



CITY OF MILWAUKIE

"Dogwood City of the West"

Ordinance No. 2141

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 16.32 TREE CUTTING.

WHEREAS, the City Council by Ordinance No. 1836 adopted Milwaukie Municipal Code (MMC) Chapter 16.32 regulating tree cutting in the public right-of-way on June 16, 1998; and

WHEREAS, the consensus of City Council and the Milwaukie Park and Recreation Board (PARB) discussion has been to develop a more comprehensive tree care ordinance to help the City achieve Tree City USA status.

WHEREAS, the consensus of City Council has confirmed the Tree Board shall consist of seven members, five of which shall be city residents, and one of which shall be a certified arborist.

WHEREAS, including the Tree Board and Office of the City Manager to the public notification process further increases the effectiveness of the ordinance.

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

Section 1. The Milwaukie Municipal Code Chapter 16.32 is amended to read:

CHAPTER 16.32 TREE CUTTING

16.32.005 PURPOSE

The purpose of this chapter is to encourage preservation of trees located on city-owned land and in the public right-of-way toward the larger goal of creating and maintaining Milwaukie's urban forest for the livability of its citizens. Trees on city-owned land and in the public right-of-way are a public resource that beautify the streetscape and provide ecosystem services such as reducing the urban heat island effect, reducing stormwater flows, and stabilizing soils. The City may allow the removal or pruning of trees in some situations including, but not limited to, removing hazards, avoiding damage to public and private property, and allowing for construction of right-of-way improvements. Preference should generally be given to authorizing the minimal amount of disturbance to the tree that is necessary to address the situation. The intent of this chapter is also to mitigate the authorized removal of trees within the public right-of-way and on city-owned land by replanting new trees in the public right-of-way and on city-owned land wherever practicable.

16.32.010 DEFINITIONS

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

“ANSI” The American National Standards Institute is a private non-profit organization that oversees the development of voluntary consensus standards for products, services, processes, systems, and personnel in the United States.

“Arbor Day/Week” means a day/week designated by the City to celebrate and acknowledge the importance of trees in the urban environment, which can include a variety of public activities such as tree planting or tree maintenance.

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

“City” means the City of Milwaukie.

“City Tree Board” means the City of Milwaukie Park and Recreation Board (Board) plus a certified arborist to be selected by the City Council, or a separate City Tree Board (including a certified arborist) appointed by the Mayor and approved by City Council.

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

“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.

“Dangerous tree” means the condition of the tree presents a foreseeable danger of inflicting damage that cannot be alleviated by treatment or pruning. A tree may be dangerous because it is likely to injure people or damage vehicles, structures, or development, such as sidewalks or utilities.

“Dead tree” means the tree is lifeless.

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

“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.

“Engineering Director” means the Engineering Director of the City of Milwaukie or his or her designee.

“Hazardous 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.

“ISA” means the International Society of Arboriculture.

“Large trees” means trees that reach at least 65 feet in height at maturity.

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

“Medium trees” means trees that at maturity are between 30 and 65 feet in height.

“Minor Tree Pruning” means trimming or removing less than 20% of any part of the branching structure of a tree in either the crown, trunk, or less than 10% of the root areas based on ANSI A300 and ANSI Z133 standards, within a 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.

“Park Trees” are defined as trees, shrubs, bushes and other woody vegetation in named public parks or to which the public has free access as a park.

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

“Relative Value.” Relative value may be calculated using the methods described in the “Guide for Plant Appraisal” published by the CTLA. 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.

“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.

“Small trees” are those that at maturity are less than 30 feet in height.

“Street tree” is defined as trees, shrubs, bushes and other woody vegetation on land lying within the City right-of-way on either side of all streets, avenues, or ways within the City and on all non-park properties owned or maintained by the City.

“Tree 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.

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

“Tree” means any living woody plant characterized by one main stem or trunk and many branches, or a multistemmed trunk system with a definitely formed crown at least 16 feet in height at maturity. (Ord. 1836 § 1 (part), 1998)

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

“Utility Tree” means a tree that is less than 20 feet in height at maturity and thus suitable for planting under overhead utility lines.

