

Clackamas County Trees Task Force
Draft Proposed Tree Ordinance
September 10, 2009
1020 **TREES**

1020.01 VALUE OF TREES

Clackamas County is unique in Oregon, having both a large rural and growing urban environment. Natural growth of trees and the historical planting of trees by residents have produced significant innumerable environmental, social, economic, property value and aesthetic benefits to communities throughout the County. These benefits, particularly those related to the environmental quality, are extraordinarily important during this time of significant global climate change. A healthy urban forest, especially one having mature trees, is essential to maintaining a healthy community and a vibrant functioning ecosystem. A balance between population growth and conservation of our important natural resources, for current and future generations, is necessary to protect the vital resource of our urban forest. Responsible land development focusing on conservation of trees is the foundation for this Ordinance.

1020.01 02 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 easement protection, and safety;~~
- A. Promote tree conservation by emphasizing preservation, maintenance and enhancement of the urban tree canopy while accommodating development, solar access, view easement, protection, public 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, ~~and supporting community sense of place and neighborhood identity;~~

- ~~C. Preserve trees for their contribution to property values, and for their natural beauty and historical significance;~~
- C. Preserve trees for their contribution toward enhancing aesthetic, cultural, historic, and property values of homes, businesses, and neighborhoods, as well as protecting individual and groves of trees that have historical significance;
- ~~D. Encourage mitigation of negative impacts of authorized tree removal to maintain and enhance the tree canopy in urban unincorporated Clackamas County;~~
- D. Provide mitigation plans for trees impacted by development or that were the subject of unauthorized removal. Any such plans must focus on preserving and enhancing the tree canopy within the urban growth boundary of 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;~~
- F. Develop a public education program to:
 - 1. Increase public awareness of the benefit of trees and a healthy urban tree canopy.
 - 2. Inform citizens and businesses about the ordinance and its purpose.
- 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 in certain areas inside the Portland Metropolitan Urban Growth Boundary.

1020.02 03 AREA OF APPLICATION

Section 1020 applies to all land inside the unincorporated area of Clackamas County within the Urban Growth Boundary, including rights-of-way and easements, and properties within designated Habitat Conservation Areas and/or the Willamette Greenway. Under all circumstances, property having a Heritage Tree, as designated in the Clackamas County Heritage Tree Program, will be subject to protections under this Ordinance. The following property will not be subject to this Ordinance:

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 due to zoning restrictions under Section 1012; or
 - b. It is not divisible because division is prohibited by a deed restriction, or by conditions, covenants, or other restrictions.

B. Land that is receiving a farm or specially assessed forestland 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 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) garage or other building structure that is an assist ~~(the term “use accessory” is not clear. I thought we had discussed the concept of building structures such as a garage or storage building)~~ to a single-family dwelling, for a period of 10 years after the last such tree is removed; and

2. In a case where a tree has been removed in violation of the Ordinance, the property owner shall record a deed restriction acknowledging these development limitations,” and be subject to provisions covered in Section 1020.11 and 1020.12.

~~Prior to the removal of a tree that would otherwise be regulated under Section 1020, the property owner shall record a deed restriction acknowledging these development limitations.~~

1020.03 04 DEFINITIONS

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

- A. Caliper: A tree’s diameter at six inches above grade. On multi-stem trees, the largest diameter stem shall be measured.
- B. Christmas Tree: A tree of a marketable species and evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control, and one or more of the following practices: basal pruning, fertilizing, insect and disease control, and soil cultivation.
- C. Critical Root Zone: The area where a tree’s roots are located. This root zone is generally the area surrounding a tree trunk at a distance equal to one foot for every inch of d.b.h. This area is described as the radius of a circle around the tree.
- D. Diameter Breast Height (d.b.h.): A tree’s diameter measured by diameter tape at four and one-half feet above grade. On multi-stem trees, the largest diameter stem shall be measured.
- E. Ecological functions: A tree’s contribution to the microclimate and shade, water storage, water flow moderation, bank stabilization and sediment/pollution control, habitat area, connectivity of habitat to water and other habitat areas, presence of unique habitat types.
- F. Emergency: Any manmade or natural event or circumstance causing or threatening loss of life, or injury to person or property.

