

Draft Purpose Statement for Proposed Tree Ordinance

April 16, 2009

This is the language that the majority of the Trees Task Force voted to approve at the April 9, 2009, meeting. Changes to the prior draft include the selection of the second (A) from that prior draft, as well as revisions to (D) and deletion of the staff comments.

1020.01 PURPOSE

Section 1020 is adopted to:

- A. Balance the goal of maintaining, preserving, and enhancing the urban tree canopy with the reasonable removal of trees for development, solar access, view protection, health, and safety;
- B. Advance the County's sustainability objectives by protecting wildlife habitat, air and water quality, and ground water recharge; controlling surface water run-off; and reducing the urban heat island effect;
- C. Preserve trees for their contribution to property values, and for their natural beauty and historical significance;
- D. Encourage mitigation of negative impacts of authorized tree removal to maintain and enhance the tree canopy in urban unincorporated Clackamas County;
- E. Contribute to County compliance with federal, state, and regional environmental regulations;
- F. Increase public awareness of the benefits of a healthy urban tree canopy;
- G. Allow farming practices and farm uses in zoning districts where agricultural uses are a primary use;
- H. Allow the continued management of commercial forestlands for forest uses, including the harvesting of forest tree species; and
- I. Implement the Oregon Forest Practices Act inside the Portland Metropolitan Urban Growth Boundary.

Draft Area of Application Subsection for Proposed Tree Ordinance

June 25, 2009

1020.02 AREA OF APPLICATION

Section 1020 applies to all land inside the Portland Metropolitan Urban Growth Boundary, except

A. A lot of record that is:

1. Located in an urban low density residential zoning district;
2. Developed with a single-family dwelling; and
3. Not divisible. A lot of record is “not divisible” if:
 - a. It is not divisible under Section 1012; or
 - b. It is not divisible because a deed restriction, or conditions covenants, or restrictions, prohibit division; and

B. Land that is receiving a farm or forest property tax deferral, or a lot of record that complies with Subsections 1020.02(A)(1) and (2) but does not comply with Subsection 1020.02(A)(3), provided that:

1. If a tree that would otherwise be regulated under Section 1020 is removed pursuant to this exemption, no application for a partition, subdivision, or conditional use shall be approved on the subject property for a period of five **(10?)** years after the last such tree is removed, and the property shall be prohibited from being developed with anything other than a single-family dwelling, or a use accessory to a single-family dwelling, for a period of five **(10?)** years after the last such tree is removed; and
2. Prior to the removal of a tree that would otherwise be regulated under Section 1020, the property owner shall record a deed restriction acknowledging these development limitations.

**Draft Exempt Trees Subsection for
Proposed Tree Ordinance**
July 1, 2009

1020.04 EXEMPT TREES

The following trees are exempt from the requirements of Section 1020:

- A. Two trees on a lot of record, or 10 percent of the total number of trees on a lot of record, whichever is greater, per two-year period. The two-year period shall commence with the removal of the first tree;
- B. Trees that are less than eight inches in diameter at breast height (4.5 feet) as measured above the ground level. However, this exemption shall not apply to trees planted as part of a mitigation plan approved pursuant to Section 1020.XX;
- C. Trees required to be removed by state or federal law;
- D. Orchard trees and Christmas trees, provided that such trees are grown for commercial agricultural production;
- E. Nuisance trees;
- F. Dead trees; and
- G. Diseased or hazardous trees, if the property owner first provides a report to the County Planning Division from an International Society of Arboriculture (ISA) Certified Arborist verifying that the tree qualifies under this exemption. If a hazardous tree is removed in response to an emergency, the property owner may provide the required arborist's report, or other credible evidence that the tree was hazardous, within 30 days after the tree's removal.

Draft Tree Removal Permits Subsection for Proposed Tree Ordinance

July 1, 2009

Staff notes are in italics. As directed by the Task Force, staff began with the City of Wilsonville's tree permit review criteria. What follows is staff's initial edit of those provisions along with comments and questions to guide our discussion at the July 9 Task Force meeting. The initial edit attempted to retain those provisions that are clearly approval criteria and eliminate duplicative provisions, some of which may appear in other sections of the ordinance. In addition, introductory language was added as discussed by the Task Force.

1020.05 TREE REMOVAL PERMITS

- A. No tree shall be removed without a Tree Removal Permit (TRP), unless such removal is exempt pursuant to Subsection 1020.04.
- B. The Planning Director shall approve a TRP, pursuant to Subsection 1305.02, if the applicant provides evidence substantiating compliance with at least one of the following criteria:

Subsection 1305.02 is a procedural section of the Zoning and Development Ordinance, which will be part of our subsequent discussion on administration of the tree code.

