

TO: PLANNING COMMISSION

**THROUGH: LISA ANDERSON-OGILVIE, AICP
INTERIM COMMUNITY DEVELOPMENT DIRECTOR AND
PLANNING ADMINISTRATOR**

**FROM: PETER FERNANDEZ, PE
PUBLIC WORKS DEPARTMENT DIRECTOR**

**SUBJECT: SUPPLEMENTAL STAFF REPORT FOR CA22-03: PROPOSED
AMENDMENT TO SALEM REVISED CODE CHAPTER 86 (TREES ON
CITY OWNED PROPERTY)**

ISSUE

Should the Planning Commission recommend City Council approval of proposed amendments to the Salem Revised Code (SRC) updating Chapter 86 (Trees on City Owned Property) to address issues that have arisen based on experience with the current code and based on feedback received from Council and the public, since the code was last amended in 2015.

RECOMMENDATION

Adopt the facts and findings of this supplemental staff report with the recommendation that staff make necessary changes to clarify the approval process for removing a city owned tree in conjunction with land use approval and forward the ordinance bill to City Council for a first reading.

SUMMARY AND BACKGROUND

On October 4, 2022, the proposed code amendments to Salem Revised Code (SRC) Chapter 86, titled Trees on City Owned Property, were initiated by the Planning Commission with the adoption of Resolution No. 22-01. Public notice was sent to affected and interested parties pursuant to SRC 300.1110. This supplemental report recommends modifications to the ordinance and provides additional findings in response to citizen comments.

FACTS AND FINDINGS

1. Recommended Modifications

- a. Definitions – Class 1 Tree. A response from Willamette University requested that the definition of Class 1 Tree include more trees of smaller diameter to provide greater protection for the smaller trees. A response from AKS Engineering and Forestry requested that the definition be limited to clear and objective standards.

As a result, staff recommends that the proposed modification to the definition of a

Class 1 Tree in SRC 86.010 (Definitions). As shown in Attachment A, staff's revised amendments ensure a clear and objective standard by defining trees as Class 1 based solely on diameter and species. Furthermore, staff's revised recommendation reduces the minimum diameter at breast height of a Class 1 Tree to 16 inches for Oregon white oak (*Quercus garryana*) and 20 inches for other trees to provide greater protection for a larger number of trees.

- b. Procedure Type. A response from AKS Engineering and Forestry identified that the discretion used in approving or denying street tree removal permits warrants a Type II process. Approval or denial of a request to remove a street tree removal permit is based on a Reasonable Alternative Analysis, criteria which are outlined in the Administrative Rules related to Trees on City Owned Property (109-500-002 Section 2.4).

Upon further review, Staff agree that more clear and objective criteria are needed. Staff will work with AKS Engineering and Forestry and others to revise the draft code and administrative rule to clarify criteria for removing Class 1, Class 2, and Class 3 trees to make the approval criteria as clear and objective as possible for all classes of trees.

2. Other Citizen Comments

- a. Developer vs. City-funded projects. AKS Engineering and Forestry correctly noted that City projects as defined in SRC 86.010 are exempt from street tree removal permits. The firm requested that developer-funded projects related to public improvements receive the same exemption. Staff disagree. The permit exemption is provided to the City for City Projects so that the City does not need to issue itself a permit for work already approved by the City. However, although a permit is not issued, as stated in SRC 86.050(b) the City is still required to comply with the provisions of SRC Chapter 86. In contrast, projects that do not fall within the definition of a City Project still require permitting to allow for an orderly process of review, approval and, if warranted, enforcement to ensure compliance with the provisions of SRC Chapter 86.

Attachments: A. Proposed Code Amendments
B. Public Comments

Prepared by Glenn Davis, Chief Development Engineer
Public Works Department

Sec. 86.010. Definitions.

Unless the context otherwise specifically requires, terms used in this chapter shall have the meanings set forth in this section; provided, however, where a term is not defined in this section, the term shall have its ordinary accepted meaning within the context in which it is used. Webster's *Third New Int'l-International Dictionary* (unabridged ed. 2002) shall be the standard reference to ordinary accepted meanings.

Biological material means any plant material, including but not limited to cones, seeds, cuttings, epiphytic plants or other plant material.

City project means any City-initiated construction or enhancement project on City property. Maintenance of existing infrastructure is not considered a City project.

City property means real property and improvements, if any, owned by, dedicated to, managed by, or subject to an easement in favor of, the City for the public's use, including, but not limited to, City parks, City rights-of-way and other City properties within city limits.

