ORDINANCE NO. 1836

MILWAUKIE, OREGON

ORDINANCE ADOPTING CHAPTER 16.32, TREE CUTTING, OF THE MILWAUKIE MUNICIPAL CODE CREATING INTERIM REGULATIONS RELATING TO TREE CUTTING IN PUBLIC RIGHT-OF-WAY.

WHEREAS, the City of Milwaukie recognizes the value to the community as a whole of a healthy and well preserved tree environment; and

WHEREAS, the City has been conducting an ongoing comprehensive study concerning the creation of an urban forestry program; and

WHEREAS, during the process leading to the Council's decision making on the urban forestry program there is concern about the impact of uncontrolled tree cutting on the existing mature tree resources within the City; and

WHEREAS the City Council determines that it is necessary to implement interim regulations pending the adoption of a comprehensive urban forestry program;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1: The Milwaukie Municipal Code is amended by adding a new Chapter 16.32, Tree Cutting, to read as follows:

16.32.010 Definitions
The following definitions shall apply for terminology, used in this Chapter:

A. Canopy: Area of the tree above the ground, including the trunk and branches, measured in mass or volume.

B. City: City of Milwaukie.

C. Cutting: The falling or removal of a tree, or any procedure that naturally results in the death or substantial destruction of a tree. "Cutting" does not include normal trimming or pruning, but does include topping of trees.

D. Dangerous Tree: The condition or location of the tree presents a clear public safety hazard or an imminent danger of property damage, and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

E. Dead Tree: The tree is lifeless.

F. Drip Line: The perimeter measured at the outermost canopy.

G. Dying Tree: The tree is diseased, infested by insects, deteriorating, or rotting, and cannot be saved by reasonable treatment or pruning, or must be removed to prevent the spread of infestation or disease to other trees.

H. ISA: International Society of Aboriculture.

I. Major Pruning: Removal of over twenty percent (20%) of the trees canopy, or injury or cutting of over 10 percent of the root system, during any 12-month period.

J. Owner: Includes, for the purposes of this Chapter, any person with a freehold interest in land, or a lessee, agent, employee, or other person acting on behalf of the owner with the owners consent.

K. Person: Any individual, firm, association, corporation, agency, or organization of any kind.

L. Pruning: Trimming or removing any part of the branching structure of a plant in either the crown, trunk, or root areas based on standards of the International Society of Arboriculture (ISA).

M. Relative Value: Relative value may be calculated using the methods described in the ISA's "Guide for Plant Appraisal." The values reflect the value to the public as a whole, rather than to the individual property owner. For example, a tree growing in full public view may have a high public value but be of low value to the property owner.

O. Removal: The cutting or removing of fifty percent (50%) or more of the crown, trunk, or root system of a plant; the uprooting or severing of the main trunk of the tree; or any act which causes, or may reasonably be expected to cause, the tree to die, including without limitation damage inflicted upon the root system by machinery, storage materials, or soil compaction; substantially changing the natural grade above the root system or around the trunk; excessive pruning; or paving with concrete, asphalt, or other impervious materials in a manner which may result in the loss of aesthetic or physiological viability.

P. Root Zone: The area of the ground around the base of the tree measured from the trunk to five (5) feet beyond the outer base of the branching system.

Q. Street Tree: Any tree located within a street right-of-way.

R. Topping: The severe cutting back of the main stem and/or limbs to buds, stubs, or laterals large enough to assure terminal role within the trees crown to such a degree as to remove the normal canopy and disfigure the tree.

S. Tree: Any living woody plant characterized by one main stem or trunk and many branches, or a multi-stemmed trunk system with a definitely formed crown.

16.320.020 Permit for Major Pruning or Removal of Street Trees or Trees in Public Right-of-Way.

A. Applicability

No person shall conduct major pruning or removal of any tree in a public right-of-way, without first receiving a permit issued by the City of Milwaukie. Tree pruning, as defined in this title, shall not require a permit.

B. Review Process

1. A permit application for major pruning or tree removal shall be submitted to the Community Development Department on forms provided by the Community Development Director.

2. The applicant shall post notice of the major pruning or removal permit application on the property in a location which is clearly visible to vehicles traveling on a public street and to pedestrians walking by the property.

3. The notice shall state that the tree removal permit is pending for trees on the property marked by a yellow plastic tagging tape, shall include the date of posting, and shall state that any person may request that a hearing be held on the application by filing a written request for a hearing within fourteen (14) days of the date of the posting.

4. The applicant shall mark each tree proposed to be removed by tying or attaching yellow plastic tagging tape to the tree four (4) to six (6) feet above mean ground level at the base of the trunk.

5. On the date that the property is posted, the applicant shall send a letter to the Neighborhood District Association for the area, to notify the association of the major pruning or removal request.

6. The applicant shall file an affidavit stating that the property has been

posted, the trees have been marked, and notice has been mailed pursuant to this Section.

7. The major pruning or tree removal permit shall not be issued for fourteen (14) days from the date of filing of the affidavit to allow for the filing of a request for a hearing. The applicant shall maintain the posting and marking for the full fourteen (14) days.

C. Approval Standards

The Community Development Director shall issue a permit for major pruning or removal of trees in a right-of-way, only if the following criteria are satisfied:

1. The proposed work will be done according to ISA standards, and qualified persons will perform the work; and one or more of the following criteria are satisfied;

   a. It is determined by the arborist that the tree is dead or dying and cannot be saved, according to current ISA standards.

   b. The tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or adjacent sites, and that extraordinary maintenance is required to prevent damage to such improvements or property.

   c. The tree has lost its relative value as a street tree due to damage from natural or accidental causes, or for some other reason it can be established that it should be removed.

   d. That the tree has been determined by a certified arborist to be unsafe to the occupants of the property, or adjacent property, or the general public.

D. All work performed on street trees pursuant to a permit issued by the Community Development Director under this Section shall be done within a sixty (60) day period from the issuance of said permit, or within a longer period as specified by the Community Development Director.

<u>16.32.030 Permit Exemptions</u>

A. Dangerous Tree. If a tree is determined to be a dangerous tree, the Community Development Director may issue an emergency removal permit. The removal

shall be in accordance with the ISA standards and be the minimum necessary to eliminate the imminent danger.

B. Maintenance. Regular maintenance or pruning which does not require removal of over twenty percent (20%) of the trees canopy, tree topping, or disturbance of over ten percent (10%) of the root system during any 12-month period.

C. Tree cutting anywhere but in a public right-of-way.

Section 2. Emergency

The City Council finds that the provisions of this ordinance are immediately necessary for the preservation of the public health, peace and safety of the City of Milwaukie, Oregon and the inhabitants thereof and that the results of the enactment of the Chapter will be to protect the health and welfare of the citizens of Milwaukie, Oregon. Therefore, an emergency is declared to exist, and this Chapter shall take effect immediately upon passage by the City Council and signature by the Mayor.

READ the first time on June 2, 1998 and moved to second reading by 4-1 vote of the City Council.

READ the second time and adopted by the City Council on June 16, 1998.

Signed by the Mayor on June 16, 1998.

Carolyn Tomei

Carolyn Tomei, Mayor

ATTEST:

Pat DuVal

Pat DuVal, City Recorder

APPROVED AS TO FORM:
O'DONNEL RAMIS CREW CORRIGAN & BACHRACH, LLP

City Attorney