

Recommended Amendments to Tigard Development Code 18.790 (Tree Removal)

As Recommended by the Tigard Planning Commission to
Tigard City Council on March 16, 2009

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18.790.010 Purpose

A. Value of trees. After years of both natural growth and planting by residents, the City now benefits from a large number of trees. These trees of varied types add to the aesthetic beauty of the community, help clean the air, help control erosion, maintain water quality and provide noise barriers.

B. Purposes. The purposes of this chapter are to:

1. Encourage the preservation, planting and replacement of trees in the City;
2. Regulate the removal of trees on **sensitive** lands in the City to eliminate unnecessary removal of trees;
3. Provide for a tree plan for developing properties;
4. Protect **sensitive** lands from erosion;
5. Protect water quality;
6. Provide incentives for tree retention and protection; and
7. Regulate commercial forestry to control the removal of trees in an urban environment.

C. Recognize need for exceptions. The City recognizes that, notwithstanding these purposes, at the time of development it may be necessary to remove certain trees in order to accommodate structures, streets, utilities, and other needed or required improvements within the development.

18.790.020 Definitions

A. Definitions. The following definitions apply to regulations governing the preservation and removal of trees contained in this chapter exclusively:

1. "Canopy cover" means the area above ground which is covered by the trunk and branches of the tree;
2. "Commercial forestry" means the removal of ten or more trees per acre per calendar year for sale. Tree removal undertaken by means of an approved tree removal plan under Section 18.790.030 is not considered commercial forestry under this definition;
3. "Hazardous tree" means a tree which by reason of disease, infestation, age, or other condition presents a known and immediate hazard to persons or to public or private property;

4. **“Practicable” means reasonably capable of being done or accomplished with the available means or resources;**
5. “Pruning” means the cutting or trimming of a tree in a manner which is consistent with recognized tree maintenance practices;
6. “Removal” means the cutting or removing of 50 percent (50%) or more of a crown, trunk or root system of a tree, or any action which results in the loss of aesthetic or physiological viability or causes the tree to fall or be in immediate danger of falling. “Removal” shall not include pruning;
7. “Tree” means ~~a standing woody plant, or group of such, having a trunk which is six inches or more in caliper size when measured four feet from ground level~~ **any standing woody plant having a trunk which is six inches or more in caliper size when measured 54 inches (4 ½ feet) above mean ground level at the base of the trunk. If a tree splits into multiple trunks above ground, but below 54 inches, the trunk is measured at its most narrow point beneath the split, and is considered one tree. If the tree splits into multiple trunks below ground, each trunk shall be considered one tree;**
8. “Sensitive lands” means those lands described at Chapter 18.775 of the title.

B. General rule. Except where the context clearly indicates otherwise, words in the present tense shall include the future and words in the singular shall include the plural.

18.790.030 Tree Plan Requirement

- A. Tree Plan Required: A tree plan for the planting, removal, and protection of trees prepared **and signed** by a certified arborist shall be provided for any lot, parcel, or combination ~~thereof of lots or parcels~~ for which a development application for a subdivision, partition, site development review, planned development or conditional use is filed. Protection is preferred over removal wherever **possible practicable**.
- B. Plan Requirements. **In order to determine that the City’s preference for tree protection has been incorporated into the project design,** the tree plan shall include the following:
 1. Identification of the location, size, **condition,** and species of all existing trees, ~~including trees designated as significant by the city;~~
 2. Identification of a program to ~~save~~ **retain** existing trees or to mitigate tree removal over 12 inches in caliper **as measured to the nearest tenth of an inch.** Mitigation must follow the replacement guidelines of Section 18.790.060D, in accordance with the following standards and shall be exclusive of trees required by other development code provisions for landscaping, streets and parking lots:
 - a. Retention of less than 25% of existing trees over 12 inches in caliper requires a mitigation program in accordance with Section 18.790.060D of no net loss of trees;
 - b. Retention of from 25% to 50% of existing trees over 12 inches in caliper requires that two-thirds of the trees to be removed be mitigated in accordance with Section 18.790.060D;
 - c. Retention of from 50% to 75% of existing trees over 12 inches in caliper requires that 50 percent of the trees to be removed be mitigated in accordance with Section 18.790.060D;
 - d. Retention of 75% or greater of existing trees over 12 inches in caliper requires no mitigation.
 3. Identification of all trees which are proposed to be removed **and the reason for their removal;**

