENA HAVENS

**Address:** 2025 SE Jefferson St MILWAUKIE

**Organization:** \_\_\_\_\_

**Phone:** 971-295-6262 OR

**Email:** HAVENSLA@GMAIL.COM

**Meeting Date:** 12/17/2024

**Topic:** (OPEN CONTAINER)

**Agenda Item You Wish to Speak to:**

**#5 Community Comments**

**Note:** Council generally does not respond to comments during this meeting. The city manager will respond to comments at the next regular session.

**#7 Other Business, Topic:** \_\_\_\_\_

**#8 Public Hearing, Topic:** \_\_\_\_\_

**You are Speaking...**

**in Support**

**in Opposition**

**from a Neutral Position**

**to ask a Question**

**Comments:**



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**Name:** Bob Smith

**Address:**

**Organization:**

**Phone:**

**Email:**

**Meeting Date:** \_\_\_\_\_

**Topic:** Burn / Sell in / USNG

**Agenda Item You Wish to Speak to:**

#5 Community Comments

**Note:** Council generally does not respond to comments during this meeting. The city manager will respond to comments at the next regular session.

#7 Other Business, Topic: \_\_\_\_\_

#8 Public Hearing, Topic: \_\_\_\_\_

**You are Speaking...**

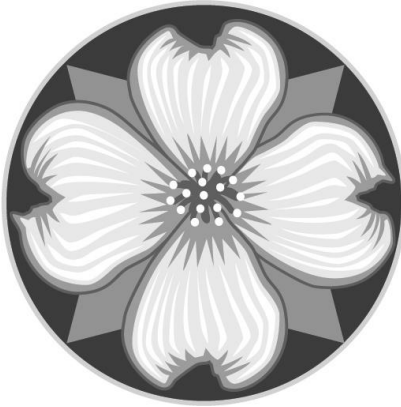
in Support

in Opposition

from a Neutral Position

to ask a Question

**Comments:**



**RS Agenda Item**

**9**

## **Council Reports**

**This item was moved to the 12/17/24 WS agenda.**

**RS 9. 12/17/24  
Exhibit  
Mayor Batey**

**From:** [Lisa Batey](mailto:Lisa.Batey@cityofmilwaukie.gov)  
**To:** [City Council](mailto:City.Council@cityofmilwaukie.gov)  
**Subject:** FW: Urgent Behavioral Healthcare Issue re: Care Oregon  
**Date:** Tuesday, December 10, 2024 3:52:35 PM

---

Scott – Please add to the record for the next meeting. I note the author does not have a Milwaukie address.

---

**From:** Fox Convey <fox@foxconvey.com>  
**Sent:** Tuesday, December 10, 2024 2:00 PM  
**To:** Lisa Batey <BateyL@milwaukieoregon.gov>; Rebecca Stavenjord <StavenjordR@milwaukieoregon.gov>; William Anderson <AndersonW@milwaukieoregon.gov>; Robert Massey <MasseyR@milwaukieoregon.gov>; Adam Khosroabadi <KhosroabadiA@milwaukieoregon.gov>  
**Subject:** Urgent Behavioral Healthcare Issue re: Care Oregon

**This Message originated outside your organization.**

---

To the Honorable Mayor and City Council,

I am writing to call your attention to a problem unfolding around mental health/behavioral health Medicaid coverage with Care Oregon, and ask for your help in solving the access crisis that it will cause.

This past week, a large number of mental health providers received a letter from Care Oregon which states that non-contracted Associates must immediately stop accepting new Care Oregon clients, and must cease all services to Care Oregon clients—which means referring out existing clients—by July 31, 2025. As you can imagine, this has sent an absolute shock wave through the mental health community, and will cause a massive disruption in care to OHP clients.

