

**COUNCIL ORDINANCE No. 2216**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE (MMC) TITLE 16 ENVIRONMENT FOR THE PURPOSE OF ADDRESSING TREE PRESERVATION (FILE #ZA-2021-002).**

**WHEREAS** it is the intent of the City of Milwaukie to increase the city's tree canopy and preserve existing trees to support efforts to achieve a 40% city-wide tree canopy; and

**WHEREAS** the proposed code amendments implement several of the goals and policies of the city's comprehensive plan related to tree preservation; and

**WHEREAS** legal and public notices have been provided as required by law, and that all residential addresses in the city were notified of the amendments and multiple opportunities for public review and input has been provided over the past 15 months; and

**WHEREAS** on October 12, October 26, 2021, and November 9, 2021 the Milwaukie Planning Commission conducted public hearings as required by MMC 19.1008.5 and adopted a motion in support of the amendments; and

**WHEREAS** the Milwaukie City Council finds that the proposed amendments are in the public interest of the City of Milwaukie.

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1. Findings. Findings of fact in support of the amendments are adopted by the City Council and are attached as Exhibit A.

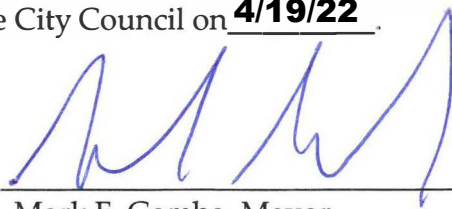
Section 2. Amendments. The Milwaukie Municipal Code (MMC) is amended as described in Exhibit B (underline/strikeout version), and Exhibit C (clean version).

Section 3. Effective Date. The amendments shall become effective 30 days from the date of adoption.

Read the first time on 4/19/22, and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 4/19/22.

Signed by the Mayor on 4/19/22.

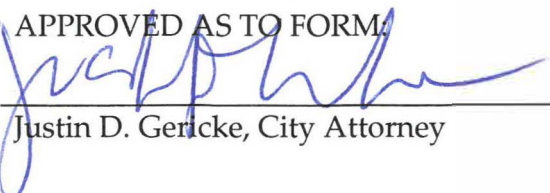


Mark F. Gamba, Mayor

ATTEST:

  
\_\_\_\_\_  
Scott S. Stauffer, City Recorder

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Justin D. Gericke, City Attorney

**EXHIBIT A**  
**Findings in Support of Approval**  
**File #ZA-2021-002**  
**Amendments to MMC Title 16 (Tree Code)**

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, the City of Milwaukie, proposes to amend the tree preservation regulations that are established in Title 16 of the Milwaukie Municipal Code (MMC). The land use application file number is ZA-2021-002.
2. The proposed amendments relate to implementation of portions of the Comprehensive Plan related to tree preservation.
3. The proposal is subject to the criteria and procedures outlined in the following sections of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.902 Amendments to Maps and Ordinances
  - MMC Chapter 19.1008 Type V Review

The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. An initial evidentiary hearing was held by the Planning Commission on November 9, 2021. Public hearings were held by the City Council on January 18, 2022, February 1, 2022, February 15, 2022, March 15, 2022, March 29, 2022, and April 5, 2022 as required by law.

4. MMC Section 19.902 Amendments to Maps and Ordinances

MMC 19.902 establishes the general process for amending the City's Comprehensive Plan and land use regulations within the Milwaukie Municipal Code. Specifically, MMC Subsection 19.902.5 establishes Type V review as the process for changing the text of land use regulations, with the following approval criteria:

- a. MMC Subsection 19.905.B.1 requires that the proposed amendment be consistent with other provisions of the Milwaukie Municipal Code.

*The proposed amendments have been coordinated with and are consistent with other provisions of the Milwaukie Municipal Code, including MMC Section 19.402 Natural Resources.*

*This standard is met.*

- b. MMC Subsection 19.902.5.B.2 requires that the proposed amendment be consistent with the goals and policies of the Comprehensive Plan.

*The goals and policies of the Comprehensive Plan support the amendments to allow the development of a new tree code:*

- (a) Section 3 – Natural Resources and Environmental Quality:

Protect, conserve, and enhance the quality, diversity, quantity and resiliency of Milwaukie’s natural resources and ecosystems, and maintain the quality of its air, land, and water. Utilize a combination of development regulations, incentives, education and outreach programs, and partnerships with other public agencies and community stakeholders.

(a) Policy 3.4.2:

Pursue the City’s goal of creating a 40% tree canopy through a combination of development code and other strategies that lead to preservation of existing trees and planting of new trees and prioritize native and climate-adapted species, while also considering future solar access.

(b) Section 6 – Climate Change and Energy Goals and Policies:

Promote energy efficiency and mitigate the anticipated impacts of climate change in Milwaukie through the use of efficient land use patterns, multimodal transportation options, wise infrastructure investments, and increased community outreach and education as outlined in the City’s Climate Action Plan.

(a) Policy 6.1.4:

Develop standards and guidelines that contribute to a 40% citywide tree canopy.

*The proposed amendments implement sections of the comprehensive plan related to tree preservation.*

*Through these updates to the City’s municipal code, the following policy mandate is addressed:*

- *Increasing the tree canopy and preserving existing trees to support the City’s goal of a 40% tree canopy*

*The proposed amendments include standards and requirements related to tree preservation, tree removal, and replanting on residentially zoned private property throughout the city. As proposed, the amendments are consistent with and facilitate the actualization of several relevant goals and policies in the City’s Comprehensive Plan.*

*This standard is met.*

- c. MMC Subsection 19.902.5.B.3 requires that the proposed amendment be consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

*The proposed amendments are consistent with the following applicable sections of Metro’s Urban Growth Management Functional Plan:*

## Title 8 – Compliance Procedures

*The City's current Comprehensive Plan and land use regulations are in compliance with the Functional Plan. The proposed amendments will be deemed to comply with the Functional Plan if no appeal to the Land Use Board of Appeals is made within the 21-day period set forth in ORS 197.830(9). As required by Metro Code Section 3.07.820.A, the City has provided notice of the proposed amendments to Metro's Chief Operating Officer as much in advance of the City Council hearing on the proposed amendments as possible.*

*In processing the proposed amendments, the City has followed its own requirements and procedures for citizen involvement. The proposed amendments have been reviewed at a public City Council work session and made available to the City's various Neighborhood District Associations for review. The City has conducted public hearings on the proposed amendments before the Planning Commission and City Council and has published public notice prior to each hearing.*

## Title 13: Nature in Neighborhoods

*The purpose of Title 13 is twofold: (1) to conserve, protect, and restore a continuous ecologically viable streamside corridor system in a manner that is integrated with upland wildlife habitat and with the surrounding urban landscape; and (2) to control and prevent water pollution for the protection of the public health and safety, and to maintain and improve water quality and prevent water pollution. The City is required to comply with Title 13 for all mapped resources located within the City. By meeting the requirements of Title 13, the City also complies with Statewide Planning Goal 5 for riparian areas and wildlife habitat. Metro's 2020 Compliance Report concluded that Milwaukie is in compliance with Title 13.*

*The proposed code amendments do not propose any changes to the City's habitat protection program or inventory of habitat resources. Further the amendments strengthen the City's approach to habitat conservation with a new tree code that applies to residential properties. The new tree code applies to both new development and non-development activities.*

*Amendments related to trees on private property are intended to make the existing Milwaukie tree code consistent with the policies in the Comprehensive Plan and Urban Forestry Management Plan.*

*The current tree code addresses only trees in the public right of way or on public property, like park or street trees. In order to meet the City's goal of a 40% tree canopy, as identified in the Climate Action Plan, Urban Forestry Management Plan, and Comprehensive Plan policies, trees on private residential property must also be preserved and protected.*

*In the proposed code amendments, private tree code is proposed to protect canopy on private residential property. The proposed tree code focuses on the adoption of tree preservation standards, tree canopy standards, mitigation standards, soil volume and protection standards. For residential development projects, tree canopy protection is prioritized, and tree replacement will be required if trees are removed. For other healthy non-development tree removal on private property, a permit will be required as well as tree replacement or mitigation. There will be exceptions and a streamlined process for unhealthy or dying trees,*

*trees posing safety hazards, invasive species, and trees significantly impacting infrastructure without practical mitigation.*

*The proposed amendments to the City's municipal code Title 16 and Title 19 clarify existing code language and update desired tree and plant types to meet City policy goals for greater forest diversity, more native and climate-resilient species, improving the ecological function and creating multi-level, uneven-aged canopy.*

*The proposed amendments were sent to Metro for comment. Metro did not identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies. The proposed code amendments are in compliance with Metro's Functional Growth Management Plan.*

*This standard is met.*

- d. MMC Subsection 19.902.5.B.4 requires that the proposed amendment be consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

#### Goal 1 – Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

*The City has an adopted and acknowledged amendment process and has followed that process in making these amendments. Public hearings on the proposed amendments have been held and public notice was published prior to each hearing. In addition, all owners of residential property were sent notice of the public hearings. The Planning Commission members are appointed by an elected City Council, following an open and public selection process.*

#### Goal 2 – Land Use Planning

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

*The proposed amendments will not change the City's land use planning process. The City will continue to have a comprehensive land use plan and implementing regulations that are consistent with the plan. Specifically, the proposed amendments will include standards and requirements related to tree preservation on private property. These changes strengthen the City's existing policies that implement Goal 2.*

*The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. The DLCD did not identify any areas where the proposed amendments were inconsistent with State statutes and administrative rules.*

*This standard is met.*

- e. MMC Subsection 19.902.5.B.5 requires that the proposed amendment be consistent with relevant federal regulations.

*Relevant federal regulations are those that address land use, the environment, or development in the context of local government planning. Typically, regulations such as those set forth under the following acts may be relevant to a local government land use process: the Americans with Disabilities Act, the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Fair Housing Act, the National Environmental Policy Act, the Religious Land Use and Institutionalized Persons Act, and the Resource Conservation and Recovery Act. None of these acts include regulations that impact the subject proposal or that cannot be met through normal permitting procedures. Therefore, the proposal is found to be consistent with federal regulations that are relevant to local government planning.*

*This standard is met.*

*The City Council finds that the proposed amendments to MMC Title 16 (Tree Code) are consistent with the applicable approval criteria for zoning text amendments as established in MMC 19.902.5.B.*

5. MMC Section 19.1008 Type V Review

MMC 19.1008 establishes the procedures and requirements for Type V review, which is the process for legislative actions. The City Council, Planning Commission, Planning Manager, or any individual may initiate a Type V application.

*The amendments were initiated by the Planning Manager on August 13, 2021.*

a. MMC Subsection 19.1008.3 establishes the public notice requirements for Type V review.