City rights-of-way means an area that allows for the passage of people and vehicles that is dedicated or deeded, or for which there is an easement to the City or the public, for public use and under the control of the City. As used in this chapter, the term "right-of-way" includes streets, bike paths, walkways, landscaping strips, ~~and~~ all other land within the area designated as right-of-way by the deed, dedication, or easement, and special setback areas on arterial or collector streets pursuant to SRC 800.040, but does not include alleys. Easements for utilities or other ~~non-roadway~~ non-transportation purposes are not included in this definition.

City tree means a tree with a trunk that is partially or completely on City property.

Class 1 Tree means a tree that is healthy, structurally stable, and is one of the following: (A) a Heritage Tree; (B) a "significant tree" pursuant to SRC 808.005; or (C) a tree with exceptional ecological, aesthetic, or historic qualities as determined by the City Forester or Planning Administrator. **(B) a rare, threatened, or endangered tree of any size, as defined or designated under state or federal law and included in the tree and vegetation technical manual; (C) an Oregon white oak (Quercus garryana) with a dbh of 16 inches or greater; or (D) any other tree with a dbh of 20 inches or greater, but excluding:**

(1)Tree of heaven (Ailanthus altissima);

(2)Empress tree (Paulownia tomentosa);

(3)Black cottonwood (Populus trichocarpa); and

(4)Black locust (Robinia pseudoacacia).

Class 2 Tree means a healthy, structurally stable tree that does not meet Class 1 criteria but has a

dbh of over six inches and a viable lifespan of more than five years.

Class 3 Tree means a tree with a dbh of six inches or less or a tree over six inches dbh that does not meet the criteria for a Class 1 or a Class 2 tree.

Construction activities include, but are not limited to, excavation, filling, tunneling, trenching, land clearing, compacting, demolition, storage of construction materials, utility work, grading, or other ground disturbing activity.

Construction of public infrastructure means infrastructure improvements, owned by or to be dedicated to the public, subject to construction permits issued under SRC 77.090.

Critical Tree Zone (CTZ) means a defined area surrounding the trunk intended to protect the tree's trunk, roots, branches, and soil to ensure tree health and stability. It is the area defined by the tree's dripline or an area measured one-foot per one-inch diameter at breast height, whichever is greater.

Development means to construct or alter a structure, to make alterations or improvements to the land or to make a change in use or appearance of land, to divide or reconfigure land, or to create, alter, or terminate a right of access. The term "development" does not include:

- (a) Maintenance and repair, usual and necessary for the continuance of an existing use;
- (b) Reasonable emergency procedures necessary for the safety or operation of property; or
- (c) Interior or exterior remodeling that does not increase the square footage or height of a structure, or substantially alter the appearance of a structure.

Diameter at breast height (dbh) means the diameter of the tree trunk measured at 4.5 feet above the ground level.

Diseased tree means any tree with an infectious condition or infestation that without reasonable treatment, pruning, or removal is likely to spread to adjacent trees and cause such adjacent trees to become infected, infested, or a risk.

Emergency means a situation exists in which action must be undertaken immediately to prevent an imminent threat to public health, public safety, or property.

Ground disturbing activity means any activity that exposes soil through the use of mechanical equipment, including, but not limited to, grading, excavating, filling, clearing, or working of land. Such disturbance may be permanent (i.e., gravel mining, farming, gardening, sports fields, etc.); or temporary or short-term duration, such as construction, excavation, fill, grading, landscape installation, or other vegetative clearing activities.

Hedge means a row or grouping of closely spaced woody plants that are planted and maintained to form a barrier or screen, or to mark a boundary.

Heritage Tree means a tree designated as such by Council.

Imminent risk of becoming infected or infested means there is an immediate and impending threat of the tree becoming a host to an invasive pest or pathogen due to its species, size, or condition and its proximity to other infested or infected trees.

Infrastructure means streets, curbs, sidewalks, buildings, utilities, or other public improvements.

Plant (verb) means to place ~~the placement of~~ vegetation into the ground.

Prohibited tree means any tree listed in the administrative rules as prohibited.

Property owner means the owner(s) of record, as shown on the latest tax rolls or deed records of the county, of property containing or adjacent to a City tree.

Prune means to trim or remove branches or roots from a tree or other plant using approved practices to achieve a specified objective.

Public Works Design Standards means those promulgated by City Public Works Department as administrative rules through SRC chapter 20J.

Risk tree means a tree or part thereof that has a high probability of failure due to an uncorrectable structural defect, infestation, or disease which poses a potential threat to the public or City property in the event of failure. Risk trees that are not in danger of imminent failure do not constitute an emergency.

