



Home of the Tualatin River National Wildlife Refuge

ORDINANCE 2012-003

AN ORDINANCE AMENDING MULTIPLE SECTIONS OF THE ZONING AND COMMUNITY DEVELOPMENT CODE RELATING TO TREES ON PRIVATE PROPERTY, INCLUDING DIVISIONS, I, V AND VIII

WHEREAS, The Sherwood Zoning and Community Development Code has not been comprehensively updated in many years, and

WHEREAS, the City has undertaken a multi-phase, multi-year program to comprehensively update the development code to ensure that it is clear, consistent, and current; and

WHEREAS, the Planning Commission helped guide the development of proposed amendments after extensive public outreach and opportunity for public input; and

WHEREAS, this Code Clean-Up Update: Trees on Private Property includes amendments to Divisions I, V and VIII specifically related to the Tree standards (16.10.020, 16.90.020 and 16.142.070) as well as minor housekeeping changes related to Parks and Open Spaces (16.142.040 and 16. 142.060) section of the code; and

WHEREAS, the proposed amendments were reviewed for compliance and consistency with the Comprehensive Plan, regional and state regulations and found to be fully compliant; and

WHEREAS, the proposed amendments were subject to full and proper notice and review and a public hearing was held before the Planning Commission on January 24, 2012; and

WHEREAS, the Planning Commission voted unanimously to forward a recommendation of approval to the City Council for the proposed development code modifications on January 24, 2012; and

WHEREAS, the analysis and findings to support the Planning Commission recommendation are identified in the attached Exhibit 2; and

WHEREAS, the City Council held a public hearing on March 20, 2012 and raised questions and concerns resulting in modifications discussed at the May 1, 2012 public hearing; and

WHEREAS, the City Council determined that the modifications in Exhibit 1-A were generally consistent with the Planning Commission recommendation, and

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. Findings. After full and due consideration of the application, the Planning Commission recommendation, the record, findings, and of the evidence presented at the public hearing, the Council adopts the findings of fact contained in the Planning Commission recommendation attached as Exhibit 2 finding that the text of the SZCDC shall be amended as documented in attached Exhibit 1-A.

Section 2. Approval. The proposed amendments for Plan Text Amendment (PA) 11-06 identified in Exhibit 1-A is hereby **APPROVED**.

Section 3 - Manager Authorized. The Planning Department is hereby directed to take such action as may be necessary to document this amendment, including notice of adoption to DLCD and necessary updates to Chapter 16 of the municipal code in accordance with City ordinances and regulations.

Section 4 - Applicability. The amendments to the City of Sherwood Zoning and Community Development Code by Sections 1 to 3 of this Ordinance apply to all land use applications submitted after the effective date of this Ordinance.

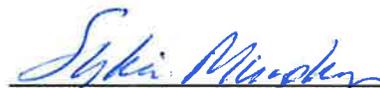
Section 5 - Effective Date. This ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

Duly passed by the City Council this 1st day of May 2012.



Keith S. Mays, Mayor

Attest:



Sylvia Murphy, CMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Langer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Butterfield	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Folsom	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Grant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mays	<input checked="" type="checkbox"/>	<input type="checkbox"/>

City of Sherwood
Planning Commission Recommendation to the City Council
File No: PA 11-06 Trees on Private Property

February 10, 2012

Proposal: Amendments to the Development Code in this phase of the Code Clean-Up project will clarify the Trees on Private Property standards as well as incentivize tree preservation. There are also a few housekeeping revisions included in the proposal. The proposed changes will modify the following code sections: Definitions (16.10), Site Plan Review (16.90), and Parks and Open Space (16.142). The proposed amendments are attached to this report as Exhibit A.

I. BACKGROUND

- A. Applicant: This is a City initiated text amendment; therefore the applicant is the City of Sherwood.
- B. Location: The proposed amendment is to the text of the development code and, therefore applies citywide.
- C. Review Type: The proposed text amendment requires a Type V review, which involves public hearings before the Planning Commission and City Council. The Planning Commission has made a recommendation to the City Council who will make the final decision. Any appeal of the City Council decision relating to Chapter 16 updates would go directly to the Oregon Land Use Board of Appeals.
- D. Public Notice and Hearing: Notice of the January 24, 2012 Planning Commission hearing on the proposed amendment was published in *The Times* on 1/12/12, and published in the January edition of the Gazette. Notice was also posted in five public locations around town on 1/3/12 and on the web site on 1/5/12.

While this does apply citywide, it does not affect the permissible uses of any property; therefore "Measure 56" notice was not required or provided. DLCD notice was sent November 21, 2011.

- E. Review Criteria:
The required findings for the Plan Amendment are identified in Section 16.80.030 of the Sherwood Zoning and Community Development Code (SZCDC).
- F. Background:
The City underwent periodic review in 1989-1991 and the Zoning and Community Development Code was comprehensively reviewed and updated as part of that process. Since that time, there have been a number of updates to comply with regional and state laws, and to address local issues. Over time, the piece-meal updates resulted in the need to conduct a comprehensive audit and update of the code to ensure cross references are correct, standards are clear, and typographical errors are fixed. In addition, development trends and community values have changed such that it has become necessary to evaluate the standards to ensure they remain consistent with the goals and policies of the City's Comprehensive Plan, Metro policies and related state and local laws. To that end, the Council, Planning Commission and staff identified the need to conduct a comprehensive update of the Development Code. There have been multiple updates since October 2010.

This update focuses on the Trees on Private Property portion of section 16.142.070. In the past the City has heard concerns from developers and homeowners about a few issues with the existing code including;

- The costs and complexities associated with an inch for inch mitigation requirement,
- The standards for residential and non-residential are the same even though the purpose and probable intensity of development within each of the zones is different, and
- The need for site plan review if a property owner, not subject to land use removes more than five trees per acre or more than 100 inches at dbh in any calendar year.

II. AFFECTED AGENCY, PUBLIC NOTICE, AND PUBLIC COMMENTS

Agencies:

The City sent an e-mail request for comments to agencies December 13, 2011. DLCD notice was sent on November 21, 2011. Sherwood Broadband, Washington County and ODOT outdoor signs replied that they do not have comments regarding trees on private property.

PGE's Forester, Brandon Fleming, submitted e-mail comments dated December 27, 2011. He wanted to ensure that the defined caliper inch measurement for street trees was consistent with the industry standard as specified in the *American Standard For Nursery Stock* publication ANSI Z60.1-2004. He also commented that "It is important to include wording in Development codes that will include the necessities of utility and right-of-way construction, and allow Portland General Electric to perform safe, regular maintenance including our line work and Vegetation Management practices...Ultimately, planting the appropriate trees around power lines will create a sustainable urban canopy."