(1) MMC Subsection 19.1008.3.A General Public Notice

MMC 19.1008.3.A establishes the requirements for public notice, including a requirement to post public notice of a public hearing on a Type V application at least 30 days prior to the first evidentiary hearing. The notice must be posted on the City website and at City facilities that are open to the public.

*A notice of the Planning Commission's October 12, 2021, hearing was posted as required on September 1, 2021. A notice of the City Council's January 18, 2022, hearing was posted as required on December 17, 2021.*

(2) MMC Subsection 19.1008.3.B DLCD Notice

MMC 19.1008.3.B requires notice of a Type V application be sent to the Department of Land Conservation and Development (DLCD) as per the standards of MMC Subsection 19.1001.6.C.4.a, which required notice to be sent to DLCD at least 35 days prior to the first evidentiary hearing.

*Notice of the proposed amendments was sent to DLCD on August 31, 2021, in advance of the first evidentiary hearing on October 12, 2021.*

(3) MMC Subsection 19.1008.3.C Metro Notice

MMC 19.1008.3.C requires notice of a Type V application be sent to Metro at least 35 days prior to the first evidentiary hearing.

*Notice of the proposed amendments was sent to Metro on August 31, 2021, in advance of the first evidentiary hearing on October 12, 2021.*

(4) MMC Subsection 19.1008.3.D Property Owner Notice (Measure 56)

MMC 19.1008.3.D requires notice to property owners if, in the Planning Manager's opinion, the proposed amendments would affect the permissible uses of land for those property owners.

*Notice of the proposed amendments was sent to all residential properties in the city on October 20, 2021, in advance of the November 9, 2021 public hearing related to the proposed amendments to the tree code.*

b. MMC Subsection 19.1008.4 Type V Decision Authority

MMC 19.1008.4 establishes that the City Council is the review authority for Type V applications and may approve, approve with conditions, amend, deny, or take no action on a Type V application after a public hearing.

*The City Council held a public hearing to consider this application on January 18, 2022, and February 1, February 15, March 15, March 29, and April 5, and approved the proposed amendments as presented.*

c. MMC Subsection 19.1008.5 Type V Recommendation and Decision

MMC 19.1008.5 establishes the procedures for review and a decision on Type V applications. The process includes an initial evidentiary hearing by the Planning Commission and a recommendation to the City Council, followed by a public hearing and decision by the City Council.

*The Planning Commission held an initial evidentiary hearing on the tree code on November 9, 2021 and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on January 18, 2022, and February 1, February 15, March 15, March 29, and April 5, and approved the proposed amendments as presented.*

## Exhibit B

### DRAFT MILWAUKIE RESIDENTIAL TREE CODE – UNDERLINE/STRIKEOUT

Revised 4/6/22

#### CHAPTER 16.32 TREE CODE

##### 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 residential zones and on land owned or maintained by the City and within rights-of-way, 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 shall~~ apply for terminology~~7~~ 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.

“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 Milwaukie.

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



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

“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, ~~or volume, or area~~ extending from the trunk and including the trunk and branches, stems, leaves, and reproductive structures.

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

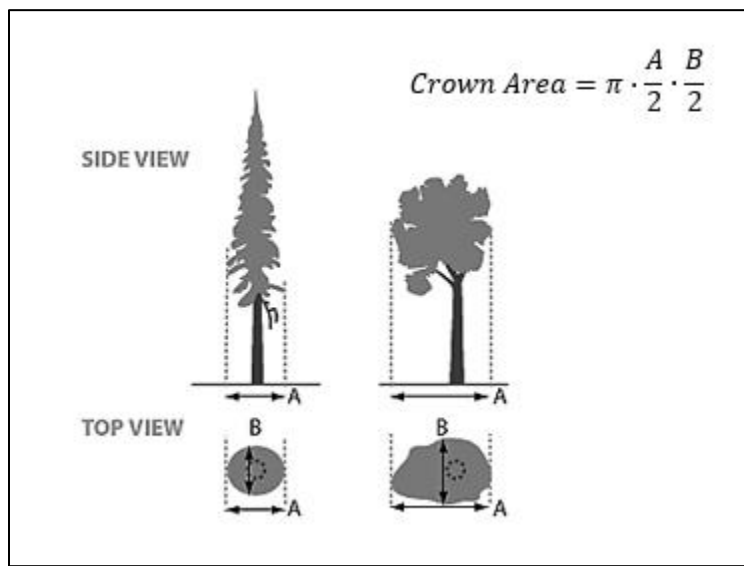


Figure 16.32.010 - 1 – Measuring crown area

“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.

“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.

“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

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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 (Figure 16.32.010 – 2D) from the ground level on the lower side of the tree. If a tree splits into multiple trunks below 4.5 feet above ground level, the measurement is taken at its most narrow point below the split.

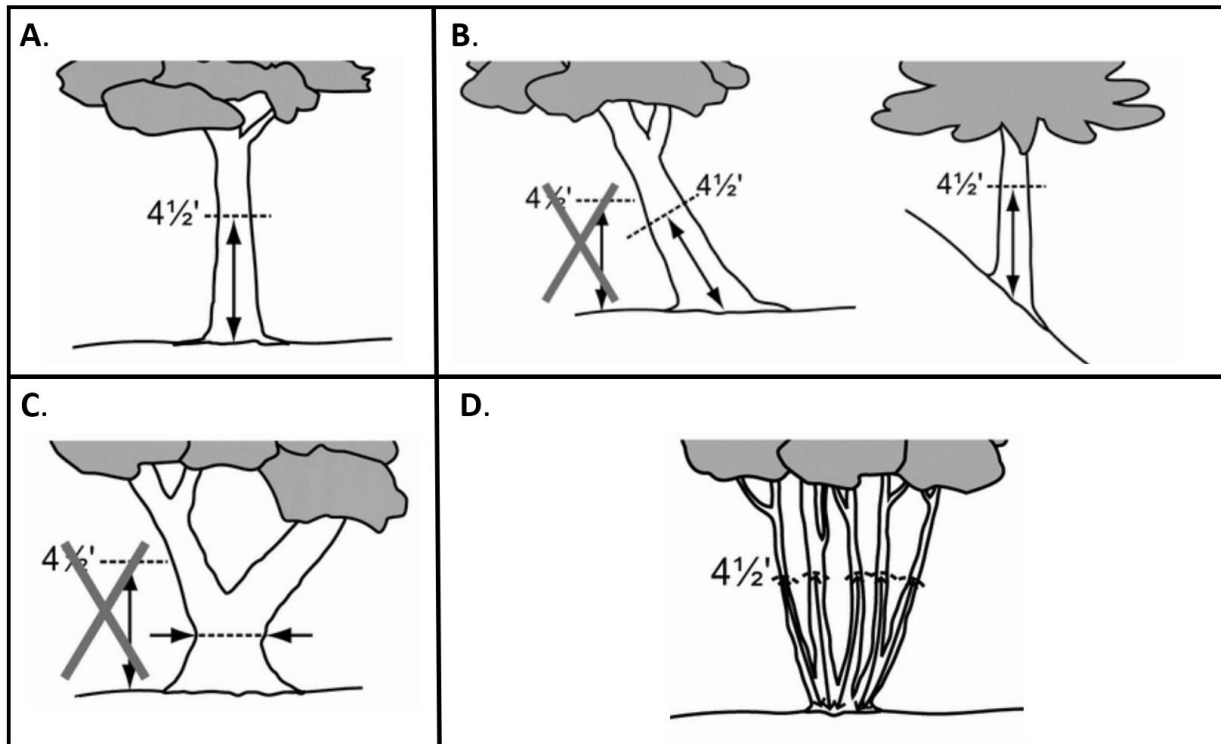


Figure 16.32.010 – 2 – Measuring Diameter at Breast Height

“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.

“Invasive species” means a tree, shrub, or other woody vegetation that is on the Oregon State Noxious Weed List or listed on the City of 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 removal of over 20% of the live crown, or removal of or injury to over 15% of the root system during any 12-month period.

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

“Minor tree pruning” means the trimming or removal of less than 20% of any part of the ~~branching structure of a tree in either the crown or trunk~~ live crown, or less than ~~150%~~ 150% of the root ~~area system~~ 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~~ means any individual, firm, association, corporation, agency, or organization of any kind.

“~~Planning Director~~ Manager” ~~means the planning director manager of the City of Milwaukie or designee~~

“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.

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~~“Public Works Director” means the public works director of the City of Milwaukie or designee.~~

~~“Right-of-way” means the area between boundary lines of a public 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 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 a pruning technique that cuts branches and/or the main stem of a tree to reduce its height or width.

“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 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 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,

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cable service, and other telecommunication technologies, sewage disposal and treatment, and other operations for public service.

### 16.32.014 ADMINISTRATION.

- A. The City Manager is authorized to administer and enforce the provisions of this chapter.
- B. The City Manager is authorized to adopt procedures and forms to implement the provisions of this chapter.
- C. The City Manager may delegate as needed any authority granted by this chapter to ~~the Public Works Director, the Urban Forester, the Planning Director~~ Manager, the City Engineer, or such other a designee as deemed appropriate by the City Manager.

### 16.32.015 CREATION AND ESTABLISHMENT OF THE TREE BOARD

#### A. Tree Board Composition

The Tree Board will consist of seven members, at least five of which must be residents of the City, one must be an ISA Certified Arborist, and all seven must be appointed by the Mayor with approval of the City Council.

#### B. Term of Office

The term of the seven persons appointed by the Mayor will be three years except that the term of two of the members appointed to the initial Tree Board will serve a term of only one year, and two members of the initial Tree Board will be for two years. In the event that a vacancy occurs during the term of any member, their successor will be appointed for the unexpired portion of the term. Tree Board members will be limited to serving three consecutive terms.

#### C. Compensation

Members of the Tree Board will serve without compensation.

#### D. Duties and Responsibilities

The Tree Board will serve in an advisory capacity to the City Council. Its responsibilities include the following:

1. Study, investigate, develop, update, and help administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition

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of the Urban Forest. The plan will be presented to the City Council for approval every five years and will constitute the official Urban Forestry Management Plan for the City;

2. Provide advice to City Council on policy and regulatory issues involving trees, including climate adaptation and mitigation efforts;
3. Provide outreach and education to the community on tree-related issues and concerns;
4. Organize and facilitate the City's tree planting events and other public events involving trees and Urban Forestry education;
5. Assist City staff in preparing recommendations regarding the application, membership, and ongoing participation by the City in the Tree City USA Program;
6. Provide leadership in planning the City's Arbor Day/Week proclamation and celebration; and
7. Provide recommendations to City Council on the allocation of funds from the Tree Fund.