- G. Hazardous Tree: A tree that, by reason of disease, infestation, age, or other condition, presents a known or immediate hazard to people or property.
- H. Nuisance Tree: Any tree of the following species: single seed hawthorn (*Crataegus monogyna*), English holly (*Ilex aquifolium*), plums (*Prunus* hybrids), sweet cherry (*Prunus avium*), English laurel (*Prunus laurocerasus*), and Portuguese laurel (*Prunus lusitanica*).
- I. Orchard Tree: A fruit or nut tree.
- J. Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose, **probable social impact, and probable impact on ecological functions.**
- K. Solar Energy System: Any solar collector or other solar energy device or any structural design feature of a building whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, for water heating, or for electricity.
- L. Tree: Any woody plant with at least one well-defined stem of at least eight inches d.b.h., or any woody plant with at least one well-defined stem and planted as a mitigation requirement of Subsection 1020.08.
- M. 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.
- ~~H.~~ N. Tree Canopy: The outermost edge of a tree's branches : when delineating the drip line on the ground, it will appear as an irregularly shaped circle defining the canopy's perimeter.
- O. Heritage Tree: A Heritage Tree is defined as any tree that has been designated as a Heritage Tree within the Heritage Tree Program of Clackamas County.

1020.04 05 EXEMPT TREES

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

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

{The comments made at the last Board meeting shows concern for the number of trees that can be removed in the two year time period. This concern can be remedied by extending the time from 2 year to 5 years. So in 10 years one could remove only 4 trees, while under the proposed time frame they could remove 10 trees. We recommend removing the 10% amount because there will be difficulty determining the qualifying trees and this will add to the administrative costs. Also for a large lot with many trees the 10% could amount to many trees removed unnecessarily.}

(Recommended Change)

- A. Two trees, with a d.b.h. of eight inches or greater, on a lot of record per 5 year period. The two year period shall commence with the removal of the first tree. Trees removed in this Subsection will require filing a Tree Removal Permit and mitigation as per Section 1020.09 (Mitigation for Removed Trees) . Trees exempt under (A) of this Subsection shall be in addition to any that are exempt under Subsections 1020.04 (B) through (L). However, this exemption shall not apply to tree removal by a utility company in a utility easement;

Urban Green recommends removal of the entire paragraph above in order to better ensure preservation of the existing urban tree canopy. The above paragraph opens a loophole that essentially allows the clear cutting of developable property, without first filing a development permit, over a period of years.

- B. Trees with a d.b.h. of less than eight inches. However, this exemption shall not apply to trees planted either to remedy a violation pursuant to Subsection 1020.10 or as part of a mitigation

plan approved pursuant to Subsection 1020.08;

- C. Trees required to be removed by state or federal law or regulation, or by a fire official;
- D. Orchard trees;
- E. Christmas trees;
- F. Trees planted on the site of a commercial nursery and grown for commercial purposes;
- G. Nuisance trees **as defined in this Ordinance**;
- H. Dead trees, where death resulted from an accident or non-human cause;
- I. Diseased or hazardous trees, where the condition resulted from an accident or non-human cause, if the property owner first **submits a tree removal permit application and** provides a report to the County Planning Division from an International Society of Arboriculture (ISA) Certified Arborist verifying that the tree qualifies under this exemption. If a hazardous tree is removed in response to an emergency, the property owner may provide the required arborist's report, or other credible evidence that the tree was hazardous, within 30 days after the tree's removal;
- J. Trees to be removed by a public utility company in order to maintain, repair, or replace an existing utility line, if the utility company first provides credible written evidence to the County Planning Division of the need for tree removal; and **submits a public utility tree removal application identifying the tree or trees to be removed and a mitigation plan to replace the trees proposed for removal.**
- K. Trees to be removed by a public agency in order to maintain, repair, or replace an existing road located in a public right-of-way, if the public agency first provides **a tree removal permit that includes** credible written evidence to the County Planning Division of the need for tree removal. This exemption shall not apply to the

widening of an existing road.* All trees proposed for removal will be subject to a mitigation plan for replacement of all trees removed.

