

ORDINANCE NO. 464

AN ORDINANCE AMENDING CHAPTER 4 OF THE WILSONVILLE CODE TO INCLUDE PROVISIONS FOR PRESERVING AND PROTECTING TREES, CREATING AN ADMINISTRATIVE PROCEDURE FOR TREE REMOVAL PERMITS, ESTABLISHING DEVELOPMENT APPLICATION REVIEW PROCEDURES, REQUIRING TREE PROTECTION DURING CONSTRUCTION, PROVIDING FOR APPEALS, PRESCRIBING PENALTIES FOR VIOLATION, PROVIDING FOR ENFORCEMENT, CREATING A CITY TREE FUND, REPEALING SECTION 4.005(5), AMENDING SECTIONS 2.190, 4.005(1), 4.005(8), 4.161(4)(a)(2), 4.450(4) and 4.512(1) OF THIS CODE, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Wilsonville has long recognized that a balanced, well managed approach to planning provides for the economic enjoyment of public and private property consistent with a high quality of environmental livability; and

WHEREAS, the City of Wilsonville is now benefited by large numbers of trees, including both natural growth and trees which have been deliberately planted and grown throughout the years; and

WHEREAS, the restoration, preservation and maintenance of trees and wooded areas in the City of Wilsonville adds to the scenic beauty of the City, preserves the ecology of the City, enhances air quality through the filtering effect of trees on air pollution, buffers noise and promotes aesthetic tranquillity; and

WHEREAS, trees and wooded areas help moderate temperature and humidity, provide cooling effects, and add moisture to the air; and

WHEREAS, the uncontrolled cutting or destruction of trees and wooded areas may increase erosion of topsoil; may damage ecological systems; may create flood hazards and the risk of landslides; may reduce windbreaks, shaded areas and noise barriers; may reduce property values through the encouragement of substandard development; and may result in the destruction of aesthetic qualities; and

WHEREAS, it is in the public interest and safety to enact regulations controlling the protection and removal of trees in order to retain the economic, aesthetic, scenic, ecological, air cooling, and air quality benefits of trees within the jurisdiction of the City,

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

- I. Chapter 4 of the Wilsonville Code shall be amended as follows:
 - A. In WC 2.190, "Department of Planning" shall be deleted and replaced by "Planning Division".
 - B. WC 4.005(5) is deleted.
 - C. WC 4.005(1) is amended to by deleting "or other treatment or use of the land surface of a single-family residential lot not involving a structure."
 - D. WC 4.005(8) is amended by adding the underlined portion: "Exclusion from a permit does not exempt the development or its use from applicable requirements of the Comprehensive Plan or from the requirements of Tree Preservation and Protection, WC 4.600.00 et seq."
 - E. WC 4.514(2) (Willamette River Greenway) is amended to read: "A plan to remove any tree or trees shall be reviewed by the Development Review Board under the procedures of WC 4.600.00 et seq. Based on the standards and procedures of WC 4.620.10, mandatory mitigation shall be required as a condition of approval for any conditional use permit granted under this section."
 - F. WC 4.450(4) (Installation of Landscaping) is amended to read: "If a property owner wishes to add landscaping for an existing development, in an effort to beautify the property, the Landscape Standards set forth in WC 4.166 shall not apply and no Plan approval or permit shall be required. If the owner wishes to modify or remove landscaping that has been accepted or approved through the City's development review process, that removal or modification must first be approved through the procedures of WC 4.010."

II. Chapter 4 of the Wilsonville Code shall be amended to include the following sections:

TREE PRESERVATION AND PROTECTION

4.600.00 PURPOSE AND DECLARATION

(1) Rapid growth, the spread of development, need for water and increasing demands upon natural resources have the effect of encroaching upon, despoiling, or eliminating many of the trees, other forms of vegetation, and natural resources and processes associated therewith which, if preserved and maintained in an undisturbed and natural condition, constitute important physical, aesthetic, recreational and economic assets to existing and future residents of the City of Wilsonville.

(2) Specifically, the City Council finds that:

(A) Woodland growth protects public health through the absorption of air pollutants and contamination, through the reduction of excessive noise and mental and

physical damage related to noise pollution, and through its cooling effect in the summer months, and insulating effects in winter;

(B) Woodlands provide for public safety through the prevention of erosion, siltation, and flooding; and

(C) Trees make a positive contribution to water quality and water supply by absorbing rainfall, controlling surface water run-off, and filtering and assisting in ground water recharge; and

(D) Trees and woodland growth are an essential component of the general welfare of the City of Wilsonville by producing play areas for children and natural beauty, recreation for all ages and an irreplaceable heritage for existing and future City residents.

(3) Therefore, the purposes of this subchapter are:

(A) To preserve primary and secondary open space, recognizing that development can and will occur.

(B) To provide for the protection, preservation, proper maintenance and use of trees and woodlands in order to protect natural habitat and prevent erosion.

(C) To protect trees and other wooded areas for their economic contribution to local property values when preserved, and for their natural beauty and ecological or historical significance.

(D) To protect water quality, control surface water run-off, and protect ground water recharge.

