

Clackamas County Trees Task Force Draft Proposed Tree Ordinance

August 20, 2009

The subsections have been combined into one continuous document and the order revised slightly. Changes since the last draft are either shown as underlined or noted in the staff comments.

1020 TREES

1020.01 PURPOSE

Section 1020 is adopted to:

- A. Balance the goal of maintaining, preserving, and enhancing the urban tree canopy with the reasonable removal of trees for development, solar access, view protection, health, and safety;
- B. 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;
- C. Preserve trees for their contribution to property values, and for their natural beauty and historical significance;
- D. Encourage mitigation of negative impacts of authorized tree removal to maintain and enhance the tree canopy in urban unincorporated Clackamas County;
- E. Contribute to County compliance with federal, state, and regional environmental regulations;
- F. Increase public awareness of the benefits of a healthy urban tree canopy;
- G. Allow farming practices and farm uses in zoning districts where agricultural uses are a primary use;
- H. Allow the continued management of commercial forestlands for forest uses, including the harvesting of forest tree species; and
- I. Implement the Oregon Forest Practices Act within the unincorporated portion of the County that is 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. A lot of record that is:
 - 1. Located in an urban low density residential 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; and

- B. Land that is receiving a farm or forest property tax deferral, or a lot of record that complies with Subsections 1020.02(A)(1) and (2) but does not comply with Subsection 1020.02(A)(3), provided that:
 - 1. If a tree that would otherwise be regulated under Section 1020 is removed pursuant to this exemption, no application for a partition, subdivision, or conditional use shall be approved on the subject property for a period of five **(10?)** years after the last such tree is removed, and the property shall be prohibited from being developed with anything other than a single-family dwelling, or a use accessory to a single-family dwelling, for a period of five **(10?)** years after the last such tree is removed; and
 - 2. Prior to the removal of a tree that would otherwise be regulated under Section 1020, the property owner shall record a deed restriction acknowledging these development limitations.

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. 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.

- B. Diameter Breast Height (d.b.h.): A tree’s diameter measured by diameter tape at four and one-half feet above grade. On multi-stem trees, the largest diameter stem shall be measured.

- C. Emergency: Any manmade or natural event or circumstance causing or threatening loss of life, or injury to person or property.
- D. Hazardous Tree: A tree that, by reason of disease, infestation, age, or other condition, presents a known or immediate hazard to people or property.
- E. Nuisance Tree: Any tree of the following species: 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*).
- F. Orchard Tree: A fruit or nut tree.
- G. Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose.

H. Solar Energy System: Any solar collector or other solar energy device or any structural design feature of a building whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, for water heating, or for electricity.

- I. Tree: Any woody plant with at least one well-defined stem of at least eight inches d.b.h., or any woody plant with at least one well-defined stem and planted as a mitigation requirement of Subsection 1020.08.
- J. 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:

- A. Two trees on a lot of record, or 10 percent of the total number of trees on a lot of record, whichever is greater, per two-year period. The two-year period shall commence with the removal of the first tree. Trees exempt under Subsection 1020.04(A) shall be in addition to any that are exempt under Subsections 1020.04(B) through (K). However, this exemption shall not apply to tree removal by a utility company in a utility easement;

- B. 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 1020.10 or as part of a mitigation plan approved pursuant to Subsection 1020.08;
- C. Trees required to be removed by state or federal law or regulation, or by a fire official;
- D. Orchard trees;
- E. Christmas trees;
- F. Trees planted on the site of a commercial nursery and grown for commercial purposes;
- G. Nuisance trees;
- H. Dead trees, where death resulted from an accident or non-human cause;
- I. 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;
- J. Trees to be removed by a public utility company in order to maintain, repair, or replace an existing utility line, if the utility company first provides credible written evidence to the County Planning Division of the need for tree removal; and
- K. Trees to be removed by a public agency in order to maintain, repair, or replace an existing road located in a public right-of-way, if the public agency first provides credible written evidence to the County Planning Division of the need for tree removal. This exemption shall not apply to the widening of an existing road.

The Task Force members who were present were evenly split on a vote of 5 for and 5 against on the question of whether to require utilities/public agencies to mitigate for trees removed to maintain utility lines and roadways.

1020.05 TREE REMOVAL PERMIT REQUIRED

- 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.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.

D.Except as provided in Subsection 1020.05(C), a TRP requested on the basis of Subsection 1020.07(A), (C), (D), or (E) shall be subject to Planning Director Review pursuant to Subsection 1305.02. Except as provided in Subsection 1020.05(C), a TRP requested on the basis of Subsection 1020.07(B) shall be subject to Planning Staff Review pursuant to Subsection 104.01(C).

E.A TRP shall be valid for two 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.

