



Regular Session

RS

Milwaukie City Council

COUNCIL REGULAR SESSION

City Hall Council Chambers, 10501 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

REVISED AGENDA

JANUARY 21, 2025

(Revised January 17, 2025)

Council will hold this meeting in-person and by video conference. The public may come to City Hall, join the Zoom webinar, or watch on the [city's YouTube channel](#) or Comcast Cable channel 30 in city limits. For Zoom login visit <https://www.milwaukieoregon.gov/citycouncil/city-council-regular-session>.
Written comments may be delivered to City Hall or emailed to ocr@milwaukieoregon.gov.

Note: agenda item times are estimates and are subject to change.

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1. **CALL TO ORDER** (6:30 p.m.)
 - A. Pledge of Allegiance
 - B. Native Lands Acknowledgment

2. **ANNOUNCEMENTS** (6:31 p.m.) 2

3. **PROCLAMATIONS AND AWARDS**
 - A. None Scheduled.

4. **SPECIAL REPORTS**
 - A. None Scheduled.

5. **COMMUNITY COMMENTS** (6:35 p.m.)
 To speak to Council, please submit a comment card to staff. Comments must be limited to city business topics that are not on the agenda. A topic may not be discussed if the topic record has been closed. All remarks should be directed at the whole Council. The presiding officer may refuse to recognize speakers, limit the time permitted for comments, and ask groups to select a spokesperson. **Comments may also be submitted in writing before the meeting, by mail, e-mail (to ocr@milwaukieoregon.gov), or in person to city staff.**

6. **CONSENT AGENDA** (6:40 p.m.)
 Consent items are not discussed during the meeting; they are approved in one motion and any Council member may remove an item for separate consideration.
 - A. **Approval of Council Meeting Minutes of:** 5
 1. December 10, 2024, study session,
 2. December 17, 2024, work session, and
 3. December 17, 2024, regular session.
 - B. **Authorization of an Agreement for a Cellular Phone Tower – Resolution**
 (removed from the agenda)
 - C. **Authorization of a Contract for the Downtown Curb and Stormwater Improvements Project (CIP-2021-T58) – Resolution** 14
 - D. **Authorization of an Intergovernmental Agreement (IGA) Amendment for County Broadband Fiber – Resolution** 19
 - E. **Approval of an Oregon Liquor and Cannabis Commission (OLCC) Application for Good Measure PDX, 10999 SE Main Street – Limited On-Premises Sales** 26

- 7. **BUSINESS ITEMS**
 - A. **Council President Election – Motion** (6:45 p.m.)
 - B. **Tree Code Amendments Adoption – Ordinance** (6:55 p.m.) **28**
Staff: Katie Gavares, Climate & Natural Resources Manager, and Courtney Wilson, Urban Forester
 - C. **Harrison and Main Site Priorities – Discussion** (7:30 p.m.) **128**
Staff: Joseph Briglio, Assistant City Manager, and Mandy Byrd, Development Project Manager
- 8. **PUBLIC HEARINGS**
 - A. **None Scheduled.**
- 9. **COUNCIL REPORTS**
 - A. **Legislative Priorities and Lobbying – Discussion** (8:30 p.m.) **163**
Staff: Emma Sagor, City Manager, Joseph Briglio, Assistant City Manager, and Scott Stauffer, City Recorder
 - B. **Council Reports** (8:45 p.m.)
- 10. **ADJOURNMENT** (9:00 p.m.)

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

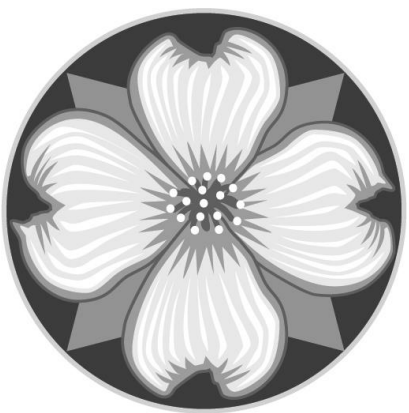
The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502. To request Spanish language translation services email espanol@milwaukieoregon.gov at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the [city's YouTube channel](#) and Comcast Channel 30 in city limits.

Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a ocr@milwaukieoregon.gov o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a espanol@milwaukieoregon.gov al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el [canal de YouTube de la ciudad](#) y el Canal 30 de Comcast dentro de los límites de la ciudad.

Executive Sessions

The City Council may meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660(2); all discussions are confidential; news media representatives may attend but may not disclose any information discussed. Final decisions and actions may not be taken in executive sessions.



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Announcements

Native Lands Acknowledgment

The City of Milwaukie respectfully acknowledges that our community is located on the ancestral homeland of the Clackamas people. In 1855, the surviving members of the Clackamas signed the Willamette Valley Treaty also known as the Kalapuya etc. Treaty with the federal government in good faith. We offer our respect and gratitude to the indigenous people of this land.

Mayor's Announcements – January 21, 2025

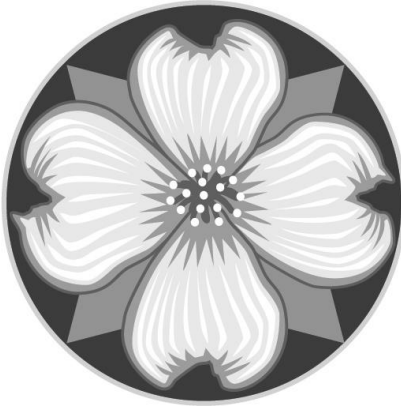


- **2024 Volunteer of the Year – Nominate a Community Member by February 12**
 - City is seeking nominations for the 2024 Volunteer of the Year
 - Nominees can include anyone who resides in Milwaukie or is a member of a non-profit organization/business that serves the Milwaukie community
 - Learn more and submit a nomination on Engage Milwaukie at engage.milwaukieoregon.gov
- **City Manager Open Door Session – Friday, January 24 (9 – 10 AM)**
 - Ask questions, raise concerns or just stop by to meet City Manager, Emma Sagor, and hear about what the city is currently working on
 - No sign-up is necessary. First come, first served.
 - Sessions take place at Milwaukie City Hall (3rd Floor Council Chambers), 10501 SE Main St.
- **Christmas Trees for Salmon Habitat at Elk Rock Island – Saturday, January 25 (10 AM – 1 PM)**
 - Help install donated trees in the Willamette River, remove invasive species and plant native plants
 - Volunteers will meet at Spring Park (SE 19th Ave. and SE Sparrow St.)
 - Register to participate at ncprd.com/nature-volunteer-application
- **Lunar New Year Celebration – Sunday, January 26 (1 – 3:30 PM)**
 - Usher out the old year and welcome prosperity into the new!
 - Event includes interactive activities, crafts, music, and dance.
 - Suggested donation of \$5 for attendees 18+
 - Event takes place at Milwaukie Community Center, 5440 SE Kellogg Creek Dr.
 - More information at ncprd.com/lunar-new-year
- **Annual Board and Committee Recruitment - February 1 to April 1**
 - Participate in the city's work by applying to serve on a city board or committee
 - Applications accepted from February 1 to April 1
 - Online form to apply is at onboard.milwaukieoregon.gov
 - Questions, send an email to ocr@milwaukieoregon.gov or call 503.786.7502
- **LEARN MORE AT [WWW.MILWAUKIEOREGON.GOV](https://www.milwaukieoregon.gov) OR CALL 503-786-7555**

Milwaukie Bay Play
Willamette River Sunset
I stepped in goose poop.

-Hamid Shibata Bennett –

Share your Milwaukie Haiku!
Email yours to bateyl@milwaukieoregon.gov



RS Agenda Item

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Consent Agenda

COUNCIL STUDY SESSION

City Hall Community Room, 10501 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

MINUTES**DECEMBER 10, 2024**

Council Present: Councilors Will Anderson, Adam Khosroabadi, and Council President Robert Massey,
and Mayor Lisa Batey

Council Absent: Councilor Rebecca Stavenjord

Staff Present: Joseph Briglio, Assistant City Manager
Mandy Bryd, Development Project Manager
Katie Gavares, Climate & Natural Resources
Manager
Nicole Madigan, Deputy City Recorder

Gabriela Santoyo Gutierrez, Equity &
Inclusion Coordinator
Peter Passarelli, Public Works Director
Emma Sagor, City Manager

Mayor Batey called the meeting to order at 5:24 p.m.

Councilor Anderson joined the meeting at 5:26 p.m.

1. Council Goals Update: Climate & Equity – Discussion

Santoyo Gutierrez and **Gavares** provided an update on Council’s equity and climate goals, explaining this was the first of two joint reports to Council on these goals with the second scheduled for March 2025. They reviewed the city’s Equity Plan and Climate Action Plan (CAP) and how those plans were being institutionalized in city operations.

The group discussed why greenhouse gas (GHG) emissions in Milwaukie had decreased in recent years. They cited possible changes in vehicle types and uses and changes in how the Oregon Department of Transportation (ODOT) measures GHG.

Gavares reported on the city’s work to meet the state’s net zero carbon emissions goal. The group noted the increased number of solar panels in Milwaukie and Portland General Electric’s (PGE’s) effort to get the state to institute a green tariff.

Gavares continued to report on the city’s work to meet state and city net zero emission goals, including the city’s Home Energy Score (HES) program. The group commented on the effectiveness of the HES and federal and local incentive programs that help homeowners increase the efficiency of their homes.

Gavares provided an update on work to achieve the city’s tree canopy and carbon neutral goals, and how staff has operationalized the CAP.

The group discussed how staff could continue to institutionalize equity and climate goals, including continuing to provide regular reports to Council and to use and improve various dashboard style measurement tools.

2. Affordable Housing Ownership Models - Discussion

Briglio introduced the topic and Jessy Ledesma with Shortstack Milwaukie.

Ledesma provided an overview of the Shortstack home-ownership affordable housing development model, that includes equity and inclusion, and density goals and is working with the Proud Ground Community Land Trust to ensure the housing units remain affordable. **Briglio** and **Ledesma** remarked on financial incentives of the land trust model.

The group discussed the long-term role of the land trust in ensuring that middle housing units remain affordable as they are bought and sold overtime and **Ledesma** noted that Shortstack Milwaukie had received a grant from Milwaukie's construction excise tax (CET) fund. They noted how land trusts had developed in Oregon and what Shortstack Milwaukie housing units looks like.

Mayor Batey and **Ledesma** remarked on how Shortstack Milwaukie was seeking to use climate friendly and cost-effective construction materials to build cottage style homes.

Briglio and **Ledesma** commented on the importance of mission driven development projects. **Ledesma** confirmed that there would be homeowners ready to buy units when Shortstack Milwaukie opens.

3. Council Reports

Council President Massey reported that interim Portland city administrator Michael Jordan had been asked by the new mayor of Portland to remain as administrator.

Councilor Khosroabadi reported attending a grand opening of a new Clackamas County health center. The group remarked on city, county, and Metro government relations and an upcoming Metro Council hearing where funding for the Kellogg Creek Dam removal project may be awarded.

Mayor Batey reported on recent work on the Metro supporting housing services (SHS) bond measure and briefly remarked possibility of a new relationship with Clackamas County regarding parks with newly elected county commissioners.

4. Adjourn

Mayor Batey adjourned the meeting at 7:16 p.m.

Respectfully submitted,

Scott Stauffer, City Recorder

COUNCIL WORK SESSION

City Hall Council Chambers, 10501 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

MINUTES

DECEMBER 17, 2024

Council Present: Councilors Will Anderson, Adam Khosroabadi, Rebecca Stavenjord, and Mayor Lisa Batey

Council Absent: Council President Robert Massey

Planning Commission Present: Commissioner Max Penneck, Vice Chair Joseph Edge, and Chair Jacob Sherman

Staff Present: Joseph Briglio, Assistant City Manager
Justin Gericke, City Attorney
Nicole Madigan, Deputy City Recorder

Emma Sagor, City Manager
Scott Stauffer, City Recorder
Laura Weigel, Planning Manager

Mayor Batey called the meeting to order at 4:03 p.m. and noted an agenda order change and that Council President Massey was absent.

1. Downtown Open Container Policy – Discussion

(moved to the December 17, 2024, regular session agenda)

Council Reports (added to the agenda)

Mayor Batey reported on touring the Willamette Falls locks.

Councilor Anderson remarked on proposing a ranked choice voting (RCV) measure in Milwaukie based on precinct report data that showed Milwaukians had supported the failed state ballot measure 117 which would've allowed RCV for elections statewide.

Councilor Stavenjord reported on attending a recent Milwaukie Academy of the Arts (MAA) orchestra concert. The group noted how to follow MAA's events and the possibility of Council attending future performances.

Councilor Anderson noted that a condominium zoning bill had been introduced in the state legislature.

Mayor Batey and **Councilor Khosroabadi** noted they had attended a recent Operation Santa Claus event put on by Clackamas Fire District #1 (CFD1).

The group discussed plans for Council to discuss its legislative goals in January and to attend the League of Oregon Cities (LOC) Cities Day at the Capitol.

Stauffer clarified the budgeted amounts for education and training for each councilor and the mayor for the biennium and **Mayor Batey** noted that Stauffer would provide in-person updates on Council member budgets semi-annually instead of quarterly.

Sagor reported that the Engage Milwaukie online Council goals survey for had been launched and noted plans for Council's goal setting town hall on January 7, 2025.

3. Parks Update – Discussion (moved up the agenda)

Sagor provided an update on parks policy issues, noting communications between the city and the North Clackamas Parks and Recreation District (NCPRD) Board, and asking for Council feedback on renegotiating the intergovernmental agreement (IGA) with NCPRD to complete Milwaukie Bay Park (MBP).

Mayor Batey commented on the number of NCPRD Board executive sessions recently and the Milwaukie Community Center Advisory Board's failed efforts to meet with NCPRD staff about the Concord Community Center. The group remarked on what services NCPRD might move to Concord from Milwaukie and they noted that NCPRD had started to think about the impacts on community center services if Milwaukie left the parks district. **Sagor** noted a recent meeting with NCPRD's new director Kia Selley.

Sagor noted the soft opening of Scott and Bowman-Brae parks and acknowledged the Milwaukie Parks Foundation's interest in a new fundraising campaign.

The group remarked on the existing no-smoking policy if the city's parks.

Mayor Batey reported that the Linwood Neighborhood District Association (NDA) had initiated a fundraising effort to build a covered structure in a local park. **Councilor Stavenjord** and **Batey** noted that a new park structure would require long-term maintenance by NCPRD.

Council Reports (continued)

Mayor Batey reported on issues that had come up at the last Metro Mayor's Consortium, including an update from Portland's outgoing mayor, the impact of vacation rentals on residential housing supply and proposed housing bills in the state legislature.

2. Annual Joint Session with the Planning Commission

Planning Commissioners, Council members, and staff introduced themselves.

Weigel and **Chair Sherman** reviewed the Commission's work over the last year, including development reviews, Comprehensive Plan and Transportation System Plan (TSP) implementation work, state-mandated housing code revisions, and a joint meeting with the city's NDAs.

Weigel noted the number of current and anticipated vacancies on the Commission and reported staff's recommendation to initiate a recruitment process as soon as possible. The group remarked on the need to recruit commissioners and noted the time commitment of serving on the Commission and how the Commission could restructure its agendas to reduce the time demand. They also discussed the recruitment and appointment process of commissioners in the past and how it should go in the future, and the need for commissioners to have some technical expertise.

Sagor and **Weigel** summarized how staff would proceed with a recruitment process for the Commission immediately. **Mayor Batey** clarified that not all applicants needed to be interviewed, a vetting process could be implemented. The group remarked on which Council members could be involved in the interview process.

The group discussed how the city could accommodate and remove barriers for historically underrepresented groups to help ensure they can serve on the Commission.

Weigel presented the Commission's anticipated workplan for 2025 including Neighborhood Hubs, TSP and Comprehensive Plan updates, an affordable housing code incentives package, updates to city strategies and plans, and the historic resources inventory. **Chair Sherman** appreciated the Commission's workplan.

Mayor Batey suggested the historic resources inventory should be made a higher priority on the Commission's workplan. **Weigel** noted the Commission's priorities would be brought to Council in 2025. The group remarked on the relationship between historic

home review applications and updating the historic resource inventory, and how Indigenous peoples and places factored into historic preservation processes.

The group observed that Council's goals would inform the Commission's workplan, for example the Hubs project and transportation infrastructure could be prioritized.

Weigel provided a brief update on upcoming TSP work and events.

4. Adjourn

Mayor Batey adjourned the meeting at 5:58 p.m.

Respectfully submitted,

Scott Stauffer, City Recorder

COUNCIL REGULAR SESSION

City Hall Council Chambers, 10501 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

MINUTES

DECEMBER 17, 2024

Council Present: Councilors Will Anderson, Adam Khosroabadi, Rebecca Stavenjord, and Council President Robert Massey, and Mayor Lisa Batey

Staff Present: Joseph Briglio, Assistant City Manager
Ryan Burdick, Police Chief
Katie Gavares, Climate & Natural Resources Manager
Justin Gericke, City Attorney
Emma Sagor, City Manager
Scott Stauffer, City Recorder
Courtney Wilson, Urban Forester

Mayor Batey called the meeting to order at 6:32 p.m.

1. CALL TO ORDER

A. Pledge of Allegiance.

B. Native Lands Acknowledgment.

2. ANNOUNCEMENTS

Mayor Batey announced upcoming activities including a free drop-in flu shot clinic, the city's annual Winter Solstice and Christmas Ships viewing event, and the annual Bing in the New Year event. **Batey** noted that the city was accepting nominees for the 2024 volunteer of the year award and would be recruiting for Planning Commissioners.

Councilor Stavenjord announced the Longest Night of the Year Vigil in honor of houseless individuals event in Oregon City the same evening as the Winter Solstice.

Mayor Batey read a Council service themed Haiku.

3. PROCLAMATIONS AND AWARDS

A. None Scheduled.

4. SPECIAL REPORTS

A. None Scheduled.

5. COMMUNITY COMMENTS

Mayor Batey reviewed the comment procedures. **Sagor** reported on staff follow-up to December 3 comments regarding an ongoing code enforcement case. No audience member wished to address Council.

6. CONSENT AGENDA

It was moved by Councilor Anderson and seconded by Council President Massey to approve the Consent Agenda as presented.

A. City Council Meeting Minutes:

- 1. November 12, 2024, study session,**
- ~~**2. November 19, 2024, work session, and** (removed from the agenda)~~
- ~~**3. November 19, 2024, regular session.** (removed from the agenda)~~

- B. Resolution 64-2024:** A resolution of the City Council of the City of Milwaukie, Oregon, certifying the results of the November 5, 2024, election.
- C. Resolution 65-2024:** A resolution of the City Council of the City of Milwaukie, Oregon, acting as the Local Contract Review Board, authorizing the city manager to enter into an intergovernmental agreement (IGA) with the North Clackamas School District (NCSD) for school resource officer (SRO) services.

Motion passed with the following vote: Councilors Anderson, Khosroabadi, Massey, and Stavenjord and Mayor Batey voting “aye.” [5:0]

7. BUSINESS ITEMS

C. Downtown Open Container Policy – Discussion (added, moved up the agenda)

Mayor Batey explained when public comment would be taken during this agenda item and clarified that the proposal was to allow individuals to walk around with open containers of alcohol in downtown Milwaukie.

Burdick provided an overview of the proposed open container policy, noting public safety, health, and legal concerns and the benefits of encouraging a vibrant downtown environment. How event permits for open container activities in Milwaukie had been processed to date were reviewed and it was noted that the only city in Oregon with an open container policy was Hood River.

Councilor Anderson and **Burdick** remarked on the lack of data regarding open container policies given there were few cities with an open container policy. **Sagor** suggested this was the beginning of a conversation and that there was a belief that such a policy could increase pressures on public safety resources.

Council President Massey remarked on the importance of knowing the policy details when preparing to implement it and was skeptical about adopting a wide-open policy.

Councilor Khosroabadi asked if an open container policy would lead to more impaired driving. **Burdick** remarked that there would likely be an increase in the number of driving under the influence (DUI) incidents with such a policy and explained how the Milwaukie Police Department (MPD) generally handles intoxicated individuals.

Councilor Stavenjord, Burdick, and Sagor noted that the proposal was to identify a specific area where individuals could carry around open alcoholic beverages in the public right-of-way (ROW). They remarked on how Hood River’s policy functioned.

Councilor Stavenjord and Burdick commented on how such a policy could be implemented for a trial period and then revisited by Council. **Mayor Batey, Burdick, and Sagor** discussed whether the Oregon Liquor and Cannabis Commission (OLCC) would allow such policies and noted the need for special event insurance and that insurance requirements would impact the implementation of an open container policy.

Sagor asked community members to speak about their vision of the proposed policy.

Mayor Batey reviewed the comment procedures.

Mike Lesch, Beer Store Milwaukie owner, remarked on the benefits of allowing the open drinking and carrying of store-bought alcoholic beverages to support downtown events such as First Friday.

Karen Baranick, Downtown Association of Milwaukie (DAM) representative and Milwaukie Sport and Spine owner, supported implementing an open container policy.

Tyler King, unincorporated Clackamas County resident, supported implementing an open container policy by allowing the policy for specific times and events at first.

Shalena Havens, Havens Acupuncture owner, supported implementing an open container policy to encourage a vibrant downtown area.

Councilor Stavenjord and **Burdick** noted that it was possible to get a DUI for drinking while riding a bicycle and the group discussed how MPD enforces public intoxication laws during such events as the citywide Porchfest concert.

Council President Massey appreciated that the community proposal focused on events and encouraged the city to take baby steps if the policy is implemented.

Councilor Anderson supported an open container policy and revisiting the special events permit policy to allow for open container and consider removing the financial impact of DUI citations. **Anderson** suggested the concerns about the policy was more about society at-large's attitude toward drinking and **Mayor Batey** noted public health aspects of drinking on a daily basis.

Councilor Khosroabadi remarked on the public safety and health aspects of drinking in public and asked if the benefits of allowing increased public drinking were worth it given the health effects.

Councilor Stavenjord appreciated the discussion, remarked on the benefits and concerns about allowing increased alcohol consumption in public, and suggested the conversation continue with public health and economic experts invited to participate.

Mayor Batey and **Councilor Stavenjord** noted that Stavenjord supported exploring the policy on an event-basis.

Mayor Batey summarized there was Council support for exploring an event-based approach to an open container policy. **Councilor Anderson** and **Batey** noted that staff had heard Anderson's request to look at removing the financial penalty of DUI citations.

Mayor Batey expressed support for exploring an event-based approach to such a policy and remarked on the challenges of drawing a line around an open container area and suggested insurance requirements could stop the implementation of such a policy.

Sagor thanked the community for coming to the meeting and confirmed staff had enough Council input to further develop policy implementation options, including MPD's enforcement of DUI laws. **Councilor Anderson** expressed discomfort with having a financial penalty if MPD was not actively enforcing the DUI citation. **Mayor Batey** supported MPD's work to avoid issuing a DUI citation.

Rod Smith, Milwaukie resident, remarked on the open container policy in the City of New Orleans, Louisiana, whether an open alcoholic beverage container policy would lead to an open marijuana use policy, and suggested such a policy would require additional law enforcement services.

Mayor Batey suggested staff would bring the issue back to Council in earl 2025.

A. Tree Code Amendments Adoption – Ordinance

Sagor reported that comments about the tree code changes had been received, and staff would like additional time to review those before Council adopts the code changes.

Stauffer noted that the agenda item was a business item and not a public hearing.

Wilson reviewed the proposed tree code amendments, noting that the changes would provide organizational clarity and enhance enforcement capabilities.

Gavares noted the code amendments had been presented to Council at a previous meeting. **Mayor Batey, Sagor, and Gericke** explained that comments from Mayor Batey had been received just before the present meeting and staff needed time to review those comments. **Batey** observed that no public comments had been received.

The group noted that the Mayor's comments would be reviewed, and the tree code amendment ordinance would be rescheduled to a future meeting.

B. Sparrow Site Goals and Next Steps – Discussion

Briglio noted previous Council discussion on the project and asked for Council to confirm that the development goal was to build affordable homeownership units for buyer who could afford 80-to-100 percent of area median income (AMI).

The group discussed the project affordability goal, how a request for proposals (RFP) process that aimed for different AMI percentages, and noted that an RFP process with multiple rounds, if no developer bids at lower AMI percents, could take a long time. **Briglio** was confident it would take a long time to get houses built on the site.

Mayor Batey summarized that it was Council consensus to prepare the first RFP for a homeownership model with a cap at 80-percent of AMI. The group acknowledged there was more than one land trust model the city could pursue to secure an initial developer, owners, and maintain affordability on the site into the future.

Sagor and Briglio reviewed the other project goals Council had agreed to at previous meetings and it was Council consensus that the goals had been agreed to.

Councilor Anderson and Mayor Batey remarked on how the city works with the county to improve county owned roads adjacent to city properties.

Briglio noted next steps in releasing an RFP for the Sparrow Site in early 2025.

Briglio asked for Council input on whether construction excise tax (CET) funds should be used on the project. It was Council consensus to wait until bids had been received on the project to determine if CET funds should be used.

8. PUBLIC HEARING

A. None Scheduled.

9. COUNCIL REPORTS (moved to the December 17, 2024, work session agenda)

10. ADJOURNMENT

It was moved by Councilor Anderson and seconded by Council President Massey to adjourn the Regular Session. Motion passed with the following vote: Councilors Anderson, Khosroabadi, Massey, and Stavenjord and Mayor Batey voting “aye.” [5:0]

Mayor Batey adjourned the meeting at 8:17 p.m.

Respectfully submitted,

Scott Stauffer, City Recorder

COUNCIL STAFF REPORT

To: Mayor and City Council
Emma Sagor, City Manager

Reviewed: Jennifer Garbely, PE, City Engineer

From: Hector Gomez-Barrios, Project Manager

Subject: **Downtown Curbs and Storm Improvements (CIP-2021-T58)**

Date Written: Jan. 6, 2025

ACTION REQUESTED

Council is asked to approve a resolution to execute a contract with R.A. Roth Construction & Son, Inc. to construct the Downtown Curbs and Storms Improvements project.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

The Downtown Curbs and Storm Improvements project between SE Jefferson and SE Monroe streets was included in the fiscal years (FYs) 2025 to 2030 Capital Improvement Plan (CIP) and the 2025-2026 Biennium budget adopted by Council on June 4, 2024.

November 5, 2024: Council approved [Resolution 60-2024](#) acting as the local contract review board, adopting the use of Best Value Construction (BVC) procurement method for Downtown Curbs and Storm Improvements. BVC uses the traditional low-bid competitive process with an added qualification element.

ANALYSIS

The objective of the Downtown Curbs and Storm Improvements project is to provide pedestrians with improved safe access; installing new underground facilities; and using pervious concrete and Silva Cells to prevent sidewalk uplift on the block between SE Jefferson and SE Monroe streets. The summary of work includes installing the following:

- 150 feet of 4-inch diameter storm drainpipe
- 100 feet of 10-inch diameter storm drainpipe
- 500 feet of 12-inch diameter storm drainpipe
- 5 storm inlets and 5 manholes
- 1,300 square feet of pervious concrete sidewalks
- Silva Cells beneath the pervious concrete sidewalks
- 200 feet of concrete curbs
- Replacement of 5 trees

Staff completed a BVC bidding process approved under Resolution 60-2024. Staff evaluated five proposals and bid schedules which were received by the solicitation deadline. The outcome of BVC bidding is summarized below:

	Contractor	Bid Amount	Proposal & Bid Evaluation (out of 100 points)
1	R.A. Roth Construction & Son	\$ 501,494.01	88.67
2	Landis & Landis Construction	\$ 562,941.00	84.33
3	ICON Construction	\$ 585,244.30	71
4	SLE Inc	\$ 575,937.00	66.67
5	Pacific Excavation	\$ 628,000.00	60.67
	Engineer's Estimate	\$ 568,114.30	

R.A. Roth Construction & Son, Inc. submitted a total bid schedule amount of \$501,494.01 and scored the best proposal and bid evaluation score of 88.67. A total project authorization of \$580,000.00 is requested, which includes a \$78,505.99 contingency based on project risks, potential deviations in quantities, anticipated work, and to cover unforeseen circumstances.

At time of writing, the city has received a public comment requesting a delay in the project so the property owner on this block can conduct utility upgrades without having to cut into newly installed infrastructure. Staff are meeting with the landowner on Friday, January 17, 2025 to discuss this and can provide an update to Council on January 21, 2025 if the staff recommendation changes.

BUDGET IMPACT

This project is funded by the city’s stormwater and transportation funds within the current biennium budget for FYs 2025-2026

CLIMATE IMPACT

Construction activity has a significant impact on the environment due to emissions from transport of materials, heavy equipment uses, and the manufacturing of material such as asphalt concrete pavement. New asphalt will be warm mix asphalt, which reduces energy consumption and emissions during production, and will contain a minimum 30% recycled asphalt pavement content. The installation of pervious concrete sidewalks enhances stormwater infiltration, reducing surface runoff and the strain on the city’s stormwater system. In addition, this project will remove over aged trees that have buckled the sidewalk, which will reduce the city’s canopy coverage. However, new trees will have the opportunity to grow under the new sidewalk with a silva cells system beneath pervious concrete. This system can extend the lifespan of the trees and enhance carbon sequestration capacity, offsetting some of the project’s carbon footprint.

EQUITY IMPACT

This project is addressing the Americans with Disabilities Act (ADA) impacts to the current sidewalk caused by trees not having enough space to grow. Currently this limits all users to be able to access businesses and safely use the sidewalk.

WORKLOAD IMPACT

The city’s engineering team will oversee the construction process. Additional on-call construction management services are available if needed.

COORDINATION, CONCURRENCE, OR DISSENT

Managers from engineering, public works, and finance reviewed and approved the project scope and budget.

STAFF RECOMMENDATION

Staff recommend that Council award the Downtown Curbs and Storm Improvements contract to R.A. Roth Construction & Son, Inc. with a project budget authorization of \$580,000.00.

ALTERNATIVES

Council could choose to:

1. Award the project as presented,
2. Reject all bids in the public interest and direct staff to revise and rebid the project during a more favorable period, or
3. Reject all bids in the public interest.

ATTACHMENTS

1. Resolution

COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING A CONTRACT WITH R.A. ROTH CONSTRUCTION & SON, INC. FOR THE DOWNTOWN CURBS AND STORM IMPROVEMENTS PROJECT (CIP-2021-T58).

WHEREAS the city has identified the Downtown Curbs and Storm Improvements project on Main Street between SE Jefferson and SE Monroe in the 2025 – 2030 Capital Improvement Plan (CIP); and

WHEREAS the city has identified funding for the project in the 2025 – 2026 biennium budget; and

WHEREAS a formal competitive selection process was conducted using the best value construction (BVC) bid process adopted by the city in Resolution 60-2024 for the Downtown Curbs and Storm Improvements project; and

WHEREAS staff recommend awarding the contract to R.A. Roth Construction & Son, Inc., who had the best scored proposal in the BVC bid process.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the city manager or designee is authorized to execute a contract with R.A. Roth Construction & Son, Inc. for construction of the Downtown Curbs and Storm Improvements, waive any irregularities, and authorize the city engineer or assistant city engineer to administer the project in accordance with the public improvements contract in the amount not to exceed \$580,000.00.

Introduced and adopted by the City Council on **January 21, 2025.**

This resolution is effective immediately

Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

**RS 6. C. 1/21/25
Correspondence**

From: [Nick Hess](#)
To: [OCR](#); [Joseph Briglio](#); [Emma Sagor](#); [Jordan Ward](#)
Subject: Downtown Storm and Sidewalk Project
Date: Tuesday, January 14, 2025 3:41:24 PM

This Message originated outside your organization.

Hello Council and City Leaders,

I am writing to you on behalf of the building owner of the property located at 10909, 10921, and 10933 SE Main ST. The Downtown Storm and Sidewalk project is set to replace the sidewalks in front of these addresses with pervious concrete sometime in the coming months. We are currently in the design phase to improve these building structures and facade to attract new tenants to the empty retail spaces.

Our ask to council, and the city, is to pause this project to allow time to plan and implement necessary utility upgrades that the building(s) may require. Upgrading water or gas service in these locations will require cutting the sidewalk. Doing this so soon after sidewalk reconstruction with a new, more expensive, sidewalk design is not ideal and will add more cost.

We are grateful the city is covering the cost of replacing this portion of sidewalk that is currently in poor condition. May we please have a meeting at your earliest convenience to discuss this topic and ensure we find a mutually beneficial solution?

Thank you,

Nick Hess
M:971-413-5469

COUNCIL STAFF REPORT

To: Mayor and City Council
Emma Sagor, City Manager

Date Written: Jan. 9, 2025

Reviewed: Michael Osborne, Finance Director, and
Kelli Tucker, Accounting & Contracts Specialist

From: Peter Passarelli, Public Works Director and
Joe Gardner, IT Manager

Subject: **Amendment #1 to Intergovernmental Agreement with Clackamas County
Broadband Exchange for Fiber Optics**

ACTION REQUESTED

Council is asked to authorize the city manager to approve a first amendment of the Intergovernmental Agreement (IGA) with Clackamas County through its Clackamas Broadband Exchange (CBX) division for fiber optic connectivity.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

February 2012: city approved an IGA with CBX for fiber optic network connectivity between city facilities.

March 2018: city approved Amendment #1 to the original IGA with CBX to extend fiber optics to temporary library location.

August 2018: city approved a new IGA with Clackamas Education Service District (CESD) for internet service.

October 2018: city approved Amendment #2 to the original IGA with CBX to add fiber optics between CESD and the Public Safety Building.

November 2022: city approved a new IGA with CBX for fiber optic network connectivity between all existing city facilities, including connectivity to new City Hall.

ANALYSIS

The proposed amendment adds fiber optic connection locations to five of the city's water treatment and well sites to create a more robust and reliable communication network for the water system. The fiber connections will become the primary mode of communications for city's Supervisory Control and Data Acquisition (SCADA) system to these five critical locations, which include the Upper and Lower Treatment facilities, the Stanley reservoir site, Well #5 and the Lava Pump Station. The links to these sites will provide a resilient pathway for communication between sites and should eliminate impacts caused by cellular service disruptions. The wireless cellular service will provide backup communications to these sites and will serve as a primary method of communication to the city's wastewater pump stations.

CBX will manage and perform the project work to install fiber to the sites. The city's cost to extend service to the five water system sites includes a one-time cost of \$114,482 and recurring

annual fees of \$3,060 per added site totaling \$15,300 through the duration of the agreement (June 2028).

Staff worked with county broadband staff to identify an alternative communications solution to these sites after the city's competitive bid process for SCADA improvements in 2023, but a radio-based system came in at \$600,000 above estimates.

BUDGET IMPACT

One-time cost of extending the fiber to the five locations is \$114,482 will be paid by the Water Fund, while on-going maintenance costs of \$15,300 annually (or as adjusted by the Consumer Price Index (CPI)) will be paid by the information technology (IT) department. The additional capital costs will result in the reallocation of some funding from Well #5 improvements, which will be deferred into fiscal year (FY) 2027.

