



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

October 15, 2008



TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Lincoln City Plan Amendment
DLCD File Number 003-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: October 29, 2008

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Laren Woolley, DLCD Regional Representative
Amanda Punton, DLCD Natural Resource Specialist
Richard Townsend, City of Lincoln City

<paa> ya/

2007

2 Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
 PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

DATE
STAMP

DEPT OF

OCT 09 2008

LAND CONSERVATION
AND DEVELOPMENT
For DLCD Use Only

Jurisdiction: City of Lincoln City Local file number: ZOA 05-07

Date of Adoption: Sept. 22, 2008 Date Mailed: October 8, 2008

Date original Notice of Proposed Amendment was mailed to DLCD: 12/21/07 and 03/21/08

☐ Comprehensive Plan Text Amendment

☐ Comprehensive Plan Map Amendment

☒ Land Use Regulation Amendment

☐ Zoning Map Amendment

☐ New Land Use Regulation

☐ Other: _____

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Amendments to the zoning ordinance to replace Section 17.52.230 of the Municipal Code, Zoning, Tree Removal, with a new section, Tree Protection and Removal", to provide additional standards for tree protection and removal. The new ordinance requires a tree protection plan for specific types of development; provides incentives for tree retention; establishes standards for replacement of removed trees; sets out requirements for tree removal permits and exemptions from permit; requires tree protection during construction; establishes maintenance and protection standards; amends standards for violation and enforcement; and establishes a city tree fund and tree board.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

Plan Map Changed from: n/a to: _____

Zone Map Changed from: n/a to: _____

Location: city-wide Acres Involved: 3592.45

Specify Density: Previous: n/a New: n/a

Applicable Statewide Planning Goals: 2, 5, 6, 7, 13

Was and Exception Adopted? ☐ YES ☒ NO

DLCD File No.: 003-08 (16795)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing? ☒ Yes ☐ No

If no, do the statewide planning goals apply? ☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption? ☐ Yes ☐ No

Affected State or Federal Agencies, Local Governments or Special Districts:

ODOT, any agency making application
within the City of Lincoln City

Local Contact: Richard Townsend Phone: (541) 996-2153 Extension: _____

Address: PO Box 50 City: Lincoln City

Zip Code + 4: 97367- Email Address: rtown@lincolncity.org

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

SECTION 1. Lincoln City Municipal Code Section 17.52.220 is amended and replaced in its entirety with the following text:

- A. Scope
- B. Purpose
- C. Definitions
- D. Tree Plan Requirement
- E. Incentives for Tree Retention
- F. Replacement Standards for Removed Trees
- G. Tree Removal Permit
- H. Tree Protection During Construction
- I. Maintenance and Protection Standards
- J. Violation; Enforcement
- K. Tree Fund
- L. Tree Board

A. Scope. This ordinance applies to all trees within the City, no matter where located, having a diameter of two (2) inches or greater diameter measured at four and one-half feet (4½ ') diameter breast height (d.b.h.); or, for species trees with multiple main stems (e.g. vine maple) the average diameter of all stems of the tree measured at a point no more than six inches above the surrounding grade or measured six (6) inches from the point where the stems digress from the trunk, whichever produces the larger measurement. If a tree has been removed and only the stump remains, diameter shall be measured as the diameter of the top of the stump.

1. Value of trees. The city benefits from a large number of trees. These trees of varied types add to the aesthetic beauty of the community and provide important environmental benefits including, help clean the air, help control erosion, maintain water quality and provide noise barriers.
2. The intent of this section is to protect trees where appropriate, including taking reasonable measures to site structures, and to prohibit damage, mutilation, and destruction of trees that have a beneficial effect on the value of property and on the city as a whole. This purpose statement provides a general philosophy to guide the specific enforcement and implementation provisions and criteria which follow in this section. In addition, this section aims to:

- 1 a. Establish regulations to protect trees;
 - 2 b. Encourage the preservation, planting and replacement of trees in the
 - 3 city;
 - 4 c. Require the preservation, planting and replacement of trees on property
 - 5 subject to development approval;
 - 6 d. Provide incentives for tree retention and protection;
 - 7 e. Set standards for removal and replacement of trees;
 - 8 f. Control problems of soil erosion, destruction of scenic values and
 - 9 wildlife habitats;
 - 10 g. Improve air quality;
 - 11 h. Protect water quality;
 - 12 i. Protect land from erosion including slopes over 25%; and
 - 13 j. Regulate commercial forestry to control the removal of trees in an urban
 - 14 environment.
- 15 3. Recognize need for exceptions. The city recognizes that, notwithstanding these
- 16 purposes, at the time of development it may be necessary to remove certain trees
- 17 in order to accommodate structures, street utilities, and other needed or required
- 18 improvements within the development. The burden of proof is on the applicant to
- 19 show removal is necessary and that other alternatives are not feasible. Cost shall
- 20 not be the sole factor in determining whether an alternative is feasible.
- 21 **C. Definitions**
- 22 The following definitions apply to regulations governing the preservation and
- 23 removal of trees contained in this chapter exclusively:
- 24 “Canopy cover” means the area above ground which is covered by the trunk and
- 25 branches of the tree.
- 26 “Project Arborist” means a licensed tree care consultant who is certified as an
- 27 Arborist by the International Society of Arboriculture and engaged by a property
- 28 owner to prepare and implement a Tree Plan.
- “City Arborist” means a licensed tree care consultant who is certified as an Arborist by the International Society of Arboriculture and is engaged as required by the City to perform the functions delegated to the City Arborist in this ordinance.
- “Cut” means to fell or remove a tree or to do anything that has the natural result of causing the death or substantial destruction of a tree, including Girdling and Topping.
- “Commercial forestry” means the removal of ten or more trees per acre per calendar year for sale. Tree removal undertaken by means of an approved tree removal plan under subsection E is not considered commercial forestry under this definition.

- 1
2 “Girdling” means the cutting or removal of the outer bark and conducting tissues
3 of a tree potentially causing death by interrupting the circulation of water and
4 nutrients.
- 5 “Hazardous tree” means a tree which by reason of emergency conditions, disease,
6 infestation, age, or other condition presents a known and immediate hazard to
7 persons or to public or private property.
- 8 “Preserved Tree” means a tree that has been so designated in a Tree Protection
9 Plan approved by the city pursuant to the issuance of a permit in connection with
10 development.
- 11 “Pruning” means the cutting or trimming of a tree in a manner which is consistent
12 with recognized tree maintenance practices.
- 13 “Topping” means the severe cutting back of the tree’s crown limbs to stubs to
14 such a degree so as to remove the natural canopy and disfigure the tree.
- 15 “Removal” means cutting or removing fifty percent (50%) or more of the crown,
16 trunk or root system of a tree, or any action which results in the loss of aesthetic
17 or physiological viability or causes the tree to fall or be in immediate danger of
18 falling. “Removal” includes topping but shall not include pruning performed to
19 required standards.
- 20 “Tree” means a standing woody plant, or group of such, having a trunk which is
21 two inches or more in caliper size when measured at four and one-half feet (4 ½’)
22 diameter breast height (d.b.h.) measured from the uphill side; in the case of multi-
23 stemmed or trunked trees, the diameter shall be the sum of diameters of all
24 individual stems or trunks.
- 25 “Tree Care Provider” means a person registered with the Oregon Construction
26 Contractors Board to perform tree preservation, tree maintenance and/or tree
27 removal activities, including but not limited to pruning, tree limb removal, tree or
28 limb guying, and tree fertilization.
- “Sensitive lands” means those lands described at Chapter 17.46 of this title and
the following:
- a. The 100-year floodplain or 1996 flood inundation line, whichever is
greater;
 - b. Natural drainage ways, as established by historical records,
photographs, or other documents;

- c. Wetland, riparian areas, and wildlife areas within the urban growth boundary and shown on the significant natural resources maps in the comprehensive plan, or areas which are regulated by the other agencies including the U.S. Army Corps of Engineers and the Division of State Lands;
- d. Steep slopes of 25% or greater and unstable ground; and
- e. Significant fish and wildlife habitat areas as designated by Oregon Dept. of Fish and Wildlife, U.S. Fish and Wildlife Service, or other state or federal law.

D. Tree Protection Plan Requirement

1. Tree Protection Plan required. A tree plan for the planting, maintenance, removal and protection of trees prepared by a certified arborist shall be provided for any lot, parcel or combination of lots or parcels for which a development application for a subdivision, partition, site development review, planned development or conditional use is filed. Protection is preferred over removal wherever possible.

2. Plan requirements. The Tree Protection Plan shall include the following:

- a. Identification of the location, size and species of all existing trees including trees designated as significant by the city;
- b. An accurate topographical survey, subdivision map or plat map, that bears the signature of a qualified, registered surveyor or engineer, and which shows:
 - 1. The shape and dimensions of the property, and the location of any existing and proposed structures or improvements; and
 - 2. The location of the individual trees on the site, and indicating species, approximate height, size at diameter breast height, canopy spread and common name; and
 - 3. The location of existing and proposed easements, as well as setbacks required by existing zoning requirements.
- c. In lieu of the map or survey, an applicant proposing to remove trees may provide aerial photographs with overlays, GIS documentation, or maps approved by the Planning and Community Development Director, and clearly indicating the information required by this subsection.
- d. Arborist report. The report, prepared by a certified arborist, shall describe the health and condition of all trees subject to removal or transplanting, and shall include information on species, common name, d.b.h., and approximate height and age.

