



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

03/22/2013

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Durham Plan Amendment
DLCD File Number 001-12

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, April 04, 2013

This amendment was submitted to DLCD for review prior to adoption 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 Acknowledgment or 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 above date specified. **NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.**

Cc: Roland Signett, City of Durham
Gordon Howard, DLCD Urban Planning Specialist
Anne Debbaut, DLCD Regional Representative
Gary Fish, DLCD Transportation Planner

<paa> YA



FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **20-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

☐ In person ☐ electronic ☐ mailed

DEPT OF

MAR 15 2013

LAND CONSERVATION AND DEVELOPMENT

DATE STAMP

For Office Use Only

Jurisdiction: **City of Durham**Local file number: **DLCD 12-01**Date of Adoption: **2/26/2013**Date Mailed: **3/15/13**Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: 8/21/12☐ 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".

Amends the Dev. Code by adding sections for compliance with recent legislation pertaining to solar photovoltaic and solar energy systems. Amends Code to comply with FCC regulations pertaining to wireless communications facilities. Amends Code to comply with Oregon Administrative Rule 660-012 requiring local governments to amend land use regulations to implement state TSP. Amends Tree Protection providing for different permit types and conditions, mitigation and language clarification.

Does the Adoption differ from proposal? Yes, Please explain below:

Minor changes in wording for clarification. No substantive changes.

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

35-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

DLCD File No. 001-12 (19467) [17389]

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

City of Durham

Local Contact: **Roland Signett**

Phone: **(503) 639-6851** Extension:

Address: **17160 SW Upper Boones Ferry Rd**

Fax Number: **503-598-8595**

City: **Durham**

Zip: **97224-**

E-mail Address: **cityofdurham@comcast.net**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 20 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)

per ORS [197.615](#) and [OAR Chapter 660, Division 18](#)

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and **one complete paper copy** (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information ([ORS 197.615](#)).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption ([ORS 197.830 to 197.845](#)).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. ([ORS 197.615](#)).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on 8½ -1/2x11 **green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

ORDINANCE 250-12
AN ORDINANCE AMENDING ORDINANCE 248-09, THE DEVELOPMENT CODE, BY
ADDING NEW PROVISIONS RELATING TO SOLAR PHOTOVOLTAIC AND SOLAR
THERMAL ENERGY SYSTEMS.

Whereas, Oregon House Bill 3516 of 2011 enacted new state-wide legislation, effective on January 1, 2012, relating to the regulation of solar energy generation by retail electricity customers; now, therefore,

The City Council of Durham, Oregon ordains as follows:

Section 1. Ordinance 248-09, the Development Code, is amended by adding new provisions to be numbered and to read as follows:

"7.9. Solar Photovoltaic and Solar Thermal Energy Systems.

7.9.1 The installation and use on a residential or a commercial structure of a solar photovoltaic- or a solar thermal energy system is an outright permitted use in any zone in which a residential or commercial structure is an allowed use. For purposes of this Section 7.9.1, "solar photovoltaic energy system" has the meaning given that term in ORS 757.360.

7.9.2 An application to install a solar energy system on a structure as allowed by this Section shall be reviewed by a Type 1 procedure if:

7.9.2.1 the installation can be accomplished without increasing the footprint of the residential or commercial structure or the peak height of the portion of the roof on which the system is installed; and,

7.9.2.2 the solar energy system would be mounted so that the plane of the system is parallel to the slope of the roof.

7.9.3 The City shall not charge a fee to review an application described in Section 7.9.2 other than building permit fees pursuant to ORS 455.020, 455.210 and 455.220. The City in reviewing the application may not require extensive surveys or site evaluations including, but not limited to, vegetation surveys, contour maps and elevation drawings.

7.9.4 Subsections 7.92 and 7.9.3 of this Section 7.9 do not apply to an application to install a solar energy system on a residential or commercial structure that is:

7.9.4.1 a conservation landmark designated by the City because of the historic, cultural, archaeological, architectural or similar merit of the landmark; or,

7.9.4.2 that is located in an area designated as a significant scenic resource unless the material uses is designated as anti-reflective or is eleven percent or less reflective.

7.9.5 An application to install a solar energy system on a structure that is not an application described in Section 7.9.2 of this section shall be reviewed by the procedure type appropriate to the approvals requested in the application.

