

## **Oregon City Municipal Code**

### **Chapter 17.41 Tree Protection, Preservation, Removal and Replanting Standards**

*Deletions shown with ~~strikeouts~~, additions and new standards shown with underline, relative to existing standards. Changes from the last set of proposed code amendments are shown in red.*

#### **17.41.010 - Protection of trees—Intent.**

The intent of this chapter is to ensure that new development is designed in a manner that preserves trees to the maximum extent practicable. As a requirement of any Type II land use application, the siting of structures, roadways and utility easements, shall provide for the protection of tree resources to the maximum extent practicable. This chapter applies to all subdivision, partition and site plan and design review applications.

#### **17.41.020 - Tree protection—Applicability.**

1. Applications for development subject to Chapters 16.08 or 16.12 (Subdivision or Minor Partition) or Chapter 17.62 (Site Plan and Design Review) shall demonstrate compliance with these standards as part of the review proceedings for those developments.
2. For public capital improvement projects, the city engineer shall demonstrate compliance with these standards pursuant to a Type II process.
3. Tree canopy removal greater than twenty-five percent on sites greater than twenty-five percent slope, unless exempted under Section 17.41.040, shall be subject to these standards.
4. A heritage tree or grove which has been designated pursuant to the procedures of Chapter 12.08.050 shall be subject to the standards of this section.

#### **17.41.030 - Tree protection—Conflicting code provisions.**

Except as otherwise specified in this section, where these standards conflict with adopted city development codes or policies, the provision which provides the greater protection for regulated trees or groves, as defined in Section 17.04, shall govern.

#### **17.41.040 - ~~Same~~—Exemptions.**

These regulations are not intended to regulate normal cutting, pruning and maintenance of trees on private property except where trees are located on lots that are undergoing development review or are otherwise protected within the Natural Resource Overlay District (NROD) of section 17.49. These standards are not intended to regulate farm and forest practices as those practices are defined under ORS 30.930. Farm or forest resources. An applicant for development may claim exemption from compliance with these standards if the development site containing the regulated grove or trees was a designated farm or forest use, tree farm, Christmas tree plantation, or other approved timber use within one year prior to development application. "Forest practices" and "forestlands" as used in this subsection shall have the meaning as set out in ORS 30.930. The ~~C~~ommunity ~~D~~evelopment ~~D~~irector has the authority to modify or waive compliance in this case.

#### 17.41.050 - ~~Same~~—Compliance options.

Applicants for review shall comply with these requirements through one or a combination of the following procedures:

- A. Option 1—Mitigation. Retention and removal of trees, with subsequent mitigation by replanting pursuant to Sections 17.41.060 or 17.41.070. ~~All replanted and saved trees shall be protected by a permanent restrictive covenant or easement approved in form by the city.~~
- B. Option 2—Dedicated Tract. Protection of trees or groves by placement in a tract within a new subdivision or partition plat pursuant to Sections 17.41.080—17.41.100; or
- C. Option 3—Restrictive Covenant. Protection of trees or groves by recordation of a permanent restrictive covenant pursuant to Sections 17.41.110—17.41.120; or
- D. Option 4—Cash-in-lieu of planting pursuant to Section 17.41.130.

A regulated tree that has been designated for protection pursuant to this section must be retained or permanently protected unless it has been determined by a certified arborist to be diseased or hazardous, pursuant to the following applicable provisions.

The ~~C~~ommunity ~~D~~evelopment ~~D~~irector, pursuant to a Type II procedure, may allow a property owner to cut a specific number of trees within a regulated grove if preserving those trees would:

- 1. Preclude achieving eighty percent of minimum density with reduction of lot size; or
- 2. Preclude meeting minimum connectivity requirements for subdivisions.

#### 17.41.060 - Tree removal and replanting—Mitigation (Option 1).

- A. Applicants for development who select this option shall ensure that all healthy trees shall be preserved outside the construction area as defined in Chapter 17.04 to the extent practicable. Compliance with these standards shall be demonstrated in a tree mitigation plan report prepared by a certified arborist, horticulturalist or forester or other environmental professional with experience and academic credentials in forestry or arboriculture. Tree inventories for the purposes of mitigation calculations may be prepared by a surveyor. At the applicant's expense, the city may require the report to be reviewed by a consulting arborist. The number of replacement trees

required on a development site shall be calculated separately from, and in addition to, any public or street trees in the public right-of-way required under section 12.08—Community Forest and Street Trees, any required tree planting in stormwater facilities on site, and any trees planted in pedestrian and bicycle accessways. Mitigation is required from the date a land use application is submitted until a land division is recorded or a development is final.