CLIMATE IMPACT

The improved operational efficiencies from the project will reduce after hour callouts, reducing vehicle miles driven and building the foundation for improved energy efficiency at the treatment plants. The new SCADA system will provide the city with better access to data which will allow staff to identify trends and patterns in energy consumption that can then be used to analyze alternatives to reduce energy use.

EQUITY IMPACT

This amendment which extends service to critical water facilities not only improves operational efficiency but also ensures critical services have the necessary connectivity needed to support public health and safety for the community.

WORKLOAD IMPACT

The work is to be completed by CBX as outlined in the IGA amendment with minimal staff time required. Public works and IT staff will be in a supporting role to facilitate access to city locations and provide input.

COORDINATION, CONCURRENCE, OR DISSENT

Public Works and IT staff are coordinating these efforts.

STAFF RECOMMENDATION

Staff recommend approval of the amendment to add fiber optic connection locations to five of the city's water treatment and well sites.

ALTERNATIVES

No action will result in the cellular communication system staying the primary communication method between these sites which have limited or no backup communication. There is a risk that in the case of a cellular outage, the water system will not communicate properly and will need to be operated manually until functionality is restored.

ATTACHMENTS

1. 2022 IGA Amendment #1
2. Resolution

AMENDMENT #1

TO THE CLACKAMAS COUNTY/CITY OF MILWAUKIE FIBER OPTIC SERVICE LEVEL AGREEMENT

This Amendment #1 is entered into by and between the City of Milwaukie (“Customer”) and the Clackamas County (“County”) and it shall become part of the Fiber Optic Service Level Agreement entered into by and between the parties on December 1, 2022 (“Agreement”).

The Purpose of the Amendment #1 is to make several changes to Appendix A, Service and Rate Schedule, of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed upon that the Agreement is hereby amended as follows:

- 1. Appendix A is hereby replaced in its entirety with the amended Appendix A, attached hereto and incorporated by this reference herein.

Except as expressly amended above, all other terms and conditions of the Agreement, and Appendix A, shall remain in full force and effect. By signature below, the parties agree to this Amendment #1, effective upon the date of the last signature below.

City of Milwaukie

Clackamas County

Authorized Signature

Authorized Signature

Name / Title (Printed)

Name/Title (Printed)

Date

Date

Approved as to Form:

County Counsel

Date

APPENDIX A

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Annual Recurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1	Milwaukie City Hall 10501 SE Main St. Milwaukie, OR 97222	Milwaukie Police Department 3200 SE Harrison St Milwaukie, OR 97222	One Pair (two) dark fibers	\$255.00
2	Milwaukie Ledding Library 10660 SE 21 st Ave Milwaukie, OR 97222	Milwaukie Police Department 3200 SE Harrison St Milwaukie, OR 97222	One Pair (two) dark fibers	\$255.00
3	Milwaukie Public Works 6101 SE Johnson Creek Blvd Milwaukie, OE 97206	Milwaukie Police Department 3200 SE Harrison St Milwaukie, OR 97222	One Pair (two) dark fibers	\$255.00
4	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015	Milwaukie Police Department 3200 SE Harrison St Milwaukie, OR 97222	One Pair (two) dark fibers	\$255.00
5	3339 SE Monroe St Milwaukie, OR 97222	Milwaukie Police Department 3200 SE Harrison St Milwaukie, OR 97222	One Pair (two) dark fibers	\$255.00
6	9951 SE 40 th Ave Milwaukie, OR 97222	Milwaukie Police Department 3200 SE Harrison St Milwaukie, OR 97222	One Pair (two) dark fibers	\$255.00

7	9790 SE 40 th Ave Milwaukie, OR 97222	Milwaukie Police Department 3200 SE Harrison St Milwaukie, OR 97222	One Pair (two) dark fibers	\$255.00
8	11800 SE Stanley Ave Milwaukie, OR 97222	Milwaukie Police Department 3200 SE Harrison St Milwaukie, OR 97222	One Pair (two) dark fibers	\$255.00
9	10505 SE 17 th Ave Milwaukie, OR 97222	Milwaukie Police Department 3200 SE Harrison St Milwaukie, OR 97222	One Pair (two) dark fibers	\$255.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)		To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1	3339 SE Monroe St Milwaukie, OR 97222	Milwaukie Police Department 3200 SE Harrison St Milwaukie, OR 97222	Construction	\$17,710.00
2	9951 SE 40 th Ave Milwaukie, OR 97222	Milwaukie Police Department 3200 SE Harrison St Milwaukie, OR 97222	Construction	\$18,975.00
3	9790 SE 40 th Ave Milwaukie, OR 97222	Milwaukie Police Department 3200 SE Harrison St Milwaukie, OR 97222	Construction	\$33,522.00
4	11800 SE Stanley Ave Milwaukie, OR 97222	Milwaukie Police Department 3200 SE Harrison St Milwaukie, OR 97222	Construction	\$37,950.00
5	10505 SE 17 th Ave Milwaukie, OR 97222	Milwaukie Police Department 3200 SE Harrison St Milwaukie, OR 97222	Construction	\$6,325.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

Remainder of this page intentionally left blank.

COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO AUTHORIZE AN AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS COUNTY FOR FIBER OPTIC CONNECTION SERVICES.

WHEREAS in compliance with Oregon Revised Statutes (ORS) Chapter 190, the city and Clackamas County (through the Clackamas Broadband Exchange division) entered into an agreement in 2022 for fiber optic connection services within the city; and

WHEREAS the city’s water system operations require reliable communications for system stability; and

WHEREAS Clackamas Broadband Exchange can provide such reliable communication to the city’s water system operations through fiber optic connection services.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the city manager is authorized to sign the first amendment to the intergovernmental agreement with Clackamas County for additional fiber optic connection locations.

Introduced and adopted by the City Council on **January 21, 2025.**

This resolution is effective immediately.

Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney



MILWAUKIE POLICE DEPARTMENT

Memorandum

Greg Elkins #42181 01/14/2025

To: Mayor Batey and Milwaukie City Council
From: Greg Elkins, Police Captain
Through: Emma Sagor, City Manager
Date: January 14, 2025
Re: OLCC Application – Good Measure PDX LLC

Action requested:

It is respectfully requested the council approve the OLCC application for Good Measure PDX LLC located at 10999 SE Main St. Milwaukie, OR 97222.

We have conducted a background check and find no reason to deny the request for the liquor license.



RS Agenda Item

7

Business Items



COUNCIL STAFF REPORT

To: Mayor and City Council
Emma Sagor, City Manager

Date Written: Jan. 8, 2025

Reviewed: Peter Passarelli, Public Works Director, and
Gabriela Santoyo Gutierrez, Equity & Inclusion Coordinator

From: Courtney Wilson, Urban Forester, and
Katie Gavares, Climate & Natural Resources Manager

Subject: **Tree Code Amendments**

ACTION REQUESTED

Council is asked to adopt the ordinance making tree code amendments.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[November 17, 2020](#): Council adopted the public tree code.

Following three work sessions in August 2021, the Planning Commission held three public hearings on the proposed housing and tree code amendments ([October 12](#), [October 26](#), and [November 9](#)) and voted 5:2 to recommend approval of the amendments with specific revisions and recommendations.

Following a work session in [January](#), Council held seven public hearings in early 2022 on the tree and housing code implementation process and draft code language ([January 18](#), [February 1](#), [February 15](#), [March 15](#), [March 29](#), and [April 5](#)).

[April 19, 2022](#): Council voted 5:0 to adopt the residential tree code.

[April 4, 2023](#): Staff updated Council on tree code implementation and provided an overview of the proposed tree code amendments for council discussion.

[July 18, 2023](#): Staff provided an overview of additional proposed tree code amendments for Council discussion.

[March 5, 2024](#): Staff updated Council on the initial tree code amendments.

[November 19, 2024](#): Staff updated Council on the proposed tree code amendments.

[December 17, 2024](#): Staff updated Council on the proposed tree code amendments and noted that staff had received comments from Council after distribution of the packet, and therefore recommended adoption be delayed until January to allow time for consideration of these comments.

ANALYSIS

To meet the city’s goal of a 40 percent tree canopy, as identified in the [Climate Action Plan](#) (CAP), the [Urban Forest Management Plan](#) (UFMP), and the 2020 [Comprehensive Plan](#) policies, it was determined that trees on private residential property were a conservation priority as canopy over private property accounted for the majority of Milwaukie canopy cover.

Residential tree code was included in the [2021-2022 Comprehensive Plan implementation process](#) to complement new housing code, with the final residential tree code being adopted in April 2022 and implemented in May 2022. Through implementation, staff have identified code revisions that would improve clarity of code language, streamline implementation, and assist in enforcement of the adopted code and permitting program as originally intended.

Changes made to December 2024 code draft

Following the last work session discussion on these code amendments, additional comments were received by staff from a councilmember on December 15, 2024. Responses to these comments are as follows:

- The first comment was regarding the definition of “damaged tree” and whether human-caused damage should be removed from the current definition. After consulting with code compliance and the city attorney, it was recommended that the definition not be revised, so that code compliance can use more discretion when enforcing on damaged trees, particularly in topping or development situations.
- Revisions were made to include references to the Milwaukie Invasive Tree List to ensure that it is included in the city’s removal standard. The code previously stated that only trees on the Oregon Noxious Weed list would be eligible for removal.
- A comment regarding tree protection bonds and how they might pertain to all trees on a development site was also submitted. Clarifying language to note that all trees on a development site may not require a protection bond, as determined by the Urban Forester, was included. This is because some trees on a development site may not be impacted by construction activities, based on their distance from activity and their species.
- The definition of “caliper” was added to the code as it is referenced for replacement planting requirements in both non-development and development conditions of permit approval. The definition used was provided by the American Nursery Stock Standard Z-60.1.
- Another comment regarding root barrier requirements was submitted. Root barrier requirements are outlined in the Milwaukie Public Works Standards, so staff added references to the Public Works Standards.

Further changes were made to correct grammatical errors.

BUDGET IMPACT

None.

CLIMATE IMPACT

Tree preservation and canopy expansion are critical for climate mitigation and adaptation in Milwaukie. The tree code is essential to tree protection, and the proposed revisions will help ensure optimal ongoing implementation.

EQUITY IMPACT

The proposed amendments are primarily functional updates designed to improve clarity, ensure compliance, and support greater tree preservation. The proposed amendments include simplified language and reorganization to improve readability, making the tree code more accessible to residents and property owners. Additionally, many lower-income neighborhoods and communities of color experience disproportionately lower tree canopy cover, contributing

to higher urban heat exposure and reduced air quality. By strengthening requirements for canopy preservation and replanting, especially on private residential properties, the amendments aim to increase canopy citywide, aligning with the city's CAP and UFMP goals.

WORKLOAD IMPACT

Code revisions could reduce workload for administration and enforcement of tree code for public works and code enforcement staff.

COORDINATION, CONCURRENCE, OR DISSENT

Public works natural resources staff worked with code compliance and planning staff on the proposed code revisions.

STAFF RECOMMENDATION

Staff recommends that Council adopt the attached ordinance.

ALTERNATIVES

Not applicable.

ATTACHMENTS

1. Ordinance
 - Exhibit A: Strikeout version of Code Title 2 and Tree Code chapters
 - Exhibit B: Clean version of Code Title 2 and Tree Code chapters
2. Council Comments from December 2024

COUNCIL ORDINANCE No.**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MUNICIPAL CODE (MMC) CHAPTER 2.10 BOARDS, COMMISSIONS, AND COMMITTEES GENERALLY AND CHAPTER 16.32 TREE CODE FOR THE PURPOSE OF IMPROVING READABILITY AND CODE ENFORCEMENT.**

WHEREAS, on October 2, 2018, the City Council adopted the Milwaukie Climate Action Plan (CAP), which included two relevant urban forest strategies that will significantly contribute to Milwaukie’s ability to adapt to the changing climate; and

WHEREAS, on March 19, 2019, the City Council adopted the Urban Forest Management Plan (UFMP), which set goals and policies and identified actions that are crucial to maximizing the benefits of Milwaukie’s trees and meeting Milwaukie’s climate goals; and

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

WHEREAS the city has adopted a tree code per Milwaukie Municipal Code (“MMC”) Chapter 16.32 for establishing processes and standards that ensure the city maximize environmental, economic, health, community and aesthetic benefits provided by its urban forest located in Milwaukie, Oregon; and

WHEREAS the proposed code amendments implement several of the goals and policies of the city’s CAP and UFMP related to tree preservation.

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

Section 1. Amendments. The Milwaukie Municipal Code (MMC) is amended as described in Exhibit A Chapter 2.10 Boards, Commissions, and Committees Generally (strikeout/clean versions) and Exhibit B Chapter 16.32 Tree Code (strikeout/clean versions).

Section 2. Effective Date. This ordinance will become effective on February 20, 2025.

Read the first time on _____ and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

ATTEST:

Lisa M. Batey, Mayor

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

2.10.010 APPLICABILITY

This chapter applies to all City boards, commissions, and committees unless mandated otherwise by State statute or City ordinance, including but not limited to the following boards, commissions and committees:

- A. Budget Committee (ORS 294.336 and MMC 2.14, exclusive from monthly meetings);
- B. Center/Community Advisory Board (MMC 2.20 and IGA);
- C. Citizens Utility Advisory Board (MMC 2.11);
- D. Library Board (ORS 357.400 to 357.621 and MMC 2.28);
- E. Park and Recreation Board (MMC 2.12);
- F. Planning Commission (ORS 227.010—227.030 and MMC 2.16);
- G. Public Safety Advisory Committee (MMC 2.24); ~~and~~
- H. Milwaukie Arts Committee (MMC 2.17); ~~and~~
- I. [Tree Board \(MMC 2.18\)](#).

[2.18 TREE BOARD](#)

~~2.18.010A.~~ Tree Board Composition

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

~~2.18.020B.~~ Term of Office

~~A.~~ The term of the seven persons appointed by the Mayor will be three years. ~~except that the term of two of the members appointed to the initial Tree Board will serve a term of only one year, and two members of the initial Tree Board will be for two years.~~

~~B.~~ ~~In the event that~~if a vacancy occurs during the term of any member, their successor will be appointed for the unexpired portion of the term. ~~Tree Board members will be limited to serving three consecutive terms.~~

~~2.18.030C.~~ Compensation

Members of the Tree Board will serve without compensation.

2.18.040D. Duties and Responsibilities

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

1. A. Study, investigate, develop, update, and help administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of the Urban Forest. The plan will be presented to the City Council for approval every five years and will constitute the official Urban Forestry Management Plan for the City;
2. B. Provide advice to City Council on policy and regulatory issues involving trees, including climate adaptation and mitigation efforts;
3. C. Provide outreach and education to the community on tree-related issues and concerns;
4. D. Organize and facilitate the City's tree planting events and other public events involving trees and Urban Forestry education;
5. E. Assist City staff in preparing recommendations regarding the application, membership, and ongoing participation by the City in the Tree City USA Program;
6. F. Provide leadership in planning the City's Arbor Day/Week proclamation and celebration; and
7. G. Provide recommendations to City Council on the allocation of funds from the Tree Fund.
8. H. The Tree Board, when requested by the City Council, will consider, investigate, make findings, report, and make recommendations on any special matter or question coming within the scope of its work.

2.18.050E. Operation

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

TITLE 2 ADMINISTRATION AND PERSONNEL

2.10.010 APPLICABILITY

This chapter applies to all City boards, commissions, and committees unless mandated otherwise by State statute or City ordinance, including but not limited to the following boards, commissions and committees:

- A. Budget Committee (ORS 294.336 and MMC 2.14, exclusive from monthly meetings);
- B. Center/Community Advisory Board (MMC 2.20 and IGA);
- C. Citizens Utility Advisory Board (MMC 2.11);
- D. Library Board (ORS 357.400 to 357.621 and MMC 2.28);
- E. Park and Recreation Board (MMC 2.12);
- F. Planning Commission (ORS 227.010—227.030 and MMC 2.16);
- G. Public Safety Advisory Committee (MMC 2.24);
- H. Milwaukie Arts Committee (MMC 2.17); and
- I. Tree Board (MMC 2.18),

2.18 TREE BOARD

2.18.010 Tree Board Composition

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

2.18.020 Term of Office

- A. The term of the seven persons appointed by the Mayor will be three years.
- B. If a vacancy occurs during the term of any member, their successor will be appointed for the unexpired portion of the term.

2.18.030 Compensation

Members of the Tree Board will serve without compensation.

2.18.040 Duties and Responsibilities

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

- A. Study, investigate, develop, update, and help administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of the Urban Forest. The plan will be presented to the City Council for approval every five years and will constitute the official Urban Forestry Management Plan for the City;
- B. Provide advice to City Council on policy and regulatory issues involving trees, including climate adaptation and mitigation efforts;
- C. Provide outreach and education to the community on tree-related issues and concerns;
- D. Organize and facilitate the City's tree planting events and other public events involving trees and Urban Forestry education;
- E. Assist City staff in preparing recommendations regarding the application, membership, and ongoing participation by the City in the Tree City USA Program;
- F. Provide leadership in planning the City's Arbor Day/Week proclamation and celebration; and
- G. Provide recommendations to City Council on the allocation of funds from the Tree Fund.
- H. The Tree Board, when requested by the City Council, will consider, investigate, make findings, report, and make recommendations on any special matter or question coming within the scope of its work.

2.18.050 Operation

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

CHAPTER 16.32 TREE CODE

Article I General Provisions

16.32.005 PURPOSE

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

This code is designed to:

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

16.32.010 DEFINITIONS

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

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

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

“Building footprint” means the area covered by the outer structural walls of a building, measured in square feet-#. Included in the calculation of footprint are: roofed structures that are not fully enclosed; building features such as patio covers, roofed

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porches, and decks; or similar features with a surface height of more than 18 inches above average grade. Footprint does not include eaves.

“Caliper” is the trunk diameter for nursery stock trees measured 6 inches from the soil line; if caliper is greater than 4 inches, the caliper measurement is taken at 12 inches from the soil line.

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

“City” means the City of Milwaukee.

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

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

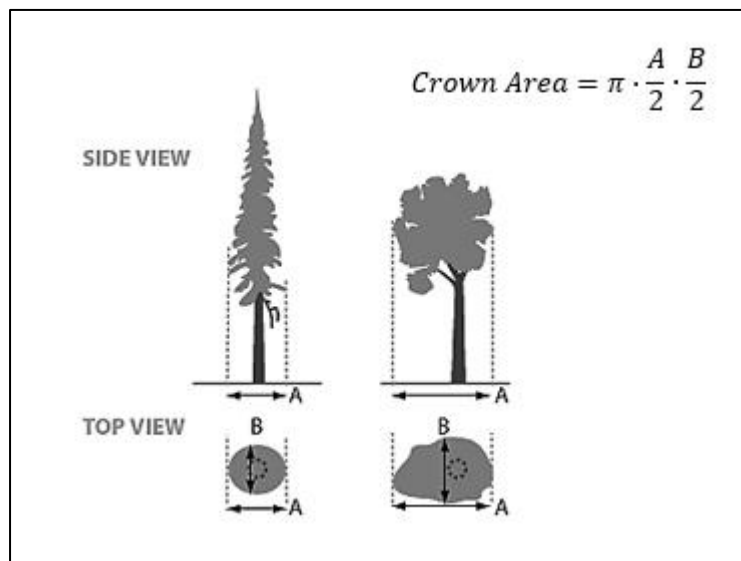
“Consolidated Fee Schedule” is the schedule of City fees and charges adopted by City Council for the services provided by the City.

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

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

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

Figure 16.32.010-1 – Measuring Crown Area



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“Cutting” means the felling or removal of a tree, or any procedure that naturally results in the death or substantial destruction of a tree. Cutting does not include normal trimming or pruning but does include topping of trees.

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

“DBH” means the diameter at breast height.

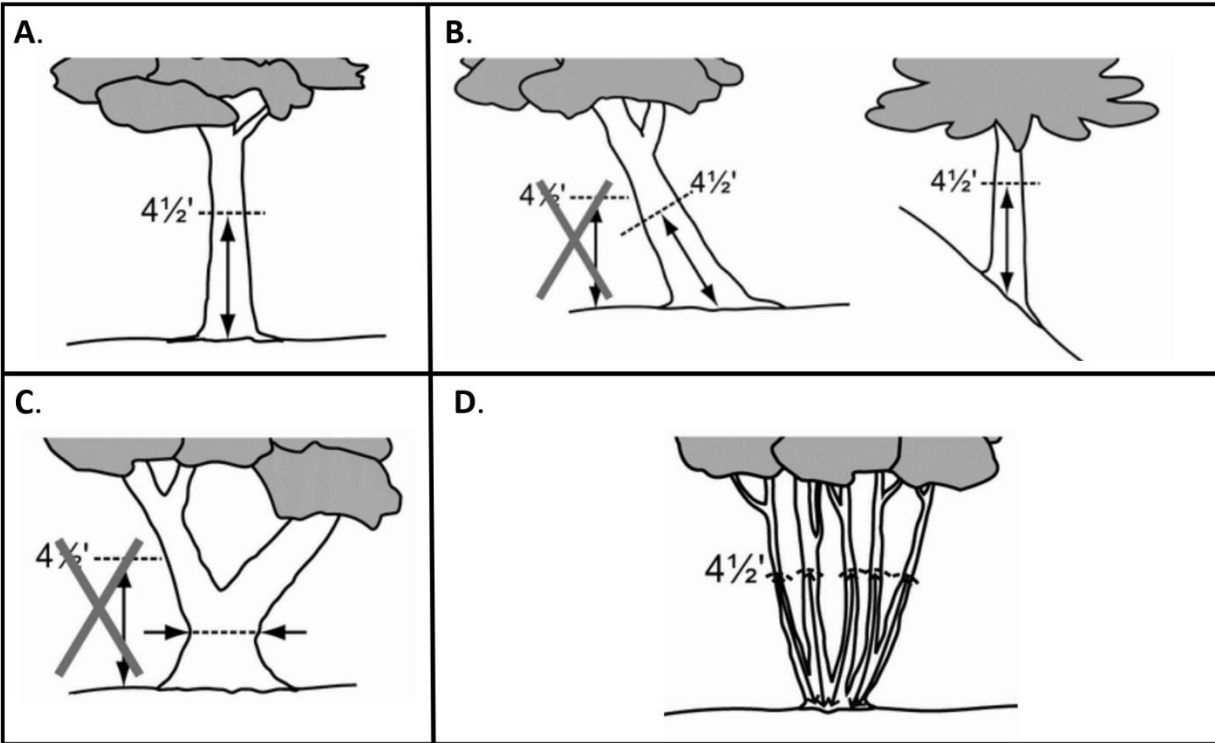
“Dead tree” means a tree that is dead or has been damaged beyond repair or where not enough live tissue, green leaves, limbs, or branches exist to sustain life.

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

Figure 16.32.010-2 – Measuring Diameter at Breast Height

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

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

“Hazardous tree” means a tree or tree part ~~that, the condition or location of which~~ presents a public safety hazard, ~~or poses an imminent danger to~~ property ~~damage~~ as determined by an ISA Qualified Tree Risk Assessor, and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

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

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

“ISA” means the International Society of Arboriculture.

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

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“Major tree pruning” means the trimming or removal of ~~over twenty percent (20%) or more~~ of the live crown, or removal of or injury to roots within a radial distance from the tree of 6 times the tree's DBH or over twenty-five (25%) of the root protection zone (see Figure 16.32.042.G.1.b)~~over 15% of the root system~~ during any 12-month period.

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

“Minor tree pruning” means the trimming or removal of less than twenty percent (20%) of ~~any part of~~ the live crown, or removal of or injury to roots beyond a radial distance from the tree of 6 times the tree's DBH or less than twenty-five percent (25%) of the root protection zone (see Figure 16.32.042.G.1.b)~~less than 15% of the root system~~ during a 12-month period.

“NDA” means Neighborhood District Association.

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

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

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

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

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

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

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

“Right-of-way” means an area that allows for the passage of people or goods. Right-of-way includes passageways such as freeways, pedestrian connections, alleys, and all streets. A right-of-way may be dedicated or deeded to the public for public use and under the control of a public agency, or it may be privately owned. A right-of-way that is not dedicated or deeded to the public is usually in a tract or easement.

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

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

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

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

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

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

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

“Tree ~~C~~anopy” means the aggregate or collective tree crowns.

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

“Tree removal” means the cutting or removal of fifty percent (50%) or more of the crown, trunk, or root system of a plant, the uprooting or severing of the main trunk of the tree, topping, or any act that causes, or may reasonably be expected to cause the tree to die as determined by an ISA Certified Arborist.

“Unhealthy tree” means a tree that is rated by a professional with expertise in the field of forestry or arboriculture as being in poor or very poor/dead health condition using International Society of Arboriculture (ISA) Best Management Practices and the rating system in this Chapter.

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

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

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

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

16.32.01~~24~~ ADMINISTRATION

A. City Manager

1. The City Manager is authorized to administer and enforce the provisions of this chapter.

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

B. City Authority

The City has the ultimate authority to:

1. Interpret the provisions of Chapter 16.32 and determine whether code criteria have been met.
2. Establish conditions of permit and land use approval to ensure Chapter 16.32 is properly implemented.
3. Create rules and procedures as needed to implement Chapter 16.32. ~~Rules and procedures may include but are not limited to:~~
 - a. City of Milwaukie tree lists;:
 - b. Tree protection standards, specifications, and procedures;:
 - c. Tree planting standards, specifications, and procedures;:
 - d. Tree establishment and maintenance standards, specifications, and procedures;:
 - e. Performance bonding, letters of credit, and cash assurances to help ensure proper tree protection, planting, and establishment;:
 - f. Tree protection inspections and oversight;:
 - g. Soil protection inspections and oversight;:
 - h. Performance path tree protection standards and specifications;:
 - i. Performance path soil volume standards and specifications;: and
 - j. Fees for permit applications, reviews, mitigation, inspections, and violations.

~~16.32.015 CREATION AND ESTABLISHMENT OF THE TREE BOARD~~

~~A. Tree Board Composition~~

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

~~B. Term of Office~~

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

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~~appointed for the unexpired portion of the term. Tree Board members will be limited to serving three consecutive terms.~~

~~C. Compensation~~

~~Members of the Tree Board will serve without compensation.~~

~~D. Duties and Responsibilities~~

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

- ~~1. Study, investigate, develop, update, and help administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of the Urban Forest. The plan will be presented to the City Council for approval every five years and will constitute the official Urban Forestry Management Plan for the City;~~
- ~~2. Provide advice to City Council on policy and regulatory issues involving trees, including climate adaptation and mitigation efforts;~~
- ~~3. Provide outreach and education to the community on tree-related issues and concerns;~~
- ~~4. Organize and facilitate the City's tree planting events and other public events involving trees and Urban Forestry education;~~
- ~~5. Assist City staff in preparing recommendations regarding the application, membership, and ongoing participation by the City in the Tree City USA Program;~~
- ~~6. Provide leadership in planning the City's Arbor Day/Week proclamation and celebration; and~~
- ~~7. Provide recommendations to City Council on the allocation of funds from the Tree Fund.~~

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

~~E. Operation~~

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

16.32.01~~46~~ CREATION OF A TREE FUND

A. Establishment

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

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B. Funding Sources

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

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

C. Funding Purposes

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

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

Article II Street Trees and Public Trees

16.32.02017 PLANTING STREET TREES AND PUBLIC TREES PLANTING ON LAND OWNED OR MAINTAINED BY THE CITY AND WITHIN THE PUBLIC RIGHT-OF-WAY

A. Species

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

B. Spacing, size, and placement

The spacing, size, and placement of street trees and public trees, ~~shrubs, and other woody vegetation~~ must be in accordance with Public Works Standards and a permit issued by the City under this section. -The City may approve special plantings designed or approved by a landscape architect, or for ecological restoration

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projects where trees are likely to be planted at a much higher density to mimic natural conditions in forest regeneration and account for expected mortality.

C. Permit

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

~~16.32.018 STREET AND PUBLIC TREE CARE~~

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

~~16.32.019 TREE TOPPING~~

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

~~16.32.020 PRUNING, CORNER CLEARANCE~~

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

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

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

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

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~~16.32.022 REMOVAL OF STUMPS~~

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

~~16.32.024 ARBORISTS LICENSE~~

~~All businesses doing arboricultural work within the City must have paid the Milwaukie business tax or have a current business license with the Metropolitan Service District. A Certified Arborist must be on site for the duration of any arboricultural work being performed on a public tree or street tree and is responsible for certifying that all arboricultural work is performed in accordance with ISA Best Management Practices.~~

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

A. Applicability

1. No person will perform major tree pruning or remove any street tree or public tree ~~in a public right-of-way or on public land~~, without first obtaining a permit issued by the City.
 - a. For public trees, only the City, a public agency charged with maintaining the property, or a utility may submit a permit application.
 - b. For street trees, the applicant must be the City, the owner of the adjacent property, or be authorized in writing by the owner of the adjacent property, where the tree will be pruned or removed.
 - ~~c. No person can remove a street tree without first obtaining a permit from the City. Permit approval may be conditioned upon either replacement of the street tree with a tree listed on the Street Tree List or a requirement to pay to the City a fee as provided in the master fee schedule Consolidated Fee Schedule.~~
2. For public trees ~~on land owned or maintained by the City~~, this chapter will be applied in conjunction with any applicable standards in Title 19 Zoning.

B. Permit Review Process

1. Application

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

2. Public Notice and Permit Meeting

Upon the filing of a permit application, the applicant must post notice, unless otherwise exempted in Section 16.32.030, of the major pruning or tree removal

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

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

3. Declaration

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

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

~~4. Exemptions from Public Notice~~

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

- ~~a. A tree, shrub, or other woody vegetation that is considered an unreasonable risk to the occupants of the property, the adjacent property, or the general public as determined by an ISA-Certified Arborist in accordance with current ISA Tree Risk Assessment standards.~~
- ~~b. A tree, shrub, or other woody vegetation that is an invasive species and that is less than 8 inches in diameter at breast height.~~
- ~~c. A street tree or public tree that is less than 2 inches in diameter at breast height.~~

C. Review Criteria and Approval Standards

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

1. Review Criteria

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

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

2. Approval Standards

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

- a. The proposed major pruning or tree removal will be performed according to current ISA Best Management Practices, ~~and a~~ An ISA Certified Arborist will be on site for the duration of ~~any major pruning the tree~~ work.
- b. The ~~tree, shrub, or other woody vegetation~~ street tree or public tree proposed for major pruning or removal meets one or more of the following criteria:
 - (1) The ~~street tree or public tree tree, shrub, or other woody vegetation~~ is dead or dying and cannot be saved as determined by an ISA Certified Arborist in accordance with ISA standards.
 - (2) The ~~street tree or public tree tree, shrub, or other woody vegetation~~ is having an adverse effect on existing adjacent infrastructure that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.
 - (3) The ~~street tree or public tree tree, shrub, or other woody vegetation~~ has sustained physical damage that will cause the vegetation to die or enter an advanced state of decline. The City may require additional documentation from an ISA Certified Arborist to demonstrate that this criterion is met.

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- (4) The ~~street tree or public tree~~ tree, shrub, or other woody vegetation poses an unreasonable risk to the occupants of the property, the adjacent property, or the general public, as determined by an ISA Certified Arborist that is Tree Risk Assessment Qualified (TRAQ) in accordance with current ISA Tree Risk Assessment ~~standards~~ Best Management Practices.
 - (5) Major pruning or removal of the ~~street tree or public tree~~ tree, shrub, or other woody vegetation is necessary to accommodate improvements in the right-of-way or on City-owned land, and it is not practicable to modify the proposed improvements to avoid major pruning or removal.
 - (6) The ~~street tree or public tree~~ tree, shrub, or other woody vegetation is on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List.
 - (7) The ~~street tree or public tree~~ tree, shrub, or other woody vegetation is part of a stormwater management system and has grown too large to remain an effective part of the system.
- c. Any approval for the removal of a healthy ~~street tree or public tree~~ tree, shrub, or other woody vegetation must require the applicant to pay a fee as established in the ~~Master Fee Schedule~~ Consolidated Fee Schedule.

D. Removal of Stumps

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

ED. Performance of Permitted Work

1. All work performed pursuant to a permit issued by the Urban Forester must be completed within the time period specified in the permit unless a different time period is authorized in writing by the Urban Forester.
2. An ISA Certified Arborist must be on site for the duration of any major pruning permit being performed on a public tree or street tree and is responsible for certifying that all arboricultural work is performed in accordance with ISA Best Management Practices.

EE. Replanting

The City will require replanting as a condition of permit approval for the major pruning or removal of a street tree or public tree. Replanting must follow the tree planting requirements outlined in the Public Works Standards.

1. The replanted tree must be a species included on the Street Tree List unless otherwise approved by the Urban Forester.
2. The City will consider alternative planting locations for street trees when replanting at the location of removal conflicts with surrounding infrastructure and the interference would impair the replanted tree.
 - a. For street trees, replanted trees must be planted within the right-of-way fronting the property for which the permit was issued or, subject to the

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approval of the Urban Forester, ~~and give written notice to with permission in writing from the adjacent property owner, within the right of way fronting the adjacent property.~~

~~b. In lieu of replanting and subject to approval of the Urban Forester, the City can require the owner to pay a fee as established in the Master Fee Schedule Consolidated Fee Schedule.~~

b.e. For public trees, replanted trees must be planted on the land from which the tree was removed unless a different location is approved by the Urban Forester.

3. ~~In lieu of replanting and subject to approval of the Urban Forester, the City can require the applicant to pay a fee as established in the Consolidated Fee Schedule.~~

34. The optimal time of year for planting is from September through April. If planting is necessary in other months, the City may condition permit approval to require extra measures to ensure survival of the newly planted tree.