1020.06 TREE REMOVAL PERMIT APPLICATION SUBMITTAL REQUIREMENTS

An application for a Tree Removal Permit shall include:

- A. A completed land use application on a form provided by the County Planning Division;
- B. A site plan of the subject property, drawn to scale and identifying the following:
 - 1. 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;
 - 2. Location and width of existing adjacent roads and road rights-of-way;
 - 3. Location and purpose of existing or proposed easements;
 - 4. Location of any rivers, streams, wetlands, or areas of special flood hazard;

5. The site ingress and egress proposed to be used by construction vehicles; and
 6. Proposed equipment and material staging and stockpile areas;
- C. A statement explaining why tree removal is necessary and addressing one or more of the approval criteria identified in Subsection 1020.07;
- D. A mitigation plan that addresses the requirements of Subsection 1020.08;
- E. An itemized cost estimate for implementing the proposed mitigation plan and including the number, size and species of the proposed replacement trees;
- F. A tree protection and maintenance plan that addresses the requirements of Subsection 1020.09; and
- G. For a TRP requested on the basis of Subsection 1020.07(A), a tree survey:
1. 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.
 2. 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 20 or more contiguous trees exist on the subject property and the applicant does not propose to remove any of those trees, the tree survey may be simplified to accurately show only the perimeter area of that stand of trees, including its drip line.

The above list is substantially similar to Wilsonville's requirements. Hiring an arborist and a surveyor (for topography) will represent a cost to the applicant. What should be the threshold (i.e. number of trees to be removed or type of development proposed) for requiring professional assistance to prepare the application? Do the required elements of the tree survey make sense? Should we specify that the threshold that mandates professional assistance is on a cumulative basis over, for example, a two-year period? (This would prevent someone from filing several applications, each of which proposes to remove fewer than the number of trees that require professional reports.)

A Tree Removal Permit 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 and reasonable access, utility, or lot design alternative.
 1. In applying Subsection 1020.07(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 1020.07(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.

During the last task force meeting, Catherine Blosser raised a question regarding whether “loss of density” should be restricted in situations involving flexible lot size developments. Staff attempted to explain flexible lot size developments and lot size variances but confusion remained. Here’s an attempt to clarify.

Suppose that there’s a 20,000-square-foot lot that is zoned R-10, allowing a minimum lot size of 10,000 square feet per dwelling unit. The property owner can divide the property evenly or can reduce the size of one of the two lots to as small as 8,000 square feet with the other lot being as large as 12,000 square feet. This is a flexible lot size development. The number of permitted lots does not increase, but the size of the lots is “flexible” within limits (no lot may be smaller than 80% of the minimum lot size). Planned unit developments are similar (i.e. no increase in the number of lots

permitted), except that the 80% limitation does not apply and common open space tracts are required.

In contrast, a lot size variance permits an additional lot to be created. This type of variance is allowed only if the property is within 10% of the size normally required to create the number of lots proposed. For example, if the R-10 property discussed above were 18,000 square feet in size, a lot size variance would permit it to be divided into two lots. (The lot size variance would not automatically be approved, however, because there are discretionary approval criteria that must be met.) If the property were 17,000 square feet in size, no variance would be possible and the property could not be divided.

If the Task Force wants to prohibit lot size variances where tree loss would result, staff believes that amendments to the Variance section of the zoning ordinance would be the most appropriate way to address the issue.

- B. The tree proposed for removal interferes with the healthy growth of other trees, unless such trees are nuisance trees; interferes with existing utility service or drainage; is located too close to an existing structure or other improvement; violates the corner vision standards of this Ordinance; or obstructs required sight distance under the County Roadway Standards, In any of these cases, it also must be demonstrated that it is not practicable to preserve the tree.
- C. 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.
- D. Tree removal is reasonably necessary to preserve, protect or enhance the view from a building used by the property owners or their invitees. “View” shall mean a sight line from the affected property that is impaired by tree growth that adversely affects the fair market value or salability of the property. “View” includes but is not limited to sight lines to mountains, rivers, other water features, cityscapes and the like.

Staff believes that this provision will be difficult to administer. It may raise questions under Goal 5 of the Statewide Planning Goals. Advice from counsel on this question may be available by the next task force meeting. As written, the only limitation is the reference to “fair market value or salability.” Aside from that, staff believes that it is likely that every request would be approved. If the task force wants to retain a view provision, here are a few questions for consideration:

Views from buildings? Yards? Decks/patios/swimming pools?

Views from the subject property and views from other properties?

Require an appraisal? A comparative market analysis? A letter from a real estate agent?

A completely unobstructed view? A 360-degree view?

What is the value of requiring a discretionary review and neighbor notice for this type of request? Should an appraisal be sufficient and the permit issued “over the counter” with mitigation?