The Tree Board, when requested by the City Council, will consider, investigate, make findings, report, and make recommendations on any special matter or question coming within the scope of its work.

### E. Operation

The Tree Board will choose its own officers, make its own rules and regulations, and keep minutes of its proceedings. A majority of the members will constitute a quorum necessary for the transaction of business.

### 16.32.016 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.

16.32.017 TREE PLANTING ON LAND OWNED OR MAINTAINED BY THE CITY AND WITHIN THE PUBLIC RIGHT-OF-WAY

A. Species

Any tree, shrub, or other woody vegetation to be planted on land owned or maintained by the City or within the public right-of-way must be a species listed on the Street Tree List unless otherwise approved by the Urban Forester.

B. Spacing, size and placement

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The spacing, size, and placement of street trees, shrubs, and other woody vegetation 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.

### **16.32.018 STREET AND PUBLIC TREE CARE**

The City will have the right to plant, prune, maintain and remove trees, shrubs, and other woody vegetation on land owned or maintained by the City and within the right-of-way as may be necessary to ensure public safety or that poses a risk to sewers, electric power lines, gas lines, water lines, or other public improvements, or is infested with any injurious fungus, insect, or other pest as determined by the Urban Forester. Unless otherwise exempted in this chapter, the City must obtain a permit for any activities performed under this section.

### **16.32.019 TREE TOPPING**

No person will top any street tree, park tree, or other tree on public property. Trees severely damaged by storms or other causes, or trees existing under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this section at the determination of the Urban Forester.

### **16.32.020 PRUNING, CORNER CLEARANCE**

Subject to enforcement under MMC\_12.12.010, any tree, shrub, or other woody vegetation overhanging any street or right-of-way within the City must be maintained by the owner to ensure that no vegetation obstructs the right-of-way.

### **16.32.021 DEAD OR DISEASED TREE REMOVAL ON PRIVATE LAND**

The City may require the removal of any tree, shrub, or other woody vegetation that is dead, diseased, or infested and that poses a significant risk to the public or the urban forest as determined by the Urban Forester. The City or its agents will notify the owners of such trees in writing.

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



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the City in writing when the required removal has been completed. If the owner does not remove the dead, diseased, or infested vegetation within the time period specified in the notice or extension granted in writing by the Urban Forester, the City will have the right to remove the dead, diseased, or infested vegetation and charge the cost of removal to the owner pursuant to MMC Chapter 8.04. In cases where the owner demonstrates extreme financial hardship, the City Manager may grant a cost waiver in accordance with MMC 16.32.038.

### 16.32.022 REMOVAL OF STUMPS

All stumps of street trees must be removed by the adjacent property owner below the surface of the ground so that the top of the stump does not project above the surface of the ground.

### 16.32.023 INTERFERENCE WITH 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 trees, park trees, or dead, diseased, or infested trees on private land, as authorized in this chapter.

### 16.32.024 ARBORISTS LICENSE

All businesses doing arboricultural work within the City must have paid the Milwaukie business tax or have a current business license with the City Metropolitan Service District, and at least one staff member who is an ISA Certified Arborist. The A Certified Arborist must be on site for the duration of any arboricultural work 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.

### 16.32.026 PERMIT FOR MAJOR PRUNING OR REMOVAL OF STREET TREES OR TREES ON LAND OWNED OR MAINTAINED BY THE CITY

#### A. Applicability

1. No person will perform major tree pruning or remove any tree in a public right-of-way or on public land, 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 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.

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- c. No person can remove a street tree without first obtaining a permit from the City. Permit approval may be conditioned upon either replacement of the street tree with a tree listed on the Street Tree List or a requirement to pay to the City a fee as provided in the master fee schedule.

2. For trees on land owned or maintained by the City, this chapter will ~~shall~~ 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 Master Fee Schedule.

#### 2. Public Notice and Permit Meeting

Upon the filing of a permit application, the applicant must post notice 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 tree, shrub, or other woody vegetation proposed for major pruning or removal by tying or attaching orange 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 orange 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 C below.

#### 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 removal has been marked.

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

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### 4. Exemptions from Public Notice

The following trees, shrubs, or other woody vegetation may be removed without public notice subject to the City's review of the application:

- a. A tree, shrub, or other woody vegetation 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 in accordance with current ISA Tree Risk Assessment standards.
- b. A tree, shrub, or other woody vegetation that is an invasive species and that is less than 8 inches in diameter at breast height.
- c. A street tree or public tree that is less than 2 inches in diameter at breast height.

### C. Review Criteria and Approval Standards

The City may issue the permit, deny the permit, or may 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 application 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.

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### 2. Approval Standards

A permit will be issued only if the following criteria 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 and an ISA Certified Arborist will be on site for the duration of the tree work.
- b. The tree, shrub, or other woody vegetation proposed for major pruning or removal meets one or more of the following criteria:
  - (1) The tree, shrub, or other woody vegetation is dead or dying and cannot be saved as determined by an ISA Certified Arborist in accordance with ISA standards.
  - (2) The tree, shrub, or other woody vegetation is having an adverse effect on adjacent infrastructure that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.
  - (3) The tree, shrub, or other woody vegetation 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 tree, shrub, or other woody vegetation poses an unreasonable risk to the occupants of the property, the adjacent property, or the general public, as determined by an ISA Certified Arborist in accordance with current ISA Tree Risk Assessment standards.
  - (5) Major pruning or removal of the tree, shrub, or other woody vegetation 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 tree, shrub, or other woody vegetation is on the Oregon State Noxious Weed List.
  - (7) The tree, shrub, or other woody vegetation 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 tree, shrub, or other woody vegetation must require the applicant to pay a fee as established in the Master Fee Schedule.

### D. Performance of Permitted Work

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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.

### E. 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.
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. In lieu of replanting and subject to approval of the Urban Forester, the City can require the owner to pay a fee as established in the Master Fee Schedule.
  - c. 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. 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 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 public properties and rights-of-way. 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 public and street 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.

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### A. 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.

### B. Applicability

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

### C. 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.

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

### E. 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 MMC 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.

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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.

### F. Decision

The Urban Forester must issue the permit, deny the permit, or may issue the permit subject to conditions of approval 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. Nothing prevents an applicant from requesting 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 MMC 16.32.028 F.

### G. 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;
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

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- a. The programmatic permit will not allow the removal of trees 6 or more inches in diameter at breast height, except as provided in this section.
- b. If an applicant requests removal of a healthy tree 6 or more inches 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 shall~~ be provided in accordance with MMC 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 MMC 16.32.028F.

### 9. Tree Work

All work performed under a programmatic permit must be performed in accordance with ISA arboricultural practices.

### H. Revocation

1. 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.

### 16.32.030 PERMIT AND FEE EXEMPTIONS ON LAND OWNED OR MAINTAINED BY THE CITY AND WITHIN THE PUBLIC RIGHT-OF-WAY

#### A. Hazardous Tree

If a tree on public properties and rights-of-way is determined to be a hazardous tree by the Urban Forester, the City may issue an emergency removal permit. The removal must shall be in accordance with ISA best management practices, and be undertaken with the minimum necessary disturbance to eliminate the imminent danger.

#### B. Maintenance

A permit for trees on public properties and rights-of-way is not required for regular maintenance or minor tree pruning that does not require removal of over 20% of the crown, tree topping, or disturbance of more than 10% of the root system during any 12-month period.

#### C. Public Infrastructure Improvements

Any tree on land owned or maintained by the City and requires removal or pruning to accommodate a city public infrastructure improvement project will require a permit and must meet replanting requirements imposed by this chapter. If it is demonstrated that tree planting, establishment, and tree care-related project costs exceed the tree removal fee costs, the permit will not be subject to a removal fee.



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### D. Private Utility Services and Dwelling Units

If the Urban Forester determines that a tree, shrub, or other woody vegetation proposed for removal on public properties and rights-of-way has an adverse effect on adjacent private utility services or threatens the structural integrity of a dwelling unit that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices, the permit will not be subject to a removal fee.

### 16.32.038 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 tree within ~~in~~ the right of way and 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.

### 16.32.040 PENALTY

A person who removes a street tree or public tree without first obtaining the necessary permit from the City, removes a tree in violation of an approved permit, or violates a condition of an approved permit must pay a fine in an amount established in the Master Fee Schedule. ~~Any fine imposed under this section must not be less than the cost of the permit and the associated removal fee for which a permit should have been obtained.~~

### 16.32.042 TREE PRESERVATION AND PLANTING IN RESIDENTIAL ZONES

#### A. Applicability

The tree preservation and planting standards in this subsection apply to the following types of development in residential zones:

1. Land Divisions.
2. Construction of a new residential dwelling unit that results in an increase of building footprint.
3. Construction of a new residential dwelling unit that does not result in an increase of building footprint. For applications meeting this criteria, only MMC 16.32.042.F, 16.32.042.H and 16.32.042.J will apply.

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B. Clear and Objective Tree Preservation Standards

Trees are required to be preserved except when their removal is required for construction, demolition, grading, utilities, and other development impacts. Not more than 25 percent of onsite existing tree canopy may be removed below the overall 40 percent site canopy coverage standard unless mitigation is provided according to MMC 16.32.042.D. Tree species on the Oregon Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy coverage calculations. Public right-of-way is not considered part of the development site for the purposes of these calculations.

Trees listed on the City of Milwaukie Rare or Threatened Tree List must be prioritized for preservation and will incur an additional fee if removed as listed on the Master Fee Schedule. When the trunk of a tree crosses a property line at ground level it is considered an onsite tree for the purposes of these tree preservation standards.

Healthy trees with DBH of 12" or greater may receive additional canopy credits for existing tree crown area to be factored into preservation calculations as defined in the master fee schedule.

C. Clear and Objective Tree Planting Standards

40% canopy coverage is the standard site canopy coverage for residential developed lots. In addition to the preservation of onsite trees, at least 40 percent tree canopy is required for a development site from existing trees or new tree plantings unless mitigation is provided according to MMC 16.32.042.D. Public right-of-way will be considered offsite for the purpose of these planting standard calculations. Tree species on the Oregon Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy coverage calculations. The following is eligible for credit towards tree canopy requirements when planted or preserved in accordance with City of Milwaukie standards:

Table 16.32.042.C.1

<u>Tree Location</u>	<u>Existing Trees</u>	<u>Newly Planted Trees</u>
<b><u>Onsite Trees</u></b> <u>(Trees located within the tax lot)</u>	<u>100% of the existing or future mature crown area, whichever is greater</u>  <u>*Significant tree credit for large DBH trees – see master fee schedule*</u>	<u>75% of the future mature crown area</u>
<b><u>Offsite Trees</u></b>	<u>50% of the existing or future mature crown area, whichever is greater</u>	<u>50% of the future mature crown area</u>

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<u>(Street trees within the adjacent ROW)</u>		
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1. Seventy-five percent (75%) of the mature crown area of planted onsite trees.