16.32.028 EMERGENCY REMOVAL OF PERMIT FOR OF HAZARDOUS STREET TREES OR PUBLIC TREES

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

16.32.028 PROGRAMMATIC PERMITS

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

A. Application Requirements

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

B. Applicability

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

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~~C. — Completeness~~

~~1. — If the Urban Forester determines an application is incomplete, the Urban Forester will provide written notice to the applicant that describes the additional information needed.~~

~~2. — The applicant must submit the additional information within 30 days from the date of the notice unless extended in writing by the Urban Forester.~~

~~3. — If the applicant does not furnish the additional information within 30 days from the date of the notice or any extension granted in writing by the Urban Forester, the application will be denied.~~

~~D. — Notice of Complete Application~~

~~When the Urban Forester determines that the application is complete, the Urban Forester must provide written notice that the application is complete to the applicant and the Tree Board. The notice must provide instructions for how to obtain additional information about the application, comment on the application, and request notification of the Urban Forester's decision.~~

~~E. — Review Criteria~~

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

~~1. — The proposed activity will result in a net gain to the urban forest functions and benefits described in the purpose statement in Section 16.32.005 considering the applicant's proposed performance measures, proposed tree planting, and other activities proposed to improve the overall health of the urban forest.~~

~~2. — The applicant's proposed outreach and notification program provides adequate notice to residents, businesses, and the City prior to performing work authorized under the programmatic permit.~~

~~F. — Decision~~

~~The Urban Forester must issue the permit, issue the permit with conditions of approval, or deny the permit, or may issue the permit subject to conditions of approval within 120 days of determining the application is complete. The Urban Forester's decision will be final and, if approved, the permit will be valid for a period of up to two years. Nothing prevents an applicant from requesting an amendment to an unexpired permit if the conditions and circumstances have changed. The Urban Forester's decision will be based on an evaluation of the application against the applicable review criteria in Subsection 16.32.028.E.~~

~~G. — Permit~~

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

~~1. Duration~~

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

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~~2. Geographic area covered by the permit;~~

~~3. Permitted activities and any restrictions on the method, number, type, location, or timing of activities;~~

~~4. Procedures and thresholds for providing notice to residents, businesses, and the City impacted by the performance of work under the permit;~~

~~5. Monitoring, Performance Tracking, and Reporting Requirements~~

~~The Urban Forester may prescribe rules or procedures that specify the manner in which such tracking and reporting occur; and~~

~~6. Traffic control requirements.~~

~~7. Annual Report~~

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

~~8. Tree Size Limits~~

~~a. The programmatic permit will not allow the removal of trees 6 or more inches in diameter at breast height, except as provided in this section.~~

~~b. If an applicant requests removal of a healthy tree 6 or more inches in diameter at breast height at time of application or during the period in which the programmatic permit is in effect, an opportunity for public comment will be provided in accordance with Subsection 16.32.026 B.2~~

~~c. For any request, the Urban Forester may further limit allowed tree removal in order to meet the review criteria in Subsection 16.32.028.E.~~

~~9. Tree Work~~

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

~~H. Revocation~~

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

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

~~A. Hazardous Tree~~

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

~~B. The following exemptions apply:~~

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A. Permit Exemptions

1. Maintenance

A permit for a trees on public properties and rights-of-way street tree or public tree is not required for regular maintenance or minor tree pruning that ~~does not require removal of overis less than twenty percent (20%) of the crown, tree topping,~~ or disturbance of roots within a radial distance from the tree of 6 times the tree's DBH or less than twenty-five percent (25%) of the root protection zone (see Figure 16.32.042.G.1.b) more than 10% of the root system during any 12-month period.

2. Removal

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

B. Public Notice Exemptions

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

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

C. Removal Fee Exemptions

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

~~C.1.~~ Public Infrastructure Improvements

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

~~D.2.~~ Private Utility Services and Dwelling Units

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

3. Hazard to Dwelling Units

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

4. Noxious or Invasive Trees

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

D. Topping Exemptions

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

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

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

E. Replanting Exemptions

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

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

16.32.03~~8~~2 LOW INCOME ASSISTANCE

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

16.32.040 PENALTY

~~A person who removes a street tree or public tree without first obtaining the necessary permit from the City, removes a tree in violation of an approved permit, or violates a~~

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~~condition of an approved permit must pay a fine in an amount established in the Master Fee Schedule.~~

Article III Private Trees in Residential Zones

16.32.042 TREE PRESERVATION AND PLANTING WITH DEVELOPMENT IN RESIDENTIAL ZONES

A. Applicability

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

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

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

1. Healthy trees at least 6-inch DBH are required to be preserved except when their removal is required for construction, demolition, grading, utilities, and other development impacts.
2. Not more than 25% of tree removal is not allowed to reduce the Preservation of at least thirty percent (30%) on-site existing healthy private tree canopy coverage may be removed below the overall 40% site canopy coverage standard thirty percent (30%) is required unless mitigation is provided according to Subsection 16.32.042.E.D. Preservation of at least thirty percent (30%) on-site healthy private tree canopy coverage is required unless mitigation is provided according to Subsection 16.32.042.E. See Figures 16.32.042.B.2-a and B.2-b for examples of when mitigation is or is not required. (See Subsection 16.32.042.D.3 for information on calculating tree canopy coverage.)
3. For development sites with thirty percent (30%) or less on-site healthy private tree canopy coverage, the removal of healthy private tree canopy is not allowed unless mitigation is provided according to Subsection 16.32.042.E.

~~Tree species on the Oregon Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy coverage calculations. Public right-of-way is not considered part of the development site for the purposes of these calculations.~~

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

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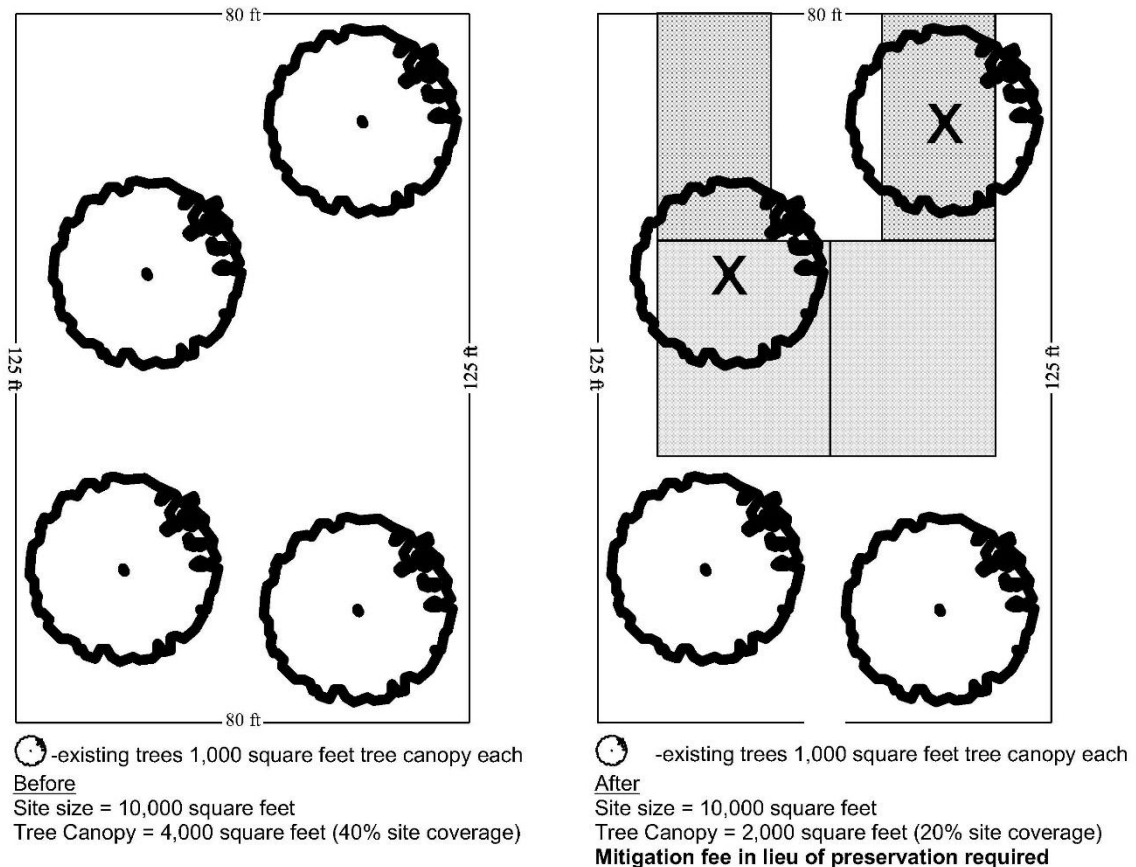
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45. Non-Unhealthy trees and trees species on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List are not required to be preserved in conjunction with applicable development as established in Subsection 16.32.042.A.

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

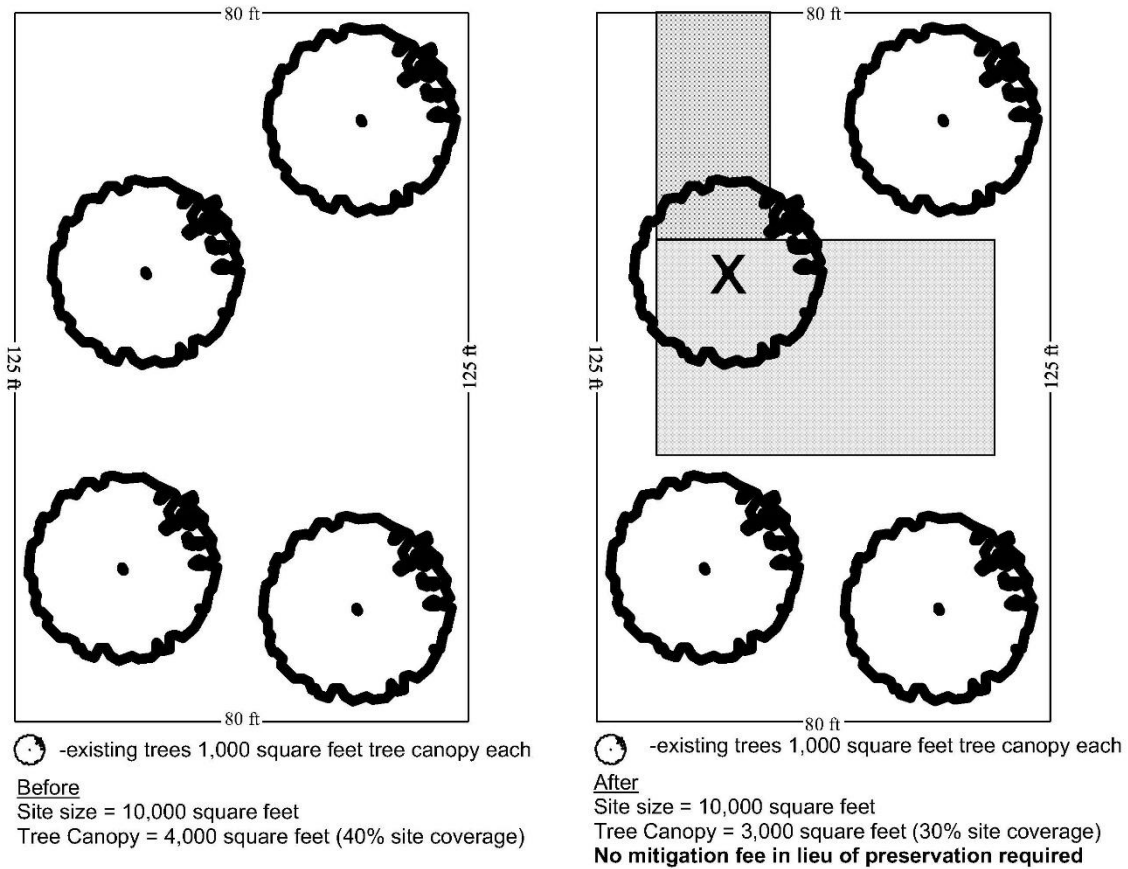
6. The applicant must provide a performance bond eExisting trees that are preserved for purposes of addressing the thirty percent (30%) canopy coverage standard, must each provide a performance bond to ensure their survival for such period of time as identified in the Consolidated Fee Schedule. Onsite trees may be exempt from the performance bond requirements if the Urban Forester or an ISA Certified Arborist determine that construction activities do not present a significant impact to tree health. All-Existing trees used for canopy credit dwould not qualify for removal based on the criteria outlined in Subsection 16.32.044 D.2.(11).

Figure 16.32.042.B.2-a – Tree removal with mitigation



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Figure 16.32.042.B.2-b – Tree removal without mitigation



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

~~40% canopy coverage is the standard site canopy coverage for residential developed lots.~~

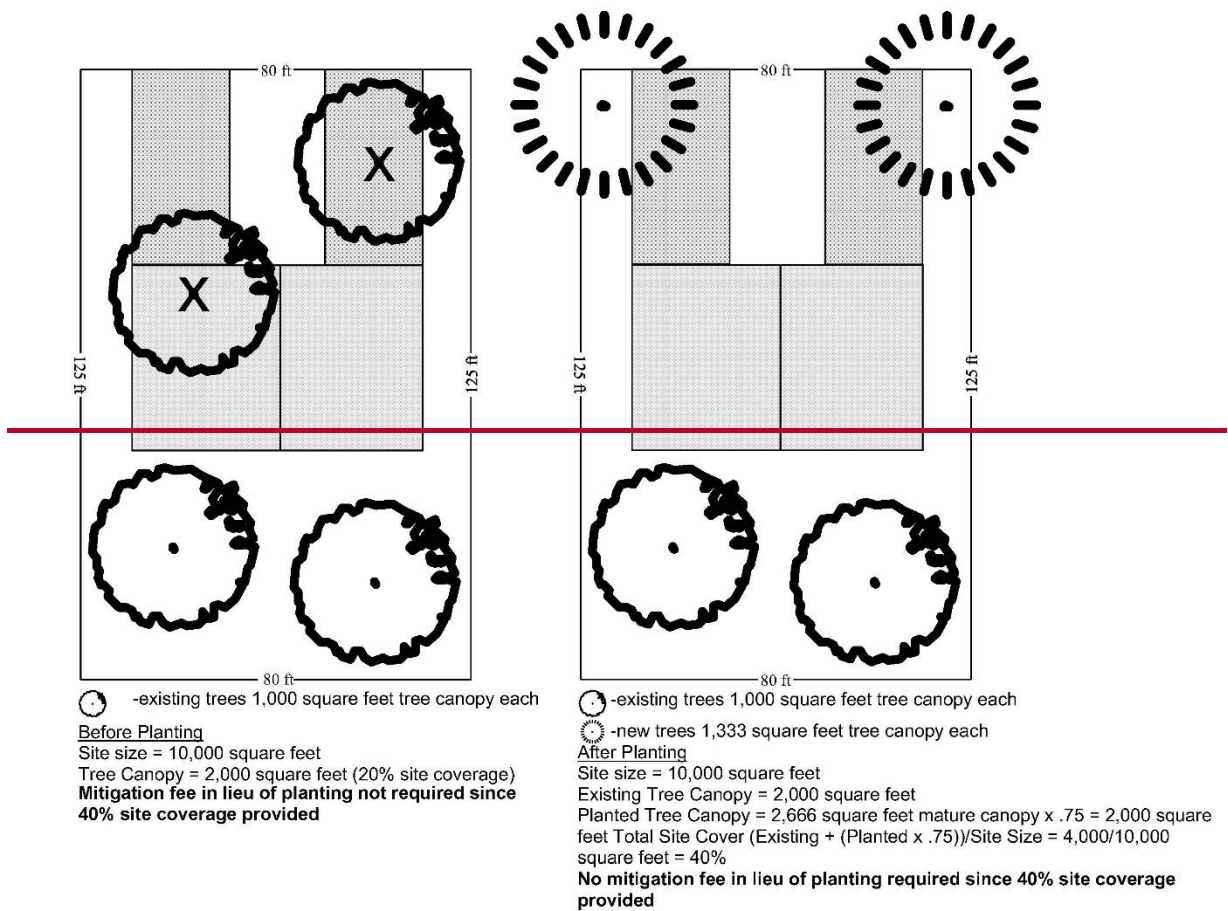
- ~~1. In addition to including the preservation of on-site healthy trees, a~~ At least forty percent (40%) tree canopy is required for a development site from existing healthy trees or new tree plantings unless mitigation is provided according to Subsection 16.32.042.ED. See Figure 16.32.042.C.1 for an example of tree planting where mitigation is not required. Public right-of-way will be considered off-site for the purpose of these planting standard calculations. Tree species on the Oregon Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy coverage calculations.
- ~~2. The minimum size of newly planted trees is 1.5-inch caliper for broadleaf trees and 5-foot tall for conifers unless otherwise approved by the Urban Forester. Nursery stock~~ Newly planted trees must be in good health with the size and quality consistent with ISA Best Management Practices and ANSI Z60.1 standards.

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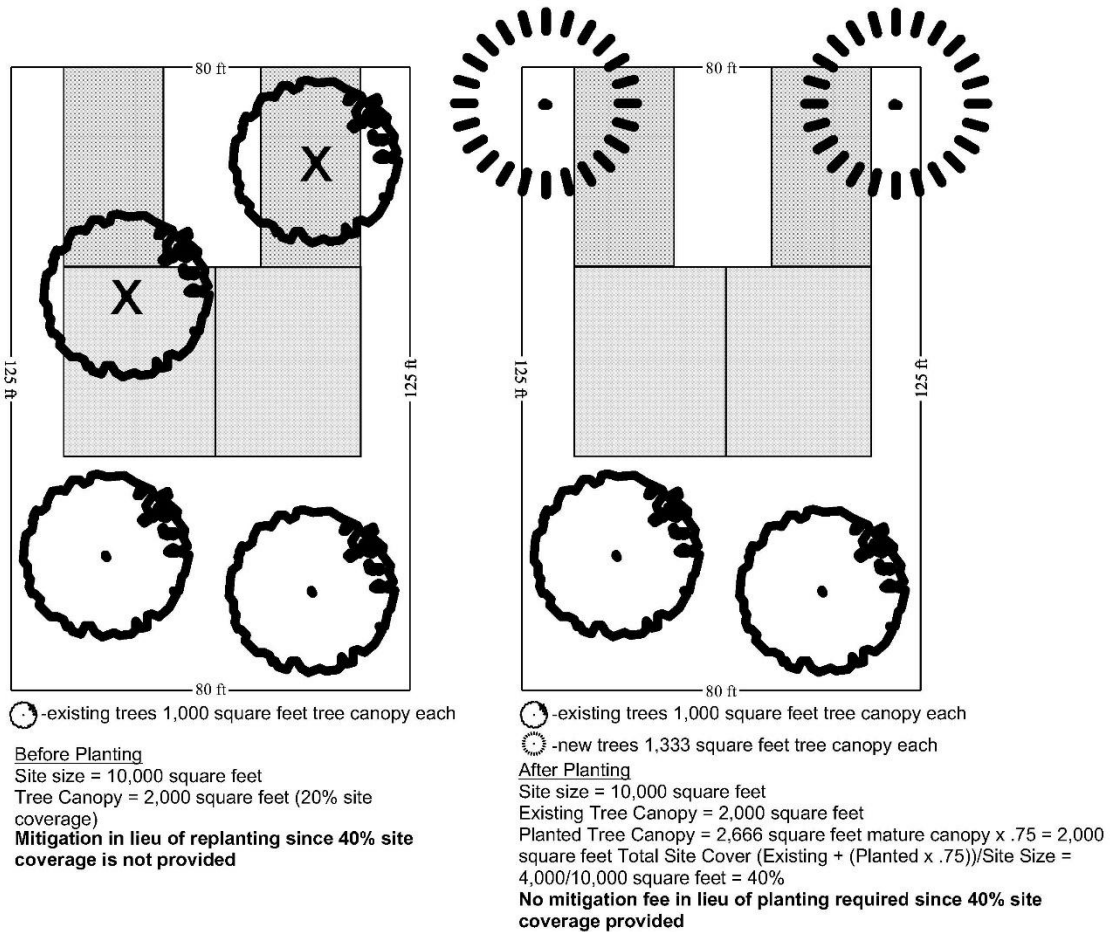
3. The species selection and spacing of trees to be planted must be such that it provides for the eventual mature size of the trees. Soil type, soil conditions and other site constraints must be considered when selecting species for planting.
4. Root barriers must be installed according to the manufacturer's specifications when a tree is planted within 5 feet of pavement or an underground utility box unless otherwise approved by the Urban Forester.
5. Where there are overhead high voltage utility lines, the tree species selected must be of a type that, at full maturity, will not require pruning to avoid interference with the lines.
6. Newly planted trees must survive a minimum number of years beyond the date of planting, with a performance bond to ensure that each new tree is replaced if it does not survive through the minimum period. See the Consolidated Fee Schedule for details. All trees planted for canopy credit would not qualify for removal based on the criteria outlined in 16.32.044 D.2.(11).

Figure 16.32.042.C.1 – Tree planting without mitigation



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D. Tree Canopy Calculations and Credits

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

Table 16.32.042.C.1 Tree Planting Standards

Tree Location	Existing Trees	Newly Planted Trees
On-Site Trees (Trees located within the tax lot)	100% of the existing or future mature crown area, whichever is greater <i>*Significant tree credit for large DBH trees – see Master Fee Schedule*</i>	75% of the future mature crown area

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Off-Site Trees (Street trees within the adjacent ROW)	50% of the existing or future mature crown area, whichever is greater	50% of the future mature crown area
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- ~~1. 75% of the mature crown area of planted on-site trees.~~
- ~~2. 50% of the mature crown area of planted street trees in the public right-of-way directly abutting the development site.~~

31. On-Site Trees

a3. One hundred percent (100%) of the existing crown area or mature crown area of on-site healthy private trees that are preserved, whichever is greater.

(1) In cases where a portion of the crown area of an on-site healthy private trees extends off site, the entire crown area is eligible for credit towards the tree canopy requirements.

(2) In cases where a portion of the crown area of an off-site private trees extends on site, the crown area is not eligible for credit towards the tree canopy requirements.

(3) Healthy on-site trees with DBHs of 12 inches or greater may receive additional canopy credits for existing or future mature crown area to be factored into preservation calculations as defined in the ~~Master Fee Schedule~~ Consolidated Fee Schedule.

b. Seventy-five percent (75%) of the future mature crown area of planted on-site private trees.

~~4. 50% of the existing crown area of street trees that are preserved in the public right of way directly abutting the development site.~~

2. Street Trees

a4. Fifty percent (50%) of the existing crown area of street trees that are preserved in the public right-of-way directly abutting the development site.

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

3. Interpretations

a. When the trunk of a tree crosses a property line at ground level it is considered an on-site tree; except that when the trunk crosses a public right-of-way line at ground level, it is considered a street tree for the purposes of these tree planting standards.

b. Public right-of-way will be considered off-site for the purposes of these planting standard calculations.

c. Tree species on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy calculations.

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d. Trees of any species that are less than 6-inches DBH are not to be included in the total canopy calculations unless a bond is provided

c. Tree species on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy calculations.

ed. The Milwaukie Mature Tree Crown Area Reference List is the primary resource for determining the estimated tree canopy area for various species.

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

Table 16.32.042.D Eligible Credits for Tree Canopy Requirements		
Tree Location	Existing <u>Preserved</u> Trees	Newly Planted Trees
On-Site Trees (Trees located within the tax lot)	100% of the existing or future mature crown area, whichever is greater ¹ <i>*Significant tree credit for large DBH trees—see Master Fee Schedule*</i>	75% of the future mature crown area
Off-SiteStreet Trees (Street trees within the adjacent ROW)	50% of the existing or future mature crown area, whichever is greater	50% of the future mature crown area

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

ED. Mitigation ~~Standards~~Fees

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

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

FE. Variance Procedure

~~1.~~ An applicant may apply for a variance to the tree preservation and/or tree planting standards. An application for a variance will be heard and decided by the Planning Commission in accordance with the provisions of Section 19.1006 (Type III review) according to Section 19.911. In addition to meeting the Type III variance approval criteria established in Subsection 19.911.4.B. ~~The~~ applicant is required to

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demonstrate that equivalent or greater environmental benefits are provided as preserving or planting the required tree ~~canopy~~.

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

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

~~G~~F. Tree Protection Standards

Trees to be retained must be protected from development impacts according to the standards in this subsection to be eligible for tree preservation and tree canopy credit. ~~For applications meeting criteria as outlined in Subsections 16.32.042.A.1 and 16.32.042.A.2, a~~ A tree protection plan prepared by an ISA ~~e~~Certified ~~a~~Arborist that demonstrates adequate protection of the trees to be preserved is required. The tree protection plan must be ~~as~~ approved by the Urban Forester ~~is required~~. Tree protection methods and specifications must be consistent with ISA ~~b~~Best ~~m~~Management ~~p~~Practices using either the ~~following~~ prescriptive path or performance path tree protection methods as described below:

1. Prescriptive Path for Tree Protection:

a. ~~Establish a r~~Root protection zone:

- (1) For on-site trees and off-site trees with root protection zones that extend into the site, provide ~~of~~ a minimum ~~of~~ one-foot radius (measured horizontally away from the center of the tree trunk) for each inch of trunk diameter at breast height. Root protection zones for off-site trees may be estimated.

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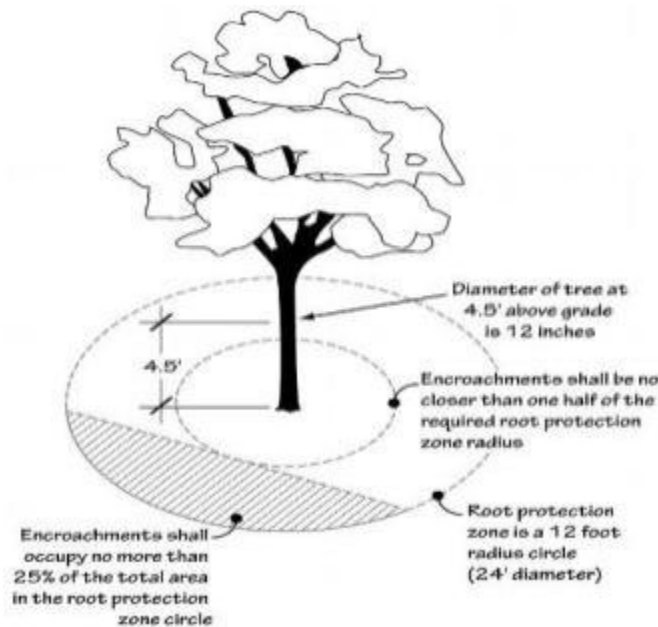
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- (2) For street trees, ~~the Urban Forester may will~~ prescribe ~~greater or lesser protection than the~~ required root protection zone after reviewing the applicant's proposed root protection zone for on-site and off-site trees.

b. Encroachments into a root protection zone

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

Figure 16.32.042.FG.1.b
Example of Permissible RPZ Encroachments



cb. Protection fencing:

- (1) Protection fencing consisting of a minimum 4-foot ~~high~~ metal chain link or no-climb horse fence, and secured with 6-foot metal posts must be established at the edge-perimeter of the root protection zone and permissible encroachment area on the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve

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as the required protective fencing. Protection fencing (new or existing) must be sturdy, highly visible, and not easily movable.

- (2) When a root protection zone extends beyond the development site, protection fencing for private trees is not required to extend beyond the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve as the required protective fencing. If prescribed by the Urban Forester, protection fencing for street trees may extend beyond the development site.

- (3) Protection fencing is required to be installed before any ground disturbing activities or construction begins, including clearing and grading, and must remain in place until final inspection.

~~e.(4)~~- Signage designating the protection zone and penalties for violations must be ~~secured~~displayed in a prominent location on each protection fence.

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

de. Prohibitions within the root protection zone

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

~~f. The fence is required to be installed before any ground disturbing activities or construction begins, including clearing and grading, and will remain in place until final inspection. Variances from the prescriptive path protection standards for off-site trees are prohibited. The Urban Forester's determination of whether the prescriptive path standards are met is final and not subject to appeal.~~

2. Performance Path for Tree Protection-

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

- a. ~~The An~~ alternative root protection zone plan is prepared by an ISA ~~e~~Certified ~~A~~rborist who has examined the specific tree's size, location, and extent of root cover, evaluated the tree's tolerance to construction impacts based on its species and health, and identified any past impacts that have occurred within the root zone.

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- b. The ~~arborist has prepared a~~ alternative root protection zone plan ~~providing~~ includes the rationale used to demonstrate that the alternate method provides an adequate level of protection based on the findings from ~~the~~ site visit ~~by the project arborist.~~
- c. If the alternative tree protection method involves alternative construction techniques, the project arborist has provided an explanation of the techniques and materials used.
- ~~d. If the alternative tree protection method involves alternative construction techniques, an explanation of the techniques and materials used must be provided by the arborist.~~
- ~~e. Variances for the Tree Protection standard for off-site trees are prohibited.~~

~~G~~H. Soil Volume Standards

1. General Standards

- a. To be eligible for tree canopy credit as outlined in Subsection 16.32.042.D, ~~planted~~ Trees to be planted must be provided access to at least 1,000 cubic feet of soil volume according to the standards in this subsection ~~to be eligible for tree canopy credit.~~ A soil volume plan prepared by an ISA ~~C~~Certified ~~A~~Arborist is required ~~that and must~~ demonstrates that at least 1,000 cubic feet of soil volume is available per tree as determined by the Urban Forester or designee. Soil volume methods and specifications must be consistent with ISA ~~B~~Best ~~m~~Management ~~p~~Practices using either the prescriptive path or performance path soil volume methods. The project arborist must verify with the Urban Forester in writing that the soil volume plan has been successfully implemented prior to tree planting.

~~1. Prescriptive Path for Soil Volume.~~

- ~~b~~e. If the existing soils at the site and abutting sites are determined by the project arborist or Urban Forester to be adequate to support healthy tree growth to maturity based on factors including but not limited to compaction levels, drainage, fertility, pH, and potential contaminants, the existing soils may be used to meet the soil volume requirements.
- ~~c~~b. The assumed soil volume depth for planting will be 3 feet unless otherwise determined by the project arborist or Urban Forester.
- ~~d~~e. A soil volume area of at least 333 square feet must be accessible to each tree when the assumed soil volume depth is 3 feet.
- ~~e~~e. The soil volume areas must be continuous and within a 50-foot radius of the tree to be planted. Continuous soil volumes areas must be at least 3 feet wide for the entire area.

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- ~~f~~e. Trees may share the same soil volume area provided that all spacing requirements of this subsection are met.
- g. Soil contaminants (i.e., soil containing construction debris, concrete, garbage, or any other substance that renders the soil inadequate to support healthy tree growth to maturity as determined by the Urban Forester) are prohibited from the soil volume areas.

2. Prescriptive Path for Soil Volume

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

(1) Protection fencing:

- (a) Fencing consisting of a minimum 4-foot~~-~~high metal chain link or no-climb horse fence, secured with 6-foot metal posts established at the edge of the soil volume area on the development site. Existing secured fencing at least 3.5 feet tall can serve as the required protective fencing.
- (b) When a soil volume area extends beyond the development site, protection fencing is not required to extend beyond the development site. Existing or new secured fencing at least 3.5 feet tall can serve as the required protective fencing.
- (c) Signage designating the protection zone and penalties for violations must be secured in a prominent location on each protection fence.

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

- (a) Steel plates placed over the soil volume area~~-~~ or
- (b) A 12-inch layer of coarse wood chips over geotextile fabric continuously maintained over the soil volume area~~-~~ or
- (c) A 6-inch layer of crushed gravel over geotextile fabric continuously maintained over the soil volume area.

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

~~3~~2. Performance Path for Soil Volume:

- a. When the standards of the prescriptive path for soil volume cannot be met; or ~~if~~ the existing soils at the site and abutting sites are determined by the Urban Forester to be inadequate to support healthy tree growth to maturity based on factors such as compaction levels, drainage, fertility, pH, and potential contamination prior to or resulting from development, a performance path soil volume plan is required.

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- b. Soils in areas of construction access that do not receive compaction prevention treatment and soils in areas of grading, paving, and construction are considered inadequate for tree growth unless a performance path soil volume plan is provided.
- ~~c. The performance path soil volume plan is required to demonstrate the methods that will be used to provide at least 1,000 cubic feet of soil volume with the capacity to support healthy growth to maturity per tree to be planted.~~
- ~~d. The soil volume areas must be continuous and within a 50-foot radius of the tree to be planted. Continuous soil volumes must be at least 3 feet wide for the entire area.~~
- ~~e. Trees may share the same soil volume area provided that all spacing requirements are met.~~
- cf. The following ~~items~~ methods may be addressed in performance path soil volume plans but are dependent on specific site conditions and should be submitted by the applicant on a project basis in coordination with other professionals such as civil and geotechnical engineers, landscape architects, and soil scientists as needed:
 - (1) Compaction Reduction
 - (a) tilling
 - (b) backhoe turning
 - (c) subsoiling
 - (2) Soil Amendments
 - (a) organic amendments
 - (b) mineral amendments
 - (c) biological amendments
 - (d) chemical amendments
 - (3) Topsoil Replacement (when soil contamination or soil removal occurs)
 - (4) Soil Under Pavement
 - (a) structural soil cells
 - (b) structural tree soils
 - (c) soil vaults
 - (d) soils under suspended pavement

~~H.~~ Submittal Application Requirements

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~~For applications for construction of a new residential dwelling unit that does not result in an expansion of building footprint (Subsection 16.32.042.A.3), applicants must demonstrate compliance with the applicable provisions of Subsection 16.32.042.F by submitting a report including elements outlined in Subsection 16.32.042.H.2. For applications for land subdivision (Subsection 16.32.042.A.1) or construction of a new residential dwelling unit that results in an expansion of the building footprint (Subsection 16.32.042.2) For all applicable developments, applications must be submitted by an ISA eCertified aArborist that is also has the ISA #Tree #Risk eAssessment aQualified education (TRAQ). Applications must demonstrate compliance with the applicable provisions of Subsections 16.32.042.B through HG. Other professionals such as engineers, landscape architects, soil scientists, and surveyors may assist the project arborist as needed in preparing the required information, but the arborist must organize, review, and approve the final product. The minimum submittal requirements include an inventory of existing trees, tree preservation plan (if applicable), tree canopy-planting plan (if applicable), and arborist report, and payment of review fee as established in the Consolidated Fee Schedule.~~

~~with #The following elements establishes requirements for the various submittal components:~~

1. Tree Inventory ~~Requirements~~

- a. ~~Survey the locations of all trees~~ Trees with any of the following characteristics must be inventoried:
 - ~~(1) at least 6-inch DBH or greater;~~
 - ~~(2) all trees at least 2-inch DBH or greater that are listed on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List; and/or~~
 - ~~(3) trees less than 6-inch DBH as specified for species listed on the City of Milwaukie #Rare or #Threatened #Tree #List; and/or~~
 - ~~(4) less than 6-inch DBH that will be preserved and included in the calculation of required canopy.-~~
- b. The location of all trees meeting the requirements of 16.32.042.I.1.a. must be identified, including:
 - ~~(1) Trees that must be surveyed include those that are eOn-site trees;#~~
 - ~~(2) Trees~~ within abutting public rights-of-way;# and
 - ~~(3) Trees~~ on abutting sites and in the abutting right-of-way with root protection zones that extend into the site.

The locations and information for trees on abutting sites may be estimated.

- ~~cb.~~ Number each inventoried tree for identification at the site and on the plans.
- ~~de.~~ Identify the common name and scientific name of each inventoried tree.

