

File ZDO-219
Proposed Zoning and Development Ordinance Amendment
Draft Dated 2/11/10

Proposed Section 1020 is new text in its entirety.

1020 **TREES**

1020.01 PURPOSE

Section 1020 is adopted to:

- A. Conserve urban trees and the urban tree canopy while permitting responsible development and the reasonable removal of trees for infrastructure construction and maintenance, solar access, view easement protection, and safety;
- B. Incentivize tree preservation prior to development;
- C. Advance the County’s sustainability objectives by protecting wildlife habitat, air and water quality, and ground water recharge; controlling surface water run-off; and reducing the urban heat island effect;
- D. Preserve trees for their contribution to property values, and for their natural beauty and historical significance;
- E. Encourage mitigation of negative impacts of authorized tree removal to maintain and enhance the tree canopy in urban unincorporated Clackamas County;
- F. Contribute to County compliance with federal, state, and regional environmental regulations;
- G. Increase public awareness of the benefits of a healthy urban tree canopy;
- H. Allow the continued management of commercial forestlands for forest uses, including the harvesting of forest tree species;
- I. Implement the Oregon Forest Practices Act inside the Portland Metropolitan Urban Growth Boundary.

1020.02 AREA OF APPLICATION

Section 1020 applies to all land inside the Portland Metropolitan Urban Growth Boundary, including rights-of-way and easements, except:

- A. Land specially assessed as forestland on the effective date of Section 1020; and
- B. A lot of record that is:
 - 1. Located in an R-2.5, R-5, R-7, R-8.5, R-10, R-15, R-20, R-30, VR-5/7, or VR-4/5 zoning district;
 - 2. Developed with a single-family dwelling; and
 - 3. Not divisible. A lot of record is “not divisible” if:
 - a. It is not divisible under Section 1012; or
 - b. It is not divisible because division is prohibited by a deed restriction, or by conditions, covenants, or restrictions.

1020.03 DEFINITIONS

Unless specifically defined in Subsection 1020.03, words or phrases used in Section 1020 shall be interpreted to give them the same meaning as they have in common usage and to give Section 1020 its most reasonable application.

- A. Caliper: A tree’s diameter at six inches above grade. On multi-stem trees, the stem with the largest diameter shall be measured.
- B. Christmas Tree: A tree of a marketable species and evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control, and one or more of the following practices: basal pruning, fertilizing, insect and disease control, and soil cultivation.
- C. Critical Root Zone: The area where a tree’s roots are located. This root zone is generally the area surrounding a tree trunk at a distance equal to one foot for every inch of d.b.h. This area is described as the radius of a circle around the tree.
- D. Diameter Breast Height (d.b.h.): A tree’s diameter measured by diameter tape at four and one-half feet above grade on the uphill side. On multi-stem trees, the stem with the largest diameter shall be measured.
- E. Emergency: Any manmade or natural event or circumstance causing or threatening loss of life, or injury to person or property.
- F. Forester: A Society of American Foresters Certified Forester, or a full member of The Association of Consulting Foresters of America, Inc.

- G. Hazardous Tree: A tree that, by reason of disease, infestation, age, or other condition, presents a known or immediate hazard to people or property.
- H. Nuisance Tree: Any tree of the following species: western hazelnut (*Corylus cornuta californica*), single seed hawthorn (*Crataegus monogyna*), English holly (*Ilex aquifolium*), plums (*Prunus* hybrids), sweet cherry (*Prunus avium*), English laurel (*Prunus laurocerasus*), and Portuguese laurel (*Prunus lusitanica*).
- I. Orchard Tree: A fruit or nut tree.
- J. Oregon Forest Practices Act: The provisions of the Oregon Forest Practices Act identified in Oregon Administrative Rules, Chapter 629, Divisions 600, 610, 615, 620, 623, 625, and 630, adopted by reference.
- K. Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose.
- L. Solar Energy System: Any solar collector, other solar energy device, or structural design feature of a building, the primary purpose of which is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, water heating, or electricity.
- M. Tree: Any woody plant with at least one well-defined stem.
- N. Tree Removal: The act of removing a tree by digging up or cutting down, or the effective removal through damage to a tree or its root system. Effective removal shall include any procedure the natural result of which is to cause the death or substantial destruction of a tree, including topping and severe cutting back of limbs to such a degree as to destroy or adversely affect the normal growth pattern of the tree. Tree removal does not include routine pruning or trimming.