2. Fifty percent (50%) of the mature crown area of planted street trees in the public right-of-way directly abutting the development site.

3. One hundred percent (100%) of the existing crown area or mature crown area of onsite trees that are preserved, whichever is greater. In cases where a portion of the crown area of onsite trees extends offsite, the entire crown area is eligible for credit towards the tree canopy requirements. In cases where a portion of the crown area of offsite trees extends onsite, the crown area is not eligible for credit towards the tree canopy requirements. Healthy trees with DBH of 12" or greater may receive additional canopy credits for existing or future mature crown area to be factored into preservation calculations as defined in the master fee schedule.

4. 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.

When the trunk of a tree crosses a property line at ground level it is considered an onsite tree except 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.

D. Mitigation Standards

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 Master Fee Schedule based on the percentage of removed canopy coverage below the minimum tree canopy preservation standard as defined in MMC 16.32.042.B.

2. The fee in lieu of planting standard in the Master Fee Schedule based on the square footage of tree crown area that would be required to meet the 40 percent tree planting standard.

E. Variance Procedure.

1. 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 MMC 19.1006 (Type III review) according to MMC 19.911. The applicant is required to demonstrate that equivalent or greater environmental benefits are provided as

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preserving or planting the required tree crown area. Examples of activities that may justify a variance include but are not limited to:

- a. 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).
- b. 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 (MMC 19.510).
- c. 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, removal of invasive plant species, and restoration of native habitat and preservation of habitat through the use of conservation easements or other protective instruments.
- d. 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.

### F. 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. For applications meeting criteria as outlined in MMC 16.32.042.A.1 and MMC 16.32.042.2, a tree protection plan prepared by an ISA certified arborist that demonstrates adequate protection of the trees to be preserved as approved by the Urban Forester is required. Tree protection methods and specifications must be consistent with ISA best management practices using either the following prescriptive path or performance path tree protection methods:

#### 1. Prescriptive Path for Tree Protection.

##### a. Establish a root protection zone:

(1) For onsite trees and offsite trees with root protection zones that extend into the site - a minimum of 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 offsite trees may be estimated.

(2) For street trees – the Urban Forester may prescribe greater or lesser protection than required for onsite and offsite trees.

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(3) Existing encroachments into the root protection zone, including structures, paved surfaces and utilities, may remain. New encroachments into the root protection zone are allowed provided:

(a) the area of all new encroachments is less than 25 percent (25%) of the remaining root protection zone area when existing encroachments are subtracted; and

(b) no new encroachment is closer than 1/2 the required radius distance from the trunk (see Figure 16.32.042.F)

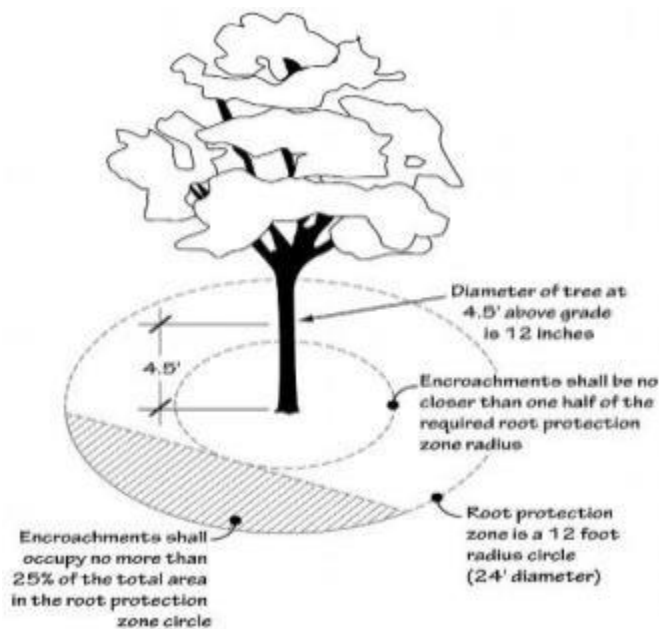


Figure 16.32.042.F – Example of Permissible RPZ Encroachments

b. Protection fencing:

(1) Protection fencing consisting of a minimum 4-foot high metal chain link or no-climb horse fence, secured with 6-foot metal posts must be established at the edge 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.

(2) When a root protection zone extends beyond the development site, protection fencing 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.

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- c. Signage designating the protection zone and penalties for violations must be secured in a prominent location on each protection fence.
- d. Installation of landscaping is not an encroachment. Any in-ground irrigation systems are considered encroachments.
- e. The following is 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.
- f. The fence is required to be installed before any ground disturbing activities or construction begins, including clearing and grading, and will remain in place until final inspection.

### 2. Performance Path for Tree Protection.

When the prescriptive path cannot be met for onsite trees as determined by the Urban Forester, the applicant may propose alternative measures to modify the prescriptive root protection zone, provided the following standards are met:

- a. The 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 arborist has prepared a plan providing the rationale used to demonstrate that the alternate method provides an adequate level of protection based on the findings from the site visit.
- c. The protection zone is marked with signage, stating that penalties will apply for violations, and providing contact information for the arborist.
- d. If the alternative tree protection method involves alternative construction techniques, an explanation of the techniques and materials used must be provided by the arborist.
- e. Variances for the Tree Protection standard for offsite trees are prohibited.

### G. Soil Volume Standards

Trees to be planted must be provided access to at least 1,000 cubic feet of soil volume according to the standards in this subsection to be eligible for tree canopy credit. A soil volume plan by an ISA certified arborist is required that demonstrates 1,000 cubic feet of soil volume is available per tree as determined by the Urban Forester or designee. Soil

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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.

### 1. Prescriptive Path for Soil Volume.

a. 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.

b. The assumed soil depth will be 3 feet unless otherwise determined by the project arborist or Urban Forester.

c. 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.

d. The soil volume areas must be continuous and within a 50-foot radius of the tree to be planted. Continuous soil volumes must be at least 3 feet wide for the entire area.

e. Trees may share the same soil volume area provided that all spacing requirements are met.

f. 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 site. Existing 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:

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(a) Steel plates placed over the soil volume area.

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

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

g. Soil contaminants are prohibited from the soil volume areas.

### 2. Performance Path for Soil Volume.

a. 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 performance path soil volume plan is required to demonstrate the methods that will be used to provide at least 1,000 cubic feet of soil volume with the capacity to support healthy growth to maturity per tree to be planted.

d. The soil volume areas must be continuous and within a 50-foot radius of the tree to be planted. Continuous soil volumes must be at least 3 feet wide for the entire area.

e. Trees may share the same soil volume area provided that all spacing requirements are met.

f. The following items 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

### H. Submittal Requirements

For applications for construction of a new residential dwelling unit that does not result in an expansion of building footprint (MMC 16.32.042.A.3), applicants must demonstrate compliance with the applicable provisions of MMC 16.32.042.F by submitting a report including elements outlined in 16.32.042.H.2. For applications for land subdivision (MMC 16.32.042.A.1) or construction of a new residential dwelling unit that results in an expansion of the building footprint (MMC 16.32.042.2) an ISA certified arborist that is also tree risk assessment qualified (TRAQ) must demonstrate compliance with the applicable provisions of MMC 16.32.042.B through G. 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, tree canopy plan, and arborist report with the following elements:

#### 1. Tree Inventory Requirements

- a. Survey the locations of all trees at least 6-inch DBH, all trees at least 2-inch DBH that are listed on the Oregon Noxious Weed List or Milwaukie Invasive Tree List, and trees less than 6-inch DBH as specified on the City of Milwaukie rare or threatened tree list. Trees that must be surveyed include those that are onsite, within abutting public rights-of-way, and on abutting sites with root protection zones that extend into the site. The locations and information for trees on abutting sites may be estimated.
- b. Number each tree for identification at the site and on the plans.
- c. Identify the common name and scientific name of each tree.
- d. Measure the DBH of each tree in inches according to accepted ISA standards.
- e. Measure the approximate average crown radius of each tree in feet.
- f. Provide the crown area of each tree using the formula:  $(\text{crown radius})^2 \times \pi$ .
- g. Assess the health condition of each tree using the following categories:

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- (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)

h. Identify whether the tree is on the Milwaukie Rare or Threatened Tree List.

i. Identify whether the tree is proposed for removal or retained.

j. Organize the tree inventory information in a table or other format approved in writing by the Urban Forester.

### 2. Tree Preservation Plan Requirements

a. Provide a site plan drawn to scale.

b. Include the existing tree locations and corresponding tree numbers from the tree inventory.

c. Identify rare or threatened trees as described in the City of Milwaukie rare or threatened tree list.

d. Identify the following site disturbances:

- (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
- (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 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 detail and 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.

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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 City of Milwaukie tree canopy list.

d. Identify the soil volume areas for each tree to be planted to scale.

e. For performance path soil volume areas, identify the methods and specifications as applicable for:

(1) Compaction Reduction;

(2) Soil Amendments;

(3) Topsoil Replacement; and/or

(4) Soil Under Pavement

f. Include a diagram depicting the tree planting that is consistent with ISA best management practices.

g. The minimum size of planted trees is 1.5-inch caliper for broadleaf trees and 5-foot tall for conifers unless otherwise approved by the Urban Forester. Nursery stock must be in good health with the size and quality consistent with ISA best management practices and ANSI Z60.1 standards.

h. 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 shall be considered when selecting species for planting. Final site plans must be approved by the Urban Forester.

i. 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.

j. 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.

l. The elements of the tree canopy plan may be included on multiple plan sheets for clarity.

m. 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.

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### 4. Arborist Report

- a. Provide a written narrative that summarizes the information from the tree inventory, tree preservation plan, and tree canopy plan.
- b. Provide findings and calculations that demonstrate whether the tree preservation standards in MMC 16.32.042.B have been met.
- c. Provide findings and calculations that demonstrate whether the tree planting standards in MMC 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 MMC 16.32.042.D.
- 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 MMC 16.32.042.E.
- f. Provide findings that demonstrate compliance with the tree protection standards in MMC 16.32.042.F.
- g. Provide findings that demonstrate compliance with the soil volume standards in MMC 16.32.042.G.

### I. Non-Development Tree Permit Requirements

1. Applicability: A permit is required prior to the removal of the following trees in residential zones on property that is outside the right-of-way and not owned or maintained by the City:
  - a. Trees that are at least 6-inch DBH.
  - b. Trees that are less than 6-inch DBH as specified on the City of Milwaukie rare or threatened tree list.
  - c. Trees that were planted to meet any requirements in MMC 16.32.042.

