

## **CHAPTER 16.32 TREE CODE**

### **Article I General Provisions**

#### **16.32.005 PURPOSE**

The purpose of this chapter is to establish processes and standards that ensure the City maximizes the environmental, economic, health, community, and aesthetic benefits provided by its urban forest. It is the intent of this code to establish, maintain, and increase the quantity and quality of tree cover in the City, and to ensure our urban forest is healthy, abundant, and climate resilient.

This code is designed to:

1. Foster urban forest growth to achieve 40% canopy coverage by 2040.
2. Maintain trees in a healthy condition through best management practices.
3. Manage the urban forest for a diversity of tree ages and species.
4. Manage street trees appropriately to maximize benefits and minimize hazards and conflicts with infrastructure.
5. Ensure the preservation and planting of tree canopy with development and redevelopment of housing in residential zones.
6. Regulate the removal, replanting, and management of trees prior to and following development and redevelopment in residential zones.
7. Implement applicable urban forest goals, policies, objectives, and action items in the Comprehensive Plan, Climate Action Plan, and Urban Forest Management Plan.

#### **16.32.010 DEFINITIONS**

The following definitions will apply for terminology used in this chapter. If a definition is not listed in this chapter, the definition in Title 19 will apply. Where definitions are not provided in this chapter or Title 19, their normal dictionary meaning will apply:

“Arbor Day/Week” means a day/week designated by the City to celebrate and acknowledge the importance of trees in the urban environment.

“Arboriculture” means the practice and study of the care of trees and other woody plants in the landscape.

“Building footprint” means the area covered by the outer structural walls of a building, measured in sq ft. Included in the calculation of footprint are: roofed structures that are not fully enclosed; building features such as patio covers, roofed porches, and decks; or similar features with a surface height of more than 18 in above average grade.

Footprint does not include eaves.

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“Canopy” is the layer of leaves, branches and stems of trees that cover the ground when viewed from above. Canopy cover is measured as the proportion of a fixed area of the ground covered by tree crowns.

“City” means the City of Milwaukee.

“City Engineer” means the city engineer of the City of Milwaukee or designee.

“City Manager” means the city manager or the city manager’s authorized representative or designee.

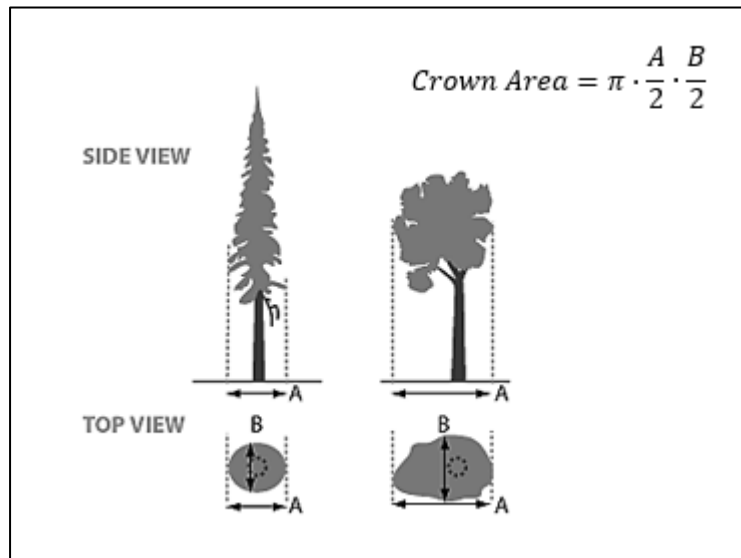
“Consolidated Fee Schedule” is the schedule of City fees and charges adopted by City Council for the services provided by the City.

“Council of Tree and Landscape Appraisers (CTLA)” means the publishers of the Guide for Plant Appraisal.

“Crown” means area of the tree above the ground, measured in mass, volume, or area extending from the trunk and including the branches, stems, leaves, and reproductive structures.

“Crown Area” means the average area in square feet that the tree crown covers (see Figure 16.32.010-1).

**Figure 16.32.010-1 – Measuring Crown Area**



“Cutting” means the felling 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.

“Damaged tree” means a tree that is injured or knocked down by human activity to the extent that mortality or serious deterioration is likely to occur or partially pushed over so as to result in a permanent lean or injury to the root system.

“DBH” means the diameter at breast height.

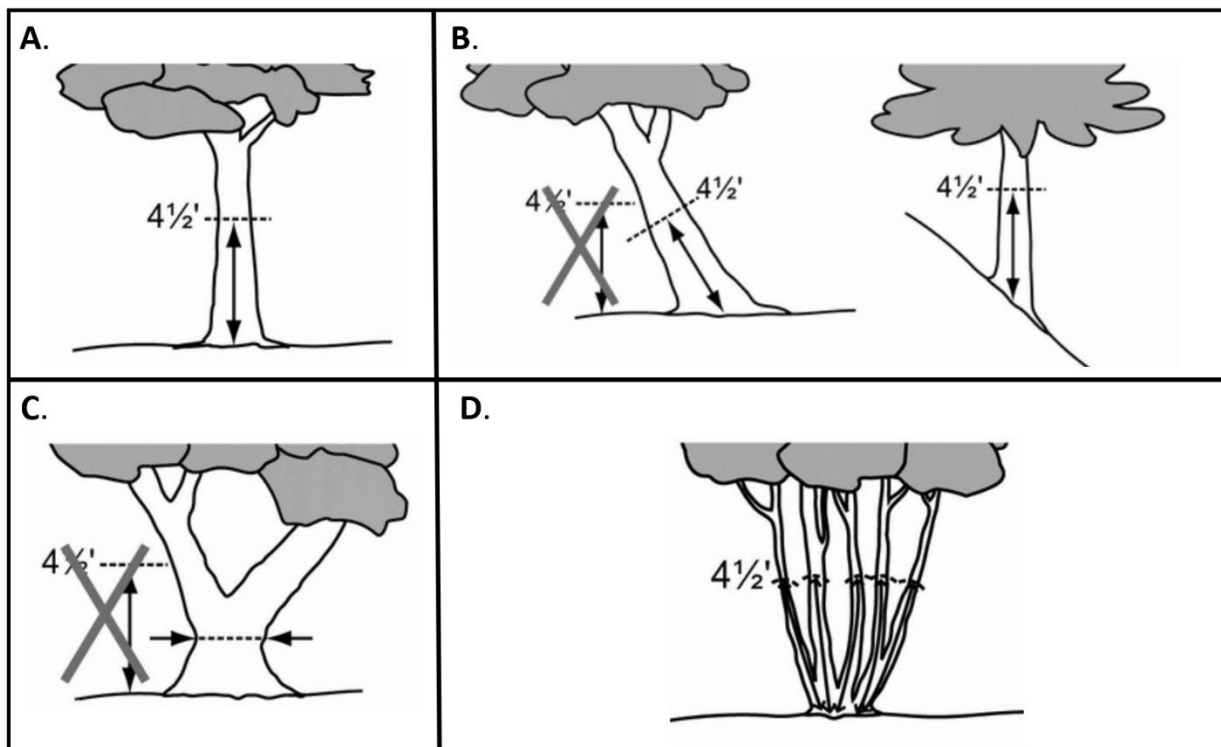
“Dead tree” means a tree that is dead or has been damaged beyond repair or where not enough live tissue, green leaves, limbs, or branches exist to sustain life.

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“Diameter at breast height” or “DBH” means the measurement of mature trees as measured at a height 4.5 feet above the mean ground level at the base of the tree (Figure 16.32.010-2A). The DBH may be determined by measuring the circumference of the tree trunk 4.5 feet above the mean ground level at the base of the tree and dividing by 3.14. Trees existing on slopes are measured at the lowest point of ground at the base of the tree (Figure 16.32.010 – 2B). When the trunk branches or splits less than 4.5 feet from the ground, measure the smallest circumference below the lowest branch and divide by 3.14 (Figure 16.32.010 – 2C). For multi-stemmed trees, the size is determined by measuring all the trunks, and then adding the total diameter of the largest trunk to one-half the diameter of each additional trunk. A multi-stemmed tree has trunks that are connected above the ground and does not include individual trees growing close together or from a common root stock that do not have trunks connected above the ground (see Figure 16.32.010-2).