First Reading: November 27, 2012

Second Reading and Passage: January 22, 2013

CITY OF DURHAM

By: _____

Gery Schirado, Mayor

ATTEST:

Roland Signett, City Administrator/Recorder

ORDINANCE NO. 252-12
AN ORDINANCE AMENDING THE DEVELOPMENT CODE
BY ADDING NEW PROVISIONS
RELATING TO TRANSPORTATION FACILITIES

Whereas, Oregon Administrative Rule 660-012 requires each local government to amend its land use regulations to implement the state Transportation Systems Plan; and,

Whereas, the Development Code now limits vehicle trips per day in the OP zone (section 3.4.2.4), allows the City to impose access controls as part of site and design review generally (Section 3.7.2.1), requires a traffic impact study for development in the BPO, IP, MDR, OP and PRD zones (Section 4.2.1.3) and requires a traffic study for certain applications for a text amendment or a rezone (Section 4.10), and the Council finds it necessary and proper to state a more general requirement to comply with that administrative rule; now, therefore,

The City of Durham, Oregon Ordains as Follows:

The Durham Development Code is amended by adding new provisions to be numbered and to read as follows:

“3.10 Protection of Transportation Facilities. An applicant for proposed development in any zoning district shall submit a Traffic Impact Analysis prepared by a registered professional traffic engineer when the proposed development may reasonably be expected to generate more than 200 vehicle trips per day or when the City determines that the application if approved may have a “significant effect” on an existing or planned transportation facility as that term is defined in OAR 660-012-0060.”

“4.7.5.11 Conditions to minimize impacts and protect transportation facilities, corridors or sites.”

“8.2.8 An applicant for a land division shall access control measures, such as driveway and road spacing, median control and signal spacing, if any, that are consistent with the functions, capacities and performance standards of facilities identified in the City’s Transportation Systems Plan.

First Reading: November 27, 2012

Second Reading and Passage: January 22, 2013

CITY OF DURHAM

By: _____

Gery Schirado, Mayor

ATTEST:



Roland Signett, City Administrator/Recorder

ORDINANCE NO. 251-12
AN ORDINANCE AMENDING THE DEVELOPMENT CODE
BY ADDING NEW PROVISIONS
RELATING TO WIRELESS COMMUNICATIONS FACILITIES

Whereas, the Development Code at Section 7.10.4 now requires that an application for a wireless communication facility (WCF) be reviewed by a Type 3 process; and,

Whereas, the Development Code at Section 9.7.6 and state law now allows for 120 days from the time an application is deemed complete for a decision on a Type 3 application; and,

Whereas, the Federal Communications Commission by its Declaratory Ruling No. 09-99 now declares that a "reasonable period of time" for a local government to process a WCF siting application shall be presumed to be 90 days for a collocation and 150 days for all other WCF applications; and,

Whereas, FCC Declaratory Ruling No. 09-99 allows the applicant to file a court challenge to the city's failure to decide an application within those timelines and allows the city to show, in its defense, that the additional time required to decide a particular application was reasonable; now, therefore,

The City of Durham, Oregon Ordains as Follows:

The Durham Development Code is amended by adding new provisions to be numbered and to read as follows:

7.10.5 Notwithstanding the time allowed for a Type 3 decision by Sections 9.7.6 and 9.7.15 of this Code, the City shall use its best efforts to decide an application for a WCF collocation within 90 days and to decide an application for any other WCF facility within 150 days of the date the application is deemed complete. The City shall adopt written findings in any case not decided within those timelines as to why the time allowed by this Section for decision is not reasonable as to that particular application.

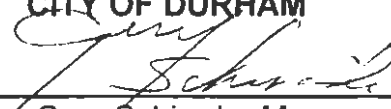
7.10.5.1 For purposes of this Section, an application to add an antenna to an existing tower or other structure is a request for collocation if it does not involve a "substantial increase in the size of a tower" as defined in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 47 C.F.R. Part 1, Appendix B.

First Reading: November 27, 2012

Second Reading and Passage: January 22, 2013

CITY OF DURHAM

By:


Gery Schirado, Mayor

ATTEST:



Roland Signett, City Administrator/Recorder

ORDINANCE NO. 253-12
AN ORDINANCE AMENDING AND CLARIFYING VARIOUS SECTIONS OF THE
DEVELOPMENT CODE

WHEREAS, the Durham City Council finds that various sections of the Durham Development Code are in need of amendment and clarification;

The Durham City Council Ordains that the Durham Development Code ("DDC") is amended to read as follow, with new matter underlined and matter to be deleted in [brackets]:

3.2.5 "The physical characteristics of the proposed development shall be compatible....."