~~* The Task Force members who were present for the vote were evenly split on a vote of five for and five against on the question of whether to require utilities and public agencies to mitigate for trees removed to maintain utility lines and roads. This draft does not include a requirement for mitigation, but one easily could be added.~~

- L. Trees required to be removed by the terms of a view easement established prior to the adoption of Section 1020, if the property owner first **submits a tree removal permit** and provides a copy of the easement document to the County Planning Division.

1020.05 06 TREE REMOVAL PERMIT REQUIRED

- A. No tree shall be removed without a Tree Removal Permit (TRP), unless such removal is exempt pursuant to **qualified exemptions in Subsection 1020.04 .05. All trees approved for removal will be subject to the mitigation requirements in section 1020.08 of this Ordinance.**
- B. No building or grading permit shall be issued prior to the approval of a TRP if the proposed development requires removal of a nonexempt tree.
- C. Section 1020 shall be applied to an application for design review **(commercial and multi-family)**, a subdivision, a partition, or a conditional use. If a TRP is approved as a result of this review, it shall be issued as part of the design review, subdivision, partition or conditional use approval.
- D. Except as provided in Subsection 1020.05(C), a TRP requested on the basis of Subsection 1020.07(A), (B), or (C) shall be subject to Planning Director Review pursuant to Subsection 1305.02. Except as provided in Subsection 1020.05(C), a TRP requested on the basis of Subsection 1020.07(D), (E), or (F) shall be subject to Planning Staff Review pursuant to Subsection 104.01(C).

- E. A TRP shall be valid for two years from the date of the final written decision, except that if a TRP is approved as part of a design review, subdivision, partition, or conditional use approval, it shall be valid for the same period of time as that approval, including any time extension thereof. If the tree is not removed prior to the expiration of the TRP, removal shall require the filing of a new TRP application.

1020.06 07 TREE REMOVAL PERMIT APPLICATION SUBMITTAL REQUIREMENTS

An application for a Tree Removal Permit shall include:

- A. A completed land use application on a form provided by the County Planning Division;
- B. A site plan of the subject property, drawn approximately to scale and identifying the following as relevant:
1. Location and type of existing and proposed development, Including but not limited to, building footprints, roads, driveways, parking areas, utilities, onsite sewage disposal systems, wells, landscaping, and filling or grading. Label each element as existing or proposed;
 2. Location and width of existing adjacent roads and road rights-of-way;
 3. Location and purpose of existing or proposed easements;
 4. Location of any rivers, streams, wetlands, or areas of special flood hazard;
 5. The site ingress and egress proposed to be used by construction vehicles; and
 6. Proposed equipment and material staging and stockpile areas;
- C. A statement explaining why tree removal is necessary and addressing one or more of the approval criteria identified in Subsection 1020.07;

- D. A mitigation plan that addresses the requirements of Subsection 1020.08 ~~to the extent applicable~~;
- E. A tree protection and maintenance plan that addresses the requirements of Subsection 1020.09; and
- F. For a TRP requested on the basis of Subsection 1020.07(A), a tree survey:
1. Where three or fewer trees are proposed for removal, the tree survey shall include, as part of the required site plan, the location of the trees proposed for removal and a brief description of those trees, including common name, approximate height, d.b.h., and apparent health.
 2. Where more than three trees are proposed for removal, the tree survey shall be prepared by an International Society of Arboriculture (ISA) Certified Arborist. The tree survey shall include an accurate map of the subject property that locates all trees and identifies their common name, botanical name, approximate height, approximate canopy spread, d.b.h., health, and condition. It also shall identify the tree(s) proposed for removal. The tree survey shall include an accurate topographic survey stamped by a surveyor or engineer registered in the State of Oregon. Where a stand of five or more contiguous trees exists on the subject property and the applicant proposes neither removal of any of those trees nor construction in proximity to those trees, the tree survey may be simplified to accurately show only the perimeter area of that stand of trees, including its drip line.