Top and topping means the practice of reducing the length of major limbs to prevent the limb from assuming a terminal role in an effort to reduce the height of the tree.

Treat means to protect or reestablish the normal function, vigor, and condition through the use of products or actions.

Tree means a woody plant that is commonly sold by the Oregon nursery trade as a tree and not maintained as a hedge, shrub, or topiary form. Pursuant to SRC 86.015(f), the Director shall have the authority to determine whether a particular woody plant is considered a City tree.

Tree removal means to cut down a tree, or remove more than 30 percent of the crown, circumference of the bark down to the heartwood, or root system of a tree, or to damage a tree in any manner so as to cause the tree to decline, become unstable, or die.

Tree trimmer means any person engaged in the business of pruning, altering, removing, or providing tree surgery for City trees.

Variance means a ~~situation where a~~ modification to the requirements of this chapter that has been made pursuant to SRC 86.055. is reasonably necessary to prevent undue hardship.

Sec. 86.015. Administration; rulemaking; responsibilities.

(a) *General.* The Director shall have jurisdiction over all City trees, including the planting, removal,

care, maintenance, and protection thereof and consistent with SRC Chapter 808. The Director shall administer and enforce this chapter and shall have the authority to render written and oral interpretations and to adopt administrative rules, design standards, and procedures for its proper administration and enforcement.

(b) *Removal or treatment of City trees.* The Director may remove or permit the removal of any City tree, or plant or part thereof that is diseased, in an unsafe condition, or is causing damage to City property, when the condition of the tree cannot otherwise be remedied by accepted arboricultural practices. The Director may, or permit another to, remove, treat, or cause to be treated any City tree or plant or part thereof that is currently infected or infested, or at imminent risk of becoming infected or infested, with a fungus, disease, insect, or other pest such that it becomes a risk, as authorized by this chapter and administrative rules.

(c) *Pruning of trees projecting into City property.* It is the responsibility of the property owner to maintain and prune trees, shrubs, or other plants on private property that ~~project~~ encroach into City property in accordance with applicable administrative rules. If the Director determines pruning of any such tree, shrub, or plant is deemed necessary, the Director shall have the power to prune or cause or order the same to be pruned. The City may assume the responsibility for pruning and bill the cost of pruning to the property owner, if notice to the property owner has been provided under SRC 86.105.

(d) *Disease and pest inspection on private property.* The Director shall have the authority, either by consent of the property owner or by appropriate legal process, to enter private property for the purpose of inspecting a tree thereon to determine if such tree may be a risk tree and threat to public safety or City property. Upon discovering that any such tree is a risk tree, an order shall be sent to the property owner advising the property owner of the conditions and the corrective measures to take. In the event the property owner fails to take the corrective measures indicated in the order, the Director shall have the power to cause the corrective measures to be made. If the Director undertakes the corrective measures, the Director may bill the cost to the property owner, if notice to the property owner has been provided under SRC 86.105.

(e) *Planting street trees.* Pursuant to SRC 803.035(k), any person undertaking development adjacent to public streets shall ensure that a minimum number of trees are planted along the street frontage to provide tree canopy as specified in the applicable administrative rules. The Director may allow a developer to pay a fee in lieu of meeting the minimum number of trees as required by this chapter if the Director has determined that such a payment is in the public interest. The payment will be deposited in the City Tree Fund. ~~provide street trees to the maximum extent feasible in accordance with the standards~~

~~and specifications set forth in this chapter and applicable administrative rules.~~

- (f) Determination of City tree. The Director shall have the authority to determine whether a particular woody plant shall be considered a City tree. Such determination shall be final and not subject to local appeal.
- (g) Maintenance around tree. The property owner, the property owner's lessee, occupant, or person in charge of property containing or adjacent to the City right-of-way is responsible for maintaining, in such a way as not to cause a hazard to public health or safety, or public property, the area around City trees. This responsibility includes maintaining landscaping, shrubs, or bushes, in accordance with applicable administrative rules, unless this responsibility is expressly assumed in writing by the City.
- (h) City not responsible. The City is not responsible for maintaining trees, shrubs, vegetation, or landscaping on private property.

Sec. 86.020. Role of the Salem Parks and Recreation Advisory Board.