**Figure 16.32.010-2 – Measuring Diameter at Breast Height**



“Drip line” means the perimeter measured on the ground at the outermost crown by drawing an imaginary vertical line from the circumference of the crown, straight down to the ground below.

“Dying tree” means a tree that is diseased, infested by insects, deteriorating, or rotting, as determined by a professional certified in the appropriate field, and that cannot be saved by reasonable treatment or pruning, or a tree that must be removed to prevent the spread of infestation or disease to other trees.

“Hazardous tree” means a tree or tree part the condition or location of which presents a public safety hazard or an imminent danger of property damage as determined by

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an ISA Qualified Tree Risk Assessor, and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

“Healthy tree” means a tree that is rated by a professional with expertise in the field of forestry or arboriculture as being in fair or good health condition using ISA Best Management Practices and the rating system in this Chapter.

“Invasive species” means a tree, shrub, or other woody vegetation that is on the Oregon State Noxious Weed List or listed on the Milwaukie Invasive Tree List in the Public Works Standards.

“ISA” means the International Society of Arboriculture.

“ISA Best Management Practices” means the guidelines established by ISA for arboricultural practices for use by arborists, tree workers, and the people who employ their services.

“Major tree pruning” means the trimming or removal of twenty percent (20%) or more of the live crown, or removal of or injury to roots within a radial distance from the tree of six times the tree’s DBH or over 25% of the root protection zone (see Figure 16.32.042.G.1.b) during any 12-month period.

“Minor tree pruning” means the trimming or removal of less than twenty percent (20%) of the live crown, or removal of or injury to roots beyond a radial distance from the tree of six times the tree’s DBH or less than 25% of the root protection zone (see Figure 16.32.042.G.1.b) during a 12-month period.

“NDA” means Neighborhood District Association.

“Noxious weed” means a terrestrial, aquatic, or marine plant designated by the State Weed Board under ORS 569.615.

“Owner” means any person who owns land, or a lessee, agent, employee, or other person acting on behalf of the owner with the owner’s written consent.

“Park tree” means a tree, shrub, or other woody vegetation within a City park.

“Person” means any natural person, firm, partnership, association, social or fraternal organization, corporation, estate, trust, receiver, syndicate, branch of government, or any other group or combination acting as a unit.

“Public agency” means any public agency or public utility as defined in ORS 757.005, or a drainage district organized under ORS Chapter 547.

“Public tree” means a tree, shrub, or other woody vegetation on land owned or maintained by the City, but does not include a tree, shrub, or other woody vegetation in the right-of-way.

“Private tree” means a tree, shrub, or other woody vegetation on land not owned or maintained by the City and the trunk of the tree does not cross a public right-of-way or public property line.

“Right-of-way” means an area that allows for the passage of people or goods. Right-of-way includes passageways such as freeways, pedestrian connections, alleys, and all

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streets. A right-of-way may be dedicated or deeded to the public for public use and under the control of a public agency, or it may be privately owned. A right-of-way that is not dedicated or deeded to the public is usually in a tract or easement.

“Shrub” means any plant with multiple woody stems that does not have a defined crown and does not grow taller than a height of 16 feet.

“Street tree” means a tree, shrub, or other woody vegetation on land within the right-of-way. When any portion of the trunk of a tree crosses a public right-of-way line at ground level, it is considered a street tree.

“Street Tree List” is the list of tree and shrub species approved by the City for planting within the right-of-way.

“Topping” means the pruning practice used to reduce tree height by cutting to a predetermined crown limit without regard to tree health or structural integrity. Topping does not include acceptable pruning practices as described in the American National Standards Institute (ANSI) "A-300 Pruning Standards" and companion "Best Management Practices" for tree pruning" published by the International Society of Arboriculture, such as size reduction, utility clearance, or risk mitigation to remove a safety hazard, dead or diseased material. Topping is considered "tree removal".

“Tree” means any living woody plant characterized by one main stem or trunk and many branches, or a multi-stemmed trunk system with a defined crown, that will obtain a height of at least 16 feet at maturity.

“Tree Board” means the city of Milwaukie Tree Board.

“Tree canopy” means the aggregate or collective tree crowns.

“Tree Fund” means the Tree Fund as created by this chapter.

“Tree removal” means the cutting or removal 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, topping, or any act that causes, or may reasonably be expected to cause the tree to die as determined by an ISA Certified Arborist.

“Urban forest” means the trees that exist within the City.

“Urban Forester” means the Urban Forester of the City of Milwaukie, or designee.

“Urban Forest Management Plan” is the management plan adopted by City Council for the management of the City's urban forest.

"Utility" is a public utility, business, or organization that supplies energy, gas, heat, steam, water, communications, or other services through or associated with telephone lines, cable service, and other telecommunication technologies, sewage disposal and treatment, and other operations for public service.

### **16.32.012 ADMINISTRATION**

A. City Manager

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1. The City Manager is authorized to administer and enforce the provisions of this chapter.
2. The City Manager is authorized to adopt procedures and forms to implement the provisions of this chapter.
3. The City Manager may delegate as needed any authority granted by this chapter to a designee as deemed appropriate by the City Manager.

### **B. City Authority**

The City has the ultimate authority to:

1. Interpret the provisions of Chapter 16.32 and determine whether code criteria have been met.
2. Establish conditions of permit and land use approval to ensure Chapter 16.32 is properly implemented.
3. Create rules and procedures as needed to implement Chapter 16.32. Rules and procedures may include but are not limited to:



- a. City of Milwaukee tree lists;
- b. Tree protection standards, specifications, and procedures;
- c. Tree planting standards, specifications, and procedures;
- d. Tree establishment and maintenance standards, specifications, and procedures;
- e. Performance bonding, letters of credit, and cash assurances to help ensure proper tree protection, planting, and establishment;
- f. Tree protection inspections and oversight;
- g. Soil protection inspections and oversight;
- h. Performance path tree protection standards and specifications;
- i. Performance path soil volume standards and specifications; and
- j. Fees for permit applications, reviews, mitigation, inspections, and violations.

### **16.32.014 CREATION OF A TREE FUND**

#### **A. Establishment**

A City Tree Fund is hereby established for the collection of any funds used for the purpose and intent set forth by this chapter.

#### **B. Funding Sources**

The following funding sources may be allocated to the Tree Fund:

1. Tree permit revenue;

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2. Payments received in lieu of required and/or supplemental plantings;
3. Civil penalties collected pursuant to this chapter;
4. Agreed-upon restoration payments or settlements in lieu of penalties;
5. Sale of trees or wood from City property;
6. Donations and grants for tree purposes;
7. Sale of seedlings by the City; and
8. Other monies allocated by City Council.

### **C. Funding Purposes**

The Tree Board will provide recommendations to the City Council during each budget cycle for how the fund will be allocated. The City will use the Tree Fund for the following purposes:

1. Expanding, maintaining, and preserving the urban forest within the City;
2. Planting and maintaining trees within the City;
3. Establishing a public tree nursery;
4. Supporting public education related to urban forestry;
5. Assessing urban forest canopy coverage; or
6. Any other purpose related to trees, woodland protection, and enhancement as determined by the City Council.

## **Article II Street Trees and Public Trees**

### **16.32.020 PLANTING STREET TREES AND PUBLIC TREES**

#### **A. Species**

Any street tree or public tree, must be a species listed on the Street Tree List unless otherwise approved by the Urban Forester.

#### **B. Spacing, size, and placement**

The spacing, size, and placement of street trees and public trees, must be in accordance with a permit issued by the City under this section. The City may approve special plantings designed or approved by a landscape architect, or for ecological restoration projects where trees are likely to be planted at a much higher density to mimic natural conditions in forest regeneration and account for expected mortality.

#### **C. Permit**

No person may plant a street tree without first obtaining a permit from the City. A permit application must be submitted in writing or electronically on a form provided by the City. This permit is at no cost.

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### 16.32.026 MAJOR PRUNING OR REMOVAL OF STREET TREES AND PUBLIC TREES

#### A. Applicability

1. No person will perform major tree pruning or remove any street tree or public tree without first obtaining a permit issued by the City.
  - a. For public trees, only the City, a public agency charged with maintaining the property, or a utility may submit a permit application.
  - b. For street trees, the applicant must be the City, the owner of the adjacent property, or be authorized in writing by the owner of the adjacent property, where the tree will be pruned or removed.
2. For public trees, this chapter will be applied in conjunction with any applicable standards in Title 19 Zoning.

