

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, RELATING TO THE PRESERVATION AND REGULATION OF TREES; CREATING CHAPTERS 3.102, 17.15 AND AMENDING SECTIONS 2.44.040, 2.44.070 AND REPEALING CHAPTER 21.08 OF THE LYNNWOOD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SUMMARY PUBLICATION.

WHEREAS, the City of Lynnwood desires to conserve and enhance the City's physical, ecological, economic and aesthetic environment and protect the quality of life of the citizens of Lynnwood; and

WHEREAS, the City desires to protect and preserve trees of special importance to the city by identifying and regulating heritage trees; and

WHEREAS, removal of trees from urban areas such as Lynnwood may result in the loss to the public of the beneficial functions of trees and to environmental degradation; and

WHEREAS, the City's current code provisions regulating tree removal are inadequate to identify and preserve trees that have long-term survivability; and

WHEREAS, the City desires to create a tree fund for the collection of monies to assist in the protection and preservation of trees in the City; and

WHEREAS, the protection and regulation of trees in the City of Lynnwood is necessary to protect the public health, safety and welfare;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNNWOOD DO ORDAIN AS FOLLOWS:

Section 1. Section 2.44.040 of the Lynnwood Municipal code is amended as follows:

2.44.040 Administrative permits – Public Works Department

The following listed permits are the responsibility of the Public Works Department:

- A. Weekend work approval - LMC 10.12.300(B.13)
- B. Water use approval - LMC 13.20.040
- C. Water meter application - LMC 13.12.010

- D. Water main/service permit - LMC 13.12.015
- E. Purity Tests - LMC 13.20.070
- F. House moving permit - LMC 16.20.045
- G. Side sewer installation permit - LMC 14.16.022
- H. Sewer main installation permit - LMC 14.16.024
- I. Sewer capping permit - LMC 14.16.220
- J. Private sewer system permit - LMC 14.44.040
- K. Industrial waste limited discharge permit - LMC 14.60.510
- L. Industrial waste discharge permit - LMC 14.60-503
- M. Cross Connection control permit - LMC 13.12.080
- N. Right of Way use permit - LMC 12.04.010
- O. Road improvement permit - LMC 12.04.015
- P. Storm drainage permit - LMC 13.40.040
- Q. Tree removal permit - LMC 17.15
- R. Sensitive areas permit - LMC 17.10
- S. Grading permit - LMC 16.04.030
- T. Right of Way Vacation - LMC 12.16.010
- U. Grease Interceptor Permit - LMC 14.60.359
- V. Sewer Lateral Permit - LMC 14.16.022
- W. Private Water Service Permit - LMC 13.12.012
- X. Land Clearing Permit - LMC 13.40.065
- Y. Water Main Connection permit - LMC 13.12.020
- Z. Fire Hydrant Inspection Permit - LMC 13.12.035

Section 2. Section 2.44.070(Q) of the Lynnwood Municipal Code is amended as follows:

2.44.070 Payment of required fees with submittals and major resubmittals

- Q. Tree removal permit.
 - 1. Class I tree removal permit
There shall be no fee for a Class I tree removal permit, unless a site inspection is required by section 17.15.110. If a site inspection is required by section 17.15.110, the permit fee shall be \$50.00.
 - 2. Class II tree removal permit
The fee for a Class II tree removal permit for significant trees shall be \$150.00 for the first 10 significant tree units approved for removal, and \$5 for each additional significant tree unit approved for removal thereafter. The fee for a Class II tree removal permit for non-significant Trees shall be \$50.00.
 - 3. Class I tree replacement option fee
The Class I tree replacement option fee shall be \$50.00 per tree.
 - 4. Class II tree replacement option fee
The Class II tree replacement option fee shall be \$125.00 per tree unit.
 - 5. Class II unreplaceable tree fee
The Class II unreplaceable tree fee shall be \$75.00 per tree unit.

Section 3. A new Chapter 3.102 of the Lynnwood Municipal Code is hereby created as follows:

3.102 Tree Fund

Sections:

- 3.102.010 Fund established.
- 3.102.010 Custodian designated.
- 3.102.020 Source of monies.
- 3.102.030 Appropriation of monies.
- 3.102.040 Approval considerations and criteria.
- 3.102.050 Interest and earnings.