Permits are not required in residential zones when tree removal is approved with development listed in MMC 16.32.042.A. Permits are also not required in residential zones for the removal of trees that are grown for commercial agricultural or horticultural purposes including fruit trees, nut trees, or holiday trees.

2. Type 1 Tree Removal Permit: The following approval standards will be applied to type 1 tree removal permits by the Urban Forester:

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a. Approval Standards: A type 1 permit will be issued only if the following criteria are met as determined by the Urban Forester:

(1) The proposed tree removal will be performed according to current ISA Best Management Practices.

(2) The tree proposed for removal meets one or more of the following criteria:

(a) The tree is dead or dying and cannot be saved as determined by an ISA Certified Arborist in accordance with ISA standards.

(b) 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.

(c) 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.

(d) 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 in accordance with current ISA tree risk assessment standards.

(e) The tree is on the Oregon State Noxious Weed List or the Milwaukie Invasive Tree List.

(f) The tree is part of a stormwater management system and has grown too large to remain an effective part of the system.

(g) 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.

(h) 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.

(i) 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

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cannot be abated through pruning or other means that results in tree retention.

(j) 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 80 percent 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.

(k) Healthy trees. One (1) healthy tree may be removed per tax lot per 12-month period if the tree meets the following:

i. The tree is less than 12 inches in diameter at breast height;

ii. None of the trees are required to be preserved by a condition of a land use review, a provision of this chapter or Title 19, or as part of a required stormwater facility;

(3) Unless removed for thinning purposes (MMC 16.32.042.1.2.a.j) or invasive species status (MMC 16.32.042.1.2.a.e) the Urban Forester will condition the removal of each 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. Nursery stock 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 Natural Resources Overlay Zone must be replaced with a long-lived evergreen native tree that abuts a Natural Resources Overlay Zone.

(d) If planting a replacement tree is not practicable, the Urban Forester may allow a tree replacement fee in lieu according to the Master Fee Schedule based on the cost of planting and maintaining a replacement tree for three years.

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3. 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. 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.

a. Review criteria: 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. Factors are considered to ensure that significant adverse impacts are avoided or mitigated, weighing the broader economic, ecological, and community concerns. These decisions are fact-specific and are made on a case-by-case basis. 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 do 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:

(1) Whether the species of tree is appropriate for its location;

(2) Whether the species of tree is an invasive species;

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

(4) Whether maintenance of the tree creates an unreasonable burden for the property owner; and

(5) Whether the removal will significantly affect public safety or neighborhood character based on the following:

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

(b) The cumulative impacts of current and prior tree removals in the area; and

(c) When the tree is associated with a grove, whether removal of the tree will have a significant adverse impact on

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the viability of other trees or make other trees considerably more vulnerable to windthrow.

b. Approval Standards: The Urban Forester will at a minimum condition the removal of tree based on MMC 16.32.042 I.2.a.(3) and the Urban Forester will condition the removal of each tree upon the planting of additional replacement tree(s) as outlined in Table 16.32.042.I.3.b:

Table 16.32.042.I.3.b: Type 2 Permit Replacement Tree Requirements

<u>Diameter at Breast Height of Tree Removed</u>	<u>Number of Additional Replacement Trees Required:</u>	<u>Total Replacement Trees Required for Type 2 Permit</u>
<u>6" DBH to &lt;12" DBH</u>	<u>--</u>	<u>1 tree</u>
<u>12" DBH to &lt;24" DBH</u>	<u>1 tree</u>	<u>2 trees</u>
<u>24" DBH to &lt;36" DBH</u>	<u>2 trees</u>	<u>3 trees</u>
<u>36" DBH or greater</u>	<u>3 trees</u>	<u>4 trees</u>

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

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

5. Application Procedures Type 1 Tree Removal Permit: Type 1 permits are technical determinations regarding the facts of a particular request, and applications of city standards to ensure that work is performed in accordance with best management practices to protect trees, the public, or 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.

- a. Application Procedures Type 1 Tree Removal Permit.



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(1) Applications for a Type 1 Tree Removal Permit must meet the requirements of Section MMC 16.32.042. 1.4.

(2) Additional information required.

(a) 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.

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

(c) 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. The City will not refund the filing fee.

b. Decision by the Urban Forester.

(1) The Urban Forester's decision will be based on an evaluation of the facts and applicable standards and review criteria in MMC 16.32.042 1.2.a.

(2) 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.

(3) 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.

(4) The Urban Forester must notify the applicant of the decision in writing.

(5) If no appeal is filed as specified in subsection 7, the decision of the Urban Forester is final.

6. Application Procedures Type 2 Tree Removal Permit: Type 2 Tree Removal permits involve the consideration of relevant technical and qualitative factors to prevent risks to public health and safety and to ensure that the impacts of tree removal are mitigated and may require public notice as set forth below. Type 2 permits are reviewed administratively by the Urban Forester, and the decision may be appealed to the City Manager by the applicant.

a. Application.

(1) Generally. Applications for a Type 2 Tree Removal Permit must meet the requirements of Section 16,32.042. 1.4.

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(2) Additional information required:

(a) 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.

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

(c) 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. The City will not refund the filing fee.

(d) Public notice is required if the tree is healthy and larger than 12 inches in diameter at breast height.

b. Decision by the Urban Forester.

(1) The Urban Forester's decision must be based on an evaluation of the facts and applicable standards and review factors in MMC 16.32.042 I.3.

(2) 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.

(3) 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.

(4) The Urban Forester must notify the applicant of the decision in writing.

(5) If no appeal is filed as specified in subsection 7. below, the decision of the Urban Forester is final.

c. Appeal. The applicant may appeal the Urban Forester's decision. Appeals must be:

(1) Filed with the Urban Forester on forms prescribed by the City;

(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.

(4) Appeals are heard by the City Manager.

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(5) 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.

(5) The City Manager may affirm or reverse the Urban Forester's decision or remand the decision to the Urban Forester to determine appropriate mitigation.

(6) The appeal decision of the City Manager is final and may not be appealed to another review body within the City.

### J. Enforcement

1. City Authority: The City has the ultimate authority to:

a. Interpret the provisions of MMC 16.32.042 and determine whether code criteria have been met.

b. Establish conditions of permit and land use approval to ensure MMC 16.32.042 is properly implemented.

c. Create rules and procedures as needed to implement MMC 16.32.042. Rules and procedures may include but are not limited to:

(1) City of Milwaukie tree lists.

(2) Tree protection standards, specifications, and procedures.

(3) Tree planting standards, specifications, and procedures.

(4) Tree establishment and maintenance standards, specifications, and procedures.

(5) Performance bonding, letters of credit, and cash assurances to help ensure proper tree protection, planting, and establishment.

(6) Tree protection inspections and oversight.

(7) Soil protection inspections and oversight.

(8) Performance path tree protection standards and specifications.

(9) Performance path soil volume standards and specifications.

(10) Fees for permit applications, reviews, mitigation, inspections, and violations.

2. Penalties: The following penalties may apply to violations of the provisions of MMC 16.32.042:

a. A person who removes a tree regulated by MMC 16.32.042 without first obtaining the necessary permit from the City, removes a tree in violation of an approved permit, or violates a condition of an approved permit must pay a fine in an amount established in the Master Fee Schedule.

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b. 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:

(1) Up to the amount established in the Master 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.

(2) Restoration of the tree crown, trunk, or root system as prescribed by an ISA certified arborist and approved by the Urban Forester.

c. Tree protection zone violations:

(1) Up to the amount established in the Master Fee Schedule.

(2) Restoration of the tree protection zone as prescribed by an ISA certified arborist and approved by the Urban Forester.

d. Evidence of Violation.

(1) If a tree is removed without a type 1 or 2 tree removal 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.

(2) Removal of the stump of a tree removed without a tree removal permit is a violation of this chapter.

(3) 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.

## **Exhibit C**

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#### **CHAPTER 16.32 TREE CODE**

##### **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 residential zones and on land owned or maintained by the City and within rights-of-way, 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.

“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 Milwaukie.

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

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

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“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 (Figure 16.32.010).

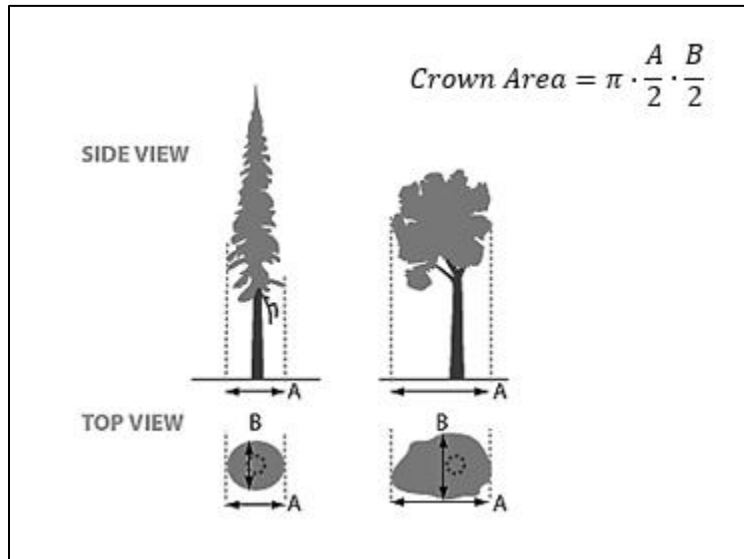


Figure 16.32.010 - 1 – Measuring crown area

“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.

“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.