- B. The applicant shall determine the number of trees to be mitigated on the site by counting all of the trees six inch DBH (minimum four and one-half feet from the ground) or larger on the entire site and either:
1. Trees that are removed outside of the construction area, shall be replanted with the number of trees specified in Column 1 of Table 17.41.060-1. Trees that are removed within the construction area shall be replanted with the number of replacement trees required in Column 2; or
  2. Dying, Diseased or hazardous trees, when the condition is verified by a certified arborist to be consistent with the definition in Section 17.04.1360, may be removed from the tree replacement calculation. Dead trees may also be removed from the calculation, with the condition of the tree verified either by the Community Development Director or by a certified arborist at the applicant's expense, when the Community Development Director cannot make a determination. To the extent that the Community Development Director determines that the dead, dying, hazardous or diseased condition of the tree is the result of intentional action, the removal of that tree shall require mitigation pursuant to Column 2 of Table 17.41.060-1. Regulated healthy trees that are removed outside of the construction area, shall be replanted with the number of trees specified in Column 1 of Table 17.41.060-1. Regulated healthy trees that are removed within the construction area shall be replanted with the number of replacement trees required in Column 2.

Table 17.41.060-1  
Tree Replacement Requirements  
All replacement trees shall be either:  
~~Two-inch caliper deciduous, or~~  
~~Six-foot high conifer~~

Size of tree removed (DBH)	Column 1  Number of trees to be planted. (If removed <b>Outside</b> of construction area)	Column 2  Number of trees to be planted. (If removed <b>Within</b> the construction area)
6 to 12"	3	1
13 to 18"	6	2
19 to 24"	9	3

25 to 30"	12	4
31 and over"	15	5

Steps for calculating the number of replacement trees:

1. Count all trees measuring six inches DBH (minimum four and one-half feet from the ground) or larger on the entire development site.
2. Designate (in certified arborists report) the condition and size (DBH) of all trees pursuant to accepted industry standards.
3. Document any trees that are currently diseased or hazardous.
4. Subtract the number of dead, dying, diseased or hazardous trees in step 3. from the total number of trees on the development site in step 1. The remaining number is the number of healthy trees on the site. Use this number to determine the number of replacement trees in steps 5. through 8.
5. Define the construction area (as defined in Chapter 17.04).
6. Determine the number and diameter of trees to be removed within the construction area. Based on the size of each tree, use Column 2 to determine the number of replacement trees required.
7. Determine the number and diameter of trees to be removed outside of the construction area. Based on the size of each tree, use Column 1 to determine the number of replacement trees required.
8. Determine the total number of replacement trees from steps 6. and 7.

~~17.41.070~~ – C. Planting area priority for mitigation (Option 1).

Development applications which opt for removal of trees with subsequent replanting pursuant to section 17.41.050A. shall be required to mitigate for tree cutting by complying with the following priority for replanting standards below:

- ~~A~~1. First Priority. Replanting on the development site.
- ~~B~~2. Second Priority. Off-site replacement tree planting locations. If the Community ~~D~~evelopment ~~D~~irector determines that it is not practicable to plant the total number of replacement trees on-site, a suitable off-site planting location for the remainder of the trees may be approved that will reasonably satisfy the objectives of this section. Such locations may include either publicly owned or private land and must be approved by the Community ~~D~~evelopment ~~D~~irector.

D. Replacement tree planting standards (Option 1).

1. All replacement trees shall be either two-inch caliper deciduous or six-foot high conifer.

2. Replacement tree species shall be approved by a landscape architect, certified arborist or found on the City's native plant list, or street tree list.

17.41.075 - Alternative mitigation plan.

The ~~C~~ommunity ~~D~~evelopment ~~D~~irector may, subject to a Type II procedure, approve an alternative mitigation plan that adequately protects habitat pursuant to the standards for the natural resource overlay district alternative mitigation plan, Section 17.49.190.

17.41.080 - Tree preservation within subdivisions and partitions—Dedicated tract (Option 2).

A. Applicants for new subdivision and partition plats may delineate and show the regulated trees or groves as either a separate tract or part of a larger tract that meets the requirements of subsection D. of this section.

B. The standards for land divisions subject to this section shall apply in addition to the requirements of the city land division ordinance and zoning ordinance, provided that the minimum lot area, minimum average lot width, and minimum average lot depth standards of the base zone may be superseded in order to allow for a reduction of dimensional standards pursuant to Section 17.41100 below.