3.102.010 Tree fund established.

There is hereby created and established a fund known as the "Tree Fund."

3.102.020 Custodian designated.

The Mayor, or his designee, is authorized to administer the operations of the Tree Fund.

3.102.030 Source of monies.

All revenues, mitigation fees, civil fines, and penalties received by the City under Chapter 17.15 of this Code, and any donations or grant monies received to achieve the purposes of Chapter 17.15 LMC and this Chapter shall be deposited into the Tree Fund.

3.102.040 Appropriation of monies.

Monies in the Tree Fund may be used for the following purposes, as reviewed and approved by the City:

- A. Paying for all services and supplies necessary to designate a Heritage Tree;
- B. Providing grant money to individuals for propagation of seedling trees, purchasing and planting trees, and for purchasing and applying necessary fertilizers or accessories;
- C. Paying for services provided by a qualified tree professional;
- D. Acquiring, maintaining, and preserving wooded areas within the city;
- E. Purchasing supplies and materials for the City's observance of Arbor Day;
- F. Other purposes relating to trees as determined by the City.

Monies from the Tree Fund may be used to purchase trees required for replacement under the conditions of a Class I Tree Permit, but may not be used to purchase trees required for replacement under the conditions of a Class II Tree Permit. Tree funds may not be used to fulfill development requirements. Further, they may not be used in any manner that will profit the grantee.

The Mayor is authorized to approve fund dispersal in an amount not to exceed \$5,000.00. Dispersal of funds exceeding \$5,000.00 shall have prior City Council approval.

3.102.050 Approval considerations and criteria.

In determining whether or not a Tree Fund grant application should be approved, the City shall consider the following criteria:

- A. The necessity of the project.
- B. The benefits to the City.

- C. The project's educational value.
- D. An appropriate proposed time frame for completion of the project.
- E. A clearly defined maintenance plan for projects involving planting.
- F. The amount requested, and the amount and source of other funds.

3.102.060 Interest and earnings.

The interest and earnings from the cumulative fund shall be paid into the fund.

Section 4. A new Chapter 17.15 of the Lynnwood Municipal Code is hereby created as follows:

**Chapter 17.15
Tree Regulations**

Sections:

- 17.15.030 Intent and purpose.
- 17.15.040 Definitions.
- 17.15.050 General regulatory authority.
- 17.15.060 Tree preservation and protection guidelines.
- 17.15.070 Heritage trees.
- 17.15.080 Tree types defined.
- 17.15.090 Tree unit calculation.
- 17.15.100 Permit required.
- 17.15.110 Class I permit.
- 17.15.120 Class II permit.
- 17.15.130 Considerations and conditions for significant tree Class II permits.
- 17.15.140 Considerations and conditions for non-significant tree Class II permits.
- 17.15.150 Tree removal permit exemptions.
- 17.15.160 Protection of public and private trees.
- 17.15.170 Violations and enforcement.
- 17.15.180 Emergencies.
- 17.15.190 Non-liability of the city.
- 17.15.200 Appeals.

17.15.030 Intent and purpose.

The purpose of this Chapter is to:

- A. Preserve the maximum number of trees that are determined to be appropriate for preservation in the Lynnwood urban environment and that have a reasonable chance of long term survival;
- B. Lessen the impact of tree removal by requiring that trees are replaced at an appropriate and sustainable level for the Lynnwood environment;
- C. Assure that newly planted trees are an appropriate species for the given environment;

- D. Aid in the stabilization of soil by the prevention of erosion and the enhancement of sedimentation;
- E. Reduce stormwater runoff and the costs associated therewith and replenish ground water supplies;
- F. Aid in the removal of carbon dioxide and generation of oxygen in the atmosphere;
- G. Provide a visual buffer and screen against traffic and some buffer against noise pollution;
- H. Provide protection against severe weather;
- I. Aid in the control of drainage and restoration of denuded soil subsequent to construction or grading;
- J. Provide a haven for birds, which in turn assist in the control of insects;
- K. Conserve and enhance the City's physical and aesthetic environment; and
- L. Generally protect and enhance the quality of life and the general welfare of the City.