(E) To reflect the public concern for these natural resources in the interest of health, safety and general welfare of Wilsonville residents.

(F) To encourage replanting where trees are removed.

4.600.10 DEFINITIONS

As used in this ordinance, the following words have the meanings attributed:

(1) **Arborist.** An arborist who is a member of the American Society of Consulting Arborists (ASCA) or is certified by the International Society of Arboriculture, or an ornamental horticulturist or urban forester who possesses equivalent credentials and experience, and who is approved by the City.

(2) **Agriculture.** The use of land larger than one acre for the primary purpose of deriving income from growing plants on land including, but not limited to, land used principally for the production of crops, land used for orchards or production of fruit, but not including land used primarily for another use and incidentally for growing plants, crops, or fruit.

- (3) Commercial Nursery or Tree Farm. A plant or tree nursery or tree farm where trees are planted and grown on the premises for sale in the ordinary course of business, but not including commercial woodlots, or land that is designated or assessed as forest land for tax deferral purposes or managed for timber production.
- (4) Commercial Woodlot. A site of at least 30,000 square feet on which trees are grown for the purpose of harvesting, and which is assessed as forestland for tax deferral purposes, and which is not a part of the approved open space or landscaping of a previously approved development.
- (4) Cutting. The falling or removal of a tree, or any procedure the natural result of which is to cause the death or substantial destruction of a tree, including topping and severe cutting back of limbs to such a degree as to destroy the normal canopy and disfigure the tree. Cutting does not include routine pruning or trimming.
- (5) Development Review Board (DRB). As defined in this Code.
- (6) Diameter Breast Height (d.b.h.). A tree's diameter in inches measured by diameter tape at four and one-half (4-1/2) feet above grade. On multi-stem trees, the largest diameter stem shall be measured.
- (7) Drip Line. An imaginary vertical line extending downward from the outermost tips of the tree branches to the ground.
- (8) Feasible. Able to be accomplished, considering all aspects of preservation and proposed site development, including the cost of mitigation and relocation.
- (9) Heritage Tree. A tree that, due to age, size, species, quality or historic association, is considered of landmark importance to the community and has been designated as such by the City Council.
- (10) Native. As applied to any tree or plant, this term means indigenous to the northern Willamette Valley.
- (11) Person. Any individual or legal entity.
- (12) Planning Director. The Director of the City's Planning Division or the Director's designee.
- (13) Remove or Removal. The act of removing a tree by topping, digging up or cutting down, effecting removal through damage, or causing to be removed, transplanted or destroyed.
- (14) Permit. Approval to remove trees according to the following categories:
Type A - Permits removal of one to three trees within a twelve (12) month period on any property.

Type B - Permits removal of four or more trees on any property (a) not subject to site development review, or b) previously approved for site development, and is c) not in a commercial woodlot.

Type C - Permits removal of trees on property under a site development application.

Type D - Permits removal of trees on a commercial woodlot.

(15) Permit Grantee. Any person, including the person's successors-in-interest, whose application for Tree Removal Permit has been approved, or who is acting on the permit grantee's behalf with the grantee's consent.

(16) Pruning. Reduction of a tree to achieve a better shape and more fruitful growth, using common practices of the arboriculture industry, including the International Society of Arboriculture, the Oregon Department of Forestry (Urban Forestry), or other professional arboriculture industry organizations.

(17) Topping. The severe cutting of limbs to stubs three inches or larger in diameter within the tree's crown to such a degree so as to remove the natural canopy or disfigure the tree.

(18) Tree. Any living, standing woody plant having a trunk six inches or more d.b.h. at four and one-half (4-1/2) feet above grade.

(19) TRP. Tree Removal Permit.

(20) Tree Survey. Information provided by an arborist which describes size, species, health, and condition, and a map that locates the trees on the property and descriptive text. Tree surveys shall be provided in keeping with WC 4.610.30 and 4.610.40.

(21) Value. Current market value or replacement cost as determined by a licensed or certified professional in the tree, nursery, or landscape field.

4.600.20 APPLICABILITY OF SUBCHAPTER

(1) The provisions of this subchapter apply to the United States and the State of Oregon, and to their agencies and subdivisions, including the City of Wilsonville, and to the employees and agents thereof.

(2) By this subchapter, the City of Wilsonville regulates forest practices on all lands located within its urban growth boundary, as provided by ORS 527.722.

(3) The provisions of this subchapter apply to all land within the City limits, including property designated Primary Open Space or other areas or trees designated as protected by the Comprehensive Plan, City zoning map, or any other law or ordinance; except that any tree activities in the Willamette River Greenway that are regulated by the provisions of

WC 4.500 - 4.514 and requiring a conditional use permit shall be reviewed by the DRB under the application and review procedures set forth for Tree Removal Permits.

4.600.30 TREE REMOVAL PERMIT REQUIRED

(1) Requirement Established. No person shall remove any tree without first obtaining a Tree Removal Permit (TRP) as required by this subchapter.

(2) Tree Removal Permits will be reviewed according to the standards provided for in this subchapter, in addition to all other applicable requirements of Chapter 4.

