

AGENDA

WORK SESSION MILWAUKIE CITY COUNCIL NOVEMBER 2, 2010

MILWAUKIE CITY HALL

Second Floor Conference Room
10722 SE Main Street

A light dinner will be served

WORK SESSION – 5:30 p.m.

Discussion Items:

	<u>Time</u>	<u>Topic</u>	<u>Presenter</u>	<u>Page #</u>
1.	5:30 p.m.	Website Demonstration	Brian Gilday, aHa Consulting	
2.	6:00 p.m.	Amendments to Right of Way Tree Permit Regulations	Ryan Marquardt	1
3.	6:45 p.m.	Adjourn		

Information

Executive Session: All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the one previous to it.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.
- The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities (ADA). If you need special accommodations, please call 503.786.7502 or email ocr@ci.milwaukie.or.us at least 48 hours prior to the meeting.



To: Mayor and City Council

Through: Bill Monahan, City Manager
Kenneth Asher, Community Development and Public Works Director
Katie Mangle, Planning Director

From: Ryan Marquardt, Associate Planner

Subject: Proposed Procedural Amendments Regarding Issuance of Tree Permits (MMC 16.32)

Date: October 26, 2010 for November 2, 2010 Work Session

Action Requested

None. This is a worksession item for discussion purposes.

History of Prior Actions and Discussions

- June 1998: City Council adopted Ordinance #1836 as interim regulations to regulate tree cutting. This ordinance is still in effect as adopted.

Background

The City regulates the cutting of trees in a relatively narrow range of locations. These are:

- Trees in the Willamette Greenway overlay zone along the Willamette River;
- Trees in or near wetland or riparian areas; and,
- Trees in the public right of way.

The City has regulated tree cutting in the right of way since 1998 when Ordinance #1836 was adopted. These regulations require that a permit be obtained by anyone who wishes to remove a tree from the right of way, trim more than 20% of a tree's canopy

volume, or remove more than 10% of the root system. The steps involved with the right of way tree permit process are illustrated in Attachment 1.

Removing trees can be contentious since the issue often involves property owners who believe they have a legitimate reason for removing a tree on their property frontage as well as nearby residents who value the trees as part of the streetscape. Staff encounters numerous problems while trying to balance these interests within existing procedures and approval criteria for a tree permit.

Staff proposes the Council consider limited amendments to the existing right of way tree regulations. These amendments focus on fixing the worst procedural problems that make the code difficult to implement. The changes recommended by staff at this time are described below. The draft proposed text amendments are shown in Attachment 2.

1. *Transfer authority for implementation from “Planning Director” to “Community Development Director”*

The code specifically lists the Planning Director as the person responsible for implementing the right of way tree removal ordinance. As a result, the Planning Department has implemented these regulations since 1998. However, this language and practice vastly underestimates the role that the Engineering Department also has in the process. The Engineering Department is the department responsible for managing the public right of way, and the department with greater knowledge of urban forestry practices.

The tree removal permitting process is a hybrid that should involve both Planning and Engineering. The Planning Department’s involvement is beneficial for the public notice and process, while the Engineering Department’s involvement is beneficial in terms of technical expertise in forestry and right of way management. Therefore, staff believes it is more appropriate to identify the Community Development Director as the decision authority, as this Director oversees both departments. This would allow delegation of different aspects of the right of way tree permit process to the appropriate department.

2. *Clarify the hearing and appeal processes*

Currently, any person may request that a hearing be held on the application by filing a written request for a hearing within 14 days of the date of the tree posting. The ordinance does not specify who presides over the hearing, what type of hearing it is, or what procedures the hearing should follow. Past implementation of this process has ranged from an on-site hearing by the Planning Director to a Planning Commission hearing.

This process is problematic both for its lack of specificity and for the inappropriateness of holding a hearing on an administrative-level decision for a tree removal permit. Staff proposes two changes to clarify the tree removal hearing process:

- Allow any person to request a *meeting* with the decision-maker before a decision is made on the permit. This meeting would ensure that community input would be heard and incorporated into the decision.
- Make the administrative tree removal permit decision appealable to the City Council within 5 days of a decision. Elevating an appeal to City Council review, rather than Planning Commission review, would result in a reduced amount of time between an appeal and final decision. It is also more appropriate for the City Council to be the appeal authority for non-land use decisions.

