

City of Sherwood, Oregon

ORDINANCE NO. 94-991

AN ORDINANCE ADOPTING REGULATIONS FOR IDENTIFYING AND PROTECTING TREES ON DEVELOPING PROPERTIES IN THE CITY OF SHERWOOD, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the identification and protection of tree resources has important economic, environmental, aesthetic and cultural benefits to the City, and

WHEREAS, the Community Development Plan, Part 2, Chapter 4, page 61 states that "the City should develop and implement a tree ordinance which regulates the cutting of trees and planting of street trees", and

WHEREAS, an Ad-hoc City Tree Committee was formed to prepare tree preservation provisions, and

WHEREAS, the City Planning Commission recommended adoption of a tree preservation ordinance (City File No. PA 94-6), on August 2, 1994.

NOW, THEREFORE, THE CITY ORDAINS AS FOLLOWS:

Section 1. Amendments. Chapter 8 of the Zoning and Community Development Code is hereby amended per the attached Exhibit "A".

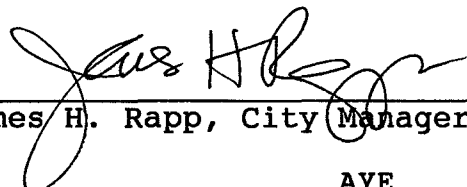
Section 2. Effective Date. As it is necessary for the peace, health and safety of the people of the City of Sherwood that the provisions of this ordinance become effective with the least possible delay, an emergency is hereby declared to exist, and this ordinance shall be effective upon its passage by the City Council and approval by the Mayor.

Duly passed by the City Council this 10th day January 1995.

Approved by the Mayor this 10th day of January 1995.


Walter Hitchcock, Mayor

Attest:


James H. Rapp, City Manager/Recorder

	<u>AYE</u>	<u>NAY</u>
Aamold	<u>X</u>	___
Boyle	<u>absent</u>	___
Cottle	<u>X</u>	___
Hitchcock	<u>X</u>	___
Kennedy	<u>X</u>	___

**AMENDMENTS TO THE SHERWOOD ZONING AND COMMUNITY
DEVELOPMENT CODE ESTABLISHING REGULATIONS FOR
IDENTIFYING AND PROTECTING TREES ON DEVELOPING
PROPERTIES**

Code Section 1.202.139 should be deleted.

Code Sections 2.202.02.B (3 & 4) should add the term:

"trees and woodlands"

Code Section 5.202.04 should be amended to read:

5.202.04 Existing Vegetation.

All developments subject to site plan review as per Section 5.102.01 and required to submit landscaping plans as per Section 5.202 shall preserve existing trees, woodlands and vegetation on the site to the maximum extent possible, as determined by the Commission, in addition to complying with the provisions of Section 8.304.07.

Code Section 7.201.03 should be amended to add a subsection G reading:

G. Tree and woodland inventories have been submitted and approved as per Section 8.304.07.

Code Section 8.304.06 should be re-titled:

8.304.06 Trees Along Public Streets or on Other Property

and amended to read:

A. Trees Along Public Streets

Trees are required to be planted by the land use applicant to the following specifications along public streets abutting or within any new development. Planting of such trees shall be a condition of development approval. The City shall be subject to the same standards for any developments involving City-owned property, or when constructing or reconstructing City streets.

1. Tree location: On private property within the front yard setback area or within public street right-of-way between front property lines and street curb lines. The land use applicant may, at their option, provide for a minimum four (4') foot deep continuous planter strip between curb and sidewalk for the purposes of street tree planting. The City may grant a corresponding reduction in right-of-way or street width, or equivalent on-street parking requirements.
2. Tree size: A minimum trunk diameter of two (2") inches DBH and minimum height of six (6') feet.
3. Tree spacing: A minimum of one (1) tree for every twenty-five (25') feet of public street frontage, or two (2) trees for every buildable lot, whichever yields the greater number of trees. Double fronting lots shall have a minimum of one (1) street tree for every twenty-five (25') feet frontage. Corner lots shall have a minimum of three (3) street trees.
4. For minor arterial and major collector streets, the City may require planted medians in lieu of paved twelve (12') foot wide center turning lanes, planted with trees to the specifications of Section 8.304.06.A.
5. Tree types: As per Appendix J of this Code.