1020.07 08 TREE REMOVAL PERMIT APPROVAL CRITERIA

For any tree removal permit to be approved, the applicant must provide information to demonstrate compliance with protections for natural resources, conserving scenic and historic areas, preservation of wildlife habitat, and providing for water quality and erosion control as required within the Oregon Administrative Rules Statutes, OAR 660-015-0000 (5) and OAR 660-015-0000 (6) and comply with the ecological functions criteria under the definition of “practicable.”

In any situation where an application for tree removal has been filed for removal of trees from Forest Land within the UGB, the provisions of the Oregon Forest Practices Act (OAR Chapter 629) are adopted by this ordinance, and the County Planning Director will assume responsibility to see that the property owner complies with the following provisions:

620.625 – Road Construction

620.630 - Harvesting

629.610 – Reforestation Stocking Standards

629.615 – Treatment of Slash

In addition to the above requirements, the Tree Removal Permit shall be approved if the applicant provides evidence substantiating compliance with at least one of the following additional criteria, and an appropriate mitigation plan is submitted as proscribed in section 1020.08 of this Ordinance:

A. Tree removal is necessary for the construction of a structure or other improvement, including landscaping within (50 feet) 25 feet of a single-family dwelling, and there is no *practicable* location alternative on the subject property—or, in the case of tree removal in a public right-of-way, elsewhere in the right-of-way—for the proposed structure or other improvement. In (~~considering~~) **determining** whether tree removal is necessary, factors that may be considered include whether the tree is located within the footprint of the proposed structure or other improvement, whether it is too close to the proposed structure or other improvement, and whether it will violate the corner vision standards of this Ordinance or obstruct required sight distance under the County Roadway Standards. If tree removal is proposed in conjunction with an application for a subdivision or partition, it also must be demonstrated that there is no *practicable* criteria, reasonable access, utility, or lot design alternative.

Urban Green’s alternative language:

A. Tree removal is necessary for the construction of a structure, **garage, or other building structure that is an assist** ~~or other improvement, including landscaping within (50 feet) 25 feet of~~ **to** a single-family dwelling, and there is no *practicable* location alternative on the subject property—or, in the case of tree removal in a public right-of-way, elsewhere in the right-

of-way—for the proposed structure or other improvement. In ~~(considering)~~ **determining** whether tree removal is necessary, factors that may be considered include whether the tree is located within the footprint of the proposed structure or other improvement, whether it is too close to the proposed structure or other improvement, and whether it will violate the corner vision standards of this Ordinance or obstruct required sight distance under the County Roadway Standards. If tree removal is proposed in conjunction with an application for a subdivision or partition, it also must be demonstrated that there is no practicable and reasonable access, utility, or lot design alternative.

1. **In applying Subsection 1020.07(A), any alternative that would result in tree removal must focus on minimizing the significance of the tree loss.”** ~~In applying Subsection 1020.07(A), alternatives that also would result in tree removal shall be preferred where such alternatives would minimize the significance of the tree loss.~~ Factors in determining relative significance **of the existing trees** include such characteristics as number of trees to be removed, tree health, tree size (i.e. height, trunk diameter, canopy spread), historic value of the trees to be removed, erosion prevention, preservation of wildlife habitat, and maintaining a diversity of tree species with an emphasis on retaining native trees appropriate to the proposed construction.
2. Application of Subsection 1020.07(A) shall not require a reduction of the square footage of a proposed structure or a reduction in the number of lots or dwelling units that would otherwise be permitted.