- (a) Duties. In addition to the functions and duties assigned in SRC chapter 13, the Salem Parks and Recreation Advisory Board (SPRAB) shall have the following duties:
 - (1) Issue decisions on appeals of decisions of the Director as set forth in this chapter.
 - (2) Issue decisions on applications referred to ~~the Board~~ SPRAB by the Director.
 - (3) Issue decisions on City projects referred to SPRAB by the Director.~~Issue recommendations on nominations for Heritage Tree designations.~~
 - (4) Issue recommendations to Council on nomination for Heritage Tree designations or on proposed rescission of a Heritage Tree designation.
 - (5) Provide advisory recommendations to the Director, and to the Council on matters relating to City trees.
- (b) *Rules of procedure.* The Director may establish rules of procedure for appeals before ~~the Salem Parks and Recreation Advisory Board~~ SPRAB by administrative rule.

Sec. 86.023. City Tree Fund.

There is established a special fund designated as the City Tree Fund from which expenditures may be made for planting city trees, and site repairs or improvements needed to successfully establish City trees as that term is defined at SRC 86.010. Expenditures from the fund are limited to the reasons described above and allocation shall be made through the City's budgeting process.

Sec. 86.025. Relationship to other regulations.

Where a conflict exists between the provisions of this chapter and other provisions of the Salem Revised Code, or state or federal law or regulations, the more restrictive provision shall govern.

Sec. 86.030. Prohibited activities.

(a) It shall be unlawful for any person, except as expressly allowed by a written permit, exemption, or variance granted pursuant to the terms of this chapter, to willfully or negligently injure, destroy, top, or prevent the growth of a City tree, including, but not limited to, the following:

- (1) Pouring or spraying of an injurious chemical on or around any City tree.
- (2) Posting any sign on a City tree, tree stake, or tree guard.
- (3) Attaching or fastening any structure or device to any City tree, tree stake, or tree guard.
- (4) Piling materials or storing supplies or debris within the Critical Tree Zone that may cause injury or damage to the tree or damage the tree, tree stake, or tree guard.
- (5) Using concrete, asphalt, brick, or impervious material that may cause injury or damage to the tree.
- (6) Causing or permitting the growth of vines, ramblers, or other climbing plants on City trees.
- (7) Construction within the Critical Tree Zone.
- (8) Parking or maneuvering vehicles that may cause injury or damage to the City tree, not including parking or maneuvering on existing paved surfaces.

(b) The Director may exempt electrical utility providers from the prohibitions related to pruning and topping.

Sec. 86.035. Certain trees prohibited.

It shall be unlawful for any person to plant any prohibited tree on City property. Established prohibited trees may be allowed to remain until the tree becomes dead, diseased, or a risk tree.

Sec. 86.040. Diseased trees and shrubs prohibited.

To ensure the health of City trees, it shall be unlawful for any property owner or occupant of private property to allow any tree, or other vegetation growing on the property owner's or occupant's property, to become infected with a fungus, disease, insect, or other pest such that it could adversely affect a City tree.

Sec. 86.050. Activities requiring permits.

(a) A permit is required for the following activities:

- (1) *Permit required to prune or remove City trees or tree protection devices.* It shall be unlawful for any person, without a written permit from the Director, to prune or remove a City tree, or to remove a tree protection device from a City tree, or cause or authorize or procure any person to do so. The Director may, by administrative rule, develop criteria for City tree pruning that does not require a permit where the Director finds the actions are minor and are unlikely to cause damage to the City tree.

- (2) *Permit required for construction within Critical Tree Zone of City trees.* It shall be unlawful for any person, without a written permit from the Director, to undertake or cause or authorize or procure any person to undertake any construction activity within the Critical Tree Zone of City trees.
- (3) *Permit required to treat City trees.* It shall be unlawful for any person, without a written permit from the Director, to treat a City tree, including, but not limited to, applying chemicals or biological controls; installing hardware or devices for the preservation of a City tree or for the control of insects or diseases; or causing or authorizing or procuring any person to do such treatment. A permit to treat a City tree may be granted if the Director determines the treatment proposed is beneficial and unlikely to harm the City tree. Any work authorized by written permit shall comply with applicable administrative rules and meet all local, state, and federal regulations.
- (4) *Permit required to collect biological materials from City trees.* It shall be unlawful for any person, without a written permit from the Director, to remove plant material from a City tree or cause or authorize or procure any person to do so. A written permit is not required for the noncommercial gathering of fruit or windfall.
- (5) *Permit required to install lights or other attachments to City trees.* It shall be unlawful for any person, without a written permit from the Director, to install or otherwise physically place lighting or other attachments on a City tree or cause or authorize or procure any person to do so. If permitted, the installation and removal shall be accomplished without damage to the City tree. The correction of any damage to the tree or replacement of the tree shall be at the permit holder's cost and shall be accomplished by a tree trimmer licensed under SRC chapter 30. The City will not be responsible for damage to any attachments or associated devices related to the lighting under this permit. In addition, the City shall not be responsible for the cost associated with the repair or installation of replacement materials.
- (6) *Permit required to plant trees on City property.* It shall be unlawful for any person to plant trees, tree seeds, or seedlings, or to cause or authorize or procure any person to do so, in or upon any City property or alleys without obtaining from the Director a written permit to do so, or obtaining approval of a landscape plan pursuant to SRC 807.020, and without first complying in all respects with the conditions set forth in such permit or approval and with the provisions of this chapter.
- (b) City projects and programs do not require a permit. ~~will be considered in compliance with the~~