17.15.040 Definitions.

For the purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein. When consistent with the context, words used in the present tense include the future and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A. "Applicant" means any person, corporation, or other public or private entity that has applied for a tree removal permit, as regulated by this chapter.
- B. "Arborist" means a tree professional certified by the International Society of Arboriculture or the National Arborist Association.
- C. "City" is the City of Lynnwood.
- D. "D.B.H." means diameter at breast height, which is the diameter of a tree, outside of the bark, at a point four and one-half (4 ½) feet above grade.
- E. "Department" means the Department of Public Works.
- F. "Developed single family residential lot" shall mean a legally platted lot of less than 16,000 square feet upon which a single-family habitable dwelling exists.
- G. "Development activity" means any construction, development, earth movement, clearing, or other site disturbance activity, which requires a permit, and/or an approval, and/or authorization from the City of Lynnwood.
- H. "Director" means the Director of the Department of Public Works.
- I. "Diseased Tree" means any tree with a combination of structural defect and/or a health condition, which makes it subject to a high probability of failure.
- J. "Holder" means the holder of a tree removal permit.
- K. "Permit" means a tree removal permit as described within this chapter.
- L. "Person" is any public or private individual, group, company, firm, corporation, partnership, association, society or any other combination of human beings whether legal or natural that are engaged in any activity regulated by the chapter.

- M. "Plat" is any subdivision of land for single-family residential purposes.
- N. "Private tree" is any tree not located on property owned or controlled by the City.
- O. "Public tree" is any tree located on property owned or controlled by the City.
- P. "Removal" is the actual removal or causing the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a tree.
- Q. "Tree" is any self-supporting woody plant together with its root system, growing upon the earth with one trunk of at least three (3) inches in diameter at a height of four and one half (4-½) feet above the ground, or a multi-stemmed trunk system with a definitely formed crown. This excludes any ornamental shrubs.
- R. "Tree Fund" refers to the fund created by Chapter 3.102 of this Code.
- S. "Tree removal permit" shall include a Class I permit as established in section 17.15.110, Class II permit as established in section 17.15.120, or any combination of these permits.

17.15.050 General regulatory authority.

- A. Administrative Responsibility.
The Director, or his designee, shall have the authority and responsibility to administer and enforce all provisions of this chapter.
- B. Enforcement.
It shall be unlawful for any person to hinder, prevent, delay or interfere with the City while engaged in the lawful execution or enforcement of this chapter. This shall not be construed as an attempt to prohibit the pursuit of any legal or equitable remedy in a court of competent jurisdiction for the protection of personal or property rights by any property owner within the City of Lynnwood.

17.15.060 Tree preservation and protection guidelines.

The Director may adopt tree preservation and protection guidelines to further the purposes of this chapter. The guidelines shall include:

- A. The species of trees recommended and preferred to be planted, preserved, replaced or replanted on the streets and public properties of the City;
- B. The procedures for preserving significant trees during development;
- C. The procedure and criteria for applying and approving Tree Fund grants;
- D. Any other tree preservation, protection, and planting procedures that the Director deems necessary.

17.15.070 Heritage trees.

A heritage tree is any tree that because of its age, size, unique type, or historical association are of special importance to the City. The City acknowledges that preserving such trees may be beneficial, and has set forth a procedure to preserve and protect these heritage trees.

- A. Application for designation.
In order for a tree to be designated as a heritage tree, a person must submit a written request to the Public Works Department. The request shall include a

signed declaration by the land owner approving of this declaration; a site map showing the lot, any structures on site, and the current use of the site; the species and size of tree; a narrative explaining why the applicant wishes to designate that tree as a heritage tree.

B. Criteria for designation.

No tree standing on private property shall be designated a heritage tree without the consent of the property owner. No tree on City-owned property shall be designated a heritage tree without the consent of the Mayor. Upon receiving a complete and valid request for heritage tree status, the City shall obtain an arborist's report evaluating the condition of the tree. The arborist's report shall include an evaluation on the tree's health, aerial space, open ground area for the root system, longevity of the species, and suitability for long-term retention.