1020.04 EXEMPT TREES

The following trees are exempt from the requirements of Section 1020. However, removal of the listed trees may be regulated under other provisions of this Ordinance, such as Section 706 (Habitat Conservation Area District) and Section 709 (Water Quality Resource Area District), or by conditions of approval on a previous land use decision.

- A. Trees with a d.b.h. of less than eight inches. However, this exemption shall not apply to trees planted either to remedy a violation pursuant to

Subsection 1020.13 or as part of a mitigation plan approved pursuant to Subsection 1020.10;

- B. Trees required to be removed by state or federal law or regulation, or by a fire official;
- C. Orchard trees;
- D. Christmas trees;
- E. Trees planted on the site of a commercial nursery and grown for commercial purposes;
- F. Nuisance trees;
- G. Dead trees, where death resulted from an accident or non-human cause;
- H. Diseased or hazardous trees, where the condition resulted from an accident or non-human cause, if the property owner first provides a report to the County Planning Division from an International Society of Arboriculture (ISA) Certified Arborist verifying that the tree qualifies under this exemption. If a hazardous tree is removed in response to an emergency, the property owner may provide the required arborist's report, or other credible evidence that the tree was hazardous, within 30 days after the tree's removal;
- I. Trees required to be removed by the terms of a view easement established prior to the effective date of Section 1020, if the property owner provides a copy of the easement document to the County Planning Division; and
- J. Trees, the removal of which requires review of a Habitat Conservation Area Development Permit under Section 706 or a Water Quality Resource Area Development Permit under Section 709.

1020.05 TREE REMOVAL PERMITS

- A. No tree shall be removed without a Tree Removal Permit (TRP), unless such removal is exempt pursuant to Subsection 1020.04.
- B. No building or grading permit shall be issued prior to the approval of a TRP if the proposed development requires removal of a nonexempt tree.
- C. Tree removal also may be regulated by other provisions of this Ordinance, such as Section 1002 (Protection of Natural Features) and Section 1003 (Hazards to Safety).

- D. Section 1020 shall be applied to an application for design review, a subdivision, a partition, or a conditional use. If a TRP is approved as a result of this review, it shall be issued as part of the design review, subdivision, partition, or conditional use approval.
- E. There are four types of TRPs. Table 1 identifies these four types and provides a brief description of each. Table 1 is intended to assist with navigating Subsection 1020, but is not intended to be regulatory. For the regulatory provisions, see the applicable subsections.

Table 1: Tree Removal Permit Types

	Type A	Type B	Type C	Type D
Applies To	Any lot of record, but no more than two nonexempt trees, or 10 percent of the total number of trees, whichever is less, in a two-year period	Some public agency and utility infrastructure projects	Property specially assessed as farmland; or property developed with a single-family dwelling and zoned R-2.5, R-5, R-7, R-8.5, R-10, R-15, R-20, R-30, RA-1, RA-2, RRFF-5, FF-10, FU-10, EFU, TBR, AG/F, VR-4/5, or VR-5/7	Tree removal due to construction, interference with the healthy growth of other trees, location too close to a structure, interference with utility service or drainage, conflict with corner vision or sight distance standards; or solar access
Special Limitations		Mitigation and tree protection required	Approval results in a five-year moratorium on most development	Mitigation and tree protection required
Approval Criteria	See Subsection 1020.06	See Subsection 1020.07	See Subsection 1020.08	See Subsection 1020.09
Submittal Requirements	See Subsection 1020.12(A)	See Subsection 1020.12(B)	See Subsection 1020.12(C)	See Subsection 1020.12(D)

1. Except as provided in Subsection 1020.05(C), Type A, B, and C TRPs shall be ministerial and are not land use decisions.