B. Prohibited Trees and Shrubs

1. Poplar, conifer, cottonwood, willow, ailanthus, any other native tree species, and fruit and nut trees, are prohibited along public streets as such trees tend to grow in such manner as to interfere with or damage public streets and utilities, or cause an unwarranted increase in the maintenance costs of same.
2. Poplar, cottonwood, and willow trees are prohibited on other public or private property not along public streets, when, in the City's determination, such trees may tend to interfere with or damage public streets and utilities, or cause an unwarranted increase in the maintenance costs of same. English ivy, holly and Himalayan blackberries are also prohibited on public property.

C. Removal and Cutting of Trees

1. For the purposes of this Section, "removal and cutting" shall be defined as the falling or removal of a tree, or any other deliberate action by any person, the natural result of which is to cause the death or substantial destruction of the tree. Prohibited removal and cutting activities do not include normal trimming or pruning when done in accordance with generally accepted arboricultural practices. The authorizations required by Section 8.304.06.C shall not apply to any removal or cutting associated with development activities authorized by the land use approvals contemplated by Section 8.304.07. Section 8.304.06.C shall only govern the removal or cutting of trees along public streets or of trees and woodlands on public property not part of a land use application.
2. Any tree located on public property or along public streets, as per this Section, shall not be subsequently removed or cut without the authorization of the Parks Advisory Board, unless removal or cutting is necessitated by the tree:
 - a. Dying, becoming severely diseased, or infested or diseased so as to threaten the health of other trees, or
 - b. Obstructing public ways or sight distance so as to cause a safety hazard, or
 - c. Interfering with or damaging public or private utilities, or
 - d. Being defined as a nuisance as per City nuisance abatement ordinances, or
 - e. Otherwise becoming a hazard to life or property, in the City's determination.
3. All requests for authorization to remove or cut trees or woodlands shall be made in writing stating the reasons and circumstances necessitating said removal or cutting. The Parks Advisory Board shall consider the request in open session at any duly convened Board meeting. Any Board authorization for the removal and cutting of such trees or woodlands shall be made in writing, setting out the reasons for the removal or cutting, and any limitations or conditions attached thereto. Such written authorization shall be issued to the party requesting the removal or cutting, and maintained in City records, as per other Notices of Decision required by this Code. Any tree or

woodland removed as per this Section shall be replaced with a new tree or trees selected from Appendix J of this Code. The party initiating the request for tree or woodland removal shall be responsible for all costs of said replacement, including installation. This Section shall apply to any party requesting tree or woodland removal or cutting, including the City.

4. In the specific circumstances listed in Section 8.304.06.C2 only, the City Manager or his or her designee may administratively authorize the immediate removal of such trees or woodlands without Parks Advisory Board review. Any administrative authorization for the removal or cutting of such trees or woodlands shall be made in writing setting out the reasons for the removal or cutting, and any limitations or conditions attached thereto. Such written authorization shall be issued to the party requesting the removal or cutting, and maintained in City records as per other Notices of Decision required by this Code. Any tree or woodland removed as per this Section shall be replaced with a new tree or trees selected from Appendix J of this Code. The party initiating the request for tree or woodland removal shall be responsible for all costs of said replacement, including installation. This Section shall apply to any party requesting tree or woodland removal or cutting, including the City.

D. Trees on Private Property

Any tree, woodland or any other vegetation located on private property, regardless of species or size, that interferes with or damages public streets or utilities, or causes an unwarranted increase in the maintenance costs of same, may be ordered removed or cut by the City Manager or his or her designee without Parks Advisory Board review. Any order for the removal or cutting of such trees, woodlands or other vegetation, shall be made and processed as per applicable City nuisance abatement ordinances.

