

# KILMER, VOORHEES & LAURICK, P.C.

A Professional Corporation  
ATTORNEYS AT LAW

2701 NW VAUGHN STREET, SUITE 780  
PORTLAND, OREGON 97210

TELEPHONE (503) 224-0055  
FAX (503) 222-5290

Robert B. Miller  
*bobmiller@kilmerlav.com*  
Admitted in Oregon, Washington, and Florida

February 23, 2022

## *Via U.S. Mail*

City of Salem Hearings Officer  
c/o City of Salem – Legal Department  
Attn: City Recorder  
555 Liberty Street SE, Room 225  
Salem, OR 97301-3503

Re: Case / Penalty No. 21-122759-00-CC  
Invoices Nos. 4110796 and 4110797

Dear Hearings Officer:

I represent Kimberly Clark-Chaffey, Kathy Clark, Kenneth Clark, and Carol Plain in the appeal from the two Enforcement Orders in the case referenced above. The City's attorney advised me that the City takes the position that each person must pay a filing fee for each of the two Orders. I have enclosed two checks for those fees. My clients do object to the City's interpretation of the fee rule in a case like this where several people who hold a common ownership interest in property are the subject of an Enforcement Order arising from one common incident.

Sincerely,

*/s/ Robert B. Miller*

Robert B. Miller

RBM:ltl'h  
Enclosures

cc: Kathy Clark (via U.S. mail)  
Kenneth Clark (via U.S. mail)  
Carol Plain (via U.S. mail)  
Kimberly Clark-Chaffey (via U.S. mail)  
Chuck Sides (via U.S. mail)  
Willamette Tree Service (via U.S. mail)

M:\10349\0004\Correspondence\City of Salem 2022-0223 notices of appeal.docx

**RECEIVED**

**FEB 28 2022**

**CITY OF SALEM  
LEGAL DEPARTMENT**

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IN THE CITY OF SALEM  
COUNTY OF MARION – STATE OF OREGON

In the Matter of the Enforcement Order /  
Notice and Assessment of Civil Penalty  
Against:

Case / Penalty No. 21-122759-00-CC

Invoice No. 4110796

KIMBERLY CLARK-CHAFFEY,  
KENNETH CLARK, KATHY CLARK,  
CAROL PLAIN, CHUCK SIDES, and  
WILLAMETTE TREE SERVICE – ATTN:  
FRANCISCO TOLENTO,

Defendants.

**NOTICE OF APPEAL  
ON ENFORCEMENT ORDER / NOTICE AND ASSESSMENT OF CIVIL PENALTY  
ON BEHALF OF KIMBERLY CLARK-CHAFFEY, KATHY CLARK,  
KENNETH CLARK, AND CAROL PLAIN**

TO: City of Salem Hearings Officer, c/o City of Salem, Legal Department,  
Attn: City Recorder, 555 Liberty Street SE, Room 225, Salem, Oregon 97301-3503.

1.

Kimberly Clark-Chaffey, Kathy Clark, Kenneth Clark, and Carol Plain (“Appellants”),  
in their individual capacities as named persons in receipt of the Enforcement Order / Notice and  
Assessment of Civil Penalty for Case / Penalty Number 21-122759-00-CC in relation to Invoice  
Number 4110796, hereby give notice of appeal from this enforcement order. Appellants’  
address is 14860 SE 51st Street, Bellevue, WA 98006.

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2.

This appeal is timely and otherwise properly filed because this “**Notice of Appeal**” is being filed with the city recorder within 15 business days of the receipt of the Enforcement Order / Notice and Assessment of Civil Penalty for Case / Penalty Number 21-122759-00-CC in relation to Invoice Number 4110796.

3.

Attached to this Notice of Appeal is a copy of the Enforcement Order / Notice and Assessment of Civil Penalty appealed from.

4.

Appellants, Kimberly Clark-Chaffey, Kathy Clark, Kenneth Clark, and Carol Plain, by and through their attorney, Robert B. Miller of Kilmer, Voorhees & Laurick, PC, respectfully appeal the Enforcement Order / Notice and Assessment of Civil Penalty for Case / Penalty Number 21-122759-00-CC, Invoice Number 4110796, because the amount billed in the invoice was not applicable to Appellants and because Appellants did not violate SRC 110.110(c) or (d) or SRC 808.025. Furthermore, Appellants were entitled to the exceptions outlined in SRC 808.030(a)(2).

5.

I certify that I directed a copy of this Notice of Appeal to be delivered on the City of Salem Hearings Officer by directing the Notice of Appeal to be delivered in a sealed envelope to: City of Salem, Legal Department, Attn: City Recorder, 555 Liberty Street SE, Room 225, Salem, Oregon 97301-3503.

DATED this 23rd day of February, 2022.

KILMER, VOORHEES & LAURICK, P.C.