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- ed. Measure the DBH of each inventoried tree in inches according to accepted ISA standards.
 - fe. Measure the approximate average crown radius of each inventoried tree in feet.
 - gf. Provide the crown area of each inventoried tree using the following formula:
(crown radius)² x π .
 - hg. Assess the health condition of each inventoried tree using the following categories:

 - (1) Good (no significant health issues)
 - (2) Fair (moderate health issues but likely viable for the foreseeable future)
 - (3) Poor (significant health issues and likely in decline)
 - (4) Very Poor or Dead (in severe decline or dead)
 - ih. Identify whether the inventoried tree is on the Milwaukie Rare or Threatened Tree List.
 - ij. Identify whether the inventoried tree is proposed for removal or ~~retained~~retention.
 - jk. Organize the tree inventory information in a table or other format approved in writing by the Urban Forester.
2. Tree Preservation Plan ~~Requirements~~
- a. Provide a site plan drawn to scale.
 - b. Include the existing tree locations and corresponding tree numbers from the tree inventory and identify which trees are subject to potential impacts identified in 16.32.042.I.2.d.
 - c. Identify rare or threatened trees as described in the ~~City of~~ Milwaukie ~~r~~Rare or ~~t~~Threatened ~~T~~Tree ~~L~~List.
 - d. Identify the following site disturbances to scale:
 - (1) Demolition
 - (2) Tree removal
 - (3) Staging, storage, and construction access
 - (4) Grading and filling
 - (5) Paving
 - (6) Construction of structures, foundations, and walls
 - (7) Utility construction
 - (8) Trenching and boring
 - (9) Excavation

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- (10) Any other demolition or construction activities that could result in ground disturbances and/or tree damage
- e. Locate tree and soil protection fencing to scale.
 - f. Locate soil compaction prevention methods to scale.
 - g. Identify prescriptive/performance path tree protection and soil volume areas.
 - h. Include tree and soil volume protection specifications from the arborist report on the plans including a detailed ~~ed and~~ description of tree and soil volume protection fencing and signage.
 - i. The elements of the tree preservation plan may be included on multiple plan sheets for clarity.
 - j. The final approved set of construction drawings must include the tree preservation plan to ensure contractors, inspectors, and other professionals have access to the information.
3. Tree Planting Plan
- a. Provide a site plan drawn to scale.
 - b. Include the existing trees to be retained and their crown areas to scale.
 - c. Include the trees to be planted and their mature crown areas to scale based on the ~~City of~~ Milwaukie Mature Tree Canopy Crown Area List.
 - d. Identify the soil volume areas for each tree to be planted to scale.
 - e. For prescriptive/performance path soil volume areas, identify the methods and specifications as applicable for:
 - (1) Protection fencing (including signage details);
 - ~~(2)~~ Compaction Reduction;
 - ~~(23)~~ Soil Amendments;
 - ~~(34)~~ Topsoil Replacement; and/or
 - ~~(45)~~ Soil Under Pavement
 - f. ~~Include a diagram depicting the tree planting that is should demonstrate~~ consistency with ISA ~~Best Management Practices~~.
 - ~~g. The minimum size of planted trees is 1.5-inch caliper for broadleaf trees and 5-foot tall for conifers unless otherwise approved by the Urban Forester. Nursery stock must be in good health with the size and quality consistent with ISA best management practices and ANSI Z60.1 standards.~~
 - ~~h. The species selection and spacing of trees to be planted must be such that it provides for the eventual mature size of the trees. Soil type, soil conditions and other site constraints shall be considered when selecting species for planting. Final site plans must be approved by the Urban Forester.~~

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- ~~i. Root barriers must be installed according to the manufacturer's specifications when a tree is planted within 5 feet of pavement or an underground utility box unless otherwise approved by the Urban Forester.~~
- ~~j. Where there are overhead high voltage utility lines, the tree species selected must be of a type that, at full maturity, will not require pruning to avoid interference with the lines.~~
- lg. The elements of the tree canopy planting plan may be included on multiple plan sheets for clarity.
- mh. The final approved set of construction drawings must include the tree canopy plan to ensure contractors, inspectors, and other professionals have access to the information.

4. Arborist Report

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

~~I. Non-Development Tree Permit Requirements~~ 16.32.044 NON-DEVELOPMENT PRIVATE TREE REMOVAL IN RESIDENTIAL ZONES

The City encourages retention of healthy private trees where practical alternatives to removal exist, and where those alternatives meet the owner's objectives for reasonable use and enjoyment of the property. Where there is discretion in a decision about non-development private tree removal, various factors are considered to ensure that

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significant adverse impacts are avoided or mitigated, weighing the broader economic, ecological, and community concerns.

A.1. Applicability

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

- 1.a. Trees that are at least 6-inch DBH.
- 2.b. Trees that are less than 6-inch DBH as specified on the City of Milwaukie Rare or Ihreatened Itree Ilist.
- 3.c. Trees that were planted to meet any requirements in Subsections 16.32.042 ~~and 16.32.044.~~

B. Permit Exemptions

Tree removal Permits are not required in residential zones when:

1. Itree removal is approved with development listed as provided in Subsection 16.32.042.A.
2. ~~Permits are also not required in residential zones for~~ Ihe removal of trees that are grown for commercial agricultural or horticultural purposes including fruit trees, nut trees, or holiday trees.

C. Applications

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

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

D2. Type A1 Tree Removal Permit

Type A1 tree removal permits are technical determinations regarding the facts of a particular request and the application of City standards to ensure that work is performed in accordance with ISA ~~Best~~ Management ~~Practices~~ to protect trees, the public, and public infrastructure, and to ensure appropriate tree replacement. Type A1 permits are reviewed administratively by the Urban Forester without public notice, and the decision may be appealed to the City Manager by the applicant.

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1. Application Requirements

a. Applications for a Type A+ tree removal permit must meet the submittal requirements of Subsection 16.32.044.C.

b. Additional information may also be required.

- 1) If the Urban Forester requires additional information to review an application, the Urban Forester will send a notice to the applicant requesting the additional information.
- 2) The applicant will have a maximum of 30 days from the date of the Urban Forester's notice to submit the additional information.
- 3) If the additional information is not received by the Urban Forester within 30 days from the date of the Urban Forester's notice, the application will be voided on the 31st day, with no refund of the filing fee.

~~The following approval standards will be applied to type 1 tree removal permits by the Urban Forester:~~

2a. Approval StandardsCriteria

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

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

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

(a1) The tree is dead or dying and cannot be saved as determined by an ISA Certified Arborist in accordance with ISA standards.

(2) The tree has sustained physical damage that will cause it to die or enter an advanced state of decline. The City may require additional documentation from an ISA Certified Arborist to demonstrate that this criterion is met.

(b3) The tree is having an adverse effect on adjacent infrastructure or buildings that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.

~~(c) The tree has sustained physical damage that will cause it to die or enter an advanced state of decline. The City may require additional documentation from an ISA Certified Arborist to demonstrate that this criterion is met.~~

(d4) The tree poses an unreasonable risk to the occupants of the property, the adjacent property, or the general public, as determined by an ISA Certified Arborist that is Tree Risk Assessment Qualified (TRAQ) in accordance with current ISA ~~tree risk-Risk assessment-Assessment standards~~Best Management Practices.

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- (~~e5~~) The tree is on the Oregon State Noxious Weed List or the Milwaukie Invasive Tree List.
- (~~f6~~) The tree is part of a stormwater management system and has grown too large to remain an effective part of the system.
- (~~g7~~) The tree location conflicts with areas of public street widening, construction, or extension as shown in the Transportation System Plan and there is no practicable alternative to removing the tree.
- (~~h8~~) Tree removal is required for the purposes of a building or land use permit, utility or infrastructure installation, or utility or infrastructure repair and there is no practicable alternative to removing the tree.
- (~~i9~~) The tree is recommended for removal by a designated fire marshal for Clackamas County because it presents a significant fire risk to habitable structures or limits emergency access for rescue workers, and the risk or access issue cannot be abated through pruning or other means that would result in tree retention.
- (~~j10~~) An ISA ~~eC~~ertified ~~aA~~rborist determines that thinning of interior trees within a stand of trees is necessary for overall stand health, the thinning will result in no less than eighty percent (80%) canopy cover at maturity for the area to be thinned, and that thinning of non-native trees is maximized prior to thinning of native trees.
- (~~k11~~) Healthy trees. One (1) healthy tree may be removed per tax lot per 12-month period if the tree ~~meets the following:~~
 - ~~i. The tree~~ is less than 12 inches in diameter at breast height; and is not
 - ~~ii. None of the trees are~~ required to be preserved by a condition of a land use review, a provision of ~~this eC~~hapter 16.32 or Title 19, or as part of a required stormwater facility.

3.3 ~~3~~ Mitigation Requirements

Unless removed for thinning purposes (Subsection ~~16.32.042.1.2.a.j~~ 16.32.044.D.2.b(10)) or invasive species status (Subsection ~~16.32.042.1.2.a.e~~ 16.32.044.D.2.b(5)), replacement of a removed tree is required as mitigation. ~~The~~ Urban Forester will condition the removal of each healthy tree upon the planting of a replacement tree as follows:

~~a.a~~ The minimum size of replacement trees is 1.5-inch caliper for broadleaf trees and 5-foot tall for conifers unless otherwise approved by the Urban Forester. ~~Nursery stock~~Trees planted must be in good health with the size and quality consistent with ISA ~~bB~~est ~~mM~~anagement ~~pP~~ractices and ANSI Z60.1 standards.

~~b.b~~ Replacement trees must be planted in a manner consistent with ISA ~~bB~~est ~~mM~~anagement ~~pP~~ractices.

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~~c.(c)~~ The replacement tree must substantively replace the function and values of the tree that was removed wherever practicable. For example, a long-lived evergreen native tree that abuts a designated Natural Resources Overlay Zone area (as per Section 19.402) must be replaced with a long-lived evergreen native tree that abuts a designated Natural Resources Overlay Zone area.

~~d.(d)~~ If planting a replacement tree is not practicable, the Urban Forester may allow a tree replacement fee in lieu according to the Master Fee Schedule Consolidated Fee Schedule based on the cost of planting and maintaining a replacement tree for 3 years.

4. Decision by the Urban Forester

a. The Urban Forester's decision will be based on an evaluation of the facts and applicable standards and review criteria in Subsection 16.32.044.D.2.

b. The Urban Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review criteria and standards.

c. Any work done under a permit must be performed in strict accordance with the terms and provisions of this chapter and conditions of approval of the permit.

d. The Urban Forester must notify the applicant of the decision in writing.

e. If no appeal is filed as specified in Subsection 16.32.044.H, the decision of the Urban Forester is final.

E3. Type B2 Tree Removal Permit

A ~~#~~Type B2 tree removal permit may be approved by the Urban Forester if the ~~#~~Type A1 tree removal approval standards cannot be met. Type B2 permits involve the consideration of relevant technical and qualitative factors to prevent risks to public health and safety and to ensure that the impacts of tree removal are mitigated. Type B2 permits are reviewed administratively by the Urban Forester. The ~~#~~Type B2 process is more discretionary than the ~~#~~Type A1 process and may consider a range of options for approving, approving with conditions, or denying a tree removal permit application.

1. Application Requirements

a. Applications for a Type B2 tree removal permit must meet the submittal requirements of Subsection 16.32.044.C.

b. Additional information may also be required.

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

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

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

~~4) Public notice is required if the tree is healthy and larger than 12 inches DBH.~~

2.a. Review and Approval Criteria

~~The City encourages retention of healthy private trees where practical alternatives to removal exist, and where those alternatives meet the owner's objectives for reasonable use and enjoyment of the property. Factors are considered to ensure that significant adverse impacts are avoided or mitigated, weighing the broader economic, ecological, and community concerns. These decisions are fact-specific and are made on a case-by-case basis.~~ The City will not issue a ~~+~~ Type B2 permit for the removal of a healthy, functioning tree without a demonstration by the applicant that extraordinary circumstances exist. Maintenance or the replacement of pavement, removal of tree litter, or other minor inconveniences ~~do~~ may or may not constitute extraordinary circumstances.

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

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

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

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

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

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

~~(a1)~~ The age, size, form, species, general condition, pruning history and any unique qualities or attributes of the trees;

~~(b2)~~ The cumulative impacts of current and prior tree removals in the area; and

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(e3) When the tree is associated with a grove, whether removal of the tree will have a significant adverse impact on the viability of other trees or make other trees considerably more vulnerable to windthrow.

3.b. Approval Standards Mitigation Requirements

a. Replacement of a removed tree is usually required as mitigation.

A.The Urban Forester will at a minimum condition the removal of a tree based on Subsection ~~16.32.042.1.2.a.3~~ 16.32.044.D.3 (planting standards and exceptions for thinned or invasive-species trees). In addition, and the Urban Forester will condition the removal of each tree upon the planting of additional replacement tree(s) as outlined in Table ~~16.32.042.1.3.b~~ 16.32.044.E.3:

Table ~~16.32.042.1.3.b~~ 16.32.044.E.3 ~~Type B2 Permit~~ Required Replacement Trees ~~Requirements for~~ Type B2 Permits

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

b. In addition, mitigation fees must be provided to the Tree Fund for each healthy private tree removed in conjunction with an approved Type B permit. See the Consolidated Fee Schedule for details.

4. Applications

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

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

4. Decision by the Urban Forester

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

5. Appeals

The applicant may appeal the Urban Forester's decision.

a. Appeals must be:

- 1) Filed with the Urban Forester on forms prescribed by the City;
- 2) Filed within 14 days from the date of the Urban Forester's decision; and
- 3) Specifically identify how the Urban Forester erred in applying the standards or review criteria.

b. Appeals are heard by the City Manager.

- 1) The City Manager will consider the application against the applicable standards or review criteria, taking into consideration information provided by the applicant and City staff.
- 2) The City Manager may affirm or reverse the Urban Forester's decision or remand the decision to the Urban Forester to determine appropriate mitigation actions.
- 3) The appeal decision of the City Manager is final and may not be appealed to another review body within the City.

~~5. Application Procedures Type 1 Tree Removal Permit~~

~~Type 1 permits are technical determinations regarding the facts of a particular request, and applications of city standards to ensure that work is performed in accordance with best management practices to protect trees, the public, or public infrastructure, and to ensure appropriate tree replacement. Type 1 permits are reviewed administratively by the Urban Forester without public notice, and the decision may be appealed to the City Manager by the applicant.~~

~~a. Application Procedures Type 1 Tree Removal Permit~~

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~~(1) Applications for a Type 1 Tree Removal Permit must meet the requirements of Subsection 16.32.042.1.4.~~

~~(2) Additional information required:~~

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

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

~~(c) If the additional information is not received by the Urban Forester within 30 days from the date of the Urban Forester's notice, the application will be voided on the 31st day. The City will not refund the filing fee.~~

~~b. Decision by the Urban Forester~~

~~(1) The Urban Forester's decision will be based on an evaluation of the facts and applicable standards and review criteria in Subsection 16.32.042.1.2.a.~~

~~(2) The Urban Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review criteria and standards.~~

~~(3) Any work done under a permit must be performed in strict accordance with the terms and provisions of this chapter and conditions of approval of the permit.~~

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

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

~~6. Application Procedures Type 2 Tree Removal Permit~~

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

~~a. Application~~

~~(1) Generally. Applications for a Type 2 Tree Removal Permit must meet the requirements of Section 16.32.042.1.4.~~

~~(2) Additional information required:~~

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

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

~~(c) If the additional information is not received by the Urban Forester within 30 days from the date of the Urban Forester's notice, the application will be voided on the 31st day. The City will not refund the filing fee.~~

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

~~b. Decision by the Urban Forester~~

~~(1) The Urban Forester's decision must be based on an evaluation of the facts and applicable standards and review factors in Subsection 16.32.042.1.3.~~

~~(2) The Urban Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review factors and standards.~~

~~(3) Any work done under a permit must be performed in strict accordance with the terms and provisions of this chapter and conditions of approval of the permit.~~

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

~~(5) If no appeal is filed as specified in Subsection 16.32.042.1.6.c below, the decision of the Urban Forester is final.~~

~~c. Appeal~~

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

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

~~(2) Filed within 14 days from the date of the Urban Forester's decision; and~~

~~(3) Specifically identify how the Urban Forester erred in applying the standards or review criteria.~~

~~(4) Appeals are heard by the City Manager.~~

~~(5) The City Manager will consider the application against the applicable standards or review criteria, taking into consideration information provided by the applicant and City staff.~~

~~(6) The City Manager may affirm or reverse the Urban Forester's decision or remand the decision to the Urban Forester to determine appropriate mitigation.~~

~~(7) The appeal decision of the City Manager is final and may not be appealed to another review body within the City.~~

Article IV Miscellaneous Provisions

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16.32.080 PROGRAMMATIC PERMITS

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

A. Applicability

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

B. Application Requirements

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

C. Permit

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

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

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

8. Tree Size Limits

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- a. The programmatic permit will not allow the removal of trees 6-inch² or more in diameter at breast height, except as provided in this section.
- b. If an applicant requests removal of a healthy tree 6-inch ² or more in diameter at breast height at time of application or during the period in which the programmatic permit is in effect, an opportunity for public comment will be provided in accordance with Subsection 16.32.026 B.2
- c. For any request, the Urban Forester may further limit allowed tree removal in order to meet the review criteria in Subsection 16.32.028F.

9. Tree Work

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

D. Completeness

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

E. Notice of Complete Application

When the Urban Forester determines that the application is complete, the Urban Forester must provide written notice that the application is complete to the applicant and the Tree Board. The notice must provide instructions for how to obtain additional information about the application, comment on the application, and request notification of the Urban Forester's decision.

F. Review Criteria

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

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

G. Decision

The Urban Forester must issue the permit, issue the permit with conditions of approval, or deny the permit within 120 days of determining the application is complete. The Urban Forester's decision will be final and, if approved, the permit

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will be valid for a period of up to two years. An applicant may request an amendment to an unexpired permit if the conditions and circumstances have changed. The Urban Forester's decision will be based on an evaluation of the application against the applicable review criteria in Subsection 16.32.028 F.

H. Revocation

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

16.32.082 COORDINATION WITH OTHER REGULATIONS

A. ~~16.32.020 PRUNING, CORNER CLEARANCE~~ Street, Sidewalk, Traffic Control Devices, and Vision Clearance

Subject to enforcement under ~~Section Chapters 12.12.010 and 12.24,~~ property owners for public trees and private trees, and adjoining property owners for street trees, must not allow ~~any tree, shrub, or other woody vegetation~~ any tree to overhanging any street, sidewalk ~~or right-of-way~~ or obstruct traffic control devices or inhibit the safe use at intersections within the City must be maintained by the owner to ensure that no vegetation obstructs the right-of-way.

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

Subject to enforcement under Subsection 8.04.110B,

16.32.021 DEAD OR DISEASED TREE REMOVAL ON PRIVATE LAND

If the City may require the removal of any tree, shrub, or other woody vegetation or tree limb that is dead, decaying, dangerous, diseased, or infested and that poses a significant risk to the public, adjoining property ~~or the urban forest as determined by the Urban Forester.~~

~~The City or its agents will notify the owners of such trees in writing.~~

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

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

If the ~~owner~~ responsible party does not remove the dead, decaying, dangerous, diseased, or infested ~~vegetation~~ tree or tree limb ~~within the time period specified in the notice or extension granted in writing by the Urban Forester,~~ the vegetation will be declared a nuisance and will be subject to further enforcement pursuant to ~~MMC Chapter 8.04. the City will have the right to remove the dead, diseased, or infested vegetation and charge the cost of removal to the owner pursuant to MMC Chapter 8.04.~~

In cases where the owner demonstrates extreme financial hardship, the City Manager may grant a cost waiver in accordance with ~~Section 16.32.0382.~~

C. ~~Business Tax or Metro License Required~~

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

D. Zoning Code

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

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

E. Tree Board

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

Article V Enforcement and Penalties

16.32.100 J. Enforcement~~ENFORCEMENT~~

- ~~1. City Authority: The City has the ultimate authority to:~~
 - ~~a. Interpret the provisions of this section and determine whether code criteria have been met.~~
 - ~~b. Establish conditions of permit and land use approval to ensure this section is properly implemented.~~
 - ~~c. Create rules and procedures as needed to implement this section. Rules and procedures may include but are not limited to:~~
 - ~~(1) City of Milwaukie tree lists.~~
 - ~~(2) Tree protection standards, specifications, and procedures.~~
 - ~~(3) Tree planting standards, specifications, and procedures.~~
 - ~~(4) Tree establishment and maintenance standards, specifications, and procedures.~~
 - ~~(5) Performance bonding, letters of credit, and cash assurances to help ensure proper tree protection, planting, and establishment.~~
 - ~~(6) Tree protection inspections and oversight.~~
 - ~~(7) Soil protection inspections and oversight.~~
 - ~~(8) Performance path tree protection standards and specifications.~~
 - ~~(9) Performance path soil volume standards and specifications.~~

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

A. Interpretations

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

B. Violations

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

1. Removal or Topping. Removal or topping of a tree regulated by Chapter 16.32 without an approved permit from the City.
2. Removal – Approved Permit. ~~R~~removal of a tree in violation of an approved permit.
3. Damaging a Tree. Willfully or negligently damaging a tree regulated by Chapter 16.32.
- 4~~d~~. Failure to Comply with Permit. Failure to meet a condition of an approved permit.
5. Major Pruning without a Permit. Major pruning of a street tree or public tree without an approved permit from the City.

~~16.32.023 INTERFERENCE WITH CITY~~

6. Interference with the City. No person will prevent, delay, or interfere with the Urban Forester or designee while they are engaged in work activities including, but not limited to inspection of trees subject to the provisions of this chapter, planting, cultivating, mulching, pruning, spraying, or removing any street tree, public tree, or private tree.
7. Removal of Stump. Removal of the stump of a tree removed without a tree removal permit.
8. Root Protection Zone Disturbance. Willfully or negligently do the following in the Root Protection Zone (RPZ): unauthorized ground disturbance or construction activity including vehicle or equipment access (but excluding access on existing streets or driveways), storage of equipment or materials including soil, temporary or permanent stockpiling, proposed buildings, impervious surfaces, underground utilities, excavation or fill, trenching or other work activities.

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9. Soil Contamination. Willfully or negligently allow soil contaminants (i.e., soil containing construction debris, concrete, garbage, or any other substance that renders the soil inadequate to support healthy tree growth to maturity as determined by the Urban Forester) in the soil volume area.

C2. Penalties

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

1a. A person who ~~removes a tree regulated by this section without first obtaining the necessary permit from the City, removes a tree in violation of an approved permit, or violates Chapter 16.32 a condition of an approved permit will, upon conviction thereof, be punished by a fine not to exceed must pay a fine in an~~ amount established in the ~~Master Fee Schedule~~Consolidated Fee Schedule.

2b. Topping, pruning, or otherwise inflicting willful and negligent damage to a tree crown or roots in a manner that is inconsistent with ISA ~~b~~Best mManagement ~~p~~Practices:

a.(1) ~~A fine U~~p to the amount established in the ~~Master Fee Schedule~~Consolidated Fee Schedule or up to the appraised loss in value of the illegally topped or pruned tree as determined by an ISA ~~e~~Certified ~~a~~Arborist plus the arborist's reasonable appraisal fee.;

b.(2) Restoration of the tree crown, trunk, or root system as prescribed by an ISA ~~e~~Certified ~~a~~Arborist and approved by the Urban Forester.

3c. Tree protection zone violations:

a.(1) ~~A fine U~~p to the amount established in the ~~Master Fee Schedule~~Consolidated Fee Schedule.

b.(2) Restoration of the tree protection zone as prescribed by an ISA ~~e~~Certified ~~a~~Arborist and approved by the Urban Forester.

4d. ~~Evidence of Violation~~General Penalty

a.(1) ~~If a tree is removed without a type 1 or 2 tree removal permit, a violation will be determined by measuring the stump. A stump that is eight (8) caliper inches or more in diameter will be considered prima facie evidence of a violation of this chapter. A person violating any of the provisions of this chapter must will, upon conviction thereof, be punished by a fine not to exceed one thousand dollars (\$1,000.00), if there is not a corresponding fine in the Consolidated Fee Schedule.~~

b. ~~Each day's violation of a provision of this chapter constitutes a separate offense.~~

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

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~~(3) — Proof of violation of this chapter will be deemed prima facie evidence that such violation is that of the owner of the property upon which the violation was committed.~~

CHAPTER 16.32 TREE CODE

Article I General Provisions

16.32.005 PURPOSE

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

This code is designed to:

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

16.32.010 DEFINITIONS

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

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

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

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

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“Caliper” is the trunk diameter for nursery stock trees measured 6 inches from the soil line; if caliper is greater than 4 inches, the caliper measurement is taken at 12 inches from the soil line.

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

“City” means the City of Milwaukie.

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

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

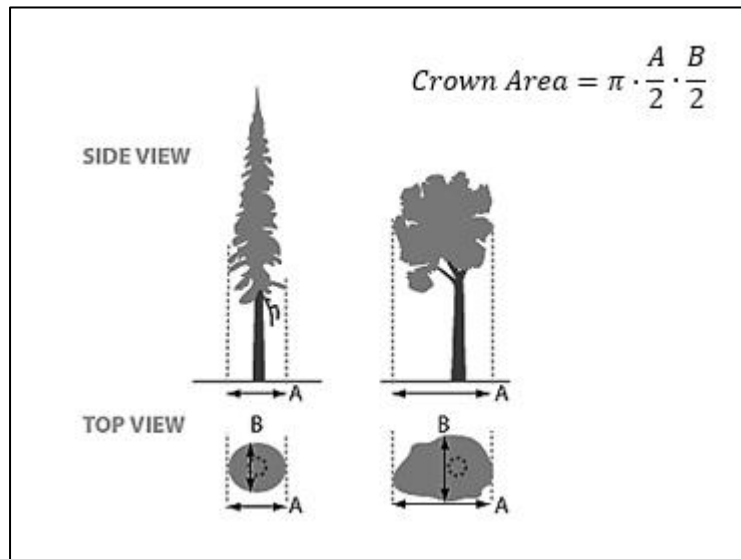
“Consolidated Fee Schedule” is the schedule of City fees and charges adopted by City Council for the services provided by the City.

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

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

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

Figure 16.32.010-1 – Measuring Crown Area



“Cutting” means the felling or removal of a tree, or any procedure that naturally results in the death or substantial destruction of a tree. Cutting does not include normal trimming or pruning but does include topping of trees.

“Damaged tree” means a tree that is injured or knocked down by human activity to the extent that mortality or serious deterioration is likely to occur.

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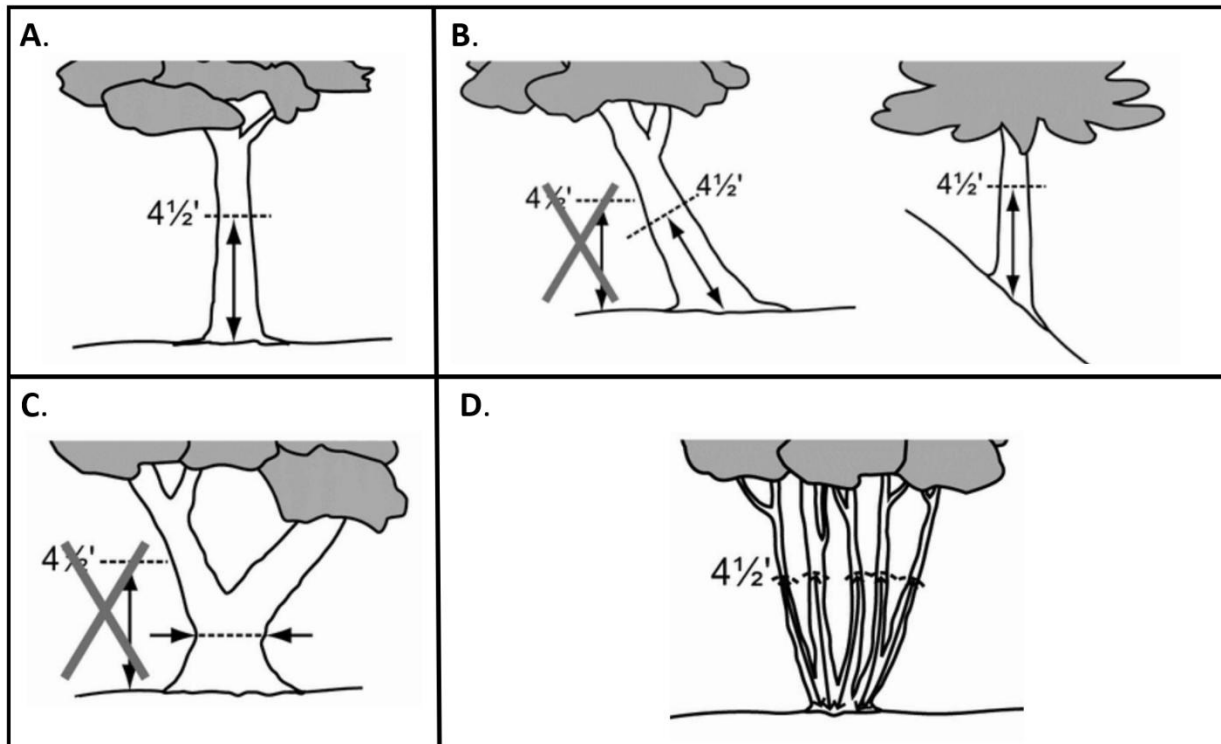
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“DBH” means the diameter at breast height.

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

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

Figure 16.32.010-2 – Measuring Diameter at Breast Height



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

“Dying tree” means a tree that is diseased, infested by insects, deteriorating, or rotting, as determined by a professional certified in the appropriate field, and that cannot be

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saved by reasonable treatment or pruning, or a tree that must be removed to prevent the spread of infestation or disease to other trees.

“Hazardous tree” means a tree or tree part that presents a public safety hazard or poses imminent danger to property as determined by an ISA Qualified Tree Risk Assessor, and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

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

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

“ISA” means the International Society of Arboriculture.

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

“Major tree pruning” means the trimming or removal of twenty percent (20%) or more of the live crown, or removal of or injury to roots within a radial distance from the tree of 6 times the tree’s DBH or over twenty-five (25%) of the root protection zone (see Figure 16.32.042.G.1.b) during any 12-month period.

“Minor tree pruning” means the trimming or removal of less than twenty percent (20%) of the live crown, or removal of or injury to roots beyond a radial distance from the tree of 6 times the tree’s DBH or less than twenty-five percent (25%) of the root protection zone (see Figure 16.32.042.G.1.b) during a 12-month period.

“NDA” means Neighborhood District Association.

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

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

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

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

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

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

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

“Right-of-way” means an area that allows for the passage of people or goods. Right-of-way includes passageways such as freeways, pedestrian connections, alleys, and all streets. A right-of-way may be dedicated or deeded to the public for public use and under the control of a public agency, or it may be privately owned. A right-of-way that is not dedicated or deeded to the public is usually in a tract or easement.

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

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

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

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

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

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

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

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

“Tree removal” means the cutting or removal of fifty percent (50%) or more of the crown, trunk, or root system of a plant, the uprooting or severing of the main trunk of the tree, topping, or any act that causes, or may reasonably be expected to cause the tree to die as determined by an ISA Certified Arborist.

“Unhealthy tree” means a tree that is rated by a professional with expertise in the field of forestry or arboriculture as being in poor or very poor/dead health condition using International Society of Arboriculture (ISA) Best Management Practices and the rating system in this Chapter.

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

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

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

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

16.32.012 ADMINISTRATION

A. City Manager

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

B. City Authority

The City has the ultimate authority to:

1. Interpret the provisions of Chapter 16.32 and determine whether code criteria have been met.
2. Establish conditions of permit and land use approval to ensure Chapter 16.32 is properly implemented.
3. Create rules and procedures as needed to implement Chapter 16.32. Rules and procedures may include but are not limited to:
 - a. City of Milwaukee tree lists;
 - b. Tree protection standards, specifications, and procedures;
 - c. Tree planting standards, specifications, and procedures;
 - d. Tree establishment and maintenance standards, specifications, and procedures;
 - e. Performance bonding, letters of credit, and cash assurances to help ensure proper tree protection, planting, and establishment;
 - f. Tree protection inspections and oversight;
 - g. Soil protection inspections and oversight;
 - h. Performance path tree protection standards and specifications;
 - i. Performance path soil volume standards and specifications; and
 - j. Fees for permit applications, reviews, mitigation, inspections, and violations.

16.32.014 CREATION OF A TREE FUND

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A. Establishment

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

B. Funding Sources

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

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

C. Funding Purposes

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

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

Article II Street Trees and Public Trees

16.32.020 PLANTING STREET TREES AND PUBLIC TREES

A. Species

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

B. Spacing, size, and placement

The spacing, size, and placement of street trees and public trees must be in accordance with Public Works Standards and a permit issued by the City under this section. The City may approve special plantings designed or approved by a landscape architect, or for ecological restoration projects where trees are likely to

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be planted at a much higher density to mimic natural conditions in forest regeneration and account for expected mortality.

C. Permit

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

16.32.026 MAJOR PRUNING OR REMOVAL OF STREET TREES AND PUBLIC TREES

A. Applicability

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

B. Permit Review Process

1. Application

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

2. Public Notice and Permit Meeting

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

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

3. Declaration

The applicant will file a declaration on a form provided by the City stating that notice has been posted and that the vegetation proposed for major pruning or removal has been marked. Once a declaration is filed with the City, the City will provide notice of the application to the appropriate NDA.

C. Review Criteria and Approval Standards

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

1. Review Criteria

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

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

2. Approval Standards

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

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

D. Removal of Stumps

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

E. Performance of Permitted Work

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

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

F. Replanting

The City will require replanting as a condition of permit approval for the major pruning or removal of a street tree or public tree. Replanting must follow the tree planting requirements outlined in the Public Works Standards.

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

16.32.028 EMERGENCY REMOVAL OF HAZARDOUS STREET TREES OR PUBLIC TREES

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

16.32.030 EXEMPTIONS

The following exemptions apply:

A. Permit Exemptions

1. Maintenance

A permit for a street tree or public tree is not required for regular maintenance or minor tree pruning that is less than twenty percent (20%) of the crown or disturbance of roots within a radial distance from the tree of 6 times the tree's

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DBH or less than twenty-five percent (25%) of the root protection zone (see Figure 16.32.042.G.1.b) during any 12-month period.

2. Removal

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

B. Public Notice Exemptions

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

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

C. Removal Fee Exemptions

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

1. Public Infrastructure Improvements

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

2. Private Utility Services

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

3. Hazard to Dwelling Units

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

4. Noxious or Invasive Trees

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

D. Topping Exemptions

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

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

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

E. Replanting Exemptions

The replanting requirement in Subsection 16.32.026.F is not applicable when the permitted tree that was removed is a species on the Oregon State Noxious Weeds List or Milwaukie Invasive Tree List.