E. Penalties

The abuse, destruction, defacing, cutting, removal, mutilation or other misuse of any tree planted on public property or along a public street as per this Section, shall be subject to the penalties defined by Section 1.101.04, and other penalties defined by applicable ordinances and statutes, provided that each tree so abused shall be deemed a separate offense.

A new Code Section 8.304.07 should be added to read:

8.304.07 Trees on Property Subject to Certain Land Use Applications.

A. Generally.

The purpose of Section 8.304.07 is to establish processes and standards which will minimize cutting or destruction of certain trees and woodlands within the City. This Section is intended to help protect the scenic beauty of the City; to retain a livable environment through the beneficial effect of trees on air pollution, heat and glare, sound, water quality, and surface water and erosion control; to encourage the retention and planting of tree species native to the Willamette Valley and Western Oregon; to provide an attractive visual contrast to the urban environment, and to sustain a wide variety and distribution of viable trees and woodlands in the community over time.

1. All Planned Unit Developments subject to Section 2.202, site developments subject to Section 5.202, and subdivisions subject to Section 7.200, shall be required to preserve trees or woodlands, as defined by this Section to the maximum extent feasible within the context of the proposed land use plan and relative to other policies and standards of the City Comprehensive Plan, as determined by the City. Section 8.304.07 shall not apply to any PUD, site development or subdivision, or any subdivision phase of any PUD, having received an approval by the Commission prior to the effective date of Ordinance No. 94-991, **except for Subsection 8.304.07.C5, which shall apply to all building permits issued after the effective date of that Ordinance.**
2. For the inventory purposes of Section 8.304.07, a tree is a living woody plant having a trunk diameter as specified below of five (5") ~~inches or greater~~ at four and one-half (4-1/2') feet above mean ground level at the base of the trunk, also known as Diameter Breast Height (DBH). Trees planted for commercial agricultural purposes, such as nut and fruit orchards and Christmas tree farms, are excluded from this definition, and from regulation under Section 8.304.07, as are any living woody plants under five (5") inch DBH.
 - a. **Douglas fir, ponderosa pine,
western red cedar, white oak,
big leaf maple, american
chestnut Ten (10") inches or greater**
 - b. **All other tree species Five (5") inches or greater**

In addition, any trees of any species of five (5") or greater DBH that are proposed for removal as per the minimally necessary development activities defined in Section 8.304.07.C3 shall be inventoried.

3. For the inventory purposes of Section 8.304.07, a woodland is a biological community dominated by trees covering a land area of 20,000 square feet or greater at a density of at least fifty (50) trees per every 20,000 square feet with at least fifty percent (50%) of those trees **of any species** having a five (5") inches or greater DBH. Woodlands planted for commercial agricultural purposes, such as nut and fruit orchards and Christmas tree farms, are excluded from this definition, and from regulation under Section 8.304.07.

B. Tree and Woodland Inventory.

1. To assist the City in making its determinations on the retention of trees and woodlands, the land use applications referenced in Section 8.304.07.A shall include a tree and woodland inventory and report, in both map and narrative form, addressing the standards in Section 8.304.07.C, and a written report by an arborist, forester, landscape architect, botanist or other qualified professional, as determined by the City, that generally evaluates the nature and quality of the existing trees and woodlands on the site and also provides information as to the extent and methods by which trees and woodlands will be retained. The inventory shall include a resume detailing the qualified professional's applicable background and experience. The City may also require the submission of additional information as per Section 8.301.03.
2. In addition to the general requirements of this Section, the tree and woodland inventory's mapping and reports shall include, but are not limited to, the following specific information. Mapping shall include a composite map, illustrating as much required information as possible while retaining map readability.
 - a. The location of the property subject to the land use application and tree and woodland inventory, including street addresses, assessors' map and tax lot numbers, and a vicinity map.
 - b. Mapping indicating the location of trees and woodlands, as defined by Section 8.304.07.A2-3. Mapping shall include typical tree root zones, given tree species, size, condition and location. For any

woodland, inventory data and mapping is required only for the group, rather than on a tree by tree basis.