*/s/ Robert B. Miller*

Robert B. Miller, OSB No. 960068

[bobmiller@kilmerlaw.com](mailto:bobmiller@kilmerlaw.com)

Attorneys for Appellants Kimberly Clark-Chaffey,  
Kathy Clark, Kenneth Clark, and Carol Plain

1 **CERTIFICATE OF FILING**

2 I hereby certify that I directed that the foregoing **NOTICE OF APPEAL ON**  
3 **ENFORCEMENT ORDER / NOTICE AND ASSESSMENT OF CIVIL PENALTY ON**  
4 **BEHALF OF KIMBERLY CLARK-CHAFFEY, KATHY CLARK, KENNETH CLARK,**  
5 **AND CAROL PLAIN** be delivered on February 23, 2022, by United States Postal Service, to:

6 City of Salem – Legal Department  
7 Attn: City Recorder  
8 555 Liberty Street SE, Room 225  
9 Salem, Oregon 97301-3503

10 **CERTIFICATE OF SERVICE**

11 I certify that on February 23, 2022, I served a true copy of the **NOTICE OF APPEAL**  
12 **ON ENFORCEMENT ORDER / NOTICE AND ASSESSMENT OF CIVIL PENALTY**  
13 **ON BEHALF OF KIMBERLY CLARK-CHAFFEY, KATHY CLARK, KENNETH**  
14 **CLARK, AND CAROL PLAIN** on the following parties at the addresses set forth below by  
15 United States Postal Service, ordinary first class mail:

16 Kathy Clark  
17 14860 SE 51st Street  
18 Bellevue, WA 98006

Kenneth Clark  
14860 SE 51st Street  
Bellevue, WA 98006

19 Carol Plain  
20 14860 SE 51st Street  
21 Bellevue, WA 98006

Kimberly Clark-Chaffey  
14860 SE 51st Street  
Bellevue, WA 98006

22 Chuck Sides  
23 PO Box 2087  
24 Salem, OR 97308

Willamette Tree Service  
Attn: Francisco Tolento  
2292 65th Avenue SE  
Salem, OR 97317

25 DATED this 23rd day of February, 2022.

26 */s/ Robert B. Miller*

Robert B. Miller, OSB No. 960068

[bobmiller@kilmerlaw.com](mailto:bobmiller@kilmerlaw.com)

Attorneys for Appellants Kimberly Clark-Chaffey,  
Kathy Clark, Kenneth Clark, and Carol Plain

M: 10349-0004Pleadings Notice of Appeal (Invoice No. 4110796) 2022-0223.docx

# INVOICE

City of Salem Miscellaneous Receivables

Original Invoice Date	25-JAN-22
Payment Due By	07-MAR-22

Invoice#	4110796
Customer#	[REDACTED]

**Bill To:**

Kathy Clark  
14860 SE 51st St  
Bellevue, WA 98006

Carol Plain  
14860 SE 51st St  
Bellevue, WA 98006

Kenneth Clark  
14860 SE 51st St  
Bellevue, WA 98006

Chuck Sides  
PO Box 2087  
Salem, OR 97308

Kimberly Clark-Chaffey  
14860 SE 51st St  
Bellevue, WA 98006

Willamette Tree Service  
Attn: Francisco Tolento  
2292 85th Av SE  
Salem, OR 97317

**Bill For:**

Code Compliance Services Code  
Compliance Civil Penalty  
2832 Marietta Street SE  
Salem, OR 97302  
Code Compliance Case  
#21-122759-00-CC

Payments for this invoice can be made in person, by mail or by calling 844-739-1117. Online Payments for this invoice are not available.

Description	Quantity	Unit Cost	Total
1 TREE PRESERVATION	1	\$2,812.50	\$2,812.50
Please Pay This Amount:			\$2,812.50

For questions call: 503-588-6210  
Please Put Invoice# 4110796 On Your Check  
Make Checks Payable To: City of Salem

Retain This Portion for your Records



FINANCE DEPARTMENT  
City Hall / Room 230  
555 Liberty St. SE  
Salem, OR 97301-3503

Please Return This Portion With Payment

Payment Due: 07-MAR-22

Invoice #  
4110796

Amount Due  
\$2,812.50

Amount Paid

Customer #: [REDACTED]  
Password: [REDACTED]  
Pin: [REDACTED]  
MISC-COMPLIANCE SVCS

CITY OF SALEM  
ACCOUNTS RECEIVABLE  
PO BOX 3256  
PORTLAND, OR 97208-3256

010000100041107960091194000012029400002812504

## ENFORCEMENT ORDER/NOTICE AND ASSESSMENT OF CIVIL PENALTY

CITY OF SALEM	)	
	)	CASE/PENALTY NO. 21-122759-00-CC
COUNTY OF MARION	)	
	)	INVOICE NO. 4110796
STATE OF OREGON	)	

CITY OF SALEM  
CODE COMPLIANCE DIVISION  
COMMUNITY DEVELOPMENT DEPARTMENT  
555 LIBERTY STREET SE, ROOM 305  
SALEM, OR 97301-3513

DATE: January 27, 2022

THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSON:		
NAME: KIMBERLY CLARK-CHAFFEY	TELEPHONE NO: UNKNOWN	
MAILING ADDRESS: 14860 SE 51ST ST		
CITY: BELLEVUE	STATE: WA	ZIP: 98006

AS WELL AS:

NAME: KENNETH CLARK	TELEPHONE NO: UNKNOWN	
MAILING ADDRESS: 14860 SE 51 <sup>ST</sup> ST		
CITY: BELLEVUE	STATE: WA	ZIP: 98006

AS WELL AS:

NAME: KATHY CLARK	TELEPHONE NO: UNKNOWN	
MAILING ADDRESS: 14860 SE 51 <sup>ST</sup> ST		
CITY: BELLEVUE	STATE: WA	ZIP: 98006