Staff response: Staff has updated the draft language to ensure that it reflects the industry standard as specified in Mr. Fleming's comments. Staff agrees that PGE should be able to perform safe, regular maintenance including line work and Vegetation Management, but additional street tree language to exempt them from the permit process has not been proposed at this time. A review is required but PGE is encouraged to seek City Council approval to waive future street tree permit fees.

Public Comments:

The following comments were received at the January 24, 2012 Public Hearing.

Kurt Kristensen- 22560 SW Fair Oaks Drive, Sherwood, OR 97140. He indicated that he understands development interests and he has watched major trees come down in the past. He thinks that this code is a good first step although some of the language is too broad. In section 16.142.070 on page 8 of the draft language there should be a maximum number of trees that can be removed from a site because a property owner or developer could remove 5 trees a year, every year. He also suggested that the neighbors should have an opportunity to comment on the trees that neighbors want to remove as trees have a benefit on neighboring properties as well.

Matt Grady, Gramor Development- 19767 SW 72nd Avenue, Suite 100, Tualatin, OR 97062. He raised a question about the definition of net development site. This is referenced but not defined in the existing or proposed code. Does this include or not include certain things? He also asked if street trees can count for the 30 percent canopy requirement.

Patrick Huske- 23352 SW Murdock Road, Sherwood, OR 97140. He mentioned that he loves trees and sees codes as guidelines. The net developable site is an imposition to property owners. He indicated that the City had done a good job looking at everyone's point of view but balance is needed. He indicated that for retention, the City should look at gross buildable

footprint or the entire site. He also mentioned that there needs to be flexibility in the provisions. There needs to be an error factor. He likes trees but as a business owner he also needs to make money.

Staff Response: The comments raised at the planning commission public hearing were all important aspects to consider as the City moves forward with this portion of the code cleanup project. Many of the concerns were clarified at the hearing. We have heard that people want to be able to remove a reasonable number of trees without a review process and it is likely that property owners that are looking to develop will not remove existing trees on site as these will be counted toward the minimum canopy requirements. In order to address the concern about the definition of net developable site, a definition has been added to section 16.10.

III. REQUIRED FINDINGS FOR A PLAN TEXT AMENDMENT

The applicable Plan Text Amendment review criteria are 16.80.030.1 and 3

16.80.030.1 - Text Amendment Review

An amendment to the text of the Comprehensive Plan shall be based upon the need for such an amendment as identified by the Council or the Commission. Such an amendment shall be consistent with the intent of the Comprehensive Plan, and with all other provisions of the Plan and Code, and with any applicable State or City statutes and regulations.

The City has identified that the code is not always clear and embarked on this code clean-up project to address issues that have arisen as a result to make it clearer, more user-friendly, and to reflect current settlement trends and community values. The proposed changes represent an effort to clean up the Tree code and ensure that existing policy is clear and objective.

The Planning Commission has held a series of work sessions (December 14, 2010, January 11, 2011, March 8, 2011, May 10, 2011, June 14, 2011 and August 23, 2011) to discuss the proposed changes and considered public input before the changes were developed to obtain feedback on needed changes.

The City took great care to ensure that the community's values are met as a result of the proposed code update. The process for this portion of the code update was different from other code clean up topics due to the complexity. The Planning Commission developed goals to help guide the process. To ensure many opportunities for outreach and engagement, a tree panel was held to hear from the experts and multiple open house type events were held and an online questionnaire was used to gather the public's input on this portion of the code clean up.

It was only after developing goals, gaining the community's input and hearing from experts that code language was developed. The proposed draft tree code is anticipated to meet the Planning Commission's goals and the community's values. The purpose of this code update was to simplify the code language, encourage tree preservation while also allowing for tree removal standards that ensure the benefits of trees are maintained over time. The language also reviews residential and non-residential developments differently.

It became evident after talking to both the arborists and developers on the tree panel and the public through the multiple outreach events that the existing process for regulating tree removal and the mitigation requirement does not work well and a change is needed. Specifically, the requirement to mitigate inch for inch results in overplanting and does not reflect the health, size or value of the tree. The current mitigation requirement can be an economic burden for a property owner with a heavily treed site. In order to ensure that the trees are seen as an asset to be protected and retained rather than a burden, a mature canopy requirement has been proposed.

The mature canopy, as proposed, is 40% for residential (single family and two family developments) and 30% for non-residential and multi-family developments. The mitigation requirement in the current code language has been removed. In addition, there are proposed incentives for developers to retain existing trees during development. The intent of these changes is to encourage preservation and keep future developers and homeowners from cutting trees before development as they will have to plant trees to meet the mature canopy requirement if on site trees are not retained.

The removal requirements for trees on residential and non-residential property not subject to land use review have been updated to ensure that required trees are retained or replaced if they must be removed. The residential requirements are similar to the existing standards, however, the removal of more than five trees or more than 10% of the trees on site no longer require a site plan. Instead it is a staff level review. Code language has also been drafted to clarify trees within natural resources and/or open spaces are subject to review on both private residential and non-residential property. This ensures the City's continued compliance with Statewide Goal 5.

The following housekeeping updates are also proposed:

1. When the open space code updates were made there were code references within 16.142 that were not updated. They are now updated to be consistent.
2. The definition of diameter at breast height was moved to the definition section of the code and the language was specified to make it easier for readers to use.
3. The way that street trees are measured when they are planted was also updated to be consistent with industry practices. The code requires street trees to be a minimum of two inches DBH when they are planted. Plant nurseries measure trees based on caliper inch which is near the root ball rather than 4 ½ feet up the tree. The requirement for newly planted street trees has been modified to reflect this industry standard.
4. The proposed language eliminates the need for site plan review for removing trees therefore the reference in the site plan section is proposed to be removed.

Upon review of the Comprehensive Plan, there are not specific policies which directly relate to the proposed language. There are no comprehensive plan requirements that would conflict with the proposed code language.

Applicable Regional (Metro) Standards

There are no known Metro standards that would conflict with the proposed language. This code update does apply to Metro Title 13 – Nature in Neighborhoods. This code update encourages tree preservation on private property through the land use process by creating a minimum canopy requirement as well as providing incentives for tree preservation.

Consistency with Statewide Planning Goals

Because the comprehensive plan policies and strategies are not changing and the comprehensive plan has been acknowledged by the State, there are no known conflicts with this text change. Staff does not believe that there are any other state or local regulations that the proposed amendments would conflict with. The language has been drafted in a manner that strives to remove conflicts in the code, and to provide clarity.

As a whole, the amendments are consistent with and support Goal 2 (land use planning) by providing more clear and objective standards. The proposed language will continue to be used city wide.