(3) Although tree activities in the Willamette River Greenway are governed by WC 4.500 - 4.514, the application materials required to apply for a conditional use shall be the same as those required for a Type B or C permit under this subchapter, along with any additional materials that may be required by the Planning Division. An application for a Tree Removal Permit under this section shall be reviewed by the Development Review Board.

4.600.40 EXCEPTIONS

(1) Exception from requirement. Notwithstanding the requirement of WC 4.600.30(1), the following activities are allowed without a Tree Removal Permit, unless otherwise prohibited:

(A) Agriculture, Commercial Tree Farm or Orchard. Tree removal or transplanting occurring during use of land for commercial purposes for agriculture, orchard(s), or tree farm(s), such as Christmas tree production.

(B) Emergencies. Actions made necessary by an emergency, such as tornado, windstorm, flood, freeze, utility damage or other like disasters, in order to prevent imminent injury or damage to persons or property or restore order and it is impractical due to circumstances to apply for a permit.

(1) When an emergency has occurred, a Tree Removal Permit must be applied for within thirty (30) days following the emergency tree removal under the application procedures established in this subchapter.

(2) In addition to complying with the permit application requirements of this subchapter, an applicant shall provide a photograph of any tree removed and a brief description of the conditions that necessitated emergency removal. Such photograph shall be supplied within seven days of application for a permit. Based on good cause shown

arising out of the emergency, the Planning Director may waive any or all requirements of this section.

(3) Where a Type A Permit is granted for emergency tree removal, the permittee is encouraged to apply to the City Tree Fund for replanting assistance.

(C) City utility or road work in utility or road easements, in utility or road right-of-ways, or in public lands. However, any trees removed in the course of utility work shall be mitigated in accordance with the standards of this subchapter.

(D) Nuisance abatement. The City is not required to apply for a Tree Removal Permit to undertake nuisance abatement as provided in WC 6.200 et seq. However, the owner of the property subject to nuisance abatement is subject to all the provisions of this subchapter in addition to the requirements of WC 6.200 et seq.

(E) The removal of filbert trees is exempt from the requirements of this subchapter.

(F) The Charbonneau District, including its golf course, is exempt from the requirements of WC 4.600.30(1) on the basis that by and through the current CC&R's of the Charbonneau Country Club, the homeowners' association complies with all requirements of WC 4.610.30(1)(C)(1). This exception will take effect after a Tree Maintenance and Protection Plan has been submitted by the Charbonneau Country Club and approved by the Planning Director. Tree removal activities remain subject to all applicable standards of this subchapter. Unless authorized by the City, this exception does not include tree removal upon any public easements or public property within the district. In the event that the CC&R's are changed relative to the effect of the Tree Maintenance and Protection Plan, then the Planning Director shall review whether such effect is material, whether it can be mitigated, and if not, may disallow the exemption.

4.600.50 APPLICATION FOR TREE REMOVAL PERMIT

(1) Application for Permit. A person seeking to remove one or more trees shall apply to the Director for a Tree Removal Permit for a Type A, B, C, or D permit, depending on the applicable standards as provided in this subchapter.

(A) An application for a tree removal permit that does not meet the requirements of Type A may be submitted as a Type B application.

(2) Time of Application. Application for a Tree Removal Permit shall be made before removing or transplanting trees, except in emergency situations as provided in WC 4.600.40 (1)(B) above. Where the site is proposed for development necessitating site

plan or plat review, application for a Tree Removal Permit shall be made as part of the site development application as specified in this subchapter.

(3) Fees. A person applying for a Tree Removal Permit shall pay a non-refundable application fee; however, no fee will be charged until established by subsequent resolution of City Council.

(A) By submission of an application, the applicant shall be deemed to have authorized City representatives to have access to applicant's property as may be needed to verify the information provided, to observe site conditions, and if a permit is granted, to verify that terms and conditions of the permit have been followed.

4.610.00. APPLICATION REVIEW PROCEDURE

(1) The permit applicant shall provide complete information as required by this subchapter in order for the City to review the application.

(2) Departmental Review. All applications for Tree Removal Permits must be deemed complete by the City Planning Division before being accepted for review. When all required information has been supplied, the Planning Division will verify whether or not the application is complete. Upon request of either the applicant or the City, the City may conduct a field inspection or review meeting. City departments involved in the review shall submit their report and recommendations to the Planning Director who shall forward them to the appropriate reviewing authority.

(3) Reviewing Authority.

(A) Type A or B. Where site plan review or plat approval by the Development Review Board is not required by City ordinance, the grant or denial of the Tree Removal Permit application shall be the responsibility of the Planning Director. The Planning Director has the authority to refer a Type B permit application to DRB under the Class II administrative review procedures of this Chapter. The decision to grant or deny a permit shall be governed by the applicable review standards enumerated in WC 4.610.10

(B) Type C. Where the site is proposed for development necessitating site plan review or plat approval by the Development Review Board, the Development Review Board shall be responsible for granting or denying the application for a Tree Removal Permit, and that decision may be subject to affirmance, reversal or modification by the City Council, if subsequently reviewed by the Council.