C. Adoption of heritage tree.

Staff shall present to the Parks and Recreation Board all information, including the application, arborist's report, and any additional information discovered by staff. The Parks and Recreation Board shall hold a public hearing, and vote whether or not to adopt the tree as a heritage tree following the public hearing.

D. Protection of heritage tree.

When a tree is designated as a heritage tree, a plaque so signifying shall be placed near the tree. The City shall place a notice in the land records of the Snohomish County Auditor for all properties upon which a heritage tree is located, stating that the heritage tree is protected by the provisions of this Chapter. The restrictions placed on a heritage tree shall bind all successors, heirs and assigns. It shall be unlawful to remove, damage in any way, or defile a heritage tree, its plaque, or any protective measures for that tree, subject to the provisions stated in subsection 17.15.070.G. It shall be unlawful to prune, trim, remove any limb, disturb the ground within the critical root zone, or undertake any activity which may cause harm to a heritage tree without prior approval from the Public Works Department.

E. Maintenance.

The City shall maintain all heritage trees that are located on City property or on public rights of way within the City. It shall be the duty of every owner of property upon which a heritage tree is standing to maintain that tree to the best of their ability. The City may give advice and assistance to property owners regarding proper maintenance of heritage trees.

F. Hazard tree.

If, in the best judgment of the City, a heritage tree, whether standing on public or private property, has become a hazard, an arborist's report shall be obtained evaluating the condition. The arborist shall evaluate the condition of the tree and recommend a suitable course of action. With the City's approval the recommended course of action shall be carried out by the owner of the heritage tree.

G. Removal of designation.

a. Criteria for removal

In order to remove the designation of Heritage Tree Public Works must evaluate the following criteria:

- i. If the tree is of poor health, diseased or no longer alive.
- ii. If the tree meets the criteria of 17.15.070F.
- iii. If the tree no longer meets the criteria for designation as stated in 17.15.070B.
- iv. The location of any proposed improvements or structures.
- v. If the tree is on private property and the property owner no longer wants the designation.

b. Process

The Public Works Director may remove the designation of heritage tree if it finds that such designation meets the criteria for removal. The Parks and Recreation Board shall be notified of such removal. Once the designation of heritage tree has been removed, all provisions of this chapter shall apply to this tree, including tree replacement measures and fees.

H. Acts of nature.

In cases where a heritage tree was damaged by a natural disaster or other acts of nature, the Mayor may waive the provisions of this subsection to the extent that the City may alleviate immediate hazards.

17.15.080 Tree types defined.

A. Significant tree.

A "Significant tree" shall be any tree that is at least six (6) inches in D.B.H., and not included on the list in subsection 17.15.080.B of this chapter. A tree growing with multiple stems, that is not included on the list in subsection 17.15.080.B of this chapter, shall be considered significant if at least one of the stems, measured at a point six (6) inches from the point where the stems digress from the main trunk, is at least four (4) inches in diameter. Any tree that is planted to fulfill requirements set forth by this chapter shall be considered significant, regardless of size or species.

B. Non-significant tree

A "Non-significant tree" shall be any tree under six inches or those included on the following list, regardless of size:

- 1. Black locust (*Robinia pseudoacacia*);
- 2. Cottonwood (*Populus freemontii*);
- 3. Native alder (Native *Alnus* only);
- 4. Native willow (Native *Salix* only);
- 5. Lombardy poplar (*Populus nigra*).

17.15.090 Tree unit and tree replacement calculation.

A. A tree unit shall be a unit of measurement based upon the diameter of the tree, at D.B.H., or whatever stump remains of a previously removed tree, as set forth in the following table:

Tree Diameter (D.B.H)	Tree Units
6" - 10"	1
10.1" - 18"	2
18.1" - 36"	3

>36"	4
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- B. The City shall require replacement of Significant Trees based on the diameter of the Significant Tree(s) removed. The number of trees to be replaced shall be determined using the following method:
1. Count the number of Significant Trees to be removed;
 2. Measure the D.B.H. of those Significant Trees. The diameter of the trees shall be verified by the City;
 3. Average the D.B.H. of those trees;
 4. Multiply the number of Significant Trees removed by the number of Tree Units to determine the number of trees to be replaced. This number shall be identified as the total tree replacement Number.