The process used to develop and review the proposed amendment is consistent with the Goal 2 requirements (and the development code):

- The Commission held multiple work sessions (December 14, 2010, January 11, 2011, March 8, 2011, May 10, 2011, June 14, 2011 and August 23, 2011) on the project;
- The website was updated regularly to provide opportunity for people to get information and provide input on the project as a whole as well as input on specific topics;

Formal notice was also published in the newspaper two weeks prior to the hearing, published in the January issue of the Gazette, posted around town and on the website.

- Courtesy notices were also provided on the website and in the City Newsletter (the Archer).
- By providing these notices in an effort to reach the public and encourage their involvement state planning Goal 1 is also met.

The code amendments are also consistent with Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) by clarifying the standards for Trees on Private Property. The tree code is moving to a canopy requirement in order to encourage tree preservation. Additionally, the code update will increase compliance with Goal 5 since standards protecting natural resources and open spaces will be specifically added to "Trees on Private Property Not Subject to Land Use Approval". The existing "Trees on Private Property Subject to Land Use Approval" code language protects natural resources and open spaces. This language will remain in the code after the code update.

FINDING: As discussed above in the analysis, there is a need for the proposed amendments and the amendments are consistent with the Comprehensive Plan and applicable City, regional and State regulations and policies.

16.80.030.3 – Transportation Planning Rule Consistency

A. Review of plan and text amendment applications for effect on transportation facilities. Proposals shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-12-0060 (the TPR). Review is required when a development application includes a proposed amendment to the Comprehensive Plan or changes to land use regulations.

FINDING: The proposed amendments are not tied to any one development application. Rather, the proposed amendments are provided to clarify existing language within the existing development code. The code language has also been updated to incentivize tree preservation and require an overall tree canopy while eliminating the tree mitigation standard. The proposed amendments will not result in a change of uses otherwise permitted and will have no measurable impacts on the amount of traffic on the existing transportation system; therefore this policy is not applicable to the proposed amendment.

IV. RECOMMENDATION

Based on the above findings of fact, and the conclusion of law based on the applicable criteria, staff recommends Planning Commission forward a recommendation of approval of PA 11-06 to the City Council.

- V. EXHIBITS**
- 1- A. Proposed development code changes (Clean Copy)
 - 1- B. Proposed development code changes (Track Changes)
 - 1- C. Matrix comparing existing standards to proposed changes
 - 1- D. Planning Commission Goals and Objectives for tree code update

Chapter 16.10 DEFINITION
Chapter 16.10.020 SPECIFICALLY*

Demolish: To raze, destroy, dismantle, deface or in any other manner cause partial or total ruin of a structure or resource.

Density: The intensity of residential land uses per acre, stated as the number of dwelling units per net buildable acre. Net **buildable** acre means an area measuring 43,560 square feet after excluding present and future rights-of-way and environmentally constrained areas.

Designated Landmark: A property officially recognized by the City of Sherwood as important in its history, culture, or architectural significance.

*Note: The entire code section is not included, this is only a reference point indicating where the inserted language should go, the rest of the definition section will not be changed.

Development Plan: Any plan adopted by the City for the guidance of growth and improvement in the City.

Diameter at Breast Height (DBH): is a standard arboricultural method for measuring the diameter of a tree. For the purposes of this code, DBH shall be measured four and a half feet above ground level as defined by the International Society of Arboriculture.

Drive-In Restaurant: Any establishment dispensing food and/or drink, that caters primarily to customers who remain, or leave and return, to their automobile for consumption of the food and/or drink, including business designed for serving customers at a drive-up window or in automobiles.

*Note: The entire code section is not included, this is only a reference point indicating where the inserted language should go, the rest of the definition section will not be changed.

Net Buildable Acre: Means an area measuring 43, 560 square feet after excluding present and future rights-of-way, environmentally constrained areas, public parks and other public uses. When environmentally sensitive areas also exist on a property and said property is within the Metro urban growth boundary on or before January 1, 2002, these areas may also be removed from the net buildable area provided the sensitive areas are clearly delineated in accordance with this Code and the environmentally sensitive areas are protected via tract or restricted easement.

Net Developable Site: Remaining area of a parent parcel after excluding present and future rights-of-way, environmentally constrained areas, public parks and other public uses but not including preserved areas for tree stands which are not associated with wetlands, streams or vegetated corridors.

Non-Attainment Area: A geographical area of the State which exceeds any state or federal primary or secondary ambient air quality standard as designated by the Oregon Environmental Quality Commission and approved by the U.S. Environmental Protection Agency.

*Note: The entire code section is not included, this is only a reference point indicating where the inserted language should go, the rest of the definition section will not be changed.

16.90.020 – Site Plan Review

A. Site Plan Review Required

Site Plan review shall be required prior to any substantial change to a site or use, issuance of building permits for a new building or structure, or for the substantial alteration of an existing structure or use, and prior to the issuance of a sign permit for the erection or construction of a sign

For the purposes of Section 16.90.020, the term "substantial change" and "substantial alteration" shall mean any development activity as defined by this Code that generally requires a building permit and may exhibit one or more of the following characteristics:

1. The activity alters the exterior appearance of a structure, building or property and is not considered a modification.
2. The activity involves changes in the use of a structure, building, or property from residential to commercial or industrial and is not considered a modification.
3. The activity involves non-conforming uses as defined in Chapter 16.48
4. The activity constitutes a change in a City approved plan, per Section 16.90.020 and is not considered a modification.
- ~~5. The activity involves the cutting of more than five (5) existing mature trees per acre, per calendar year.~~
- ~~65.~~ The activity is subject to site plan review by other requirements of this Code.
- ~~76.~~ The activity increases the size of the building by more than 100% (i.e. the building more than doubles in size), regardless of whether it would be considered a major or minor modification.

B. Exemption to Site Plan Requirement

1. Single and two family uses
2. Manufactured homes located on individual residential lots per Section 16.46.010, but including manufactured home parks,
3. Major modifications
4. Minor modifications

Division VIII. - ENVIRONMENTAL RESOURCES

Chapter 16.132 - GENERAL PROVISIONS*

Chapter 16.134 - FLOODPLAIN (FP) OVERLAY*

Chapter 16.136 - PROCEDURES*

Chapter 16.138 - MINERAL RESOURCES*

Chapter 16.140 - SOLID WASTE*

Chapter 16.142 -- PARKS, TREES AND OPEN SPACES

Chapter 16.144 - WETLAND, HABITAT AND NATURAL AREAS*

Chapter 16.146 - NOISE*

Chapter 16.148 - VIBRATIONS*

Chapter 16.150 - AIR QUALITY*

Chapter 16.152 - ODORS*

Chapter 16.154 - HEAT AND GLARE*

Chapter 16.156 - ENERGY CONSERVATION*

Chapter 16.142 – PARKS, TREES AND OPEN SPACES

16.142.040 – Visual Corridors

A. Corridors Required

New developments located outside of the Old Town Overlay with frontage on Highway 99W, or arterial or collector streets designated on Figure 8-1 of the Transportation System Plan shall be required to establish a landscaped visual corridor according to the following standards:

	Category	Width
1.	Highway 99W	25 feet
2.	Arterial	15 feet
3.	Collector	10 feet

In residential developments where fences are typically desired adjoining the above described major street the corridor may be placed in the road right-of-way between the property line and the sidewalk. In all other developments, the visual corridor shall be on private property adjacent to the right-of-way.