Urban Green and Audubon recommend the following additional provision:

3. Application of Subsection 1020.07(A) will take into consideration opportunities that utilize innovative design techniques that effectively integrate existing trees into new development or redevelopment (i.e. use lower impact designs).
- B. Appropriate arborist report documenting the need to remove a tree that interferes with the healthy growth of other trees, unless such trees are nuisance trees, as defined in this Ordinance, and it is not practicable to preserve the tree.**
~~The tree proposed for removal interferes with the healthy growth of~~

~~other trees, unless such trees are nuisance trees, and it is not practicable to preserve the tree.~~

- C. The tree proposed for removal is located too close to an existing structure or other improvement, and it is not practicable to preserve the tree.
- D. The tree proposed for removal interferes with existing utility service or drainage, and it is not practicable to preserve the tree.
- E. The tree proposed for removal violates the corner vision standards of this Ordinance; or obstructs required sight distance under the County Roadway Standards, and it is not practicable to preserve the tree.
- F. Tree removal is reasonably necessary to allow solar access for the efficient operation of a solar energy system. The applicant shall provide supporting documentation from a solar energy system installer, a government agency with expertise in solar energy systems, or another credible source (e.g. Energy Trust of Oregon, an architect registered to practice architecture in the State of Oregon, an engineer registered to practice engineering in the State of Oregon).

1020.08 09 MITIGATION FOR REMOVED TREES

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

- A. To the extent practicable, the replacement tree shall be planted on the subject property and within the same general area as the removed tree. In determining whether such planting is practicable, consideration shall be given to such factors as terrain, difficulty of replacement, and impact on adjacent property.

Urban Green and Audubon recommend the following changes to the above paragraph:

- A. Mitigated trees should be above and beyond standard landscaping. To utilize the energy savings benefits of trees, ~~To the extent practicable,~~ some replacement tree(s) shall be planted on the south, southwest, and/or

~~west side of the~~ subject property ~~and within the same general area as the removed tree. In determining whether such planting is practicable, consideration shall be given to such factors as terrain, difficulty of replacement, and impact on adjacent property.~~ ~~The replacement trees should be chosen for their site and root characteristics; energy savings value; benefit to wildlife (including their potential as nesting sites); and species.~~

- B. When it is not practicable to relocate or replace the tree on the subject property, the applicant shall:
1. Relocate or replace the tree at another location approved by the Planning Director. The alternate location shall be within the portion of the County that is inside the Portland Metropolitan Urban Growth Boundary; or

Urban Green and Audubon recommend the following changes to the above paragraph:

1. Relocate or replace the tree at another location approved by the Planning Director. The alternate location shall be within the ~~same ecological sub-hydrologic basin~~ ~~area portion of the County~~ that is inside the Portland Metropolitan Urban Growth Boundary; or
 2. Pay into the County Tree Fund, which fund is hereby created, an amount of money established by separate order of the Board of County Commissioners.
 - a. The County shall use the County Tree Fund within the portion of the County that is inside the Portland Metropolitan Urban Growth Boundary for planting trees; ~~and~~ for producing, maintaining, and preserving wooded areas and heritage trees; ~~for monitoring the viability of mitigated replacement trees~~
 - b. In addition, and as funds allow, the County Tree Fund shall provide educational materials to assist with tree planting, mitigation, and relocation.
- C. Except as provided in Subsection 1020.08(C)(2), each tree approved for removal shall be replaced as follows:

1. If the tree to be removed has a d.b.h. of less than 16 inches, ~~one~~ (2) replacement tree shall be planted.
2. If the tree to be removed has a d.b.h. of at least 16 inches but less than 24 inches, ~~two~~ (3) replacement trees shall be planted.
3. If the tree to be removed has a d.b.h. of 24 inches or greater, ~~three~~ (4) replacement trees shall be planted.