17.15.100 Permit required.

Except as otherwise provided in section 17.15.150, it shall be unlawful for any person to remove a tree within the City of Lynnwood without having first obtained a valid tree removal permit.

- A. **Application.**
Any person desiring to remove a tree or trees, shall submit an application to the City. The application shall include all of the elements stated in Section 2.44.080 of the Lynnwood Municipal Code, unless specifically waived by the Director. The City may also require an arborist's report, at the applicant's expense, prior to making a determination.
- B. **Inspection.**
Upon receipt of the application, and any time during the approval process, or during the permit and bond duration, City staff or its agent may visit and inspect the site.
- C. **Expiration.**
A tree removal permit issued pursuant to this ordinance shall expire twelve (12) months from date of issuance, or following completion of the development activity, whichever is longer.
- D. **Revocation.**
A tree removal permit may be revoked because of incorrect information submitted by the applicant, or for any action in violation of the permit or this chapter.
- E. **Appeal.**
Any person who objects to the decision of the Director under this section may file an appeal to the hearing examiner using the procedure under Process II in LMC 1.35.200 through .260.

17.15.110 Class I permit.

A Class I tree removal permit shall only be issued for tree removal from a developed single family residential lot under 16,000 square feet in size.

- A. **Removal up to two trees or 40% of trees.**
The City shall approve of all Class I tree removal permit applications immediately after receiving a complete application packet, provided not more than two significant trees or not more than 40% of significant trees (whichever is greater) are requested for removal in a calendar year or no other significant trees were removed in a period of six months prior, or the

tree(s) proposed for removal were not replanted trees nor trees saved as a part of a previous tree permit.

B. Tree removal subject to City review.

If more trees are requested for removal than allowed in section 17.15.110.A, or if the tree(s) proposed for removal were replanted trees or trees saved as a part of a previous tree permit the City shall inspect the site in question and evaluate the condition of the trees with respect to disease, insect attack, danger of falling, proximity to existing or proposed structures, and interference with utility services. The City shall approve the removal of trees unless removal could cause damage to adjacent properties, as reasonably determined by the Public Works Department.

C. Replanting.

All holders of a Class I tree removal permit shall be required to replace removed trees over the allowable limit specified in 17.15.110.A at a ratio of one tree for every significant tree removed, regardless of the size of tree removed, up to the amount that land can reasonably sustain. The holder of a Class I permit shall only be required to replant the amount that the land can reasonably sustain. The holder of a Class I permit shall not be required to replant following removal of a non-significant tree. Replacement trees required by a Class I permit shall be at least 4' tall, and shall be subject to approval by the Public Works Department.

D. Option to replant.

If the holder of a Class I tree removal permit wishes not to replace the required amount of replacement trees, the holder may pay a Class I tree replacement option fee per tree not replaced, established in Section 2.44.070. The Class I tree replacement option fee shall be placed in the Tree Fund, as established in Chapter 3.102 of this code.

E. Fee.

A Class I tree removal permit shall not be issued until such time as the applicant has paid the fee established in Section 2.44.070. A fee shall not be required if the City gives written notice to a property owner that trees on their property must be removed.

17.15.120 Class II permit.

A Class II tree removal permit shall be issued for significant and non-significant tree removal for all sites, except for those subject to a Class I tree removal permit.

A. Action on application.

Following receipt of a Class II tree removal permit application, the Department shall review the application for completeness. When the information submitted is deemed complete, staff shall review the information and make a determination based on the conditions and criteria for significant and non-significant tree removal.

B. Fee.

A Class II tree removal permit shall not be issued until such time as the applicant has paid the fee established in Section 2.44.070. A fee shall not be required if the City gives written notice to a property owner that trees on their property must be removed.