B. Landscape Materials

The required visual corridor areas shall be planted as specified by the review authority to provide a continuous visual and/or acoustical buffer between major streets and developed uses. Except as provided for above, fences and walls shall not be substituted for landscaping within the visual corridor. Uniformly planted, drought resistant street trees and ground cover, as specified in Section ~~16.142.050~~ 16.142.060, shall be planted in the corridor by the developer. The improvements shall be included in the compliance agreement. In no case shall trees be removed from the required visual corridor.

C. Establishment and Maintenance

Designated visual corridors shall be established as a portion of landscaping requirements pursuant to Chapter 16.92. To assure continuous maintenance of the visual corridors, the review authority may require that the development rights to the corridor areas be dedicated to the City or that restrictive covenants be recorded prior to the issuance of a building permit.

D. Required Yard

Visual corridors may be established in required yards, except that where the required visual corridor width exceeds the required yard width, the visual corridor requirement

shall take precedence. In no case shall buildings be sited within the required visual corridor, with the exception of front porches on townhomes, as permitted in Section 16.44.010(E)(4)(c).

E. Pacific Highway 99W Visual Corridor

1. Provide a landscape plan for the highway median paralleling the subject frontage. In order to assure continuity, appropriate plant materials and spacing, the plan shall be coordinated with the City Planning Department and ODOT.
2. Provide a visual corridor landscape plan with a variety of trees and shrubs. Fifty percent (50%) of the visual corridor plant materials shall consist of groupings of at least five (5) native evergreen trees a minimum of ten (10) feet in height each, spaced no less than fifty (50) feet apart, if feasible. Deciduous trees shall be a minimum of four (4) inches DBH and twelve (12) feet high, spaced no less than twenty-five (25) feet apart, if feasible.

16.142.050 – Park Reservation

Areas designated on the Natural Resources and Recreation Plan Map, in Chapter 5 of the Community Development Plan, which have not been dedicated pursuant to Section 16.142.030 or 16.134.020, may be required to be reserved upon the recommendation of the City Parks Board, for purchase by the City within a period of time not to exceed three (3) years.

16.142.060 – Street Trees

A. Installation of Street Trees on New or Redeveloped Property.

Trees are required to be planted to the following specifications along public streets abutting or within any new development or re-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. After installing street trees, the property owner shall be responsible for maintaining the street trees on the owner's property or within the right-of-way adjacent to the owner's property.

1. Location: Trees shall be planted within the planter strip along a newly created or improved streets. In the event that a planter strip is not required or available, the trees shall be planted on private property within the front yard setback area or within public street right-of-way between front property lines and street curb lines or as required by the City.
2. Size: Trees shall have a minimum trunk diameter of two (2) caliper inches, which is measured six inches above the soil line, DBH and a minimum height of six (6) feet when planted. Diameter at breast height (DBH) shall be measured as defined by the International Society of Arboriculture.
3. Types: Developments shall include a variety of street trees. The trees planted shall be chosen from those listed in 16.142.080 of this Code.
4. Required Street Trees and Spacing:
 - a. The minimum spacing is based on the maximum canopy spread identified in the recommended street tree list in section 16.142.080 with the intent of providing a continuous canopy without openings between the trees. For example, if a tree has a canopy of forty (40) feet, the spacing between trees is forty (40) feet. If the tree is not on the list, the mature canopy width must be provided to the planning department by a certified arborist.

- b. All new developments shall provide adequate tree planting along all public streets. The number and spacing of trees shall be determined based on the type of tree and the spacing standards described in a. above and considering driveways, street light locations and utility connections. Unless exempt per c. below, trees shall not be spaced more than forty (40) feet apart in any development.
- c. A new development may exceed the forty-foot spacing requirement under section b. above, under the following circumstances:
 - (1) Installing the tree would interfere with existing utility lines and no substitute tree is appropriate for the site; or
 - (2) There is not adequate space in which to plant a street tree due to driveway or street light locations, vision clearance or utility connections, provided the driveways, street light or utilities could not be reasonably located elsewhere so as to accommodate adequate room for street trees; and
 - (3) The street trees are spaced as close as possible given the site limitations in (1) and (2) above.
 - (4) The location of street trees in an ODOT or Washington County right-of-way may require approval, respectively, by ODOT or Washington County and are subject to the relevant state or county standards.
 - (5) For arterial and collector streets, the City may require planted medians in lieu of paved twelve-foot wide center turning lanes, planted with trees to the specifications of this subsection.

B. Removal and Replacement of Street Trees.

The removal of a street tree shall be limited and in most cases, necessitated by the tree. A person may remove a street tree as provided in this section. The person removing the tree is responsible for all costs of removal and replacement. Street trees less than five (5) inches DBH can be removed by right by the property owner or his or her assigns, provided that they are replaced. A street tree that is removed must be replaced within six (6) months of the removal date.

- 1. Criteria for All Street Tree Removal for trees over five (5) inches DBH. No street tree shall be removed unless it can be found that the tree is:
 - 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. Defined as a nuisance per City nuisance abatement ordinances.
- 2. Street trees between five (5) and ten (10) inches DBH may be removed if any of the criteria in 1. above are met and a tree removal permit is obtained.
 - a. The Tree Removal Permit Process is a Type I land use decision and shall be approved subject to the following criteria:
 - (1) The person requesting removal shall submit a Tree Removal Permit application that identifies the location of the tree, the type of tree to be

removed, the proposed replacement and how it qualifies for removal per Section 1. above.