(C) Type D. Type D permit applications shall be subject to the standards and procedures of Class I administrative review and shall be reviewed for compliance with the Oregon Forest Practice Rules and Statutes. The Planning Director shall make the decision to grant or deny an application for a Type D permit.

(D) Review period for complete applications. Type A permit applications shall be reviewed within 10 (ten) working days. Type B permit applications shall be reviewed by the Planning Director within thirty (30) calendar days, except that the DRB shall review any referred application within sixty (60) calendar days. Type C permit applications shall be reviewed within the time frame established by this Chapter. Type D permit applications shall be reviewed within 15 calendar days.

(4) Notice. Before the granting of a Type C Tree Removal Permit, notice of the application shall be sent by regular mail to all owners within two hundred fifty feet (250') of the property where the trees are located as provided for in WC 4.010. The notice shall indicate where the application may be inspected and when a public hearing on the application will be held.

(5) Denial of Tree Removal Permit. Whenever an application for a Tree Removal Permit is denied, the permit applicant shall be notified, in writing, of the reasons for denial.

(6) Grant of a Tree Removal Permit. Whenever an application for a Type B, C or D Tree Removal Permit is granted, the reviewing authority shall:

(A) Conditions. Attach to the granting of the permit any reasonable conditions considered necessary by the reviewing authority including, but not limited to, the recording of any plan or agreement approved under this subchapter, to ensure that the intent of this Chapter will be fulfilled and to minimize damage to, encroachment on or interference with natural resources and processes within wooded areas;

(B) Completion of Operations. Fix a reasonable time to complete tree removal operations; and

(C) Security. Require the Type C permit grantee to file with the City a cash or corporate surety bond or irrevocable bank letter of credit in an amount determined necessary by the City to ensure compliance with Tree Removal Permit conditions and this Chapter.

(1) This requirement may be waived by the Planning Director if the tree removal must be completed before a plat is recorded, and the applicant has complied with WC 4.264(1) of this Code.

4.610.10 STANDARDS FOR TREE REMOVAL, RELOCATION OR REPLACEMENT

(1) Except where an application is exempt, or where otherwise noted, the following standards shall govern the review of an application for a Type A, B, C or D Tree Removal Permit:

(A) Standard for Primary Open Space. The standard for tree removal in Primary Open Space shall be that removal or transplanting of any tree is not inconsistent with the purposes of this Chapter.

(B) Preservation and Conservation. No development application shall be denied solely because trees grow on the site. Nevertheless, tree preservation and conservation as a design principle shall be equal in concern and importance to other design principles.

(C) Developmental Alternatives. Preservation and conservation of wooded areas and trees shall be given careful consideration when there are feasible and reasonable location alternatives and design options on-site for proposed buildings, structures or other site improvements.

(D) Land Clearing. Where the proposed activity requires land clearing, the clearing shall be limited to designated street rights-of-way and areas necessary for the construction of buildings, structures or other site improvements.

(E) Residential Development. Where the proposed activity involves residential development, residential units shall, to the extent reasonably feasible, be designed and constructed to blend into the natural setting of the landscape.

(F) Compliance With Statutes and Ordinances. The proposed activity shall comply with all applicable statutes and ordinances.

(G) Relocation or Replacement. The proposed activity shall include necessary provisions for tree relocation or replacement, in accordance with WC 4.620.00, and tree protection, in accordance with WC 4.620.10.

(H) Limitation. Tree removal or transplanting shall be limited to instances where the applicant has provided completed information as required by this Chapter and the reviewing authority determines that removal or transplanting is necessary based on the criteria of this subsection.

(1) Necessary For Construction. Where the applicant has shown that removal or transplanting is necessary for the construction of a building, structure or other site improvement, and that there is no feasible and reasonable location alternative or design option on-site for a proposed building, structure or other site improvement; or a tree is located too close to existing or proposed buildings or structures, or creates unsafe vision clearance.

(2) Disease, Damage, or Nuisance, or Hazard. Where the tree is diseased, damaged, or in danger of falling, or presents a hazard as defined in WC 6.208, or is a nuisance as defined in WC 6.200 et seq., or creates unsafe vision clearance as defined in this Code.

(a) As a condition of approval of Stage II development, filbert trees must be removed if they are no longer commercially grown or maintained.

(3) Interference. Where the tree interferes with the healthy growth of other trees, existing utility service or drainage, or utility work in a previously dedicated right-of-way, and it is not feasible to preserve the tree on site.

(4) Other. Where the applicant shows that tree removal or transplanting is reasonable under the circumstances.

(I) Additional Standards for Type C Permits.

(1) Tree survey. For all site development applications reviewed under the provisions of Chapter 4 Planning and Zoning, the developer shall provide a Tree Survey before site development as required by WC 4.610.40, and provide a Tree Maintenance and Protection plan, if required by the Planning Director or DRB, prior to initiating site development.

(2) Platted Subdivisions. The recording of a final subdivision plat whose preliminary plat has been reviewed and approved after the effective date of Ordinance 464 by the City and that conforms with this subchapter shall include a Tree Survey and Maintenance and Protection Plan, as required by this subchapter, along with all other conditions of approval.