C. Prior to preliminary plat approval, the regulated tree or grove area shall be shown either as a separate tract or part of a larger tract that meets the requirements of subsection D. of this section, which shall not be a part of any parcel used for construction of a structure. The size of the tract shall be the minimum necessary as recommended by a consulting arborist to adequately encompass the dripline of the tree, protect the critical root zone and ensure long term survival of the tree or grove.

D. Prior to final plat approval, ownership of the regulated tree or grove tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:

1. Private open space held by the owner or a homeowners association; or
2. For residential land divisions, private open space subject to an easement conveying stormwater and surface water management rights to the city and preventing the owner of the tract from activities and uses inconsistent with the purpose of this document; or
3. At the owners option, public open space where the tract has been dedicated to the city or other governmental unit; or
4. Any other ownership proposed by the owner and approved by the ~~C~~ommunity ~~D~~evelopment ~~D~~irector. (Ord. 99-1013 §10(part), 1999).

~~17.41.090—~~ E. Density transfers incentive for tree protection tracts (Option 2).

A1. The purpose of this section is to allow dimensional adjustments within a regulated tree protection tract to be transferred outside said tract to the remainder of the site. This provision applies on-site and density shall not be transferred beyond the boundaries of the development site.

B2. Development applications for subdivisions and minor partitions that request a density transfer shall:

1ia. Provide a map showing the net buildable area of the tree protection tract;

2iib. Provide calculations justifying the requested dimensional adjustments;

3iiic. Demonstrate that the minimum lot size requirements can be met based on an average of all lots created, including the tree protection tract created pursuant to Section 17.41.080;

4ivd. Demonstrate that, with the exception of the tree protection tract created pursuant to Section 17.41.080, no parcels have been created which would be unbuildable in terms of minimum yard setbacks;

5ve. Meet all other standards of the base zone except as modified in section 17.41.100.

C3. The area of land contained in a tree protection tract may be excluded from the calculations for determining compliance with minimum density requirements of the zoning code.

**17.41.100— F.** Permitted modifications to dimensional standards (Option 2 only).

A1. An applicant proposing to protect trees in a dedicated tract pursuant to section 17.41.080 may request, and the Community Development Director, pursuant to a Type II procedure, may grant a reduction to, the lot size, width, depth, and setbacks of the underlying zone district in approving a subdivision or partition if necessary to retain a regulated tree or grove in a tract, as long as the calculation of average lot size, including tree protection tracts, meet the minimum lot size for the zone. The applicant may choose to make the adjustments over as many lots as required. For example, the lot reduction could be spread across all the remaining lots in the proposed subdivision or partition or could be applied to only those needed to incorporate the area of the tree tract.

**Table 17.41.100 A**  
Lot Size Reduction

ZONE	Min. Lot Size [sq. feet]	Min. Lot Width	Min. Lot Depth
R-10	5,000 sq. feet	50'	65'
R-8	4,000 sq. feet	45'	60'
R-6	3,500 sq. feet	35'	55'
R-5	3,000 sq. feet	30'	50'

R-3.5	1,800 sq. feet	20'	45'
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**Table 17.41.100 B**  
Reduced Dimensional Standards for Detached Single-Family Residential Units

Size of Reduced Lot	Front Yard Setback	Rear Yard Setback	Side yard Setback	Corner Side	Lot Coverage
8,000—9,999 square feet	15 feet	20 feet	7/9 feet	15 feet	40%
6,000—7,999 square feet	10 feet	15 feet	5/7 feet	15 feet	40%
4,000—5,999 square feet	10 feet	15 feet	5/5 feet	10 feet	40%
1,800—3,999 square feet	5 feet	15 feet	5/5 feet	10 feet	55%

**Table 17.41.100 C**  
Reduced Dimensional Standards for Single-Family Attached or Two-Family Residential Units

Size of Reduced Lot	Front Yard Setback	Rear Yard Setback	Side yard Setback	Corner Side	Lot Coverage
3,500—7,000 square feet	10 feet	15 feet	5/0* feet	10 feet	40%
1,800—3,499 square feet	5 feet	15 feet	5/0* feet	10 feet	55%

\*0 foot setback is only allowed on single-family attached units

Any regulated tree or grove which cannot be protected in a tract pursuant to Section 17.41.080 above shall be protected with a restrictive covenant in a format to be approved by the Community Development Director. Such covenant shall be recorded against the property deed and shall contain provisions to permanently protect the regulated tree or grove unless such tree or grove, as determined by a certified arborist and approved by the Community Development Director, are determined to be diseased or hazardous.