#### B. Permit Review Process

##### 1. Application

A permit application must be submitted in writing or electronically on a form provided by the City and be accompanied by the correct fee as established in the Consolidated Fee Schedule.

##### 2. Public Notice and Permit Meeting

Upon the filing of a permit application, the applicant must post notice, unless otherwise exempted in Section 16.32.030, of the major pruning or tree removal permit application on the property in a location that is clearly visible from the public right-of-way. The applicant must mark each street tree or public tree proposed for major pruning or removal by tying or attaching plastic tagging tape to the vegetation. The City will provide the applicant with at least one sign containing adequate notice for posting, tagging tape, and instructions for posting the notice. The notice must state the date of posting and that a major pruning or tree removal permit application has been filed for the vegetation marked by plastic tagging tape. The notice must state that any person may request a meeting with the City within 14 days from the date of posting to raise questions or concerns about the proposed pruning or tree removal prior to issuance of the permit.

If a meeting is requested, it must be held within 14 days of the request. The City will consider all concerns raised at the meeting but will have final decision-making authority over issuance of the permit based on the criteria and approval standards set forth in Subsection 16.32.026.C.

##### 3. Declaration

The applicant will file a declaration on a form provided by the City stating that notice has been posted and that the vegetation proposed for major pruning or



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removal has been marked. Once a declaration is filed with the City, the City will provide notice of the application to the appropriate NDA.

### C. Review Criteria and Approval Standards

The City may issue the permit, deny the permit, or issue the permit subject to conditions of approval. The City's decision will be final and valid for a period of one year after issuance unless a different time period is specified in the permit. Nothing prevents an applicant from requesting an amendment to an unexpired permit if the conditions and circumstances have changed.

#### 1. Review Criteria

The City will not permit the major pruning or removal of a healthy, functioning street tree or public tree without a demonstration by the applicant that extraordinary circumstances exist. Maintenance or the replacement of sidewalks or curbs, removal of tree litter, or other minor inconveniences do not constitute extraordinary circumstances. Decisions regarding major pruning or removal of healthy, functioning street trees or public trees are fact-specific and are made on a case-by-case basis by the Urban Forester. In determining whether extraordinary circumstances exist that warrant the major pruning or removal of a healthy tree, the Urban Forester will consider:

- a. Whether the species of tree is appropriate for its location;
- b. Whether the species of tree is an invasive species;
- c. Whether the crown, stem, or root growth has developed in a manner that would prevent continued healthy growth or is negatively impacting other trees;
- d. Whether maintenance of the tree creates an unreasonable burden for the property owner; and
- e. Whether the major pruning or removal will have a negative impact on the neighborhood streetscape and any adopted historic or other applicable design guidelines or public utilities.

#### 2. Approval Standards

A permit will be issued only if the following standards are met as determined by the Urban Forester:

- a. The proposed major pruning or tree removal will be performed according to current ISA Best Management Practices. An ISA Certified Arborist will be on site for the duration of any major pruning work.
- b. The street tree or public tree proposed for major pruning or removal meets one or more of the following criteria:
  - (1) The street tree or public tree is dead or dying and cannot be saved as determined by an ISA Certified Arborist in accordance with ISA standards.

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- (2) The street tree or public tree is having an adverse effect on existing adjacent infrastructure that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.
  - (3) The street tree or public tree has sustained physical damage that will cause the vegetation to die or enter an advanced state of decline. The City may require additional documentation from an ISA Certified Arborist to demonstrate that this criterion is met.
  - (4) The street tree or public tree poses an unreasonable risk to the occupants of the property, the adjacent property, or the general public, as determined by an ISA Certified Arborist that is Tree Risk Assessment Qualified (TRAQ) in accordance with current ISA Tree Risk Assessment Best Management Practices.
  - (5) Major pruning or removal of the street tree or public tree is necessary to accommodate improvements in the right-of-way or on City-owned land, and it is not practicable to modify the proposed improvements to avoid major pruning or removal.
  - (6) The street tree or public tree is on the Oregon State Noxious Weed List.
  - (7) The street tree or public tree is part of a stormwater management system and has grown too large to remain an effective part of the system.
- c. Any approval for the removal of a healthy street tree or public tree must require the applicant to pay a fee as established in the Consolidated Fee Schedule.

### D. Removal of Stumps

All stumps of street trees and public trees must be removed below the surface of the ground so that the top of the stump does not project above the surface of the ground, unless otherwise approved to remain by the City.

### E. Performance of Permitted Work

1. All work performed pursuant to a permit issued by the Urban Forester must be completed within the time period specified in the permit unless a different time period is authorized in writing by the Urban Forester.

2. An ISA Certified Arborist must be on site for the duration of any major pruning permit being performed on a public tree or street tree and is responsible for certifying that all arboricultural work is performed in accordance with ISA Best Management Practices.

### F. Replanting

The City will require replanting as a condition of permit approval for the major pruning or removal of a street tree or public tree.

1. The replanted tree must be a species included on the Street Tree List unless otherwise approved by the Urban Forester.

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2. The City will consider alternative planting locations for street trees when replanting at the location of removal conflicts with surrounding infrastructure and the interference would impair the replanted tree.
  - a. For street trees, replanted trees must be planted within the right-of-way fronting the property for which the permit was issued or, subject to the approval of the Urban Forester and with permission in writing from the adjacent property owner, within the right-of-way fronting the adjacent property.
  - b. For public trees, replanted trees must be planted on the land from which the tree was removed unless a different location is approved by the Urban Forester.
3. In lieu of replanting and subject to approval of the Urban Forester, the City can require the applicant to pay a fee as established in the Consolidated Fee Schedule.
4. The optimal time of year for planting is from September through April. If planting is necessary in other months, the City may condition permit approval to require extra measures to ensure survival of the newly planted tree.

### **16.32.028 EMERGENCY REMOVAL OF HAZARDOUS STREET TREES OR PUBLIC TREES**

If a street tree or public tree is determined to be a hazardous tree by the Urban Forester, the City may issue an emergency removal permit. The removal must be in accordance with ISA Best Management Practices and be undertaken with the minimum necessary disturbance to eliminate the imminent danger.

### **16.32.030 EXEMPTIONS**

The following exemptions apply:

#### **A. Permit Exemptions**

##### **1. Maintenance**

A permit for a street tree or public tree is not required for regular maintenance or minor tree pruning that is less than twenty percent (20%) of the crown or disturbance of roots within a radial distance from the tree of six times the tree's DBH or less than 25% of the root protection zone (see Figure 16.32.042.G.1.b) during any 12-month period.

##### **2. Removal**

A permit for a street or public tree is not required when it is on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List and less than 2 inches DBH.

#### **B. Public Notice Exemptions**

The following street trees and public trees may be removed without public notice subject to the City's review of the application:

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1. A street tree or public tree that is dead or dying.
2. A street tree or public tree that is on the Oregon State Noxious Weed List or Milwaukee Invasive Tree List.
3. A street tree or public tree that is considered an unreasonable risk to the occupants of the property, the adjacent property, or the general public as determined by an ISA Certified Arborist that is Tree Risk Assessment Qualified (TRAQ) in accordance with current ISA Tree Risk Assessment Best Management Practices.
4. A street tree or public tree that is less than 2 inches DBH.

### C. Removal Fee Exemptions

A permit for any of the following tree removal situations will not be subject to a removal fee:

#### 1. Public Infrastructure Improvements

The removal of a street tree or public tree during a city public infrastructure improvement project if it is demonstrated that tree planting, establishment, and tree care-related project costs exceed the tree removal fee costs.

#### 2. Private Utility Services

A street tree or public tree that the Urban Forester determines to have an adverse effect on adjacent private utility services.

#### 3. Hazard to Dwelling Units

A street tree or public tree that the Urban Forester determines to threaten the structural integrity of a dwelling unit in a manner that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.

#### 4. Noxious or Invasive Trees

A street tree or public tree that is on the Oregon State Noxious Weed List or Milwaukee Invasive Tree List and is 2 inches DBH or greater.

### D. Topping Exemptions

Topping of a street tree or public tree may be exempted only if a determination has been made by the Urban Forester for these instances:

1. Crown restoration consistent with ISA Best Management Practices for trees severely damaged by storms or other causes, or
2. Crown clearance, crown reduction, or risk mitigation consistent with ISA Best Management Practices for trees existing under or adjacent to utility wires or other obstructions where other pruning practices are impractical.

