

ORDINANCE NO. 2022

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING PORTIONS OF CHAPTER 16.08, ADMINISTRATION, AND CHAPTER 16.32, TREE CUTTING, REGARDING THE PROCESSING OF PERMITS FOR TREE CUTTING IN THE PUBLIC RIGHT-OF-WAY.

WHEREAS, the City of Milwaukie passed Ordinance 1836 on June 2, 1998, creating interim regulations on tree cutting in the public right-of-way ; and

WHEREAS, the interim regulations have procedural problems that hinder the City's ability to efficiently process permits for tree cutting; and

WHEREAS, the City desires to have a clear and efficient review of tree cutting permits, and to maintain the City's tree canopy over time; and

WHEREAS, the City has prepared amendments to the appropriate portions of the Milwaukie Municipal Code to further these objectives;

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

Section 1. Chapter 16.08, Administration, and Chapter 16.32, Tree Cutting, are amended as described in Exhibit A (underline/Strikeout amendments), and Exhibit B (clean copy amendments).

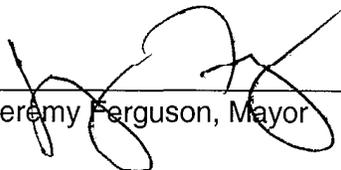
Section 2. All sections not amended as described in Exhibits A and B remain as written.

Section 3. This ordinance shall be effective on the 60th day following the date of adoption.

Read the first time on 1/18/11, and moved to second reading by 5-0 vote of the City Council.

Read the second time and adopted by the City Council on 1/18/11.

Signed by the Mayor on 1/18/11.



Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC



Pat DuVal, City Recorder



City Attorney

Exhibit A

Underline and Strikeout Changes

CHAPTER 16.08 ADMINISTRATION

16.08.010 ENFORCEMENT AUTHORITY

The Public Works Director and the Community Development Director ~~Planning Director~~, or their designees, shall have the power and duty to enforce the provisions of the environmental protection part of the Community Development Ordinance. They have the authority to establish forms, require information of applicants and take other reasonable measures in order to administer effectively the requirements of the environmental protection part.

16.08.020 APPEALS

- A. An administrative decision from Chapter 16.32 may be appealed to City Council. An appeal ~~Appeals may be made~~ from administrative decisions of the Public Works Director or Community Development Director ~~either of these directors~~ from other chapters within this title may be made to the Planning Commission. A decision of the Planning Commission may be appealed to the City Council.
- B. Whenever an appeal is made to the Planning Commission or Council, a public hearing shall be held. For appeal hearings on administrative decisions pursuant to Chapter 16.32, notice shall be given to the Neighborhood District Association and owners of property within 300 feet of the subject property at least 10 days prior to the hearing. For appeal hearings on decisions pursuant to other chapters in this title, notice ~~Notice~~ shall be given to owners and residents of property within 5 lots of the subject property at least 10 days prior to the hearing.
- C. An appeal of a decision by the Public Works Director, Community Development Director ~~Planning Director~~ or Planning Commission must be made in writing within 15 days of the day of decision.
- D. The Planning Commission or Council shall receive all information in written and map form prior to the hearing on the appeal.

16.08.030 FEES

A fee, as established by resolution of the City, shall be paid to the City upon filing of a required report or appeal. Such fees shall not be refundable.

CHAPTER 16.32 TREE CUTTING

16.32.005 PURPOSE

The purpose of this chapter is to encourage preservation of trees located in the public right-of-way. Trees within the public right-of-way are a public resource that beautify the streetscape and provide ecosystem services such as reducing the urban heat island effect, reducing stormwater flows, and stabilizing soils. The City may allow the removal or pruning of trees in some situations including, but not limited to, removing hazards, avoiding damage to public and private property, and allowing for construction of right-of-way improvements. Preference should

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generally be given to authorizing the minimal amount of disturbance to the tree that is necessary to address the situation. The intent of this chapter is also to mitigate the authorized removal of trees within the public right-of-way by replanting new trees in the public right-of-way wherever practicable.