#### 17.41.120 – Permitted adjustments (Option 3 Only).

- A. The Community Development Director, pursuant to a Type II procedure, may grant an adjustment to the side, front and rear yard setback standards by up to 50 percent if necessary to retain a Regulated Tree or Grove through a restrictive covenant pursuant to this section. In no case may the side yard setback be reduce less than three feet. The adjustment shall be the minimum necessary to accomplish preservation of trees on the lot and shall not conflict with other conditions imposed on the property.
- B. The Community Development Director, pursuant to a Type II procedure, may grant an adjustment to street standards, pursuant to adopted public works standards, in order to preserve a tree. This may include flexibility to redesign sidewalk and planter strip sizes and locations and allow placement of sidewalks and planter strips in an easement within private lots.
- C. The Community Development Director, pursuant to a Type II procedure, may allow other adjustments in order to preserve any healthy tree that cannot be moved due to its size, but will contribute to the landscape character of the area and will not present a foreseeable hazard if retained.

#### 17.41.1[25] - Cash-in-lieu of planting (tree bank/fund) (Option 4).

The applicant may choose this option in-lieu-of or in addition to Compliance Options 1 through 3. In this case, the Community Development Director may approve the payment of cash-in-lieu into a dedicated fund for the remainder of trees that cannot be replanted in the manner described above.

- A. The cash-in-lieu payment per tree shall be as listed on the adopted fee schedule and shall be adjusted annually based on the Consumer Price Index (Index). The price shall include the cost of materials, transportation and planting.
- B. The amount of the cash-in-lieu payment into the tree bank shall be calculated as the difference between the value of the total number of trees an applicant is required to plant, including cost of installation and adjusted for Consumer Price Index, minus the value of the trees actually planted. The value of the trees shall be based on the adopted fee schedule.

#### 17.41.130 - Regulated tree protection procedures during construction.

- A. No permit for any grading or construction of public or private improvements may be released prior to verification by the Community Development Director that regulated trees designated



for protection or conservation have been protected according to the following standards. No trees designated for removal shall be removed without prior written approval from the Community Development Director.

B. Tree protection shall be as recommended by a qualified arborist or, as a minimum, to include the following protective measures:

1. Except as otherwise determined by the Community Development Director, all required tree protection measures set forth in this section shall be instituted prior to any development activities, including, but not limited to clearing, grading, excavation or demolition work, and such measures shall be removed only after completion of all construction activity, including necessary landscaping and irrigation installation, and any required plat, tract, conservation easement or restrictive covenant has been recorded.
2. Approved construction fencing, a minimum of four feet tall with steel posts placed no farther than ten feet apart, shall be installed at the edge of the tree protection zone or dripline, whichever is greater. An alternative may be used with the approval of the Community Development Director.
3. Approved signs shall be attached to the fencing stating that inside the fencing is a tree protection zone, not to be disturbed unless prior approval has been obtained from the Community Development Director.
4. No construction activity shall occur within the tree protection zone, including, but not limited to; dumping or storage of materials such as building supplies, soil, waste items; nor passage or parking of vehicles or equipment.
5. The tree protection zone shall remain free of chemically injurious materials and liquids such as paints, thinners, cleaning solutions, petroleum products, and concrete or dry wall excess, construction debris, or run-off.
6. No excavation, trenching, grading, root pruning or other activity shall occur within the tree protection zone unless directed by an arborist present on site and approved by the Community Development Director.
7. No machinery repair or cleaning shall be performed within ten feet of the dripline of any trees identified for protection.
8. Digging a trench for placement of public or private utilities or other structure within the critical root zone of a tree to be protected is prohibited. Boring under or through the tree protection zone may be permitted if approved by the Community Development Director and pursuant to the approved written recommendations and on-site guidance and supervision of a certified arborist.
9. The city may require that a certified arborist be present during any construction or grading activities that may affect the dripline of trees to be protected.
10. The Community Development Director may impose conditions to avoid disturbance to tree roots from grading activities and to protect trees and other significant vegetation identified for retention from harm. Such conditions may include, if necessary, the advisory expertise of a qualified consulting arborist or horticulturist both during and after site preparation, and a special maintenance/management program to provide protection to the resource as recommended by the arborist or horticulturist.

C. Changes in soil hydrology due to soil compaction and site drainage within tree protection areas shall be avoided. Drainage and grading plans shall include provision to ensure that drainage of the site does not conflict with the standards of this section. Excessive site run-off shall be directed to appropriate storm drainage facilities and away from trees designated for conservation or protection.