3.3.1 "Setbacks for a development abutting the major arterials....."

3.7.1.7 Add the following sentence: "These dimensions may be adjusted to accomodate vehicle access ways that provide for joint and reciprocal access to adjoining properties."

3.7.5 Revise the last two rows to read: "IP Warehouse Up to 150,000 Sq Ft Gross Floor Area - [3] 1.6 / No Maximum" and "IP Warehouse Over 150,000 Sq Ft Gross Floor Area - [1.1] .3 / No Maximum"

4.7.4 [The City may impose any and all conditions of approval of a conditional use that would allow the City to find that] An application for a conditional use shall demonstrate that the application if granted will meet the following additional criteria for approval with conditions if feasible and necessary to meet the critereria:

4.10 "When a proposed text amendment or a rezone may "significantly affect a transportation facility" (as that phrase is defined in Oregon law), the City may require the applicant to submit....."

4.10.2.3.2 "[Worsen] Degrade the performance of an existing or planned transportation facility [below the minimum acceptable performance standard] such that it would not meet the performance standards identified in the transportatoin system plan or comprehensive land use plan; or,"

4.10.2.3.3 "[Worsen] Degrade the performance of an existing or planned transportation facility that is otherwise projected [to perform below that minimum acceptable performance standard] not to meet the performance standards identified in the transportation systems plan or comprehensive land use plan.

5.1 For purposes of this Chapter 5, to "Cut" a tree 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."

6.1.2 "[A sign] Signage is not a permitted principal use of property in any zoning district [unless

the sign] but instead is deemed to be incidental and subordinate to a principal use.....”

7.2.1.2 “the City shall obtain, review and reasonably utilize [any] the best available base flood elevation and floodway data.....”

7.8.1 “and the City may require such a transfer.....”

7.8.3 “Except as allowed by subsection 7.8.2.1 of this Code, a person may apply.....”

8.3.6 “...or the City finds that it is feasible [and] that as a condition of approval.....”

8.3.7 “...for the property to be divided; and,”

8.3.8 Change semicolon at end of sentence to a period.

9.4.2 Change sentence order to read, “If in response to the City’s written notice that an application is incomplete an applicant submits none of the responses described in this Section within 180 days after the City received the application, the application is void.”

9.7.5.1.1 “If new written evidence is [produced] added to the record at the continued hearing, any person may request, [prior to the close of] while that hearing is open, that the record be left open.....

9.7.5.1.2 Add after the existing second sentence: “Any such request may be submitted only after the new evidence is submitted into the record. If new evidence has been submitted while the record is left open, any person then may raise new issues.....”

9.10 “...or to the zoning map attached to and incorporated into this Code (a rezone or “map amendment”), an addition or amendment to the comprehensive land use plan, or a combination of any of those applications [or both].”

9.10.1 Add a new sentence at end to read, “A quasi-judicial review and decision process requires a Type 3 process.”

9.10.3.1 “...the Department of Land Conservation and Development (DLCD) at least [45] 35 days prior to the first public hearing on the application, or, in the case where a public hearing is not required as per OAR 660-018-0020(4), at least 35 days before the proposed change is adopted, as required by.....”.

9.10.9 Add entry to this table showing a Major Modification to a Conditional Use as per Section 2.4 is a Type 3 process.

11.2.1 “The ratio of expenses [currently] already incurred by the property owner to the total estimated cost of the land division or the approved land use at full build out of the lots created by the land division or of the approved land use;”

11.3.4.1 "...is consistent with the current comprehensive land use plan as of the date of application for the extension; and,"

11.6 Change last sentence to read, "[The time for which] A land division or land development permit or approval shall not be extended, and an application for extension of time shall be denied, as to any property where [for any portion of any period for which] a violation of that condition has not been remedied to the City's satisfaction.