16.32.010 DEFINITIONS

The following definitions shall apply for terminology, used in this chapter:

“Canopy” means area of the tree above the ground, including the trunk and branches, measured in mass or volume.

“City” means the City of Milwaukee.

“Cutting” means 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.

“Dangerous tree” means 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.

“Dead tree” means the tree is lifeless.

“Drip line” means the perimeter measured at the outermost canopy.

“Dying tree” means 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.

“ISA” means the International Society of Arboriculture.

“Major pruning” means removal of over 20% of the tree’s canopy, or injury or cutting of over 10% of the root system, during any 12-month period.

“Owner” means and 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 owner’s consent.

“Person” means any individual, firm, association, corporation, agency, or organization of any kind.

“Pruning” means 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 ISA.

“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.

“Removal” means the cutting or removing of 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.

“Root zone” means the area of the ground around the base of the tree measured from the trunk to 5 feet beyond the outer base of the branching system.

“Street tree” means any tree located within a street right-of-way.

“Topping” means the severe cutting back of the main stem and/or limbs to buds, stubs, or laterals large enough to assure terminal role within the tree’s crown to such a degree as to remove the normal canopy and disfigure the tree.

“Tree” means any living woody plant characterized by 1 main stem or trunk and many branches, or a multistemmed trunk system with a definitely formed crown.

16.32.020 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. Tree pruning, as defined in this chapter, shall not require a permit.

B. Review Process.

1. A permit application for major pruning or tree removal shall be submitted to the Planning Department on forms provided by the Community Development Director ~~Planning 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~~ readable by 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 a meeting with the Community Development Director ~~that a hearing be held on the application by filing a written request for a hearing~~ within 14 days of the date of the posting. The purpose of the meeting is to provide an opportunity to raise questions or concerns about the major pruning or removal prior to issuance of the administrative decision on the permit.
4. The applicant shall mark each tree proposed to be removed by tying or attaching yellow plastic tagging tape to the tree 4 to 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 section 16.32.020 or subsection 16.32.020.B.
7. The major pruning or tree removal permit shall not be issued for 14 days from the date of filing of the affidavit to allow for the filing of a request for a meeting hearing. The applicant shall maintain the posting and marking for the full 14 days. When a meeting with the Community Development Director is requested, the Community Development Director shall not issue the permit decision until the meeting can be held.

C. Approval Standards

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The Community Development Director ~~Planning Director~~ shall issue a permit for major pruning or removal of trees in a right-of-way, only if the following criteria are satisfied: The Community Development Director will consult a certified arborist where necessary to evaluate the criteria.

1. The proposed work will be done according to ISA standards, and qualified persons will perform the work-
 2. 1 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. 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.
 - e. Major pruning or removal is necessary to accommodate improvements in the right-of-way, and it is not practicable to modify the proposed improvements to avoid major pruning or removal.
- D. All work performed on street trees pursuant to a permit issued by the Community Development Director ~~Planning Director~~ under this section shall be done within a 60-day period from the issuance of said permit, or within a longer period as specified by the Community Development Director ~~Planning Director~~.
- E. The Community Development Director shall require tree replanting as a condition of approval for a major pruning or removal permit wherever practicable. Replanted trees shall be planted within the right-of-way fronting the property for which the tree permit was issued. The replanted tree shall be a species appropriate for the location where it is planted, as determined by the Community Development Director. In addition to the tree maintenance requirements of section 8.04.110, the abutting property owner shall be responsible for maintaining a replanted tree in a healthy condition for 3 years following replanting.

16.32.030 PERMIT EXEMPTIONS

A. Dangerous Tree

If a tree is determined to be a dangerous tree, the Community Development Director ~~Planning 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 20% of the tree's canopy, tree topping, or disturbance of over 10% of the root system during any 12-month period.

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

16.32.040 PENALTY

Any person, firm, or corporation violating any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine not to exceed one thousand dollars (\$1,000.00).

Exhibit B

Clean Copy Amendments

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