- 1 e. Tree protection; preserved trees. Unless specifically exempted by the
2 Planning and Community Development Director, a statement describing
3 how trees intended to remain as Preserved Trees will be protected during
4 tree removal and how Preserved Trees will be maintained.
- 5 f. Tree identification. Unless specifically exempted by the Planning and
6 Community Development Director, a statement that any trees proposed for
7 removal will be identified by a method obvious to a site inspector, such as
8 tagging, painting, or flagging, in addition to clear identification on
9 construction documents.
- 10 g. Replacement trees. A description of the proposed tree replacement
11 program meeting the standards of subsection D(3) with a detailed
12 explanation including the number, size, and species, and cost.
- 13 h. Covenants, conditions and restrictions (CC&R's). Where the applicant
14 is proposing to remove trees on common areas, the applicant shall provide
15 a copy of the applicable CC&R's, including any landscaping provisions.
- 16 i. Waiver of documentation. The Planning and Community Development
17 Director may waive an application document where the required
18 information has already been made available to the City, or where the
19 Planning and Community Development Director determines the
20 information is not necessary to review the application.
- 21 j. Protection program. A protection program defining and describing
22 methods that will be used by the applicant to insure the protection of trees
23 during and after construction. The protection program must meet the
24 following standards:
- 25 1. Notice to city a minimum of 48 hours in advance of any grading
26 or clearing of the site.
 - 27 2. Demonstration that a certified arborist will be on site at all times
28 during clearing, grading or tree removal, with authority to direct
construction practices to protect trees.
 3. Adequate barriers are in place to protect trees and tree roots
from damage by any construction activity;
 4. Permission for the city to enter the site at any time to review
compliance with the Tree Protection Plan and Tree Removal
Permit.
 5. Any other standards adopted by resolution of the City Council
to protect trees during construction.
- k. A maintenance plan ensuring survival of all protected trees, Preserved
Trees, and newly planted trees.

1
2 3. Replacement standards for development. Replacement of trees six inches (6")
3 d.b.h. or larger must follow the replacement guidelines of subsection F, in
4 accordance with the following standards and shall be exclusive of trees required
5 by other development code provisions for landscaping, streets and parking lots:

6 a. Retention of less than 25% of existing trees requires a replacement
7 program in accordance with Section F of no net loss of trees;

8 b. Retention of from 25% to 50% of existing trees requires that two thirds
9 of the trees to be removed be replaced in accordance with Section F;

10 c. Retention of from 50% to 75% of existing trees requires that 50
11 percent of the trees to be removed be replaced in accordance with Section
12 F;

13 d. Retention of 75% or greater of existing trees requires no replacement.

14 4. Pre-development tree removal. Trees removed within the period of one year
15 prior to a development application listed above will be inventoried as part of the
16 Tree Protection Plan above and will be replaced according to subsection F.

17 **E. Incentives for Tree Retention**

18 1. Incentives. To assist in the preservation and retention of existing trees as
19 described in subsection D(2), the Planning and Community Development Director
20 may apply one or more of the following incentives as part of development review
21 approval and the provisions of a Tree Protection Plan:

22 a. Density bonus. For each 2% of canopy cover provided by trees that are
23 preserved and incorporated into a development plan, a 1% bonus may be
24 applied to density computations of residential development. No more than
25 a 20% bonus may be granted for any one development. The percentage
26 density bonus shall be applied to the number of dwelling units allowed in
27 the underlying zone. This bonus is not applicable to trees preserved in
28 areas of floodplain, slopes greater than 25%, drainage ways, or wetlands
that would otherwise be precluded from development;

b. Lot size averaging. To retain existing trees over six inches in caliper in
the development plan for any land division under Title 16, lot size may be
averaged to allow lots less than the minimum lot size allowed by the
underlying zone as long as the average lot area for all lots and private open
space is not less than that allowed by the underlying zone. No lot area
shall be less than 80% of the minimum lot size allowed in the zone;

c. Lot width and depth. To retain existing trees over six inches in caliper in
the development plan for any land division under Title 16 (including