2. Except as provided in Subsection 1020.05(C), Type D TRPs shall be subject to Planning Director Review pursuant to Subsection 1305.02.
 3. If more than one tree is proposed for removal, the applicant may consolidate the requests into one TRP application. If a consolidated request includes a tree subject to a Type D TRP, the entire application shall be subject to Planning Director Review pursuant to Subsection 1305.02.
- F. A TRP shall be valid for three years from the date of the final written decision, except that if a TRP is approved as part of a design review, subdivision, partition, or conditional use approval, it shall be valid for the same period of time as that approval, including any time extension thereof. If the tree is not removed prior to the expiration of the TRP, removal shall require the filing of a new TRP application, unless such removal is exempt pursuant to Subsection 1020.04.

1020.06 TYPE A TREE REMOVAL PERMIT APPROVAL CRITERIA

A Type A Tree Removal Permit (TRP) for a nonexempt tree shall be approved if no more than two trees on a lot of record, or 10 percent of the total number of trees on a lot of record, whichever is greater, are removed in a two-year period.

- A. The two-year period shall commence with the removal of the first tree.
- B. Trees removed pursuant to a Type A TRP may be in addition to exempt trees removed pursuant to Subsection 1020.04 and trees removed pursuant to a Type B, C, or D TRP.
- C. Trees in a public right-of-way, or to be removed by a public utility company in a utility easement, are not eligible for a Type A TRP.

1020.07 TYPE B TREE REMOVAL PERMIT APPROVAL CRITERIA

A Type B Tree Removal Permit (TRP) for a nonexempt tree shall be approved if:

- A. The tree proposed for removal is to be removed by a public agency, and the applicant provides a written statement from the public agency that the tree must be removed in order to maintain, repair, replace, or expand an existing road, sidewalk, or pedestrian pathway located in a public right-of-way, or to construct a new road, sidewalk, or pedestrian pathway in a public right-of-way; or

- B. The tree proposed for removal is to be removed by a public utility company, and the applicant provides a written statement from the utility company that the tree must be removed in order to maintain, repair, or replace an existing utility line, or to construct a new utility line in a public right-of-way.

1020.08 TYPE C TREE REMOVAL PERMIT APPROVAL CRITERIA

- A. A Type C Tree Removal Permit (TRP) for a nonexempt tree shall be approved if the applicant provides evidence substantiating compliance with the following criteria:
 - 1. The subject property is located in an R-2.5, R-5, R-7, R-8.5, R-10, R-15, R-20, R-30, RA-1, RA-2, RRFF-5, FF-10, FU-10, EFU, TBR, AG/F, VR-4/5, or VR-5/7 zoning district, and is developed with a single-family dwelling; or the subject property was specially assessed as farmland on the effective date of Section 1020, and has remained specially assessed as farmland continuously since then; and
 - 2. If the OFPA applies, the applicant has submitted a plan, completed and signed by a forester, verifying that the tree removal as planned will comply with the OFPA.
- B. If a tree is removed pursuant to a Type C TRP, no application for design review, a partition, a subdivision, or a conditional use shall be approved on the subject property for a period of five years after the last such tree is removed. Prior to the removal of a tree pursuant to a Type C TRP, the property owner shall record a deed restriction acknowledging these development limitations.