16.32.032 LOW INCOME ASSISTANCE

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

Article III Private Trees in Residential Zones

16.32.042 TREE PRESERVATION AND PLANTING WITH DEVELOPMENT IN RESIDENTIAL ZONES

A. Applicability

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

B. Tree Preservation Standards

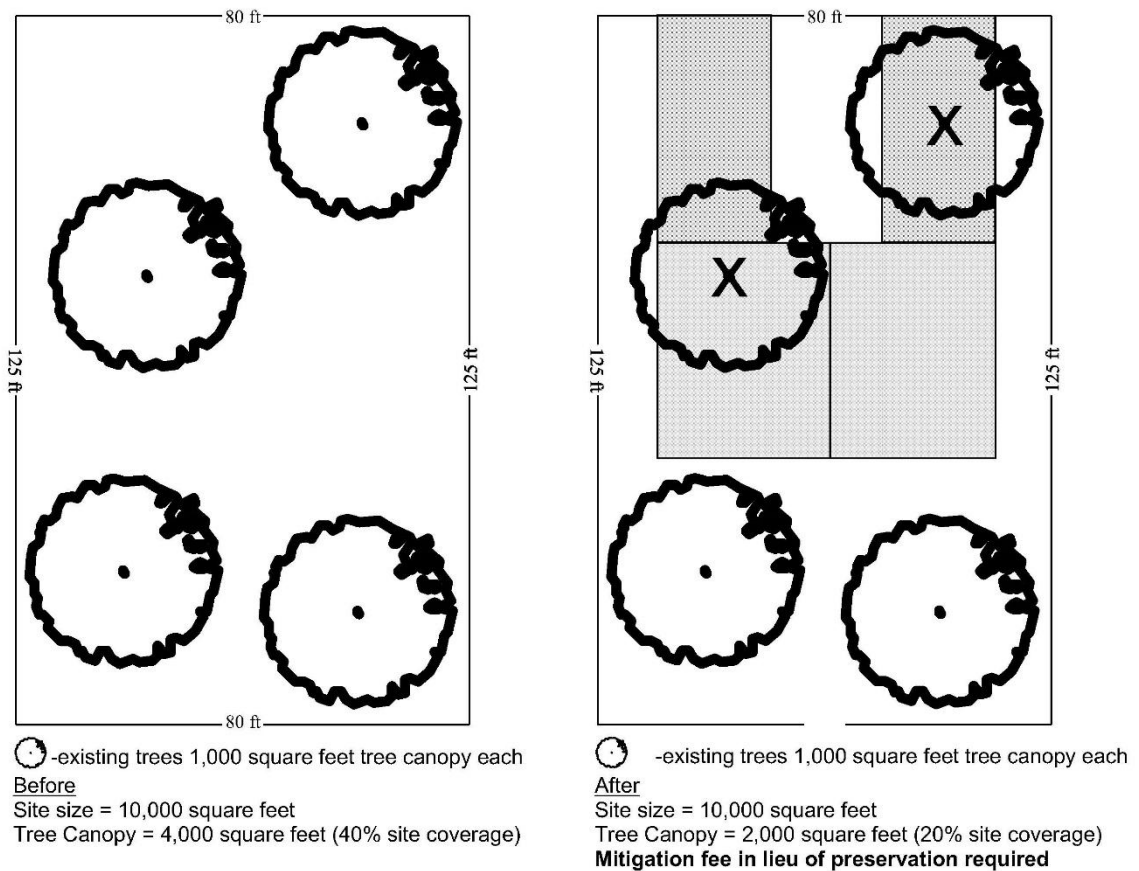
1. Healthy trees at least 6-inch DBH are required to be preserved except when their removal is required for construction, demolition, grading, utilities, and other development impacts.
2. Preservation of at least thirty percent (30%) on-site healthy private tree canopy coverage is required unless mitigation is provided according to Subsection 16.32.042.E. See Figures 16.32.042.B.2-a and B.2-b for examples of when mitigation is or is not required. (See Subsection 16.32.042.D.3 for information on calculating tree canopy coverage.)
3. For development sites with thirty percent (30%) or less on-site healthy private tree canopy coverage, the removal of healthy private tree canopy is not allowed unless mitigation is provided according to Subsection 16.32.042.E.

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4. Trees listed on the Milwaukie Rare or Threatened Tree List must be prioritized for preservation; if removed, healthy trees from this list will incur an additional fee as listed on the Consolidated Fee Schedule.
5. Unhealthy trees and trees species on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List are not required to be preserved in conjunction with applicable development as established in Subsection 16.32.042.A.
6. The applicant must provide a performance bond for existing trees that are preserved for purposes of addressing the thirty percent (30%) canopy coverage standard, to ensure their survival for such period of time as identified in the Consolidated Fee Schedule. Onsite trees may be exempt from the performance bond requirements if the Urban Forester or an ISA Certified Arborist determine that construction activities do not present a significant impact to tree health. Existing trees used for canopy credit do not qualify for removal based on the criteria outlined in Subsection 16.32.044 D.2.(11).

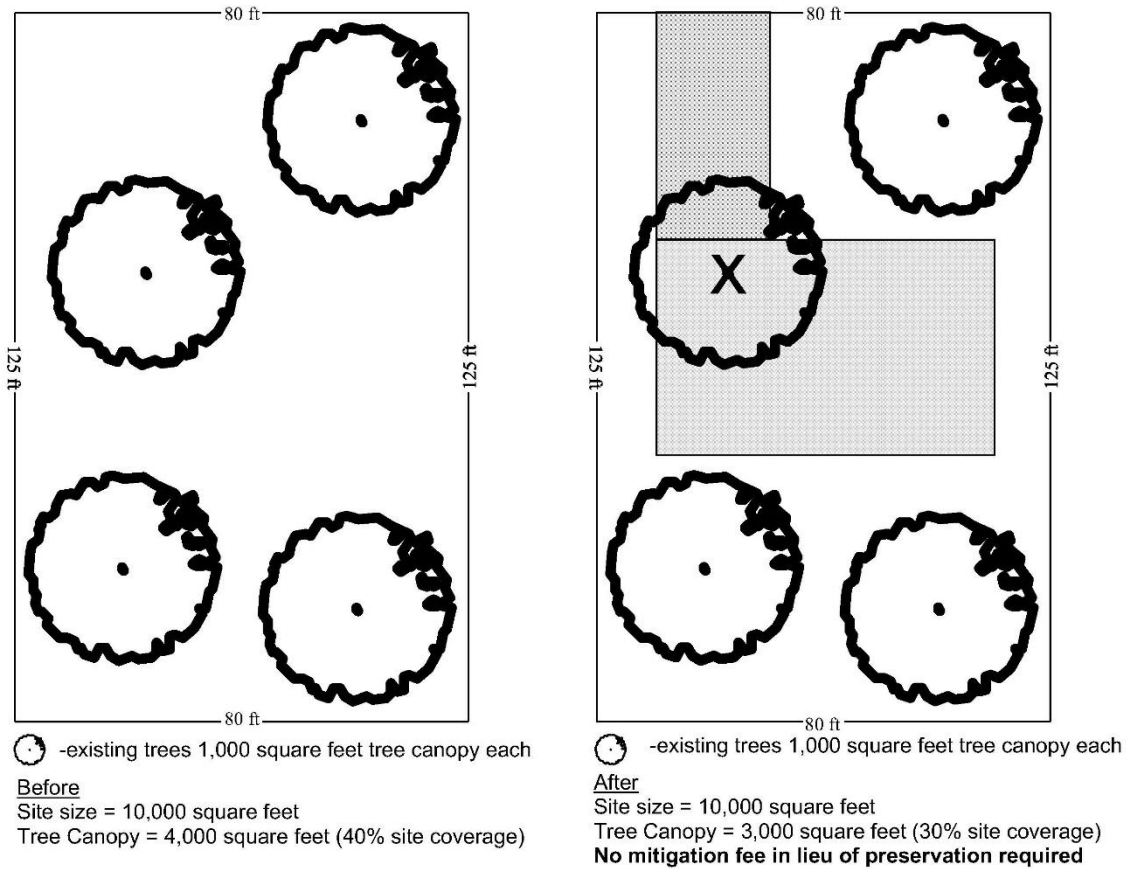
Figure 16.32.042.B.2-a – Tree removal with mitigation



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Figure 16.32.042.B.2-b – Tree removal without mitigation



C. Tree Planting Standards

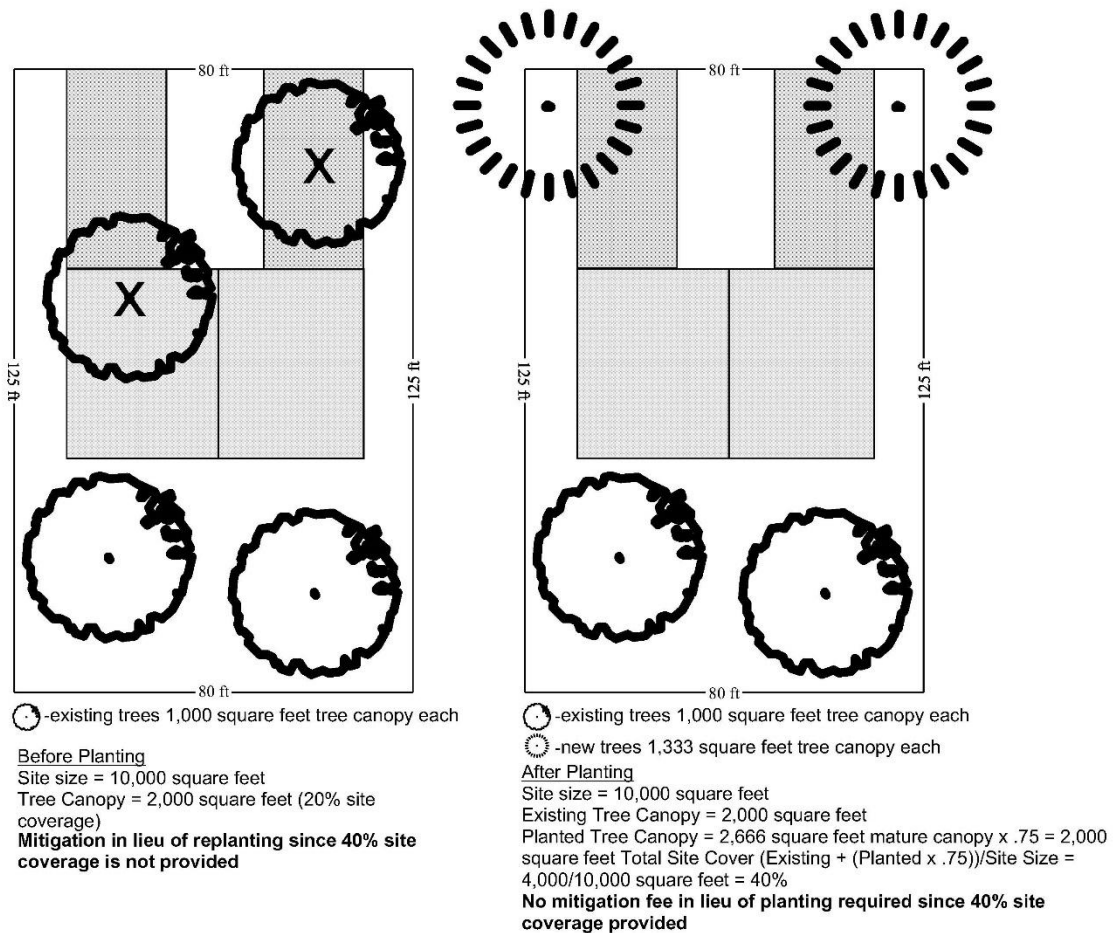
1. At least forty percent (40%) tree canopy is required for a development site from existing healthy trees or new tree plantings unless mitigation is provided according to Subsection 16.32.042.E. See Figure 16.32.042.C.1 for an example of tree planting where mitigation is not required.
2. The minimum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

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5. Where there are overhead high voltage utility lines, the tree species selected must be of a type that, at full maturity, will not require pruning to avoid interference with the lines.
6. Newly planted trees must survive a minimum number of years beyond the date of planting, with a performance bond to ensure that each new tree is replaced if it does not survive through the minimum period. See the Consolidated Fee Schedule for details. All trees planted for canopy credit would not qualify for removal based on the criteria outlined in 16.32.044 D.2.(11).

Figure 16.32.042.C.1 – Tree planting without mitigation



D. Tree Canopy Calculations and Credits

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

1. On-Site Trees

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

2. Street Trees

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

3. Interpretations

- a. When the trunk of a tree crosses a property line at ground level it is considered an on-site tree; except that when the trunk crosses a public right-of-way line at ground level, it is considered a street tree for the purposes of these tree planting standards.
- b. Public right-of-way will be considered off-site for the purposes of these planting standard calculations.
- c. Tree species on the Oregon State Noxious Weed List or Milwaukie Invasive Tree List are not to be included in the total canopy calculations.
- d. Trees of any species that are less than 6-inches DBH are not to be included in the total canopy calculations unless a bond is provided
- e. The Milwaukie Mature Tree Crown Area Reference List is the primary resource for determining the estimated tree canopy area for various species.

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

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Table 16.32.042.D Eligible Credits for Tree Canopy Requirements

Tree Location	Existing Preserved Trees	Newly Planted Trees
On-Site Trees (Trees located within the tax lot)	100% of existing or future mature crown area, whichever is greater ¹	75% of future mature crown area
Street Trees (Street trees within the adjacent ROW)	50% of existing or future mature crown area, whichever is greater	50% of future mature crown area

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

E. Mitigation Fees

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

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

F. Variance Procedure

An applicant may apply for a variance to the tree preservation and/or tree planting standards. An application for a variance will be heard and decided by the Planning Commission in accordance with the provisions of Section 19.1006 (Type III review) according to Section 19.911. In addition to meeting the Type III variance approval criteria established in Subsection 19.911.4.B, the applicant is required to demonstrate that equivalent or greater environmental benefits are provided as preserving or planting the required tree canopy.

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

1. Use of techniques that minimize hydrological impacts beyond regulatory requirements (examples include porous pavement, green roofs, infiltration planters/rain gardens, flow through planters, LIDA (low impact development approach) swales, vegetated filter strips, vegetated swales, extended dry basins, and constructed water quality wetlands).
2. Use of techniques that minimize reliance on fossil fuels and production of greenhouse gases beyond regulatory requirements through the use of energy efficient building technologies, on-site energy production technologies, and green buildings standards (Section 19.510).

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3. Use of techniques that preserve and enhance wildlife habitat beyond regulatory requirements, including, but not limited to, the use of native plant species in landscape design, restoration of native habitat and preservation of habitat through the use of conservation easements or other protective instruments.
4. Use of techniques that preserve open space for sustainable urban agriculture through the use of conservation easements or other protective instruments at sites that are not compatible with tree canopy preservation or planting.

G. Tree Protection Standards

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

1. Prescriptive Path for Tree Protection

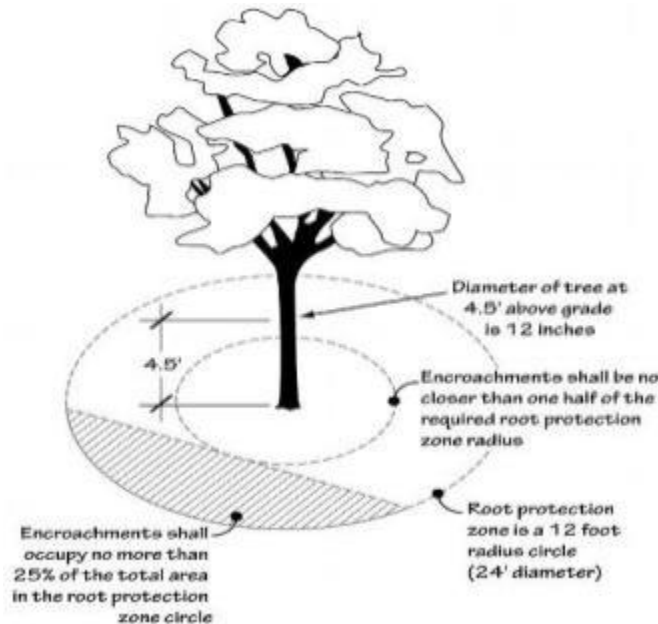
a. Root protection zone

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

b. Encroachments into a root protection zone

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

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



c. Protection fencing

- (1) Protection fencing consisting of a minimum 4-foot-high metal chain link or no-climb horse fence and secured with 6-foot metal posts must be established at the perimeter of the root protection zone and permissible encroachment area on the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve as the required protective fencing. Protection fencing (new or existing) must be sturdy, highly visible, and not easily movable.
- (2) When a root protection zone extends beyond the development site, protection fencing for private trees is not required to extend beyond the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve as the required protective fencing. If prescribed by the Urban Forester, protection fencing for street trees may extend beyond the development site.
- (3) Protection fencing is required to be installed before any ground disturbing activities or construction begins, including clearing and grading, and must remain in place until final inspection.
- (4) Signage designating the protection zone and penalties for violations must be displayed in a prominent location on each protection fence.

d. Prohibitions within the root protection zone

Except as allowed by Subsection 16.32.042.G.1.b, the following are prohibited within the root protection zone of each tree: ground disturbance or construction activity including vehicle or equipment access (but excluding access on existing streets or driveways), storage of equipment or materials

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including soil, temporary or permanent stockpiling, proposed buildings, impervious surfaces, underground utilities, excavation or fill, trenching or other work activities.

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

2. Performance Path for Tree Protection

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

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

H. Soil Volume Standards

1. General Standards

- a. To be eligible for tree canopy credit as outlined in Subsection 16.32.042.D, planted trees must be provided access to at least 1,000 cubic feet of soil volume according to the standards in this subsection. A soil volume plan prepared by an ISA Certified Arborist is required and must demonstrate that at least 1,000 cubic feet of soil volume is available per tree as determined by the Urban Forester or designee. Soil volume methods and specifications must be consistent with ISA Best Management Practices using either the prescriptive path or performance path soil volume methods. The project arborist must verify with the Urban Forester in writing that the soil volume plan has been successfully implemented prior to tree planting.
- b. If the existing soils at the site and abutting sites are determined by the project arborist or Urban Forester to be adequate to support healthy tree growth to maturity based on factors including but not limited to compaction levels,

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drainage, fertility, pH, and potential contaminants, the existing soils may be used to meet the soil volume requirements.

- c. The assumed soil volume depth for planting will be 3 feet unless otherwise determined by the project arborist or Urban Forester.
- d. A soil volume area of at least 333 square feet must be accessible to each tree when the assumed soil volume depth is 3 feet.
- e. The soil volume areas must be continuous and within a 50-foot radius of the tree to be planted. Continuous soil volume areas must be at least 3 feet wide for the entire area.
- f. Trees may share the same soil volume area provided that all spacing requirements of this subsection are met.
- g. Soil contaminants (i.e., soil containing construction debris, concrete, garbage, or any other substance that renders the soil inadequate to support healthy tree growth to maturity as determined by the Urban Forester) are prohibited from the soil volume areas.

2. Prescriptive Path for Soil Volume

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

(1) Protection fencing:

- (a) Fencing consisting of a minimum 4-foot-high metal chain link or no-climb horse fence, secured with 6-foot metal posts established at the edge of the soil volume area on the development site. Existing secured fencing at least 3.5 feet tall can serve as the required protective fencing.
- (b) When a soil volume area extends beyond the development site, protection fencing is not required to extend beyond the development site. Existing or new secured fencing at least 3.5 feet tall can serve as the required protective fencing.
- (c) Signage designating the protection zone and penalties for violations must be secured in a prominent location on each protection fence.

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

- (a) Steel plates placed over the soil volume area, or
- (b) A 12-inch layer of coarse wood chips over geotextile fabric continuously maintained over the soil volume area, or
- (c) A 6-inch layer of crushed gravel over geotextile fabric continuously maintained over the soil volume area.

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

3. Performance Path for Soil Volume

- a. When the standards of the prescriptive path for soil volume cannot be met; or if the existing soils at the site and abutting sites are determined by the Urban Forester to be inadequate to support healthy tree growth to maturity based on factors such as compaction levels, drainage, fertility, pH, and potential contamination prior to or resulting from development, a performance path soil volume plan is required.
- b. Soils in areas of construction access that do not receive compaction prevention treatment and soils in areas of grading, paving, and construction are considered inadequate for tree growth unless a performance path soil volume plan is provided.
- c. The following methods may be addressed in performance path soil volume plans but are dependent on specific site conditions and should be submitted by the applicant on a project basis in coordination with other professionals such as civil and geotechnical engineers, landscape architects, and soil scientists as needed:
 - (1) Compaction Reduction
 - (a) tilling
 - (b) backhoe turning
 - (c) subsoiling
 - (2) Soil Amendments
 - (a) organic amendments
 - (b) mineral amendments
 - (c) biological amendments
 - (d) chemical amendments
 - (3) Topsoil Replacement (when soil contamination or soil removal occurs)
 - (4) Soil Under Pavement
 - (a) structural soil cells
 - (b) structural tree soils
 - (c) soil vaults
 - (d) soils under suspended pavement

I. Application Requirements

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

The following establishes requirements for the various submittal components:

1. Tree Inventory

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

The locations and information for trees on abutting sites may be estimated.

- c. Number each inventoried tree for identification at the site and on the plans.
- d. Identify the common name and scientific name of each inventoried tree.
- e. Measure the DBH of each inventoried tree in inches according to accepted ISA standards.
- f. Measure the approximate average crown radius of each inventoried tree in feet.
- g. Provide the crown area of each inventoried tree using the following formula:
(crown radius)² x π .

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- h. Assess the health condition of each inventoried tree using the following categories:
 - (1) Good (no significant health issues)
 - (2) Fair (moderate health issues but likely viable for the foreseeable future)
 - (3) Poor (significant health issues and likely in decline)
 - (4) Very Poor or Dead (in severe decline or dead)
 - i. Identify whether the inventoried tree is on the Milwaukie Rare or Threatened Tree List.
 - j. Identify whether the inventoried tree is proposed for removal or retention.
 - k. Organize the tree inventory information in a table or other format approved in writing by the Urban Forester.
2. Tree Preservation Plan
- a. Provide a site plan drawn to scale.
 - b. Include the existing tree locations and corresponding tree numbers from the tree inventory and identify which trees are subject to potential impacts identified in 16.32.042.I.2.d.
 - c. Identify rare or threatened trees as described in the Milwaukie Rare or Threatened Tree List.
 - d. Identify the following site disturbances to scale:
 - (1) Demolition
 - (2) Tree removal
 - (3) Staging, storage, and construction access
 - (4) Grading and filling
 - (5) Paving
 - (6) Construction of structures, foundations, and walls
 - (7) Utility construction
 - (8) Trenching and boring
 - (9) Excavation
 - (10) Any other demolition or construction activities that could result in ground disturbances and/or tree damage
 - e. Locate tree and soil protection fencing to scale.
 - f. Locate soil compaction prevention methods to scale.
 - g. Identify prescriptive/performance path tree protection and soil volume areas.

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- h. Include tree and soil volume protection specifications from the arborist report on the plans including a detailed description of tree and soil volume protection fencing and signage.
 - i. The elements of the tree preservation plan may be included on multiple plan sheets for clarity.
 - j. The final approved set of construction drawings must include the tree preservation plan to ensure contractors, inspectors, and other professionals have access to the information.
3. Tree Planting Plan
- a. Provide a site plan drawn to scale.
 - b. Include the existing trees to be retained and their crown areas to scale.
 - c. Include the trees to be planted and their mature crown areas to scale based on the Milwaukie Mature Tree Crown Area List.
 - d. Identify the soil volume areas for each tree to be planted to scale.
 - e. For prescriptive/performance path soil volume areas, identify the methods and specifications as applicable for:
 - (1) Protection fencing (including signage details);
 - (2) Compaction Reduction;
 - (3) Soil Amendments;
 - (4) Topsoil Replacement; and/or
 - (5) Soil Under Pavement
 - f. The tree planting should demonstrate consistency with ISA Best Management Practices.
 - g. The elements of the tree planting plan may be included on multiple plan sheets for clarity.
 - h. The final approved set of construction drawings must include the tree canopy plan to ensure contractors, inspectors, and other professionals have access to the information.
4. Arborist Report
- a. Provide a written narrative that summarizes the information from the tree inventory, tree preservation plan, and tree planting plan.
 - b. Provide findings and calculations that demonstrate whether the tree preservation standards in Subsection 16.32.042.B have been met.
 - c. Provide findings and calculations that demonstrate whether the tree planting standards in Subsection 16.32.042.C have been met.

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

16.32.044 NON-DEVELOPMENT PRIVATE TREE REMOVAL IN RESIDENTIAL ZONES

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

A. Applicability

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

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

B. Permit Exemptions

Tree removal permits are not required in residential zones when:

- 1. Tree removal is approved with development as provided in Subsection 16.32.042.A.
- 2. The removal of trees that are grown for commercial agricultural or horticultural purposes including fruit trees, nut trees, or holiday trees.

C. Applications

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

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

D. Type A Tree Removal Permit

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

1. Application Requirements

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

2. Approval Criteria

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

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

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- (2) The tree has sustained physical damage that will cause it to die or enter an advanced state of decline. The City may require additional documentation from an ISA Certified Arborist to demonstrate that this criterion is met.
- (3) The tree is having an adverse effect on adjacent infrastructure or buildings that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.
- (4) The tree poses an unreasonable risk to the occupants of the property, the adjacent property, or the general public, as determined by an ISA Certified Arborist that is Tree Risk Assessment Qualified (TRAQ) in accordance with current ISA Tree Risk Assessment Best Management Practices.
- (5) The tree is on the Oregon State Noxious Weed List or the Milwaukie Invasive Tree List.
- (6) The tree is part of a stormwater management system and has grown too large to remain an effective part of the system.
- (7) The tree location conflicts with areas of public street widening, construction, or extension as shown in the Transportation System Plan and there is no practicable alternative to removing the tree.
- (8) Tree removal is required for the purposes of a building or land use permit, utility or infrastructure installation, or utility or infrastructure repair and there is no practicable alternative to removing the tree.
- (9) The tree is recommended for removal by a designated fire marshal for Clackamas County because it presents a significant fire risk to habitable structures or limits emergency access for rescue workers, and the risk or access issue cannot be abated through pruning or other means that would result in tree retention.
- (10) An ISA Certified Arborist determines that thinning of interior trees within a stand of trees is necessary for overall stand health, the thinning will result in no less than eighty percent (80%) canopy cover at maturity for the area to be thinned, and that thinning of non-native trees is maximized prior to thinning of native trees.
- (11) Healthy trees. One (1) healthy tree may be removed per tax lot per 12-month period if the tree is less than 12 inches in diameter at breast height and is not required to be preserved by a condition of a land use review, a provision of Chapter 16.32 or Title 19, or as part of a required stormwater facility.

3. Mitigation Requirements

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

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

4. Decision by the Urban Forester

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

E. Type B Tree Removal Permit

A Type B tree removal permit may be approved by the Urban Forester if the Type A tree removal approval standards cannot be met. Type B permits involve the consideration of relevant technical and qualitative factors to prevent risks to public health and safety and to ensure that the impacts of tree removal are mitigated. Type B permits are reviewed administratively by the Urban Forester. The Type B process is more discretionary than the Type A process and may consider a range of options for approving, approving with conditions, or denying a tree removal permit application.

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1. Application Requirements

- a. Applications for a Type B tree removal permit must meet the submittal requirements of Subsection 16,32.044.C.
- b. Additional information may also be required.
 - 1) If the Urban Forester requires additional information to review an application, the Urban Forester will send a notice to the applicant requesting the additional information.
 - 2) The applicant will have a maximum of 30 days from the date of the Urban Forester's notice to submit the additional information.
 - 3) If the additional information is not received by the Urban Forester within 30 days from the date of the Urban Forester's notice, the application will be voided on the 31st day, with no refund of the filing fee.

2. Review and Approval Criteria

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

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

- a. Whether the species of tree is appropriate for its location;
- b. Whether the crown, stem, or root growth has developed in a manner that would prevent continued healthy growth or is negatively impacting other trees;
- c. Whether maintenance of the tree creates an unreasonable burden for the property owner; and
- d. Whether the removal will significantly affect public safety or neighborhood character based on the following:
 - (1) The age, size, form, species, general condition, pruning history and any unique qualities or attributes of the trees;
 - (2) The cumulative impacts of current and prior tree removals in the area; and
 - (3) When the tree is associated with a grove, whether removal of the tree will have a significant adverse impact on the viability of other trees or make other trees considerably more vulnerable to windthrow.

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3. Mitigation Requirements

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

Table 16.32.044.E.3 Required Replacement Trees for Type B Permits

Diameter at Breast Height (DBH) of Tree Removed	Number of Additional Trees Required Beyond 1:1 Replacement	Total Replacement Trees Required
6" DBH to <12" DBH		1 tree
12" DBH to <24" DBH	1 tree	2 trees
24" DBH to <36" DBH	2 trees	3 trees
36" DBH or greater	3 trees	4 trees

- b. In addition, mitigation fees must be provided to the Tree Fund for each healthy private tree removed in conjunction with an approved Type B permit. See the Consolidated Fee Schedule for details.

4. Decision by the Urban Forester

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

5. Appeals

The applicant may appeal the Urban Forester's decision.

- a. Appeals must be:
 - 1) Filed with the Urban Forester on forms prescribed by the City;
 - 2) Filed within 14 days from the date of the Urban Forester's decision; and

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

Article IV Miscellaneous Provisions

16.32.080 PROGRAMMATIC PERMITS

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

A. Applicability

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

B. Application Requirements

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

C. Permit

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

1. Duration. The Urban Forester may approve a programmatic permit for a period of up to 2 years;
2. Geographic area covered by the permit;

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

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

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

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

D. Completeness

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

E. Notice of Complete Application

When the Urban Forester determines that the application is complete, the Urban Forester must provide written notice that the application is complete to the applicant and the Tree Board. The notice must provide instructions for how to obtain additional information about the application, comment on the application, and request notification of the Urban Forester's decision.

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F. Review Criteria

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

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

G. Decision

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

H. Revocation

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

16.32.082 COORDINATION WITH OTHER REGULATIONS

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

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

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

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

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

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

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

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

C. Business Tax or Metro License Required

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

D. Zoning Code

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

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

E. Tree Board

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

Article V Enforcement and Penalties

16.32.100 ENFORCEMENT

A. Interpretations

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

B. Violations

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

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

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

C. Penalties

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

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

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

**RS 7. B. 1/21/25
Council Comments**

From: [Scott Stauffer](mailto:Scott.Stauffer)
To: [Scott Stauffer](mailto:Scott.Stauffer)
Subject: FW: comments/questions on tree code
Date: Friday, January 17, 2025 8:04:28 AM

From: Lisa Batey <BateyL@milwaukieoregon.gov>
Sent: Sunday, December 15, 2024 11:33 PM
To: Katie Gavares <GavaresK@milwaukieoregon.gov>; Courtney Wilson <WilsonC@milwaukieoregon.gov>; Peter Passarelli <PassarelliP@milwaukieoregon.gov>
Cc: Emma Sagor <SagorE@milwaukieoregon.gov>; Joseph Briglio <BriglioJ@milwaukieoregon.gov>; Justin Gericke <GerickeJ@milwaukieoregon.gov>
Subject: comments/questions on tree code

All:

Sorry for my delay in reviewing the tree code – I really intended to do this over the Thanksgiving weekend, but ended up being busier than I expected. I think it looks great overall. I had no comments on Title 2, but I had a number of questions and comments on Title 16. I am putting substantive comments at the top, and minor “scrivener’s error” type stuff at the bottom.

- Definition of “damaged tree” (RS42) – is this meant to refer only to human-caused damage, not to storm or other nature-caused damage? If so, I wonder if the latter clause about a tree “partially pushed over” should also make reference to that being human-caused. I know from personal experience that ice can push over the top of a tree (in my case, an aspen) that does not straighten up after the ice storm.
- The approval standards for public tree removal, page RS53, subpart 2.b.6 says a tree can be removed that is on the Noxious Weed List. If we are going to expand beyond that list to recognize other invasive species (like English Holly and English Hawthorn), should this have a reference to whatever future list we might create? Later, on RS57 and RS58, we say Noxious Weed List or Milwaukie Invasive Tree List.
- Paragraph 6 at the bottom of RS60 is not grammatically correct – trees can’t provide a performance bond! But substantively, are we requiring a bond for all remaining trees on the lot, or only those within so many feet of any earth disturbance? If there are trees at the edge of a property not near where construction is happening, they still require a bond?
- At RS62, RS79, RS90 and later, the document talks about replacement trees as “1.5 inch caliper” but that does not appear to be defined. I’m guessing this does not mean at breast height, but is it at some other defined point above ground? Is caliper different from diameter?
- At RS63 and later there are a few references to the requirement for “root barriers.” I can

imagine there are various different types of these. Are we okay with anything that anyone might use, or does this need to be defined?

- Do we need a definition for “soil contaminants” (RS70 and later)?

Minor comments:

- I think you meant to remove the 4 at the end of the Administration section number (middle of RS46)
- Section F.2.a on RS54 has inserted text that does not appear to be grammatically correct.

Lisa M. Batey, Mayor (she/her)
City of Milwaukie
E-mail: bateyl@milwaukieoregon.gov
Message line: 503-786-7512

Tree Code Adoption

January 21, 2025

Courtney Wilson

Urban Forester

Katie Gavares

Climate and Natural Resources Manager

RS 7. B. 1/21/25
Presentation



Purpose of code changes:

- Improve overall organization and readability.
- Align impact of the code with its original intention.
- Reduce loopholes in enforcement.
- Align with Natural Resources Code.



Overview of code changes:

- Overall Look and Organization
 - Added “Articles” for better organization.
 - Removed redundancies.
 - Provided space for potential growth.
 - Moved Tree Board to Title 2.
- Improve clarity of code language.
 - Added and revised definitions.
 - Renamed Type 1 & Type 2 permits to Type A and Type B permits.
 - Clarified what trees can be used towards private development canopy credit.
- Enforcement Improvement
 - Consolidated enforcement codes.
 - Violations are now clearly stated.



Public comments

- Revised “damaged tree” definition.
 - Code compliance will only enforce on trees that are posing a public or private safety hazard
- Added “caliper” definition.
- Included Milwaukie Invasive Tree List in permit approval standards.
- Added clarifying language about tree protection bonds.
 - Not all trees on a development site would require a bond.
- Added references to the Public Works Standard for tree root barrier requirements.
- Added additional context for types of soil contaminants.
 - Parenetical citations added to include construction debris, concrete, garbage, or any other substance that renders soil inadequate to support healthy tree growth



Thank you!



Questions?

Courtney Wilson

Urban Forester

503-786-7655

WilsonC@milwaukieoregon.gov

Katie Gavares

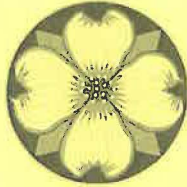
Climate and Natural Resources Manager

503-786-7668

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www.milwaukieoregon.gov/trees





CITY OF MILWAUKIE
CITY COUNCIL

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ocr@milwaukieoregon.gov

Speaker Card

The City of Milwaukie encourages all residents to express their views to their city leaders in a **respectful** and **appropriate** manner. If you wish to speak before the City Council, fill out this card and hand it to the City Recorder. Note that this Speaker Card, once submitted to the City Recorder, becomes part of the public record.

Name: DAVID ASCHENBRENNER

Address: 11505 SE HOME AVE

Organization: SELF

Phone: 503 804 3937

Email:

Meeting Date: JAN 21 25

Topic: HARBOR / MAIN SITE

Agenda Item You Wish to Speak to:

#5 Community Comments

Note: Council generally does not respond to comments during this meeting. The city manager will respond to comments at the next regular session.

#7 Other Business, Topic: _____

#8 Public Hearing, Topic: _____

You are Speaking...

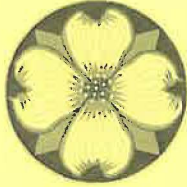
in Support

in Opposition

from a Neutral Position

to ask a Question

Comments:



**CITY OF MILWAUKIE
CITY COUNCIL**

10722 SE Main Street
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Name: Brendan Eiswerth

Address:

Organization:

Phone:

Email:

Meeting Date: 1/21/25

Topic: Herrington Main St Site

Agenda Item You Wish to Speak to:

You are Speaking...