AS WELL AS:

NAME: CAROL PLAIN	TELEPHONE NO: UNKNOWN	
MAILING ADDRESS: 14860 SE 51 <sup>ST</sup> ST		
CITY: BELLEVUE	STATE: WA	ZIP: 98006

As Well as:

NAME: CHUCK SIDES	TELEPHONE NO: 503-588-7099	
MAILING ADDRESS: PO BOX 2087		
CITY: SALEM	STATE: OR	ZIP: 97308

As Well as:

NAME: WILLAMETTE TREE SERVICE ATTN: FRANCISCO TOLENTO	TELEPHONE NO: 503-931-4653	
MAILING ADDRESS: 2292 65 <sup>TH</sup> AV SE		
CITY: SALEM	STATE: OR	ZIP: 97317

THE FOLLOWING PLACE WITHIN THE CORPORATE LIMITS OF THE CITY OF SALEM AND IN THE ABOVE-MENTIONED STATE AND COUNTY:

ON OR ABOUT: December 3, 2021 – December 5, 2021	AT OR NEAR LOCATION: 2832 MARIETTA ST SE SALEM, OR 97302
--	--

**DID THEN AND THERE:**

<p>1. Violate SRC 110.110(c),(d): Civil Enforcement</p> <p>Any person who undertakes an activity regulated by the UDC (Unified Development Code) without first obtaining a permit shall be subject to an administrative civil penalty.</p> <p>Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, may likewise be subject to a civil penalty.</p>	<p>Description of Violation: Pursuant to SRC 808.025, No trees may be removed on a lot or parcel that is 20,000 square feet or greater or on contiguous lots or parcels 20,000 square feet or greater which are under the same ownership, without approval.</p> <p>SRC 808.030(a)(2)(n) provides an exception if the removal of trees does not result in:</p> <p>(i)Removal of more than five trees or 15 percent of the trees, whichever is greater, within a single calendar year;</p> <p>(ii)Removal of more than 50 percent of the trees within any five consecutive calendar years; and</p> <p>(iii)Removal of heritage trees, significant trees, and trees in riparian corridors;</p> <p>There were 26 total trees on the property. Pursuant to SRC 808.030(N) a permit would not have been required had no more than 4 non-significant trees to been removed. 9 trees were removed from this property. As such, each tree removed is subject to a civil penalty. However, at this time the City is not seeking a civil penalty for 4 of the non-significant trees removed from this property. The City is imposing civil penalties for the removal of 5 non-signifant trees from this property at \$562.50 per tree.</p>	<p>Amount of Civil Penalty:</p> <p>\$ 2,812.50</p>
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DUE TO THE FACT THAT THE TREE(S) HAS ALREADY BEEN REMOVED IN VIOLATION SRC CHAPTER 808, IT IS OBJECTIVELY IMPOSSIBLE TO REMEDY THIS VIOLATION, THEREFORE A CIVIL PENALTY HAS BEEN ASSESSED AS PART OF AN ENFORCEMENT ORDER PURSUANT TO SALEM REVISED CODE 20J.140(c).

THIS PENALTY IS FOR THE UNPERMITTED REMOVAL OF TREES IN VIOLATION OF SRC AS LISTED ABOVE. THIS PENALTY IS IN ADDITION TO ALL OTHER LEGAL REMEDIES WITH THE CITY MAY SEEK. SRC 808.065(C) PROVIDES FOR ADDITIONAL FEES FOR RESTORATION TO BE DETERMINED BY THE CITY'S PLANNING DEPARTMENT AND INDEPENDENT FROM THIS PENALTY. AS STATED IN 808.065(C):

*"Persons violating this chapter, or any permit issued hereunder, shall be responsible for restoring damaged areas in conformance with a plan approved by the Planning Administrator..." "Costs of restoration shall be not less than those determined equal to the monetary value of the regulated trees and/or native vegetation removed in violation of this chapter..."*

I SWEAR/AFFIRM UNDER APPLICABLE LAW AND UNDER PENALTIES FOR FALSE SWEARING THAT I HAVE SUFFICIENT GROUNDS TO AND DO BELIEVE THAT THE ABOVE-MENTIONED PERSON COMMITTED THE ABOVE VIOLATION(S), AND I HAVE SERVED THE PERSON WITH THIS ENCORCEMENT ORDER / NOTICE AND ASSESSMENT OF CIVIL PENALTY.

**TOTAL AMOUNT OF CIVIL PENALTIES, BASED ON THE ATTACHED MATRIX, AND ASSESSED BY THIS NOTICE AND ASSESSMENT OF CIVIL PENALTY ARE: \$2,812.50.**

I SWEAR/AFFIRM UNDER PENALTIES FOR FALSE SWEARING THAT I HAVE SUFFICIENT GROUNDS TO AND DO BELIEVE THAT THE ABOVE-MENTIONED PERSON COMMITTED THE ABOVE VIOLATION(S) AND FAILED

CORRECT SAID VIOLATIONS WITHIN THE TIME LIMITS SET FORTH IN THE ENFORCEMENT ORDER  
ISSUED PREVIOUSLY AS SET FORTH ABOVE.