First Reading: November 27, 2012

Second Reading and Passage: January 22, 2013

CITY OF DURHAM

By: _____

Gery Schirado, Mayor

ATTEST:

Roland Signett, City Administrator/Recorder

ORDINANCE NO. 254-12

AN ORDINANCE OF THE CITY OF DURHAM AMENDING CHAPTER 5 OF THE CITY OF DURHAM DEVELOPMENT CODE

The Durham City Council hereby ordains as follows:

5.1 Scope Every tree within the City with a diameter of 5 inches or greater shall be preserved and protected as required by this Chapter. A tree with a single trunk shall be measured at 4.5' above grade, otherwise known as "diameter at breast height" and designated hereafter as DBH. For a tree with multiple main stems digressing at less than 24 inches above grade the measurement will be determined by the greater of the measurement of the trunk at the point of digression or the sum of the diameter of all stems measured 6 inches above the point of digression. A tree that has been reduced to a stump shall be measured across the top of the trunk. For purposes of this Chapter 5, to "Cut" a tree 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.

5.2 Tree Care Standards. No person other than the property's owner or a tree care provider licensed and bonded as such shall perform tree preservation, tree protection, tree maintenance or tree removal. All such work shall be done in accordance with ANSI A-300.

5.3. Application Required. No person shall Cut a tree without first submitting an application, paying the applicable fees, obtaining a City permit and complying with all terms and conditions of the City permit. The provisions of this Chapter including the requirement for a City Permit shall control over any authority to Cut a tree purportedly granted by any other federal, state or local authority.

5.3.1 In an emergency wherein a tree presents imminent danger to person or property the property owner shall report the action to the City within 48 hours or the first work day following a weekend or holiday. The property owner shall also submit the required application without charge and provide documentation supporting the imminent danger presented by the tree sufficient to satisfy exemption from the standard permit requirements of this Chapter.

5.3.1.1 If it should be found by the Planning Commission that the supporting documentation does not support a finding that the tree presented an imminent danger, it shall be deemed a violation of this Chapter.

5.3.2 Every application to remove a tree(s) shall provide:

5.3.2.1 A diagram of the lot drawn to approximate scale showing the number, size, species and location of all trees on the property and the tree(s) proposed to be Cut.

5.3.2.2 Proof that the topography of the property is such that to cut the tree will not adversely affect, soil retention, stability of earth, flow of surface water, protection of nearby trees, windbreaks and a desirable balance between shade and open space.

5.3.2.3 Evidence that to Cut the tree will not materially affect the preservation of an upland wooded corridor or stream side vegetated corridor as identified in the City's Comprehensive Land Use Plan.

5.3.2.4 When mitigation is anticipated, a mitigation plan showing location and species of tree or trees to be planted subject to the standards set forth in the section applicable to the permit type, or tender of payment of the in lieu fee to the mitigation fund.

5.4 Application Types on Developed Residential Lots. An applicant seeking to Cut a tree or trees on a developed lot shall apply separately for each tree to be Cut under one of the following applications types:

5.4.1 Type “A” Permit. Trees that are dead or diseased shall be reviewed and approved under a Type 1 process. In instances when it cannot be determined readily that a tree is diseased beyond recovery, or that measures cannot be taken to restore the tree’s health, approval may be conditioned on an evaluation by a certified arborist or appealed to the Planning Commission upon payment of the appeal fee. For an approved Type “A” permit no mitigation is required.

5.4.2 Type “B” Permit. Trees that are dangerous or potentially destructive to public or private property may be approved by a Type 1 process. When it cannot be determined readily that a tree poses a potential for being dangerous or destructive, approval may be conditioned upon evaluation by a certified arborist or appealed to the Planning Commission upon payment of the appeal fee. For an approved Type “B” permit no mitigation is required.

5.4.3 Type “C” Permit. Trees required to be removed for the purpose of enlarging the footprint of a structure, adding a deck, patio, or other building structure on an already improved lot may be approved by a Type 1 process. For removal of any tree over 10” DBH, not otherwise exempted in this Chapter, mitigation shall be provided as set forth in Section 5.8. A Type “C” permit will only be issued subsequent to the approved building permit.

5.4.4 Type “D” Permit. A tree less than 5” DBH does not require a permit for removal. A tree between 5” and 10” DBH not permitted for removal under any other permit type may be removed at the discretion of a property owner under a Type 1 process. Approval shall be conditioned upon confirmation that the tree to be removed does not exceed the maximum DBH.

No more than one tree shall be permitted for removal under a type “D” permit in any 24 month period. No mitigation shall be required.

