

ORDINANCE NO. 16-1002

AN ORDINANCE OF THE CITY OF OREGON CITY AMENDING THE OREGON CITY MUNICIPAL CODE BY REPEALING ONE SECTION OF CHAPTER 12.08 - PUBLIC AND STREET TREES: SECTION 12.008.040 – HERITAGE TREES AND GROVES; AND ADOPTING A NEW CHAPTER: 12.32 – HERITAGE TREES.

WHEREAS, the City of Oregon City wishes to recognize, foster appreciation and provide for voluntary protection of Heritage Trees; and

WHEREAS, the City Commission directed the Natural Resources Committee to review and revise the current Heritage Tree Code; and

WHEREAS, the proposed revisions provide improved definitions, criteria and processes to guide nomination and designation of heritage trees and stands throughout the City; and


WHEREAS, the Oregon City Natural Resources Committee and Planning Commission have reviewed the proposed amendments to the Heritage Tree Code and recommend their approval to the City Commission.

NOW, THEREFORE, OREGON CITY ORDAINS AS FOLLOWS:

Section 1. Section 12.08.040 of the Oregon City Municipal Code is repealed in its entirety.

Section 2. A new Chapter entitled Heritage Trees is hereby created within the Oregon City Municipal Code as Chapter 12.32.

Read for the first time at a regular meeting of the City Commission held on the 17th day of February 2016, and the City Commission finally enacted the foregoing Ordinance this 17th day of February 2016.



DAN HOLLADAY, Mayor

Attested to this 17th day of February 2016,



Katie Riggs, City Recorder

Approved as to legal sufficiency:



City Attorney

Attachment:

A. Revised Heritage Tree Ordinance

CHAPTER 12.32 – HERITAGE TREES.

- 12.32.010 - Purpose
- 12.32.020 – Definitions
- 12.32.030 – Nomination Process
- 12.32.040 – Review Process
- 12.32.050 - Criteria for Designation
- 12.32.060 – Protection of Heritage Trees and Stands
- 12.32.070 – Recognition of Heritage Trees and Stands
- 12.32.080 – Removal of Heritage Tree or Stand Designation

12.32.010 - Purpose.

A. The purpose of this chapter is to recognize, foster appreciation and provide for voluntary protection of certain trees, because of their age, species, natural resource value, ecological or historical association, are of special importance to the city. These trees may grow on private or public property.

B. In particular, the following trees are considered significant, and therefore will be eligible for heritage tree nomination in Oregon City, if they meet the minimum size requirements of the table below:

Tree Eligibility based on Size

<u>Common Name</u>	<u>Species</u>	<u>Size (d.b.h)*</u>
Oregon White Oak	<i>Quercus garryana</i>	8"
Douglas-Fir	<i>Pseudotsuga menziesii</i>	18"
Western Red Cedar	<i>Thuja plicata</i>	12"
Ponderosa Pine	<i>Pinus ponderosa</i>	12"
Western Yew	<i>Taxus brevifolia</i>	6"
Pacific Dogwood	<i>Cornus nuttallii</i>	5"
Coastal Redwood	<i>Sequoia sempervirens</i>	12"
Giant Sequoia	<i>Sequoiadendron giganteum</i>	12"
Other broadleaf tree species		20"
Other conifer trees		18"

*d.b.h = Diameter at Breast Height, means a measurement of the trunk or stem diameter of a mature tree at a height 4.5 feet above the ground level at the base of the tree.

12.32.020 – Definitions.

A. "Hazardous or diseased tree" means a tree that has a naturally occurring disease that is expected to kill the tree or that presents a significant risk to life or property as determined by a certified arborist. To the extent that the community development director determines that the

hazardous or diseased condition of the tree is the result of intentional action, the removal of that tree shall require mitigation pursuant to Section 17.41.060. An otherwise healthy tree that may become a hazard to a proposed future development shall not be considered a hazardous tree. Hazardous trees may include, but are not limited to dead, diseased, broken, split, cracked, leaning, and uprooted trees. A tree harboring communicable diseases or insects of a type that could infest and cause the decline of adjacent or nearby trees may also be identified as a hazardous tree.

B. "Heritage Stand" means a group of two or more trees that have been designated by the city as having unique importance, subject to the Heritage Tree Regulations of Section 12.08.040.

C. "Heritage Tree" means a tree that has been designated by the city as having unique importance, and subject to the Heritage Tree Regulations of Section 12.08.050. Where a grouping of two or more Heritage Trees has been so designated, the term Heritage Stand may be used.

D. "Imminent hazard tree" means a hazardous tree — all or more than thirty percent of which has already fallen or is estimated to fall within seventy-two hours into the public right-of-way or onto a target that cannot be protected, restricted, moved, or removed. (See also Tree, Hazard.) Determination of Imminent Hazard is made by the City of Oregon City Public Works or Emergency Personnel, a PGE forester, or a certified arborist.

E. "Native Tree" or "Native Tree Stand" refers to a regulated native tree or stand of trees that are defined as such on the Oregon City Native Plant List or Portland Native Plant List. Significant native trees are those that contribute to the landscape character of the area.