1/27/2022  
DATE ISSUED



Anthony Hinkle, Code Compliance Officer  
ENFORCEMENT OFFICER OF THE CITY OF SALEM

**YOU HAVE THE RIGHT TO APPEAL THIS NOTICE AND ASSESSMENT OF CIVIL PENALTY TO THE CITY'S  
HEARINGS OFFICER**

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**PAYMENT PROCEDURE / RIGHT TO APPEAL**

**1. PAYMENT: PAYMENT IS DUE WITHIN THIRTY (30) DAYS.**

Payment in full of the total amount of all civil penalties assessed must be made by delivering payment, within thirty (30) business days of the date this Notice and Assessment of Civil Penalty was issued, to the following address:

**CITY OF SALEM  
ADMINISTRATIVE SERVICES  
FINANCE DIVISION  
555 LIBERTY STREET SE, ROOM 230  
SALEM, OR 97301-3503**

**2. APPEAL RIGHTS AND PROCEDURE:**

You have the right to appeal this Notice of Civil Penalty to the City of Salem's Hearings Officer. A notice of appeal must be filed with the City Recorder within fifteen (15) business days after receiving this Notice. The notice of appeal shall be delivered or mailed to:

**CITY OF SALEM  
LEGAL DEPARTMENT  
ATTN: CITY RECORDER  
555 LIBERTY STREET SE, ROOM 225  
SALEM, OR 97301-3503**

The notice of appeal shall contain:

- (1) The name and address of the appellant;
- (2) A copy of this Notice and Assessment of Civil Penalty; and
- (3) The basis for the appeal, stating with specificity:
  - (A) Why the imposition of the civil penalty is in error as the violation(s) were corrected within the time stated in the enforcement order; or
  - (B) Why the amount of the civil penalty is not supported by a factual basis based on the criteria set forth in SRC 20J.150.

The notice of appeal SHALL be accompanied by an appeal fee of \$270, as established by resolution of the Salem City Council. The appeal fee is not refundable unless the Hearings Officer finds that this Notice and Assessment of Civil Penalty was not well founded in law or fact, in which case the appeal fee shall be refunded in full.



## TREE AND NATIVE VEGETATION VIOLATION:

Number of "non-significant/riparian" trees/native veg removed?	9
Number of significant/heritage/riparian trees/native veg removed?	0
Approved TCP/TRP violation?	No
At least 25% trees remaining?	Yes
Number of Prior violations?	0

TOTAL POINTS	BASE PENALTY
1	\$250
2	\$500
3	\$750
4	\$1,000
5	\$1,500
6	\$2,000

### BASE PENALTY: A = Gravity and Magnitude

A	BASE PENALTY: A = Gravity and Magnitude	Points	Non-Significant/ Heritage/Riparian	Significant/ Heritage/Riparian
	1-10 trees removed- Not significant, heritage, riparian	+1	1	-
	10+ trees removed - Not significant, heritage, riparian	+2	-	-
	Significant, heritage, riparian tree/native veg. removed	+4	-	-
	Approved TCP/TRP violation	+1	-	-
	<25% total trees retained	+1	-	-
	<b>Total Score</b>		1	-
	<b>A = Base Penalty (see table above right)</b>		\$250	-

### AGGRAVATING AND MITIGATING FACTORS = (B+C+D+E)

	(B+C+D+E) SEE ATTACHED SHEET	Non-Significant/ Heritage/Riparian	Significant/ Heritage/Riparian
<b>B</b>	Unavoidable Accident?	2	-
<b>C</b>	Prior Violations?	-	-
<b>D</b>	Cooperation in compliance?	.25	-
<b>E</b>	Steps to prevent further violation?	-	-
	<b>Total B+C+D+E</b>	<b>2.25</b>	

### CIVIL PENALTY = A x (B+C+D+E)

A x (B+C+D+E)	Non-Significant/ Heritage/Riparian	Significant/ Heritage/Riparian	Total Civil Penalty
Base Penalty =	\$250	-	
B+C+D+E =	2.25	-	
* A x (B+C+D+E) =	\$562.50		
Total # Trees/Native Veg.	5	-	
<b>TOTAL CIVIL PENALTY</b>	<b>\$2812.50</b>		

\*If B + C + D + E = 0 skip this step and only use base penalty and number of trees.

## TREE AND NATIVE VEGETATION VIOLATION CIVIL PENALTY CRITERIA

- A Gravity and magnitude?
- B Unavoidable accident?
- C Prior violation?
- D Cooperation in compliance?
- E Steps taken by developer to prevent further violation?

$$\text{Penalty} = A \times (B+C+D+E)$$

### BASE PENALTY

#### A = GRAVITY AND MAGNITUDE?

See Worksheet (attached)

### AGGRAVATING AND MITIGATING FACTORS

#### B = UNAVOIDABLE ACCIDENT?

0 = If the respondent's conduct was purely **accidental** or there is insufficient information

+1 = If respondent's conduct was **negligent** or the respondent had constructive knowledge (reasonably should have known) that the conduct would be a violation. Holding a permit that prohibits or requires conduct is presumed to constitute at least constructive knowledge and may be actual knowledge depending on the specific facts of the case

+2 = If the respondent's conduct was **reckless** or **flagrant**, or the respondent had actual knowledge that its conduct would be a violation and respondent's conduct was intentional. A respondent that previously received a similar violation is presumed to have actual knowledge. Holding a permit that prohibits or requires conduct may be actual knowledge depending on the specific facts of the case.