This personally impacts me in a tremendous way. In my practice, I see 8 clients whose CCO is Care Oregon. Many of them have had a horrendous time finding and securing consistent and dedicated care, especially care that is attuned to their specific needs. I am a CLSS provider who offers educated and compassionate culturally specific care to the queer community—a marginalized, neglected, abused, and exploited community. Removing me from my clients is wrong, hurtful, and unfair. We have spent years investing in these relationships that will be ripped away from us in July if this change happens. This could lead to unimaginable deleterious impacts for my clients. It could lead to relapses in treatment, and I guarantee you it will in some cases, and could even be deadly.

Multiply this by hundreds of Registered Associates across the state.

Given the ongoing mental healthcare crisis, we know there is already a gap between client need and the availability of behavioral health providers for Oregonians on Medicaid. This gap was reduced significantly by changing the contracting process with Care Oregon, and by allowing Associates and non-contracted licensed providers to provide care. Rolling this back amidst the shortages in community mental health providers is a short-sighted decision that will have a devastating impact on the mental healthcare of thousands of Oregonians.

I hope the Behavioral Health Committee and state legislature will take action this session to address this issue with Care Oregon and ensure that Associates and non-contracted licensed providers may continue to see clients—providing necessary and critical care to Oregonians covered by Care Oregon.

Sincerely,

**RS135**

## **Fox Aven Convey ([she/they](#)), MA, Registered Associate, Yoga RYT-500**

6002 SE Morris St. Portland, OR 97206

Tele: 210.551.4707.

[Client Portal](#) / [www.softworldrising.com](http://www.softworldrising.com)

Supervisor: [Michelle Vosika-Cooper, LPC](#)

### **Queer Crisis Hotlines:**

- **[The Trevor Project](#)**: Providing confidential support for LGBTQ youth and young adults in crisis, 24 hours a day, 7 days a week.
- **TrevorLifeline**: [1-866-488-7386](tel:1-866-488-7386): Crisis intervention and suicide prevention phone service available 24/7/365
- **TrevorChat**: Confidential [online instant messaging](#) with a Trevor counselor, available 24/7. Access through a computer.
- **TrevorText**: Text START to 678-678. Confidential text messaging with a Trevor counselor, available 24/7/365. *Standard messaging rates may apply.*
- **[Trans Lifeline](#)**: A 24/7 hotline available in the U.S. and Canada staffed by transgender people for transgender people. [1-877-565-8860](tel:1-877-565-8860) (United States) Confidential, 24/7 crisis support.

### **General Crisis Lines/Resources (Not queer specific):**

- **All US Territories 24/7 Mental Health Support**: Call 988 or text "HOME" to 741741 for text mental health support. This includes crisis counseling through texting.
- **Multnomah Mental Health Support Line, 24/7**: Call 503-988-4888
- **Project Respond, Multnomah Mobile Crisis Services**: Call 503-988-4888. They will come to you as soon as they are able to check on you and offer support!
- **Cascadia Mental Health Urgent Walk-in Clinic, no cost**: 4212 SE Division St, Portland, Open daily, 7am-10:30pm.

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**From:** [Lisa Batey](#)  
**To:** [City Council](#)  
**Subject:** upcoming BCC meeting agendas include  
**Date:** Monday, December 16, 2024 11:18:53 AM

---

All: [Scott, please add this to packet for tomorrow's meeting]

The BCC has yet another executive session tomorrow morning on NCPRD (and WES) matters.

[Executive Sessions: BCC, WES and NCPRD - Dec. 17, 2024 | Clackamas County](#)

It says the topics are “*potential* litigation” and “exempt records.”

\* \* \* \* \*

Following that ES, they have their Issues and Updates meeting at 10am.

[Issues & Updates - Dec. 17, 2024 | Clackamas County](#)

This is the meeting where they discuss items which would typically then appear on a consent agenda on Thursday. This includes a number of issues that folks might find of interest, including approval of the funding for various city-led initiatives coming out of SHS funding. The list includes the Clackamas Service Center project on which Councilor Stavenjord has been working, along with other cities' requests for houseless liaison and behavioral health positions and other projects. I do not see our cooling center among the items queued up for approval.

A couple of other things caught my eye, such as that they are funneling all unused ARPA funds into the pot for purchase of the Clackamas School for the Recovery Center.