F. "Tree Stand" means a stand of three or more trees which together create a mutual canopy continuous over eighty or more percent of the area within the boundaries of the stand.

12.32.030 – Nomination Process.

A. General Procedure.

1. A tree or stand of trees may be nominated for consideration as a heritage tree or heritage stand by any citizen. The tree or stand of trees may be located anywhere in the city, regardless of whether the property is public or private, or if it is within a right-of-way.
2. The Community Development Director shall prepare a staff report, and forward a staff recommendation to the Natural Resources Committee.
3. The Natural Resources Committee shall review the nomination and staff report at a regular meeting and make a recommendation regarding the nomination to the City Commission. In the absence of a functioning Natural Resources Committee then the Community Development Director shall forward the nomination directly to the City Commission.

4. The City Commission shall make the final decision on all nominations based on the criteria identified in this chapter.

B. Consent of Owner.

1. Depending on the ownership or jurisdiction of the property on which the nomination occurs, the following shall apply.

a. Nominations for trees or tree stands on city owned property, other than right-of-way, may be submitted by any citizen of Oregon City and the City Commission shall make the final decision following the general procedure identified in subsection (A) above. If the nomination is for a city park, the Parks and Recreation Advisory Committee shall also review the nomination and provide an advisory opinion prior to the Natural Resources Committee recommendation to the City Commission.

b. Nominations for trees or tree stands located in city public right-of-ways, including alleys, may be submitted by any citizen and the City Commission shall make the final decision following the general procedure identified in subsection (A) above. However, the abutting property owner responsible for the care and maintenance of the nominated tree pursuant to section 12.08.025 of this code shall be notified of the nomination by the citizen making the nomination. The consent of the abutting property owner shall be a consideration by the City Commission in their decision; however, the failure of the abutting property owner to receive the notice of nomination or to consent to the nomination shall not affect the final determination by the City Commission.

c. Nominations for trees or tree stands on property owned by other public agencies that are not the city (for example, Clackamas County, the Oregon Department of Transportation, Urban Renewal Agency), shall require the written consent of the applicable public agency before the nomination is considered by the city.

d. Nominations for trees or tree stands located on private property may only be submitted by the property owner or if accompanied by the property owner's written consent.

C. Nomination Submittal Requirements.

1. Trees and stands of trees shall be nominated by completing a form provided by the Community Development Director and attaching the required information.

2. For individual trees, the applicant shall provide, at a minimum, the size, age, diameter, species and condition of the tree. For a stand of trees, the nomination shall be accompanied by sufficient information, such as a stand health report, that describes the overall condition of the stand.

3. The nomination shall include a narrative explaining how the tree or stand of trees meets the review criteria identified in section 12.32.050 of this chapter.

4. The nomination shall be accompanied by the written consent of the property owner or agency as described in section 12.32.030(B) of this chapter.
5. The Community Development Director may request further information from the applicant to support the nomination request.

12.32.040 – Review Process.

A. Completeness Review.

1. Within thirty days of receipt of the application, the community development director shall complete an initial review and issue a written statement to the applicant indicating whether the application is complete enough to process, and if not, what information must be submitted to make the application complete for review.

2. The applicant has one hundred eighty days from the date the application was made to submit the missing information or, on the one hundred eighty-first day, the application shall be rejected and all materials (except one copy of the application) returned to the applicant. If the applicant submits the requested information within the one hundred eighty-day period, the community development director shall again verify whether the application, as augmented, is complete. If the new information does not result in a complete application, the community development director shall issue a written statement to the applicant identifying the missing information.

3. The application shall be deemed complete for the purpose of this section upon receipt by the community development director of:

- a. All the missing information;
- b. Some of the missing information and written notice from the applicant that no other information will be provided; or
- c. Written notice from the applicant that none of the missing information will be provided.

B. Natural Resource Committee Review and Recommendation.

1. Within 60 days of deeming the application complete, the community development director shall schedule the nomination for review by the natural resources committee (NRC) at a regularly scheduled meeting, with notice to the general public, applicant and the property owner.

2. If the nominated tree or tree stand is located on city right-of-way or other property under city jurisdiction, notice of the NRC meeting shall be provided to the chair of any recognized neighborhood association in which the tree or stand is located, as well as to the abutting property owner if located in a right-of-way and to the parks and recreation advisory committee (PRAC), if located in a city park.

3. The community development director shall prepare a report analyzing the nomination pursuant to the criteria in this chapter and shall include a staff recommendation to support or not support the nomination.

4. The natural resources committee shall review the nomination and provide a recommendation to the city commission for a final decision. If the natural resources committee is not functioning or is inactive, the community development director shall provide a recommendation directly to the city commission.

C. City Commission Decision.

a. Within 30 days following the NRC meeting, the City Commission shall review all Heritage Tree and Stand recommendations forwarded to them by the NRC at a public meeting.

b. Notice of the city commission meeting shall be provided to the general public, the nominating applicant, the property owner or abutting property owner (if located on city right-of-way), the chair of any recognized neighborhood association in which the tree or stand is located, and the PRAC, if applicable.

c. After considering any recommendations by city committees, the staff report and any testimony by interested persons, the city commission shall vote to approve or deny the nomination.