4. A protection program defining standards and methods that will be used by the applicant to protect trees during and after construction including those within 25 feet of the affected lot or parcel (as estimated by the project arborist if permission to enter is not granted by adjacent property owner);
 5. A narrative and site plan demonstrating how the following design and construction techniques will be utilized to the extent practicable. The format of the narrative must address each technique with a “yes” or “no” answer, followed by a written explanation as to how the plans have included said techniques, or why said techniques are not practicable. The accompanying site plan shall include the location of all existing trees in relation to the location of proposed grading, lot lines, and improvements.
 - a. Does the project protect and retain existing non-hazardous trees that are not likely to become a hazard during or soon after development given their existing condition, ability to withstand unavoidable development related impacts, proximity to proposed land uses and structures, and susceptibility to windthrow?
 - b. Do grading plans avoid soil compaction within the driplines of existing trees to be preserved, the removal of existing soil within driplines, or the placement of new soil within the driplines of existing trees to be preserved?
 - c. Are infrastructure improvements such as stormwater facilities, utilities, sidewalks, and other improvements located outside of the driplines of existing trees?
 - d. Are lot layouts, road and driveway configurations, building locations, and building footprints located outside of the driplines of existing trees?
 - e. Are parking lot improvements located outside of the driplines of existing trees? If no, can parking spaces be reduced to a number consistent with minimum parking stall requirements?
 - f. Does the site plan locate required open space and landscaping in areas that contain existing trees?
 - g. Does the project utilize lot size averaging and/or the reduction of lot width and depth to preserve trees, as allowed per 18.790.040A(2) and (3);
 - h. If the project cannot avoid disturbance within the driplines of existing trees, does the protection program identify compatible construction techniques that will be used to prevent or reduce harm to existing trees (i.e. tunneling for utilities, no – dig pavement installation, use of retaining walls to limit disturbance) to a level that the health and longevity of the trees will not be significantly impacted?
 6. A mitigation plan signed by the project arborist that includes the location, species, spacing, and planting specifications for the replacement trees and/or the amount of caliper inches that will be compensated through fees in lieu of planting.
- C. Subsequent Prior tree removal. Trees removed within the period of one year prior to a development application listed above will be inventoried as part of the tree plan above and will be replaced according to Section 18.790.060D.

D. Peer Review. In questions of adequacy, the Planning Director or approving authority may, at their discretion, subject a tree plan to peer review by a third-party certified arborist under contract to the City. The findings and recommendations of the third-party certified arborist shall be incorporated into the tree plan by revision or condition of approval.

E. Approval Criteria. The approval authority may approve, approve with conditions, or deny a tree plan based on the following approval criteria:

1. The tree plan contains all content requirements set forth in sections 18.790.030(A) through (C), including the signature of a certified arborist on all documents, attachments, and amendments; and
2. The tree plan demonstrates that the applicant has affirmatively attempted to protect, as opposed to remove, trees on the project site; and
3. In cases where the Tree Plan has been peer reviewed, the recommendations of the third-party arborist have been incorporated into the tree plan through revisions by a certified arborist, or condition(s) of approval; and
4. Tree removal on sensitive lands complies with requirements set forth in 18.790.050.

F. Modifications to approved Tree Plans. Approved tree plans may be modified in the following manner.

1. Major Modification(s) to Approved Tree Protection Plans

A. Determination request. An applicant may request approval of a modification to an approved tree protection plan or existing development by:

1. Providing the Director with three copies of the proposed modified tree protection plan; and
2. A narrative which indicates the rationale for the proposed modification addressing the changes listed in subsection B below.

B. Evaluation criteria. The Director shall determine that a major modification(s) will result if one or more of the following changes are proposed. There will be:

1. The total number of trees being removed increases by 10% or more, as defined by the whole of the original project; or
2. The total number of caliper inches being removed increases by 10% or more;

C. When the determination is made. Upon determining that the proposed modification to the tree protection plan is a major modification, the applicant shall submit a new development application in accordance with the original project approval.

