

**STAFF REPORT TO THE  
PLANNING COMMISSION  
FOR THE CITY OF TIGARD, OREGON**



**SECTION I. APPLICATION SUMMARY**

**FILE NAME:** CODE AMENDMENT TO CLARIFY CONTENT REQUIREMENTS OF TREE PLANS

**FILE NO.:** Development Code Amendment (DCA) DCA2009-00001

**PROPOSAL:** To amend Chapter 18.790 (Tree Removal) of the Tigard Development Code to clarify how an applicant for development is to demonstrate compliance with the City's stated preference for tree protection over removal wherever possible.

**APPLICANT:** City of Tigard **OWNER:** N/A  
13125 SW Hall Blvd  
Tigard, OR 97223

**ZONE:** All City Zoning Districts

**COMP PLAN:** All City Comprehensive Plan Designations

**LOCATION:** Citywide.

**APPLICABLE  
REVIEW**

**CRITERIA:** Community Development Code Chapters 18.380, 18.390, and 18.790; Comprehensive Plan Policies 1.1.2, 1.1.3, 1.2.1, 1.2.6, 2.1.2, 2.1.14, 2.1.24, 2.2.1, 2.2.6, 2.3.1, 2.3.6, 6.1.6, 6.2.3, 6.2.4, and 6.2.5; Metro Functional Plan Titles 1, 2, and 3; and Statewide Planning Goals 1, 2, and 6.

**SECTION II. STAFF RECOMMENDATION**

Staff recommends that the Planning Commission find in favor to amend the Tree Removal regulations as proposed by the applicant, with any alterations as determined through the public hearing process and make a final recommendation to the Tigard City Council.

## SECTION III. BACKGROUND INFORMATION

### History

Historically, applicants submitting for land use approval have been required to identify all trees on site, specify which will be removed, and propose protection methods for those to be retained. Any or all trees could be removed so long as they were appropriately mitigated. This practice does not prioritize protection over removal wherever possible, as required in Section 18.790.030 of the Tigard Community Development Code. This practice is also in conflict with the purpose statement of the Tree Removal Ordinance which recognizes the value of trees and calls for their preservation. That said, the code is not clear as to how an applicant can demonstrate compliance with the City's stated preference.

This lack of clarity generated a Director's Interpretation in 2008 by the previous Community Development Director, which was intended to guide the administration of Chapter 18.790 during development application review. Shortly after issuance, the Home Builders Association of Metropolitan Portland (HBA) appealed this interpretation to the City Council. The appeal was successful and the Council overturned the interpretation on the grounds that it was more appropriately addressed through a code update. Coinciding with their ruling, Council directed staff to address this issue through updates to the development code.

In response to Council direction, staff has prepared a series of text amendments that clarify and expand the submittal requirements to better enable an applicant to clearly and objectively comply with this community preference. A draft of the amendments was presented to the Tigard Tree Board for review and comment on December 4, 2008. Recommended changes and public comments received at that meeting were incorporated by staff and presented to the Planning Commission at a workshop on February 23, 2009. Following the February workshop, additional refinements to the proposed text amendments were made in response to correspondence submitted by the public and on advice from the City attorney.

### Proposed Changes

The proposed changes to Chapter 18.790 are as follows (also found in Exhibit A), with deleted text as ~~strikeouts~~ and added text **bolded and underlined**:

#### **18.790 - Tree Removal**

##### **18.790.010 Purpose**

##### **18.790.020 Definitions**

##### **18.790.030 Tree Plan Requirement**

##### **18.790.040 Incentives for Tree Retention**

##### **18.790.050 ~~Permit Applicability~~ Tree Removal on Sensitive Lands**

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

##### **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 means at hand and circumstances as they are.**
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, **adjacent road right-of-way,** 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 **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);**

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;

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 addition to the 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 and construction 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 that are 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 18.790.040(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 supports a finding that protection is preferred over removal wherever practicable; 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 the original certified arborist, or condition(s) of approval; and**
- 4. Tree removal on sensitive lands shall also comply with requirements set forth in 18.790.050.**

#### **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.

### **Proposal Discussion**

The City acknowledges that tree removal is sometimes necessary to accommodate the needs and aspirations of the Community. This acknowledgement is embedded in both the zoning of properties for particular types and intensities of development, as well as in the preamble to the Tree Removal Chapter (18.790.010) itself. At the same time the community has expressed a desire to save viable trees when it is reasonably possible to do so, and has embedded that value in the Tree Removal Chapter and the goals and policies of the recently updated Comprehensive Plan.