(3) Utilities. The City Engineer shall cause utilities to be located and placed wherever reasonably possible to avoid adverse environmental consequences given the circumstances of existing locations, costs of placement and extensions, the public welfare, terrain, and preservation of natural resources. Mitigation and/or replacement of any removed trees shall be in accordance with the standards of this subchapter.

(J) Exemption. Type D permit applications shall be exempt from review under standards D, E, F, H and I of this subsection.

4.610.20 TYPE A PERMIT

(1) Approval to remove one to three trees within a twelve (12) month period on any property shall be granted if the application meets all of the following requirements:

(A) The trees subject to removal are not located in primary or secondary open space; and

(B) The trees subject to removal are not located in the Willamette River Greenway;

(C) The trees subject to removal are not Heritage Trees.

(D) The trees subject to removal are not street trees;

(E) The trees subject to removal must not be retained as a condition of site development approval.

(2) Where the City determines that an application to remove a tree or trees does not meet the criteria of 1(A) - (E) of this section, then the application may be submitted as a Type B application.

(3) An application for a Type A Permit shall contain the following information:

(A) A brief statement explaining why tree removal is necessary.

(B) A brief description of the trees proposed for removal or relocation, including common name, approximate height, diameter (or circumference) at four and one-half (4 1/2) feet d.b.h. above grade, and apparent health.

(C) A drawing that depicts where trees are located and provides sufficient detail to indicate to a City reviewer where removal or relocation will occur.

(D) The name of the person who will perform the removal or transplanting, if known, and the approximate date of removal.

(E) Additional supporting information which the Planning Division requests, in order to determine whether an application meets the requirements of this section.

(3) The City shall accept a Type A permit application under the following procedure:

(A) Review Period. Completed Type A permit applications shall be reviewed within ten (10) working days. The grant or denial of the Tree Removal Permit application shall be the responsibility of the Planning Director.

(B) The Type A permit application shall be reviewed under the standards of Class I administrative review and applicable requirements of this subchapter.

4.610.30 TYPE B PERMIT

(1) An applicant may apply for a Type B Permit based on the following criteria:

(A) The applicant proposes to remove four (4) or more trees on property not subject to site development review; or

(B) The applicant proposes major or minor changes in a condition or conditions of a development permit previously approved under the provisions of this Chapter; or

(C) The applicant is a homeowners' association that proposes to remove trees on property previously approved by the City for development.

(1) A Tree Maintenance and Protection Plan submitted for approval under (1)(C) of this subsection shall meet the following criteria:

(a) The Development Review Board shall review the Covenants, Conditions and Restrictions (CC&R's) to verify that the homeowners' association is designated and authorized by the CC&R's to review tree maintenance, removal, and planting requests.

(b) A request for tree removal shall indicate the reason for the request, as well as the location, size, species and health of tree.

(c) Decisions on requests and actions taken are documented and retained and shall be made available to the City's Development Review Board upon request.

(d) A replanting program is established and reviewed on an annual basis. Where such a program is approved, mitigation under this Chapter shall not be required.

(2) Any permit approved under this subsection shall require that all maintenance, planting, and removal be performed to the standards established in this subchapter and in Wilsonville Code.

(3) Failure of a homeowners' association to meet the requirements of this subsection shall be grounds for revocation of a Type B permit.

(2) Application for the Type B permit shall consist of the information required for a Type A Permit, as provided in WC 4.610.20, and a Tree Maintenance and Protection Plan, which shall contain the following information:

(A) A topographical survey, subdivision map or plat map, that bears the signature of a qualified, registered surveyor or engineer, and which shows:

(1) the shape and dimensions of the property, and the location of any existing and proposed structure or improvement,

(2) the location of the trees on the site, and indicating species, canopy and common name,

(3) the location of existing and proposed easements, as well as setbacks required by existing zoning requirements.

(B) In lieu of the map or survey, an applicant proposing to remove trees under (1)(B) or (1)(C) of this subsection may provide aerial photographs with overlays, GIS

documentation, or maps approved by the Planning Director, and clearly indicating the information required by (2)(A) of this subsection.

(C) Arborist Report. The report shall describe the health and condition of all trees subject to removal or transplanting, and shall include information on species, common name, diameter at four and one-half (4 1/2) feet d.b.h., approximately height and age.

(D) Tree Protection. If required by the Planning Division, a statement describing how trees intended to remain will be protected during tree removal, and how remaining trees will be maintained.

(E) Tree Identification. A statement that any trees proposed for removal will be identified by a method obvious to a site inspector, such as tagging, painting, or flagging, in addition to clear identification on construction documents.

(F) Replacement Trees. A description of the proposed tree replacement program with a detailed explanation including the number, size, and species, and cost. In lieu of replacing trees, the applicant may propose to pay into the City Tree Fund an amount equivalent to the value of the replacement trees after installation, as provided in this subchapter.

(G) Covenants, Conditions and Restrictions (CC&R's). Where the applicant is proposing to remove trees on common areas, the applicant shall provide a copy of the applicable CC&R's, including any landscaping provisions.

(H) Waiver of documentation. The Planning Director may waive an application document where the required information has already been made available to the City, or where the Director determines the information is not necessary to review the application.

(3) Review.