2. Minor Modification(s) to Approved Tree Protection Plans or Existing Development

A. Minor modification defined. Any modification which is not within the description of a major modification as provided in Section 18.790.030.F.1 shall be considered a minor modification.

B. Process. An applicant may request approval of a minor modification as follows:

1. Providing the Director with three copies of the proposed modified tree protection plan; and

2. A narrative which indicates the rationale for the proposed modification.

C. Approval criteria. A minor modification shall be approved, approved with conditions or denied following the Community Development Director's review based on finding that:

1. The proposed development is in compliance with all applicable requirements of this title; and

2. The modification is not a major modification.

18.790.040 Incentives for Tree Retention

A. Incentives. To assist in the preservation and retention of existing trees, the Director may apply one or more of the following incentives as part of development review approval and the provisions of a tree plan according to Section 18.790.030:

1. Density bonus. For each 2% of canopy cover provided by existing trees over 12 inches in caliper that are preserved and incorporated into a development plan, a 1% bonus may be applied to density computations of Chapter 18.715. No more than a 20% bonus may be granted for any one development. The percentage density bonus shall be applied to the number of dwelling units allowed in the underlying zone. This bonus is not applicable to trees preserved in areas of floodplain, slopes greater than 25%, drainageways, or wetlands that would otherwise be precluded from development;
2. Lot size averaging. To retain existing trees over 12 inches in caliper in the development plan for any land division under Chapter 18.400, lot size may be averaged to allow lots less than the minimum lot size allowed by the underlying zone as long as the average lot area for all lots and private open space is not less than that allowed by the underlying zone. No lot area shall be less than 80% of the minimum lot size allowed in the zone;
3. Lot width and depth. To retain existing trees over 12 inches in caliper in the development plan for any land division under Chapter 18.400, lot width and lot depth may be reduced up to 20% of that required by the underlying zone;
4. Commercial/industrial/civic use parking. For each 2% of canopy cover provided by existing trees over 12 inches in caliper that are preserved and incorporated into a development plan for commercial, industrial or civic uses listed in Section 18.765.080, Minimum and Maximum Off-Street Parking Requirements, a 1% reduction in the amount of required parking may be granted. No more than a 20% reduction in the required amount of parking may be granted for any one development;
5. Commercial/industrial/civic use landscaping. For each 2% of canopy cover provided by existing trees over 12 inches in caliper that are preserved and incorporated into a development plan, a 1% reduction in the required amount of landscaping may be granted. No more than 20% of the required amount of landscaping may be reduced for any one development.

B. Subsequent removal of a tree. Any tree preserved or retained in accordance with this section may thereafter be removed only for the reasons set out in a tree plan, in accordance with Section 18.790.030, or as a condition of approval for a conditional use, and shall not be subject to removal under any other section of this chapter. The property owner shall record a deed restriction as a condition of approval of any development permit affected by this section to the effect that such tree may be removed only if the

tree dies or is hazardous according to a certified arborist. The deed restriction may be removed or will be considered invalid if a tree preserved in accordance with this section should either die or be removed as a hazardous tree. The form of this deed restriction shall be subject to approval by the Director.

- C. Site development modifications granted as incentives. A modification to development requirements granted under this section shall not conflict with any other restriction on the use of the property, including but not limited to easements and conditions of development approval.
- D. Design modifications of public improvements. The City Engineer may adjust design specifications of public improvements to accommodate tree retention where possible and where it would not interfere with safety or increase maintenance costs.