- c. Mapping and other inventory data shall include, but is not limited to, the boundaries and/or types of soils, wetlands, and floodplains underlying the tree or woodland; site hydrology, drainage, and slope characteristics; the condition, density, form, root zone and aspect of the tree or woodland, including in the case of a woodland, associated understory.
- d. Mapping and other inventory data shall be of sufficient detail and specificity to allow for field location of trees and woodlands by the City, and shall include but is not limited to, existing and proposed property lines, topography at the intervals otherwise specified for the type of land use application being considered, and any significant man-made or natural features that would tend to aid in such field location.
- e. The number, size, species, condition, and location of trees and woodlands proposed for removal, the timing and method of such removal, and the reason(s) for removal.
- f. The number, size, species condition, and location of trees and woodlands proposed for retention, and the methods by which such trees and woodlands shall be maintained in a healthy condition both during and subsequent to development activity.
- g. Proposed mitigation and replacement efforts as per Section 8.304.07.D, including a description of how proposed replacement trees will be successfully replanted and maintained on the site.

C. Tree or Woodland Retention.

- 1. The Commission, or in the case of Planned Unit Developments (PUD), the Council acting on the Commission's recommendation, shall make findings identifying all trees and woodlands, or additional trees not inventoried, that merit retention. Alternatively, the City may require planting of new trees in lieu of retention as per Section 8.304.07.D1-3, or acquire said trees and woodlands as per Section 8.304.07.D4. Prior to making such any such determinations or recommendations, the Commission and Council shall receive and consider the recommendations of the City Parks Advisory Board. Special

consideration shall be given in making these determinations to the retention or replanting of trees native to the Willamette Valley and Western Oregon, except in areas where such trees are prohibited as per Section 8.304.06.B.

2. To require retention of trees or woodlands as per Section 8.304.07.B, the Commission or Council must make specific findings that retention of said trees or woodlands furthers the purposes and goals of this Section, is feasible and practical **both** within the context of the proposed land use plan and relative to other policies and standards of the City Comprehensive Plan, and are:
 - a. Within a Significant Natural Area, 100-year floodplain, City greenway, jurisdictional wetland or other existing or future public park or natural area designated by the City Comprehensive Plan, or
 - b. A landscape or natural feature as per applicable policies of the City Comprehensive Plan, or are necessary to keep other identified trees or woodlands on or near the site from being damaged or destroyed due to windfall, erosion, disease or other natural processes, or
 - c. Necessary for soil stability and the control of erosion, for managing and preserving surface or groundwater quantities or quality, or for the maintenance of a natural drainageway, as per Unified Sewerage Agency stormwater management plans and standards or the City Comprehensive Plan, or
 - d. Necessary as buffers between otherwise incompatible land uses, or from natural areas, wetlands and greenways, or
 - e. Otherwise merit retention because of unusual size, historic association or species type, habitat or wildlife preservation considerations, or some combination thereof, as determined by the City.
3. In general, the City shall permit only the removal of trees, woodlands, and associated vegetation, regardless of size and/or density, minimally necessary to undertake the development activities contemplated by the land use application under consideration. For the development of PUDs and subdivisions, minimally necessary activities will typically entail tree removal for the purposes of

constructing City and private utilities, streets, and other infrastructure, **and minimally required site grading necessary to construct the development as approved.** For site developments, minimally necessary activities will typically entail tree removal for the purposes of constructing City and private utilities, streets and other infrastructure, **minimally required site grading necessary to construct the development as approved,** construction of permitted buildings, and City required site improvements such as driveways and parking lots.