Topping is not considered tree removal when approved by the Urban Forester.

### E. Replanting Exemptions

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The replanting requirement in Subsection 16.32.026.F is not applicable when the permitted tree that was removed was any of the following:

1. A species on the Oregon State Noxious Weeds List or Milwaukie Invasive Tree List.
2. A tree that is dead, hazardous, or dying.

### **16.32.032 LOW INCOME ASSISTANCE**

To the extent that City funds are available, the City Manager may grant a property owner an exemption or a reduction in permit fees, removal fees, replanting fees and/or may provide assistance in removing a dead or diseased street trees in residential zones. Eligibility and extent of assistance will be based on a percentage of the property owner's median household income for the Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area. A schedule of different fee reductions and exemptions will be determined by the City Manager.

## **Article III Private Trees in Residential Zones**

### **16.32.042 TREE PRESERVATION AND PLANTING WITH DEVELOPMENT IN RESIDENTIAL ZONES**

#### A. Applicability

The tree preservation and planting standards in this subsection apply in residential zones to the construction of a new residential dwelling unit(s) that results in an increase of building footprint.

#### B. Tree Preservation Standards

1. Healthy trees are required to be preserved except when their removal is required for construction, demolition, grading, utilities, and other development impacts.
2. Preservation of at least thirty percent (30%) on-site healthy private tree canopy coverage is required unless mitigation is provided according to Subsection 16.32.042.E.
3. For development sites with thirty percent (30%) or less on-site healthy private tree canopy coverage, the removal of healthy private tree canopy is not allowed unless mitigation is provided according to Subsection 16.32.042.E.
4. Trees listed on the Milwaukie Rare or Threatened Tree List must be prioritized for preservation; if removed, healthy trees from this list will incur an additional fee as listed on the Consolidated Fee Schedule.
5. Unhealthy trees and trees species on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List are not required to be preserved in conjunction with applicable development as established in Subsection 16.32.042.A.

#### C. Tree Planting Standards



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1. At least forty percent (40%) tree canopy is required for a development site from existing healthy trees or new tree plantings unless mitigation is provided according to Subsection 16.32.042.E.
2. The minimum size of newly planted trees is 1.5-inch caliper for broadleaf trees and 5-feet tall for conifers unless otherwise approved by the Urban Forester. Newly planted trees must be in good health with the size and quality consistent with ISA Best Management Practices and ANSI Z60.1 standards.
3. The species selection and spacing of trees to be planted must be such that it provides for the eventual mature size of the trees. Soil type, soil conditions and other site constraints must be considered when selecting species for planting.
4. Root barriers must be installed according to the manufacturer's specifications when a tree is planted within 5 feet of pavement or an underground utility box unless otherwise approved by the Urban Forester.
5. Where there are overhead high voltage utility lines, the tree species selected must be of a type that, at full maturity, will not require pruning to avoid interference with the lines.

### D. Tree Canopy Calculations and Credits

The following situations are eligible for credit towards tree canopy requirements when trees are planted or preserved in accordance with applicable City standards:

#### 1. On-Site Trees

- a. One hundred percent (100%) of the existing crown area or mature crown area of on-site healthy private trees that are preserved, whichever is greater.
  - (1) In cases where a portion of the crown area of an on-site healthy private tree extends off site, the entire crown area is eligible for credit towards the tree canopy requirements.
  - (2) In cases where a portion of the crown area of an off-site private tree extends on site, the crown area is not eligible for credit towards the tree canopy requirements.
  - (3) Healthy on-site trees with DBHs of 12 inches or greater may receive additional canopy credits for existing or future mature crown area to be factored into preservation calculations as defined in the Consolidated Fee Schedule.
- b. Seventy-five percent (75%) of the future mature crown area of planted on-site private trees.

#### 2. Street Trees

- a. Fifty percent (50%) of the existing crown area of street trees that are preserved in the public right-of-way directly abutting the development site.
- b. Fifty percent (50%) of the mature crown area of newly planted street trees in the public right-of-way directly abutting the development site.

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3. Interpretations

- a. When the trunk of a tree crosses a property line at ground level it is considered an on-site tree; except that when the trunk crosses a public right-of-way line at ground level, it is considered a street tree for the purposes of these tree planting standards.
- b. Public right-of-way will be considered off-site for the purposes of these planting standard calculations.
- c. Tree species on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy calculations.
- d. The Milwaukie Mature Tree Crown Area Reference List is the primary resource for determining the estimated tree canopy area for various species.

Table 16.32.042.D summarizes the credits eligible for the tree canopy requirements of Section 16.32.042.

<b>Table 16.32.042.D Eligible Credits for Tree Canopy Requirements</b>		
<b>Tree Location</b>	<b>Existing Preserved Trees</b>	<b>Newly Planted Trees</b>
<b>On-Site Trees</b> (Trees located within the tax lot)	100% of existing or future mature crown area, whichever is greater <sup>1</sup>	75% of future mature crown area
<b>Street Trees</b> (Street trees within the adjacent ROW)	50% of existing or future mature crown area, whichever is greater	50% of future mature crown area

<sup>1</sup> Healthy on-site trees with DBH of 12 inches or greater may receive additional canopy credits for existing or future mature crown area—see Consolidated Fee Schedule.

E. Mitigation Fees

If the tree preservation and/or tree planting standards are not met, mitigation fees must be provided to the Tree Fund as follows:

- 1. The fee in lieu of preservation standard in the Consolidated Fee Schedule, based on the percentage of removed onsite healthy private canopy coverage below the thirty percent (30%) minimum tree canopy preservation standard established in Subsection 16.32.042.B.
- 2. The fee in lieu of planting standard in the Consolidated Fee Schedule, based on the square footage of tree canopy that would be required to meet the forty percent (40%) tree planting standard established in Subsection 16.32.042.C.

F. Variance Procedure

An applicant may apply for a variance to the tree preservation and/or tree planting standards. An application for a variance will be heard and decided by the Planning Commission in accordance with the provisions of Section 19.1006 (Type III review) according to Section 19.911. In addition to meeting the Type III variance approval

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criteria established in Subsection 19.911.4.B, the applicant is required to demonstrate that equivalent or greater environmental benefits are provided as preserving or planting the required tree canopy.

Examples of activities that may justify a variance include but are not limited to:

1. Use of techniques that minimize hydrological impacts beyond regulatory requirements (examples include porous pavement, green roofs, infiltration planters/rain gardens, flow through planters, LIDA (low impact development approach) swales, vegetated filter strips, vegetated swales, extended dry basins, and constructed water quality wetlands).
2. Use of techniques that minimize reliance on fossil fuels and production of greenhouse gases beyond regulatory requirements through the use of energy efficient building technologies, on-site energy production technologies, and green buildings standards (Section 19.510).
3. Use of techniques that preserve and enhance wildlife habitat beyond regulatory requirements, including, but not limited to, the use of native plant species in landscape design, , restoration of native habitat and preservation of habitat through the use of conservation easements or other protective instruments.
4. Use of techniques that preserve open space for sustainable urban agriculture through the use of conservation easements or other protective instruments at sites that are not compatible with tree canopy preservation or planting.

### G. Tree Protection Standards

Trees to be retained must be protected from development impacts according to the standards in this subsection to be eligible for tree preservation and tree canopy credit. A tree protection plan prepared by an ISA Certified Arborist that demonstrates adequate protection of the trees to be preserved is required. The tree protection plan must be approved by the Urban Forester. Tree protection methods and specifications must be consistent with ISA Best Management Practices using either the prescriptive path or performance path tree protection methods as described below.

#### 1. Prescriptive Path for Tree Protection

##### a. Root protection zone

- (1) For on-site trees and off-site trees with root protection zones that extend into the site, provide a minimum 1-foot radius (measured horizontally away from the center of the tree trunk) for each inch of trunk diameter at breast height. Root protection zones for off-site trees may be estimated.
- (2) For street trees, the Urban Forester will prescribe the required root protection zone after reviewing the applicant's proposed root protection zone.