#### C = PRIOR VIOLATIONS?

0 = No prior violations

+0.5 = 1 prior violation – Not significant, heritage or riparian tree

+1 = 1 prior violation – Significant, heritage or riparian tree

+0.5 = Each additional violation

#### D = COOPERATION IN COMPLIANCE?

0 = Immediate response and correction

+0.25 = No response/correction for 7-28 days after deadline

+0.5 = No response/correction for more than 28 days after deadline

#### E = Steps taken to prevent further violations?

+0.5 = No effort or not enough information

0 = Reasonable effort or not enough information

-0.5 = Extraordinary effort

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4 IN THE CITY OF SALEM  
5 COUNTY OF MARION – STATE OF OREGON  
6

7 In the Matter of the Enforcement Order /  
8 Notice and Assessment of Civil Penalty  
9 Against:

10 KIMBERLY CLARK-CHAFFEY,  
11 KENNETH CLARK, KATHY CLARK,  
12 CAROL PLAIN, CHUCK SIDES, and  
13 WILLAMETTE TREE SERVICE – ATTN:  
14 FRANCISCO TOLENTO.

Defendants.

Case / Penalty No. 21-122759-00-CC

Invoice No. 4110797

15 **NOTICE OF APPEAL**  
16 **ON ENFORCEMENT ORDER / NOTICE AND**  
17 **ASSESSMENT OF CIVIL PENALTY ON BEHALF OF**  
18 **KATHY CLARK, KENNETH CLARK, AND CAROL PLAIN**

19 TO: City of Salem Hearings Officer, c/o City of Salem, Legal Department,  
20 Attn: City Recorder, 555 Liberty Street SE, Room 225, Salem, Oregon 97301-3503.

21 1.

22 Kathy Clark, Kenneth Clark, and Carol Plain (“Appellants”), in their individual capacities  
23 as named persons in receipt of the Enforcement Order / Notice and Assessment of Civil Penalty  
24 for Case / Penalty Number 21-122759-00-CC in relation to Invoice Number 4110797, hereby  
25 give notice of appeal from this enforcement order. Appellants’ address is 14860 SE 51st Street,  
26 Bellevue, WA 98006.

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2.

This appeal is timely and otherwise properly filed because this **“Notice of Appeal”** is being filed with the city recorder within 15 business days of the receipt of the Enforcement Order / Notice and Assessment of Civil Penalty for Case / Penalty Number 21-122759-00-CC in relation to Invoice Number 4110797.

3.

Attached to this Notice of Appeal is a copy of the Enforcement Order / Notice and Assessment of Civil Penalty appealed from.

4.

Appellants, Kathy Clark, Kenneth Clark, and Carol Plain, by and through their attorney, Robert B. Miller of Kilmer, Voorhees & Laurick, PC, respectfully appeal the Enforcement Order / Notice and Assessment of Civil Penalty for Case / Penalty Number 21-122759-00-CC, Invoice Number 4110797, because the amount billed in the invoice was not applicable to Appellants and because Appellants did not violate SRC 110.110(c) or (d), SRC 808.015, or SRC 808.025. Furthermore, Appellants were entitled to the exceptions outlined in SRC 808.030(a)(2).

5.

I certify that I directed a copy of this Notice of Appeal to be delivered on the City of Salem Hearings Officer by directing the Notice of Appeal to be delivered in a sealed envelope to: City of Salem, Legal Department, Attn: City Recorder, 555 Liberty Street SE, Room 225, Salem, Oregon 97301-3503.

DATED this 23rd day of February, 2022.

KILMER, VOORHEES & LAURICK, P.C.

/s/ Robert B. Miller  
Robert B. Miller, OSB No. 960068  
[bobmiller@kilmerlaw.com](mailto:bobmiller@kilmerlaw.com)  
Attorneys for Appellants  
Kathy Clark, Kenneth Clark, and Carol Plain

1 **CERTIFICATE OF FILING**

2 I hereby certify that I directed that the foregoing **NOTICE OF APPEAL ON**  
3 **ENFORCEMENT ORDER / NOTICE AND ASSESSMENT OF CIVIL PENALTY ON**  
4 **BEHALF OF KATHY CLARK, KENNETH CLARK, AND CAROL PLAIN** be delivered  
on February 23, 2022, by United States Postal Service, to:

5 City of Salem – Legal Department  
6 Attn: City Recorder  
7 555 Liberty Street SE, Room 225  
8 Salem, Oregon 97301-3503

8 **CERTIFICATE OF SERVICE**

9 I certify that on February 23, 2022, I served a true copy of the **NOTICE OF APPEAL**  
10 **ON ENFORCEMENT ORDER / NOTICE AND ASSESSMENT OF CIVIL PENALTY**  
11 **ON BEHALF OF KATHY CLARK, KENNETH CLARK, AND CAROL PLAIN** on the  
12 following parties at the addresses set forth below by United States Postal Service, ordinary first  
13 class mail:

14 Kathy Clark  
15 14860 SE 51st Street  
16 Bellevue, WA 98006

Kenneth Clark  
14860 SE 51st Street  
Bellevue, WA 98006

16 Carol Plain  
17 14860 SE 51st Street  
18 Bellevue, WA 98006

Kimberly Clark-Chaffey  
14860 SE 51st Street  
Bellevue, WA 98006

18 Chuck Sides  
19 PO Box 2087  
20 Salem, OR 97308

Willamette Tree Service  
Attn: Francisco Tolento  
2292 65th Avenue SE  
Salem, OR 97317