~~permitting requirements of SRC 86.030(a) and this section where the City projects and programs shall comply~~ complies with applicable standards and criteria of this chapter, applicable Public Works Design Standards, and input from the City's Urban Forester. The process for City projects to seek input from the City's Urban Forester shall be described in the administrative rules issued pursuant to this chapter.

(c) ~~The Director may refer any permit decision to the Salem Parks and Recreation Advisory Board SPRAB at the sole discretion of the Director for final decision. The Director may refer consideration of City projects pursuant to SRC 86.053.~~

(d) ~~An application for a permit shall be submitted on a form provided by the Director, along with the applicable permit application fee. Incomplete applications or applications submitted without the required fee will be rejected. The Director may adopt administrative rules establishing the processes and procedures necessary to obtain a permit under this section, as well as the manner in which activities conducted pursuant to a permit are carried out.~~ Activities conducted under a permit issued pursuant to this chapter must comply with the administrative rules issued pursuant to this chapter, as well as any other applicable administrative rules issued by the Director.

(e) The Director may require additional information from an applicant depending on the circumstances of the request.

(f) Removal of City trees under a written permit may be done by any licensed general contractor or licensed tree trimmer; any other work done to City trees under written permit must be performed by a City licensed tree trimmer in strict accordance with the terms of the permit, the provisions of this chapter, and all applicable design standards.

Sec. 86.053. Director referral.

(a) ~~The Director may refer a City project that contemplates removal of a City tree to SPRAB for purposes of authorizing or denying the removal of a City tree. City projects that contemplate removal of a City tree that is subject to a land use decision may not be referred if the land use decision authorizes the tree removal.~~

(b) ~~When a City Project is referred to SPRAB, the referral is project-specific. Whether the goals of the City project could be achieved elsewhere is beyond the scope of SPRAB's referral. SPRAB shall consider the following:~~

(1) The goals of the project;

(2) The necessity of removing the tree in order to achieve the goals of the project;

(3) The health, longevity, historical significance, and environmental efficacy of the tree being considered for removal. By way of illustration but not limitation, efficacy of a tree includes

the tree's ability to capture carbon dioxide; the shade the tree provides to the surrounding area; the obstruction by the tree of views; the damage being done by the tree to surrounding property or infrastructure; and the habitat for wildlife provided by the tree;

(4) The options considered other than removing the tree that are provided in the reasonable alternative analysis that was prepared pursuant to the applicable administrative rule;

(5) The criteria for tree removal listed in SRC 86.090(a);

(6) The adequacy of the mitigation plan proposed by the City's Urban Forester; and

(7) The community benefits of the project when weighed against the consequences of the removal of the tree, with a preference for preservation of the tree when practicable to do so.

(c) If additional mitigation beyond that recommended by the Urban Forester would, in the opinion of SPRAB, allow for the project to be built as designed, SPRAB may issue a conditional approval and recommend such additional mitigation as SPRAB deems appropriate.

Sec. 86.060. Fees.

Fees for applications and other related services provided by the City under this chapter, including variances and appeals, shall be set by resolution of the Council. Fees shall be paid at the time the application is submitted or, if no application is required, at the time the request for a particular service is made. For applications or services requiring payment of a deposit, the amount of the deposit shall be credited against the exact final calculated costs. If applicable, any unused portion of the deposit shall be refunded once all incurred fees are paid. Applications submitted without the applicable fee or deposit shall be rejected.

Sec. 86.070. Tree pruning and treating criteria.

A permit to prune or treat a City tree may be granted if one or more of the following criteria are met, as determined by the Director:

(a) A City tree is encroaching onto private property and causing injury to privately-owned trees or shrubs.

(b) A City tree is having an adverse effect on adjacent infrastructure or buildings that may be resolved by pruning or treatment.

(c) A City tree's branches pose a threat to utility lines, cables, or other overhead structures.

(d) The pruning or treatment proposed is unlikely to harm the City tree, public health or safety, or environmental health.