The proposed changes strike a balance between these two competing demands and are expected to provide the following changes to improve tree preservation and the clarify of the development review process.

1. The purpose statement would be amended to remove any explicit references to sensitive lands. This chapter addresses, through various sections, tree removal on both sensitive and non-sensitive lands and staff wishes to make clear that it is not the intent of this section to protect Goal 5 resources.
2. The definitions section would be amended to better define split trunk trees, a source of much debate during development review.
3. The phrase "protection is preferred over removal wherever *possible*" would be amended to read "wherever *practicable*." The intent is to bring the terminology of this chapter closer in line to that of the Comprehensive Plan, which demonstrates a preference for "practicable" over "possible" as it implies situational appropriateness and reasonableness in the face of competing priorities, as opposed to an absolute concept regardless of the other circumstances.
4. The content requirements of the tree plan would require an expansive view and more detail on individual trees, the preservation strategies considered, and the reason for a tree's removal. It would also require that tree plans be signed by an arborist who would self-certify the plan. These requirements have been introduced for two reasons. First, if the plan is going to be self-certifying there must a sufficient level of detail for the strength of the determination to be readily apparent.

Second, to answer the questions the certifying arborist will have to be in closer consultation with the remainder of the design team.

5. Approval criteria have been added to clarify how and when a tree plan may be approved.
6. Subchapter names have been changed to better communicate the structure and requirements of this chapter.

## **SECTION IV. SUMMARY OF REPORT**

Applicable criteria, findings and conclusions

- Tigard Community Development Code (Title 18)
  - Chapter 18.380
  - Chapter 18.390
  - Chapter 18.790
- Applicable Comprehensive Plan Policies
  - Chapters 1, 2, and 6
- Applicable Metro Standards
  - Title 1, 2, and 3
- Statewide Planning Goals
  - Goals 1, 2, and 6.

City Department and outside agency comments

## **SECTION V. APPLICABLE CRITERIA AND FINDINGS**

### **CITY OF TIGARD COMMUNITY DEVELOPMENT CODE (TITLE 18)**

#### **Chapter 18.380: Zoning Map and Text Amendments**

##### **Chapter 18.380.020 Legislative Amendments to the Title and Map**

**A. Legislative amendments. Legislative zoning map and text amendments shall be undertaken by means of a Type IV procedure, as governed by Section 18.309.060G**

Findings: The proposed text amendments to the Tigard Development Code would be applied to development throughout the City of Tigard; and therefore, the application is being processed as a Type IV procedure, Legislative Amendment, as governed by Section 18.390.060G.

#### **Chapter 18.390: Decision-Making Procedures**

##### **Chapter 18.390.020. Description of Decision-Making Procedures**

**B.4. Type IV Procedure. Type IV procedures apply to legislative matters. Legislative matters involve the creation, revision, or large-scale implementation of public policy. Type IV matters are considered initially by the Planning Commission with final decisions made by the City Council.**

Findings: The proposed amendments to the Tigard Development Code will be reviewed under the Type IV procedure as detailed in Section 18.390.060.G. In accordance with this section, the amendments will initially be considered by the Planning Commission on March 16, 2009 with City Council making the final decision.

**Chapter 18.390.060.G. Decision-making considerations. The recommendation by the Commission and the decision by the Council shall be based on consideration of the following factors:**

1. **The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197;**
2. **Any federal or state statutes or regulations found applicable;**
3. **Any applicable Metro regulations;**
4. **Any applicable comprehensive plan policies; and**
5. **Any applicable provisions of the City's implementing ordinances.**

Findings: As indicated pursuant to the findings and conclusions that address applicable Statewide Planning Goals, Metro Regulations, comprehensive plan policies, and other chapters of the Tigard Development Code, the amendment is consistent with this criterion.

### **Chapter 18.790: Tree Removal**

#### **Chapter 18.790.010 Purpose**

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

- 1. Encourage the preservation, planting and replacement of trees in the City;**
- 3. Provide for a tree plan for developing properties;**

Findings: The proposed text amendments to 18.790.030 are consistent with the overall stated purposes of Chapter 18.790, including the encouragement of tree preservation and the provision of a tree plan.