And also that they are putting in for CDBG funding for a new crosswalk and rapid-flashing beacon on King Road in our UGMA: [Grant Application Lifecycle Process Form v. 3.xlsx](#)

There's also their \$1mil grant application to Metro for their “development-ready land” work, which is focused along the UGB.

[Grant Application Lifecycle Process Form v. 3.xlsx](#)

I do wish they would put similar focus to housing production in the urban unincorporated areas, such as along 99E. . .

**Lisa M. Batey, Mayor (she/her)**  
City of Milwaukie  
E-mail: [bateyl@milwaukieoregon.gov](mailto:bateyl@milwaukieoregon.gov)  
Message line: 503-786-7512



**From:** [Lisa Batey](#)  
**To:** [City Council](#)  
**Subject:** Council Report -- SHS compilation: views from Clackamas County plus notes from recent MMC and Chamber meetings  
**Date:** Monday, December 16, 2024 11:48:56 AM  
**Attachments:** [SHS Reform.msg](#)

---

Scott: Please include this in the record for tomorrow's meeting.

All:

I sent more extensive notes on the SHS discussions back on December 2. This is my council report on the more recent conversations I have been in. I understand that Metro plans to make the draft ordinance public later this week.

Below are notes sent from County staff, with an attached communication from Chair Smith to Metro President Lynn Peterson from 11 days ago. As I understand it, all of the counties have expressed concern about needing more lead time to plan for the reduction in funding that would result.

The MMC held its last meeting of the year on December 5 – the main event was to discuss the legislative agenda for the new term (I will circulate that separately), and to bid farewell to outgoing mayors (Wilsonville, Hillsboro, Portland, Durham, King City). The new incoming mayor from Wilsonville also joined us.

The discussion of SHS was pretty passionate – mayors generally understand and agree with the need to modify and extend the program, but feel like there is far too much yet to be worked out by way of details to go to the ballot in May. Some of the key concerns:

- The \$15mil proposed allocation to cities is woefully inadequate
- The model for allocation to cities should follow the ARPA model – direct allocation with guardrails and a clawback provision
- Some mayors have tales of county overreach, such as buying land for a shelter in their city without consultation with the city. As a result they would like to see a format for funding allocation to the counties (acknowledging that the bulk of funding should go to counties) which puts cities more squarely at the table for discussions of how funds are used
- Lots of concern about the proposed HPAC oversight committee (I will note that existing Metro committees, MPAC and JPACT, have only elected officials or government agency reps, but apparently Metro proposes to deviate from that model here)
- Many mayors want to see a more reliable and steady stream of SHS funding before more goes into creating large affordable housing sites
- SHS was passed in 2020, and implemented rather hurriedly through a series of IGAs with the counties that are flawed and apparently impede better data collection and transparency. But if those need to be fixed, they should be fixed independent of any new ballot measure. Indeed, much of what Metro wants to accomplish can be done through

their own processes without going to the ballot. It is the extension that requires going to the ballot, but going in 2027 would still be well ahead of the end of the current measure in 2031.

There was also a zoom call on December 9 with a number of mayors (mostly Washington County mayors, plus LO Mayor Joe Buck and me) and chamber of commerce entities, with Angela Martin from Here Together and Andrew Hoan from the Portland Metro Chamber. As previously distributed, those two groups issued a joint letter of endorsement for Metro's core proposal a couple of months ago. I think they were taken aback by the strength of concerns and objections from the mayors, and may have a better appreciation that cities should have been brought to the table earlier.