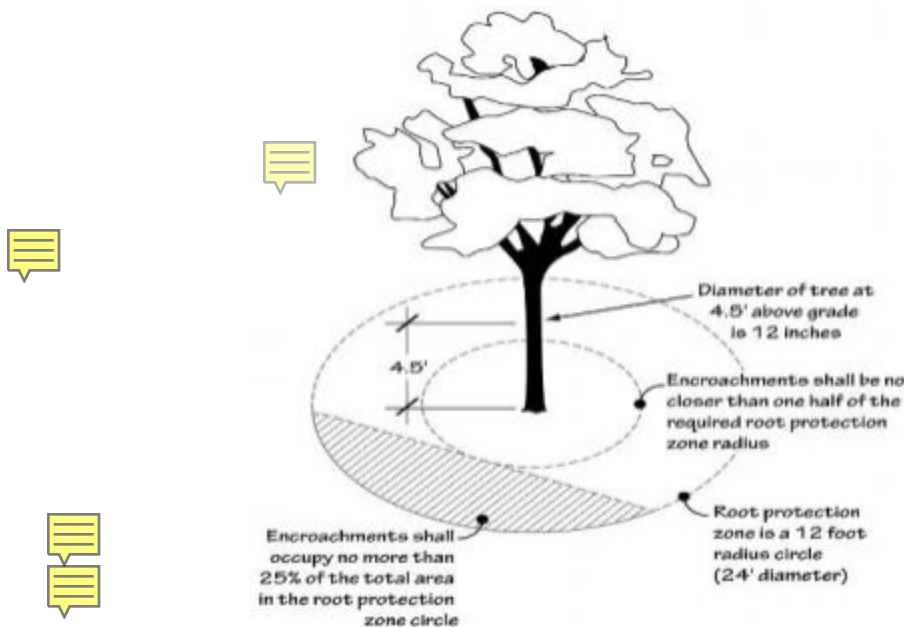


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- b. Encroachments into a root protection zone
- (1) Existing encroachments into the root protection zone, including structures, paved surfaces and utilities, may remain.
  - (2) New encroachments into the root protection zone are allowed provided:
    - (a) The area of all new encroachments is less than twenty-five percent (25%) of the remaining root protection zone area when existing encroachments are subtracted; and
    - (b) No new encroachment is closer than half the required radius distance from the trunk (see Figure 16.32.042.G.1.b).
  - (3) Installation of landscape planting is not an encroachment.
  - (4) Any in-ground irrigation systems are considered encroachments.

**Figure 16.32.042.G.1.b**  
**Example of Permissible RPZ Encroachments**




c. Protection fencing

- (1) Protection fencing consisting of a minimum 4-foot-high metal chain link or no-climb horse fence and secured with 6-foot metal posts must be established at the perimeter of the root protection zone and permissible encroachment area on the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve as the required protective fencing. Protection fencing (new or existing) must be sturdy, highly visible, and not easily movable.

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
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-  (2) When a root protection zone extends beyond the development site, protection fencing for private trees is not required to extend beyond the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve as the required protective fencing. If prescribed by the Urban Forester, protection fencing for street trees may extend beyond the development site.
- (3) Protection fencing is required to be installed before any ground disturbing activities or construction begins, including clearing and grading, and must remain in place until final inspection.
- (4) Signage designating the protection zone and penalties for violations must be displayed in a prominent location on each protection fence.
- d. Prohibitions within the root protection zone

Except as allowed by Subsection 16.32.042.G.1.b, the following are prohibited within the root protection zone of each tree: ground disturbance or construction activity including vehicle or equipment access (but excluding access on existing streets or driveways), storage of equipment or materials including soil, temporary or permanent stockpiling, proposed buildings, impervious surfaces, underground utilities, excavation or fill, trenching or other work activities.

Variances from the prescriptive path protection standards for off-site trees are prohibited. The Urban Forester's determination of whether the prescriptive path standards are met is final and not subject to appeal.

### 2. Performance Path for Tree Protection

 When the standards of the prescriptive path for tree protection cannot be met, the applicant may propose alternative measures to modify the prescriptive root protection zone and use a performance path for tree protection, provided the following criteria are met as approved by the Urban Forester:


- a. An alternative root protection zone plan is prepared by an ISA Certified Arborist who has examined the specific tree's size, location, and extent of root cover, evaluated the tree's tolerance to construction impacts based on its species and health, and identified any past impacts that have occurred within the root zone.
-  b. The alternative root protection zone plan includes the rationale used to demonstrate that the alternate method provides an adequate level of protection based on the findings from a site visit by the project arborist.
- c. If the alternative tree protection method involves alternative construction techniques, the project arborist has provided an explanation of the techniques and materials used. 
- d. The protection zone is marked with signage, stating that penalties will apply for violations, and providing contact information for the arborist.

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### H. Soil Volume Standards

#### 1. General Standards


- 
- a. To be eligible for tree canopy credit as outlined in Subsection 16.32.042.D, planted trees must be provided access to at least 1,000 cubic feet of soil volume according to the standards in this subsection. A soil volume plan prepared by an ISA Certified Arborist is required and must demonstrate that at least 1,000 cubic feet of soil volume is available per tree as determined by the Urban Forester or designee. Soil volume methods and specifications must be consistent with ISA Best Management Practices using either the prescriptive path or performance path soil volume methods. The project arborist must verify with the Urban Forester in writing that the soil volume plan has been successfully implemented prior to tree planting.
  - b. If the existing soils at the site and abutting sites are determined by the project arborist or Urban Forester to be adequate to support healthy tree growth to maturity based on factors including but not limited to compaction levels, drainage, fertility, pH, and potential contaminants, the existing soils may be used to meet the soil volume requirements.
  - c. The assumed soil volume depth for planting will be 3 feet unless otherwise determined by the project arborist or Urban Forester.
  - d. A soil volume area of at least 333 square feet must be accessible to each tree when the assumed soil volume depth is 3 feet.
  - e. The soil volume areas must be continuous and within a 50-foot radius of the tree to be planted. Continuous soil volume areas must be at least 3 feet wide for the entire area.
  - f. Trees may share the same soil volume area provided that all spacing requirements of this subsection are met.
  - g. Soil contaminants are prohibited from the soil volume areas.

#### 2. Prescriptive Path for Soil Volume

- a. Soil volume areas must be protected from construction impacts through any combination of the following methods:



(1) Protection fencing:

- 
- (a) Fencing consisting of a minimum 4-foot-high metal chain link or no-climb horse fence, secured with 6-foot metal posts established at the edge of the soil volume area on the development site. Existing secured fencing at least 3.5 feet tall can serve as the required protective fencing.

- (b) When a soil volume area extends beyond the development site, protection fencing is not required to extend beyond the development

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site. Existing or new secured fencing at least 3.5 feet tall can serve as the required protective fencing.

(c) Signage designating the protection zone and penalties for violations must be secured in a prominent location on each protection fence.

(2) Compaction prevention options for encroachment into soil volume areas:

(a) Steel plates placed over the soil volume area, or

(b) A 12-inch layer of coarse wood chips over geotextile fabric continuously maintained over the soil volume area, or

(c) A 6-inch layer of crushed gravel over geotextile fabric continuously maintained over the soil volume area.

The Urban Forester's determination of whether the prescriptive path standards are met is final and not subject to appeal.

### 3. Performance Path for Soil Volume

a. When the standards of the prescriptive path for soil volume cannot be met; or if the existing soils at the site and abutting sites are determined by the Urban



Forester to be inadequate to support healthy tree growth to maturity based on factors such as compaction levels, drainage, fertility, pH, and potential contamination prior to or resulting from development, a performance path soil volume plan is required.

b. Soils in areas of construction access that do not receive compaction prevention treatment and soils in areas of grading, paving, and construction are considered inadequate for tree growth unless a performance path soil volume plan is provided.

c. The following methods may be addressed in performance path soil volume plans but are dependent on specific site conditions and should be submitted by the applicant on a project basis in coordination with other professionals such as civil and geotechnical engineers, landscape architects, and soil scientists as needed:



(1) Compaction Reduction

(a) tilling

(b) backhoe turning

(c) subsoiling

(2) Soil Amendments

(a) organic amendments

(b) mineral amendments

(c) biological amendments

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- (d) chemical amendments
- (3) Topsoil Replacement (when soil contamination or soil removal occurs)
- (4) Soil Under Pavement
  - (a) structural soil cells
  - (b) structural tree soils
  - (c) soil vaults
  - (d) soils under suspended pavement

### I. Application Requirements

For all applicable developments, applications must be submitted by an ISA Certified Arborist that also has the ISA Tree Risk Assessment Qualification (TRAQ). Applications must demonstrate compliance with the applicable provisions of Subsections 16.32.042.B through H. Other professionals such as engineers, landscape architects, soil scientists, and surveyors may assist the project arborist as needed in preparing the required information, but the arborist must organize, review, and approve the final product. The minimum submittal requirements include an inventory of existing trees, tree preservation plan (if applicable), tree planting plan (if applicable), arborist report, and payment of review fee as established in the Consolidated Fee Schedule.