**CONCLUSION:** Based on the analysis above, staff finds that the proposed text amendments satisfy the applicable review criteria within the Tigard Community Development Code and recommends the Planning Commission forward these proposed amendments to the City Council with a recommendation for adoption.

### **CITY OF TIGARD COMPREHENSIVE PLAN POLICIES:**

A review of the comprehensive plan identified the following relevant policies for the proposed amendments:

**Policy 1.1.2: The City shall define and publicize an appropriate role for citizens in each phase of the land use planning process.**

**Policy 1.2.1: The City shall ensure pertinent information is readily accessible to the community and presented in such a manner that even technical information is easy to understand.**

**Policy 1.2.6: The City shall provide opportunities for citizens to communicate to Council, boards and commissions, and staff regarding issues that concern them.**

Finding: Consistent with Chapter 18.390 of the Tigard Development Code (Decision-Making Procedures), two public hearings will be held where public comment will be received by the Planning Commission and City Council. Public notice of these hearings will occur through a combination of direct mailings to affected agencies and interested parties, and publication on the City's website and in a newspaper of general circulation. In addition, the proposed amendments are available for viewing on the City's website or at City Hall.

**Policy 1.1.3: The City shall establish special citizen advisory boards and committees to provide input to the City Council, Planning Commission, and City staff.**

Finding: The proposed amendments were presented at a regular meeting of the Tigard Tree Board on December 4, 2008 whereupon board members and attending citizens considered the changes and provided comments. The Tree Board unanimously agreed that the proposed amendment should proceed through the legislative process.

**Policy 2.1.2: The City's land use regulations, related plans, and implementing actions shall be consistent with and implement its Comprehensive Plan.**

Finding: As demonstrated in findings above and below, the proposed amendments are consistent with the Comprehensive Plan.

**Policy 2.1.14: Applicants shall bear the burden of proof to demonstrate that land use applications are consistent with applicable criteria and requirements of the Development Code, the Comprehensive Plan and, when necessary, those of the state and other agencies.**

Finding: The existing text of Chapter 18.790 of the Tigard Development Code establishes a stated preference for tree preservation over removal, but does not set forth a procedure or criteria through which an applicant can demonstrate proof that such a preference has been considered and incorporated into the project design. The proposed amendment would resolve this ambiguity by establishing clear and objective submittal requirements and approval criteria that would enable an applicant to demonstrate proof of compliance with the City's stated preference.

**Policy 2.1.24: The City shall establish design standards to promote quality urban development and to enhance the community's value, livability, and attractiveness.**

Finding: The proposed amendments to reinforce the City's preference for tree protection over removal, and replacement where removal is necessary, are consistent with this policy. The stated objectives of this chapter are to protect the contribution of existing trees in Tigard, including their contributions to the aesthetic beauty of the community, cleaning of the air, erosion control, maintenance of water quality and the provision of noise barriers. All such services contribute to the community's value, livability, and attractiveness.

**Policy 2.2.1: The City shall maintain and periodically update policies, regulations and standards to inventory, manage, preserve, mitigate the loss of, and enhance the community's tree and vegetation resources to promote their environmental, aesthetic and economic benefits.**

Finding: The proposed amendment is an update of Chapter 18.790 whose purpose is to preserve community trees. The update does not change the purpose of the chapter, but addresses known deficiencies in submittal requirements and approval criteria that do not enable an applicant to clearly and sufficiently demonstrate a preference for tree protection in land use applications. The amendments would also specify content requirements for tree mitigation plans that govern the planting of new trees to replace those removed.

**Policy 2.2.6: The City shall establish and enforce regulations to protect the public's investment in trees and vegetation located in parks, within right-of-ways and on other public lands and easements.**

Finding: The proposed amendments would require the inclusion of trees within 25 feet of the affected parcel, and not just those within the parcel boundaries. The purpose of this requirement is to ensure the preservation of off-site trees, where practicable. Such offsite trees could include, where applicable, those located in public right of ways, open spaces, and other public lands.

**Policy 2.3.1: The City shall develop and implement standards and procedures designed to minimize the reduction of existing tree cover, with priority going to native trees and non-native varieties that are long lived and/or provide a broad canopy spread.**

Finding: The proposed amendment is consistent with this policy as it will clarify and strengthen the effectiveness of an existing chapter of the development code whose purpose is to minimize tree removal as a result of a development application.