(e) A City tree is obstructing clearance areas/zones as established in applicable administrative rules or Public Works Design Standards.

(f) A City tree is at imminent risk of becoming infected or infested.

Sec 86.075. Review of City tree removal plans in conjunction with land use approval

(a) Applicability. A City tree removal plan is required in conjunction with any development activity requiring land use approval under SRC Chapter 300 that proposes to remove a City tree.

(b) Submittal requirements. A City tree removal plan shall include the following:

(1) A site plan, of a size and form and in the number of copies meeting the standards established by the Director, identifying the type, size, and location of all existing City trees abutting the development site and depicting which trees are proposed for removal;

(2) An assessment of reasonable alternatives per the applicable administrative rule, which includes an evaluation based, in part, on the classification of the tree (i.e., Class 1, Class 2, or Class 3.)

(c) Procedure type. A City tree removal plan is processed as a Type I procedure under SRC Chapter 300.

(d) Decision. The Director shall approve or deny the application according to the applicable administrative rules, standards, and criteria. The decision shall be a written order.

(e) Notice of Decision. Notice of the decision shall be delivered to the applicant and to the Planning Administrator. The notice shall include the case number of the land use approval necessitating removal of the tree or trees, and a statement regarding how the applicant may appeal the decision for the land use decision that generated the need for City tree removal.

(f) Appeals. Any party objecting to the Director's decision regarding the street tree removal plan application may do so by appealing the decision of the land use application that necessitated the City tree removal pursuant to procedures in SRC Chapter 300. The appeal body may affirm, deny, or modify the Director's approval or denial of the City tree removal plan in conjunction with the overall land use decision.

(g) Effective Date. The Director's decision becomes effective concurrent with the effective date of the land use decision that necessitated the City tree removal.

Sec 86.076. Adjustments to approved City tree removal plans

(a) Applicability. No tree designated for preservation in an approved City tree removal plan shall be removed unless a City tree removal plan adjustment has been approved pursuant to this section.

(b) Submittal requirements. A City tree removal plan adjustment application shall include the following:

- (1) The approved City tree removal plan
- (2) A site plan, of a size and form and in the number of copies meeting the standards established by the Director, identifying the type, size, location of all existing City trees abutting the development site and depicting the adjustments to the approved City tree removal plan
- (3) An assessment of reasonable alternatives per the applicable administrative rule, which includes an evaluation based, in part, on the classification of the tree (i.e., Class 1, Class 2, or Class 3).

(c) Procedure type. A City tree removal plan adjustment is processed as a Type I procedure under SRC Chapter 300.

(d) Notice of Decision. Notice of the decision shall be mailed to the applicant and forwarded to the Planning Administrator. The notice shall include the case number of the land use approval necessitating removal of the tree or trees, and a statement regarding how the applicant may appeal the decision.

(e) Appeals. The decision may be appealed only by the applicant. The Review Authority for an appeal of an adjustment to an approved City tree removal plan shall be the Hearings Officer pursuant to procedures in SRC Chapter 300.

Sec. 86.080. Review of applications for City tree removal not in conjunction with land use approval.

Upon receipt of a complete permit application for City tree removal, the Director shall review the application, and if the application fails to meet the applicable criteria the application shall be denied, and a notice of denial shall be provided to the applicant, which notice shall identify the reasons for the denial. If the application meets the applicable criteria, the Director shall provide written notice to SPRAB and the neighborhood association where the tree or trees are located, and post notice of the approval as near as practicable to the tree or trees to be removed.

(a) The notice shall include the following:

- (1) The name of the applicant;
- (2) The location of the tree or trees subject to the decision;
- (3) A reference to the criteria or standards applicable to the decision;
- (4) A statement that interested persons may appeal the decision pursuant to SRC 86.095; and
- (5) The effective date of the decision if no appeal is filed.

(b) The notice shall be provided to the neighborhood association and posted a minimum of 30 days prior to the effective date of the decision.

(c) Effective date. A decision to approve a permit application for City tree removal shall be effective no earlier than 30 calendar days after the decision has been issued, unless an appeal has been filed, and any appeal fee paid.

Sec. 86.085. Removal of ~~city~~ trees in the right-of-way in historic districts and or abutting city City-owned designated historic sites.

~~(a) In addition to the requirements in this chapter, an application to remove a City tree that is a historic contributing object or within a City-owned historic site, as those terms are defined in SRC Chapter 230, shall be subject to Historic Design Review under SRC Chapter 230.~~

(a) In addition to the requirements in this chapter, an application to remove a tree in the right-of-way that is located in an historic district or abutting a City-owned historic resource shall include a determination from the City's Planning Division indicating whether the City tree is contributing to the historic district or resource in which it is located.