C. Replacement trees.

The following criteria shall apply to all trees required to be planted as a condition of a Class II tree removal permit, subject to approval by the City:

1. Prior to planting, the location and species of replacement trees shall be approved by the City;
2. All deciduous replacement trees shall be a minimum of two and one half (2 1/2) inches in diameter, and all evergreen conifer trees shall be a minimum of eight (8) feet high;

D. Unreplaceable tree fee.

An unreplaceable tree fee shall be paid if the site cannot reasonably sustain the number of replacement trees required by this chapter. The unreplaceable tree fee shall be established using the following method:

1. Subtract the number of trees that the land can sustain from the total tree replacement number;
2. Multiply that number by the unreplaceable tree fee dollar amount established in Section 2.44.070 of this code to arrive at the total unreplaceable tree fee.

The unreplaceable tree fee shall be placed in the Tree Fund, as established in Chapter 3.102 of this code.

E. Tree Replacement Option Fee

A tree replacement option fee shall be paid for the number of replacement trees that the land can sustain and the permit holder chooses not to replant. At a minimum one tree must be replanted for each tree removed unless the land cannot sustain that amount. The tree replacement option fee shall be established using the following method:

1. Subtract the number of trees to be planted from the number of trees that the land can sustain (up to the total tree replacement number calculated in section 17.15.090);
2. Multiply that number by the Tree Replacement Option Fee dollar amount established in Chapter 2.44.070 of this code to arrive at the total tree replacement option fee.

The tree replacement option fee shall be placed in the Tree Fund, as established in Chapter 3.102 of this Code.

F. Bond.

The Public Works Department is authorized to require all persons with approved Class II tree removal permits to post bond or cash escrow in an amount not less than 125% of the actual replacement cost for a period not less than three (3) years. Further terms and conditions of posting bond or cash escrow may be established by the Public Works Director or his designee.

17.15.130 Considerations and conditions for significant tree class II permits.

A. Considerations for significant tree removal.

In determining whether or not a Class II tree removal permit for significant trees should be granted, the City shall consider the following:

1. Whether the tree in question has a reasonable chance of survival once the site is developed or modified and will not pose a threat to life or property;

2. Whether the tree in question has a uniform canopy and well-tapered trunk. Trees with poorly tapered or non-existent branches on their trunks, and/or trees with high, irregular shaped crowns are very prone to wind failure, and not good candidates for retention;
3. The condition of the tree or trees with respect to disease, insect attack, danger of falling,
4. The proximity of the tree or trees in relation to existing or proposed structures, and interference with utility services;
5. The necessity of removing the tree or trees in order to construct the proposed improvements and achieve the density yield allowed under the zoning code;
6. The effect of the removal on erosion, soil moisture retention, flow of surface waters;
7. Whether tree removal would affect water quality and aquifer recharge by reducing the natural assimilation of nutrients, chemical pollutants, heavy metals, and other substances from ground and surface waters during the movement of water towards an aquifer or natural stream;
8. Whether tree removal would affect noise pollution by increasing noise levels to such a degree that a public nuisance may be anticipated or a violation of the noise control ordinance will occur;
9. The need for visual screening in transitional zones or relief from glare, light, commercial or industrial ugliness or any other visual affront;
10. The timeframe and/or schedule proposed to remove the trees;
11. Whether any associated development activity is pending or forthcoming.

B. Conditions of significant tree removal.

As a condition to granting the removal of significant trees, and in keeping with the intent and purpose of this chapter, the City shall require replacement of significant trees at a ratio that is based on the diameter of the significant tree(s) removed. The number of trees to be replaced shall be determined using the method in section 17.15.090.

17.15.140 Considerations and conditions for non-significant tree class II permits.

A. Considerations for non-significant tree removal.

The City shall approve the removal of all non-significant trees, except for those instances where non-significant trees are requested for removal, and the site is undeveloped, or where the site is potentially subdividable and the tree(s) proposed for removal reside on the area of the site that is substantially undeveloped, and where no development activity is pending City approval. In those cases, those trees shall be considered significant trees, and subject to all the significant tree removal considerations and conditions.