- 1 subdivisions for planned unit development approved under Title 17), lot
2 width and lot depth may be reduced up to 20% of that required by the
underlying zone;
- 3
4 d. Commercial/industrial/places of public assembly use parking. For each
5 2% of canopy cover provided by existing trees over six inches (6") d.b.h.
6 that are preserved and incorporated into a development plan for
commercial, industrial or civic uses listed in subsections 17.56.050 B or D
7 through G, Off-Street Parking Requirements, a 1% reduction in the
8 amount of minimum required parking may be granted. No more than a
20% reduction in the required amount of parking may be granted for any
one development;
- 9
10 e. Commercial/industrial/places of public assembly landscaping. For each
11 2% of canopy cover provided by existing trees over six inches (6") d.b.h.
12 that are preserved and incorporated into a development plan, a 1%
reduction in the required amount of landscaping may be granted. No more
than 20% of the required amount of landscaping may be reduced for any
one development.
- 13
14 2. Removal of a tree after development approval. Any Preserved Tree, or tree
15 retained or planted in accordance with this section may thereafter be removed
16 only for the reasons set out in a Tree Protection Plan, in accordance with
17 subsection 17.52.220D, or as a condition of approval for a conditional use, and
18 shall not be subject to removal under any other section of this chapter. The
19 property owner shall record a deed restriction as a condition of approval of any
20 development permit affected by this section to the effect that such tree may be
21 removed only if the tree dies or is hazardous according to a certified arborist. The
deed restriction may be removed or will be considered invalid if a tree preserved
in accordance with this section should either die or be removed as a hazardous
tree. The form of this deed restriction shall be subject to approval by the Planning
and Community Development Director. Removal of a tree after development
approval except as provided in this subsection shall constitute a Class A violation.
- 22
23 3. Site development modifications granted as incentives. A modification to
24 development requirements granted under this section shall not conflict with any
other restriction on the use of the property, including but not limited to easements
and conditions of development approval.
- 25
26 4. Design modifications of public improvements. The City Engineer may adjust
27 design specifications of public improvements to accommodate tree retention
where possible and where it would not interfere with safety or increase
maintenance costs.
- 28 **F. Standards for Replacement of Removed Trees.**

- 1 1. Standards for replacement of removed trees. The standards of this section apply
2 to replacement mitigation required under sections 17.52.220 D and E. If the tree
3 being removed is dead, dying, diseased or dangerous to life or property,
4 mitigation shall be encouraged but not required. If removal is for the purpose of
5 landscaping or esthetics only and does not relate to the condition of the tree or the
6 tree's adverse impact on a surrounding grove, mitigation shall be determined
7 based on the uniqueness of the tree, number of other trees on the property and
8 surrounding area, or other factors pertinent to the particular situation.
- 9 2. Minimum standards. It is the policy of the city to emphasize a preference for
10 native trees including conifers when requiring the planting of a mitigation tree.
11 However, the Planning Commission or Planning and Community Development
12 Director shall take into consideration site compatibility as well as the property
13 owner's preference so long as the species of replacement tree is expected to
14 mature to approximately the same environmental and esthetic value as the tree
15 being removed. The minimum caliper size of a replacement tree shall be two and
16 one-half inches (2.5"). The Planning and Community Development Director or
17 Planning Commission may adjust the size requirement for tree species where the
18 applicant demonstrates to the satisfaction of the City Arborist that the minimum
19 size would be unreasonable or impractical in the circumstances.
- 20 3. Planting site. The preferred replacement site shall be on the property from
21 which a tree is being removed. Provided one or more of the replacement trees
22 cannot be located viably on the property from which a tree is removed, the
23 applicant may propose to pay into the City Tree Fund an amount equivalent to the
24 value of the replacement trees after installation, as provided in this subsection.
- 25 4. Replacement and in lieu payment. The payment amount shall be set by
26 resolution of the City Council and shall be based on a formula that determines the
27 value of the tree removed and no less than the equivalent of the average cost of
28 replacement trees including the cost of installation, labor, and maintenance for a
 period of one year.
5. The in-lieu payment approved and received shall be used by the city for
 planting of mitigation trees on city-owned property but such planting shall not
 necessarily be on a one-for-one basis. The city shall separately track all in-lieu
 payments received as well as expenditures for mitigation plantings. Any unspent
 funds shall be carried forward from year to year for the purpose of meeting the
 intent of this chapter to maintain the city's urban forest. The exact placement of
 mitigation trees on city property shall be determined by the City Council, whose
 authority is herein delegated to the City Manager. The City Manager shall
 coordinate with city staff, including but not limited to the Planning and
 Community Development Director, the Public Works Director, Parks and
 Recreation Director, and City Arborist, as applicable to the circumstances.
6. The planting of replacement trees shall take place in such a manner as to
 reasonably insure that the trees grow to maturity. Any mitigation tree planted on

1 private property dying within one year of the date of planting shall be replaced by
2 the owner of the property.

3 7. Replacement trees, including trees meant to replace a previously planted
4 mitigation tree that has died within one year, shall be planted within six (6)
5 months of the date of issuance of a tree removal permit or death of a mitigation
6 tree, unless the Planning and Community Development Director has granted a
7 extension of time no longer than three (3) months due to season or unforeseen
8 circumstances. Failure to complete mitigation within the allotted time frame shall
9 be considered a violation of this chapter and subject to the penalties provided for
10 herein.