- (2) The person shall post a sign, provided by the City, adjacent to the tree for ten (10) calendar days prior to removal that provides notice of the removal application and the process to comment on the application.
 - (3) If an objection to the removal is submitted by the City or to the City during the ten (10) calendar day period, an additional evaluation of the tree will be conducted by an arborist to determine whether the tree meets the criteria for street tree removal in Section 1. above. The person requesting the Tree Removal Permit shall be responsible for providing the arborist report and associated costs.
 - (4) Upon completion of the additional evaluation substantiating that the tree warrants removal per Section 1. above or if no objections are received within the ten-day period, the tree removal permit shall be approved.
 - (5) If additional evaluation indicates the tree does not warrant removal, the Tree Removal Permit will be denied.
3. Street trees over ten (10) inches DBH may be removed through a Type I review process subject to the following criteria.
- a. The applicant shall provide a letter from a certified arborist identifying:
 - (1) The tree's condition,
 - (2) How it warrants removal using the criteria listed in Section 1. above, and identifying any reasonable actions that could be taken to allow the retention of the tree.
 - b. The applicant shall provide a statement that describes whether and how the applicant sought assistance from the City, HOA or neighbors to address any issues or actions that would enable the tree to be retained.
 - c. The person shall post a sign, provided by the City, adjacent to the tree for ten (10) calendar days prior to removal that provides notice of the removal application and the process to comment on the application.
 - d. Review of the materials and comments from the public confirm that the tree meets the criteria for removal in Section 1. above.

C. Homeowner's Association Authorization.

The Planning Commission may approve a program for the adoption, administration and enforcement by a homeowners' association (HOA) of regulations for the removal and replacement of street trees within the geographic boundaries of the association.

1. An HOA that seeks to adopt and administer a street tree program must submit an application to the City. The application must contain substantially the following information:
 - a. The HOA must be current and active. The HOA should meet at least quarterly and the application should include the minutes from official HOA Board meetings for a period not less than eighteen (18) months (six (6) quarters) prior to the date of the application.

- b. The application must include proposed spacing standards for street trees that are substantially similar to the spacing standards set forth in ~~16.142.050~~ 16.142.060.A above.
 - c. The application must include proposed street tree removal and replacement standards that are substantially similar to the standards set forth in ~~16.142.050~~ 16.142.060.B above.
 - d. The application should include a copy of the HOA bylaws as amended to allow the HOA to exercise authority over street tree removal and replacement, or demonstrate that such an amendment is likely within ninety (90) days of a decision to approve the application.
 - e. The application should include the signatures of not less than seventy-five (75) percent of the homeowners in the HOA in support of the application.
 2. An application for approval of a tree removal and replacement program under this section shall be reviewed by the City through the Type IV land use process. In order to approve the program, the City must determine:
 - a. The HOA is current and active.
 - b. The proposed street tree removal and replacement standards are substantially similar to the standards set forth in ~~16.142.050~~ 16.142.060.B above.
 - c. The proposed street tree spacing standards are substantially similar to the standards set forth in ~~16.142.050~~ 16.142.060.A above.
 - d. The HOA has authority under its bylaws to adopt, administer and enforce the program.
 - e. The signatures of not less than seventy-five (75) percent of the homeowners in the HOA in support of the application.
 3. A decision to approve an application under this section shall include at least the following conditions:
 - a. Beginning on the first January 1 following approval and on January 1 every two (2) years thereafter, the HOA shall make a report to the city planning department that provides a summary and description of action taken by the HOA under the approved program. Failure to timely submit the report that is not cured within sixty (60) days shall result in the immediate termination of the program.
 - b. The HOA shall comply with the requirements of Section 12.20 of the Sherwood Municipal Code.
 4. The City retains the right to cancel the approved program at any time for failure to substantially comply with the approved standards or otherwise comply with the conditions of approval.
 - a. If an HOA tree removal program is canceled, future tree removals shall be subject to the provisions of section ~~16.142.050~~ 16.142.060.
 - b. A decision by the City to terminate an approved street tree program shall not affect the validity of any decisions made by the HOA under the approved program that become final prior to the date the program is terminated.
 - c. If the city amends the spacing standards or the removal and replacement standards in this section (SZCDC ~~16.142.050~~) the City may require that the HOA amend the corresponding standards in the approved street tree program.

5. An approved HOA tree removal and replacement program shall be valid for five (5) years; however the authorization may be extended as approved by the City, through a Type II Land Use Review.

D. Exemption from Replacing Street Trees.

A street tree that was planted in compliance with the Code in effect on the date planted and no longer required by spacing standards of section A.4. above may be removed without replacement provided:

1. Exemption is granted at the time of street tree removal permit or authorized homeowner's association removal per Section ~~16.142.050~~ 16.142.060.C. above.
2. The property owner provides a letter from a certified arborist stating that the tree must be removed due to a reason identified in the tree removal criteria listed in Section ~~16.142.050~~ 16.142.060.B.1. above, and
3. The letter describes why the tree cannot be replaced without causing continued or additional damage to public or private utilities that could not be prevented through reasonable maintenance.

E. Notwithstanding any other provision in this section, the city manager or the manager's designee may authorize the removal of a street tree in an emergency situation without a tree removal permit when the tree poses an immediate threat to life, property or utilities. A decision to remove a street tree under this section is subject to review only as provided in ORS 34.100.

F. Trees on Private Property Causing Damage.

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. Any order for the removal or cutting of such trees, woodlands or other vegetation, shall be made and reviewed under the applicable City nuisance abatement ordinances.

G. 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 16.02.040, and other penalties defined by applicable ordinances and statutes, provided that each tree so abused shall be deemed a separate offense.

16.142.070 Trees on Property Subject to Certain Land Use Applications

A. Generally

The purpose of this Section is to establish processes and standards which will minimize cutting or destruction of 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.

B. Applicability

~~1. All Planned Unit Developments~~ applications including a Type II - IV land use review actions subject to Chapter 16.40, site developments subject to Section 16.92.020, and subdivisions subject to Chapter 16.122, 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 codes, policies and standards of the City Comprehensive Plan, ~~as determined by the City. This Section 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 C5 of this Section, which shall apply to all building permits issued after the effective date to that Ordinance.~~

2BC. Inventory

1. To assist the City in making its determinations on the retention of trees and woodlands, land use applications for including Type II – IV development shall include a tree and woodland inventory and report. The report shall be prepared by a qualified professional certified arborist and must contain the following information:

- a. Tree size (in DBH and canopy area)
- b. Tree species
- c. The condition of the tree with notes as applicable explaining the assessment
- d. The location of the tree on the site
- e. The location of the tree relative to the planned improvements
- f. Assessment of whether the tree must be removed to accommodate the development
- g. Recommendations on measures that must be taken to preserve trees during the construction that are not proposed to be removed.

~~2.~~ ~~Trees removed on the property within one year prior to the submittal of the development application shall also be included in the inventory. In the event that adequate data is not available to address the specific inventory requirements below, an aerial photo may be utilized to determine the approximate number, canopy size and type of trees on the property.~~

~~23.~~ ~~In addition to the general requirements of this Section, the tree and woodland inventory's mapping and report shall also include, but is not limited to, the specific information outlined in the appropriate land use application materials packet.~~

33. Definitions ~~For~~ for the inventory purposes of this Section

~~1a.~~ ~~a~~ A tree is a living woody plant having a trunk diameter as specified below at ~~four and one-half (4 1/2) feet above mean ground level at the base of the trunk, also known as~~ Diameter at Breast Height (DBH). Trees planted for commercial agricultural purposes, and/or those subject to farm forest deferral, such as nut and fruit orchards and Christmas tree farms, are excluded from this definition and from regulation under this Section, as are any living woody plants under ~~five-six (56) inches at~~ DBH.