The following establishes requirements for the various submittal components:





#### 1. Tree Inventory

- a. Trees with any of the following characteristics must be inventoried:
  - (1) 6-inch DBH or greater;
  - (2) 2-inch DBH or greater listed on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List; and/or
  - (3) less than 6-inch DBH for species listed on the Milwaukie Rare or Threatened Tree List.
- b. The location of all trees meeting the requirements of 16.32.042.I.1.a. must be identified, including:
  - (1) On-site trees;
  - (2) Trees within abutting public rights-of-way; and
  - (3) Trees on abutting sites and in the abutting right-of-way with root protection zones that extend into the site.

The locations and information for trees on abutting sites may be estimated.
- c. Number each inventoried tree for identification at the site and on the plans.
- d. Identify the common name and scientific name of each inventoried tree.

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- e. Measure the DBH of each inventoried tree in inches according to accepted ISA standards.
  - f. Measure the approximate average crown radius of each inventoried tree in feet.
  - g. Provide the crown area of each inventoried tree using the following formula:  
  $(\text{crown radius})^2 \times \pi$ .
  - h. Assess the health condition of each inventoried tree using the following categories:
    - (1) Good (no significant health issues)
    - (2) Fair (moderate health issues but likely viable for the foreseeable future)
    - (3) Poor (significant health issues and likely in decline)
    - (4) Very Poor or Dead (in severe decline or dead)
  - i. Identify whether the inventoried tree is on the Milwaukie Rare or Threatened Tree List. 
  - j. Identify whether the inventoried tree is proposed for removal or retention.
  - k. Organize the tree inventory information in a table or other format approved in writing by the Urban Forester.
2. Tree Preservation Plan
- a. Provide a site plan drawn to scale.
  - b. Include the existing tree locations and corresponding tree numbers from the tree inventory and identify which trees are subject to potential impacts identified in 16.32.042.l.2.d.
  - c. Identify rare or threatened trees as described in the Milwaukie Rare or Threatened Tree List.
  - d. Identify the following site disturbances to scale:
    - (1) Demolition
    - (2) Tree removal
    -  (3) Staging, storage, and construction access
    - (4) Grading and filling
    - (5) Paving
    - (6) Construction of structures, foundations, and walls
    - (7) Utility construction
    -  (8) Trenching and boring
    - (9) Excavation

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- (10) Any other demolition or construction activities that could result in ground disturbances and/or tree damage
  - e. Locate tree and soil protection fencing to scale.
  - f. Locate soil compaction prevention methods to scale.
  - g. Identify prescriptive/performance path tree protection and soil volume areas.
  - h. Include tree and soil volume protection specifications from the arborist report on the plans including a detailed description of tree and soil volume protection fencing and signage.
  - i. The elements of the tree preservation plan may be included on multiple plan sheets for clarity.
  - j. The final approved set of construction drawings must include the tree preservation plan to ensure contractors, inspectors, and other professionals have access to the information.
3. Tree Planting Plan
- a. Provide a site plan drawn to scale.
  - b. Include the existing trees to be retained and their crown areas to scale.
  - c. Include the trees to be planted and their mature crown areas to scale based on the Milwaukie Mature Tree Crown Area List.
  - d. Identify the soil volume areas for each tree to be planted to scale.
  - e. For prescriptive/performance path soil volume areas, identify the methods and specifications as applicable for:
    - (1) Protection fencing (including signage details);
    - (2) Compaction Reduction;
    - (3) Soil Amendments;
    - (4) Topsoil Replacement; and/or
    - (5) Soil Under Pavement
  - f. The tree planting should demonstrate consistency with ISA Best Management Practices.
  - g. The elements of the tree planting plan may be included on multiple plan sheets for clarity.
  - h. The final approved set of construction drawings must include the tree canopy plan to ensure contractors, inspectors, and other professionals have access to the information.
4. Arborist Report
- a. Provide a written narrative that summarizes the information from the tree inventory, tree preservation plan, and tree planting plan.

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- b. Provide findings and calculations that demonstrate whether the tree preservation standards in Subsection 16.32.042.B have been met.
- c. Provide findings and calculations that demonstrate whether the tree planting standards in Subsection 16.32.042.C have been met.
- d. If the tree preservation and/or tree planting standards have not been met, provide calculations for the applicable tree mitigation fees as required by Subsection 16.32.042.E.
- e. If the applicant is seeking a variance to the tree preservation and/or tree planting standards in place of providing mitigation fees, provide findings that demonstrate the proposal provides equivalent or greater environmental benefits as preserving or planting the required tree canopy consistent as required by Subsection 16.32.042.F.
- f. Provide findings that demonstrate compliance with the tree protection standards in Subsection 16.32.042.G.
- g. Provide findings that demonstrate compliance with the soil volume standards in Subsection 16.32.042.H.

### 16.32.044 NON-DEVELOPMENT PRIVATE TREE REMOVAL IN RESIDENTIAL ZONES

The City encourages retention of healthy private trees where practical alternatives to removal exist, and where those alternatives meet the owner's objectives for reasonable use and enjoyment of the property. Where there is discretion in a decision about non-development private tree removal, various factors are considered to ensure that significant adverse impacts are avoided or mitigated, weighing the broader economic, ecological, and community concerns.

#### A. Applicability

A permit is required prior to the removal of the following private trees in residential zones:

1. Trees that are at least 6-inch DBH.
2. Trees that are less than 6-inch DBH as specified on the Milwaukie Rare or Threatened Tree List.
3. Trees that were planted to meet any requirements in Sections 16.32.042 or 16.32.044.

#### B. Permit Exemptions

Tree removal permits are not required in residential zones when:

1. Tree removal is approved with development as provided in Subsection 16.32.042.A.



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2. The removal of trees that are grown for commercial agricultural or horticultural purposes including fruit trees, nut trees, or holiday trees.

### C. Applications

An application for a tree removal permit must be made upon forms prescribed by the City and contain the following:

1. Photograph(s) that clearly identify the tree(s) proposed for removal.
2. The number, DBH, species, and location of the trees proposed to be cut on a site plan of the property drawn to scale.
3. Information as to whether the tree is within a Habitat Conservation Area overlay district or is part of an approved landscape or mitigation plan.
4. Any additional information required by the City.
5. An application for a tree cutting permit must be accompanied by the correct fee as established in the Consolidated Fee Schedule.

### D. Type 1 Tree Removal Permit

Type 1 tree removal permits are technical determinations regarding the facts of a particular request and the application of City standards to ensure that work is performed in accordance with ISA Best Management Practices to protect trees, the public, and public infrastructure, and to ensure appropriate tree replacement. Type 1 permits are reviewed administratively by the Urban Forester without public notice, and the decision may be appealed to the City Manager by the applicant.

#### 1. Application Requirements

- a. Applications for a Type 1 tree removal permit must meet the submittal requirements of Subsection 16.32.044.C.
- b. Additional information may also be required.
  - 1) If the Urban Forester requires additional information to review an application, the Urban Forester will send a notice to the applicant requesting the additional information.
  - 2) The applicant will have a maximum of 30 days from the date of the Urban Forester's notice to submit the additional information.
  - 3) If the additional information is not received by the Urban Forester within 30 days from the date of the Urban Forester's notice, the application will be voided on the 31<sup>st</sup> day, with no refund of the filing fee.