11 **G. Tree Removal Permit**

12 1. Removal permit required. No person shall engage in or cause land clearance or
13 tree removal without having first obtained a Tree Removal Permit issued by the
14 city.

15 2. Permit issuance. A Tree Removal Permit shall be issued only for the
16 following:

17 a. Removal of diseased tree(s) weakened by age, storm, fire or other
18 injury. If a visual inspection by the City Arborist cannot establish that the
19 tree is dead or diseased, the applicant shall, at the applicant's cost, obtain
20 the services of a qualified arborist to make that determination. If it is
21 determined by the arborist that the tree is dead or diseased and cannot be
22 saved, the Planning and Community Development Director shall approve
23 its removal. If the tree is determined to be alive and/or curable of disease,
24 the Planning and Community Development Director shall deny the permit.

25 b. Removal of tree(s) for the placement of structures and other
26 improvements where development approval of a site plan, subdivision or
27 planned unit development has been obtained and for which a Tree
28 Protection Plan has been approved under this section.

1. A Tree Removal Permit shall not be issued under this subsection
unless the city engineer first has given final approval to the final
design of all street, gutter, curb, and sidewalk, sanitary sewer,
storm sewer, and water system improvements required under the
development permit or approval to serve proposed development on
the land and, to the extent otherwise required by this section or this
code, the owner has entered into a public infrastructure
improvement agreement for the improvements and provided
financial security therefor.

2. Any Tree Removal Permit issued under this subsection shall be
subject to such conditions as are appropriate to assure that

- 1 disturbed areas will be re-vegetated immediately following
2 completion of the improvements and that any replacement and
 mitigation requirements of this section have been met.
- 3 c. Removal of tree(s) to protect solar access to the south face of buildings
4 during solar access hours, as defined in ORS § 227.190, which cannot be
5 accomplished by pruning on the benefiting property;
- 6 d. Selective removal of tree(s) and vegetation to allow reconnaissance
7 surveys topographical determinations of a project site, coring to permit
8 geotechnical evaluation and soil surveys, and similar efforts, to the extent
9 the applicant demonstrates such removal is necessary to perform such
 surveys;
- 10 e. Where removal is necessary to prevent the spread of disease or insects
11 declared to be a nuisance by a government agency or certified arborist, or
12 to correct or eliminate a verified natural hazard to the property owner,
 surrounding properties, or the community at large;
- 13 f. Trees and vegetation within wetlands that fall under the jurisdiction of
14 state and federal government shall not be removed without concurrence
 from the state and/or federal agencies that have jurisdiction thereof.
- 15 3. Exemptions. A tree removal permit under this subsection is not required for the
16 following:
- 17 a. Trees measuring less than six inches at four and ½ feet d.b.h.;
- 18 b. Tree removal by utility or city public works personnel to remove
19 vegetation and trees that present a danger to life or property, to restore
20 utility services, or to reopen a public thoroughfare to traffic;
- 21 c. Removal of trees and groundcover by city public works personnel that
22 are deemed nuisances under Chapter 8.12, Nuisances, or for the removal
23 for trees and other vegetation necessary to install or maintain
 improvements on parklands, streets, sewers, or utilities within publicly-
24 owned and dedicated rights-of-way or public utility easements;
- 25 d. Removal of a tree which is a hazard, or a nuisance affecting public
26 safety as defined in Chapter 8.12.08 of this code, as demonstrated to the
 satisfaction of the City Arborist in consultation with the City Engineer, as
27 applicable to the circumstances.
- 28 e. Removal of trees for Christmas tree production, or on land registered
 with the Lincoln County Assessor's office as tax-deferred tree farm or