“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

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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 (Figure 16.32.010 – 2D)

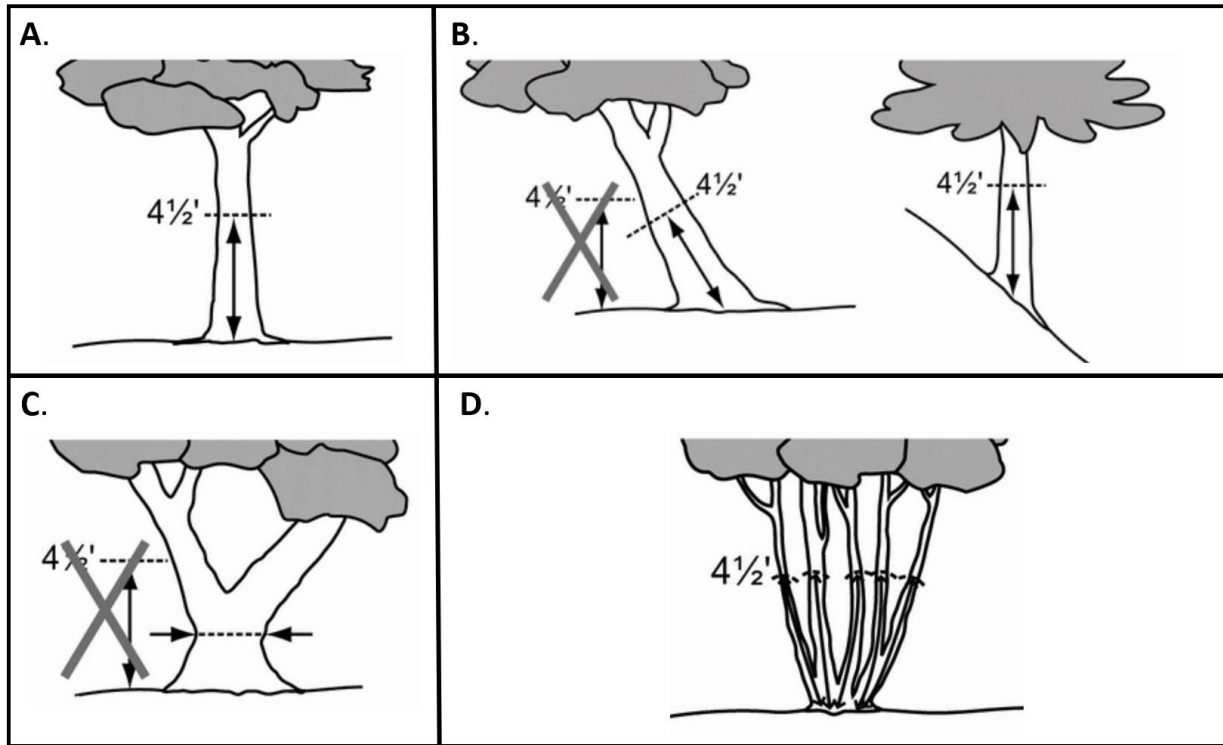


Figure 16.32.010 – 2 – Measuring Diameter at Breast Height

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

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

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“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 removal of over 20% of the live crown, or removal of or injury to over 15% of the root system during any 12-month period.

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

“Minor tree pruning” means the trimming or removal of less than 20% of any part of the live crown, or less than 15% of the root system 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.

“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 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.



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“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 a pruning technique that cuts branches and/or the main stem of a tree to reduce its height or width.

“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 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 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.

### **16.32.014 ADMINISTRATION.**

- A. The City Manager is authorized to administer and enforce the provisions of this chapter.
- B. The City Manager is authorized to adopt procedures and forms to implement the provisions of this chapter.

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C. The City Manager may delegate as needed any authority granted by this chapter to a designee as deemed appropriate by the City Manager.

### 16.32.015 CREATION AND ESTABLISHMENT OF THE TREE BOARD

#### A. Tree Board Composition

The Tree Board will consist of seven members, at least five of which must be residents of the City, one must be an ISA Certified Arborist, and all seven must be appointed by the Mayor with approval of the City Council.

#### B. Term of Office

The term of the seven persons appointed by the Mayor will be three years except that the term of two of the members appointed to the initial Tree Board will serve a term of only one year, and two members of the initial Tree Board will be for two years. In the event that a vacancy occurs during the term of any member, their successor will be appointed for the unexpired portion of the term. Tree Board members will be limited to serving three consecutive terms.

#### C. Compensation

Members of the Tree Board will serve without compensation.

#### D. Duties and Responsibilities

The Tree Board will serve in an advisory capacity to the City Council. Its responsibilities include the following:

1. Study, investigate, develop, update, and help administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of the Urban Forest. The plan will be presented to the City Council for approval every five years and will constitute the official Urban Forestry Management Plan for the City;
2. Provide advice to City Council on policy and regulatory issues involving trees, including climate adaptation and mitigation efforts;
3. Provide outreach and education to the community on tree-related issues and concerns;
4. Organize and facilitate the City's tree planting events and other public events involving trees and Urban Forestry education;
5. Assist City staff in preparing recommendations regarding the application, membership, and ongoing participation by the City in the Tree City USA Program;

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6. Provide leadership in planning the City's Arbor Day/Week proclamation and celebration; and
7. Provide recommendations to City Council on the allocation of funds from the Tree Fund.

The Tree Board, when requested by the City Council, will consider, investigate, make findings, report, and make recommendations on any special matter or question coming within the scope of its work.

### E. Operation

The Tree Board will choose its own officers, make its own rules and regulations, and keep minutes of its proceedings. A majority of the members will constitute a quorum necessary for the transaction of business.

## 16.32.016 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;
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

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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.

### 16.32.017 TREE PLANTING ON LAND OWNED OR MAINTAINED BY THE CITY AND WITHIN THE PUBLIC RIGHT-OF-WAY

#### A. Species

Any tree, shrub, or other woody vegetation to be planted on land owned or maintained by the City or within the public right-of-way 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, shrubs, and other woody vegetation 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.

### 16.32.018 STREET AND PUBLIC TREE CARE

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The City will have the right to plant, prune, maintain and remove trees, shrubs, and other woody vegetation on land owned or maintained by the City and within the right-of-way as may be necessary to ensure public safety or that poses a risk to sewers, electric power lines, gas lines, water lines, or other public improvements, or is infested with any injurious fungus, insect, or other pest as determined by the Urban Forester. Unless otherwise exempted in this chapter, the City must obtain a permit for any activities performed under this section.

### 16.32.019 TREE TOPPING

No person will top any street tree, park tree, or other tree on public property. Trees severely damaged by storms or other causes, or trees existing under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this section at the determination of the Urban Forester.

### 16.32.020 PRUNING, CORNER CLEARANCE

Subject to enforcement under MMC 12.12.010, any tree, shrub, or other woody vegetation overhanging any street or right-of-way within the City must be maintained by the owner to ensure that no vegetation obstructs the right-of-way.

### 16.32.021 DEAD OR DISEASED TREE REMOVAL ON PRIVATE LAND

The City may require the removal of any tree, shrub, or other woody vegetation that is dead, diseased, or infested and that poses a significant risk to the public or the urban forest as determined by the Urban Forester. The City or its agents will notify the owners of such trees in writing.

Removal under this section must be completed within the time period specified in the written notice unless extended in writing by the Urban Forester. The owner must notify the City in writing when the required removal has been completed. If the owner does not remove the dead, diseased, or infested vegetation within the time period specified in the notice or extension granted in writing by the Urban Forester, the City will have the right to remove the dead, diseased, or infested vegetation and charge the cost of removal to the owner pursuant to MMC Chapter 8.04. In cases where the owner demonstrates extreme financial hardship, the City Manager may grant a cost waiver in accordance with MMC 16.32.038.

### 16.32.022 REMOVAL OF STUMPS

All stumps of street trees must be removed by the adjacent property owner below the surface of the ground so that the top of the stump does not project above the surface of the ground.

### 16.32.023 INTERFERENCE WITH CITY

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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 trees, park trees, or dead, diseased, or infested trees on private land, as authorized in this chapter.

### 16.32.024 ARBORISTS LICENSE

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. A Certified Arborist must be on site for the duration of any arboricultural work 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.

### 16.32.026 PERMIT FOR MAJOR PRUNING OR REMOVAL OF STREET TREES OR TREES ON LAND OWNED OR MAINTAINED BY THE CITY

#### A. Applicability

1. No person will perform major tree pruning or remove any tree in a public right-of-way or on public land, 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 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.
  - c. No person can remove a street tree without first obtaining a permit from the City. Permit approval may be conditioned upon either replacement of the street tree with a tree listed on the Street Tree List or a requirement to pay to the City a fee as provided in the master fee schedule.
2. For trees on land owned or maintained by the City, 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 Master Fee Schedule.

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

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Upon the filing of a permit application, the applicant must post notice 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 tree, shrub, or other woody vegetation proposed for major pruning or removal by tying or attaching orange 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 orange 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 C below.

### 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 removal has been marked.

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

### 4. Exemptions from Public Notice

The following trees, shrubs, or other woody vegetation may be removed without public notice subject to the City's review of the application:

- a. A tree, shrub, or other woody vegetation 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 in accordance with current ISA Tree Risk Assessment standards.
- b. A tree, shrub, or other woody vegetation that is an invasive species and that is less than 8 inches in diameter at breast height.
- c. A street tree or public tree that is less than 2 inches in diameter at breast height.

### C. Review Criteria and Approval Standards

The City may issue the permit, deny the permit, or may issue the permit subject to conditions of approval. The City's decision will be final and valid for a period of one

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year after issuance unless a different time period is specified in the permit. Nothing prevents an application 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.

### 2. Approval Standards

A permit will be issued only if the following criteria 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 and an ISA Certified Arborist will be on site for the duration of the tree work.
- b. The tree, shrub, or other woody vegetation proposed for major pruning or removal meets one or more of the following criteria:
  - (1) The tree, shrub, or other woody vegetation is dead or dying and cannot be saved as determined by an ISA Certified Arborist in accordance with ISA standards.
  - (2) The tree, shrub, or other woody vegetation is having an adverse effect on adjacent infrastructure that cannot be mitigated by



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pruning, reasonable alternative construction techniques, or accepted arboricultural practices.

- (3) The tree, shrub, or other woody vegetation 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 tree, shrub, or other woody vegetation poses an unreasonable risk to the occupants of the property, the adjacent property, or the general public, as determined by an ISA Certified Arborist in accordance with current ISA Tree Risk Assessment standards.
  - (5) Major pruning or removal of the tree, shrub, or other woody vegetation 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 tree, shrub, or other woody vegetation is on the Oregon State Noxious Weed List.
  - (7) The tree, shrub, or other woody vegetation 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 tree, shrub, or other woody vegetation must require the applicant to pay a fee as established in the Master Fee Schedule.

### D. Performance of Permitted Work

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.

### E. 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.
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

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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. In lieu of replanting and subject to approval of the Urban Forester, the City can require the owner to pay a fee as established in the Master Fee Schedule.
  - c. 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. 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 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 public properties and rights-of-way. 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 public and street 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. 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.

#### B. Applicability

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

#### C. 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.

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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.

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

### E. 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 MMC 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.

### F. Decision

The Urban Forester must issue the permit, deny the permit, or may issue the permit subject to conditions of approval 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. Nothing prevents an applicant from requesting 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 MMC 16.32.028 F.

### G. 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

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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;
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 or more inches in diameter at breast height, except as provided in this section.
  - b. If an applicant requests removal of a healthy tree 6 or more inches 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 MMC 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 MMC 16.32.028F.
9. Tree Work

All work performed under a programmatic permit must be performed in accordance with ISA arboricultural practices.

### H. Revocation

1. 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.