#5 Community Comments

Note: Council generally does not respond to comments during this meeting. The city manager will respond to comments at the next regular session.

in Support

in Opposition

#7 Other Business, Topic: _____

from a Neutral Position

#8 Public Hearing, Topic: _____

to ask a Question

Comments:

COUNCIL STAFF REPORT

To: Mayor and City Council
Emma Sagor, City Manager

Reviewed: Joseph Briglio, Assistant City Manager and
Acting Community Development Director

From: Mandy Byrd, Development Project Manager

Subject: **Harrison & Main Site – Council Priority Discussion**

Date Written: Jan. 7, 2025

ACTION REQUESTED

Council is asked to discuss whether to move forward with prioritizing the redevelopment of the Harrison & Main Site.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

October 6, 2015: Council directed staff to begin marketing the site and start the request for proposals (RFP) process for the Harrison & Main Site.

May 17, 2016: Council heard a presentation on the Transit Oriented Development (TOD) program at Metro and real estate market conditions from Jerry Johnson of Johnson Economics. A discussion of criteria was held, including a discussion about the city and Metro developing an intergovernmental agreement (IGA) for the site.

June 21, 2016: Council authorized an IGA to develop the property with Metro.

December 12, 2017: in executive session, the city's development manager and Metro's project manager discussed disposition of the site.

January 16, 2018: in executive session, the city's development manager and Metro's project manager again discussed disposition of the site.

[March 20, 2018](#): Council passed a resolution adopting project goals for the site.

[August 7, 2018](#): Council held a public hearing to declare the Harrison & Main Site to be surplus for the purpose of development.

ANALYSIS**Background**

The city and Metro entered an IGA in 2016 for the purpose of redeveloping the Harrison & Main Site. Since that time the city has collaborated with Metro on development goals, next steps and timing, which have prompted conceptual drawings, public outreach, council updates, goal setting discussions, and declaring the property surplus. In late 2018/early 2019, the city shifted its priority from the Harrison & Main Site to South Downtown (SODO) construction (i.e., Adams Street Connector and Plaza). This was partly due to wanting to create a solution and new location for the highly esteemed and historic Milwaukie Farmer's Market, which would be subsequently displaced by the redevelopment of Harrison and Main. Once SODO was completed, the COVID-19 pandemic disrupted all operations, construction projects, and

development goals, which delayed progress. Since COVID-19, the Harrison & Main Site project has been placed on “hold.”

City and Metro staff have been continually engaged over the years about this project and both deprioritized the site’s redevelopment due to the pandemic and shifting agency needs. However, in late 2024, Metro approached city staff about the possibility of reengaging in the property’s redevelopment. Metro is interested in understanding a path forward, even if that means different development goals. They have asked that the city provide some updated direction on its priority for this site and partnership with Metro.

Additional Context

There have been significant changes and development in downtown since the city and Metro first executed its IGA. The Harrison & Main Site was initially viewed as a catalytic project for downtown; however, that is arguably not the case now as the market in downtown, and throughout Milwaukie, has changed. Recent evidence of this includes Axletree, Henley Place, Historic City Hall, Coho Point, and the influx of new businesses. This has increased activity in our downtown area, as well as the demand for parking. Since the context has changed, it is reasonable to ask whether the city’s goals for the Harrison & Main Site have also changed.

Questions for Council

Should developing the Harrison & Main Site be a higher priority for the city?

With the changing landscape of downtown, are there new goals Council would like staff to discuss with Metro?

BUDGET IMPACT

There are no financial impacts in discussing the future of this site, however it is expected that the city will participate financially in the project if public benefits as outlined in the project goals are achieved. Council will have ultimate authority to authorize any financial participation in the project.

CLIMATE IMPACT

The city’s 2023 climate goals update indicated that transportation emissions amount to 52% of Milwaukie’s total emissions. TOD housing projects, like the Harrison & Main Site, have the potential to mitigate transportation-related carbon emissions by promoting access to alternative and public transportation.

Additionally, two of the proposed project goals are specifically targeted at increasing the project’s climate impact including: 1) sustainable building design and 2) transit supportive development.

EQUITY IMPACT

The housing crisis has a disproportional impact on [marginalized populations](#). If the Harrison & Main Site comes to fruition, it could potentially create much-needed affordable housing for underserved community members. This will promote the city’s equity goals by creating housing units affordable to a more diverse population.

Additionally, two of the proposed project goals are specifically targeted at increasing the project’s equity impact including: 1) equitable housing affordability, and 2) public realm connections to downtown amenities.

WORKLOAD IMPACT

The city's assistant city manager, community development director, and development project manager, as well as public works, planning, and engineering staff will work together to facilitate this project. If this project is given a higher priority, then staff time and resources would have to be redistributed, which would likely require deprioritizing and slowing down other projects.

COORDINATION, CONCURRENCE, OR DISSENT

The city manager, assistant city manager, city attorney, community development director, and development project manager have coordinated on this effort.

STAFF RECOMMENDATION

Staff would like general direction from Council regarding the Harrison & Main Site.

ALTERNATIVES

No alternative approaches for the site have been explored.

ATTACHMENTS

1. Metro IGA
2. Previously Approved Project Goals (2018)

RECORD COPY**Attachment 7. C. 1.****INTERGOVERNMENTAL AGREEMENT
City of Milwaukie and Metro
Harrison and Main Street Milwaukie Site**

This Harrison and Main Street Milwaukie Site Intergovernmental Agreement (the "Agreement" or "IGA") is entered into by and between Metro, a municipal corporation established pursuant to Oregon law and the Metro Charter ("Metro") and the City of Milwaukie (the "City"), a municipal corporation (collectively, "the Parties"). This Agreement is effective as of the last date of execution set forth below (the "Effective Date").

RECITALS

A. Metro Council Resolution No. 98-2619 ("For the Purpose of Authorizing Start-Up Activities for the Transit-Oriented Development (TOD) Implementation Program at Metro") adopted on April 9, 1998, as amended by Metro Council Resolution No. 04-3479 ("For the Purpose of Amending the Transit-Oriented Development (TOD) Program to Expand the TOD Program Area and Initiate an Urban Centers Program") adopted on July 15, 2004, authorized the acquisition and "Joint Development" of real property satisfying certain criteria and identified as "Opportunity Sites." Metro's TOD Program utilizes joint development tools such as land acquisition and disposition subject to development agreements that require the development of projects located near rail transit stations and satisfying the Metro Transit-Oriented Development Project Investment Criteria set forth in Exhibit A, attached hereto.

B. On March 17, 2005, the Metro Council authorized Metro to purchase a parcel of real property occupied by a Texaco service station located at 10700 SE Mcloughlin Blvd., Milwaukie, Oregon and legally described in Exhibit A hereto (the "Metro Property"), for the Transit-Oriented Development/Urban Centers Program, via Metro Council Resolution No. 05-3555A ("For the Purpose of Authorizing the Chief Operating Officer to Purchase Property in the Milwaukie Town Center for a Transit-Oriented Development/Centers Project"). The Metro Council approved the acquisition of the Metro Property subject to specific preconditions, including the entry into an IGA (the "Main Street Village II IGA") providing for a joint offering of the Metro Property and the adjacent half block of City of Milwaukie real property, occupied by a municipal parking lot located on Main Street, in Milwaukie, across from City Hall, and legally described in Exhibit B hereto (the "City Property") for a transit oriented development project.

C. In June, 2005, Metro's environmental site assessment uncovered soil and water contamination on the Metro Property, in concentrations exceeding permissible residential use levels. Metro and the Oregon Department of Environmental Quality ("DEQ") negotiated the terms of a Prospective Purchaser Agreement ("PPA"). The PPA

requires, among other things, that the existing underground gasoline storage tanks be decommissioned and that the Property not be used for residential purposes until measures are taken to reduce the risk of hazardous substance vapor intrusion to levels acceptable to DEQ. Metro subsequently decommissioned and removed the existing underground storage tanks under DEQ oversight, backfilled the excavation with clean fill, and removed the filling station buildings from the site.

D. On August 16, 2005, the Milwaukie City Council approved Resolution No. 39-2005, authorizing the City to enter into the Main Street Village II IGA with Metro.

E. On September 22, 2005, via Metro Council Resolution No. 05-3621A ("For the Purpose of Amending the Terms of the Transaction Set Forth in Resolution No. 05-3555A to Acquire Property in Milwaukie Town Center for a Transit-Oriented Development/Centers Project") the Metro Council authorized Metro to, among other things, enter into the PPA with DEQ, purchase the Metro Property subject to the PPA, and enter into the Main Street Village II IGA with the City on substantially the terms set forth in an attachment to the resolution.

F. Metro entered into the "Main Street Village II" IGA with the City on September 21, 2005, entered into the PPA with DEQ on September 22, 2005, and acquired the Metro Property on October 7, 2005.

G. Metro and the City were unable to complete the joint offering of the Harrison and Main Street Milwaukie site (previously the "Texaco Site") and the Main Street Village II IGA subsequently expired on September 21, 2010.

H. Metro and the City now wish to enter into a new IGA to govern the joint offering of the Harrison and Main Street Milwaukie site for a transit oriented development ("TOD") project satisfying the Metro TOD Program TOD Project Investment Criteria.

I. On June 21, 2016, The Milwaukie City Council approved ~~Resolution No. XX-2016~~, authorizing the City to enter into this Agreement with Metro.

NOW, THEREFORE, in reliance on the above recitals and in consideration of the mutual and reciprocal covenants and agreements set forth below, the Parties agree as follows:

1. **General Objective.** To provide for joint solicitation by the City and Metro of a developer to construct a mixed-use transit-oriented development on the Harrison and Main Street Milwaukie site and selection of a developer followed by entry into an exclusive negotiating agreement leading to a Disposition and Development Agreement between the City, Metro and the selected developer providing for the development of the Harrison and Main Street Milwaukie site into a landmark signature mixed-use project with housing or other related uses above ground floor retail and services, satisfying the Metro TOD Program's

Opportunity Site Project Investment Criteria and Property Disposition Parameters (the "Project").

2. Project Development Program Criteria.

- 2.1 Within the height restrictions of the zoning code.
- 2.2 Highest reasonable land use efficiency based on floor area and site coverage ratio.
- 2.3 A transit-supportive site layout with a mix of residential and retail uses.
- 2.4 Ground floor retail space.

3. Project Management Committee. The City and Metro agree to establish a Project Management Committee to conduct pre-development activities and to craft, manage and implement a mutually acceptable developer solicitation and selection process to promptly select a development team for the Project.

The Project Management Committee shall be composed of the following:

- Alma Flores, City of Milwaukie Community Development Director
- Vera Kalias, or assigned staff, City of Milwaukie Associate Planner
- Megan Gibb, Metro Development Center Manager
- TBD, Metro Principal Development Project Manager

The City and Metro may assign other staff or consultants as needed.

4. Joint Offering. Through the Project Management Committee, the Parties will cooperate to conduct a competitive solicitation using either a Request for Qualifications or Request for Proposals process. The terms of the solicitation shall be established by mutual agreement, but shall conform to the Minimum Development Criteria set forth above, the requirements of this section, any other criteria mutually agreed upon in writing by Metro and the City, the parameters set forth in the TOD Program Workplan, the Milwaukie City Code, and all applicable provisions of ORS 279A-C (the "Joint Offering").

4.1 Concept. The initial development concept is generally described as a landmark signature mixed-use development of housing or housing and office above ground floor retail, with full city-block development, consistent with the zoning code, including the height limitation.

4.2 Land Value Write Down/Proceeds. The City agrees that the joint offering will include a commitment to "write down" the land value of the City Property to an amount that will ensure the desired development as set forth in Section 2 above, subject to Milwaukie City Council approval. Metro agrees that the joint offering will include a commitment to "write down" the land value of the Metro Property to an amount that will ensure a development meeting Metro TOD minimum development of 4 and 5 stories, subject to TOD Program Steering Committee and Metro Council approval.

4.3 City Incentives. The City agrees that, in addition to Land Value Write Down, it will seek to contribute the following additional incentives to the Project subject to Milwaukie City Council approval:

- Vertical Housing Development Program
- SDC assistance, such as credits, waivers sequestering and Bancroft Bonding
- Technical Assistance
- Site Preparation
- Parcel consolidation
- Other incentives, including tools and resources of the Infrastructure Financing Authority and Business Oregon.

4.4 Metro Incentives. Metro agrees that, in addition to Land Value Write Down, it will seek to contribute the following additional incentives to the Project, subject to TOD Steering Committee and Metro Council approval:

- Purchase by Metro of a Metro TOD Easement from the selected developer for development meeting TOD minimum development criteria of 4 and 5 stories
- Technical Assistance
- Site Preparation

4.5 Cost Sharing Principles. With respect to cost sharing and developer incentives, the parties agree that the City's financial participation must equal or exceed Metro's financial participation. For purposes of this section, City's financial participation includes but is not limited to the full value of any grants, exemptions, and specifically the Vertical Housing Development program secured by City.

4.6 PPA Compliance. Metro and the City agree that the Joint Offering will include a requirement that the selected developer agree in the DDA to implement such measures as are needed to satisfy the terms of the DEQ PPA as part of any residential development and before any residential occupancy is permitted. Metro and the City acknowledge that the extent of such measures, if any, will be mutually determined prior to entry into the DDA and that requiring the purchaser to take such actions will affect the price a developer will pay for the Harrison and Main Street Milwaukie site.

4.7 Evaluation and Selection. The City and Metro, through the Project Management Committee, shall jointly evaluate the qualifications and/or proposals of all developers responding to the Joint Offering and select the developer ("Developer") by mutual agreement. It is recognized that each entity's respective governing body has final authority over selection as provided in each entity's rules.

4.8 Schedule. The City and Metro shall share equally in the costs to conduct the Joint Offering and shall exert best efforts to complete the Joint Offering on the following schedule:

- Issue Request For Qualifications (RFQ) 3rd Quarter, 2016
- Review RFQ responses and issue a Request For Proposal (RFP) to up to 3 highly qualified firms 4th Quarter, 2106
- Review RFP responses 4th Quarter, 2016
- Select developer and execute Exclusive Negotiating Agreement 1stQtr , 2017
- Execute Disposition and Development Agreement 3rd Quarter, 2017

5. **Predevelopment Activities**. The costs of Predevelopment Activities conducted by the parties will be shared equally unless otherwise set forth herein. The City and Metro agree to conduct the following activities prior to execution of the DDA:

5.1 ALTA Survey. The City and Metro will jointly perform an ALTA survey of the Harrison and Main Street Milwaukie site. The City and Metro shall share equally in the third-party costs to comply with this section.

5.2 Environmental Assessment. The City anticipates receipt of a Business Oregon Brownfields Assessment grant, which it will use to conduct Phase I and Phase II Environmental Assessments on the Harrison and Main Street Milwaukie site to determine the environmental condition of the City Property and to characterize the extent of petroleum contamination that exists in the Metro Property's soil and groundwater, including soil vapor sampling and testing sufficient to determine whether or not a vapor barrier, separated air handling systems, or other engineering controls are necessary to reduce hazardous material vapors to concentrations that are acceptable for residential development. The City will coordinate the scope of work under this section with Metro including providing Metro and the DEQ with an opportunity to review, alter and approve the proposed scope of work for the Phase II ESA for purposes of ensuring that the Phase II satisfies DEQ PPA requirements.

5.3 Appraisal. The City and Metro agree to obtain an independent MAI appraisal performed in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP") and general appraisal standards, and confirmed by Metro's independent review appraiser as follows: the parties will jointly select an appraiser and mutually agree upon the terms of an appraisal assignment that will report the independent fair market value of the City Property, the Metro Property, the Harrison and Main Street Milwaukie as consolidated, and the "residual land value of Lot 14" as encumbered by the DDA and TOD Easement, if any. Metro will pay for the costs to obtain the appraisal review.

5.4 Geotechnical Engineering Assessment. The City and Metro agree to jointly select a Geotechnical Engineer to evaluate the subsurface conditions on the Harrison and Main Street Milwaukie site and determine the Harrison and Main Street Milwaukie site's ability to support a development satisfying the criteria set forth in Section 2, and specifically if needed, the development proposed by the Developer.

5.5 Land Use and Development Applications. The City acknowledges that a Project satisfying the criteria set forth in Section 2 is the preferred development form and agrees to sign and jointly submit with Metro and Developer land use and development applications submitted prior to the conveyance of the Harrison and Main Street Milwaukie site under the DDA.

5.6 Parcel Consolidation. The City and Metro will jointly submit a parcel consolidation application. The City and Metro shall conclude the consolidation concurrently with the conveyance of the Harrison and Main Street Milwaukie site to Developer under the DDA. The City and Metro shall share equally in the third-party costs to comply with this section.

5.7 Site Preparation. The City and Metro acknowledge that site preparation, if deemed necessary or beneficial to the development, may be performed independently by either party or coordinated among them. The application of the costs of site preparation performed by staff to the cost sharing equation must be determined by negotiation between the parties.

6. Exclusive Negotiating Agreement. The City and Metro may elect to enter into a 180-day Exclusive Negotiating Agreement with options to extend with the Developer. The Exclusive Negotiating Agreement shall provide that the Developer shall have the exclusive right to conduct due diligence and to negotiate in good faith with the City and Metro for the rights to develop the Harrison and Main Street Milwaukie site, including the terms of the DDA and all related agreements, documents and instruments providing for the transit oriented development of the Harrison and Main Street Milwaukie site, and that the City and Metro will not accept, solicit, pursue or entertain any other offers or other indications of interest with respect to the Harrison and Main Street Milwaukie site for any development, sale or other transaction with a third party during the term thereof.

7. Disposition and Development Agreement. The City, Metro and the Developer shall be parties to the Disposition and Development Agreement ("DDA"). The City and Metro shall jointly negotiate the terms of the DDA with Developer, which shall be mutually acceptable to Metro and the City, and shall comply in all respects with the terms of this Agreement and the Minimum Development Program Criteria set forth in Section 2. The costs of closing the DDA, including title insurance premiums and escrow fees, shall be shared equally between the City and Metro.

8. Preconditions to Land Disposition.

8.1 Approval of Plans. Final review and approval by the City and Metro of the schematic design drawings, final architectural plans, and construction details to ensure that the design, finish and quality of materials and construction are consistent with developing a landmark signature mixed-use development in downtown Milwaukie. It is recognized that this approval may not be inconsistent with, and is subject to, the terms and conditions of development approval(s) issued pursuant to the Milwaukie Development Code.

8.2 Approval of Elevations. Final review and approval by the City and Metro of the building elevation details for consistency with the Conceptual Design.

8.3 Proof of Financing and Equity Capital. The Developer shall have secured adequate construction financing and equity investment capital, necessary to complete the Project. The adequacy or inadequacy of the construction financing and equity investment capital shall be subject to the mutual determination of the City and Metro.

8.4 No Litigation or Bankruptcy. The Developer and its members, partners, or principals shall be subject to no pending or existing litigation or action privately, or by regulation or government order commenced, pending, or threatened in writing that adversely affects Developer's ability to construct the Project, including a petition in bankruptcy. This requirement may be waived by mutual agreement of Metro and the City.

8.5 BOLI Predetermination Letter. The City, Metro and the Developer shall jointly submit a request for a predetermination letter from the Oregon Bureau of Labor and Industries ("BOLI") to establish the applicability of ORS 279C.800-870 ("prevailing wage laws") to the project.

9. Environmental Indemnity. In addition to the indemnification provided in paragraph 11.1 and 11.2, below, the City and Metro agree that no provision of this IGA or action taken by any party hereunder shall operate to limit or diminish the reciprocal Environmental Indemnities provided by the Main Street Village II IGA attached as Exhibit C hereto. City may require, however, and Metro shall cooperate in good faith in obtaining, DDA terms by which the developer assumes responsibility for environmental conditions, agrees to indemnify and defend City or otherwise relieves or ameliorates City's environmental liability to any person or entity other than Metro.

10. Property Management Prior to Conveyance. The City shall continue to manage the Harrison and Main Street Milwaukie site until it is conveyed to a developer pursuant to a DDA. The City shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures necessary to maintain public

safety on the Property, and to deter public nuisance use of the Property. Access to the Property shall be controlled by the City, and the City shall respond to neighborhood or citizen complaints regarding nuisance uses or noise on the Property. Any permits granted to third parties by the City to use the Property shall comply with the terms and limitations set forth in this Agreement. The City shall be responsible for obtaining all necessary permits and for complying with all state and local rules and regulations in managing and maintaining the Property. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Property. Funding for the management and maintenance of the Property and the payment of taxes or assessments applying to the Property, if any, shall be provided from the City's own resources.

11. General Provisions

11.1 City Indemnification. Within the limits of the Oregon Tort Claims Act, City shall indemnify and defend Metro, and hold Metro harmless from and against any claim, loss, liability or cost suffered directly or from a third-party claim arising out of or related to the City's, its officers', employees' and agents' acts or failure to act hereunder, including but not limited to its management of the Property or any condition on the Harrison and Main Street Milwaukie site while in the possession or under the control of the City.

11.2 Metro Indemnification. Within the limits of the Oregon Tort Claims Act, Metro shall indemnify and defend the City, and hold the City harmless from and against any claim, loss, liability or cost suffered directly or from a third-party claim arising out of or related to Metro's, its officers', employees' and agents' acts or failure to act hereunder, except that Metro shall have no liability to the City for any injury, loss, or damage caused by third parties, except to the extent resulting from Metro's negligence or breach of duty under this Agreement.

11.3 Liens. Except with respect to activities for which Metro is responsible, the City shall pay as due all claims for work done on and for services rendered or material furnished to the Property, and shall keep the Property free from any liens. If the City fails to pay any such claims or to discharge any lien, Metro may do so and collect the cost from the City. Such action by Metro shall not constitute a waiver of any right or remedy that Metro may have on account of the City's default. The City may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, as long as Metro's property interests are not jeopardized. If a lien is filed as a result of nonpayment, the City shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Metro cash or sufficient surety bond or other surety satisfactory to Metro in an amount sufficient to discharge the lien plus any costs or attorney fees.

11.4 Acknowledgement. The City and Metro shall document in any signage, publication, media presentation or other presentations on the Property that a partnership was established between Metro and the City to promote redevelopment of the Property.

11.5 Term. The term of this Agreement shall be five (5) years from its Effective Date. This Agreement shall automatically renew for successive 5-year terms, unless written notice is provided by a party that it does not wish to renew no later than 30-days prior to the renewal date, or this Agreement is otherwise terminated under the provisions set forth below. The indemnities set forth in Sections 11.1 and 11.2 shall survive and shall not be affected by the expiration or termination of this Agreement. The Environmental Indemnities set forth in Exhibit C shall survive sale of the property to a developer pursuant to the DDA.

11.6 Joint Termination for Convenience. Metro and the City may jointly terminate all or part of this Agreement based upon a mutual determination that such action is in the public interest. Termination shall be effective upon mutual written agreement of the Parties to terminate.

11.7 Termination for Cause. Either party may terminate this Agreement before the date of expiration, if that party determines, in its sole discretion, that the other party has failed to comply with the terms and conditions of this Agreement and is therefore in default. The terminating party shall promptly notify the defaulting party in writing of that determination and document said default with reasonable particularity. Thereafter, the defaulting party shall have 30 days to cure the default. If the default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be complied with if the defaulting party begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to cure the default as soon as practicable.

11.8 Laws of Oregon – ORS 279. This Agreement shall be governed by the laws of the State of Oregon, and the Parties agree to submit to the jurisdiction of the courts of the State of Oregon. All applicable provisions of ORS Chapter 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provisions were a part of this Agreement. The City and Metro hereby acknowledge that prevailing wage rate laws, including ORS 279C.800-870 and related regulations, may apply to this Agreement, and the DDA and Project contemplated thereby. The City and Metro agree to require the compliance of Developer with said laws when applicable.

11.9 Assignment. No party may assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the Parties may subcontract for performance of any of their responsibilities under this Agreement.

11.10 Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro
Megan Gibb, Metro Development Center Manager
600 N.E. Grand Avenue
Portland, OR 97232-2736

To City: City of Milwaukie
William Monahan, City Manager
10722 SE Main Street
Milwaukie, OR 97222

Copy to:
Alma Flores, Community Development Director
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206

11.11 Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform to the terms and requirements of applicable law and the intent of this Agreement.

11.12 Entire Agreement. Except as set forth in Section 10, this Agreement, as supplemented by the Exclusive Negotiating Agreement, if any, and DDA, constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous oral or written communications, agreements or representations relating to the Harrison and Main Street Milwaukie site. No course of dealing between the parties and no usage of trade shall be relevant to supplement any term used in this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by any party of that or any other provision.

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year set forth below.

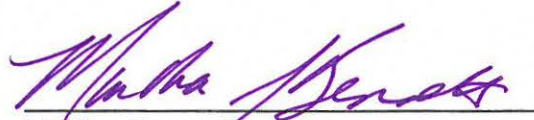
CITY OF MILWAUKIE

METRO



William Monahan
City Manager

Date: 6/21/16



Martha Bennett
Metro Chief Operating Officer

Date: 7/7/16

Exhibits:

Exhibit A - Transit-Oriented Development Project Investment Criteria

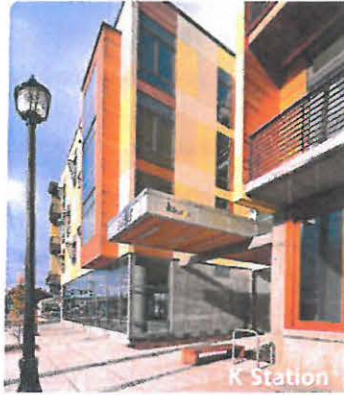
Exhibit B - Legal Description and Depiction of Metro Property and City Property

Exhibit C - Main Street Village II IGA

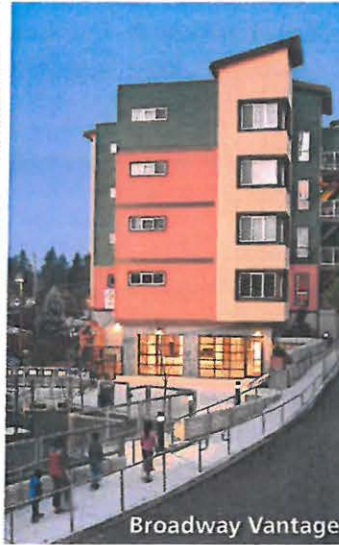
Adopted Aug. 2012

TRANSIT-ORIENTED DEVELOPMENT

Project investment criteria



K Station



Broadway Vantage



OCOM



The Rocket



Central Eastside Lofts



Lofts Apartments

The Transit-Oriented Development Program has a unique and critical role in implementing the region's 2040 Growth Concept of vibrant, urban centers and station areas linked by transit. TOD program activities help to optimize the existing transit system by bringing more people to live, work and shop in areas with a functional pedestrian connection to transit. The core program activity is providing development project funding to stimulate construction of higher-density and mixed-use projects near transit. Related program activities include opportunity site acquisition, investment in urban living infrastructure, and technical assistance.

The TOD project investment criteria have been adopted by the Metro Council as part of the TOD work plan. These excerpts are provided as a resource for real estate professionals and local officials interested in partnering with Metro's TOD Program to implement transit-oriented development in areas where the real estate market is not yet able to support those higher cost development forms.

The core mission of the TOD program is to stimulate private sector investment to create the vibrant communities envisioned in the region's 2040 Growth Concept.

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THRESHOLD REQUIREMENTS

TOD project investments must meet the following threshold requirements to be eligible for funding consideration:

Site control

Must meet **all** of the following

- The applicant must be a public entity or a willing and capable developer with site control or the ability to establish site control.
- The TOD development must be privately owned and operated.

Connection to transit

Must meet **one** of the following

- **Station communities** Properties must have a functional pedestrian connection between the site and existing or planned rail stations, generally less than 1/2 mile.
- **Frequent bus and streetcar** Properties must have a functional pedestrian connection between the site and the transit corridor, generally less than 1/4 mile.
- **Urban centers** Properties must be within the boundary of an urban center, have a functional pedestrian connection to the main street or commercial core, and be within an eligible TOD typology place type.

Eligible TOD typology areas

Must meet **one** of the following

- **Catalytic project** investments and site improvements are eligible in Catalyze and Connect areas and may be considered conditionally in Plan and Partner areas.
- **Catalytic Plus project** investments are eligible in Infill and Enhance and Catalyze and Connect areas and may be considered conditionally in Plan and Partner areas.
- **Housing Choice project** investments may be considered conditionally in Infill and Enhance, Catalyze and Connect and Plan and Partner areas.

Transportation and environmental benefits

Must meet **all** of the following

- The project development program will generate additional transit trips as a result of more intensive use of the site compared to what

would occur without public participation in the proposed project.

- The project development program is expected to reduce regional Vehicle Miles Traveled compared to what would occur without public participation in the proposed project.
- The site plan and building design enhance the pedestrian and bicyclist experience, and makes the pedestrian realm more visually attractive, active, vibrant and safe.
- The development has the lowest reasonable parking ratio.

Land use efficiency

Must meet **all** of the following

- The development has the highest reasonable floor area ratio.
- The development has the highest reasonable site coverage ratio.

Financial need

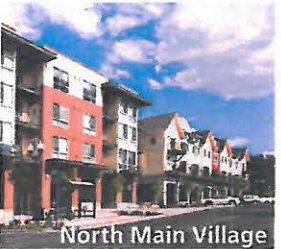
Must meet **all** of the following

- The project has cost premiums related to higher density, urban infill, or vertically integrated mixed use development.
- There are not adequate local, state, or federal resources or incentives available to close the financing gap without Metro participation.
- Metro funding shall not exceed the minimum amount necessary for the project to move forward and be constructed.

Cost effectiveness

Must meet **all** of the following

- Metro funding will leverage significant private investment.
- Cost per induced transit rider is reasonable relative to other development project investments.
- Metro's program, legal and other administrative costs are reasonably proportionate to the TOD Program development investment in the project.
- Upon stabilization, the project is expected to be financially feasible and successful in the market.



COMPETITIVE INVESTMENT CRITERIA

In addition to the threshold requirements, proposed projects are evaluated according to a set of competitive investment criteria. Competitive investment criteria allow a project to distinguish itself among other qualified projects. These criteria are considered by TOD staff in determining whether and what level of TOD project funding to recommend for approval, and what conditions to apply. Not all of these criteria apply to every investment opportunity. The relative importance of these criteria varies depending on the characteristics of the project and the area in which it is located.

Increase transit ridership

- Increased transit ridership is induced from more intense development.
- Features are incorporated that improve access to the transit system, transit information services, way-finding signage, lighting, sidewalk improvements, additional bike parking/storage, or new access routes.
- Transportation demand management strategies are integrated such as limited or no parking, charging for parking, car sharing, bike storage, or transportation alternatives programming efforts.
- Significant transit ridership is generated by the creation of new employment, institutional, or entertainment destinations near transit.

Creates new market comparables

- New market comparables are created as a result of demonstrating market acceptance of new product types, faster absorption, or higher achievable pricing.

Builds community acceptance of urban style buildings

- Higher quality of design and/or materials are used than is typical in the area.
- Innovative green building elements or development practices are demonstrated that serve to improve the environmental impact of the development and enhance both the human and natural environment.

Improves availability of urban living infrastructure retail services and amenities

- Economic base to support retail services and amenities is strengthened.

- Urban living infrastructure amenities or retail services are integrated into the new development.

Expands base of developers with TOD expertise

- New development partners are engaged for the TOD program.
- Developers are inspired to innovate in compact and mixed-use development forms.

Contributes to placemaking and local identity

- Elements are incorporated that help create a sense of place.
- Elements are incorporated that reflect and/or build unique local identity.
- A large scale initiative is advanced that will improve the TOD readiness of the area.
- Downtown revitalization is supported.
- Affordable housing is provided in areas where it increases housing choices and does not exacerbate concentrations of poverty.

Removes barriers to compact and mixed-use development

- Changes to local plans or development regulations are necessitated.
- Product types, building materials, or building systems are introduced that are relatively new to the area.

Attracts investment, create jobs and strengthen local tax bases

- Direct investment in the development is attracted.
- Jobs are created.
- Contributions are leveraged from other public and non-profit entities such as: local government (tax abatement, tax increment financing, reduced SDCs, or support for entitlement changes); state/federal government (low income housing tax credits, public bond financing, grants); or private foundations.
- Additional property tax revenues are generated.





Clean air and clean water do not stop at city limits or county lines. Neither does the need for jobs, a thriving economy, and sustainable transportation and living choices for people and businesses in the region. Voters have asked Metro to help with the challenges and opportunities that affect the 25 cities and three counties in the Portland metropolitan area.

A regional approach simply makes sense when it comes to providing services, operating venues and making decisions about how the region grows. Metro works with communities to support a resilient economy, keep nature close by and respond to a changing climate. Together, we're making a great place, now and for generations to come.

Stay in touch with news, stories and things to do.

www.oregonmetro.gov/connect

Metro Council President

Tom Hughes

Metro Council

Shirley Craddick, District 1
Carlotta Collette, District 2
Craig Dirksen, District 3
Kathryn Harrington, District 4
Sam Chase, District 5
Bob Stacey, District 6

Auditor

Suzanne Flynn

TYOLOGY DEFINITIONS

Infill and Enhance transit communities are the most "TOD ready" areas in the region outside of downtown Portland. Given the relative strength of these areas, TOD program project investments should leverage significantly higher residential and/or employment densities, prototypical projects, urban living amenities (e.g. restaurants, shops), and/or workforce housing.

Catalyze and Connect areas offer some physical market foundation for supporting transit-oriented development. Projects that help catalyze future private development, and increase activity levels through density and/or urban amenities are appropriate. There is also an opportunity to work with local jurisdictions to identify placemaking and infrastructure needs to enhance the pedestrian orientation of the street network and provide better connectivity for all modes.

Plan and Partner transit communities are not currently ripe for direct TOD program investments, since they generally lack the built form and market environment that would attract private investment. Given their transit accessibility, however, these areas are ideally suited for station area planning and development implementation technical assistance. The TOD program will work with local and regional partners as strategic opportunities arise to develop partnerships for future projects.

INVESTMENT TYPE DEFINITIONS

Catalytic projects have relatively modest public financial participation, generally of less than 20 percent total development costs, and are expected to improve the financial feasibility of future private sector projects within the real estate submarket.

Catalytic plus projects qualify as catalytic project investments and significantly contribute to place-making or serve as a new prototype for development in the submarket.

Housing choice projects have higher levels of public financial participation, such as low income housing tax credits, and are expected to expand the income diversity of households in a particular area by producing additional affordable or workforce housing units.

Site improvement projects or site preparation projects are separated in time, responsibility, or financing structure from the TOD project development.