~~a(1).~~ ~~Douglas fir, ponderosa pine, western red cedar, white oak, big leaf maple, American chestnut, ten (10)~~ All trees six (6) inches or greater shall be inventoried.

~~b.~~ ~~All other tree species, five (5) inches or greater.~~

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

~~2b.~~ For the inventory purposes of this Section, a 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-six (56)~~ inches or greater at DBH. Woodlands planted for commercial agricultural purposes and/or subject to farm forest deferral, such as nut and fruit orchards and Christmas tree farms, are excluded from this definition, and from regulation under this Section.

- c. A large stature tree is over 20 feet tall and wide with a minimum trunk diameter of 30 inches at DBH.

D. Retention requirements

1. Trees may be considered for removal to accommodate the development including buildings, parking, walkways, grading etc., ~~regardless provided the development satisfies~~ of D.2 or D.3, below.

~~E12.~~ —Required Tree Canopy - Residential Developments (Single Family Attached, Single Family Detached and Two – Family)

Each net development site shall provide a variety of trees to achieve a minimum total tree canopy of 40 percent. The canopy percentage is based on the expected mature canopy of each tree by using the equation πr^2 to calculate the expected square footage of canopy for each tree. The expected mature canopy is counted for each tree regardless of an overlap of multiple tree canopies.

~~This~~ The canopy requirement can be achieved by retaining existing trees or planting new trees. Required street trees can be used toward the total on site canopy required to meet this standard. The expected mature canopy spread of the new trees will be counted toward the needed canopy cover. A certified arborist or other qualified professional shall provide the estimated tree canopy of the proposed trees to the planning department for review.

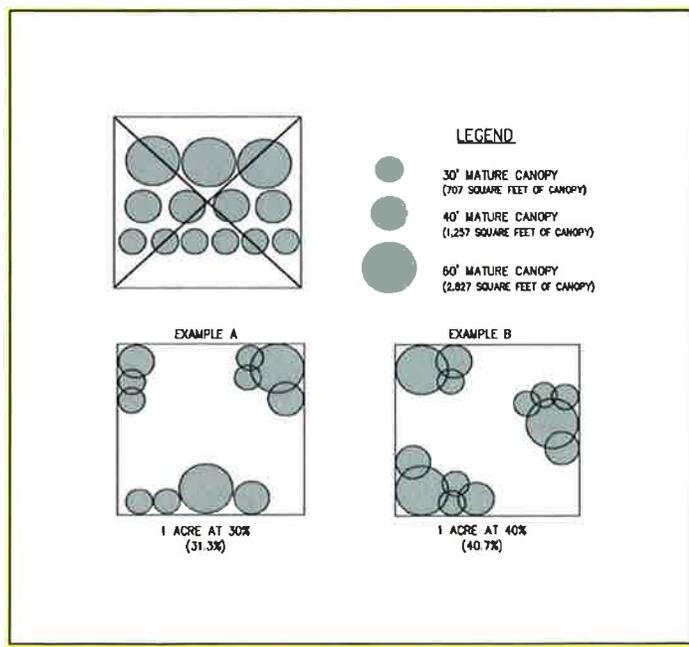
~~D23.~~ —Required Tree Canopy – Non-Residential and Multi-family Developments

Each net development site shall provide a variety of trees to achieve a minimum total tree canopy of 30 percent. The canopy percentage is based on the expected mature canopy of each tree by using the equation πr^2 to calculate the expected square footage of each tree. The expected mature canopy is counted for each tree even if there is an overlap of multiple tree canopies.

~~This~~ The canopy requirement can be achieved by retaining existing trees or planting new trees. Required landscaping trees can be used toward the total on site canopy required to meet this standard. The expected mature canopy spread of the new trees will be counted toward the ~~needed~~ required canopy cover. A certified arborist or other qualified professional shall provide an estimated tree canopy for all proposed trees to the planning department for review as a part of the land use review process.

	<u>Residential (single family & two family developments)</u>	<u>Old Town & Infill developments</u>	<u>Commercial, Industrial, Institutional Public</u>
--	--	---	---

			and Multi-family
Canopy Requirement	40%	N/A	30%
Counted Toward the Canopy Requirement			
Street trees included in canopy requirement	Yes	N/A	No
Landscaping requirements included in canopy requirement	N/A	N/A	Yes
Existing trees onsite	Yes x2	N/A	Yes x2
Planting new trees onsite	Yes	N/A	Yes
<p>Mature Canopy in Square Feet Equation πr^2 or $(3.14159 * \text{radius}^2)$ (This is the calculation to measure the square footage of a circle. The Mature Canopy is given in diameter. In gardening and horticulture reference books, therefore to get the radius you must divide the diameter in half.</p>			
<p>Canopy Calculation Example: Pin Oak Mature canopy =35' $(3.14159 * 17.5^2) = 962$ square feet</p>			



4. The City may determine that, regardless of D.1 through D.3, that certain trees or woodlands ~~(stands of trees)~~ may be required to be retained. The basis for such a decision shall include: 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~~ Clean Water Services stormwater management plans and standards of the City Comprehensive Plan, or
 - d. Necessary as ~~in required~~ buffers between otherwise incompatible land uses, or from natural areas, wetlands and greenways, or
 - e. Otherwise merit retention because of unusual size, size of the tree stand, historic association or species type, habitat or wildlife preservation considerations, or some combination thereof, as determined by the City.
5. Tree retention requirements for properties located within the Old Town Overlay or projects subject to the infill standards of Chapter 16.68 are only subject to retention requirements identified in D.4. above.