3. *Allow for tree removal when required to construct right of way improvements*

Currently, there is not a criterion that explicitly allows a tree to be removed when it is necessary to construct public improvements (such as sidewalks or roadway) within the right of way. Adding a criterion that clearly identifies this situation as a legitimate reason for tree removal would aid multiple private and public projects that need to obtain tree removal permits. Part of this proposed criterion would require demonstration that the public improvements could not reasonably be modified to allow the tree to remain.

4. *Add authority to require replanting*

The current tree ordinance does not give staff the ability to require replanting to mitigate for removal of a tree. This is an important provision that will help maintain Milwaukie's tree canopy. Staff would, in some instances, feel more comfortable approving tree removal knowing that the loss is being mitigated. This would not be an onerous requirement because many citizens that apply for a tree permit express a willingness to replant a tree on a voluntary basis.

Concurrence

The Community Development Department, Engineering Department, and Planning Department all concur with the proposed changes to Milwaukie Municipal Code.

Fiscal Impact

This proposal would have a minimal fiscal impact. Potential saving could result from a simplified hearing and appeal process and more efficient evaluation of the tree permits the City receives.

Work Load Impacts

The work load for most tree permits would remain the same, though the staff time required for permits where a hearing is requested could be reduced substantially. Staff currently spends an average of 3 hours on a typical tree permit. For a recent application that included a hearing request, staff spent an estimated 80 hours. Under the proposed code amendments, this may have taken substantially less time. One of the goals of the proposed amendments is more effective use of staff time. Of course, shifting appeals from the Planning Commission to the City Council could increase the workload of the City Council and affect agendas.

The need to improve the right of way tree cutting process has been on the Planning Department's list of code problems to fix for several years. A small amount of staff time would be required for the code adoption and republication process.