21 DATED this 23rd day of February, 2022.

22  
23 */s/ Robert B. Miller*  
24 Robert B. Miller, OSB No. 960068  
[bobmiller@kilmerlaw.com](mailto:bobmiller@kilmerlaw.com)  
25 Attorneys for Appellants  
26 Kathy Clark, Kenneth Clark, and Carol Plain

M:\10349\0004\Pleadings Notice of Appeal (Invoice No. 4110797) 2022-0223.docx

# INVOICE

City of Salem Miscellaneous Receivables

Original Invoice Date	25-JAN-22
Payment Due By	07-MAR-22

Invoice#	4110797
Customer#	[REDACTED]

**Bill To:**

Kathy Clark  
14860 SE 51st St  
Bellevue, WA 98006

Chuck Sides  
PO Box 2087  
Salem, OR 97308

Kenneth Clark  
14860 SE 51st St  
Bellevue, WA 98006

Willamette Tree Service  
Attn: Francisco Tolento  
2292 65th Av SE  
Salem, OR 97317

Carol Plain  
14860 SE 51st St  
Bellevue, WA 98006

**Bill For:**

Code Compliance Services  
Compliance Civil Penalty  
2832 Marietta Street SE  
Salem, OR 97302  
Code Compliance  
Case #21-122759-00-CC

Payments for this invoice can be made in person, by mail or by calling 844-739-1117. Online Payments for this invoice are not available.

	Description	Quantity	Unit Cost	Total
1	TREE PRESERVATION (TAX LOT #083W12C000301)	1	\$96,000.00	\$96,000.00
2	TREE PRESERVATION (TAX LOT#083W12C002200)	1	\$39,375.00	\$39,375.00
Please Pay This Amount:				<b>\$135,375.00</b>

For questions call: 503-588-6210  
Please Put Invoice# 4110797 On Your Check  
Make Checks Payable To: City of Salem

Retain This Portion for your Records

Please Return This Portion With Payment



FINANCE DEPARTMENT  
City Hall / Room 230  
555 Liberty St. SE  
Salem, OR 97301-3503

Payment Due: 07-MAR-22

Invoice #	Amount Due	Amount Paid
4110797	\$135,375.00	<input type="text"/>

Customer #: [REDACTED]  
Password: [REDACTED]  
Pin: [REDACTED]  
MISC-COMPLIANCE SVCS.

CITY OF SALEM  
ACCOUNTS RECEIVABLE  
PO BOX 3256  
PORTLAND, OR 97208-3256

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# ENFORCEMENT ORDER/NOTICE AND ASSESSMENT OF CIVIL PENALTY

CITY OF SALEM	)	CASE/PENALTY NO. 21-122759-00-CC
	)	
COUNTY OF MARION	)	INVOICE NO. 4110797
	)	
STATE OF OREGON	)	

CITY OF SALEM  
CODE COMPLIANCE DIVISION  
COMMUNITY DEVELOPMENT DEPARTMENT  
555 LIBERTY STREET SE, ROOM 305  
SALEM, OR 97301-3513

DATE: January 27, 2022

<b>THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSONS:</b>		
NAME: KATHY CLARK	TELEPHONE NO: UNKNOWN	
MAILING ADDRESS: 14860 SE 51 <sup>ST</sup> ST		
CITY: BELLEVUE	STATE: WASHINGTON	ZIP: 98006
<b>AS WELL AS:</b>		
NAME: KENNETH CLARK	TELEPHONE NO: UNKNOWN	
MAILING ADDRESS: 14860 SE 51 <sup>ST</sup> ST		
CITY: BELLEVUE	STATE: WASHINGTON	ZIP: 98006
<b>AS WELL AS:</b>		
NAME: CAROL PLAIN	TELEPHONE NO: UNKNOWN	
MAILING ADDRESS: 14860 SE 51 <sup>ST</sup> ST		
CITY: BELLEVUE	STATE: WASHINGTON	ZIP: 98006
<b>As Well as:</b>		
NAME: CHUCK SIDES	TELEPHONE NO: 503-588-7099	
MAILING ADDRESS: PO BOX 2087		
CITY: SALEM	STATE: OR	ZIP: 97308
<b>As Well as:</b>		
NAME: WILLAMETTE TREE SERVICE ATTN: FRANCISCO TOLENTO	TELEPHONE NO: 503-931-4653	
MAILING ADDRESS: 2292 65 <sup>TH</sup> AV SE		
CITY: SALEM	STATE: OREGON	ZIP: 97317
<b>AT THE FOLLOWING PLACE WITHIN THE CORPORATE LIMITS OF THE CITY OF SALEM AND IN THE ABOVE-MENTIONED STATE AND COUNTY:</b>		
ON OR ABOUT: December 3, 2021 – December 5, 2021	AT OR NEAR LOCATION: 2792 MARIETTA ST SE (Tax Lot#083W12C000301 only)	