16.32.015 CREATION AND ESTABLISHMENT OF A CITY TREE BOARD

A. Creation

There is hereby created and established a City Tree Board (Tree Board) for the City of Milwaukie, Oregon, which shall consist of seven members, at least five of which shall be residents of the City, and one of which shall be a certified arborist, and all seven of which shall be appointed by the Mayor with approval of the City Council. The Tree Board may consist of the City of Milwaukie Parks and Recreation Board plus a certified arborist.

B. Term of Office

The term of the five persons to be appointed by the Mayor shall be three years except that the term of two of the members appointed to the first board shall be for only one year and the term of two members of the first board shall be for two years. In the event that a vacancy shall occur during the term of any member, his successor shall be appointed for the unexpired portion of the term. Tree Board members shall be limited to three consecutive terms.

C. Compensation

Members of the Tree Board shall serve without compensation.

D. Duties and Responsibilities

It shall be the responsibility of the Tree Board to study, investigate, develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the City Council and upon their acceptance and approval shall constitute the official urban forestry management plan for the City of Milwaukie, Oregon. The Tree Board will provide leadership in planning the City's Arbor Day/Week proclamation and celebration.

The Tree Board, when requested by the City Council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work. The Tree Board shall inform and coordinate with the North Clackamas Park and Recreation District (NCPRD) or the City of Milwaukie to ensure that the provisions of this ordinance are complied with during performance of maintenance activities.

E. Operation

The Tree Board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

16.32.017 TREE PLANTING

A. Species

Tree species to be planted on city-owned land or in public rights of way are those approved by the Engineering Department of the City for different types of planting in those specified locations.

B. Spacing

The spacing of Street Trees will be in accordance with the permit issued by the Engineering Department and in accordance with Department standards and specifications. Spacing will be determined in the planting plan for each site as determined by the City's Public Works Standards. In addition, the Engineering Director may approve special plantings designed or approved by a landscape architect, or for ecological restoration projects where seedlings or whips are likely to be planted at a much higher density to mimic natural conditions in forest regeneration.

C. Distance from Curb and Sidewalk

The City's Public Works Standards shall provide the distance from which small, medium, and large trees may be planted from curbs or curblines and sidewalks

D. Distance from Street Corners and Fire Hydrants

No Street Tree shall be planted closer than 35 feet from any street corner, measured from the point of nearest intersecting curbs or curblines. No Street Tree shall be planted closer than 10 feet from any fire hydrant.

E. Utilities

No Utility Trees other than those species listed in in the City's Public Works Standards may be planted under or within 10 lateral feet of any overhead utility wire, or over or within 5 lateral feet of any underground water line, sewer line, transmission line or other utility.

F. Size

Street trees must meet the size requirements set forth in the City's Public Works Standards for utility, small, medium, and large trees, based on the tree's size at maturity.

16.32.018 PUBLIC TREE CARE

The City shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the property lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

The City Tree Board may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. This Section does not prohibit the planting of Street Trees by property owners adjacent to the street or right-of-way, provided that the selection and location of said trees is in accordance with Section 16.32.017 of this ordinance.

16.32.019 TREE TOPPING

No person, firm, or City department shall top any Street Tree, Park Tree, or other tree on public property. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this ordinance at the determination of the City Tree Board.

16.32.020 PRUNING, CORNER CLEARANCE

Pursuant to Milwaukie Municipal Code 12.12.010, every owner of any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall not obstruct the right of way. Enforcement of this section shall be pursuant to MMC 12.12 and compliant with ISA Best Management Practices (BMPs).

16.32.021 DEAD OR DISEASED TREE REMOVAL ON PRIVATE PROPERTY

Owner shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which may pose a significant risk to the safety of the public. If owner fails to do so, City shall have the right to cause the removal of such trees. The City Tree Board or its agents will notify, in writing, the owners of such trees. Removal shall be done by said owners at their own expense within sixty days after the date of service of notice. After removal is complete, the property owners shall notify the City in writing. In the event of failure of owners to comply with such provisions, the City shall have the authority to remove such trees and charge the cost of removal to the owners pursuant to MMC 8.04. In cases where the owner demonstrates extreme financial hardship, the City Council may grant a cost waiver. Some dead trees which provide wildlife habitat and are not a hazard may be left uncut.

16.32.022 REMOVAL OF STUMPS

All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground, except for circumstances where the stumps do not pose a hazard to the public and may be left to improve wildlife habitat structure.