D. Designation.

Following approval by the City Commission, the designation shall be completed pursuant to the following procedures.

a. For private property, the designation shall be complete upon the property owner's execution of a restrictive covenant running with the land for the benefit of the city and suitable for recordation by the city. The covenant shall describe the subject property, generally describe the location of the heritage tree or stand of trees, and covenant that the tree or stand of trees is protected as a "Heritage Tree" or "Heritage Stand" by the City of Oregon City and therefore subject to special protection as provided in this chapter.

b. If the tree or stand of trees is located on city right-of-way, the designation shall be complete upon the staff's listing of the tree or stand of trees on the City of Oregon City Heritage Tree and Stand records and official maps. The city shall condition any future property owner-requested vacation of the public right-of-way upon the execution of a protective covenant in accordance with subsection a., above, which shall be recorded by the city upon the vacation of the right-of-way.

c. For designation of heritage trees and stands on city parks and other city owned property, the designation shall be complete upon the City Commission's approval of the nomination and any documents determined by the commission to be legally necessary to ensure the preservation of the heritage tree or stand of trees, whether this be in the form of a restrictive covenant, or other instrument or agreement applicable to the specific site.

d. For designation of heritage trees and stands on public property or right-of-way other than city property or right-of-way, the designation shall be complete upon the City Commission's approval of the nomination and any documents determined by the commission to be legally necessary to ensure the preservation of the heritage tree or stand of trees, whether this be in the form of a restrictive covenant, or other instrument or agreement applicable to the specific site.

12.32.050 - Criteria for Designation.

A. The city commission may designate a tree or stand of trees as a Heritage Tree or Heritage Stand if the commission, determines that the tree or stand of trees is consistent with a positive balance of the factors set forth below.

1. Heritage Criteria (at least one heritage criterion must be met)

- a. The tree or stand of trees is associated with events that have made a significant contribution to the broad pattern of Oregon City's history; or
- b. The tree or stand of trees is associated with the life of a person or group of historic significance to Oregon City; or
- c. The tree or stand of trees represents a significant and distinguishable presence within Oregon City; or
- d. The tree or stand of trees has age, size, or species significance (horticultural or ecological), which contributes to Oregon City's heritage status;

2. Site and Condition Criteria (all criteria must be satisfied)

- a. A certified arborist, forester, or ecologist has determined in a written report that the tree or stand trees is not irreparably damaged, diseased, hazardous or unsafe or the applicant is willing to have the tree or stand of trees treated by a certified arborist, forester or ecologist and the treatment will alleviate the damage, disease or hazard;
- b. The tree species is not listed as invasive on any regionally accepted plant list;
- c. If the proposed heritage tree or stand is located on private property or on public property owned by a public agency other than the City of Oregon City, the property owner or, if the tree or stand of trees is located on a public right-of-way, the abutting private property owner consents to the designation and agrees to sign a protective covenant.

12.32.060 – Protection of Heritage Trees and Stands.

A. No Heritage Tree or Stand may be removed, topped, or otherwise altered unless permitted by this section.

B. An application to remove a Heritage Tree or Stand shall demonstrate that the burden imposed on the property owner, or, if the tree is located within the public right-of-way under city jurisdiction, then the burden imposed on the city by the continued presence of the tree, outweighs the public benefit provided by the tree. For the purposes of making this determination, the following tree impacts shall not be considered unreasonable burdens on the property owner, or if appropriate, the city:

1. View obstruction;
2. Routine pruning, leaf raking and other maintenance activities; and
3. Infrastructure impacts or tree hazards that can be controlled or avoided by appropriate pruning or maintenance.

C. If the tree is permitted to be removed due to poor health or hazard as determined in a certified arborist's report and as approved by the city, the applicant shall be required to mitigate for the loss of the tree pursuant to Table 12.08.035.

D. The removal of or damage to a Heritage Tree or Stand in violation of this chapter shall constitute a civil infraction, subject to the code enforcement procedures of Chapter 1.16 and/or Chapter 1.20, except that the penalty for unlawful removal of a Heritage Tree shall be \$600 for each tree removed or damaged.

12.32.070 – Recognition of Heritage Trees and Stands

A. A heritage tree plaque may be designed and furnished by the city to the property owner or, if the tree is in the public right-of-way, to the appropriate city official, of a designated heritage tree or stand. The city may charge a fee to cover the costs of the providing the plaque. The plaque shall be posted at a location at or near the heritage tree or stand and, if feasible, visible from a public right-of-way.

B. The community development director shall maintain a list and map of designated heritage trees and stands.

12.32.080 – Removal of Heritage Tree or Stand Designation

1. A designated heritage tree or stand may have that designation removed if the tree or stand dies or is removed pursuant to this chapter. If removed from private property, the city shall record a document extinguishing the covenant.