B. Conditions of non-significant tree removal.

When non-significant tree removal is granted, the permit holder shall be required to replant one (1) tree for every ten (10) non-significant trees removed.

17.15.150 Tree removal permit exemptions.

A tree removal permit need not be obtained prior to removal of trees under the following circumstances, and as determined by the City upon review:

- A. Commercial nurseries, Christmas tree farms, or horticultural properties.
A tree removal permit is not needed prior to the removal of trees from commercial nurseries, Christmas tree farms, or horticultural properties such as farms, nurseries, or orchards. This shall not be interpreted to include timber harvesting incidental to imminent development of the land.
- B. Public rights-of-way.
A tree removal permit is not needed prior to the removal of trees on public rights-of-way conducted by or on behalf of a federal agency, state agency, or the City of Lynnwood in pursuance of its lawful activities and functions for construction, improvement, and maintenance of public rights-of-way.
- C. Overhead Utility Lines.
The City of Lynnwood acknowledges that trees may become hazardous when growing in or near overhead electrical lines, and may need to be trimmed, pruned, topped, or removed in order to reduce or avoid harm to life and property. A tree removal permit is not needed prior to the removal of trees when an electrical company, or their designated representative, has identified a hazard and/or must remove trees in order to perform the duties mandated in the Washington Administrative Code, sections 296-24-960, 296-44-31719, and 296-24-95601. However, notice shall be given to the City prior to tree removal.
- D. Diseased or Dead trees.
A tree removal permit is not needed for the removal of diseased or dead trees, unless the cause of death was found to be deliberate, or due to negligence during construction activity.
- E. Hazard to Life or Property.
A tree removal permit is not required for the removal of any tree which becomes, or threatens to become a danger to human life; or cause damage to property.

17.15.160 Protection of public and private trees.

Injury or disfigurement resulting in death of any public or private tree growing within the City shall be a violation of this chapter. In order to protect all public and private trees, the following provisions shall apply:

- A. Prohibited actions.
No person shall:
 - 1. Attach any sign, notice or other object to any tree or fasten any wires, cables, nails or screws to any tree in a manner that could prove harmful to the tree;
 - 2. Pour any material on any tree or on nearby ground which could be harmful to the tree;
 - 3. Cause or encourage any fire or burning near or around any tree;

4. Pile building material, stockpile dirt, or equipment around any tree so as to cause injury thereto;
 5. Top evergreen conifer trees;
 6. Prune or limb a tree which results in the loss of that tree or violates the intent and purpose of the tree as stated in Section 17.15.030.G;
 7. Violate any term or condition of a tree removal permit.
- B. Protection during construction.
1. A protective barrier shall be placed around the protected trees prior to land preparation or construction activities, and shall remain in place until all construction activity is terminated. No equipment, chemicals, soil deposits or construction materials shall be placed within the protective barriers. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.
 2. Tree protection barriers shall be a minimum of four (4) feet high, constructed of chain link, polyethylene laminar safety fencing or similar material, subject to approval by the City.
 3. The Director is authorized to require any measures necessary to protect significant trees during construction. Further tree preservation procedures may be established in the "Tree Preservation and Protection Guidelines" adopted pursuant to Section 17.15.040.

17.15.170 Violations and enforcement.

It shall be unlawful for any person, firm, or corporation to violate any provision of this chapter. The Director shall have the authority to enforce provisions of this chapter, by proceeding with the following actions in progressive severity, except in cases where a delay would result in the loss of additional trees:

- A. Stop work orders.
A stop work order may be issued in the case of failure to comply with any of the terms of a tree removal permit, or in the case of removal of any trees in violation of this chapter.
- B. Civil remedies and penalties.
Any person who removes a tree in violation of the terms of this chapter shall be subject to the following civil penalties:
- a. The City may issue a notice and order under Chapter 1.40 LMC stating all trees removed in violation of this chapter shall be replaced, and set a reasonable amount of time for compliance. The number of replacement trees shall be determined by measuring the diameter of the removed tree's remaining stump, outside of the bark, and referencing it against the table in Section 17.15.090 of this chapter to determine the number of tree units. Each tree unit shall equal one replacement tree. Each tree removed shall be considered a separate offense, and averaging of tree diameters shall not be allowed. All replacement trees shall be subject to the replacement criteria specified in Section 17.15.120.C of this chapter.