(A) The Type B permit application, including major or minor changes in a condition or conditions of a development permit previously approved under the provisions of this chapter, shall be reviewed under the standards of Class II administrative review and the requirements of this subchapter. Where site plan review or plat approval by the Development Review Board is not required by City ordinance, the grant or denial of the Type B permit shall be the responsibility of the Planning Director. The Planning Director has the authority to refer a Type B permit application to DRB under the Class II administrative review procedures of this Chapter.

(B) The DRB shall review any application referred by the Planning Director within sixty (60) days. The Planning Director shall review a completed permit application within thirty (30) days.

(C) The decision to grant or deny a Type B permit shall be governed by the standards established in WC 4.610.10.

4.610.40 TYPE C PERMIT

(1) Approval to remove any trees on property as part of a site development application may be granted in a Type C permit. A Type C permit application shall be reviewed by the standards of this subchapter and all applicable review criteria of Chapter 4. Application of the standards of this section shall not result in a reduction of square footage or loss of density. If an applicant proposes to remove trees and submits a landscaping plan as part of a site development application, an application for a Tree Removal Permit shall be included. The Tree Removal Permit application will be reviewed in the Stage II development review process, and any plan changes made that affect trees after Stage II review of a development application shall be subject to review by DRB. Where mitigation is required for tree removal, such mitigation may be considered as part of the landscaping requirements as set forth in this Chapter.

(2) The applicant must provide ten copies of a Tree Maintenance and Protection Plan completed by an arborist that contains the following information:

(A) A plan, including a topographical survey bearing the stamp and signature of a qualified, registered professional containing all the following information:

(1) Property Dimensions. The shape and dimensions of the property, and the location of any existing and proposed structure or improvement.

(2) Tree survey. The survey must include:

(a) A drawing of the site based on accurate survey techniques at a minimum scale of one inch (1") equals one hundred feet (100') and which provides a) the location of all trees having six inches (6") or greater d.b.h. likely to be impacted, b) the spread of canopy of those trees, (c) the common and botanical name of those trees, and d) the approximate location and name of any other trees on the property.

(b) A description of the health and condition of all trees likely to be impacted on the site property. In addition, for trees in a present or proposed public street or road right-of-way that are described as unhealthy, the description shall include recommended actions to restore such trees to full health. Trees proposed to remain, to be transplanted or to be removed shall be so designated.

(3) Tree Protection. A statement describing how trees intended to remain will be protected during development, and where protective barriers are necessary, that they will be erected before work starts.

(4) Easements and Setbacks. Location and dimension of existing and proposed easements, as well as all setbacks required by existing zoning requirements.

(5) Grade Changes. Designation of grade changes proposed for the property.

(6) Cost of Replacement. A cost estimate for the proposed tree replacement program with a detailed explanation including the number, size and species.

(7) Tree Identification. A statement that all trees being retained will be identified by some method, such as tagging, painting, flagging, etc., in addition to clear identification on construction documents.

4.610.50 TYPE D PERMIT

(1) The owner or operator of a commercial woodlot shall apply and receive approval for a Type D Permit before beginning harvesting operations of more than three (3) trees within any twelve (12) month period. Type D permit applications shall be subject to the standards and procedures of Class I administrative review and shall be reviewed for compliance with the Oregon Forest Practice Rules. The removal of three (3) or fewer trees in a commercial woodlot within any twelve (12) month period shall not require a tree removal permit.

(2) Sites which meet the following criteria on the effective date of this regulation shall be designated as commercial woodlots by the Planning Director:

(A) The site is at least 30,000 square feet.

(B) Trees have been maintained on the site for the purpose of harvesting.

(C) The property from which the forest species are to be harvested are in a property tax deferred status based on agricultural and/or forest use under state law provisions for Farm Deferral, Forest Land Deferral, or Small Woodlands Deferral.

(3) All other sites which potentially meet the criteria of WC 4.610.50(B) shall be reviewed by the Development Review Board, which shall determine whether a site meets the criteria for a commercial woodlot designation when an application is submitted for a tree removal permit.

(4) Approval to remove trees as part of a commercial harvest shall be granted if a plan meets all of the following criteria:

(A) Trees will be grown and maintained according to an established plan.

(B) Approved forestry practices will be followed. Forest practices include the administrative rules as adopted by the Oregon Department of Forestry.

(C) Harvested trees will be replanted according to an established plan. Where trees are proposed to be removed as a final harvest and no further planting, maintenance, or rotation of trees will occur after trees are removed, the applicant shall propose an erosion control and revegetation plan for review.

4.620.00 TREE RELOCATION, MITIGATION, OR REPLACEMENT

(1) Requirement Established. A Type B or C Tree Removal Permit grantee shall replace or relocate each removed tree having six (6) inches or greater d.b.h. within one year of removal.

(2) Basis For Determining Replacement. The permit grantee shall replace removed trees on a basis of one (1) tree replanted for each tree removed. All replacement trees must measure two inches (2") or more in diameter.

(3) Replacement Tree Requirements. A mitigation or replacement tree plan shall be reviewed by the City prior to planting and according to the standards of this subsection.