- 1. Tree removal is necessary for the construction of a building, structure, or other improvement, and there is no feasible and reasonable location alternative or design option on the subject property for the proposed building, structure, or other improvement; or a tree is located too close to existing or proposed buildings or structures, or creates unsafe vision clearance;

It appears that the words after the semi-colon are unrelated to the need to evaluate feasible and reasonable location alternatives or design options. Staff suggests clearly linking the two or creating two separate criteria. Staff would argue that the most significant words in this provision are "feasible" and "reasonable." Dictionary definitions will apply unless the terms are defined in the code. Here are some examples from an online reference site:

Feasible:

- 1. *capable of being done, effected, or accomplished: a feasible plan.*
- 2. *probable; likely: a feasible theory.*
- 3. *suitable: a road feasible for travel.*

Reasonable:

1. agreeable to reason or sound judgment; logical: a reasonable choice for chairman.
2. not exceeding the limit prescribed by reason; not excessive: reasonable terms.
3. moderate, esp. in price; not expensive: The coat was reasonable but not cheap.
4. endowed with reason.
5. capable of rational behavior, decision, etc.

Currently the word “practicable” is used elsewhere in the zoning ordinance and it is defined as follows: “Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose and probable impact on ecological functions.”

This definition would need to be modified somewhat (ecological functions relate specifically to Habitat Conservation Areas), but it provides a possible framework for our use here.

Staff reviewed other examples of approval criteria for tree removal permits. The basic concept behind a couple of them is similar to that of the City of Wilsonville’s. One—a model code on the website of Partnerships for Change Sustainable Communities—may have been used by Wilsonville in the creation of its ordinance (strong similarities). The model includes the following:

“Tree removal or transplanting shall be limited to the following instance:

- a. **When removal or transplanting is necessary for the construction of a building, structure, or other site improvement, and the permit applicant has shown there is no feasible and prudent location alternative on-site for a proposed building, structure or other site improvement; or,**
- b. **The tree is dead, in decline, in danger of falling, is located too close to existing buildings or structures, interferes with existing utility service or drainage, creates unsafe vision clearance, or does not conform to other (community) ordinances or regulations.”**

Fairfax County, Virginia, recently received a National Association of Counties Award for their tree ordinance. The ordinance includes the following:

“Deviations, in whole or part, from the tree preservation target may be requested under the following conditions:

1. **Meeting the tree preservation target would prevent the development of uses or densities otherwise allowed by the Zoning Ordinance;**
2. **Meeting the tree preservation target would require the preservation of trees and forested areas that do not meet standards for health, structural condition, and other vegetation and risk management requirements.**
3. **Construction activities could be reasonably expected to impact existing trees or forested areas used to meet the tree preservation target to the extent they would not likely survive in a healthy and structurally sound manner for a minimum of ten (10) years in accordance with the post-development standards for trees and forested areas.”**

- B. The tree proposed for removal interferes with the healthy growth of other trees, existing utility service or drainage, or utility work in a previously dedicated right-of-way, and it is not feasible to preserve the tree; or

Should there be a blanket exemption for tree removal within a public right-of-way?

- C. Tree removal is reasonable under the circumstances.

This provision is very broad. In lieu of this general criterion, specific references could be included to solar access, view protection and health as the Task Force has discussed previously. Here are the provisions suggested by Bill Howe at the last meeting, with some staff edits:

- C. Tree removal is necessary to provide solar access to active or passive solar collection features;

For any structure?

- D. Tree removal is necessary to preserve, protect, or enhance the view from a dwelling; or

What qualifies as a “view?”

- E. Tree removal is necessary to allow more light in windows of a dwelling when a resident of the dwelling has a medical condition such as seasonal affective disorder or Vitamin D deficiency.

Should a healthcare provider’s statement be required?

**Draft Definitions Subsection for
Proposed Tree Ordinance**
July 1, 2009

1020.03 DEFINITIONS

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

- A. Emergency: Any manmade or natural event or circumstance causing or threatening loss of life, or injury to person or property.
- B. Hazardous Tree: A tree that, by reason of disease, infestation, age, or other condition, presents a known or immediate hazard to people or property.
- C. Nuisance Tree: Any tree of the following species: single seed hawthorn (*Crataegus monogyna*), English holly (*Ilex aquifolium*), plums (*Prunus* hybrids), sweet cherry (*Prunus avium*), English laurel (*Prunus laurocerasus*), and Portuguese laurel (*Prunus lusitanica*).
- D. Topping: The severe cutting of the top or limbs within a tree's crown to such a degree so as to remove the natural canopy or disfigure the tree.
- E. Tree:

Here are several options culled from different sources:

- **Any wooded plant**
 - **Any woody plant with at least one well-defined stem**
 - **Any standing woody plant**
 - **A plant having a permanently woody main stem or trunk, ordinarily growing to a considerable height, and usually developing branches at some distance from the ground**
 - **Any self-supporting woody plant which visually produces one main trunk and a more or less distinct and elevated head with many branches that typically reach at least 15 feet in height at maturity.**
- F. Tree Removal: The act of removing a tree by digging up or cutting down, or the effective removal through damage to a tree or its root system. Effective removal shall include any procedure the natural result of which is to cause the death or substantial destruction of a tree, including topping and severe cutting back of limbs to such a degree as to destroy or adversely affect the normal growth pattern of the tree. Tree removal does not include routine pruning or trimming.