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### 16.32.030 PERMIT AND FEE EXEMPTIONS ON LAND OWNED OR MAINTAINED BY THE CITY AND WITHIN THE PUBLIC RIGHT-OF-WAY

#### A. Hazardous Tree

If a tree on public properties and rights-of-way 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.

#### B. Maintenance

A permit for trees on public properties and rights-of-way is not required for regular maintenance or minor tree pruning that does not require removal of over 20% of the crown, tree topping, or disturbance of more than 10% of the root system during any 12-month period.

#### C. Public Infrastructure Improvements

Any tree on land owned or maintained by the City and requires removal or pruning to accommodate a city public infrastructure improvement project will require a permit and must meet replanting requirements imposed by this chapter. If it is demonstrated that tree planting, establishment, and tree care-related project costs exceed the tree removal fee costs, the permit will not be subject to a removal fee.

#### D. Private Utility Services and Dwelling Units

If the Urban Forester determines that a tree, shrub, or other woody vegetation proposed for removal on public properties and rights-of-way has an adverse effect on adjacent private utility services or threatens the structural integrity of a dwelling unit that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices, the permit will not be subject to a removal fee.

### 16.32.038 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 tree within the right of way and 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.

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### 16.32.040 PENALTY

A person who removes a street tree or public tree without first obtaining the necessary permit from the City, removes a tree in violation of an approved permit, or violates a condition of an approved permit must pay a fine in an amount established in the Master Fee Schedule.

### 16.32.042 TREE PRESERVATION AND PLANTING IN RESIDENTIAL ZONES

#### A. Applicability

The tree preservation and planting standards in this subsection apply to the following types of development in residential zones:

1. Land Divisions.
2. Construction of a new residential dwelling unit that results in an increase of building footprint.
3. Construction of a new residential dwelling unit that does not result in an increase of building footprint. For applications meeting this criteria, only MMC 16.32.042.F, 16.32.042.H and 16.32.042.J will apply.

#### B. Clear and Objective Tree Preservation Standards

Trees are required to be preserved except when their removal is required for construction, demolition, grading, utilities, and other development impacts. Not more than 25 percent of onsite existing tree canopy may be removed below the overall 40 percent site canopy coverage standard unless mitigation is provided according to MMC 16.32.042.D. Tree species on the Oregon Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy coverage calculations. Public right-of-way is not considered part of the development site for the purposes of these calculations.

Trees listed on the City of Milwaukie Rare or Threatened Tree List must be prioritized for preservation and will incur an additional fee if removed as listed on the Master Fee Schedule. When the trunk of a tree crosses a property line at ground level it is considered an onsite tree for the purposes of these tree preservation standards.

Healthy trees with DBH of 12" or greater may receive additional canopy credits for existing tree crown area to be factored into preservation calculations as defined in the master fee schedule.

#### C. Clear and Objective Tree Planting Standards

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40% canopy coverage is the standard site canopy coverage for residential developed lots. In addition to the preservation of onsite trees, at least 40 percent tree canopy is required for a development site from existing trees or new tree plantings unless mitigation is provided according to MMC 16.32.042.D. Public right-of-way will be considered offsite for the purpose of these planting standard calculations. Tree species on the Oregon Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy coverage calculations. The following is eligible for credit towards tree canopy requirements when planted or preserved in accordance with City of Milwaukie standards:

Table 16.32.042.C.1

Tree Location	Existing Trees	Newly Planted Trees
<b>Onsite Trees</b> (Trees located within the tax lot)	100% of the existing or future mature crown area, whichever is greater  *Significant tree credit for large DBH trees – see master fee schedule*	75% of the future mature crown area
<b>Offsite Trees</b> (Street trees within the adjacent ROW)	50% of the existing or future mature crown area, whichever is greater	50% of the future mature crown area

1. Seventy-five percent (75%) of the mature crown area of planted onsite trees.
2. Fifty percent (50%) of the mature crown area of planted street trees in the public right-of-way directly abutting the development site.
3. One hundred percent (100%) of the existing crown area or mature crown area of onsite trees that are preserved, whichever is greater. In cases where a portion of the crown area of onsite trees extends offsite, the entire crown area is eligible for credit towards the tree canopy requirements. In cases where a portion of the crown area of offsite trees extends onsite, the crown area is not eligible for credit towards the tree canopy requirements. Healthy trees with DBH of 12" or greater may receive additional canopy credits for existing or future mature crown area to be factored into preservation calculations as defined in the master fee schedule.
4. 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.

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When the trunk of a tree crosses a property line at ground level it is considered an onsite tree except 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.

### D. Mitigation Standards

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 Master Fee Schedule based on the percentage of removed canopy coverage below the minimum tree canopy preservation standard as defined in MMC 16.32.042.B.
2. The fee in lieu of planting standard in the Master Fee Schedule based on the square footage of tree crown area that would be required to meet the 40 percent tree planting standard.

### E. Variance Procedure.

1. 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 MMC 19.1006 (Type III review) according to MMC 19.911. The applicant is required to demonstrate that equivalent or greater environmental benefits are provided as preserving or planting the required tree crown area. Examples of activities that may justify a variance include but are not limited to:

- a. 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).
- b. 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 (MMC 19.510).
- c. 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, removal of invasive plant species, and restoration of native habitat and preservation of habitat through the use of conservation easements or other protective instruments.
- d. 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.



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### F. 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. For applications meeting criteria as outlined in MMC 16.32.042.A.1 and MMC 16.32.042.2, a tree protection plan prepared by an ISA certified arborist that demonstrates adequate protection of the trees to be preserved as approved by the Urban Forester is required. Tree protection methods and specifications must be consistent with ISA best management practices using either the following prescriptive path or performance path tree protection methods:

#### 1. Prescriptive Path for Tree Protection.

##### a. Establish a root protection zone:

(1) For onsite trees and offsite trees with root protection zones that extend into the site - a minimum of 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 offsite trees may be estimated.

(2) For street trees – the Urban Forester may prescribe greater or lesser protection than required for onsite and offsite trees.

(3) Existing encroachments into the root protection zone, including structures, paved surfaces and utilities, may remain. New encroachments into the root protection zone are allowed provided:

(a) the area of all new encroachments is less than 25 percent (25%) of the remaining root protection zone area when existing encroachments are subtracted; and

(b) no new encroachment is closer than 1/2 the required radius distance from the trunk (see Figure 16.32.042.F)

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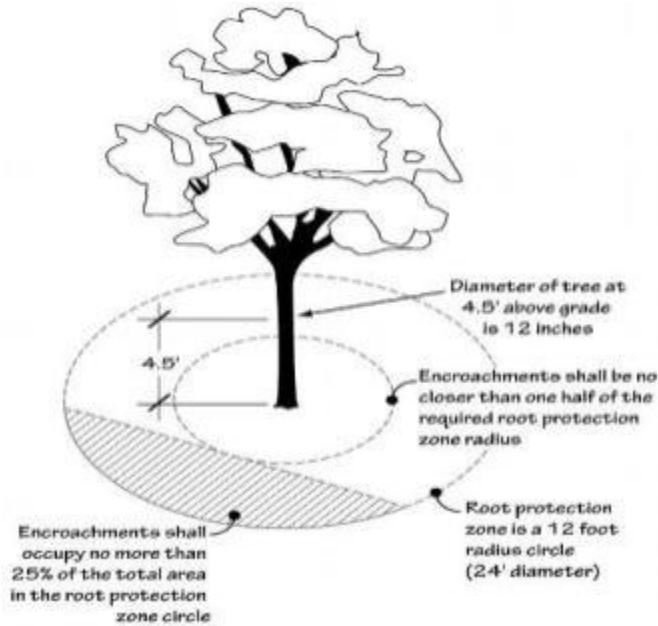


Figure 16.32.042.F – Example of Permissible RPZ Encroachments

b. Protection fencing:

(1) Protection fencing consisting of a minimum 4-foot high metal chain link or no-climb horse fence, secured with 6-foot metal posts must be established at the edge 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.

(2) When a root protection zone extends beyond the development site, protection fencing 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.

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

d. Installation of landscaping is not an encroachment. Any in-ground irrigation systems are considered encroachments.

e. The following is 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.

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f. The fence is required to be installed before any ground disturbing activities or construction begins, including clearing and grading, and will remain in place until final inspection.

### 2. Performance Path for Tree Protection.

When the prescriptive path cannot be met for onsite trees as determined by the Urban Forester, the applicant may propose alternative measures to modify the prescriptive root protection zone, provided the following standards are met:

- a. The 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 arborist has prepared a plan providing the rationale used to demonstrate that the alternate method provides an adequate level of protection based on the findings from the site visit.
- c. The protection zone is marked with signage, stating that penalties will apply for violations, and providing contact information for the arborist.
- d. If the alternative tree protection method involves alternative construction techniques, an explanation of the techniques and materials used must be provided by the arborist.
- e. Variances for the Tree Protection standard for offsite trees are prohibited.

### G. Soil Volume Standards

Trees to be planted must be provided access to at least 1,000 cubic feet of soil volume according to the standards in this subsection to be eligible for tree canopy credit. A soil volume plan by an ISA certified arborist is required that demonstrates 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.

#### 1. Prescriptive Path for Soil Volume.

- a. 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.

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- b. The assumed soil depth will be 3 feet unless otherwise determined by the project arborist or Urban Forester.
- c. 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.
- d. The soil volume areas must be continuous and within a 50-foot radius of the tree to be planted. Continuous soil volumes must be at least 3 feet wide for the entire area.
- e. Trees may share the same soil volume area provided that all spacing requirements are met.
- f. 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 site. Existing 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.

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

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

- g. Soil contaminants are prohibited from the soil volume areas.

## 2. Performance Path for Soil Volume.

- a. 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

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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 performance path soil volume plan is required to demonstrate the methods that will be used to provide at least 1,000 cubic feet of soil volume with the capacity to support healthy growth to maturity per tree to be planted.

d. The soil volume areas must be continuous and within a 50-foot radius of the tree to be planted. Continuous soil volumes must be at least 3 feet wide for the entire area.

e. Trees may share the same soil volume area provided that all spacing requirements are met.

f. The following items 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
- (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

### H. Submittal Requirements

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For applications for construction of a new residential dwelling unit that does not result in an expansion of building footprint (MMC 16.32.042.A.3), applicants must demonstrate compliance with the applicable provisions of MMC 16.32.042.F by submitting a report including elements outlined in 16.32.042.H.2. For applications for land subdivision (MMC 16.32.042.A.1) or construction of a new residential dwelling unit that results in an expansion of the building footprint (MMC 16.32.042.2) an ISA certified arborist that is also tree risk assessment qualified (TRAQ) must demonstrate compliance with the applicable provisions of MMC 16.32.042.B through G. 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, tree canopy plan, and arborist report with the following elements:

### 1. Tree Inventory Requirements

- a. Survey the locations of all trees at least 6-inch DBH, all trees at least 2-inch DBH that are listed on the Oregon Noxious Weed List or Milwaukie Invasive Tree List, and trees less than 6-inch DBH as specified on the City of Milwaukie rare or threatened tree list. Trees that must be surveyed include those that are onsite, within abutting public rights-of-way, and on abutting sites with root protection zones that extend into the site. The locations and information for trees on abutting sites may be estimated.
- b. Number each tree for identification at the site and on the plans.
- c. Identify the common name and scientific name of each tree.
- d. Measure the DBH of each tree in inches according to accepted ISA standards.
- e. Measure the approximate average crown radius of each tree in feet.
- f. Provide the crown area of each tree using the formula:  $(\text{crown radius})^2 \times \pi$ .
- g. Assess the health condition of each 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)
- h. Identify whether the tree is on the Milwaukie Rare or Threatened Tree List.
- i. Identify whether the tree is proposed for removal or retained.