1020.09 TYPE D TREE REMOVAL PERMIT APPROVAL CRITERIA

- A Type D Tree Removal Permit (TRP) for a nonexempt tree shall be approved if the applicant provides evidence substantiating compliance with at least one of the following criteria:
- A. Tree removal is necessary for the construction of a structure or other improvement, including landscaping within 50 feet of a single-family dwelling, and there is no practicable location alternative on the subject property—or, in the case of tree removal in a public right-of-way, elsewhere in the right-of-way—for the proposed structure or other improvement. In considering whether tree removal is necessary, factors that may be considered include whether the tree is located within the footprint of the proposed structure or other improvement, whether it is too close to the proposed structure or other improvement, and whether it will violate the corner vision standards of this Ordinance or obstruct required

sight distance under the County Roadway Standards. If tree removal is proposed in conjunction with an application for a subdivision or partition, it also must be demonstrated that there is no practicable access, utility, or lot design alternative.

1. In applying Subsection 1020.09(A), alternatives that also would result in tree removal shall be preferred where such alternatives would minimize the significance of the tree loss. Factors in determining relative significance include such characteristics as number of trees to be removed, tree health, tree size (i.e. height, trunk diameter, canopy spread), historic value of the trees to be removed, erosion prevention, preservation of wildlife habitat, and maintaining a diversity of tree species with an emphasis on retaining native trees appropriate to the proposed construction.
 2. Application of Subsection 1020.09(A) shall not require a reduction of the square footage of a proposed structure or a reduction in the number of lots or dwelling units that would otherwise be permitted.
- B. The tree proposed for removal interferes with the healthy growth of other trees, unless such trees are nuisance trees, and it is not practicable to preserve the tree.
 - C. The tree proposed for removal is located too close to an existing structure or other improvement, and it is not practicable to preserve the tree.
 - D. The tree proposed for removal interferes with existing utility service or drainage, and it is not practicable to preserve the tree.
 - E. The tree proposed for removal violates the corner vision standards of this Ordinance; or obstructs required sight distance under the County Roadway Standards, and it is not practicable to preserve the tree.
 - F. Tree removal is reasonably necessary to allow solar access for the efficient operation of a solar energy system. The applicant shall provide supporting documentation from a solar energy system installer, a government agency with expertise in solar energy systems, or another credible source (e.g. Energy Trust of Oregon, an architect registered to practice architecture in the State of Oregon, an engineer registered to practice engineering in the State of Oregon).

1020.10 MITIGATION FOR REMOVED TREES

If a Type B or D Tree Removal Permit is approved, compliance with the following mitigation standards shall be required.

- A. Except as provided in Subsection 1020.10(C)(2), each tree approved for removal shall be replaced as follows:
 - 1. If the tree to be removed has a d.b.h. of less than 16 inches, one replacement tree shall be planted.
 - 2. If the tree to be removed has a d.b.h. of at least 16 inches but less than 24 inches, two replacement trees shall be planted.
 - 3. If the tree to be removed has a d.b.h. of 24 inches or greater, three replacement trees shall be planted.
- B. For a Type D TRP, to the extent practicable, the replacement tree shall be planted on the subject property and within the same general area as the removed tree. In determining whether such planting is practicable, consideration shall be given to such factors as terrain, difficulty of replacement, and impact on adjacent property.
- C. For a Type D TRP, when it is not practicable to relocate or replace the tree on the subject property, the applicant shall:
 - 1. Relocate or replace the tree at another location approved by the Planning Director. The alternate location shall be within the portion of the County that is inside the Portland Metropolitan Urban Growth Boundary; or
 - 2. Pay into the County Tree Fund, which fund is hereby created, an amount of money established by separate order of the Board of County Commissioners.
 - a. The County shall use the County Tree Fund within the portion of the County that is inside the Portland Metropolitan Urban Growth Boundary for planting trees and for producing, maintaining, and preserving wooded areas and heritage trees.
 - b. In addition, and as funds allow, the County Tree Fund shall provide educational materials to assist with tree planting, mitigation, and relocation.
- D. For a Type B TRP, the applicant shall comply with Subsection 1020.10(A), 1020.10(C)(1) or 1020.10(C)(2), and the choice shall be at the applicant's discretion.
- E. A replacement tree shall be appropriately chosen for the site from an approved tree species list supplied by the County. For a Type D TRP,

diversity of tree species shall be maintained where essential to preserving a wooded area or other habitat.