- 1 small woodlands, provided trees do not stand on significant natural
2 resource areas or steep slopes of 25% or greater and unstable ground.
- 3 f. The removal of trees on a single lot in a residential zone provided a
4 lawful dwelling exists on the lot as of September 22, 2008 and the lot is
not capable of additional development.
- 5 4. Conditions. Every Tree Removal Permit shall be subject to such conditions as
6 are appropriate to assure that the tree removal is conducted in a manner consistent
7 with Section 17.52.220, including but not limited to subsections D, F, and H, as
applicable, and Section 12.08.050(B) of this code.
- 8 5. Review process. The permit for removal of a tree shall be processed as part of
9 development review using the following approval criteria:
- 10 a. Removal of the tree must not have a measurable negative impact on
11 erosion, soil stability, flow of surface waters or water quality as evidenced
by an erosion control plan which precludes:
- 12 1. Deposits of mud, dirt, sediment or similar material exceeding
13 1/2 cubic foot in volume on public or private streets, adjacent
14 property, or into the storm and surface water system, either by
15 direct deposit, dropping, discharge or as a result of the action of
erosion;
- 16 2. Evidence of concentrated flows of water over bare soils; turbid
17 or sediment-laden flows; or evidence of on-site erosion such as
18 rivulets on bare soil slopes where the flow of water is not filtered
19 or captured on site using the techniques of an approved plan under
Municipal Code Chapter 12.08 Erosion Control and rules issued by
the Public Works Department.
- 20 b. Within significant natural resource areas, no trees may be removed or
21 pruned except as provided in Chapter 17.46 of this title.
- 22 c. Where a Tree Protection Plan is required for development review, the
23 city shall not issue a tree removal permit until the applicant has demonstrated
24 compliance with all conditions of the development approval that are required to
be met prior to the start of any land clearing, grading, or construction.
- 25 6. Fee. The City Council may adopt by resolution a fee to cover the actual or
26 average costs of reviewing or issuing a Tree Removal Permit.
- 27 7. Authority to issue permit. The City Manager or the City Manager's designee,
28 including the Planning and Community Development Director in the case of

development approval, or Public Works Director in the case of a public works permit, is authorized to issue, extend, enforce, and revoke a Tree Removal Permit.

8. Permit appeal.

a. The city shall not issue a Tree Removal Permit until approval has first been granted by the Planning and Community Development Director or the Planning Commission. Notice of decision or hearing shall be provided in accordance with Chapter 17.76. Any applicant or person affected or aggrieved by a decision to grant or deny a Tree Removal Permit may appeal the decision as provided in this Title. Administrative decisions by the Planning and Community Development Director may be appealed to the Planning Commission, which shall be the final appeal. Decisions of the Planning Commission, not including appeals of administrative decisions, may be appealed to the City Council in the same manner as provided for in Chapter 17.76.

b. The city shall not issue a Tree Removal Permit approved by the Planning Commission until twelve (12) calendar days have passed following the approval and no possible appeal has been filed, or after all appeals have been exhausted. An appeal must be filed in writing within the 12-day appeal period. The timely filing of an appeal shall have the effect of suspending the issuance of a permit pending the outcome of the appeal.

9. Display of permit, inspection.

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

a. A Tree Removal Permit shall be effective eighteen months from the date of approval.

b. In addition, any person designated to enforce violations of city ordinances may enforce this Section of the municipal code, including but not limited to the Planning and Community Development Director, the Code Enforcement Officer, a city police officer, the City Manager, the Building Official, the Public Works Director, and City Engineer.

10. Permit extension. Upon written request by the applicant prior to the expiration of the existing permit, a Tree Removal Permit shall be extended for a period of up to one year if the approval authority finds that the applicant is in compliance with all prior conditions of permit approval and that no material facts stated in the original application have changed.

1
2 11. Prohibition of commercial forestry. Commercial forestry, excluding
subsection 17.52.220 (D)(4)(d), is not permitted.

3 **H. Tree Protection During Construction**

4
5 a. Where tree protection is required by a condition of development under
6 Title 16 or 17, by a public works permit, or by a Tree Protection Plan
approved under this section, the following standards apply:

7 1. All trees required to be protected must be clearly labeled as
8 such.

9 2. Placing construction materials near tree. No person may conduct
10 any construction activity likely to be injurious to a tree designated
11 to remain, including but not limited to, placing solvents, building
12 material, construction equipment, or depositing soil, or placing
13 irrigated landscaping, within the drip line, unless a plan for such
construction activity has been approved by the Planning and
Community Development Director or Planning Commission based
upon the recommendation of an arborist.

14 3. Attachments to trees during construction. Notwithstanding the
15 requirement in subsection H (a)(1) to label trees, no person shall
16 attach any device or wire to any protected tree unless needed for
tree protection.

17 4. Protective barrier. Before development, land clearing,
18 excavation, filling, or any land alteration for which a Tree
19 Removal Permit is required, the developer shall erect and maintain
20 suitable barriers as identified by an arborist to protect remaining
trees.

21 a. Protective barriers shall remain in place until the city
22 authorizes their removal or issues a final certificate of
occupancy, whichever occurs first.

23 b. Barriers shall be sufficiently substantial to withstand
24 nearby construction activities, and the most appropriate and
25 protective barrier shall be utilized. Plastic tape or similar
forms of markers do not constitute "barriers."

26 c. Except in right-of-ways and easements, barriers are
27 required for all Preserved Trees and trees designated to
28 remain. Street right-of-way and utility easements may be
cordoned by placing stakes a minimum of fifty (50) feet

apart and tying ribbon, plastic tape, rope, etc. from stake to stake along the outside perimeters of areas to be cleared.