16.32.023 INTERFERENCE WITH CITY TREE BOARD

No person shall prevent, delay or interfere with the City Tree Board, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any Street Trees, Park Trees, or trees on private grounds, as authorized in this ordinance.

16.32.024 ARBORISTS LICENSE AND BOND

All certified arborists operating in the City of Milwaukie shall be ISA-certified.

16.32.025 REVIEW BY CITY COUNCIL

The City Council shall have the right to review the conduct, acts and decisions of the Tree Board. Any person may appeal from any ruling or order of the Tree Board to the City Council who may hear the matter and make a final decision.

16.32.026 PERMIT FOR MAJOR PRUNING OR REMOVAL OF STREET TREES OR TREES IN PUBLIC RIGHT-OF-WAY AND OTHER PUBLIC LAND

A. Applicability

1. No person shall conduct major pruning or removal of any tree in a public right-of-way or on city-owned land, without first receiving a permit issued by the City, except as provided in chapter 16.32.030. Minor tree pruning shall not require a permit.
2. For trees on City-owned land, this chapter shall be applied in conjunction with any applicable standards in Title 19 Zoning.

B. Review Process

1. A permit application for major pruning or tree removal shall be submitted to the Engineering Department on a Right of Way Permit Application.
2. The Engineering Department 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 readable by pedestrians walking by the property.
3. The notice shall state that the tree removal permit is pending for trees on the property marked by an orange plastic tagging tape, shall include the date of posting, and shall state that any person may request a meeting with the Engineering Director 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. The Engineering Director shall consider all concerns raised at such a meeting, but shall have final decision making authority over the issuance of a permit, based on the Approval Standards in Subsection C below.
4. The Engineering Department shall mark each tree proposed to be removed by tying or attaching orange 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 tree removal notice is posted on the property, the Engineering Department shall send a letter to the neighborhood district association for the area, the City Tree Board, and the Office of the City Manager, 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 Section 16.32.026 or subsection 16.32.026.B.
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. The applicant shall maintain the posting and marking for the full 14 days. When a

meeting with the Engineering Director is requested, the Engineering Director shall not issue the permit decision until the meeting can be held.

C. Approval Standards

The Engineering Director shall issue a permit for major pruning or removal of trees in a right-of-way or on city-owned land only if the following criteria are satisfied. The Engineering Director will consult a certified arborist where necessary to evaluate the criteria.

1. The proposed work will be done according to ISA best management practices, and qualified persons will perform the work.
2. One or more of the following criteria are satisfied:
 - a. It is determined 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. The tree has been determined 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 or on city-owned land, and it is not practicable to modify the proposed improvements to avoid major pruning or removal.

D. Performance of Permitted Work

All work performed on street trees pursuant to a permit issued by the Engineering 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 Engineering Director.

E. Replanting

The Engineering Director shall, wherever practicable, require tree replanting as a condition of approval for a major pruning or removal permit on city-owned land or in public rights of way. For major pruning or removal of trees in the public rights of way, replanted trees shall be planted within the right-of-way fronting the property for which the tree permit was issued. For major pruning or removal of trees on city-owned land, replanted trees shall be planted on city-owned land 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 Engineering Director, in conjunction with the issued permit and in compliance with applicable ANSI standards and ISA best management practices. In addition to the tree maintenance requirements of Milwaukie Municipal Code Chapter 8.04.110, the abutting property owner shall be responsible for maintaining a replanted tree in a healthy condition for 3 years following replanting. (Ord. 2022 § 1, 2011; Ord. 1836 § 1 (part), 1998).

The optimal time of year for planting is the fall (September-November). If planting is necessary in other months, the Engineering Director may include conditions of the permit that require extra measures to ensure survival of newly planted trees.

16.32.030 PERMIT EXEMPTIONS

A. Dangerous Tree

If a tree is determined to be a dangerous tree, the Engineering Director may issue an emergency removal permit. The removal shall be in accordance with ANSI standards and ISA best management practices and be the minimum necessary to eliminate the imminent danger.

B. Maintenance

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

C. Non-City Owned Land

Tree cutting anywhere except in a public right-of-way or on city-owned land.

16.32.040 PENALTY

Except where otherwise provided, any person, firm, or corporation violating any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine not to exceed one thousand dollars (\$1,000.00).

Read the first time on 2/21/17, and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 2/21/17.

Signed by the Mayor on 2/21/17.



Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Scott Stauffer, City Recorder



City Attorney