- F. A replacement tree shall have a minimum caliper of two inches or a minimum height of eight feet by nursery industry standards.
- G. A replacement tree shall be staked, fertilized, and mulched.
- H. Planting of required replacement tree(s) shall occur within one year of tree removal.
- I. If, within two years after the planting date, a replacement tree dies, or acquires a disease that necessitates removal, the tree shall be replaced, and the replacement tree shall in turn be subject to the same two-year standard.

1020.11 TREE PROTECTION DURING CONSTRUCTION

If a Type B or D Tree Removal Permit (TRP) is approved, or if construction is authorized on the subject property pursuant to the approval of an application for design review, a subdivision, a partition, or a conditional use, compliance with the following tree protection standards shall be required.

- A. Unless a tree is exempt pursuant to Subsection 1020.04 or has been authorized for removal by a TRP, it shall be protected. If no trees that require protection pursuant to this provision exist on the subject property, the provisions of Subsection 1020.11 are not applicable.
- B. Trees that require protection shall be clearly labeled as such for the duration of construction activity.
- C. Construction activity likely to be injurious to a tree designated to remain, including, but not limited to, placing solvents, building material, construction equipment, or depositing soil, or placing irrigated landscaping, within the drip line, shall be prohibited, unless a plan for such construction activity has been approved by the Planning Director based upon the recommendations of an arborist.
- D. Notwithstanding the requirement of Subsection 1020.11(B), no device or wire shall be attached to any protected tree unless needed for tree protection.
- E. Prior to the commencement of construction activity, the applicant shall erect and maintain readily visible protective tree fencing along the outer edge and completely surrounding the critical root zones of all protected trees or groups of trees. Orange construction fencing (i.e. safety fencing, snow fencing, or a comparable product) shall be required. The protective

fencing shall remain in place until the County authorizes its removal or issues a final certificate of occupancy, whichever occurs first. Protective fencing is required for all protected trees, except in the following cases:

1. Rights-of-Way and Easements. Street rights-of-way and utility easements may be cordoned by placing stakes a minimum of 50 feet apart and tying ribbon, plastic tape, rope, or similar material from stake to stake along the outside perimeters of areas to be cleared.
2. Any property area separate from the construction or land clearing area and onto which no equipment will venture may also be cordoned off as described in Subsection 1020.11(E)(1), or by other reasonable means.

1020.12 TREE REMOVAL PERMIT APPLICATION SUBMITTAL REQUIREMENTS

A. An application for a Type A Tree Removal Permit (TRP) shall include:

1. A completed application on a form provided by the County Planning Division;
2. A site plan of the subject property, drawn approximately to scale and identifying the following:
 - a. Location and type of existing development, including structure footprints, roads, driveways and parking areas;
 - b. The location of the tree proposed for removal and a brief description of the tree, including common name if known, approximate height, d.b.h., and apparent health; and
 - c. The location of all other trees on the subject property;
3. A statement indicating whether any other trees were removed from the subject property in the two years immediately preceding submittal of the TRP application, and if so, a statement indicating the basis upon which the trees qualified for removal under this Ordinance; and
4. A statement identifying the reason for the proposed tree removal and whether the removed tree will be replaced.