#### 2. Approval Criteria

A Type 1 permit will be issued only if the following criteria are met, as determined by the Urban Forester:

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- a. The proposed tree removal will be performed according to current ISA Best Management Practices.
- b. The tree proposed for removal meets one or more of the following criteria:
  - (1) The tree is dead or dying and cannot be saved as determined by an ISA Certified Arborist in accordance with ISA standards.
  - (2) The tree has sustained physical damage that will cause it to die or enter an advanced state of decline. The City may require additional documentation from an ISA Certified Arborist to demonstrate that this criterion is met.
  - (3) The tree is having an adverse effect on adjacent infrastructure or buildings that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.
  - (4) The tree poses an unreasonable risk to the occupants of the property, the adjacent property, or the general public, as determined by an ISA Certified Arborist that is Tree Risk Assessment Qualified (TRAQ) in accordance with current ISA Tree Risk Assessment Best Management Practices.
  - (5) The tree is on the Oregon State Noxious Weed List or the Milwaukie Invasive Tree List.
  - (6) The tree is part of a stormwater management system and has grown too large to remain an effective part of the system.
  - (7) The tree location conflicts with areas of public street widening, construction, or extension as shown in the Transportation System Plan and there is no practicable alternative to removing the tree.
  - (8) Tree removal is required for the purposes of a building or land use permit, utility or infrastructure installation, or utility or infrastructure repair and there is no practicable alternative to removing the tree.
  - (9) The tree is recommended for removal by a designated fire marshal for Clackamas County because it presents a significant fire risk to habitable structures or limits emergency access for rescue workers, and the risk or access issue cannot be abated through pruning or other means that would result in tree retention.
  - (10) An ISA Certified Arborist determines that thinning of interior trees within a stand of trees is necessary for overall stand health, the thinning will result in no less than eighty percent (80%) canopy cover at maturity for the area to be thinned, and that thinning of non-native trees is maximized prior to thinning of native trees.
  - (11) Healthy trees. One (1) healthy tree may be removed per tax lot per 12-month period if the tree is less than 12 inches in diameter at breast height

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and is not required to be preserved by a condition of a land use review, a provision of Chapter 16.32 or Title 19, or as part of a required stormwater facility.

### 3. Mitigation Requirements

Unless removed for thinning purposes (Subsection 16.32.044.D.2.b(10)) or invasive species status (Subsection 16.32.044.D.2.b.(5)), replacement of a removed tree is required as mitigation. The Urban Forester will condition the removal of each healthy tree upon the planting of a replacement tree as follows:

- a. The minimum size of replacement trees is 1.5-inch caliper for broadleaf trees and 5-foot tall for conifers unless otherwise approved by the Urban Forester. Trees planted must be in good health with the size and quality consistent with ISA Best Management Practices and ANSI Z60.1 standards.
- b. Replacement trees must be planted in a manner consistent with ISA Best Management Practices.
- c. The replacement tree must substantively replace the function and values of the tree that was removed wherever practicable. For example, a long-lived evergreen native tree that abuts a designated natural resources area (as per Section 19.402) must be replaced with a long-lived evergreen native tree that abuts a designated natural resources area.
- d. If planting a replacement tree is not practicable, the Urban Forester may allow a tree replacement fee in lieu according to the Consolidated Fee Schedule.

### 4. Decision by the Urban Forester

- a. The Urban Forester's decision will be based on an evaluation of the facts and applicable standards and review criteria in Subsection 16.32.044.D.2.
- b. The Urban Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review criteria and standards.
- c. Any work done under a permit must be performed in strict accordance with the terms and provisions of this chapter and conditions of approval of the permit.
- d. The Urban Forester must notify the applicant of the decision in writing.
- e. If no appeal is filed as specified in Subsection 16.32.044.H, the decision of the Urban Forester is final.

### E. Type 2 Tree Removal Permit

A Type 2 tree removal permit may be approved by the Urban Forester if the Type 1 tree removal approval standards cannot be met. Type 2 permits involve the consideration of relevant technical and qualitative factors to prevent risks to public

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health and safety and to ensure that the impacts of tree removal are mitigated. Type 2 permits are reviewed administratively by the Urban Forester. The Type 2 process is more discretionary than the Type 1 process and may consider a range of options for approving, approving with conditions, or denying a tree removal permit application.


### 1. Application Requirements

a. Applications for a Type 2 tree removal permit must meet the submittal requirements of Subsection 16,32.044.C.

b. Additional information may also be required.

1) If the Urban Forester requires additional information to review an application, the Urban Forester will send a notice to the applicant requesting the additional information.


 2) The applicant will have a maximum of 30 days from the date of the Urban Forester's notice to submit the additional information.

 3) If the additional information is not received by the Urban Forester within 30 days from the date of the Urban Forester's notice, the application will be voided on the 31st day, with no refund of the filing fee.

### 2. Review and Approval Criteria

The City will not issue a Type 2 permit for the removal of a healthy, functioning tree without a demonstration by the applicant that extraordinary circumstances exist. Maintenance or the replacement of pavement, removal of tree litter, or other minor inconveniences may or may not constitute extraordinary circumstances.

Decisions regarding removal of healthy, functioning trees are fact-specific and are made on a case-by-case basis by the Urban Forester. In determining whether extraordinary circumstances exist that warrant the major pruning or removal of a healthy tree, the Urban Forester will consider:

 a. Whether the species of tree is appropriate for its location;

b. Whether the species of tree is an invasive species;

c. Whether the crown, stem, or root growth has developed in a manner that would prevent continued healthy growth or is negatively impacting other trees;

d. Whether maintenance of the tree creates an unreasonable burden for the property owner; and

e. Whether the removal will significantly affect public safety or neighborhood character based on the following:

(1) The age, size, form, species, general condition, pruning history and any unique qualities or attributes of the trees;

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- (2) The cumulative impacts of current and prior tree removals in the area; and
- (3) When the tree is associated with a grove, whether removal of the tree will have a significant adverse impact on the viability of other trees or make other trees considerably more vulnerable to windthrow.

3. Mitigation Requirements

Replacement of a removed tree is usually required as mitigation.

A. The Urban Forester will at a minimum condition the removal of a tree based on Subsection 16.32.044.D.3 (planting standards and exceptions for thinned or invasive-species trees). In addition, the Urban Forester will condition the removal of each tree upon the planting of additional replacement tree(s) as outlined in Table 16.32.044.E.3:

<b>Table 16.32.044.E.3 Required Replacement Trees for Type 2 Permits</b>		
<b>Diameter at Breast Height (DBH) of Tree Removed</b>	<b>Number of Additional Trees Required Beyond 1:1 Replacement</b>	<b>Total Replacement Trees Required</b>
6" DBH to <12" DBH		1 tree
12" DBH to <24" DBH	1 tree	2 trees
24" DBH to <36" DBH	2 trees	3 trees
36" DBH or greater	3 trees	4 trees

4. Decision by the Urban Forester

- a. The Urban Forester’s decision must be based on an evaluation of the facts and applicable standards and review factors in Subsection 16.32.044.E.2.
- b. The Urban Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review factors and standards.
- c. Any work done under a permit must be performed in strict accordance with the terms and provisions of this chapter and conditions of approval of the permit.
- d. The Urban Forester must notify the applicant of the decision in writing.
- e. If no appeal is filed as specified in Subsection 16.32.044.E.5, the decision of the Urban Forester is final.

5. Appeals

The applicant may appeal the Urban Forester's decision.

- a. Appeals must be:
  - 1) Filed with the Urban Forester on forms prescribed by the City;

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- 2) Filed within 14 days from the date of the Urban Forester's decision; and
  - 3) Specifically identify how the Urban Forester erred in applying the standards or review criteria.
- b. Appeals are heard by the City Manager.
- 1) The City Manager will consider the application against the applicable standards or review criteria, taking into consideration information provided by the applicant and City staff.
  - 2) The City Manager may affirm or reverse the Urban Forester's decision or remand the decision to the Urban Forester to determine appropriate actions.
  - 3) The appeal decision of the City Manager is final and may not be appealed to another review body within the City.

## **Article IV Miscellaneous Provisions**

### **16.32.080 PROGRAMMATIC PERMITS**

Programmatic permits may be issued by the Urban Forester for routine public facility or utility operation, planned repair and replacement, and on-going maintenance programs on street trees, public trees, and private trees. The purpose of a programmatic permit is to eliminate the need for individual permits for tree removal, pruning, or for ongoing activities that cover a wide geographic area and may include the pruning or removal of numerous street trees, public trees, and private trees. Programmatic permits are evaluated to prevent cumulative adverse impacts to the urban forest and ensure that any permitted activities meet the goals and objectives of the Urban Forest Management Plan.

#### **A. Applicability**

Programmatic permits may only be issued to a public agency or a utility as defined in this chapter.