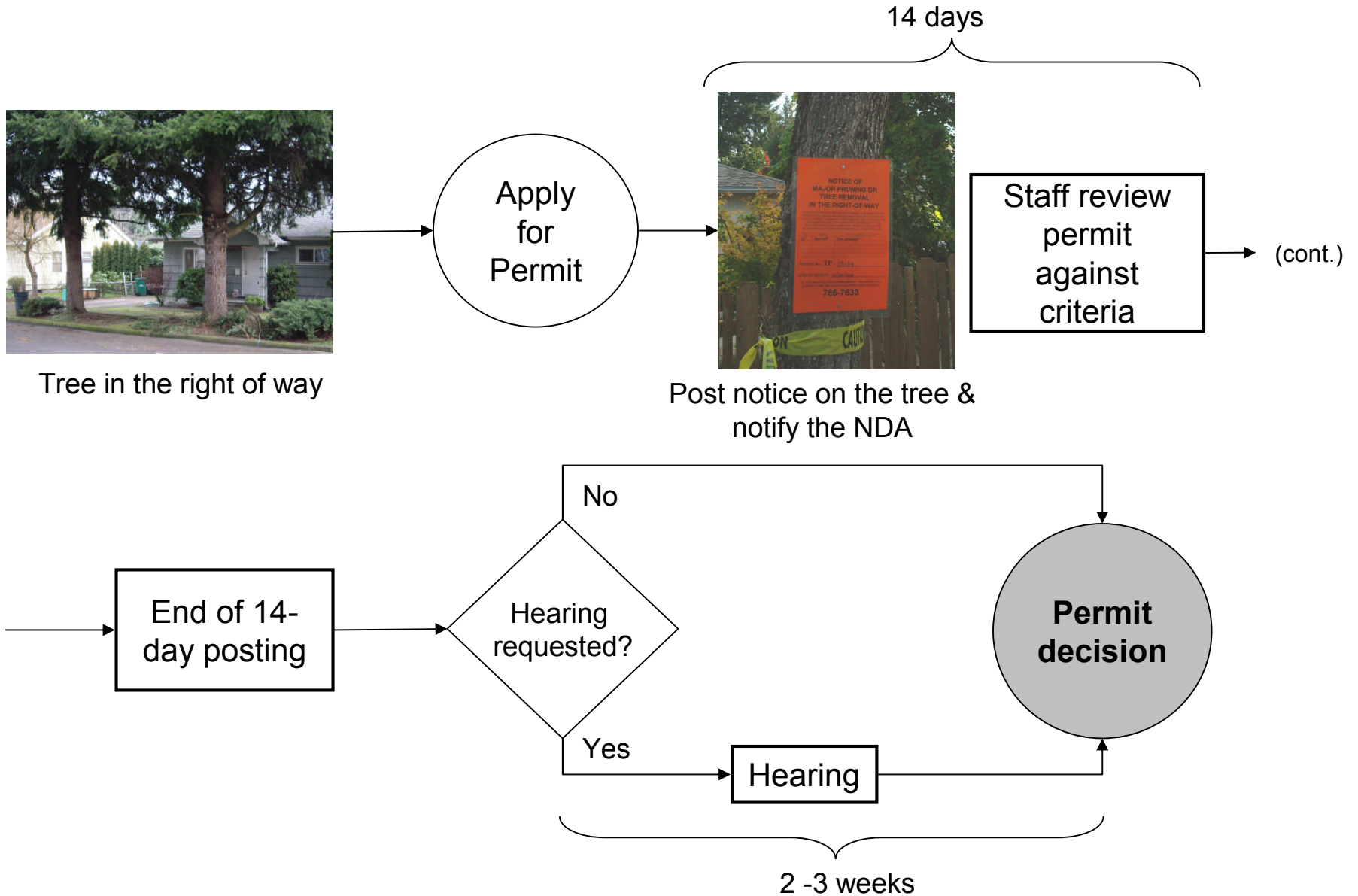
Alternatives

- Direct staff to continue to prepare the proposed amendments for adoption.
- Direct staff to revise the proposed amendments for further consideration by Council.
- Direct staff to delay the proposed amendments for consideration at some future date.

Attachments

1. Right of Way Tree Removal Permit process diagram
2. Proposed underline/strikeout amendments to MMC 16.32, Tree Cutting

Right of Way Tree Permit Process



CHAPTER 16.08 ADMINISTRATION

16.08.010 ENFORCEMENT AUTHORITY

The Public Works Director and the ~~Community Development Director~~ ~~Planning Director~~, or their designees, shall have the power and duty to enforce the provisions of the environmental protection part of the Community Development Ordinance. They have the authority to establish forms, require information of applicants and take other reasonable measures in order to administer effectively the requirements of the environmental protection part.

16.08.020 APPEALS

- A. ~~An administrative decision from Chapter 16.32 may be appealed to City Council. An appeal Appeals may be made~~ from administrative decisions of ~~the Public Works Director or Community Development Director either of these directors from other chapters within this Title may be made~~ to the Planning Commission. A decision of the Planning Commission may be appealed to the City Council.
- B. Whenever an appeal is made to the Planning Commission or Council, a public hearing shall be held. Notice shall be given to owners and residents of property within 5 lots of the subject property at least 10 days prior to the hearing.
- C. An appeal of a decision by the Public Works Director, ~~Community Development Director~~ ~~Planning Director~~ or Planning Commission must be made in writing within 15 days of the day of decision.
- D. The Planning Commission or Council shall receive all information in written and map form prior to the hearing on the appeal.

CHAPTER 16.32 TREE CUTTING

16.32.010 DEFINITIONS

The following definitions shall apply for terminology, used in this chapter:

“Canopy” means area of the tree above the ground, including the trunk and branches, measured in mass or volume.

“City” means the City of Milwaukie.

“Cutting” means the falling 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.

“Dangerous tree” means the condition or location of the tree presents a clear public safety hazard or an imminent danger of property damage, and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

“Dead tree” means the tree is lifeless.

“Drip line” means the perimeter measured at the outermost canopy.

“Dying tree” means the tree is diseased, infested by insects, deteriorating, or rotting, and cannot be saved by reasonable treatment or pruning, or must be removed to prevent the spread of infestation or disease to other trees.

“ISA” means the International Society of Arboriculture.

Proposed Code Amendment

“Major pruning” means removal of over 20% of the tree’s canopy, or injury or cutting of over 10% of the root system, during any 12-month period.

“Owner” means and includes, for the purposes of this chapter, any person with a freehold interest in land, or a lessee, agent, employee, or other person acting on behalf of the owner with the owner’s consent.

“Person” means any individual, firm, association, corporation, agency, or organization of any kind.

“Pruning” means trimming or removing any part of the branching structure of a plant in either the crown, trunk, or root areas based on standards of the ISA.

“Relative Value.” Relative value may be calculated using the methods described in the ISA’s “Guide for Plant Appraisal.” The values reflect the value to the public as a whole, rather than to the individual property owner. For example, a tree growing in full public view may have a high public value but be of low value to the property owner.

“Removal” means the cutting or removing of 50% or more of the crown, trunk, or root system of a plant; the uprooting or severing of the main trunk of the tree; or any act which causes, or may reasonably be expected to cause, the tree to die, including without limitation damage inflicted upon the root system by machinery, storage materials, or soil compaction; substantially changing the natural grade above the root system or around the trunk; excessive pruning; or paving with concrete, asphalt, or other impervious materials in a manner which may result in the loss of aesthetic or physiological viability.