5. Arborist required during grading, clearing, and removal. The developer shall be responsible for retaining an arborist to be present on the project site at all times when grading, clearing, or tree removal is taking place.

b. Any property separate from the construction or land clearing area onto which no equipment will venture may also be cordoned off as described in subsection H(a)(4), or by any other reasonable means as approved by the reviewing authority.

I. Maintenance and Protection Standards

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

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

2. Topping is prohibited, except where an application for Tree Removal Permit demonstrates Topping is necessary for utility work or public safety. The burden of proof is on the applicant to show no other means of accomplishing the task are feasible.

J. Violation; Enforcement

1. **Responsibility.** The owner and the owner's agents and contractors, including but not limited to an arborist, contractor, engineer or other person responsible for clearing, grading, construction or tree removal on a project, shall have joint and separate liability for any violation of Section 17.52.220.

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

a. Cutting, damaging, or removing a tree:

1. Without a valid Tree Removal Permit; or

2. In noncompliance with any condition of approval of a tree removal permit; or

3. In noncompliance with any condition of any city permit including but not limited to a building permit, public works permit,

- 1 approved Tree Protection Plan, covenants, codes and restrictions
2 (CC&R's) imposed by a condition of approval and required to be
3 reviewed and approved by the city, or other development approval;
4 or
5 4. In noncompliance with any recorded covenant; or
6 5. In noncompliance with any other section of this title or code.
7 b. Breach of a condition of any city permit or development approval which
8 results in damage to, or contributes to the decline or failure of, a tree or its root
9 system.
10 2. Remedies. If the City Manager, whose authority is delegated to the Planning
11 and Community Development Director, the Building Official, or Public Works
12 Director, has reason to believe that a violation of this chapter has occurred, then
13 he or she may do any or all of the following:
14 a. Require the owner of the land on which the tree was located to submit
15 sufficient documentation, which may include a written statement from a
16 qualified arborist or forester, showing that removal of the tree was
17 permitted by law;
18 b. Issue a stop order, as provided in subsection 3;
19 c. Issue a citation pursuant to Chapter 1.16 of the Municipal Code, with an
20 expedited hearing;
21 d. File an action to temporarily restrain and or permanently enjoin the
22 owner from continuing to violate this chapter;
23 e. Take any other action allowed by law.
24 3. Enforcement of conditions. The Planning and Community Development
25 Director, the Building Official, and Public Works Director are each authorized to
26 issue a stop-work order, withhold approval of a final plat or public works permit,
27 or withhold issuance of a certificate of occupancy, permits or conduct of required
28 inspections or acceptance of work until the provisions of this section, including
any conditions attached to a public works permit, Tree Protection Plan or Tree
Removal Permit have been fully met.
a. In the event any grading, clearing, excavation, filling, construction or
activity on the property is about to occur, is occurring or has occurred in
such a manner that Preserved Trees or trees required to be protected on the
site are in imminent danger of damage or removal from such activities,

- 1 any person authorized to enforce this chapter may order all work on the
2 site to cease until adequate safeguards are in place as follows:
- 3 1. Based on sufficient evidence that activities on site are likely to
4 cause or have caused harm to trees required to be protected, city
5 staff shall immediately notify any responsible person on the project
6 that a stop work order is imminent and that all work on the site
7 shall cease;
 - 8 2. The order shall be in written form, copied to the property owner,
9 and include a brief description of the violations or imminent harm
10 that are required to be immediately addressed;
 - 11 3. A sign declaring the stop work order shall be posted on the site;
 - 12 4. Staff shall make reasonable attempts to inform the owner and
13 developer by any means, including but not limited to telephone,
14 facsimile, or electronic communication, that a stop work order has
15 been placed on the site.
- 16 b. The stop work order shall not be lifted until adequate safeguards,
17 including any amendments to an agreement between the applicant and the
18 city, a development approval, a Tree Protection Plan, a Tree Removal
19 Permit, a public works permit, or other applicable permit, is reviewed and
20 approved by the city; and
- 21 c. The stop work order shall be removed after the city staff responsible for
22 the matter has determined there is no longer a need for the order.
- 23 d. Whenever the city has issued a citation for violation of this code in
24 connection with activities leading to issuance of a stop work order or order
25 to cease and desist activities on land, the city and owner may agree to
26 resolve the citations by means of settlement in lieu of further prosecution.
27 Any monies paid in lieu of fines shall be deposited in the City Tree Fund.
28 Any such settlement agreement shall be approved by the City Council.
4. Penalties; Fines; Mitigation.
Notwithstanding any other provision of this title, a violation of this section shall
be enforced as a Class A civil infraction pursuant to Section 1.16 of the Municipal
Code. Any person convicted of a violation of this section shall be subject to civil
penalties including a fine up to the maximum amount provided by this code, with
illegal removal or damage to one tree constituting a single violation. In addition to
the fine, any person convicted of a violation of this section shall be required to
remedy any damage caused by the violation. Such remediation shall include, but
not be limited to, the following:

- 1 a. Replacement of unlawfully removed or damaged trees in accordance
- 2 with Section 17.52.220F(6); and
- 3 b. Payment of an additional civil penalty representing the estimated value
- 4 of any unlawfully removed or damaged tree, as determined using the most
- 5 current International Society of Arboriculture's Guide for Plant Appraisal.
- 6 c. The municipal court judge is authorized to require up to double
- 7 mitigation as an enhanced penalty for any tree removal conducted in
- 8 violation of this chapter where the removal appears to have been
- 9 conducted in reckless disregard of any permit or approval by any person
- 10 engaged in the project, or was done in a particularly egregious manner.
- 11 5. Alternative enforcement. In the event a person commits more than one
- 12 violation of this section, the following alternative sentence may be imposed:
- 13 a. If a person has gained money or property through the commission of an
- 14 offense under this section, then upon conviction thereof, the court, in lieu
- 15 of imposing a fine, may sentence the person to pay an amount, fixed by
- 16 the court, not to exceed double the amount of the gain from the
- 17 commission of the offense.
- 18 b. "Gain" is defined as the amount of money or value of property derived
- 19 from the commission of the violation, less the amount of money or value
- 20 of property seized by or surrendered to the City. "Value" shall be the
- 21 greater of the market value or replacement cost as determined by a
- 22 licensed professional in the tree, nursery, or landscape field.
- 23 6. Guidelines for replacement. Replacement of a tree shall take place according to
- 24 the following guidelines:
- 25 a. A replacement tree shall be a substantially similar species taking into
- 26 consideration site characteristics;
- 27 b. If a replacement tree of the species of the tree removed or damaged is
- 28 not reasonably available, the Planning and Community Development
- Director may allow replacement with a different species of equivalent
- natural resource value;
- c. If a replacement tree of the size cut is not reasonably available on the
- local market or would not be viable, the Planning and Community
- Development Director shall require replacement with more than one tree
- in accordance with the following formula: The number of replacement
- trees required shall be determined by dividing the
- estimated caliper size of the tree removed or damaged by the caliper size
- of the largest reasonably available replacement trees. If this number of

1 trees cannot be viably located on the subject property, the Planning and
2 Community Development Director may require one or more replacement
3 trees to be planted on other property within the City, either public property
4 or, with the consent of the owner, private property; and

5 d. The planting of a replacement tree shall take place in a manner
6 reasonably calculated to allow growth to maturity.

7 7. Allocation of fines and payments. After deduction of any mandatory costs and
8 assessments, any fines and penalties paid under this subsection shall accrue to the
9 City Tree Fund.

10 8. Exclusivity. The remedies set out in this section shall not be exclusive, and the
11 city may take any action authorized by law to enforce this section.

12 **K. City Tree Fund**
13 A city tree fund is hereby established for the purpose of promoting the planting of
14 trees on public property including city-owned property, city parks, public right of
15 way, and other areas appropriate for the planting of trees.

16 **L. Tree Board**
17 1. Purpose. An advisory board is hereby established to advise staff and city
18 council on matters relating to trees.

19 a. The Tree Board shall make recommendations on a tree manual
20 implementing the requirements of this section and that establishes
21 guidelines for tree selection, installation, and maintenance, using best
22 practices. The City Council shall adopt the tree manual by resolution.

23 b. The Tree Board shall make recommendations on suggested tree species
24 for use in planting and landscaping in Lincoln City, Oregon.

25 c. The Tree Board shall make reports from time to time as it deems
26 advisable on ordinance revisions and enforcement, information concerning
27 tree disease or infestation, and other matters related to trees.

28 2. Members. The City Council by ordinance shall establish the number of
members and any membership qualifications of the Tree Board.

Section 2. The provisions of this ordinance are severable and the invalidity of any
provision of this ordinance shall not affect the other valid provisions, which shall
remain in full force and effect.

Section 3. Emergency declared; effective date. Due to the need to prevent erosion
from occurring from activities on the land including unnecessary or hasty removal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

of trees before the rain season begins, an emergency is declared and this ordinance shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Lincoln City this 22nd day of September, 2008.


LORI HOLLENGSWORTH, MAYOR

ATTEST:


CATHY STEERE, CITY RECORDER

COMMUNITY DEVELOPMENT

↓ CITY

OR 97367



\$ 01.51⁰

Attn: Plan Amendment Specialist
Dept. of Land Conservation & Dev.
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540