TAXLOT# 083W12C002200  
SALEM, OR 97302

**DID THEN AND THERE:**

<p>1. Violate SRC 110.110(c),(d): Civil Enforcement</p> <p>Any person who undertakes an activity regulated by the UDC (Unified Development Code) without first obtaining a permit shall be subject to an administrative civil penalty.</p> <p>Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, may likewise be subject to a civil penalty.</p>	<p>Description of Violation: Pursuant to SRC 808.015 (Significant Trees), No person shall remove a significant tree, unless the removal is undertaken pursuant to a tree and vegetation removal permit issued under SRC 808.030, undertaken pursuant to a tree conservation plan approved under SRC 808.035, or undertaken pursuant to a tree variance granted under SRC 808.045.</p> <p>48 significant trees (Oregon white oak 24 inches dbh or greater) were removed from the properties without any permits to do so. These are cited at \$2,000.00 per tree.</p>	<p>Amount of Civil Penalty: \$96,000.00</p>
<p>2. Violate SRC 110.110(c),(d): Civil Enforcement</p> <p>Any person who undertakes an activity regulated by the UDC (Unified Development Code) without first obtaining a permit shall be subject to an administrative civil penalty.</p> <p>Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, may likewise be subject to a civil penalty.</p>	<p>Description of Violation: Pursuant to SRC 808.025, No trees may be removed on a lot or parcel that is 20,000 square feet or greater or on contiguous lots or parcels 20,000 square feet or greater which are under the same ownership, without approval. SRC 808.030(a)(2)(n) provides an exception if the removal of trees does not result in:</p> <ul style="list-style-type: none"><li>(i) Removal of more than five trees or 15 percent of the trees, whichever is greater, within a single calendar year;</li><li>(ii) Removal of more than 50 percent of the trees within any five consecutive calendar years; and</li><li>(iii) Removal of heritage trees, significant trees, and trees in riparian corridors;</li></ul> <p>There were 189 total trees on the two contiguous properties. Pursuant to SRC 808.030(N) a permit would not have been required had no more than 28 non-significant trees to been removed. 111 trees were removed from these properties, 48 of which were significant trees as defined by SRC 808.005. As such, each tree removed is subject to a civil penalty. However, at this time the City is not seeking a civil penalty for 28 of the non-significant trees removed from these properties. The City is imposing civil penalties for the removal of 35 non-significant trees removed from these properties at \$1,125.00 per tree.</p>	<p>Amount of Civil Penalty: \$39,375.00</p>



DE TO THE FACT THAT THE TREE(S) HAS ALREADY BEEN REMOVED IN VIOLATION SRC CHAPTER 808, IT IS OBJECTIVELY IMPOSSIBLE TO REMEDY THIS VIOLATION, THEREFORE A CIVIL PENALTY HAS BEEN ASSESSED AS PART OF AN ENFORCEMENT ORDER PURSUANT TO SALEM REVISED CODE 20J.140(c).

THIS PENALTY IS FOR THE UNPERMITTED REMOVAL OF TREES IN VIOLATION OF SRC AS LISTED ABOVE. **THIS PENALTY IS IN ADDITION TO ALL OTHER LEGAL REMEDIES WHICH THE CITY MAY SEEK.** SRC 808.065(C) PROVIDES FOR ADDITIONAL FEES FOR RESTORATION TO BE DETERMINED BY THE CITY'S PLANNING DEPARTMENT AND INDEPENDENT FROM THIS PENALTY. AS STATED IN 808.065(C):

*"Persons violating this chapter, or any permit issued hereunder, shall be responsible for restoring damaged areas in conformance with a plan approved by the Planning Administrator..." "Costs of restoration shall be not less than those determined equal to the monetary value of the regulated trees and/or native vegetation removed in violation of this chapter..."*

I SWEAR/AFFIRM UNDER APPLICABLE LAW AND UNDER PENALTIES FOR FALSE SWEARING THAT I HAVE SUFFICIENT GROUNDS TO AND DO BELIEVE THAT THE ABOVE-MENTIONED PERSON COMMITTED THE ABOVE VIOLATION(S), AND I HAVE SERVED THE PERSON WITH THIS ENFORCEMENT ORDER / NOTICE AND ASSESSMENT OF CIVIL PENALTY.

**TOTAL AMOUNT OF CIVIL PENALTIES, BASED ON THE ATTACHED MATRIX, AND ASSESSED BY THIS NOTICE AND ASSESSMENT OF CIVIL PENALTY ARE: \$135,375.00.**

I SWEAR/AFFIRM UNDER PENALTIES FOR FALSE SWEARING THAT I HAVE SUFFICIENT GROUNDS TO AND DO BELIEVE THAT THE ABOVE-MENTIONED PERSON COMMITTED THE ABOVE VIOLATION(S) AND FAILED TO CORRECT SAID VIOLATIONS WITHIN THE TIME LIMITS SET FORTH IN THE ENFORCEMENT ORDER ISSUED PREVIOUSLY AS SET FORTH ABOVE.