For more information,
call 503-797-1757 or visit
www.oregonmetro.gov/tod

Printed on recycled-content paper.
14071 Sept. 2013

Exhibit B

Legal Description of Property and City Property

Metro Property:

Lots 5, 6, 7 and 8, Block 14, MILWAUKIE, in the County of Clackamas, and State of Oregon. The Easterly boundary of said lots to be a line more particularly described:

Beginning at a brass screw set in the South sidewalk of Harrison Street in the Town of Milwaukie, at a point which is South 800 West 5 feet and North 9° 20' West 4 feet from the Northeast corner of said Lot 5, Block 14, MILWAUKIE, thence South 9° 20' East, along the center line of the vacated alley in said Block 14, as vacated by Milwaukie City Ordinance 35 recorded in Book 516, Page 124 Deed Records, a distance of 204 feet to an iron pipe set in the South line of said Block 14, said iron pipe being the point of terminus of said boundary as shown by Survey 2615 in the office of the Clackamas County Surveyor.

City Property:

Lots 1, 2, 3 and 4, Block 14, MILWAUKIE, according to the duly recorded plat thereof, said western boundary of said lots to be a line described particularly as follows:

Beginning at a brass screw set in the South sidewalk of Harrison Street in the Town of Milwaukie, at a point which is South 800 West 5 feet and North 9° 20' West 4 feet from the Northeast corner of said Lot 5, Block 14, MILWAUKIE; thence South 9° 20' East, along the center line of the vacated alley in said Block 14, as vacated by Milwaukie City Ordinance 35, recorded in Book 516, page 124 Deed Records, a distance of 204 feet to an iron pipe set in the South line of said Block 14; said iron pipe being the point of terminus of said boundary, as shown by Survey 2615 in the Office of the Clackamas County Surveyor.

INTERGOVERNMENTAL AGREEMENT MAIN STREET VILLAGE PHASE II

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into by and between Metro, a municipal corporation established pursuant to Oregon law and the Metro Charter ("Metro") and the City of Milwaukie (the "City"), a municipal corporation (collectively, "the Parties"). This Agreement is effective as of the last date of execution set forth below (the "Effective Date").

RECITALS

A. Metro Council Resolution No. 98-2619 ("For the Purpose of Authorizing Start-Up Activities for the Transit-Oriented Development (TOD) Implementation Program at Metro") adopted on April 9, 1998, as amended by Metro Council Resolution No. 04-3479 ("For the Purpose of Amending the Transit-Oriented Development (TOD) Program to Expand the TOD Program Area and Initiate an Urban Centers Program") adopted on July 15, 2004, authorizes the acquisition and "Joint Development" of real property satisfying certain criteria and identified as "Opportunity Sites." Metro's TOD Program utilizes joint development tools such as land acquisition and development agreements to encourage the development of projects located in close proximity to rail transit stations, "Frequent Bus Stops" and in Urban Centers throughout the region.

B. On March 17, 2005, the Metro Council authorized Metro to purchase the Property for the Transit-Oriented Development/Urban Centers Program, via Metro Council Resolution No. 05-3555A ("For the Purpose of Authorizing the Chief Operating Officer to Purchase Property in the Milwaukie Town Center for a Transit-Oriented Development/Centers Project"). The Metro Council approved the acquisition of the Property subject to specific preconditions, including the entry into this Agreement by the Parties on terms set forth in the Letter of Intent set forth below.

C. Metro and the City have entered into a Letter of Intent expressing the mutual intent of the Parties to provide for the acquisition of a Texaco filling station site located at 10700 SE McLoughlin Boulevard, Milwaukie, Oregon, and described and depicted in the attached Exhibit A (the "Property") as TOD Program Urban Centers Opportunity Site. The Letter of Intent attached as Exhibit B sets forth the general terms of acquisition and co-ownership of the Property by Metro and the City, and provides for a joint offering of the Property with the adjacent City property at 10721 SE Main Street ("City Property"), also described and depicted in the attached Exhibit A, so that the entire block may be developed by a future purchaser. The development called for in the Letter of Intent is a landmark signature mixed-use project of 4-5 stories, with retail uses on the ground floor and residential uses on higher floors.

D. Soil and water contamination have been discovered on the Property in concentrations that exceed permissible levels if the Property is to be developed for residential use. The Oregon Department of Environmental Quality ("DEQ") has agreed

to issue Metro a Prospective Purchaser Agreement (“PPA”). The PPA requires that the existing underground gasoline storage tanks be decommissioned and that measures be taken to reduce the risk from vapor intrusion into buildings to levels acceptable to DEQ.

E. Metro has entered into an Agreement of Purchase and Sale with Olson Brothers Enterprises, L.L.C., to purchase the Property, has performed due diligence in accord with Metro standard real estate acquisition guidelines, and is prepared to close the acquisition of the Property upon execution of this Agreement.

F. On August 16, 2005, the Milwaukie City Council approved Resolution No. 39-2005, authorizing the City to enter into this Agreement with Metro.

NOW, THEREFORE, in reliance on the above recitals and in consideration of the mutual promises described below, the Parties agree as follows:

1. **General Objective.** To provide for the acquisition of the Property as a TOD Program Urban Centers Opportunity Site, setting forth the terms of co-ownership of the Property by Metro and the City, and providing for a joint offering of the Property with the City Property for the development of Main Street Village, Phase II, a landmark signature mixed-use project of 4-5 stories with housing above ground floor retail.

2. **Property Acquisition**

2.1 Metro shall close escrow and acquire the Property upon the execution of this Agreement by both Parties.

2.2 At closing, the City shall take an undivided 5% interest in title to the Property, and Metro shall take an undivided 95% interest in title to the Property as tenants-in-common.

3. **Project Management/Joint Offering**

3.1 The Parties will cooperate jointly to offer the entire city block, consisting of the Property, the City Property, and the ROW Parcels (defined below) for development (“Block 14”). The initial development concept is for a landmark signature mixed-use development of 4-5 stories of housing above ground floor retail, with the building footprint covering most of Block 14, to be called Main Street Village, Phase II (the “Joint Offering”). The terms of the Joint Offering shall be established by mutual agreement, but shall conform to the parameters set forth in the TOD/Urban Centers Workplan.

3.2 Metro and the City agree to establish a project management committee to manage parcel consolidation, craft and market a public Joint Offering document, determine the appropriate land value write-down, solicit proposals and select a developer. The Joint Offering may be made either through an open competitive process or an unsolicited proposal process, upon the mutual written agreement of the Parties. The Parties shall

share equally in the cost of conducting the Joint Offering, and shall exert best efforts to complete the Joint Offering within 18 months from the Effective Date.

3.3 Metro agrees to write down the land value of the Property to an amount that will ensure the desired development as set forth in Section 3.1 above, subject to TOD/Centers Steering Committee and Metro Council approval. The City agrees to market the City Property at an equivalent value per square foot as Metro markets the Property. The proceeds of any sale of Block 14 shall be allocated pro rata between the Parties based on the square footage of their respective properties.

3.4 Metro and the City agree that the Joint Offering will include a requirement that the purchaser implement such measures as are needed to satisfy the terms of the DEQ PPA as part of any residential development and before any residential occupancy is permitted. Metro and the City acknowledge that requiring the purchaser to take such actions will affect the price a developer will pay for Block 14.

3.5 The City staff agrees to support and recommend to the Milwaukie City Council the vacation of certain portions of the right-of-way of SE Harrison Street and SE Jackson Street (the "ROW Parcels"), as depicted on Exhibit A, and the incorporation of said ROW Parcels into the Joint Offering.

3.6 City will exert its best efforts to amend its zoning and development ordinance and regulations to permit a project to be developed on Block 14 consisting of residential over ground floor retail, a minimum of 5 stories with a floor area ratio ("FAR") of 1 to 1, a housing/parking ratio not to exceed one space per housing unit and a building type that is economically feasible.

3.7 Metro agrees to demolish the existing buildings on the Property, close and stub all utilities and remove all demolition materials in accord with all state and local regulations, such that the Property is in a reasonably safe condition after closing.

3.8 Metro agrees to decommission the Underground Storage Tanks ("UST") located in the tank nest on the Property after closing, in compliance with all DEQ UST decommissioning rules and regulations, either by removal or in place, such that they may be used as stormwater storage vessels for future development.

3.9 Metro agrees to exert its best efforts to obtain a No-Further-Action Letter from DEQ, stating that no further investigation, remediation or cleanup is required to be performed upon the Property in connection with commercial use.

4. Environmental Assessment and Indemnity

4.1 Environmental Assessment. Metro's Phase I and Phase II Environmental Assessments revealed that petroleum contamination exists in the Property's soil and groundwater, in concentrations that are acceptable for commercial development but exceed permissible levels if the Property is to be developed for residential use, and that

petroleum contamination originating on the Property has migrated from the Property in a southwesterly direction, into the soil and groundwater underlying SE Jackson Street and SE McLoughlin Boulevard. In accord with the Letter of Intent, and in consideration for Metro's agreement to acquire the Property for purposes of mixed-use development, the City has agreed to indemnify Metro as set forth below.

4.2 Environmental Indemnity. The City hereby covenants to indemnify and defend (with legal counsel reasonably acceptable to Metro) Metro and hold Metro, its officers and employees, successors and assigns, harmless from and against all claims, demands, causes of action, or any other action or proceeding, meritorious or not, and all liabilities, losses, damages, costs and expenses relating to or arising, in whole or in part, directly or indirectly, from: (a) the past, present or future Environmental Condition of the Property; (b) past, present or future Adverse Environmental Activity occurring on or related to the Property; (c) any and all Government Action related to the Property or past, present or future activities thereon; (d) the past, present or future Environmental Condition of real property surrounding the Property, relating to or resulting from the Environmental Condition of the Property or Adverse Environmental Activity on the Property; and (d) City or City's agents failure to comply with any and all future Environmental Requirements relating to the Property.

Metro hereby covenants to indemnify and defend (with legal counsel reasonably acceptable to the City) the City, and hold the City, its officers and employees, successors and assigns, harmless from and against all claims, demands, causes of action, or any other action or proceeding, meritorious or not, and all liabilities, losses, damages, costs and expenses relating to or arising, in whole or in part, directly or indirectly, from Metro's activities under Sections 3.7 and 3.8 above.

4.2.1 For purposes of this Section, "Environmental Condition" shall be interpreted to include, but not be limited to, the release of or contamination by any Hazardous Substance(s), pollutant or contaminant, as those terms are defined in CERCLA, TOSCA, ORS Chapters 465 and 466, and all other applicable federal and state environmental statutes, rules and regulations now or hereafter in effect, but shall not include conditions directly resulting from the acts of Metro, its officers and employees, agents and contractors.

4.2.2 For purposes of this Section, "Government Action" shall be interpreted to include any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency which results directly or indirectly from the Environmental Condition of the Property or Environmental Activity related on or related to the Property.

4.2.3 For purposes of this Section, "Adverse Environmental Activity" shall be interpreted to include any past or current, actual, proposed or threatened surface or subsurface, storage, holding, existing, release, emission, discharge, generation, processing, abatement, removal, remediation, disposition, handling or transportation of any Hazardous Substance(s), pollutant or contaminant (as though they are defined in CERCLA, TOSCA, ORS Chapters 465 and 466, and other applicable federal and state

environmental statutes, rules and regulations hereinafter in effect), from, under, into or on, the Property, or otherwise relating to the Property or the use of the Property or neighboring properties, or any other activity or occurrence, cause or causes that would cause any such event to exist, but shall not include activity by Metro, or on behalf of Metro by its officers and employees, agents and contractors

4.2.4 For purposes of this Section, "Environmental Requirements" shall be interpreted to include past, present and future state and federal local laws and ordinances, including CERCLA, TOSCA, and ORS Chapters 465 and 466, as amended from time to time, including any administrative court order, judgment or decree arising therefrom.

4.2.5 The City and Metro hereby agree that the Environmental Indemnity contained herein shall survive the sale of the Property to a third party. Metro may, at its option, tender any defense of any claim, action or suit covered under this Environmental Indemnity to the City.

5. Property Management. Upon acquisition of the Property by Metro and the City, the City shall manage the Property until it is conveyed to a developer pursuant to the Joint Offering. The City shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures necessary to maintain public safety on the Property, and to deter public nuisance use of the Property. Access to the Property shall be controlled by the City, and the City shall respond to neighborhood or citizen complaints regarding nuisance uses or noise on the Property. Any permits granted to third parties by the City to use the Property shall comply with the terms and limitations set forth in this Agreement. The City shall be responsible for obtaining all necessary permits and for complying with all state and local rules and regulations in managing and maintaining the Property. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Property. Funding for the management and maintenance of the Property and the payment of taxes or assessments applying to the Property, if any, shall be provided from the City's own resources.

6. General Provisions

6.1 General Indemnification. The City shall indemnify and defend Metro, and hold Metro harmless from and against any claim, loss, liability or cost suffered directly or from a third-party claim arising out of or related to the City's management of the Property or any condition on the Property in the possession or under the control of the City. Metro shall have no liability to the City for any injury, loss, or damage caused by third parties, except to the extent caused by Metro's negligence or breach of duty under this Agreement. The indemnity obligations of the City under this clause shall survive any expiration or termination of this Agreement.

Metro shall indemnify and defend the City, and hold the City harmless from and against any claim, loss, liability or cost suffered directly or from a third-party claim arising out of or related to Metro's activities under Sections 3.7 and 3.8, above. The indemnity

obligations of Metro under this clause shall survive any expiration or termination of this Agreement.

6.2 Liens. Except with respect to activities for which Metro is responsible, the City shall pay as due all claims for work done on and for services rendered or material furnished to the Property, and shall keep the Property free from any liens. If the City fails to pay any such claims or to discharge any lien, Metro may do so and collect the cost from the City. Such action by Metro shall not constitute a waiver of any right or remedy that Metro may have on account of the City's default. The City may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, as long as Metro's property interests are not jeopardized. If a lien is filed as a result of nonpayment, the City shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Metro cash or sufficient surety bond or other surety satisfactory to Metro in an amount sufficient to discharge the lien plus any costs or attorney fees.

6.3 Signage. The City may provide on-site signage informing the public that the City is managing the site, but said signage shall state that funding for the acquisition came from Metro's Transit-Oriented Development/Urban Centers Program. The City shall also document in any publication, media presentation or other presentations on the Property that funding was provided by Metro's Transit-Oriented Development/Urban Centers Program.

6.4 Term. The term of this Agreement shall be five (5) years from the Effective Date of this Agreement, renewable by mutual written agreement for additional five (5) year periods. The indemnities set forth herein shall survive and shall not be affected by the expiration or termination of this Agreement.

6.5 Joint Termination for Convenience. Metro and the City may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon 10 days' written notice of termination issued by Metro, subject to the mutual written agreement of the Parties.

6.6 Termination for Cause. Either party may terminate this Agreement before the date of expiration, if that party determines, in its sole discretion, that the other party has failed to comply with the terms and conditions of this Agreement and is therefore in default. The terminating party shall promptly notify the defaulting party in writing of that determination and document said default with reasonable particularity. Thereafter, the defaulting party shall have 30 days to cure the default. If the default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be complied with if the defaulting party begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to cure the default as soon as practicable. If this Agreement is terminated under this provision, the City shall quitclaim its interest in the Property to Metro.

6.7 Metro Termination for Failure to Vacate Right of Way and/or Obtain Necessary Zone Change. If the City's best efforts do not result in the incorporation of the ROW

Parcels and/or the amendment of its zoning ordinance as set forth in Section 3 above, then Metro may at its sole option terminate this Agreement, and the City shall quitclaim its interest in the Property to Metro.

6.8 City Termination for Failure to Obtain No Further Action Letter. If Metro's best efforts do not result in the receipt of a No-Further-Action Letter from DEQ as set forth in Section 3.9 above, then the City may at its sole option terminate this Agreement, and the City shall quitclaim its interest in the Property to Metro.

6.9 Laws of Oregon. This Agreement shall be governed by the laws of the State of Oregon, and the Parties agree to submit to the jurisdiction of the courts of the State of Oregon. All applicable provisions of ORS Chapter 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provisions were a part of this Agreement, including but not limited to ORS 279.015 to 279.320.

6.10 Assignment. No party may sell its undivided interest in the Property, or assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the Parties may subcontract for performance of any of their responsibilities under this Agreement.

6.11 Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro
Phil Whitmore, TOD Program Manager
600 N.E. Grand Avenue
Portland, OR 97232-2736

To City: City of Milwaukie
Mike Swanson, City Manager
10722 SE Main Street
Milwaukie, OR 97222

6.12 Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform to the terms and requirements of applicable law and the intent of this Agreement.

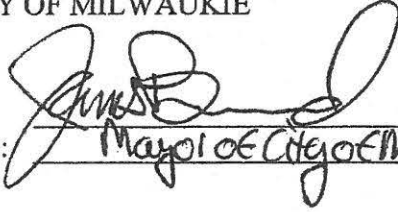
6.13 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to this Property. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year set forth below.

CITY OF MILWAUKIE

METRO

By:



Title:

Mayor of City of Milwaukie

By:



Title:

Chief Operating Officer

Date: 9/21/05

Exhibits:

Exhibit A – Legal Description and Depiction of Property and City Property

Exhibit B – Signed Letter of Intent

EXHIBIT A

Legal Description of Property and City Property

Property:

Lots 5, 6, 7 and 8, Block 14, MILWAUKIE, in the County of Clackamas, and State of Oregon. The Easterly boundary of said lots to be a line more particularly described:

Beginning at a brass screw set in the South sidewalk of Harrison Street in the Town of Milwaukie, at a point which is South 80° West 5 feet and North 9° 20' West 4 feet from the Northeast corner of said Lot 5, Block 14, MILWAUKIE, thence South 9° 20' East, along the center line of the vacated alley in said Block 14, as vacated by Milwaukie City Ordinance 35 recorded in Book 516, Page 124 Deed Records, a distance of 204 feet to an iron pipe set in the South line of said Block 14, said iron pipe being the point of terminus of said boundary as shown by Survey 2615 in the office of the Clackamas County Surveyor.

City Property:

Lots 1, 2, 3 and 4, Block 14, MILWAUKIE, according to the duly recorded plat thereof, said western boundary of said lots to be a line described particularly as follows:

Beginning at a brass screw set in the South sidewalk of Harrison Street in the Town of Milwaukie, at a point which is South 80° West 5 feet and North 9° 20' West 4 feet from the Northeast corner of said Lot 5, Block 14, MILWAUKIE; thence South 9° 20' East, along the center line of the vacated alley in said Block 14, as vacated by Milwaukie City Ordinance 35, recorded in Book 516, page 124 Deed Records, a distance of 204 feet to an iron pipe set in the South line of said Block 14; said iron pipe being the point of terminus of said boundary, as shown by Survey 2615 in the Office of the Clackamas County Surveyor.

EXHIBIT B

Signed Letter of Intent

LETTER OF INTENT

The purpose of this Letter of Intent is to set forth the terms for discussion by Metro, a Metropolitan Service District ("Metro"), and the City of Milwaukie ("City") for the purpose of entering into an agreement to provide a joint offering ("TOD/Centers Joint Offerings") of the Olson Bros service station ("Olson Property") site and the adjacent city-owned surface parking lot ("City Parking Lot") depicted in Exhibit A, subject to the legislative approval of each party's governing body. The TOD/Centers Joint Offering will provide for the development of an Urban Centers Project of 4-5 stories, containing housing above retail, in downtown Milwaukie, Oregon hereafter referred to as "Main Street Village, Phase II." Unless and until such time as a definitive written agreement has been approved and properly executed by all parties, no party shall have any legal obligation to the other with respect to the potential transactions discussed in this Letter. This Letter of Intent shall in no way be construed as a binding agreement between the parties. Subject to the foregoing, the following is a statement of potential deal points and actions by the parties that are intended to provide a framework for negotiation of a definitive written agreement.

Metro Participation

1. Metro will obtain an appraisal and appraisal review for the Olson Property at 10700 SE McLoughlin, Milwaukie, Oregon.
 2. Metro will seek the approval of the TOD/Centers Steering Committee and the Metro Council for the acquisition of the Olson Property.
 3. Metro will complete said acquisition and become the record owner of the Olson Property.
 4. Metro will cooperate with the City to jointly offer the Olson Property and the adjacent City parking lot for development as a signature mixed-use project of 4-5 stories with housing above retail to be called the Main Street Village, Phase II.
-
5. Metro will write down the land value of the Olson Property to an amount that will ensure the construction of a mixed-use development, subject to TOD/Centers Steering Committee and Metro Council approval.

City of Milwaukie Participation

1. City will offer the City Parking Lot at 10721 SE Main Street in a joint offering with the Olson Property, at an equivalent value per square foot as Metro offers the Olson Property. By writing down the land value of the City Parking Lot Property, the City will share in the financial burden of ensuring the construction of a mixed use project. However, it is understood that because Metro is purchasing land supporting a service station and converting it to commercial-residential use, Metro's total land value write down for the Olson Property will likely exceed the City's, despite equivalent sale values.

2. City will complete the necessary process to have the right-of-way parcels at SE Harrison Street and SE Jackson Street ("ROW Parcels"), depicted on Exhibit B, become part of the TOD/Centers Joint Offering.
3. City will use its best efforts to modify its planning and development regulations to permit a project composed of a minimum of five stories with a floor area ratio ("FAR") of 1 to 1, housing/parking ratio not to exceed one space per housing unit and a building type that is economically feasible
4. City will execute an environmental indemnity prior to Metro's acquisition of the Olson Property, agreeing to indemnify, defend and hold harmless Metro against all liability relating to the environmental condition of the Olson Property.

Joint Participation


1. Metro and the City will establish a project management committee to manage parcel consolidation including the ROW Parcels, craft and market a public offering document, solicit proposals and select a developer. The City and Metro will share decision-making equally for the project.
2. The Joint Offering may be offered through either an open competitive process or an unsolicited proposal process. The initial development concept is for a landmark mixed-use development of four to five stories, with the building footprint covering most of the parcel.

Schedule

The parties' intent is that the Joint Offering will issue within 18 months or less from the date of this Agreement.


Neither Metro nor City shall have any obligation to the other with respect to transactions and matters discussed above until a definitive written agreement encompassing said transactions and matters has been approved by the respective governing bodies of Metro and the City and executed by the parties. Unless and until such a written agreement has been so executed, neither party shall have any obligation to the other with respect to any costs incurred, including but not limited to, legal and consulting fees incurred in connection with the proposed transactions and actions described herein.

City of Milwaukee



City Manager

Metro



Chief Operating Officer

G:\Real_Estate\Milwaukee\Metro Joint Dev Offer\LETTER OF INTENT(031605).doc

EXHIBIT A

LEGAL DESCRIPTION

Lots 5, 6, 7 and 8, Block 14, MILWAUKIE, according to the duly recorded plat thereof, in the City of Milwaukie, County of Clackamas and State of Oregon, the Eastern boundary of said lots to be a line more particularly described as follows:

Beginning at a brass screw set in the South sidewalk of Harrison Street in the Town of Milwaukie, at a point which is South 80° West 5 feet and North 9°20' West, 4 feet from the Northeast corner of said Lot 5, Block 14, MILWAUKIE; thence South 9°20' East, along the center line of the vacated alley in said Block 14, as vacated by Milwaukie City Ordinance 35, recorded in Book 516, Page 124, Deed Records, a distance of 204 feet to an iron pipe set in the South line of said Block 14, said iron pipe being the point of terminus of said boundary, as shown by Survey 2615 in the Office of the Clackamas County Surveyor.

EXCEPTING THEREFROM those portions deeded to the City of Milwaukie by Deeds recorded February 1, 2005, Fee No. 2005-009153 and also Fee No. 2005-009154.

- 1. Maximize Development Potential. The project may be comprised of one or more buildings, but should be designed to maximize the development potential of the site to the greatest extent practicable including the use of the density bonus or variance process to achieve at least five stories in height.**

This goal will help deliver on Superaction 3 "Create Complete Neighborhoods that offer a range of housing types and amenities and enhance local identify and character." Priority Action Prosperity 2.2 also calls out "Incentivizing development of opportunity sites and other vacant and underutilized properties that can help meet the needs of neighborhood residents."

- 2. Equitable Housing. The project should reserve a minimum of 20 percent of the total build out of residential units to households earning 80 percent of the area median family income or below for a period of at least 30 years. Project Partners anticipate providing a reasonable amount of assistance to achieve this goal. Project partners are open to a land use program that includes multiple buildings, one of which is affordable.**

This goal will deliver on Superaction 3 "create complete neighborhoods that offer a range of housing types and amenities and enhance local identify and character" by providing some level of income restricted housing, and providing a variety of housing types accessible to people of a range of incomes. The City also declared in the housing emergency resolution that delivery of affordable housing is a priority for the Council and new tools such as the Construction Excise Tax have been deployed to support this effort.

- 3. Sustainability. The project must at a minimum meet the City of Milwaukie's green building requirement for density bonus. The project should be designed to reduce energy consumption and overall carbon output, utilize sustainable development practices, and consider the use of local and/or renewable building materials.**

Superaction 1 "Make Milwaukie a model of resiliency, environmental stewardship and disaster preparedness" includes Planet 1.1 "Implement city programs, incentives and development code amendments that promote sustainable development and help to better integrate the built environment and natural environment." By requiring that the project utilize the existing green building density bonus the city will leverage a more sustainable building and more housing units.

- 4. Mixed Use. The project must include a mixture of commercial and residential uses. Ground floor retail must be a primary component of the project's ground floor activation strategy and housing must be also a component of the project. Office uses may be considered on upper floors.**

This goal will help deliver on Superaction 3 "Create Complete Neighborhoods that offer a range of housing types and amenities and enhance local identify and character." Specifically, Priority Action Prosperity 2.2 "Incentivizing development of opportunity sites and other vacant and underutilized properties that can help meet the needs of neighborhood residents"

- 5. Transit Supportive Development.** The project should leverage the site's proximity to multiple forms of high frequency transit by minimizing on-site automobile parking, and incorporating other transportation demand management strategies such as shared parking, Electric Vehicle charging stations, car/bike share, transit information displays, and other transportation alternative programming efforts.

This goal delivers on Superaction 2 "Continually improve our transportation system so that it provides safety and connectivity for all users" as the project will include upgraded pedestrian amenities. The goal also reflects both Metro and City intentions to leverage the Max Orange Line, and adjacent bus mall and other transportation alternatives to reduce reliance on single occupancy vehicles.

- 6. Public Realm.** The project should consider the site's prominent location in the heart of Downtown Milwaukie, its proximity to Milwaukie Bay Park and Milwaukie's historic City Hall. The project should also consider its relationship to these amenities and provide benefits to the public through ground floor design, and/or uses accessible to the public within the building.

This goal recognizes the importance of the site location in the heart of downtown Milwaukie and ensuring that the building is designed to the highest standards and embraces and connects to the public amenities that surround it.

- 7. Public Financing.** should be minimized while delivering project goals.
- 8. Project Delivery.** The development should commence construction as soon as practicable.

From: [The Business of Milwaukie](#)
To: [OCR](#)
Subject: Harrison and Main Street Lot Discussion
Date: Tuesday, January 21, 2025 10:56:43 AM

**RS 7. C. 1/21/25
Correspondence**

This Message originated outside your organization.

Good evening Mayor Batey, City Council, City Manager, and staff,

It is our wish that we could have joined you in person this evening, time constraints will keep us from being with you tonight.

The Business of Milwaukie is sending this letter to add to the conversation around the Harrison and Main Street Lot at Tuesday nights council meeting.

The goal in Downtown Milwaukie is to create a vibrant, active, thriving business community. Streets filled with people shopping, dining, and experiencing what we know Milwaukie to be.

When stepping back and looking at the heart of the downtown it is the lot at Harrison and Main Street.

It is the space where the recent Bing in the New Year event was hosted, despite rain, community came together to celebrate the new beginning of 2025 in a big way. Many guests from outside of Milwaukie, discovering Milwaukie for the first time dining and shopping in downtown before the celebration began.

It is the home of the Milwaukie Farmers Market, a beloved weekly event in Milwaukie, 6 months of the year it draws not only from our community but surrounding communities too. A much anticipated event in the downtown contributing to the vibrancy and commerce in Milwaukie. It is the home of First Friday a community driven event bringing people together one evening a month during the “cooperative” weather months. The Sustainability Fair, the Leaf Drop, its where Santa rests his feet for a moment during the holidays, and umbrellas show off the creativity and diversity of Milwaukie. It is the best location to view the lighting of everyone’s favorite tree. It’s where we park to view the ships and fill the waterfront for solstice.

It is where more events are being dreamt of and planned to continue activating the downtown. It is the only location large enough downtown to host these *large scale*, active, and vibrant events.

The heart of downtown Milwaukie where people come together, a third place.

In 2018 (if memory is correct) when the conversation started around the lot, it was a very

different downtown, it had a smaller community of downtown residents, at the time North Main was really the only residential property in downtown proper. As we know it has grown to include Axledee, Henley Place, with more to come, to include Coho Point, & the Monroe and 21st Ave development. Parking, always controversial, has changed in its need, and will continue to grow and change in demand as construction becomes active, as more residents live in downtown, and as the business community grows.

As construction begins we need to remember that our access into the downtown is limited and can easily be stressed and impact our current businesses. We know this from when SODO was under construction. Washington Street is a critical access into downtown from McLoughlin and becomes “stopped” very quickly with construction and general traffic from trains, buses, cars, bikes, and those on foot. A lot happens in that small space from McLoughlin to 21st on Washington Street. Monroe, is often a “google” recommendation into downtown, if coming from the east/I-205, and will be impacted by construction. (yes, there is an assumption that both of these projects could be happening at the same time)

Harrison Street becomes the main access either from McLoughlin or 224, having the lot available for parking and events, is a great way to *welcome everyone* into Downtown Milwaukie.

In welcoming business, commerce, and vitality to downtown, currently there are 4 businesses that have made a large investment in downtown Milwaukie. Keeper Coffee, pFriem, Sewcial, and B-Side Records & Vintage are all under construction and poised to open in the spring of 2025 directly across from the lot. In Good Measure, and Decibel, are bringing new business to downtown in the near future as they build and expand. How about the new yoga studio in North Main or Sauna Glo that has just opened their doors. Why mention all of this? The Business of Milwaukie, is just getting started and wants to engage in this by bringing the larger business community into this conversation. In bringing them into the conversation some of the questions we can all benefit from their answers too are:

-Is the core (heart) of downtown able to thrive if it is under construction at Harrison and Main? We know what the impact is when construction is at either “end” of downtown

-How does the construction of the Harrison/Main lot impact the businesses that are located directly across from the lot and beyond? The ROI could be impacted for these businesses, is that how we want to welcome them to Milwaukie? Will they thrive/survive in Milwaukie?

-What is the impact on the businesses that are currently operating in downtown. We know that SODO had an impact on our business community where some survived,

others were lost. How do we all work together if we do feel that the businesses can thrive?

-What events are critical to the Downtown? Where could these large scale events be hosted if not in the Harrison Main lot? It has been previously determined that current events will have to scale down if moved to the south downtown space. Does that area “activate” all of downtown? Closing streets for events is an option, though it does create its own opportunities/challenges. What is the impact to our large percentage of services businesses, salons, therapists, yoga studios and more when streets are closed? We need more retail how do we work together to grow that segment? We can continue to grow the residential spaces in downtown, we won’t keep folks active in downtown if we don’t have more places for them spend their time.

-Should the city purchase the other half of the lot? Can Urban Renewal funds be used? What alternative funding is there to purchase the lot?

-If the lot is developed what needs to be included to support the businesses in downtown, ie parking, event space, farmers market space?

-How does the TOD designation (in the businesses opinion) benefit or not the downtown? Is it a contribution to activating the downtown?

-Do we take a pause on the lot, allow all of the “new” to settle into their homes, support our stakeholders in reinventing and revitalizing our really great “bones” and come back and create a space that serves everyone downtown and greater Milwaukie

We are posing a lot of questions, with an intention to bring all of the businesses into this conversation depending on where they are at in their engagement with this subject. This is an opportunity for all of us to meet, talk, and build a downtown for the current stakeholders, newly investing, and those to come. It is understood that tonight’s discussion is a beginning conversation. Let’s create an opportunity, provide direction tonight to activate the business community around this.

**there was not enough time for engagement with the business community once the details of the agenda were announced in addition to the meeting being on a holiday week, our business community is already working with a “short” week - it is important to us that all of the business have an opportunity to contribute not just a few in the room*

Best,

Kelli Keehner

The Business of Milwaukie

@thebusinessofmilwaukie

On a personal note: Isn’t the Harrison and Main lot as important as any one of our city

parks? Doesn't it bring community together? Doesn't it bring activity and vibrancy into the downtown? Doesn't it stimulate commerce? Doesn't it provide a service to the downtown businesses and residents?

Doesn't the lot provide a place for events that offer everyone a third place?

From: [Jay Panagos](#)
To: [OCR](#)
Subject: Re: Harrison & Main site
Date: Tuesday, January 21, 2025 7:28:14 PM

This Message originated outside your organization.

Scott,
Please pass my previous email thoughts on the Harrison & Main site to Council!

Thanks,
Jay
Sent from my iPhone

> On Jan 21, 2025, at 7:13 PM, Jay Panagos <jaypanagos64@gmail.com> wrote:

>

> Hello,

> If the land is developed as a small business/parking garage/site can a portion of that site be used for small business, auto parking, and most needed safe indoor bicycle parking?