(b) If the tree proposed for removal is contributing to the historic district or resource in which it is located then, in addition to the requirements of this chapter, the application must include a written opinion from a Certified Arborist, including the facts supporting the opinion, that the application meets the requirements for approval set forth in this chapter.

~~(b)(c)~~ (c) Replanting, in conformance with the Public Works Design Standards, shall be required upon removal of any City tree located in the right-of-way within a local historic district, a National Register historic district, or abutting a City-owned designated historic resource. site. Waiver of this requirement may only be granted through Historic Design Review a zoning adjustment under SRC Chapter 230250.

Sec. 86.090. City tree removal criteria.

(a) A permit to remove a City tree may be granted if one or more of the following criteria are met, as determined by the Director:

- (1) The tree is dead.
- (2) The tree is in an advanced state of decline.
- (3) The tree is structurally unsound and poses an imminent risk to person or property, as determined by a tree risk assessment, and when the risk cannot be mitigated or the tree cannot be made sound by accepted arboricultural practices.
- (4) The tree is infected, or at imminent risk of becoming infected, with an acute fatal disease that cannot be treated successfully or there is a strong potential that the pathogen could spread and kill other trees in the immediate vicinity (e.g., Dutch Elm Disease).
- (5) The tree is infested, or at imminent risk of becoming infested, with an insect that cannot be

treated successfully or there is a high likelihood that the infestation could spread and kill other trees or vegetation in the immediate vicinity (e.g., Emerald Ash Borer).

- (6) When City trees have been planted too close to each other based on administrative rules and the spacing causes an adverse effect on neighboring trees. The tree with the greatest vigor will remain unless it meets other criteria for removal. The applicant shall bear the cost of tree and stump removal.
 - (7) When past pruning and other tree maintenance practices, other than required electrical line clearance, has destroyed the natural shape of the tree or caused the tree to go into decline.
 - (8) The Director may permit the removal of a City tree due to construction if there is no reasonable alternative. The applicant shall be required to bear all cost of the tree's removal and replacement. Prior to the Director issuing a permit authorizing removal of a City tree, the applicant must submit an assessment of reasonable alternatives per the applicable administrative rule, which includes an evaluation based, in part, on the classification of the tree (i.e., Class 1, Class 2, or Class 3).
 - (9) The Director may permit the removal of a City tree if the tree is having an adverse effect on adjacent infrastructure and that effect cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices. Prior to the Director issuing a permit authorizing removal of a City tree, the applicant must submit an assessment of reasonable alternatives per the applicable administrative rule that is based, in part, on the classification of the tree (i.e., Class 1, Class 2, or Class 3).
- (b) Except as provided in SRC 86.085~~(b)~~(c), if a tree is removed pursuant to subsection (a)(8) of this section, the tree will be replaced in conformance with the applicable administrative rules and Public Works Design Standards.
- (c) The City shall not permit the removal of a City tree for any other reason, including, but not limited to, the following, unless the criteria for a variance has been approved:
- (1) Dropping of leaves, flowers, seeds, bark, sap, stems, pests, or other matter.
 - (2) Improvement or maintenance of views.
 - (3) Competition with turf or impact on non-plant landscaping (e.g., mulch or gravel).
 - (4) Common allergies.
 - (5) Damage to items that have been placed too close to the trunk such as pavers, bricks, blocks and concrete.
- (d) Removals by City.

- (1) Where the City proposes to remove a City tree smaller than ten inches dbh, no posting shall be required.
 - (2) Where the City proposes to remove a City tree larger than ten inches dbh, the City shall post notice of the removal as near as practicable to the tree to be removed for a period of 15 days prior to the removal.
 - (3) Where the City has determined that an emergency exists, no posting shall be required.
 - ~~(3)~~(4) No appeals of decisions related to removals by the City shall be allowed, unless part of another decision which provides for an appeal.
- (e) Removals pursuant to City tree removal plans.

- (1) Where an approved City tree removal plan or an adjusted plan specifies removal of a City tree, no posting shall be required.
- (2) No appeals of decisions for removals related to an approved City tree removal plan or an adjusted plan shall be allowed unless part of another decision that provides for an appeal.

Sec. 86.095. Appeal of decisions or orders not in conjunction with land use approval.