5.4.5 Type “E” Permit. Trees measuring 10” DBH or greater and not eligible for any other permit type, including Type “D,” shall be subject to permitting with Planning Commission approval under a Type 2 process. For an approved Type “E” Permit mitigation shall be provided as set forth in Section 5.5. Under certain circumstances, the Planning Commission may require mitigation exceeding that required in Section 5.5, but not less.

5.5 Mitigation Standards on Developed Residential Lots. At such time as mitigation is required for any permit designated as a Type “A” through Type “E” the standards shall be as follows:

5.5.1 The minimum size for a tree planted as mitigation shall be 2” diameter when measured from the top of the root ball for deciduous trees. Evergreen trees shall be a minimum of 6’ tall measured from the top of the root ball, excluding the leader.

5.5.2 The specific species of a tree planted for mitigation shall be at the owner’s discretion, but must be such that it contributes significantly to the future maintenance of the canopy in Durham. The permit decision making authority shall have the right to reject as mitigation any proposed tree that does not meet the general intent of Chapter 5 of the Development Code.

5.5.3 Mitigation trees shall be planted within 6 months of that date of permit approval. The City Administrator may approve a one-time extension of 60 days.

5.5.4 A mitigation tree shall be planted so as to insure that the tree grows to maturity.

5.5.5 The recipient of a tree removal permit shall request an inspection of the completed mitigation plan upon completion, but no later than 6 months following permit issuance or a subsequent 60 day extension thereof.

5.5.6 Any mitigation planting failing within 2 years of the time of the first inspection by the City shall be replaced at the owner's expense and the City shall be notified of such replacement at the time of planting.

5.5.7 A final inspection shall be requested within 60 days of the second anniversary of the date of the last planting and the permit shall not be considered finalized until such time as a final inspection is conducted and found to be in conformity with the mitigation standards.

5.5.8 The City shall make every reasonable effort to notify the property owner when the final inspection is due, but it shall be the responsibility of the property owner to contact the City.

5.6 **Type "F" Permit.** A permit issued for removal of a tree(s) 5" DBH or greater in developed commercial and industrial zones shall be designated a Type "F" Permit and be subject to review and approval by the Planning Commission under a Type 2 process. Mitigation shall be required per the conditions set forth in section 5.8.

5.6.1 Removal of a tree in the commercial and industrial zones shall not qualify for any other permit type.

5.7 **Type "G" Permit. For Previously Undeveloped Property.**

5.7.1 Tree Preservation Plan. The City's approval of a land division-, land use- or building permit issued for vacant property shall be deemed to obligate the property owner to use best efforts to preserve all existing trees on the site to be divided or developed. Separate Type

“G” permit applications shall be submitted for a land division and installation of required infrastructure as well as for installation of utilities and structural building permits on each lot at the time the lot applies for a building permit. The applicant shall submit with the initial application a tree preservation plan prepared by a certified arborist with a narrative as to how the plan will effect tree preservation.

5.7.2 An applicant shall attempt to preserve existing trees on a site by varying the site design, as provided for elsewhere in this Code, and by the following means, whichever are applicable:

5.7.2.1 Specific measures for tree preservation and protection during all phases of construction, including excavation, grading and filling, repair and removal of trees, pruning and structural support, fertilization and aeration;

5.7.2.2 Use of tree protection zone or construction zone tape with tree fencing;

5.7.2.3 All tree related decisions and activity to be approved by the City’s arborist;

5.7.2.4 All preserved tree health determinations, other than construction damage, to require core samples or other non-harmful procedures;

5.7.2.5 Authorize the City to stop work for any violation of the approved plan;

5.7.2.6 Require the contractor to acknowledge the approved tree protection plan in writing prior to any on-site tree removal, with a copy of same provided to the City.

5.7.2.7 Repair any damage to a preserved tree in a timely manner.

5.7.2.8 Employ an Arborist to prevent harm from construction activity to a tree to be preserved on the site;

5.7.2.9 Coordinate the project grading with the City's Arborist to identify possible preservation of additional trees not shown on the application;

5.8 Mitigation Required. Removed trees shall be replaced with mitigation trees to the extent that at maturity they equal the canopy being removed or mature canopy coverage equivalent to 35% of the square footage of the lot, whichever is less. Mature canopy coverage shall be as set forth on the City's tree list based on the tree species, or as otherwise determined by the City Administrator.