#### **B. Application Requirements**

Applications for programmatic permits must be submitted in writing or electronically on forms provided by the City and be accompanied by the correct fee.

#### **C. Permit**

Approved permits must include the following required information. The Urban Forester may modify the permit at any time to respond to any questions, changes in regulations, or previously unforeseen issues, provided the applicant is notified in writing.

1. Duration. The Urban Forester may approve a programmatic permit for a period of up to 2 years;

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2. Geographic area covered by the permit;
3. Permitted activities and any restrictions on the method, number, type, location, or timing of activities;
4. Procedures and thresholds for providing notice to residents, businesses, and the City impacted by the performance of work under the permit;
5. Monitoring, performance tracking, and reporting requirements. The Urban Forester may prescribe rules or procedures that specify the manner in which such tracking and reporting occur; and
6. Traffic control requirements.
7. Annual Report

On the anniversary of permit issuance, the applicant must submit an annual report on a form supplied by the City detailing any work performed under the permit and any work scheduled to be performed.

8. Tree Size Limits
  - a. The programmatic permit will not allow the removal of trees 6-inch or more in diameter at breast height, except as provided in this section.
  - b. If an applicant requests removal of a healthy tree 6-inch or more in diameter at breast height at time of application or during the period in which the programmatic permit is in effect, an opportunity for public comment will be provided in accordance with Subsection 16.32.026 B.2
  - c. For any request, the Urban Forester may further limit allowed tree removal in order to meet the review criteria in Subsection 16.32.028F.
9. Tree Work

All work performed under a programmatic permit must be performed in accordance with ISA Best Management Practices.

### D. Completeness

1. If the Urban Forester determines an application is incomplete, the Urban Forester will provide written notice to the applicant that describes the additional information needed.
2. The applicant must submit the additional information within 30 days from the date of the notice unless extended in writing by the Urban Forester.
3. If the applicant does not furnish the additional information within 30 days from the date of the notice or any extension granted in writing by the Urban Forester, the application will be denied.

### E. Notice of Complete Application

When the Urban Forester determines that the application is complete, the Urban Forester must provide written notice that the application is complete to the applicant and the Tree Board. The notice must provide instructions for how to

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obtain additional information about the application, comment on the application, and request notification of the Urban Forester's decision.

### F. Review Criteria

The Urban Forester may approve a programmatic permit upon a determination that the following criteria are satisfied or will be satisfied with conditions:

1. The proposed activity will result in a net gain to the urban forest functions and benefits described in the purpose statement in Subsection 16.32.005 considering the applicant's proposed performance measures, proposed tree planting, and other activities proposed to improve the overall health of the urban forest.
2. The applicant's proposed outreach and notification program provides adequate notice to residents, businesses, and the City prior to performing work authorized under the programmatic permit.

### G. Decision

The Urban Forester must issue the permit, issue the permit with conditions of approval, or deny the permit within 120 days of determining the application is complete. The Urban Forester's decision will be final and, if approved, the permit will be valid for a period of up to two years. An applicant may request an amendment to an unexpired permit if the conditions and circumstances have changed. The Urban Forester's decision will be based on an evaluation of the application against the applicable review criteria in Subsection 16.32.028 F.

### H. Revocation

The Urban Forester may revoke a programmatic permit upon a determination that the applicant is not adhering to the terms of the permit or is acting beyond the activities authorized by permit.

## **16.32.082 COORDINATION WITH OTHER REGULATIONS**

### A. Street, Sidewalk, Traffic Control Devices, and Vision Clearance

Subject to enforcement under Chapters 12.12 and 12.24, property owners for public trees and private trees, and adjoining property owners for street trees, must not allow any tree to overhang any street, sidewalk or obstruct traffic control devices or inhibit the safe use at intersections within the City.

### B. Dead, Decaying, Dangerous, Diseased, or Infested Tree or Tree Limb Removal

Subject to enforcement under Subsection 8.04.110B, the City may require the removal of any tree or tree limb that is dead, decaying, dangerous, diseased, or infested and that poses a significant risk to the public, adjoining property or the urban forest as determined by the Urban Forester.

Removal under this section must be completed within the time period specified in a written notice unless extended in writing by the Urban Forester.

The responsible party must notify the City in writing when the required removal has been completed.



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If the responsible party does not remove the dead, decaying, dangerous, diseased, or infested tree or tree limb, the vegetation will be declared a nuisance and will be subject to further enforcement pursuant to Chapter 8.04.

In cases where the owner demonstrates extreme financial hardship, the City Manager may grant a cost waiver in accordance with Section 16.32.032.

### C. Business Tax or Metro License Required

Subject to enforcement under Chapter 5.08, all businesses doing arboricultural work within the City must have paid the Milwaukie business tax or have a current business license with the Metropolitan Service District.

### D. Zoning Code

In addition to Chapter 16.32 and subject to enforcement under Section 8.04.135, trees are required to be preserved, planted, and permitted for removal under:

1. Section 19.401 Willamette Greenway
2. Section 19.402 Natural Resources
3. Section 19.606 Parking Lot Standards
4. Section 19.708 Transportation Facility Requirements

### E. Tree Board

The Tree Board is an advisory board to the City Council, with duties and responsibilities established in Section 2.18.

## Article V Enforcement and Penalties

### 16.32.100 ENFORCEMENT

#### A. Interpretations

1. A tree that is removed without an approved removal permit will be considered an unpermitted healthy tree removal.
2. Tree topping, unless otherwise permitted, will be an unpermitted healthy tree removal.
3. If a tree is removed without a permit, a violation will be determined by measuring the stump. A stump that is eight (8) caliper inches or more in diameter will be considered prima facie evidence of a violation of this chapter.
4. Proof of violation of this chapter will be deemed prima facie evidence that such violation is that of the owner of the property upon which the violation was committed.

#### B. Violations

The following are considered violations of the tree code (Chapter 16.32).

1. Removal or Topping. Removal or topping of a tree regulated by Chapter 16.32 without an approved permit from the City.

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2. Removal – Approved Permit. Removal of a tree in violation of an approved permit.
3. Damaging a Tree. Willfully or negligently damaging a tree regulated by Chapter 16.32.
4. Failure to Comply with Permit. Failure to meet a condition of an approved permit.
5. Major Pruning without a Permit. Major pruning of a street tree or public tree without an approved permit from the City.
6. Interference with the City. No person will prevent, delay, or interfere with the Urban Forester or designee while they are engaged in work activities including, but not limited to inspection of trees subject to the provisions of this chapter, planting, cultivating, mulching, pruning, spraying, or removing any street tree, public tree, or private tree.
7. Removal of Stump. Removal of the stump of a tree removed without a tree removal permit.
8. Root Protection Zone Disturbance. Willfully or negligently do the following in the Root Protection Zone (RPZ): unauthorized ground disturbance or construction activity including vehicle or equipment access (but excluding access on existing streets or driveways), storage of equipment or materials including soil, temporary or permanent stockpiling, proposed buildings, impervious surfaces, underground utilities, excavation or fill, trenching or other work activities.
9. Soil Contamination. Willfully or negligently allow soil contaminants in the soil volume area.

### C. Penalties

The following penalties may apply to violations of the provisions of Chapter 16.32:

1. A person who violates Chapter 16.32 will, upon conviction thereof, be punished by a fine not to exceed an amount established in the Consolidated Fee Schedule.
2. Topping, pruning, or otherwise inflicting willful and negligent damage to a tree crown or roots in a manner that is inconsistent with ISA Best Management Practices:
  - a. A fine up to the amount established in the Consolidated Fee Schedule or up to the appraised loss in value of the illegally topped or pruned tree as determined by an ISA Certified Arborist plus the arborist's reasonable appraisal fee.
  - b. Restoration of the tree crown, trunk, or root system as prescribed by an ISACertified Arborist and approved by the Urban Forester.
3. Tree protection zone violations:
  - a. A fine up to the amount established in the Consolidated Fee Schedule.

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- b. Restoration of the tree protection zone as prescribed by an ISA Certified Arborist and approved by the Urban Forester.
4. General Penalty
- a. A person violating any of the provisions of this chapter will, upon conviction thereof, be punished by a fine not to exceed one thousand dollars (\$1,000.00), if there is not a corresponding fine in the Consolidated Fee Schedule.
  - b. Each day's violation of a provision of this chapter constitutes a separate offense.