(A) Replacement trees shall have shade potential or other characteristics comparable to the removed trees, shall be appropriately chosen for the site from an approved tree species list supplied by the City, and shall be state Department of Agriculture Nursery Grade No. 1 or better.

(B) Replacement trees must be staked, fertilized and mulched, and shall be guaranteed by the permit grantee or the grantee's successors-in-interest for two (2) years.

(C) A "guaranteed" tree that dies or becomes diseased during that time shall be replaced.

(D) Diversity of tree species shall be encouraged where trees will be replaced, and diversity of species shall also be maintained where essential to preserving a wooded area or habitat.

(4) All trees to be planted shall consist of nursery stock that meets requirements of the American Association of Nurserymen (AAN) American Standards for Nursery Stock (ANZI Z60.1) for top grade.

(5) Replacement Tree Location.

(A) City Review Required. The City shall review tree relocation or replacement plans in order to provide optimum enhancement, preservation and protection of wooded areas. To the extent feasible and desirable, trees shall be relocated or replaced on-site and within the same general area as trees removed.

(B) Relocation or Replacement Off-Site. When it is not feasible or desirable to relocate or replace trees on-site, relocation or replacement may be made at another location approved by the City.

(6) City Tree Fund. Where it is not feasible to relocate or replace trees on site or at another approved location in the City, the Tree Removal Permit grantee shall pay into the City Tree Fund, which fund is hereby created, an amount of money approximately the value as defined by this subchapter, of the replacement trees that would otherwise be required by this subchapter. The City shall use the City Tree Fund for the purpose of producing, maintaining and preserving wooded areas and heritage trees, and for planting trees within the City.

(A) The City Tree Fund shall be used to offer trees at low cost on a first-come, first-serve basis to any Type A Permit grantee who requests a tree and registers with the City Tree Fund.

(B) In addition, and as funds allow, the City Tree Fund shall provide educational materials to assist with tree planting, mitigation, and relocation.

(7) Exception. Tree replacement may not be required for applicants in circumstances where the Director determines that there is good cause to not so require. Good cause shall be based on a consideration of preservation of natural resources, including preservation of mature trees and diversity of ages of trees. Other criteria shall include consideration of terrain, difficulty of replacement and impact on adjacent property.

4.620.10 TREE PROTECTION DURING CONSTRUCTION

(1) Where tree protection is required by a condition of development under Chapter 4 or by a Tree Maintenance and Protection Plan approved under this subchapter, the following standards apply:

(A) All trees required to be protected must be clearly labeled as such.

(B) Placing Construction Materials Near Tree. No person may conduct any construction activity likely to be injurious to a tree designated to remain, including, but not

limited to, placing solvents, building material, construction equipment, or depositing soil, or placing irrigated landscaping, within the drip line.

(C) Attachments to Trees During Construction. Notwithstanding the requirement of WC 4.620.10(1)(A), no person shall attach any device or wire to any protected tree unless needed for tree protection.

(D) Protective Barrier. Before development, land clearing, filling or any land alteration for which a Tree Removal Permit is required, the developer shall erect and maintain suitable barriers as identified by an arborist to protect remaining trees. Protective barriers shall remain in place until the City authorizes their removal or issues a final certificate of occupancy, whichever occurs first. The most appropriate and protective barrier shall be utilized. Barriers are required for all trees designated to remain, except in the following cases:

(1) Right-of-Ways and Easements. Street right-of-way and utility easements may be cordoned by placing stakes a minimum of fifty (50) feet apart and tying ribbon, plastic tape, rope, etc., from stake to stake along the outside perimeters of areas to be cleared.

(2) Any property area separate from the construction or land clearing area onto which no equipment will venture may also be cordoned off as described in paragraph (D) of this subsection, or by other reasonable means as approved by the reviewing authority.

4.620.20 MAINTENANCE AND PROTECTION STANDARDS

(1) The following standards apply to all activities affecting trees, including, but not limited to, tree protection as required by a condition of approval on a site development application brought under this Chapter or as required by an approved Tree Maintenance and Protection Plan.

(A) Pruning activities shall be guided by the most recent version of the ANSI 300 Standards for Tree, Shrub, and Other Woody Plant Maintenance. Information on these standards shall be available upon request from the Planning Division.

(B) Topping is prohibited.

(1) Exception from this section may be granted under a Tree Removal Permit if necessary for utility work or public safety.

4.630.00 APPEAL

(1) The City shall not issue a Tree Removal Permit until approval has been granted by either the Planning Director or the DRB. Any applicant denied a Type A or B permit may

appeal the decision as provided for in review of Class I Development Applications, or Class II Development Applications, whichever is applicable. Decisions by the Planning Director may be appealed to the DRB as provided in WC 4.010. Decisions by the DRB may be appealed to the City Council as provided in WC 4.017.

(2) The City shall not issue a Tree Removal Permit approved by the Development Review Board until fifteen (15) calendar days have passed following the approval. The grant or denial of a Tree Removal Permit may be appealed to the City Council in the same manner as provided for in WC 4.017. An appeal must be filed in writing, within the fifteen (15) calendar day period following the decision being appealed. The timely filing of an appeal shall have the effect of suspending the issuance of a permit pending the outcome of the appeal. The City Council, upon review, may affirm, reverse or modify the decision rendered by the Development Review Board based upon the same standards of review specified for the DRB in the Wilsonville Code.