“Root zone” means the area of the ground around the base of the tree measured from the trunk to 5 feet beyond the outer base of the branching system.

“Street tree” means any tree located within a street right-of-way.

“Topping” means the severe cutting back of the main stem and/or limbs to buds, stubs, or laterals large enough to assure terminal role within the tree’s crown to such a degree as to remove the normal canopy and disfigure the tree.

“Tree” means any living woody plant characterized by 1 main stem or trunk and many branches, or a multistemmed trunk system with a definitely formed crown.

16.32.020 PERMIT FOR MAJOR PRUNING OR REMOVAL OF STREET TREES OR TREES IN PUBLIC RIGHT-OF-WAY

A. Applicability

No person shall conduct major pruning or removal of any tree in a public right-of-way, without first receiving a permit issued by the City. Tree pruning, as defined in this chapter, shall not require a permit.

B. Review Process.

1. A permit application for major pruning or tree removal shall be submitted to the Planning Department on forms provided by the [Community Development Director](#) ~~Planning Director~~.
2. The applicant shall post notice of the major pruning or removal permit application on the property in a location which is clearly visible to vehicles traveling on a public street and to pedestrians walking by the property.
3. The notice shall state that the tree removal permit is pending for trees on the property marked by a yellow plastic tagging tape, shall include the date of posting, and shall

state that any person may request a meeting with the Community Development Director that a hearing be held on the application by filing a written request for a hearing within 14 days of the date of the posting. The purpose of the meeting is to provide an opportunity to raise questions or concerns about the major pruning or removal prior to issuance of the administrative decision on the permit.

4. The applicant shall mark each tree proposed to be removed by tying or attaching yellow plastic tagging tape to the tree 4 to 6 feet above mean ground level at the base of the trunk.
5. On the date that the property is posted, the applicant shall send a letter to the neighborhood district association for the area, to notify the association of the major pruning or removal request.
6. The applicant shall file an affidavit stating that the property has been posted, the trees have been marked, and notice has been mailed pursuant to this section.
7. The major pruning or tree removal permit shall not be issued for 14 days from the date of filing of the affidavit to allow for the filing of a request for a meeting ~~hearing~~. The applicant shall maintain the posting and marking for the full 14 days. When a meeting with the Community Development Director is requested, the Community Development Director shall not issue the permit decision until the meeting can be held.

C. Approval Standards

The ~~Community Development Director~~ ~~Planning Director~~ shall issue a permit for major pruning or removal of trees in a right-of-way, only if the following criteria are satisfied:

1. The proposed work will be done according to ISA standards, and qualified persons will perform the work; and 1 or more of the following criteria are satisfied;
 - a. It is determined by the arborist that the tree is dead or dying and cannot be saved, according to current ISA standards.
 - b. The tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or adjacent sites, and that extraordinary maintenance is required to prevent damage to such improvements or property.
 - c. The tree has lost its relative value as a street tree due to damage from natural or accidental causes, or for some other reason it can be established that it should be removed.
 - d. That the tree has been determined by a certified arborist to be unsafe to the occupants of the property, or adjacent property, or the general public.
 - e. Major pruning or removal is necessary to accommodate improvements in the right of way, and it is not practicable to modify the proposed improvements to avoid major pruning or removal.

D. All work performed on street trees pursuant to a permit issued by the ~~Community Development Director~~ ~~Planning Director~~ under this section shall be done within a 60-day period from the issuance of said permit, or within a longer period as specified by the ~~Community Development Director~~ ~~Planning Director~~.

E. The Community Development Director may require tree replanting as a condition of approval for a major pruning or removal permit. Replanted trees shall be planted within the right of way fronting the property for which the tree permit was issued. The replanted tree

shall be a species appropriate for the location where it is planted, as determined by the Community Development Director. The abutting property owner shall be responsible for maintaining trees in a healthy condition for 3 years following replanting.

16.32.030 PERMIT EXEMPTIONS

A. Dangerous Tree

If a tree is determined to be a dangerous tree, the Community Development Director ~~Planning Director~~ may issue an emergency removal permit. The removal shall be in accordance with the ISA standards and be the minimum necessary to eliminate the imminent danger.

B. Maintenance

Regular maintenance or pruning which does not require removal of over 20% of the tree's canopy, tree topping, or disturbance of over 10% of the root system during any 12-month period.

C. Tree cutting anywhere but in a public right-of-way.