4. The Notice of Decision issued for the land use applications subject to this Section shall indicate which trees and woodlands will be retained as per Section 8.304.07.C2, which may be removed or shall be retained as per Section 8.304.07.B, and which shall be mitigated as per Section 8.304.07.D, and any limitations or conditions attached thereto. The applicant shall prepare and submit a Final Tree and Woodland Plan prior to issuance of any construction permits, illustrating how identified trees and woodlands will be retained, removed or mitigated as per the Notice of Decision. **Such Plan shall specify how trees and woodlands will be protected from damage or destruction by construction activities, including protective fencing, selective pruning and root treatments, excavation techniques, temporary drainage systems, and like methods.**
5. **At the time of building permit issuance for any development of a site containing trees or woodlands identified as per Section 8.304.07C, the Building Official shall permit only the removal of trees, woodlands and associated vegetation, regardless of size and/or density, minimally necessary to undertake the development activities contemplated by the building permit application under consideration. The permit shall specify how trees and woodlands will be protected from damage or destruction by construction activities, including protective fencing, selecting pruning and root treatments, excavation techniques, temporary drainage systems, and like methods. Minimally necessary activities will typically entail tree removal for the purposes of constructing City and private utilities, streets and other infrastructure, minimally required site grading necessary to construct the development as approved, construction of permitted buildings, and City required site improvements such as**

driveways and parking lots. A fee for this inspection shall be established as per Section 3.301, provided however that said inspection is not deemed to be a land use action.

6. When a tree or woodland within an approved site plan, subdivision or Planned Unit Development subsequently proves to be so located as to prohibit the otherwise lawful siting of a building or use, retention of said trees or woodlands may be deemed sufficient cause for the granting of a variance as per Section 4.400, subject to the satisfaction of all other applicable criteria in Section 4.400.
7. All trees, woodlands, and vegetation located on any private property accepted for dedication to the City for public parks and open space, greenways, Significant Natural Areas, wetlands, floodplains, or for storm water management or for other purposes, as a condition of a land use approval, shall be retained outright, irrespective of size, species condition or other factors. Removal of any such trees, woodlands, and vegetation prior to actual dedication of the property to the City shall be cause for reconsideration of the land use plan approval.

D. Mitigation

1. The City may require mitigation for the removal of any trees and woodlands identified as per Section 8.304.07.C if, in the City's determination, retention is not feasible or practical within the context of the proposed land use plan or relative to other policies and standards of the City Comprehensive Plan. Such mitigation shall not be required of the applicant when removal is necessitated by the installation of City utilities, streets and other infrastructure in accordance with adopted City standards and plans. Provided, however, that the City may grant exceptions to established City street utility and other infrastructure standards in order to retain trees or woodlands if, in the City's determination, such exceptions will not significantly compromise the functioning of the street, utility or other infrastructure being considered. Mitigation shall be in the form of replacement by the planting of new trees.
2. Replacement trees required as part of mitigation as per this Section shall, as determined by the City, be generally of a substantially similar species, size and quantity to those trees proposed for removal, taking into account soils, slopes, hydrology, site area, and other relevant

characteristics of the site on which the mitigation is proposed. In consideration of the foregoing factors the City may require replacement trees to be replanted at greater than a 1:1 ratio. Exotic or non-native trees shall generally be replaced with species native to the Willamette Valley or Western Oregon, except where such native trees are prohibited by Section 8.304.06.B2. Said replacement trees shall be in addition to trees along public streets required by Section 8.304.06.A. Standards for trees along public streets may be different than those for trees required for retention or replacement under this Section.

3. If replacement trees of the species, size or quantity being removed are not available, or cannot be successfully replanted due to soils, slopes, hydrology, site area, or other relevant characteristics of the site, the City may require:
 - a. Different species of trees to be substituted, or
 - b. Replacement trees to be planted on another, more suitable site within the City, or
 - c. Cash payments equivalent to the fair market value of the otherwise required replacement trees, including estimated installation costs, said payments to be set aside by the City in a dedicated fund for eventual purchase and planting of trees when suitable sites become available.
4. The Commission may also make recommendation to the Council, based on the recommendation of the Parks Advisory Board, that trees or woodlands identified as per this Section be purchased by the City, if such trees cannot otherwise be retained as part of the proposed land use plan, obtained as a parks and open space or other dedication to the City, or otherwise be mitigated as per Section 8.304.07.D.

E. Penalties

Violations of Section 8.304.07 shall be subject to the penalties defined by Section 1.101.04, provided that each designated tree or woodland unlawfully removed or cut shall be deemed a separate offense.