4.630.10 DISPLAY OF PERMIT; INSPECTION

The Tree Removal Permit grantee shall conspicuously display the permit on-site. The permit grantee shall display the permit continuously while trees are being removed or replaced or while activities authorized under the permit are performed. The permit grantee shall allow City representatives to enter and inspect the premises at any reasonable time, and failure to allow inspection shall constitute a violation of this subchapter.

4.630.20 VARIANCE FOR HARDSHIP

Any person may apply for a variance of this subchapter as provided for in WC 4.186 of this Chapter.

4.630.30 SEVERABILITY

If any part of this ordinance is found by a court of competent jurisdiction to be invalid, that part shall be severable and the remainder of this ordinance shall not be affected.

4.640.00 VIOLATION; ENFORCEMENT

(1) The cutting, damaging, or removal of any individual tree without a permit as required by this ordinance constitutes a violation punishable as a separate infraction under WC 1.013. In addition, each violation of a condition or a violation of any requirement of this Chapter shall constitute a separate infraction.

(2) Retroactive Permit. A person who removes a tree without obtaining a Type A or Type B permit may apply retroactively for a permit. In addition to all application requirements of this Chapter, the person must be able to demonstrate compliance with all requirements of this subchapter, in addition to paying a triple permit fee and a penalty per tree in an amount established by resolution of City Council. Mitigation requirements of this subchapter apply to all retroactive permits.

(3) Nuisance Abatement. Removal of a tree in violation of this Chapter is a nuisance and may be abated as provided in Sections 6.230 to 6.244, 6.250, and 6.260 of this Code.

(4) Withholding Certificate of Occupancy. The City Building Official has the authority to issue a stop-work order, withhold approval of a final plat, or withhold issuance of a certificate of occupancy, permits or inspections until the provisions of this Chapter, including any conditions attached to a Tree Removal Permit, have been fully met.

(5) Fines. Fines for a violation shall be imposed according to WC 1.012.

(6) Mitigation. The City shall require the property owner to replace illegally removed or damaged trees. The City may also require a combination of payment and tree replacement.

(A) The City shall notify the property owner in writing that a violation has occurred and mitigation is required. Within thirty (30) days of the date of mailing of the notice, the property owner shall provide a mitigation plan to the City. The plan shall provide for replacement of a tree of similar species and size taking into account the suitability of the site and nursery stock availability.

(B) Replacement will be on an inch-for-inch basis computed by adding the total diameter measured at d.b.h. in inches of the illegally removed or damaged trees. Alternatively, the Planning Director or Development Review Board may require the permit grantee to replace removed trees on a per caliper inch basis, based on a finding that the large size of the trees being removed justifies an increase in the replacement trees required. The City may use any reasonable means to estimate the tree loss if destruction of the illegally removed or damaged trees prevents exact measurement. All replaced trees must be a minimum two-inch (2") caliper. If the mitigation requirements cannot be completed on the property, the City may require completion at another approved location. Alternatively,

the City may require payment into the City Tree Fund of the value of the removed tree as established by the Planning Division.

4.640.10 ALTERNATIVE ENFORCEMENT

(1) In the event that a person commits more than one violation of WC 4.600.30 to WC 4.630.00, the following alternative sentence may be imposed:

(A) If a person has gained money or property through the commission of an offense under this section, then upon conviction thereof, the court, in lieu of imposing a fine, may sentence the person to pay an amount, fixed by the court, not to exceed double the amount of the gain from the commission of the offense.

(B) "Gain" is defined as the amount of money or value of property derived from the commission of the violation, less the amount of money or value of property seized by or surrendered to the City. "Value" shall be the greater of the market value or replacement cost as determined by a licensed professional in the tree, nursery, or landscape field.

(C) Any fines collected by the City under this section shall accrue to the City Tree Fund.

4.640.20. Responsibility for Enforcement. Compliance with this Chapter shall be enforced by the City Attorney, the City Attorney's designee, and Clackamas County or Washington County law enforcement officers.

The matters herein concern the public health, safety and welfare, and in view of the need to implement an orderly transition in the regulation of forest practices, and to provide certainty for property owners, this ordinance shall become effective immediately upon its passage by the City Council.

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 7th day of October, 1996, and scheduled for the second reading at a regular meeting of the Council on the 21st day of October, 1996, commencing at the hour of 7:00 p.m. at the Community Development Hearings Room.



SANDRA C. KING, City Recorder

ENACTED by the City Council on the 21st day of October, 1996, by
the following votes: YEAS: 4 NAYS: -0-



SANDY C. KING, City Recorder

DATED and signed by the Mayor this 24 day of October, 1996.



GERALD A. KRUMMEL, Mayor

SUMMARY OF VOTES:

Mayor Krummel	<u>Yes</u>
Councilor Hawkins	<u>Yes</u>
Councilor Lehan	<u>Yes</u>
Councilor MacDonald	<u>Yes</u>