- b. In addition to requiring replanting, the City may assess civil penalties as provided in LMC 1.01.085.
- c. In those cases when the site cannot reasonably sustain the number of replacement trees required, as verified by a certified arborist and confirmed by the City, the City shall assess a civil penalty fine. The fine shall be determined by subtracting the number of trees being replaced from the required number of replacement trees. That number shall then be multiplied by twice the unreplaceable tree fee dollar amount established in Section 2.44.070 of this code. This fine shall be placed in the Tree Fund, as established in Chapter 3.102 of this code.
- d. The City shall require a maintenance bond to insure compliance with the City's order, subject to the bonding procedure established in section 17.15.120.F of this chapter.
- e. If the order requiring replacement trees is not complied with, then the property owner shall be subject to a civil fine of \$25 per day. This fine shall be placed in the Tree Fund, as established in Chapter 3.102 of this code.
- f. If the noncompliance continues for more than thirty (30) days, civil penalties shall be increased to \$100 per day up to a maximum of \$5,000. Fines shall stop on the day that compliance with the order is achieved, pending successful completion with the compliance order. This fine shall be placed in the Tree Fund, as established in Chapter 3.102 of this code.
- g. Any person who objects to a final order of the City under this section may file an appeal to the hearing examiner using the procedure under Process II in LMC 1.35.200 through 1.35.260.
- h. Any unpaid civil fines may become a lien against the property where the trees were unlawfully removed, and the City may record said lien.

17.15.180 Emergencies.

In cases of emergencies involving, but not limited to, hurricanes, windstorms, floods, freezes or other natural disasters, the requirements of this chapter may be waived by the Mayor.

17.15.190 Non-liability of the city.

Nothing in this chapter shall be deemed to impose any liability upon the City nor upon any of its officers or employees nor to relieve the owner and occupant of any private property from the duty to keep trees and shrubs upon private property or under his control in a safe condition.

17.15.200 Appeals.

Any person who objects to a final order of the City under this chapter may file an appeal to the hearing examiner using the procedure under Process II in LMC 1.35.200 through 1.35.260.

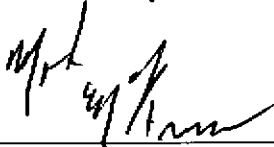
Section 5. Repealer. The following are hereby repealed in their entirety:

- A. Ordinance 1035, codified at Chapter 21.08 of the Lynnwood Municipal Code, enacted March 26, 1979.
- B. Ordinance 1672, codified at Chapter 21.08 of the Lynnwood Municipal Code, enacted February 27, 1989.
- C. Section 5 of Ordinance 2020, codified at Chapter 21.08 of the Lynnwood Municipal Code, enacted December 27, 1994.

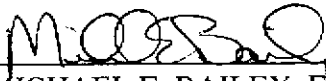
Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

Section 7. Effective Date. This ordinance shall take effect March 1, 2004, which is more than five (5) days after passage and publication of an approved summary thereof consisting of the title.

PASSED THIS 26th day of January, 2004, and signed in authentication of its passage this 27th day of January, 2004.

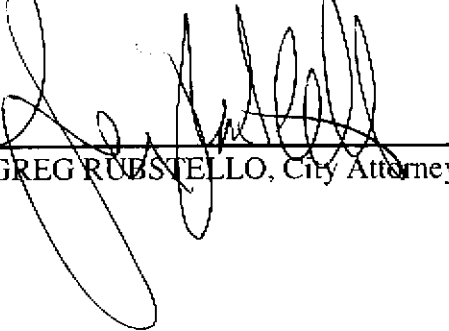


MIKE MCKINNON, Mayor



MICHAEL E. BAILEY, Finance Director

APPROVED AS TO FORM:



GREG RUBSTELLO, City Attorney