>

> Thank you,

> Jay Panagos

> Bike Milwaukie

> Sent from my iPhone

Harrison and Main St. Site Discussion

City Council
January 21, 2025

Joseph Briglio, Assistant City Manager,
Acting Community Development Director
briglioj@milwaukieoregon.gov

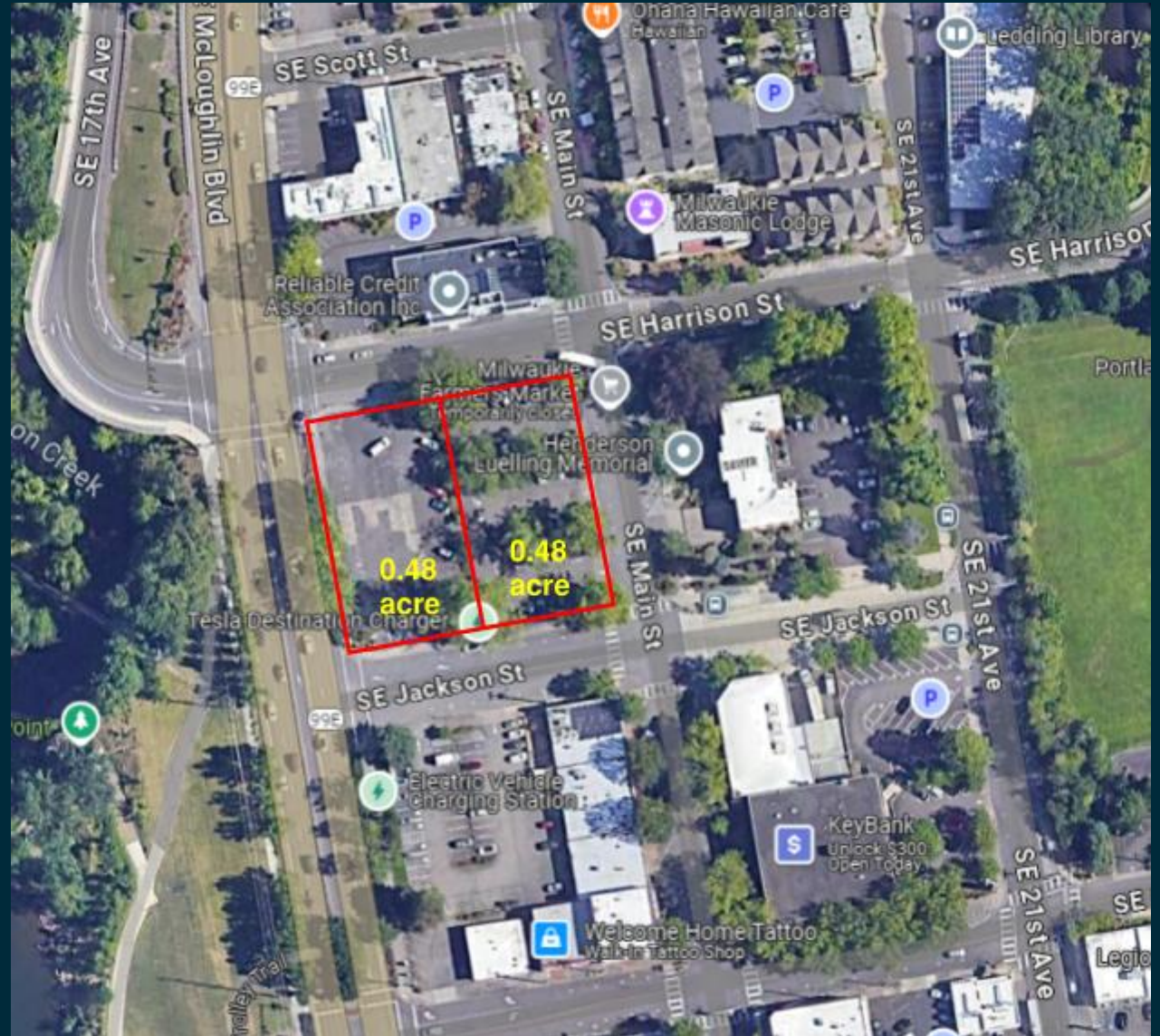
and

Mandy Byrd, Development Project Manager
byrdm@milwaukieoregon.gov



Harrison and Main St. Site – Vicinity Map

- Metro IGA - 2016
- Redevelopment Opportunities
- Constraints
- Council Prioritization



Metro TOD Program

Purpose:

Implements 2040 Growth Concept by investing in compact mixed-use projects near high frequency transit and in town and regional centers.

Goals:

- Vibrant communities
- Safe and reliable transportation
- Economic prosperity
- Equity
- Clean air and water
- Leadership on climate change



Proposed Development Goals (2018)

1. Maximize Development Potential
2. Equitable Housing
3. Sustainability
4. Mixed Use
5. Transit Supportive Development
6. Public Realm
7. Minimize Public Financing
8. Timely Project Delivery

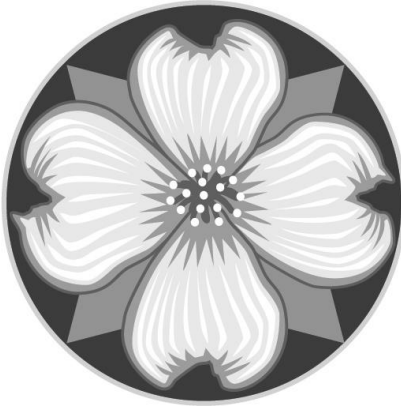


Harrison and Main St. Site Discussion

Discussion:

- Should developing the Harrison and Main Site be a higher priority for the city?
- With the changing landscape of downtown, are there new goals Council would like staff to discuss with Metro?





RS Agenda Item

9

Council Reports

COUNCIL STAFF REPORT

To: Mayor and City Council
Emma Sagor, City Manager

Reviewed: Scott Stauffer, City Recorder

From: Joseph Briglio, Assistant City Manager

Subject: **City Council 2025 Legislative Priorities**

Date Written: Jan. 10, 2025

ACTION REQUESTED

Council is asked to discuss and confirm their 2025 legislative priorities for cities day in Salem.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

In the fall of 2024, the League of Oregon Cities (LOC) requested that Milwaukie provide its 2025-2026 legislative priorities. Out of the priorities presented by LOC, Council selected the following five as its highest priority:

- Fully Funding Housing Production
- Shelter and homelessness response
- 2025 Transportation package
- Infrastructure Funding
- Funding and Expanding Public Transit

ANALYSIS

In preparation for LOC's City Day at the state capitol in Salem, and to prepare talking points for ongoing conversations with state and federal representatives, staff would like to generate a one-pager, or a "leave behind," that speaks to the priorities listed above and any additional legislative priorities Council wants to highlight (for example, securing funding for the Kellogg Dam removal and restoration project). An example of what this informational material could look like is attached (Attachment 1).

Staff requests that Council discuss and confirm their legislative priorities for the next two years (a long and short session). These priorities will inform both Council and staff on what the most important policy matters are for Milwaukie at the state level and beyond. Staff will then turn this input into a one-pager for Council use at LOC City Day on January 28, 2025.

ATTACHMENTS

1. City of Happy Valley Legislative Priorities One-Sheet Example



WELCOME TO HAPPY VALLEY

The City of Happy Valley was incorporated in 1965, growing from a rural area of about 300 people to a thriving community of 25,738 neighbors. Happy Valley is one of the most diverse cities in Oregon with many residents identifying as Asian (25 percent), of two or more races (7.8 percent), and/or Hispanic or Latino (4.3 percent). Our beautiful parks and trails, safe neighborhoods, and vibrant business community contribute to making Happy Valley a wonderful place to call home. Together, we celebrate and honor the spirit of unity bringing people together and making our Happy Valley the kind of place where everyone feels valued.

Welcome to our town. We look forward to partnering with you to make it even better.

GUIDING PRINCIPLES

PROTECT HOME RULE AUTHORITY

Happy Valley strongly believes that governments work *best* when they work *collaboratively* to provide complementary services and programs. While many issues involve different levels of government, each entity has a distinct role and purpose.



The City of Happy Valley's role was articulated when residents enacted a Home Rule Charter and instructed the City to exercise *all* powers under its charter, state and federal laws. Accordingly, Happy Valley residents expect their elected City officials to effectively govern local resources, tools, programs, services, and policies. To best serve area residents, the City urges the continued protection of local representative democracy and opposition to any action that would diminish home rule authority as established in the Oregon Constitution.

PRESERVE LOCAL FUNDING TOOLS

Much like the State, the City must balance its budget. The demand for services continues to grow, yet the City has very few funding tools. As a measure of fairness and equity, Happy Valley strives to make sure growth pays for growth. Tools critical to this effort include:

- Urban Renewal to fund infrastructure that serves growing areas
- System Development Charges (SDCs) which fund new roads, parks, sewer & water treatment capacity
- ROW/Franchise Fees which help maintain publicly owned roads and sidewalks



PROMOTE SAFE AND INCLUSIVE COMMUNITIES

Happy Valley is an attractive place to live. It's also one of the most racially diverse cities in Oregon. At the direction of a community driving task force, the City is continuously implementing action items detailed in our Diversity, Equity, and Inclusion Strategic Plan. The City encourages the State to work with local governments to build on strong relationships to further this work, remove barriers, and eliminate disparities through inclusive decision-making structures.



2023 PRIORITIES

LIBRARY COMMUNITY ROOM EXPANSION FUNDING

Happy Valley Library is a regional hub for information, resources, and programs on everything from mental health, diversity, history, financial wellness, and more! The Library serves approximately 55,000 people, the majority of whom are residents in unincorporated Clackamas County. With such a large service population outside of the city limits, the City is seeking \$4M in state funding to cover 50% of the cost of an upcoming expansion. The expansion will include a 300-person community room and kitchen—a welcoming place for all to use, gather, and celebrate our unique and shared cultural experiences.



ALIGNMENT FOR STATE LAND USE INITIATIVES

Recent state agency rulemaking and previous legislation have significantly changed the local land use planning process. Happy Valley supports the goals of these efforts which include making housing more affordable, our neighborhoods more equitable, and our community climate friendly. While well intended, local implementation of the statewide efforts have unintended consequences that are counter to the underlying goals and conflict with others. The City is supportive of additional flexibility to help achieve the intended goals in a way that reflect local community voices and values.



INFRASTRUCTURE FUNDING

With a substantial increase in federal funding coming to the State of Oregon, it’s important for the State to partner with cities and counties to strategically invest transportation dollars. The City seeks to ensure access to these funds will be simple and manageable.



LOCAL FUNDING TO ADDRESS HOMELESSNESS

In 2021, the Oregon Legislature enacted HB 3115 which established the “objectively reasonable” standard for time, place, and manner restrictions on camping in public. While Happy Valley has developed time, place, and manner restrictions to comply with HB 3115, the City strongly believes it’s more humane to provide shelter beds and access to appropriate services for those experiencing homelessness. The City is supportive of legislation providing additional funding at all levels to develop greater access to shelter beds for those in need.



ADDRESS MEASURE 110 SHORTCOMINGS

Happy Valley supports authorizing cities the ability to increase marijuana taxes to a new cap of 10%, with voter approval, and supports the legislature providing much needed relief to cities due to the passage of Measure 110.



TRANSPORTATION SAFETY ENHANCEMENT

The City supports legislation providing more authority for cities to set speed limits, expanding authority for establishing fixed photo radar, increasing the investment in the “safe route to schools” program, and expanding the “great streets” programs.



COMMUNITY RESILIENCY AND WILDFIRE PLANNING

In the midst of the 2020 Labor Day Fires, Happy Valley experienced a fire in a natural open space threatening thousands of neighboring homes. In response, the City hired a forester to develop a threat assessment and mitigation strategies on all public and private open spaces within the City. Happy Valley is still in need of technical assistance, additional capacity, and funding to mitigate future wildfires.



DRAFT

Draft MMC 2025 Legislative Agenda

MMC

Metropolitan Mayors' Consortium

Mayor Lacey Beaty

City of Beaverton

Mayor Brian Hodson

City of Canby

Mayor Jeffrey Dalin

City of Cornelius

Mayor Keith Jehnke

City of Durham

Mayor Keith Kudrna

City of Fairview

Mayor Malynnda Wenzl

City of Forest Grove

Mayor Michael Milch

City of Gladstone

Mayor Travis Stovall

City of Gresham

Mayor Tom Ellis

City of Happy Valley

Mayor Steve Callaway

City of Hillsboro

Mayor Shawna Thompson

City of King City

Mayor Joe Buck

City of Lake Oswego

Mayor Michelle Montross

City of Maywood Park

Mayor Lisa Batey

City of Milwaukie

Mayor Teri Lenahan

City of North Plains

Mayor Denyse McGriff

City of Oregon City

Mayor Ted Wheeler

City of Portland

Mayor Tim Rosener

City of Sherwood

Mayor Heidi Lueb

City of Tigard

Mayor Randy Lauer

City of Troutdale

Mayor Frank Bubenik

City of Tualatin

Mayor Rory Bialostosky

City of West Linn

Mayor Julie Fitzgerald

City of Wilsonville

Mayor John Miner

City of Wood Village

DEI, Social Justice, and Police Reform

MMC mayors are committed to listening to their communities and support policy and funding to improve the quality of life within cities. Mayors will establish effective city processes and policies related to public safety and advancing transparency and meaningful reforms. Systemic barriers to homeownership, entrepreneurship and access to services must be removed. Issues the MMC will focus on during the 2025 session include:

- Improving low-income utility assistance;
- Closing the digital divide and providing high speed internet access to all communities;
- Support funding to address the lack of public defenders;
- Making mental health resources accessible and ensuring law enforcement has access to more comprehensive mental health training to assist in response and de-escalation;
- Reinforcing and increasing law enforcement transparency, accountability, and training, with an emphasis on balancing training length and frequency; and
- Maintaining the level of investment achieved in the 2023-2025 biennium at the Department of Public Safety Standards and Training for officer training to prevent a backlog.

Transportation and Land Use

The MMC cities are uniquely impacted by transportation investments, including the method of finance, investments in regional projects, and proposed regulations. The MMC is encouraged by the prospect of a transportation investment package in the 2025 and fully endorses a bold investment. The MMC believes the investments must consider regional transportation needs. Issues the MMC will focus on during the 2025 session include:

- *2025 Transportation Package:* Supporting stabilizing ODOT operation and maintenance funding including moving towards alternative funding sources including equitable and efficient fees. Clean-up of the right of ways.
- *2025 Transportation Package:* It is imperative that any new and current revenue continue to be shared with local government partners in the traditional 50/30/20 percent split between the state, counties and cities.

DRAFT

- *2025 Transportation Package*: Supporting investments for major Portland Metropolitan Regional transportation infrastructure projects, including funding to complete the HB 2017 projects.
- *2025 Transportation Package*: Encouraging safe, multi-modal transportation options and investments that increase safety in pedestrian, bike, and transit routes.
- Supporting efforts to make more recreational immunity protections for local government
- Supporting equitable practices when addressing funding inefficiencies, with a focus on mitigating regional community impacts.

Economic & Workforce Development

Cities in the region have worked steadfastly and successfully towards economic recovery following the significant disruption caused by COVID-19. MMC mayors are focused on driving economic development and expanding workforce opportunities. Working families need access to quality and reliable supportive services to seize economic opportunity. Mayors will prioritize policies that attract businesses, support job creation, and encourage investment. Issues the MMC will focus on during the 2025 session include:

- Increase access to municipal broadband for all communities;
- Protect System Development Charges and seek opportunities to backfill loss of City revenue when SDC's are waived;
- Protect Local Shared Revenue that funds essential city services;
- Support economic development tools such as the Industrial Site Fund that promote development of industrial lands;
- Support increased access to high quality childcare, preschool and other critical early learning initiatives.

Emergency Preparedness, Crisis Response & Informational Technology - Buck

Oregon cities have experienced impacts from declared emergencies related to climate and technological changes. The MMC will prepare for future emergencies and disasters via infrastructure resilience and emergency response management and coordination. MMC mayors are focused on being able to react quickly to emergencies and will monitor developments in cybersecurity policies and artificial intelligence technology. Issues the MMC will focus on during the 2025 session include:

- Support investments in the development of resilient infrastructure including electrical grid and ensuring that costs are distributed equitably and appropriately;
- Support investments in wildfire prevention and increasing local access to tools to react efficiently and effectively to wildfires;
- Increase transparency in public hearings for personal identification, in verbal, written, and electronic testimony;
- Pursue emergency preparedness and economic recovery opportunities after declared emergencies; and
- Monitoring wildfire insurance availability in high-risk areas, as concerns grow about the lack of homeowners insurance in wildfire-prone zones.

DRAFT

Energy and Environment - Rosener

The MMC will prioritize policies and investments that support a balanced transition to clean energy. This includes ensuring tools are appropriately tailored to local circumstances and that infrastructure needs are met to achieve the state's long-term objectives. The MMC will focus on the following issues during the 2025 session:

- Advocate for flexible, locally appropriate tools in ratemaking and policy development rather than prescriptive, one-size-fits-all mandates;
- Advance transmission infrastructure as a foundational component of achieving clean energy goals, ensuring resilience and capacity for growth;
- Support the application of robust, transparent cost-benefit analyses to ensure energy policies provide measurable value and align with community priorities;
- Support flexibility in building energy standards in the state building code to address local needs and circumstances; and,
- Caution against encouragement of energy-intensive industries that may not be sustainable at current capacity.

Housing, Livability, and Public Health - Hodson

Oregon's public health system has been historically underfunded, which significantly impacts the MMC cities, with increasing demands for emergency and police services. This dynamic is exacerbated by limited city resources, understaffed programs, and a shortage of health care providers. Increased availability of affordable housing will address a segment of the homeless population's needs, however, there are other segments of the homeless population that need support, social services, and job training to stay housed. Issues the MMC will focus on during the 2025 session include:

- Supporting substantial infrastructure funding that supports housing production and land readiness;
- Securing ongoing direct funding and flexible one-time capital funding to cities for response to unhoused community members' needs;
- Increasing access and transparency to homeownership programs including mixed entry point opportunities and a historic rehabilitation tax credit.
- Increasing funding for state supported home ownership of naturally occurring affordable housing; and,
- Addressing the behavioral health workforce shortage.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF CLACKAMAS COUNTY, STATE OF OREGON

**RS 9. 1/21/25
Council Reports
- Mayor Batey**

In the Matter of Supporting a Recovery-Oriented System of Care in Responding to the Addictions, Mental Health and Homelessness Crisis



Resolution No. 2023-043

Page 1 of 2

WHEREAS, Clackamas County has identified drugs, crime, and untreated mental illness, of which homeless encampments are a symptom, as top threats to the health, safety and flourishing of all of its residents; and

WHEREAS, Clackamas County believes in the dignity and worth of its residents, and the communal good that is achieved when residents are on a path toward the realization of their full potential; and

WHEREAS, Clackamas County acknowledges that a significant and consequential portion of both those struggling with homelessness in the greater Portland area and throughout North America also contend with the complex diseases of mental illness and or addiction, whether a precursor to or a result of homelessness; and

WHEREAS, the U.S. Surgeon General specifically describes addiction as a brain disorder disease that results in reduced brain function, that inhibits an individual's ability to make decisions and regulate his or her actions, emotions, and impulses, and furthermore, that changes in the brain persist long after substance use stops and recognizes that addiction to alcohol or drugs is a chronic brain disease that has the potential for recurrence and recovery; and

WHEREAS, Clackamas County recognizes that housing alone cannot cure mental illness or addiction, and the nature of addiction and serious mental illness can make sufferers unable to recognize their own illnesses or seek help willingly and benefit from a well-coordinated continuum of care to help them get the supports they need; and

WHEREAS, Clackamas County agrees that open air drug scenes create violence that is incompatible with clean and vibrant public spaces, and make recovery from addiction more difficult; and

WHEREAS, Clackamas County believes that harm reduction services, when not antithetical to a recovery-oriented system of care, can be effective in saving lives. Moreover, they must exist within a full continuum of compassionate care that includes prevention, intervention, treatment, and recovery for those suffering from addiction; and

WHEREAS, Clackamas County identifies other contributing factors to homelessness, including domestic violence, experience in the child welfare system, economic and health crises, and physical and mental health conditions and is identifying strategies to address these factors; and

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of Supporting a Recovery-Oriented System of Care in Responding to the Addictions, Mental Health and Homelessness Crisis



Resolution No. 2023-043

Page 2 of 2

WHEREAS, Clackamas County believes that all people have a right to clean and vibrant public spaces, as well as safe emergency and transitional shelter when needed;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF CLACKAMAS COUNTY that all efforts to address homelessness in which the County and its employees engage must be concentrated on helping all residents participate in realizing their full human potential, by ensuring shelter, psychiatric, behavioral health and addiction care for all who need it, and by protecting public spaces for the use of the entire community.

DATED this 6th day of April, 2023

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

From: [Lisa Batey](#)
To: [City Council](#); [Michael Osborne](#)
Subject: article on Beaverton consideration of allowing dropboxes from other than approved haulers
Date: Wednesday, January 15, 2025 8:46:23 AM

Scott – please include in next week’s packet

All:

I thought this article was good food for thought before we circle back to our garbage hauler discussion. It will be interesting to see if Beaverton does allow this.

[Beaverton Could Get More Garbage Choices and More Recycling | News | valleytimes.news](#)

Excerpt from middle of article:

Thunderbird Drop Box is going before the Beaverton City Council on January 21st asking for permission to provide additional dumpster services in the community, promising better customer service, more recycling and lower prices.

“Choice and competition are good things,” said Terrell Garrett. “If the City of Beaverton allows more drop box providers in the area, like Thunderbird, hopefully, prices will go down and recycling rates will go up.”

There’s been an outpouring of public support for this proposal. Four of the city’s Neighborhood Associations and two large homeowner’s associations wrote letters of support. In addition, over 450 people signed a petition circulated at community events in Beaverton last year demonstrating they back Thunderbird’s efforts.

Commercial and industrial customers are also behind Thunderbird. The list includes the Homebuilders of Portland, Associated Builders and Contractors, Associated Roofing Contractors of Oregon and SW Washington, and the National Association of the Remodeling Industry Pacific NW.

Lisa M. Batey, Mayor (she/her)
City of Milwaukie
E-mail: bateyl@milwaukieoregon.gov
Message line: 503-786-7512

From: [Lisa Batey](#)
To: [City Council](#); [Peter Passarelli](#)
Subject: for our discussion of legislative agenda: Energy Affordability bills in the upcoming Oregon legislative session
Date: Monday, January 20, 2025 12:18:06 PM
Attachments: [Building Resilience priorities 2025.pdf](#)

Scott: Please include in Tuesday's packet. Please include the attachment, too, as well as this article (Oregonian "gift" article – link only good for 7 days)

<https://www.oregonlive.com/silicon-forest/2025/01/oregon-lawmakers-craft-bill-to-shield-consumers-from-the-cost-of-powering-data-centers.html?gift=ce3d5ddb-99d1-433d-a86b-1b07fb298834>

All: I will be sharing some additional background for our discussion of legislative priorities, beginning with this information from Brad Reed. Note that the two bills highlighted in yellow below are NOT covered in the attached priority document.

Lisa M. Batey, Mayor (she/her)
City of Milwaukie
E-mail: bateyl@milwaukieoregon.gov
Message line: 503-786-7512

From: Brad Reed <brad@buildingresilience.org>
Sent: Wednesday, January 15, 2025 6:10 PM
To: Lisa Batey <BateyL@milwaukieoregon.gov>
Subject: Energy Affordability bills in the upcoming Oregon legislative session for the MMC

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Hello Mayor Batey,

Great to see you the other day and chat about city council goals for the next few years!

Thanks for following up and making sure this issue is brought to the attention of the Consortium! If the Mayors choose to support some of these agenda items, I know it will be a big boost to our efforts. Plenty of legislators appreciate hearing from their mayors.

My organization, Building Resilience, is championing three priority items this year and they fit narratively into an overall "Energy Affordability and Resilience" set of bills that could be easily grouped together.

For the past year, our coalition took a ground up approach by surveying our communities about their challenges and how it relates to homes and

buildings, and energy. What we heard was an intersection of problems related to the rising cost of utilities. As of this month, the **major for-profit utilities** in Oregon have **raised rates about 50% in the last 5 years**. Hundreds of dollars annually for the average customer. Inability to pay utility bills is a harbinger of loss of **housing**. We approach this work as part of the strategy on preventing homelessness.

It's also a matter of climate resilience. When **fear of a high energy bill forces someone to switch off cooling or heating**, as climate change makes our weather more extreme each season, that's not resilience. Many homes still lack cooling at all. Upgrades to homes and buildings to protect against extreme weather and lower energy costs are available, but can be difficult to access for some folks do to expense or difficulty navigating the incentive landscape.

Our coalition is working with lawmakers on both a short and long term approach to tackling these challenges-- rate relief to slow the utility hikes (short term) and increasing access to energy efficiency upgrades to bring bills down and increase resilience (long term). Legislators have stepped up to introduce bills that will engage solutions to these challenges.

- One Stop Shop 2.0 (energy efficiency navigation) - [House Bill 3081](#)
- Get the Junk Out of Rates (stop utilities from charging certain expenses like lobbying, advertising, association fees to customers) [Senate Bill 88](#)
- Full Funding for Climate Resilience (budget investments to support successful, existing programs) - Two ODOE heat pump incentive programs, and Office of Resilience & Emergency Management's Climate Resilience Hubs program.

Additionally, various close partners of ours are working on other priority bills to take a multifaceted approach to getting rate hikes under control.

- **Fairness & Affordability in Residential Energy (ratemaking reform to favor consumers)** - [House Bill 3179](#)
- **Protecting Oregonians With Energy Responsibility (ability for utilities to charge large load customers for new infrastructure related to their demand, instead of all ratepayers)** - this bill hasn't dropped yet, but [Rep. Marsh previewed it for *The Oregonian*](#).

I'd be happy to sit down and expand on the vision for how these bills could work together and really deliver on a challenge a lot of Oregonians are naming as a top concern. Let me know!

Brad Reed (he/him)
Campaign Director
[Building Resilience](#)

! --Lisa



Building Resilience is a statewide coalition of climate justice and public health, business and labor, faith and frontline communities, environmental, family, and youth organizations, and thousands of individuals advocating for legislative and regulatory action to promote **healthy, affordable, resilient homes and buildings that run on clean energy**, for all Oregonians.

The Challenge

The need for **affordable, resilient homes and buildings** has never been greater, with soaring fossil fuel prices, worsening climate harms, and an extreme need to build new homes and buildings to accommodate our growing communities and businesses. We must prepare both existing and future buildings to better protect us. The climate crisis is here and harming us all, with those who are already the most vulnerable bearing the worst burden. Our **homes and buildings** are the second largest source of climate pollution and our first line of defense against climate harms, like extreme heat and wildfire smoke.

Additionally, with Oregon on one of the most progressive timelines in the nation toward **100% clean electricity**, there is more momentum than ever for plugging our homes and buildings into that clean power by transitioning off of methane gas, oil, and other expensive, polluting energy.

The Coalition

Together we share a vision for making Oregon's homes and buildings healthier, more affordable, resilient, efficient, safer, and all-electric to lower climate pollution, while creating good-paying jobs. The coalition will seek policies that put people at the center and prioritize those most harmed by the climate crisis and the high cost of fossil fuels such as people with low-income, rural, Black, Indigenous, and people of color in Oregon.

A steering committee of **Verde, Oregon League of Conservation Voters, Oregon Just Transition Alliance, Oregon Environmental Council, Community Energy Project, and Climate Solutions** anchors the growing Building Resilience coalition, bringing together diverse allies across Oregon.





2025 LEGISLATIVE PRIORITIES

“One Stop Shop 2.0” (HB 3081)

There’s never been more financial help for Oregonians to upgrade their homes and buildings for better health, lower costs, less pollution, and higher resilience. Yet finding and applying for all the incentives and rebates for efficient heat pumps, improved insulation, sturdier doors and windows, and clean electric cooking **can be a challenge**.

Imagine a working parent, juggling all of life’s obligations, plugging in some basic information to Oregon’s incentive “One Stop Shop” website and receiving a list of all the assistance available in one simple read-out. That system is nearly up and running! Now imagine not only do they get the information they need, but **a support system kicks into gear**– ready to help the busy parent navigate the applications, connect to trusted contractors, and answer questions throughout the process until the upgrades are done! Lower utility bills, healthier air, and better comfort in their home, with all the help they need, start to finish. That’s the vision for **One Stop Shop 2.0**.

“Get the Junk Out of Rates” (SB 88)

Utility bills are rising rapidly and are unaffordable for many Oregonians. **High energy costs make us less resilient to climate disasters** like extreme heat waves, wildfire smoke events, and arctic storms. When fear of a high energy bill forces someone to switch off cooling in the summer or heating in the winter, that’s not resilience.

To bring utility bills down long term we must increase energy efficiency and make a clean energy transition to cheaper wind and solar. In the meantime, **for-profit, monopoly utilities need to tighten their belts like the rest of us**. Things like expensive lawyers and lobbyists, advertising, industry association fees, and charitable donations should come out of company profits and not be charged on our bills. We’re going to **get millions of dollars of “junk” out of our rates**.

“Full Funding for Climate Resilience”

More Oregonians today enjoy energy efficient heating and cooling and resilience against the elements thanks to the **most equity-minded incentive programs for home upgrades** in our state’s history. The legislature passed these programs in the last several years with **one-time funding**, which is now all spent. The need is still enormous.

With the [deaths of at least 17 more Oregonians](#) in 2024 due to extreme heat and the [largest wildfire burns in state history](#), we cannot spend enough to help prepare our homes and buildings to protect people from climate harms. All we’re asking is for budget writers to maintain **the important incentive programs at previous levels**, so more Oregonians will be prepared and protected against climate disasters and rising energy costs. We’re focused on the **Rental Home Heat Pump Program** and **Community Heat Pump Deployment Program** at the Oregon Dept. of Energy, and the **Community Resilience Hubs Program** at the Office of Resilience and Emergency Management.



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Oregon lawmakers craft bill to shield consumers from the cost of powering data centers

Updated: Jan. 13, 2025, 12:19 p.m. | Published: Jan. 11, 2025, 6:04 a.m.



PGE's Shute Substation in North Hillsboro helps supply power to nearby data centers. Pending legislation seeks to ensure tech companies cover the cost of new generation and transmission to power their operations. Sean Meagher/The Oregonian



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By [Mike Rogoway](#) | [The Oregonian/OregonLive](#)

Power-hungry data centers are poised to send Oregon electricity consumption soaring by the end of the decade, [an unprecedented surge in energy demand](#) that could drive up residential power bills, too.

So state lawmakers are crafting legislation for the upcoming session that would give Oregon regulators new authority to insulate residential customers from the costs associated with supplying Big Tech.

"People who are our largest energy users should be paying for the cost of their energy," said Rep. Pam Marsh, D-Ashland, who is writing the legislation. "That's just a basic consumer protection issue here."

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Oregon already has laws designed to make sure each class of customer pays its fair share, but state regulators say those provisions didn't envision electricity customers wanting as much power as the data centers do.

Oregon's electricity consumption will rise spectacularly in the coming years, driven not only by data centers but also a shift away from fossil fuels and toward electric vehicles, machinery and appliances.

The legislation aims to ensure the data center operators bear most of the cost of new electricity plants and transmission lines that serve the tech industry.

Oregon's residential electricity customers are already reeling from a series of rate hikes, which have sent power bills up by nearly 50% in the Portland area in just the past four years.

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Oregon is one of several states contemplating similar legislation in response to data center growth but Marsh said her proposal, currently designated Legislative Concept 1547, is being written in response to the particular challenges data centers are creating here.

Already, data centers consume more than 10% of all Oregon's electricity. Power planners expect tech companies' power use will double by the end of the decade, or perhaps quadruple.

Industry insiders say the high end of the forecast is most likely, meaning that by 2030 Northwest data centers could consume nearly as much electricity as all the homes in Oregon and Washington use today.

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It's all being driven by artificial intelligence, energy-intensive computing that enables sophisticated data analysis.

Oregon has one of the largest data center markets in the nation, in large part due to the state's especially lucrative tax breaks. Wealthy technology companies operating in Oregon are in line to save billions of dollars in local property taxes in the years ahead.

An early draft of LC 1547 viewed by The Oregonian/OregonLive would direct the Oregon Public Utility Commission to create a new class of utility customer for industrial facilities with a "base load of 25 megawatt-hours or more."

The legislation would give the commission explicit authority to assign the costs of serving those huge energy customers to those customers and to ensure that big power contracts "do not result in increased costs or risks to other retail electricity consumers."

It would also require those big customers to commit to 10-year power contracts and to pay a minimum percentage of those power costs. That provision is designed to ensure that large tech companies are on the hook for the cost of new power plants and transmission lines, even if the companies don't ultimately need as much electricity as they initially anticipated.

"We think it is a good bill," said Bob Jenks, director of the Oregon Citizens Utility Board, which advocates for residential energy customers. "Because rate classes are the methodology that is used to assign costs, this would allow the costs to serve data centers to be assigned to the data centers."

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LC 1547 applies to investor-owned utilities like PacifiCorp and Portland General Electric, which provide power to data centers in Prineville and Hillsboro. It doesn't apply to electric cooperatives like those serving Amazon in Morrow and Umatilla counties and Google in The Dalles. Cooperatives have the authority to set their own rules for allocating power costs.

Portland General Electric and PacifiCorp haven't taken a position on LC 1547 but both utilities say they support regulations to allocate the costs of serving large energy customers to the companies using that power.

"While the existing regulatory framework is established to protect customers and align the costs of energy infrastructure with the customers benefiting from these investments, the scale, pace and uncertainty surrounding this potential load growth will require additional regulatory updates to protect all customers while creating a path for large customers to expand their businesses," PacifiCorp said in a written statement.

In rate cases before state regulators, Amazon and Meta (Facebook's parent company) have jostled with utilities over how to assign the costs of serving data centers.

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The proposed legislation could help eliminate ambiguity in existing law and make it more straightforward for the utility commission to arbitrate such disputes – but the legislation itself could prove contentious.

Amazon hasn't taken a public position on the legislation but said it has been talking with lawmakers and others for several months about the proposed changes to Oregon regulations governing large data centers. The company indicated it believes some costs should be spread across all utility customers.

"Transmission charges fund the ongoing grid modernization and upgrades required to support the needs of all energy users. Utility regulators set these transmission charges to make sure buyers pay their fair share," Amazon said in a written statement.

However, the company said it's appropriate that specific users bear some costs themselves.

"Where we require specific infrastructure to meet our needs (such as new substations), we work to make sure that we're covering those costs and that they aren't being passed on to other ratepayers," Amazon said.

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Meta, Facebook's parent company, didn't respond to a request for comment on LC 1547.

Large tech companies have enormous political clout in Oregon.

Two years ago, amid [intense lobbying by Amazon](#) and by technology associations, state lawmakers [dropped a proposal](#) to subject data centers to the same clean energy standards that apply to other industries. Lawmakers also voted to extend the program of tax breaks that benefits data centers until 2032.

Data centers' energy use has generated a great deal of interest and concern, said Jenks, from the Citizens Utility Board. He said he will be watching to see how lawmakers' respond.

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"It will be a test of legislators' concerns about rising rates," Jenks said, "versus the clout of the data center coalition."

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-- [Mike Rogoway](#) covers Oregon technology and the state economy. Reach him at mrogoway@oregonian.com.

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From: [Lisa Batey](#)
To: [City Council](#)
Subject: FW: Homelessness in our city
Date: Monday, January 20, 2025 5:24:41 PM

Scott, Emma – please add this to the record – I defer to you whether that’s tomorrow’s record, or the one for the retreat.

From: Mary Zellharie <mzellharie@icloud.com>
Sent: Monday, January 20, 2025 4:15 PM
To: Robert Massey <MasseyR@milwaukieoregon.gov>; William Anderson <AndersonW@milwaukieoregon.gov>; Rebecca Stavenjord <StavenjordR@milwaukieoregon.gov>; Lisa Batey <BateyL@milwaukieoregon.gov>; Adam Khosroabadi <KhosroabadiA@milwaukieoregon.gov>
Subject: Homelessness in our city

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Mayor Batey and Councilors,

This email is in regard to the film “No place to call home” which was shown to a **packed** room at the library last week. Now I have seen it twice...but I didn’t see you there? Maybe you attended the first showing at CCC earlier...

This is an important film ..it drives home a growing problem for the elderly...not having an adequate place to live... Recently, my husband and I saw a clip from the OPB program Independent Lens which exposed the situation in Japan where the elderly are committing crimes so they can be sent to jail where they will have a place to live, with meals and care...

You are working on your goals...adequate housing with support services ..MUST be part of what you select for the next and coming years....we can’t let this or sleeping in tents be our answer to Home...

If you haven’t seen this film, I urge you to contact Tara so she can help you find future showings of this film.

Thanks for your work.

Mary Zellharie

Sent from my iPad