Urban Green and Audubon recommend substitution of 1-3 above and adoption of Oregon City's tree replacement ratios:

1. If the tree to be removed is less than 8" d.b.h., 1 replacement tree
2. If the tree to be removed is 8" – 12" d.b.h., 2 replacement trees
3. If the tree to be removed is 13"- 18" d.b.h., 3 replacement trees
4. If the tree to be removed is 19" – 24" d.b.h., 4 replacement trees
5. If the tree to be removed is 25" – 30" d.b.h., 5 replacement trees
6. If the tree to be removed is 31" and over d.b.h., 8 replacement trees

D. When it is not practicable to relocate or replace the tree on the subject property, the applicant shall:

1. Relocate or replace the tree at another location approved by the Planning Director. The alternate location shall be within the portion of the County that is inside the Portland Metropolitan Urban Growth Boundary; or
2. Pay into the County Tree Fund, which fund is hereby created, an amount of money established by separate order of the Board of County Commissioners.
 - a. The County shall use the County Tree Fund within the portion of the County that is inside the Portland Metropolitan Urban Growth Boundary for **deferring the administration cost of this Ordinance, supporting a community tree education program, and** planting trees and for producing, maintaining, and preserving wooded areas and heritage trees.
 - b. In addition, and as funds allow, the County Tree Fund shall Provide educational materials to assist with tree planting,

mitigation, and relocation.

- E. A replacement tree shall be appropriately chosen for the site from an approved tree species list supplied by the County. Diversity of tree species shall be maintained where essential to preserving a wooded area or other habitat.
- F. A replacement tree shall have a minimum caliper of two inches or a minimum height of eight to ten feet by nursery industry standards.
- G. A replacement tree shall be staked, fertilized, and mulched. **The property owner will be responsible to guarantee that any mitigation replacement tree survives for 2 years; any tree that dies within this time period must be replaced. Any trees planted as part of a mitigation plan cannot be removed without filing a TRP.**
- H. Planting of required replacement tree(s) shall occur within one year of tree removal, **and the property owner is responsible to notify the Planning Department that the mitigation planting has been completed in accordance with this Ordinance. Failure to do so will be deemed a violation of this Ordinance and subject to penalties as proscribed.**
- ~~I. A replacement tree shall be guaranteed by the applicant for two years after the planting date. A guaranteed tree that dies, or acquires a disease that necessitates removal, shall be replaced, and that replacement tree shall in turn be guaranteed by the applicant for two years after the planting date.~~

1020.09 10 TREE PROTECTION DURING CONSTRUCTION

If a Tree Removal Permit (TRP) is approved pursuant to Subsection 1020.07(A), or if construction is authorized on the subject property pursuant to the approval of an application for design review, a subdivision, a partition, or a conditional use, compliance with the following tree protection standards shall be required.

- A. Unless a tree is exempt pursuant to Subsection 1020.04 or has been authorized for removal by a TRP, it shall be protected. If no trees that require protection pursuant to this provision exist on the subject property, the provisions of Subsection 1020.09 are not applicable.

- B. Trees that require protection shall be clearly labeled as such for the duration of construction activity.
- C. Construction activity likely to be injurious to a tree designated to remain, including, but not limited to, placing solvents, building material, construction equipment, or depositing soil, or placing irrigated landscaping, within the drip line, shall be prohibited, unless a plan for such construction activity has been approved by the Planning Director based upon the recommendations of an arborist.
- D. Notwithstanding the requirement of Subsection 1020.09(B), no device or wire shall be attached to any protected tree unless needed for tree protection.
- E. Prior to the commencement of construction activity, the applicant shall erect and maintain readily visible protective tree fencing along the outer edge of the tree drip line and completely surrounding the critical root zones of all protected trees or groups of trees. Fences shall be ~~constructed of chain-link and~~ at least four feet high, unless another type of fencing is authorized by the Planning Director. The protective fencing shall remain in place until the County authorizes its removal or issues a final certificate of occupancy, whichever occurs first. Protective fencing is required for all protected trees, except in the following cases:
1. Rights-of-Way and Easements. Street rights-of-way and utility easements may be cordoned by placing stakes a minimum of 50 feet apart and tying ribbon, plastic tape, rope, or similar material from stake to stake along the outside perimeters of areas to be cleared.
 2. Any property area separate from the construction or land clearing area and onto which no equipment will venture may also be cordoned off as described in Subsection 1020.09(E)(1), or by other reasonable means.
- F. The removal of or damage to a tree or trees otherwise requiring protection during construction will be deemed a violation of this ordinance and subject to fines, penalties and remedies as stipulated in this ordinance.