- E. Tree removal is reasonable under the circumstances, as demonstrated by a report from an International Society of Arboriculture (ISA) Certified Arborist.

What would this be? We’ve already accommodated diseased, hazardous, dead, interfering with the healthy growth of other trees, new construction, too close to structures, interfering with drainage and utility service, obstructing driver vision, and solar access. Staff is concerned that this provision is overly broad. This provision establishes no limit on what “reasonable under the circumstances” means.

1020.08 MITIGATION FOR REMOVED TREES

If a Tree Removal Permit is approved pursuant to Subsection 1020.07, compliance with the following mitigation standards shall be required.

- A. Except as provided in Subsection 1020.08(C)(2), one tree shall be planted for each tree approved for removal. Planting shall occur within one year of removal.
- B. 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. 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 unincorporated portion of the County and 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 unincorporated 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. A replacement tree shall have a minimum caliper of two inches. Alternatively, a removed tree may be required to be replaced on a per-caliper-inch basis, based on a finding that the large size of the tree being removed justifies an increase in the size of the replacement tree required, except, however, that the use of replacement Oregon white oaks and other uniquely valuable trees with a smaller diameter may be allowed.

Staff would prefer to limit the discretion in this provision. What are “large” trees? What are “uniquely valuable” trees? Consideration should be given to the cost and practical difficulty in planting large trees. This will be easier to administer if we establish a specific requirement. Also, it is staff’s understanding that evergreen trees are sold by height rather than caliper, so should there be an alternate size standard for evergreens? Finally, do we need to define caliper? It appears that caliper typically is measured six inches above the ground.

C. A replacement tree shall:

1. Have shade potential or other characteristics comparable to the removed tree;
2. Be appropriately chosen for the site from an approved tree species list supplied by the County;
3. Be Oregon Department of Agriculture Nursery Grade No. 1 or better; and
4. Meet the requirements of the American Association of Nurserymen (AAN) American Standards for Nursery Stock (ANSI Z60.1) for top grade.

What is the distinction between the Dept. of Ag. Standard and the AAN standard? Do we need both?

D. A replacement tree shall be staked, fertilized, and mulched.

E. A replacement tree shall be guaranteed by the applicant for two years after the planting date. A “guaranteed” tree that dies or becomes diseased during that time shall be replaced, and that replacement tree shall in turn be guaranteed by the applicant for two years after the planting date.

F. Tree replacement shall provide optimum enhancement, preservation, and protection of wooded areas where such areas are present. Diversity of tree species shall be maintained where essential to preserving a wooded area or other habitat.

1020.09 TREE PROTECTION AND MAINTENANCE

If a Tree Removal Permit (TRP) is approved pursuant to Subsection 1020.07, compliance with the following tree protection and maintenance standards shall be required. In addition, if an application for design review, a subdivision, a partition, or a conditional use is approved, compliance with the following standards also shall be required, regardless of whether a TRP was required or approved.

- 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 1020.09 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 1020.09(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 developer shall erect suitable barriers as identified by an arborist to protect remaining trees. Protective barriers shall remain in place until the County authorizes their removal or issues a final certificate of occupancy, whichever occurs first. Barriers shall be sufficiently substantial to withstand nearby construction activities. Plastic tape or similar forms of markers do not constitute "barriers." The most appropriate and protective barrier shall be utilized. Barriers are 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 1020.09(E)(1), or by other reasonable means.

- F. Pruning of protected trees shall be guided by the most recent version of the ANSI 300 Standards for Tree, Shrub, and Other Woody Plant Maintenance. Information on these standards shall be available upon request from the Planning Director.

Is this the right technical reference? This is the reference in the Wilsonville ordinance, and the PGE forester who attended our last meeting recommended using these standards. Previously the Task Force voted not to cite these standards when exempting pruning from the definition of Tree Removal. Should we apply these standards for trees protected as a result of a TRP or larger development review (subdivision, partition, etc.). If so, should we incorporate them in the tree removal definition as well, in order to provide consistency?

1020.10 VIOLATIONS

These provisions have been relocated from Subsection 1020.07. In addition, (B)(2)(a) and (b) have been modified to reflect the vote at the last meeting.

- 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(s) were still in place; or
 2. Replacing the removed tree(s), subject to the following criteria:
 - a. Twice as many trees shall be planted as would ordinarily be required by Subsection 1020.08.
 - b. The County may use any reasonable means to estimate the number of trees removed if destruction of the illegally removed tree(s) prevents an exact count.
 - c. Except as modified by Subsection 1020.10(B)(2)(a), compliance with Subsections 1020.08 and 1020.09 shall be required.
- C. Subsection 1020.10 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.