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j. Organize the tree inventory information in a table or other format approved in writing by the Urban Forester.

### 2. Tree Preservation Plan Requirements

a. Provide a site plan drawn to scale.

b. Include the existing tree locations and corresponding tree numbers from the tree inventory.

c. Identify rare or threatened trees as described in the City of Milwaukie rare or threatened tree list.

d. Identify the following site disturbances:

(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

(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 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 detail and 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 City of Milwaukie tree canopy list.

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- d. Identify the soil volume areas for each tree to be planted to scale.
- e. For performance path soil volume areas, identify the methods and specifications as applicable for:
  - (1) Compaction Reduction;
  - (2) Soil Amendments;
  - (3) Topsoil Replacement; and/or
  - (4) Soil Under Pavement
- f. Include a diagram depicting the tree planting that is consistent with ISA best management practices.
- g. The minimum size of planted trees is 1.5-inch caliper for broadleaf trees and 5-foot tall for conifers unless otherwise approved by the Urban Forester. Nursery stock must be in good health with the size and quality consistent with ISA best management practices and ANSI Z60.1 standards.
- h. 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 shall be considered when selecting species for planting. Final site plans must be approved by the Urban Forester.
- i. 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.
- j. 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.
- l. The elements of the tree canopy plan may be included on multiple plan sheets for clarity.
- m. 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 canopy plan.
- b. Provide findings and calculations that demonstrate whether the tree preservation standards in MMC 16.32.042.B have been met.
- c. Provide findings and calculations that demonstrate whether the tree planting standards in MMC 16.32.042.C have been met.



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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 MMC 16.32.042.D.

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 MMC 16.32.042.E.

f. Provide findings that demonstrate compliance with the tree protection standards in MMC 16.32.042.F.

g. Provide findings that demonstrate compliance with the soil volume standards in MMC 16.32.042.G.

### I. Non-Development Tree Permit Requirements

1. Applicability: A permit is required prior to the removal of the following trees in residential zones on property that is outside the right-of-way and not owned or maintained by the City:

a. Trees that are at least 6-inch DBH.

b. Trees that are less than 6-inch DBH as specified on the City of Milwaukie rare or threatened tree list.

c. Trees that were planted to meet any requirements in MMC 16.32.042.

Permits are not required in residential zones when tree removal is approved with development listed in MMC 16.32.042.A. Permits are also not required in residential zones for the removal of trees that are grown for commercial agricultural or horticultural purposes including fruit trees, nut trees, or holiday trees.

2. Type 1 Tree Removal Permit: The following approval standards will be applied to type 1 tree removal permits by the Urban Forester:

a. Approval Standards: A type 1 permit will be issued only if the following criteria are met as determined by the Urban Forester:

(1) The proposed tree removal will be performed according to current ISA Best Management Practices.

(2) The tree proposed for removal meets one or more of the following criteria:

(a) The 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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(b) 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.

(c) 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.

(d) 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 in accordance with current ISA tree risk assessment standards.

(e) The tree is on the Oregon State Noxious Weed List or the Milwaukie Invasive Tree List.

(f) The tree is part of a stormwater management system and has grown too large to remain an effective part of the system.

(g) 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.

(h) 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.

(i) 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 results in tree retention.

(j) 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 80 percent 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.

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(k) Healthy trees. One (1) healthy tree may be removed per tax lot per 12-month period if the tree meets the following:

i. The tree is less than 12 inches in diameter at breast height;

ii. None of the trees are required to be preserved by a condition of a land use review, a provision of this chapter or Title 19, or as part of a required stormwater facility;

(3) Unless removed for thinning purposes (MMC 16.32.042.1.2.a.j) or invasive species status (MMC 16.32.042.1.2.a.e) the Urban Forester will condition the removal of each 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. Nursery stock 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 Natural Resources Overlay Zone must be replaced with a long-lived evergreen native tree that abuts a Natural Resources Overlay Zone.

(d) If planting a replacement tree is not practicable, the Urban Forester may allow a tree replacement fee in lieu according to the Master Fee Schedule based on the cost of planting and maintaining a replacement tree for three years.

3. 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. 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.

a. Review criteria: The City encourages retention of healthy private trees where practical alternatives to removal exist, and where those

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alternatives meet the owner's objectives for reasonable use and enjoyment of the property. Factors are considered to ensure that significant adverse impacts are avoided or mitigated, weighing the broader economic, ecological, and community concerns. These decisions are fact-specific and are made on a case-by-case basis. 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 do 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:

- (1) Whether the species of tree is appropriate for its location;
- (2) Whether the species of tree is an invasive species;
- (3) Whether the crown, stem, or root growth has developed in a manner that would prevent continued healthy growth or is negatively impacting other trees;
- (4) Whether maintenance of the tree creates an unreasonable burden for the property owner; and
- (5) Whether the removal will significantly affect public safety or neighborhood character based on the following:
  - (a) The age, size, form, species, general condition, pruning history and any unique qualities or attributes of the trees;
  - (b) The cumulative impacts of current and prior tree removals in the area; and
  - (c) 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.

b. Approval Standards: The Urban Forester will at a minimum condition the removal of tree based on MMC 16.32.042 I.2.a.(3) and the Urban Forester will condition the removal of each tree upon the planting of additional replacement tree(s) as outlined in Table 16.32.042.I.3.b:

Table 16.32.042.I.3.b: Type 2 Permit Replacement Tree Requirements

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Diameter at Breast Height of Tree Removed	Number of Additional Replacement Trees Required:	Total Replacement Trees Required for Type 2 Permit
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. Applications: An application for a tree removal permit must be made upon forms prescribed by the City and contain the following:

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

5. Application Procedures Type 1 Tree Removal Permit: Type 1 permits are technical determinations regarding the facts of a particular request, and applications of city standards to ensure that work is performed in accordance with best management practices to protect trees, the public, or 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.

a. Application Procedures Type 1 Tree Removal Permit.

(1) Applications for a Type 1 Tree Removal Permit must meet the requirements of Section MMC 16.32.042. I.4.

(2) Additional information required.

(a) 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.

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

(c) 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. The City will not refund the filing fee.

### b. Decision by the Urban Forester.

(1) The Urban Forester's decision will be based on an evaluation of the facts and applicable standards and review criteria in MMC 16.32.042 I.2.a.

(2) 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.

(3) 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.

(4) The Urban Forester must notify the applicant of the decision in writing.

(5) If no appeal is filed as specified in subsection 7, the decision of the Urban Forester is final.

6. Application Procedures Type 2 Tree Removal Permit: Type 2 Tree Removal permits involve the consideration of relevant technical and qualitative factors to prevent risks to public health and safety and to ensure that the impacts of tree removal are mitigated and may require public notice as set forth below. Type 2 permits are reviewed administratively by the Urban Forester, and the decision may be appealed to the City Manager by the applicant.

### a. Application.

(1) Generally. Applications for a Type 2 Tree Removal Permit must meet the requirements of Section 16,32.042. I.4.

(2) Additional information required:

(a) 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.

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

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(c) 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. The City will not refund the filing fee.

(d) Public notice is required if the tree is healthy and larger than 12 inches in diameter at breast height.

### b. Decision by the Urban Forester.

(1) The Urban Forester's decision must be based on an evaluation of the facts and applicable standards and review factors in MMC 16.32.042 I.3.

(2) 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.

(3) 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.

(4) The Urban Forester must notify the applicant of the decision in writing.

(5) If no appeal is filed as specified in subsection 7. below, the decision of the Urban Forester is final.

### c. Appeal. The applicant may appeal the Urban Forester's decision. Appeals must be:

(1) Filed with the Urban Forester on forms prescribed by the City;

(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.

(4) Appeals are heard by the City Manager.

(5) 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.

(5) The City Manager may affirm or reverse the Urban Forester's decision or remand the decision to the Urban Forester to determine appropriate mitigation.

(6) The appeal decision of the City Manager is final and may not be appealed to another review body within the City.

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### J. Enforcement

1. City Authority: The City has the ultimate authority to:

a. Interpret the provisions of MMC 16.32.042 and determine whether code criteria have been met.

b. Establish conditions of permit and land use approval to ensure MMC 16.32.042 is properly implemented.

c. Create rules and procedures as needed to implement MMC 16.32.042. Rules and procedures may include but are not limited to:

(1) City of Milwaukie tree lists.

(2) Tree protection standards, specifications, and procedures.

(3) Tree planting standards, specifications, and procedures.

(4) Tree establishment and maintenance standards, specifications, and procedures.

(5) Performance bonding, letters of credit, and cash assurances to help ensure proper tree protection, planting, and establishment.

(6) Tree protection inspections and oversight.

(7) Soil protection inspections and oversight.

(8) Performance path tree protection standards and specifications.

(9) Performance path soil volume standards and specifications.

(10) Fees for permit applications, reviews, mitigation, inspections, and violations.

2. Penalties: The following penalties may apply to violations of the provisions of MMC 16.32.042:

a. A person who removes a tree regulated by MMC 16.32.042 without first obtaining the necessary permit from the City, removes a tree in violation of an approved permit, or violates a condition of an approved permit must pay a fine in an amount established in the Master Fee Schedule.

b. 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:

(1) Up to the amount established in the Master 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.

(2) Restoration of the tree crown, trunk, or root system as prescribed by an ISA certified arborist and approved by the Urban Forester.



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c. Tree protection zone violations:

- (1) Up to the amount established in the Master Fee Schedule.
- (2) Restoration of the tree protection zone as prescribed by an ISA certified arborist and approved by the Urban Forester.

d. Evidence of Violation.

- (1) If a tree is removed without a type 1 or 2 tree removal 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.
- (2) Removal of the stump of a tree removed without a tree removal permit is a violation of this chapter.
- (3) 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.