1/27/2022  
DATE ISSUED



Anthony Hinkle, Code Compliance Officer  
ENFORCEMENT OFFICER OF THE CITY OF SALEM

**YOU HAVE THE RIGHT TO APPEAL THIS NOTICE AND ASSESSMENT OF CIVIL PENALTY TO THE CITY'S HEARINGS OFFICER**

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**PAYMENT PROCEDURE / RIGHT TO APPEAL**

**1. PAYMENT: PAYMENT IS DUE WITHIN THIRTY (30) DAYS.**

Payment in full of the total amount of all civil penalties assessed must be made by delivering payment, within thirty (30) business days of the date this Notice and Assessment of Civil Penalty was issued, to the following address:

**CITY OF SALEM  
ADMINISTRATIVE SERVICES  
FINANCE DIVISION  
555 LIBERTY STREET SE, ROOM 230  
SALEM, OR 97301-3503**

**2. APPEAL RIGHTS AND PROCEDURE:**

You have the right to appeal this Notice of Civil Penalty to the City of Salem's Hearings Officer. A notice of appeal must be filed with the City Recorder within fifteen (15) business days after receiving this Notice. The notice of appeal shall be delivered or mailed to:

**CITY OF SALEM  
LEGAL DEPARTMENT  
ATTN: CITY RECORDER  
555 LIBERTY STREET SE, ROOM 225  
SALEM, OR 97301-3503**

The notice of appeal must contain:

- (1) The name and address of the appellant;
- (2) A copy of this Notice and Assessment of Civil Penalty; and
- (3) The basis for the appeal, stating with specificity:
  - (A) Why the imposition of the civil penalty is in error as the violation(s) were corrected within the time stated in the enforcement order; or
  - (B) Why the amount of the civil penalty is not supported by a factual basis based on the criteria set forth in SRC 20J.150.

The notice of appeal SHALL be accompanied by an appeal fee of \$270, as established by resolution of the Salem City Council. The appeal fee is not refundable unless the Hearings Officer finds that this Notice and Assessment of Civil Penalty was not well founded in law or fact, in which case the appeal fee shall be refunded in full.

This dropped off in person or mailed to t

**ANY NOTICE OF APPEAL FILED AFTER THE TIME PERIOD SET FORTH ABOVE SHALL BE DISMISSED BY THE HEARINGS OFFICER AS UNTIMELY. FAILURE TO FILE A NOTICE OF APPEAL SHALL BE A WAIVER OF ALL RIGHT TO REVIEW THE IMPOSITION OR AMOUNT OF THE CIVIL PENALTY.**

**3. HEARING ON APPEAL:**

Upon the filing of a notice of appeal, the Hearings Officer shall set a time, date, and place for a hearing. The hearing date shall be set not less than twenty (20) business days nor more than sixty (60) business days after the date the notice of appeal is filed, unless continued with the consent of all parties or upon the motion of any party for good cause shown.

**4. FINALITY OF CIVIL PENALTY:**

This Notice and Assessment of Civil Penalty shall become final upon the expiration of the time for filing an appeal. If a notice of appeal is timely filed, the civil penalty shall become final upon the issuance of the Hearing Officer's decision affirming the civil penalty.

**5. QUESTIONS:**

If you have any questions about this Notice and Assessment of Civil Penalty, you may contact the Community Development Department at following address or telephone number:

**DEPARTMENT OF COMMUNITY DEVELOPMENT  
CODE COMPLIANCE DIVISION  
555 LIBERTY STREET SE, ROOM 305  
SALEM, OREGON 97301-3503  
TELEPHONE NUMBER: (503) 588-6421**

## TREE AND NATIVE VEGETATION VIOLATION:

Number of "non-significant/riparian" trees/native veg removed?	35
Number of significant/heritage/riparian trees/native veg removed?	48
Approved TCP/TRP violation?	No
At least 25% trees remaining?	Yes
Number of Prior violations?	0

TOTAL POINTS	BASE PENALTY
1	\$250
2	\$500
3	\$750
4	\$1,000
5	\$1,500
6	\$2,000

### BASE PENALTY: A = Gravity and Magnitude

A	BASE PENALTY: A = Gravity and Magnitude	Points	Non-Significant/ Heritage/Riparian	Significant/ Heritage/Riparian
	1-10 trees removed- Not significant, heritage, riparian	+1	-	-
	10+ trees removed - Not significant, heritage, riparian	+2	2	-
	Significant, heritage, riparian tree/native veg. removed	+4	-	4
	Approved TCP/TRP violation	+1	-	-
	<25% total trees retained	+1	-	-
	<b>Total Score</b>		<b>2</b>	<b>4</b>
	<b>A = Base Penalty (see table above right)</b>		<b>\$500</b>	<b>\$1000</b>

### AGGRAVATING AND MITIGATING FACTORS = (B+C+D+E)

	(B+C+D+E) SEE ATTACHED SHEET	Non-Significant/ Heritage/Riparian	Significant/ Heritage/Riparian
<b>B</b>	Unavoidable Accident?	2	2
<b>C</b>	Prior Violations?	-	-
<b>D</b>	Cooperation in compliance?	.25	.25
<b>E</b>	Steps to prevent further violation?	-	-
	<b>Total B+C+D+E</b>	<b>2.25</b>	<b>2.25</b>

### CIVIL PENALTY = A x (B+C+D+E)

A x (B+C+D+E)	Non-Significant/ Heritage/Riparian	Significant/ Heritage/Riparian	Total Civil Penalty
Base Penalty =	\$500	\$1000	
B+C+D+E =	2.25	2.25	
*A x (B+C+D+E) =	\$1125	\$2250 (\$2000 MAX)	
Total # Trees/Native Veg.	35	48	
<b>TOTAL CIVIL PENALTY</b>	<b>\$39,375</b>	<b>\$96,000</b>	

\*If B + C + D + E = 0 skip this step and only use base penalty and number of trees.