5.8.1 Preservation of existing trees in good condition, suitable for preservation and of appropriate species, shall receive a 200% credit based on their existing canopy area. Planting of native species shall receive a credit of 125% of mature canopy. (Example: A 10,000 s.f. lot would require 3,500 s.f. of canopy. An existing Black Hawthorne has 314 s.f. of existing canopy. This property would receive a credit of 628 s.f., leaving 2,872 s.f. that will need to be mitigated for with new plantings.)

5.8.2 Mitigation trees shall be selected from any of the tree lists maintained by the City, excepting nuisance trees, unless otherwise approved by the City Administrator.

5.8.3 The minimum size for a tree planted as mitigation shall be 2" diameter when measured from the top of the root ball for deciduous trees. Evergreen trees shall be a minimum of 6' tall measured from the top of the root ball, excluding the leader.

5.8.4 Mitigation trees shall be located as follows

5.8.4.1 Trees categorized as small on the City's tree list shall be spaced no closer than 15' on center from other trees and no closer than 10' from the face of any structure.

5.8.4.2 Trees categorized as medium on the City's list shall be spaced no closer than 20' on center from other trees and no closer than 10' from the face of any structure.

5.8.4.3 Trees categorized as large on the City's tree list shall be spaced no closer than 30' on center from other trees and no closer than 15' from the face of any structure.

5.8.4.4 No tree shall be placed less than 3' from any hard surface.

5.8.5 Replacement of one or more trees when required as a condition of a land division or land development approval shall be complete within 6 months after the approval is final. The City may grant a 60 day extension if the City finds abnormal weather conditions require delay. Additional time beyond the 60 day extension shall be subject to Planning Commission approval.

5.8.6 Trees removed for the purpose of installation of infrastructure upon a division of land may be mitigated by the developer by planting the required mitigation trees upon any lot in the division. Such trees will be required to be planted outside the anticipated footprint of any future structure or within required structural setback areas. At such time as building occurs, the builder/owner of the lot shall receive a credit of 100% of mature canopy based on the species planted.

5.8.7 When an improved site cannot accommodate the required number of replacement trees the City may require the applicant to pay to the City a fee in lieu of replacement. The fee in lieu shall be in amount set by resolution of the City Council and shall be based upon the percentage of mature canopy not recovered through mitigation planting.

5.9 Type "H" Permit. Preserved Trees. A tree initially designated to be preserved in the tree preservation plan that dies prior to 2 years after project completion shall be replaced by the property owner. The Planning Commission shall determine the minimum size, but in no

case shall the replacement tree be less than 2.5" DBH and of a variety expected to provide the canopy coverage at maturity of the tree being replaced.

5.9.1 It shall be the responsibility of the property owner to notify the City at any time a preserved tree requires replanting within the 2 year period and to request a final inspection by the City at the end of the 2 year period.

5.9.2 A tree removal permit issued pursuant to section 5.9 shall not be considered final until the expiration of the 2 year period in compliance with all conditions imposed thereon.

5.10 **Tree Permit Process.** Permit types "A" through "D" shall be reviewed by a Type 1 process. All other permits for the removal of a tree or trees shall be by a Type 2 process.


5.11 **Rights Reserved.** For all permit types, the decision making authority reserves the right to deny a permit, require mitigation or require mitigation beyond the minimum specified in this ordinance when it is considered in the best interest and welfare of the community as a whole. Administrative decisions are appealable to the Planning Commission and Planning Commission decisions may be appealed to the City Council.

5.12 **Determination of Permit Type.** Certain trees on developed residential lots for which the City receives an application for removal may qualify for removal under more than one permit type. In such cases, the City shall determine the appropriate permit type.

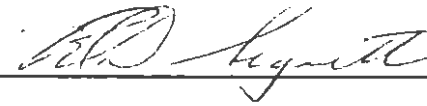
First Reading: January 22, 2013

Second Reading and Passage February 26, 2013

CITY OF DURHAM

By: 
Gery Schirado, Mayor

ATTEST:



Roland Signett, City Administrator/Recorder

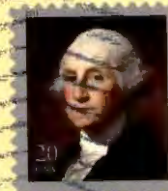


City of D
17160 SW Upper Boones Ferry
Durham, OR 97224



PORTLAND, OR 972 2

THU 14 MAR 2013



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MAR 15 2013

LAND CONSERVATION
AND DEVELOPMENT

Attention: Plan Amendment Specialist
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540