1020.11 VIOLATION OF ORDINANCE

- A. A violation shall be deemed to have occurred if it is determined that a tree, or trees, have been cut down or otherwise destroyed contrary to the specific requirements of this Ordinance. Evidence of such violation will be from the physical appearance of the land from which the tree or trees have been cut, as well as testimony from any witnesses. Removal of stump material that would otherwise prove or disprove a violation of this Ordinance will be deemed to be prima facia evidence that such a violation has happened. It will then be the landowner's burden to prove that an Ordinance violation has not occurred.
- B. If more than one non-exempt tree is removed without a TRP, each removed tree will constitute a separate violation.
- C. A violation of this Ordinance may result in any of the following actions by the County:
1. Denial of tree cutting application.
 2. Revocation of an approved tree-cutting permit.
 3. Revocation of an application for land development if there are violations of this Ordinance that were conditions of approval for any such land development application.
 4. Fines, injunctions, mitigation and other remedies as outlined in the "Remedy" section.
 5. A moratorium limiting future development on the subject property as per Subsection 1020.03 (B) (1) of this ordinance.

1020.12 Remedies

- A. A violation resulting from the removal of a non-exempt tree without first obtaining a TRP shall be remedied by all of the following:
1. Obtaining a TRP, in which case the TRP approval criteria will be applied as though the removed tree(s) were still in place; or
 2. Replacing the removed tree(s), subject to the following criteria:

- a. Twice as many trees shall be planted as would ordinarily be required by section 1020.08.
- b. The County may use any reasonable means to estimate the number of trees removed if destruction of illegally removed trees prevents an exact count.
- c. Except as modified by sections 1020.10(B)(a), compliance with Subsections 1020.08 and 1020.09 shall be required.

B. Subsection 1020.10 applies in addition to any enforcement action the County may take pursuant to Chapter 2.07 of the County Code.

1020.13 Fines and Penalties

Each exempted tree removed without a permit will be considered a separate violation of this Ordinance, and each violation will be subject to any or all of the following fines or penalties :

- A. The value of the trees unlawfully removed based on the appraised value using the latest edition for Plant Appraisal (International Society of Arboriculture, Council of Tree and Landscape Appraisers).
- B. A fine will be assessed, as proscribed in the Clackamas County Code 20.7.120, appendix B, up to \$3,500 per violation.
- C. In addition to fines assessed, civil penalties may be imposed as proscribed in the Zoning and Development Ordinance 102.03. Those penalties may be as follows:
 1. A civil penalty for each day of violation, such penalty to be determined by resolution of the Board off County Commissioners.

~~1020.10 VIOLATIONS~~

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

~~B. A violation resulting from the removal of a non-exempt tree without first obtaining a TRP shall be remedied by:~~

- ~~1. Obtaining a TRP, in which case the TRP approval criteria will be applied as though the removed tree(s) were still in place; or~~
- ~~2. Replacing the removed tree(s), subject to the following criteria:
 - ~~a. Twice as many trees shall be planted as would ordinarily be required by Subsection 1020.08.~~
 - ~~b. The County may use any reasonable means to estimate the number of trees removed if destruction of the illegally removed tree(s) prevents an exact count.~~
 - ~~c. Except as modified by Subsection 1020.10(B)(2)(a), compliance with Subsections 1020.08 and 1020.09 shall be required.~~~~

~~C. Subsection 1020.10 applies in addition to any enforcement action the County may take pursuant to Subsection 102.03 of this Ordinance and Chapter 2.07 of the County Code.~~