**Policy 2.3.6: The City shall, in order to preserve existing trees and ensure new trees will thrive, allow and encourage flexibility in site design through all aspects of development review.**

Finding: The proposed amendment is consistent with this policy in that it will require the applicant to consider and address the practicability of flexible design approaches including the use of lot size averaging and/or the reduction of lot width or depth when tree removal is a possibility.

**Policy 6.1.6: The City shall encourage the maintenance and improvement of open spaces, natural resources, and the City's tree canopy to sustain positive contributions to air quality.**

Finding: The proposed amendment is consistent with this policy as it will clarify and strengthen the effectiveness of an existing chapter of the development code whose purpose is to minimize tree removal as a result of a development application.

**Policy 6.2.3: The City shall encourage the use of low-impact development practices that reduce stormwater impacts from new and existing development.**

Finding: The text amendments would require an applicant to demonstrate in both narrative and plan form that low impact development practices had been considered and incorporated into the tree plan, where practicable. These techniques are set forth in section 18.790.030.B.5(a) through (f) of the proposed text amendments.

**Policy 6.2.4: The City shall protect, restore, and enhance, to the extent practical, the natural functions of stream corridors, trees, and water resources for their positive contributions to water quality.**

**Policy 6.2.5: The City shall require measures to minimize erosion and storm run-off from development sites during and after construction.**

Finding: The proposed amendments will allow the City and applicant to more clearly and efficiently protect and restore the natural functions of trees, to the extent practicable. Trees perform a variety of natural functions, including the reduction of erosion and the absorption of storm water, and the proposed amendments will more effectively preserve and/or replace their natural functions to the extent practicable.

**CONCLUSION:** Based on the analysis above, staff finds that the proposed amendment satisfies the applicable policies contained in the City of Tigard Comprehensive Plan.

## **APPLICABLE METRO REGULATIONS:**

### **Metro Urban Growth Management Plan**

#### **Title 1 – Requirements for Housing and Employment**

Finding: This section of the Functional Plan facilitates efficient use of land within the Urban Growth Boundary (UGB). Each city and county has determined its capacity for providing housing and employment that serves as their baseline and if a city or county chooses to reduce capacity in one location, it must transfer that capacity to another location. Cities and counties must report changes in capacity annually to Metro. The amendments will not reduce the number of dwelling units or reduce employment capacity, they will only ensure that the minimum number of trees are removed during construction. Therefore, this text amendment does not reduce the City's housing and employment capacity.

#### **Title 2 – Regional Parking Policy**

Finding: The Metro 2040 Growth Concept calls for more compact development to encourage the efficient use of land, promote a higher proportion of non-automobile trips, and protect air quality. In addition, the federally mandated air quality plan adopted by the state relies on the 2040 Growth Concept fully achieving its transportation objectives. This title establishes regionwide parking policies that set the minimum and maximum number of parking spaces that can be required by local governments for certain types of new development. By not creating an over supply of parking, urban land can be used most efficiently. The proposed amendments will ensure that land is used for the preservation of existing trees rather than extra parking spaces, where practicable and consistent with minimum parking requirements.

#### **Title 3 – Water Quality**

Finding: The purpose of Title 3 is to protect the region's health and public safety by reducing flood and landslide hazards, controlling soil erosion and reducing pollution of the region's waterways. Title 3 specifically implements the Oregon Statewide Land Use Goals 6 and 7 by protecting streams, rivers, wetlands and

floodplains by avoiding, limiting or mitigating the impact on these areas from development. The proposed amendments are consistent with Title 3 in that it will ensure that only the minimum number of trees are removed during development, wherever they occur within City limits, and with that will occur a reduction in erosion and other water quality and stormwater management benefits whether inside the boundaries or upland of water resources.

**CONCLUSION:** Based on the analysis above, staff finds that the proposed amendment satisfies the applicable Metro regulations.