BE. 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 subsection A of this Section shall include a tree and woodland inventory and report, in both map and narrative form, addressing the standards in subsection C, C or D of this Section (above), 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 16.136.030.~~
- ~~2. Trees removed on the property within one year prior to the submittal of the development application shall also be included in the inventory. In the event that adequate data is not available to address the specific inventory requirements below, an aerial photo may be utilized to determine the approximate number, size and type of trees on the property.~~
- ~~23. 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 outlined in the appropriate land use application materials packet. 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 subsections A2 through 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 subsection D of this Section, including a description of how proposed replacement trees will be successfully replanted and maintained on the site.~~

~~CE. Tree and Woodland Retention~~

~~1. The review authority 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 subsection D1 through D3 of this Section, or acquire said trees and woodlands as per subsection D4 of this Section. Prior to making any such determinations or recommendations, the review authority may seek 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 16.142.050B.~~

~~2. To require retention of trees or woodlands as per subsection B D of this Section, 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~~

- ~~e. 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.~~

~~4156. 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 subsection C2-D of this Section, which may be removed or shall be retained as per subsection B-D of this Section, and which shall be mitigated as per subsection D of this Section, 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. At a minimum, trees to be protected shall have the area within the drip line of the tree protected from grading, stockpiling, and all other construction related activity unless specifically reviewed and recommended by a certified arborist.~~

~~5. At the time of building permit issuance for any development of a site containing trees or woodlands identified as per subsection C of this Section, 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, selective pruning and root treatments, excavation techniques, temporary drainage systems, and like methods. Minimally necessary activities will typically entail tree removal for the purposes of construction of 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 16.74.010, 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 Chapter 16.84, subject to the satisfaction of all other applicable criteria in Chapter 16.84.~~

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.

E. Tree Preservation Incentive. Retention of existing native trees on site which are in good health can be used to achieve the required mature canopy requirement of the development. The expected mature canopy can be calculated twice for existing trees. For example, if one existing tree with an expected mature canopy of 10 feet (78.5 square feet) is retained it will count as twice the existing canopy (157 square feet).

F. Additional Preservation Incentives

1. General Provisions. To assist in the preservation of trees, the City may apply one or more of the following flexible standards as part of the land use review approval. To the extent that the standards in this section conflict with the standards in other sections of this Title, the standards in this section shall apply except in cases where the City determines there would be an unreasonable risk to public health, safety, or welfare. Flexibility shall be requested by the applicant with justification provided within the arborist's tree preservation and protection report as part of the land use review process and is only applicable to trees that are eligible for credit towards the effective tree canopy cover of the site. A separate adjustment application as outlined in Section 16.84.030.A is not required.

2. Flexible Development Standards. The following flexible standards are available to applicants in order to preserve trees on a development site. These standards cannot be combined with any other reductions authorized by this code.

a. Lot size averaging. To preserve existing trees in the development plan for any Land Division under Division VII, lot size may be averaged to allow lots less than the minimum lot size required in the underlying zone as long as the average lot area is not less than that allowed by the underlying zone. No lot area shall be less than 80 percent of the minimum lot size allowed in the zone;

b. Setbacks. The following setback reductions will be allowed for lots preserving existing trees using the criteria in subsection (1) below. The following reductions shall be limited to the minimum reduction necessary to protect the tree.

(1) Reductions allowed:

(a.) Front yard – up to a 25 percent reduction of the dimensional standard for a front yard setback required in the base zone. Setback of garages may not be reduced by this provision.

(b.) Interior setbacks - up to a 40 percent reduction of the dimensional standards for an interior side and/or rear yard setback required in the base zone.

(c.) Perimeter side and rear yard setbacks shall not be reduced through this provision.

c. Approval criteria:

(1.) A demonstration that the reduction requested is the least required to preserve trees; and

(2.) The reduction will result in the preservation of tree canopy on the lot with the modified setbacks; and

(3.) The reduction will not impede adequate emergency access to the site and structure.

3. Sidewalks. Location of a public sidewalk may be flexible in order to preserve existing trees or to plant new large stature street trees. This flexibility may be accomplished through a curb-tight sidewalk or a meandering public sidewalk easement recorded over private property and shall be reviewed on a case by case basis in accordance with the provisions of the Engineering Design Manual, Street and Utility Improvement Standards. For preservation, this flexibility shall be the minimum required to achieve the desired effect. For planting, preference shall be given to retaining the planter strip and separation between the curb and sidewalk wherever practicable. If

a preserved tree is to be utilized as a street tree, it must meet the criteria found in the Street Tree section, 16.142.060.

4. Residential Density Transfer. Up to 100% density transfer is permitted from the preserved portion of a significant tree stand within the development site to the buildable area of the development site.

a. Density may be transferred provided that:

(1.) At least 50% of the significant tree stand's canopy within the development site (and not within the sensitive lands or areas that areas dedicated to the City) is preserved;

(2.) The project arborist certifies the preservation is such that the connectivity and viability of the remaining significant tree stand is maximized;

(3.) Maximum density for the net site area including the Significant tree stand is not exceeded;

(4.) The lots must maintain an 80 percent minimum lot size;

(5.) The Significant tree stand is protected through an instrument or action subject to approval by the City Manager or the City manager's designee that demonstrates it will be permanently preserved and managed as such:

(1.) A conservation easement;

(2.) An open space tract;

(3.) A deed restriction; or

(4.) Through dedication and acceptance by the City.

b. The proposed development may include the following:

(1.) Zero lot line single family detached housing for the portion of the development site that receives the density transfer.

(2.) The following variations from the base zone development standards are permitted:

(1.) Up to 25% reduction of average minimum lot width;

(2.) Up to 10 foot minimum front yard setback

(3.) Up to 33% reduction in side or rear yard, however the side yard cannot be less than three feet;

(4.) Up to four foot reduction in the garage setback;

(5.) Up to 20% increase in maximum height as long as the height requirement adjustment complies with the State Building Code.

(3.) When the portion of the development receives the density transfer abuts a developed residential district with the same or lower density zoning, the average area of abutting perimeter lots shall not be more than 150% of the adjacent zoning.

4. 5. Adjustments to Commercial and Industrial development Standards. Adjustments to Commercial or Industrial Development standards of up to 20 feet additional building height are permitted provided;

a. At least 50% of a Significant Tree stand's of canopy within a development site (and not also within the sensitive lands or areas that areas dedicated to the City) is preserved;

b. The project arborist or qualified professional certifies the preservation is such that the connectivity and viability of the remaining significant tree stand is maximized;

c. Applicable buffering and screening requirements are met;

- d. Any height adjustments comply with state building codes;
- e. Significant tree stands are protected through an instrument or action subject to approval by the City Manager or the City manager's designee that demonstrates it will be permanently preserved and managed as such;
 - (1.) A conservation easement;
 - (2.) An open space tract;
 - (3.) A deed restriction; or
 - (4.) Through dedication and acceptance by the City.

~~a.—~~

~~D.—Mitigation~~

- ~~1. The City may require mitigation for the removal of any trees and woodlands identified as per subsection C of this Section 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 caliper inch 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 16.142.050B2. Said replacement trees shall be in addition to trees along public streets required by Section 16.142.050A. 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 submitted, 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 subsection D of this Section.~~

G. Tree Protection During Development

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 protected 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. At a minimum, trees to be protected shall have the area within the drip line of the tree protected from grading, stockpiling, and all other construction related activity unless specifically reviewed and recommended by a certified arborist or other qualified professional. Any work within the dripline of the tree shall be supervised by the project arborist or other qualified professional being onsite during construction.