18.790.050 ~~Permit Applicability~~ Tree Removal on Sensitive Land Areas

- A. Removal permit required. Tree removal permits shall be required only for the removal of any tree which is located on or in a sensitive land area as defined by Chapter 18.775. The permit for removal of a tree shall be processed as a Type I procedure, as governed by Section 18.390.030, using the following approval criteria:
 - 1. Removal of the tree must not have a measurable negative impact on erosion, soil stability, flow of surface waters or water quality as evidenced by an erosion control plan which precludes:
 - a. Deposits of mud, dirt, sediment or similar material exceeding 1/2 cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge or as a result of the action of erosion;
 - b. Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes where the flow of water is not filtered or captured on site using the techniques of Chapter 5 of the Washington County Unified Sewerage Agency Environmental Protection and Erosion Control rules.
 - 2. Within stream or wetland corridors, as defined as 50 feet from the boundary of the stream or wetland, tree removal must maintain no less than a 75% canopy cover or no less than the existing canopy cover if the existing canopy cover is less than 75%.
- B. Effective date of permit. A tree removal permit shall be effective for one and one-half years from the date of approval.
- C. Extension. Upon written request by the applicant prior to the expiration of the existing permit, a tree removal permit shall be extended for a period of up to one year if the Director finds that the applicant is in compliance with all prior conditions of permit approval and that no material facts stated in the original application have changed.
- D. Removal permit not required. A tree removal permit shall not be required for the removal of a tree which:
 - 1. Obstructs visual clearance as defined in Chapter 18.795 of the title;
 - 2. Is a hazardous tree;
 - 3. Is a nuisance affecting public safety as defined in Chapter 7.40 of the Municipal Code;
 - 4. Is used for Christmas tree production, or land registered with the Washington County Assessor's office as tax-deferred tree farm or small woodlands, but does not stand on sensitive lands.

E. Prohibition of commercial forestry. Commercial forestry as defined by Section 18.790.020 A.2., excluding D.4. above, is not permitted.

18.790.060 ~~Illegal Tree Removal~~ Violations and Replacement Standards

A. Violations. The following constitute a violation of this chapter:

1. Removal of a tree:
 - a. Without a valid tree removal permit; or
 - b. In noncompliance with any condition of approval of a tree removal permit; or
 - c. In noncompliance with any condition of any City permit or development approval; or
 - d. In noncompliance with any other section of this title.
2. Breach of a condition of any City permit or development approval, which results in damage to a tree or its root system.

B. Remedies. If the Director has reason to believe that a violation of this chapter has occurred, then he or she may do any or all of the following:

1. Require the owner of the land on which the tree was located to submit sufficient documentation, which may include a written statement from a qualified arborist or forester, showing that removal of the tree was permitted by this chapter;
2. Pursuant to Section 18.390.050., initiate a hearing on revocation of the tree removal permit and/or any other permit or approval for which this chapter was an approval standard;
3. Issue a stop order pursuant to Section 18.230 of this title;
4. Issue a citation pursuant to Chapter 1.16 of the Municipal Code;
5. Take any other action allowed by law.

C. Fines. Notwithstanding any other provision of this title, any party found to be in violation of this chapter pursuant to Section 1.16 of the Municipal Code shall be subject to a civil penalty of up to \$500 and shall be required to remedy any damage caused by the violation. Such remediation shall include, but not be limited to, the following:

1. Replacement of unlawfully removed or damaged trees in accordance with Section D below; and
2. Payment of an additional civil penalty representing the estimated value of any unlawfully removed or damaged tree, as determined using the most current International Society of Arboriculture's Guide for Plant Appraisal.

D. Guidelines for replacement. Replacement of a tree shall take place according to the following guidelines:

1. A replacement tree shall be a substantially similar species taking into consideration site characteristics;
2. If a replacement tree of the species of the tree removed or damaged is not reasonably available, the Director may allow replacement with a different species of equivalent natural resource value;
3. If a replacement tree of the size cut is not reasonably available on the local market or would not be viable, the Director shall require replacement with more than one tree in accordance with the following formula: The number of replacement trees required shall be determined by dividing the

estimated caliper size of the tree removed or damaged by the caliper size of the largest reasonably available replacement trees. If this number of trees cannot be viably located on the subject property, the Director may require one or more replacement trees to be planted on other property within the City, either public property or, with the consent of the owner, private property;

4. The planting of a replacement tree shall take place in a manner reasonably calculated to allow growth to maturity.
- E. In lieu-of payment. In lieu of tree replacement under Section D above, a party may, with the consent of the Director, elect to compensate the City for its costs in performing such tree replacement.
- F. Exclusivity. The remedies set out in this section shall not be exclusive.