### **THE STATEWIDE PLANNING GOALS AND GUIDELINES ADOPTED UNDER OREGON REVISED STATUTES CHAPTER 197**

Forty-five day advance notice was provided to DLCDC on January 30, 2009, 45 days prior to the first scheduled public hearing as required. In addition, the Tigard Development Code and Comprehensive Plan have been acknowledged by DLCDC. The following are the applicable Statewide Planning Goals that are applicable to this proposal:

#### ***Statewide Planning Goal 1 – Citizen Involvement:***

**This goal outlines the citizen involvement requirement for adoption of Comprehensive Plans and changes to the Comprehensive Plan and implementing documents.**

Finding: This goal has been met by complying with notice and hearing requirements set forth in the Tigard Development Code. A minimum of two public hearings will be held, first the Planning Commission followed by a final decision by the City Council. Public notice of the Planning Commission public hearing was sent to the interested parties list and published in the March 2, 2009 issue of The Oregonian (in accordance with Tigard Development Code Chapter 18.390). Notice will be published again prior to the City Council public hearing. The notices invite public input and included the phone number of a contact person to answer questions. The notice also included the address of the City's webpage where the entire draft of the text changes could be viewed.

#### ***Statewide Planning Goal 2 – Land Use Planning:***

**This goal outlines the land use planning process and policy framework. The Comprehensive Plan was acknowledged by DLCDC as being consistent with the statewide planning goals.**

Findings: The proposed amendment to the Tigard Comprehensive Plan is being processed as a Type IV procedure, which requires any applicable statewide planning goals, federal or state statutes or regulations, Metro regulations, comprehensive plan policies, and City's implementing ordinances, be addressed as part of the decision-making process. Notice was provided to DLCDC 45 days prior to the first scheduled public hearing as required. All applicable review criteria have been addressed within this staff report; therefore, the requirements of Goal 2 have been met.

#### ***Statewide Planning Goal 6: Air, Water, and Land Resources Quality***

**To maintain and improve the quality of the air, water, and land resources of the state.**

Findings: The proposed amendment is consistent with this goal as the proposed changes are intended to protect water quality and other natural functions of existing or replacement trees. By clarifying submittal requirements, including the use of low impact development techniques, the City will minimize impacts from future development.

**CONCLUSION:** Based on the analysis above, staff finds that the proposed amendment is consistent with Statewide Planning Goals.

## **SECTION VI. ADDITIONAL CITY STAFF COMMENTS**

The City of Tigard's Building Division, Engineering Division, Current Planning Division, and Public Works Department has had an opportunity to review this proposal and did not respond.

**CONCLUSION:** Based on no response from City staff, staff finds the proposed amendment does not interfere with the best interests of the City.

## **SECTION VII. OUTSIDE AGENCY COMMENTS**

The following agencies/jurisdictions had an opportunity to review this proposal and did not respond:

City of Durham  
City of Beaverton  
City of King City  
City of Lake Oswego  
City of Portland  
City of Tualatin  
Washington County, Department of Land Use and Transportation  
Tualatin Valley Fire & Rescue  
Metro Land Use and Planning  
Oregon Department of Land Conservation and Development  
Oregon Department of Transportation  
Oregon Department of Environmental Quality  
Oregon Department of Fish & Wildlife

The following agencies/jurisdictions had an opportunity to review this proposal and had the following comments:

**Clean Water Services:** Recommended the inclusion of any and all relevant provisions of the current intergovernmental agreement between the City of Tigard and Clean Water Services, and the relevant provisions of the current Design and Construction Standards.

**Findings:** The proposed amendments do not conflict with the current intergovernmental agreement or the current Design and Construction standards.

**CONCLUSION:** Staff finds the proposed amendment meets all requirements of these agencies and does not interfere with the best interests of the City.

## **SECTION VIII. CONCLUSION**

The proposed changes comply with the applicable Statewide Planning Goals, Metro regulations, the Tigard Comprehensive Plan, and applicable provisions of the City's implementing ordinances.

Therefore, Staff recommends that the Planning Commission recommend approval of the Tree Removal Chapter Amendment to the Tigard City Council as determined through the public hearing process.

**ATTACHMENTS:**

- 1. PROPOSED AMENDMENT TO CHAPTER 18.790 THE TIGARD DEVELOPMENT CODE.**
- 2. LETTER FROM CLEAN WATER SERVICES**

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PREPARED BY: John Floyd  
Associate Planner

March 9, 2009  
DATE

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APPROVED BY: Ron Bunch  
Community Development Director

March 9, 2009  
DATE