EH. Penalties

Violations of this Section shall be subject to the penalties defined by Section 16.02.040, provided that each designated tree or woodland unlawfully removed or cut shall be deemed a separate offense. (Ord. 2006-021; Ord. 91-922, § 3)

16.142.080 Trees on Private Property -- not subject to a land use action

A. Generally

In general, existing mature trees on private property shall be retained unless determined to be a hazard to life or property. For the purposes of this section only, existing mature trees shall be considered any deciduous tree greater than ten (10) inches diameter at the breast height (dbh) or any coniferous tree greater than twenty (20) inches dbh.

B. Residential (Single Family and Two-Family) Standards

In the event a property owner determines it necessary to remove existing mature trees on their property that are not a hazard, they may remove the trees as described below;

1. Removal of up to five (5) trees, or up to 10 percent of the number of trees on site, whichever is greater, within a twelve month period. No review or approval required provided that trees are not located within a natural resource area wetland, floodplain or protected through prior land use review per section 3.b. (1.) – (5.) below, that the planning department is notified in writing 48 hours prior to removing the tree, including the property address, property owner name and contact information, and provided with the type and size of the tree. Failure to notify the Planning Department shall not result in a violation of this code unless it is determined that the tree removal is located within a natural resource area wetland, floodplain or protected through prior land use review per section 3.b. (1.) – (5.) below, or in excess of that permitted outright.
2. Removal of six (6) or more trees, or more than 10 percent of the number of trees on site, whichever is greater, within a twelve month period except as allowed in subsection 1, above.
 - a. The applicant shall submit the following:
 - (1.) A narrative describing the need to remove the tree(s).
 - (2.) A statement describing when and how the Homeowner's Association (HOA) was informed of the proposed tree cutting and their response. If there is not an active HOA, the applicant shall submit as statement indicating that there is not a HOA to contact.
 - (3.) A plan showing the location of the tree and
 - (4.) The applicant shall submit a replacement tree plan. Half of the number of trees removed shall be replaced on site with native trees within six months from the date of removal.
3. The City may determine that, regardless of B.1 through B.2, that certain trees or stands of trees may be required to be retained.

a. If removal is proposed within a ~~natural resource area wetland, floodplain or protected through prior land use review per section 3.b. (1.) – (5.) below,~~ the applicant shall submit documentation from a licensed qualified professional in natural resources management such as a wetland scientist, a botanist, or biologist, discussing the proposed tree removal and how it would or would not compromise the integrity of the resource. It shall also discuss the feasibility and practicality of tree removal relative to policies and standards of the City Comprehensive Plan, listed in section 3.b. below.

b. The basis for such a City decision shall include; specific findings that retention of said trees or woodlands furthers the purposes and goals of this Section, is feasible and practical relative to other policies and standards of the City Comprehensive Plan, and are:

- (1.) 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
- (2.) 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
- (3.) 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 Clean Water Services stormwater management plans and standards of the City Comprehensive Plan, or
- (4.) Necessary ~~asin required~~ buffers between otherwise incompatible land uses, or from natural areas, wetlands and greenways, or
- (5.) Otherwise merit retention because of unusual size, size of the tree stand, historic association or species type, habitat or wildlife preservation considerations, or some combination thereof, as determined by the City.

~~up to 5 trees per acre per calendar year by right, not to exceed 100 inches total dbh. The property owner shall document the number of trees and the date removed for their records and shall notify the City Planning Department 48 hours prior to tree removal. If the property owner determines that it is necessary to remove more trees than is permitted by right, the act is considered to be an alteration of the exterior appearance of the property and site plan review is required. In that instance, the requirements of Section 16.142.060 shall apply. The review authority shall be determined by the square footage of the area to be disturbed.~~

~~(Ord. 2006-021)~~

C. Non-Residential and Multi-family Standards

In the event a property owner determines it necessary to remove existing mature trees on their property that are not a hazard, they may remove the trees as described below;

1. Trees required by a land use decision after the effective date of this code can be removed. Any trees removed shall be replaced within six months of removing the tree with an appropriate tree for the area.
2. Trees that were not required by land use or planted prior to the effective date of this code can be removed after receiving approval from the City of Sherwood.
 - a. Removal of up to 25 percent of the trees on site can be removed and replaced through a type I review process. The applicant shall submit the following;
 - (1.) A narrative describing the need to remove the trees,

- (2.) A plan showing the location of the trees and
 - (3.) A replacement tree plan. One-half (1/2) of the number of trees removed shall be replaced. The replacement shall take place on site with similar trees within six months from the date of removal.
 - (4.) Exemption to replacement. If less than one-half (1/2) of the trees removed will be replanted due to site crowding and constraints precluding the healthy growth of additional trees, a report from a qualified professional shall describe the site specific crowding or constraints, and provide a report to the City requesting the exemption in order to be exempt from replacing the removed trees.
 - b. Removal of more than 25 percent of the trees on site can be removed and replaced through a type II review process. The applicant shall submit the following:
 - (1.) An arborists report describing the need to remove the trees. The cause for removal must be necessitated by the trees,
 - (2.) A plan showing the location of the tree and
 - (3.) A replacement tree plan. Two – thirds of the number of trees removed shall be replaced on site with similar trees within six months from the date of removal.
 - (4.) Exemption to replacement. If less than one-half (1/2) of the trees removed will be replanted due to site crowding and constraints precluding the healthy growth of additional trees, a report from a qualified professional shall describe the site specific crowding or constraints, and provide a report to the City requesting the exemption in order to be exempt from replacing the removed trees.
3. The City may determine that, regardless of C.1 through C.2, that certain trees or stands of trees may be required to be retained.
 - a. The applicant shall submit documentation from a licensed qualified professional in natural resources management such as wetland scientist, botanist or biologist, discussing the proposed tree removal within the context of the proposed land use plan and relative to other policies and standards of the City Comprehensive Plan, listed in section 3.b. below.
 - b. The basis for such a City decision shall include; 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:
 - (1.) Within a Significant Natural Area, 100-year floodplain, City gateway, jurisdictional wetland or other existing or future public park or natural area designated by the City Comprehensive Plan, or
 - (2.) 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
 - (3.) 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 Clean Water Services

stormwater management plans and standards of the City Comprehensive Plan, or

- (4.) Necessary asin required buffers between otherwise incompatible land uses, or from natural areas, wetlands and greenways, or
- (5.) Otherwise merit retention because of unusual size, size of the tree stand, historic association or species type, habitat or wildlife preservation considerations, or some combination thereof, as determined by the City.