B. An application for a Type B TRP shall include:

1. A completed application on a form provided by the County Planning Division;

2. A site plan of the subject property, drawn approximately to scale and identifying the following:
 - a. The location of the tree proposed for removal and a brief description of the tree, including common name if known, approximate height, d.b.h., and apparent health;
 - b. For a TRP requested on the basis of Subsection 1020.07(A), the name and width of the road right-of-way, and the existing and proposed improvements within the right-of-way; and
 - c. For a TRP requested on the basis of Subsection 1020.07(B), the location of the utility easement and the utility line where the work is proposed;
 3. A statement explaining why tree removal is proposed and addressing one or more of the approval criteria identified in Subsection 1020.07;
 4. A mitigation plan that addresses the requirements of Subsection 1020.10 to the extent applicable; and
 5. A tree protection and maintenance plan that addresses the requirements of Subsection 1020.11 to the extent applicable.
- C. An application for a Type C TRP shall include:
1. A completed application on a form provided by the County Planning Division; and
 2. Sufficient information to demonstrate whether the proposed tree removal is subject to the Oregon Forest Practices Act (OFPA). If the OFPA applies, the applicant shall submit a plan, completed and signed by a forester, verifying that the tree removal as planned will comply with the OFPA.
- D. An application for a Type D TRP shall include:
1. A completed land use application on a form provided by the County Planning Division;
 2. A site plan of the subject property, drawn approximately to scale and identifying the following as relevant:
 - a. Location and type of existing and proposed development, including but not limited to, building footprints, roads, driveways, parking areas, utilities, onsite sewage disposal systems, wells,

- landscaping, and filling or grading. Label each element as existing or proposed;
- b. Location and width of existing adjacent roads and road rights-of-way;
 - c. Location and purpose of existing or proposed easements;
 - d. Location of any rivers, streams, wetlands, or areas of special flood hazard;
 - e. The site ingress and egress proposed to be used by construction vehicles; and
 - f. Proposed equipment and material staging and stockpile areas;
3. A statement explaining why tree removal is necessary and addressing one or more of the approval criteria identified in Subsection 1020.09;
 4. A mitigation plan that addresses the requirements of Subsection 1020.10 to the extent applicable;
 5. A tree protection and maintenance plan that addresses the requirements of Subsection 1020.11; and
 6. A tree survey:
 - a. Where three or fewer trees are proposed for removal, the tree survey shall include, as part of the required site plan, the location of the trees proposed for removal and a brief description of those trees, including common name, approximate height, d.b.h., and apparent health.
 - b. Where more than three trees are proposed for removal, the tree survey shall be prepared by an International Society of Arboriculture (ISA) Certified Arborist. The tree survey shall include an accurate map of the subject property that locates all trees and identifies their common name, botanical name, approximate height, approximate canopy spread, d.b.h., health, and condition. It also shall identify the tree(s) proposed for removal. The tree survey shall include an accurate topographic survey stamped by a surveyor or engineer registered in the State of Oregon. Where a stand of five or more contiguous trees exists on the subject property and the applicant proposes neither removal of any of those trees nor construction in proximity to those trees, the tree survey may be simplified to accurately show only the perimeter area of that stand of trees, including its drip line.

1020.13 VIOLATIONS

- A. Removal of a non-exempt tree without first obtaining a Tree Removal Permit (TRP) is a violation of this Ordinance. If more than one non-exempt tree is removed without a TRP, each removed tree shall constitute a separate violation.

- B. A violation resulting from the removal of a non-exempt tree without first obtaining a TRP shall be remedied by:
 - 1. Obtaining a TRP, in which case the TRP approval criteria will be applied as though the removed tree were still in place; or
 - 2. Replacing the removed tree, subject to the following criteria:
 - a. Twice as many trees shall be planted as would ordinarily be required by Subsection 1020.10.
 - b. The County may use any reasonable means to estimate the number of trees removed, if destruction of the illegally removed trees prevents an exact count.
 - c. Except as modified by Subsection 1020.13(B)(2)(a), compliance with Subsections 1020.10 and 1020.11 shall be required.

- C. Subsection 1020.13 applies in addition to any enforcement action the County may take pursuant to Subsection 102.03 of this Ordinance and Chapter 2.07 of the County Code.