Thanks,  
Lisa

**Lisa M. Batey, Mayor (she/her)**  
City of Milwaukie  
E-mail: [bateyl@milwaukieoregon.gov](mailto:bateyl@milwaukieoregon.gov)  
Message line: 503-786-7512

---

**From:** Klepper, Emily <EmilyKle@clackamas.us>  
**Sent:** Monday, December 9, 2024 8:04 AM  
**To:** 'Brian Hodson' <hodsonb@canbyoregon.gov>; 'seandrinkwine@cityofestacada.org' <seandrinkwine@cityofestacada.org>; WES - Michael Milch <milch@ci.gladstone.or.us>; 'tome@happyvalleyor.gov' <tome@happyvalleyor.gov>; 'jbuck@ci.oswego.or.us' <jbuck@ci.oswego.or.us>; Lisa Batey <BateyL@milwaukieoregon.gov>; 'Scott Keyser' <skeyser@cityofmolalla.com>; Denyse McGriff <dmcgriff@orcitey.org>; 'mayor@cityofrivergrove.com' <mayor@cityofrivergrove.com>; 'spulliam@ci.sandy.or.us' <spulliam@ci.sandy.or.us>; 'Frank Bubenik' <fbubenik@tualatin.gov>; 'Bialostosky, Rory' <RBialostosky@westlinnoregon.gov>; 'fitzgerald@ci.wilsonville.or.us' <fitzgerald@ci.wilsonville.or.us>  
**Cc:** 'Eileen Stein' <steine@canbyoregon.gov>; 'Melanie Wagner' <Wagner@cityofestacada.org>; Jacque Betz <betz@ci.gladstone.or.us>; BCS - Jason Tuck <jasont@happyvalleyor.gov>; 'Bennett, Martha' <mbennett@ci.oswego.or.us>; Emma Sagor <SagorE@milwaukieoregon.gov>; 'DHuff@cityofmolalla.com' <DHuff@cityofmolalla.com>; Tony Konkol <tkonkol@orcitey.org>; 'tdeems@ci.sandy.or.us' <tdeems@ci.sandy.or.us>; 'slombos@tualatin.gov' <slombos@tualatin.gov>; John Williams <jwilliams@westlinnoregon.gov>; 'Bryan Cosgrove' <cosgrove@ci.wilsonville.or.us>; Schmidt, Gary <GSchmidt@clackamas.us>; Klepper, Emily <EmilyKle@clackamas.us>  
**Subject:** Clackamas County update on SHS Reform

**This Message originated outside your organization.**

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Hello Mayors,

As most of you know Metro has been working on reforming the SHS program, with a timeline to wrap up by the end of the year or very early in the new year.

Health, Housing and Human Services department staff presented to the Board of County Commissioners on Tuesday, November 26 about Metro's SHS Reform activities, impacts and priorities. The materials can be found [here](#). They include the financial scenarios Metro submitted to the counties for consideration along with preliminary information about how these could impact county programs. The current scenarios call for a 25-34% decrease in county funding.

Chair Smith recently sent the attached communication to Metro councilors summarizing key concerns. And, the counties continue to come to the table and are preparing a counterproposal to the financial scenarios Metro prepared. This work is ongoing.

We remain concerned that these reform activities will impede the county's progress in serving our homeless community.

Please reach out if you have any questions.

Thank you,  
Emily

Emily Klepper  
Senior Policy Advisor  
971-219-4461  
[emilykle@clackamas.us](mailto:emilykle@clackamas.us)

## An Overview of Entities Engaged at Willamette Falls

**Willamette Falls Trust**, chaired by former Governor Kate Brown

[Willamette Falls Trust \(https://www.willamettefallstrust.org/\)](https://www.willamettefallstrust.org/)

**Willamette Falls Locks Authority**, a public corporation established in 2021

[Willamette Falls Locks Authority \(https://www.willamettefallslocks.org/\)](https://www.willamettefallslocks.org/)

**Willamette Falls and Landings Heritage Area**, a nonprofit that will be opening an interpretive center in the Historic West Linn City Hall

[Home - Willamette Falls & Landings Heritage Area Coalition \(https://www.wflha.org/\)](https://www.wflha.org/)

**Tumwata Village**, the Confederated Tribes of the Grand Ronde's plans for the significant property they own at the falls

[Return to Tumwata - Tumwata Village \(https://www.tumwatavillage.org/\)](https://www.tumwatavillage.org/)

# Council Reports (Batey) – December 17, 2024



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