- (a) General. Except as otherwise provided in this chapter, An appeal of a decision on a permit application issued by the Director shall be to ~~the Salem Parks and Recreation Advisory Board~~ SPRAB. The appeal decision by ~~the Salem Parks and Recreation Advisory Board~~ SPRAB is final; no further appeal or review shall be available. The Director shall send notice of the appeal decision issued by ~~the Salem Parks and Recreation Advisory Board~~ SPRAB to the applicant, the applicable neighborhood association, and any person that participated in the appeal.
- (b) Director order. Except as otherwise provided for in this chapter, an appeal of an order issued by the Director shall be governed by SRC chapter 20J.
- (c) *Standing to appeal.*
- (1) Permit application decisions. The applicant, the applicable neighborhood association where the tree or trees are located, and any interested person shall have standing to appeal a decision on a permit application by filing a notice of intent to appeal with the Director. In the event a permit application or variance is denied by the City and the applicant appeals the denial, the City shall provide written notice of appeal to the applicable neighborhood association, and post notice of appeal for 30 calendar days as near as practicable to the tree or trees at issue. The notice of appeal shall include the following:
 - (A) The name of the applicant;
 - (B) The location of the tree or trees subject to the decision;

- (C) A reference to the criteria or standards applicable to the decision;
- (D) The date, time and place of the hearing on the appeal; and
- (E) A statement that any interested person may participate in the appeal by submitting written testimony, or by appearing in person to testify at the hearing.

(2) Director order. ~~The~~ Only the property owner or the person to whom the order is issued has standing to appeal an order issued by the Director under this chapter.

(d) *Notice of intent to appeal.* A written notice of intent to appeal allowed by this chapter shall be filed with the Director not later than ~~30~~15 calendar days after the date the decision was issued. The notice of intent to appeal shall state the basis of the appeal and why the decision was in error, and shall be accompanied by the nonrefundable appeal fee as set by Council.

(e) *Appeal procedures.* The Director shall provide rules of the procedure of appeals to ~~the Salem Parks and Recreation Advisory Board~~SPRAB under this chapter by administrative rule.

Sec. 86.100. ~~Master city~~ City tree plan.

(a) A ~~master street~~ City tree plan may be prepared by the Director for the downtown historic district and central business district with the advice of ~~the Salem Parks and Recreation Advisory Board~~SPRAB.

This plan shall be consistent with this chapter and shall include policies and guidelines that:

- (1) Provide for the preservation of Heritage Trees.
- (2) Encourage the preservation of trees in construction areas when ~~said~~ City trees are desirable types and in healthy condition.

(b) A ~~master street~~City tree plan may be prepared for other areas of the City, including other historic districts and City owned historic resources and sites.

Sec. 86.105. Enforcement.

(a) *Order to abutting property owner to prune trees and shrubs.* Whenever the property owner, or the property owner's lessee, occupant, or person in charge of abutting property shall neglect or refuse to prune any tree, shrub, or plant provided in SRC 86.015, the Director may serve upon such owner, lessee, occupant, or person in charge of abutting property a written order to prune or remove such trees, shrubs, or plants within ten days after the giving of such order, and in case such owner, lessees, occupants, or person in charge of abutting property fail to do so, such persons shall be in violation of this chapter and subject to the penalties provided by SRC 86.120. Such order shall be served upon the property owner, lessees, occupants, or person in charge of the abutting property by regular mail to the last known address of said person or persons.

(b) *Notice by City upon failure of abutting property owner.* If the property owner, or the property

owner's lessee, occupant, or person in charge of the abutting property, shall fail and neglect to trim such trees, shrubs, or plants within ten days after receiving the order provided for in SRC 86.105(a), the Director may cause such trees, shrubs, or plants to be trimmed or removed.

(c) *Costs of restoration.* Persons violating this chapter, or a permit issued hereunder, shall be responsible for the cost of the City to restore ~~restoring~~ damaged areas. ~~in conformance with a plan approved by the Director that provides for repair of any environmental or property damage and restoration of the site.~~ Costs of restoration shall be not less than those determined equal to the monetary value of the regulated trees removed in violation of this chapter, or permit issued hereunder, as set forth in ~~an appraisal acceptable to the Director and based upon applicable administrative rules.~~ Each removal of a regulated tree in violation of this chapter shall result in a separate civil fine in addition to costs of restoration.

Sec. 86.110. Statement of costs; billing and collection procedures.

(a) _____ Where the Director takes action under SRC 86.105(b), the Director shall keep an accurate account of the costs of enforcing this chapter. The Director shall invoice each affected property owner for the amount due the City, which shall include an amount equal to ten percent of the cost of labor and materials to defray administrative costs of enforcing this chapter. The affected property owner shall have 15 business days to file objections to the costs. If no objections are filed within the 15-day period, the Director may pursue all remedies available at law or equity, including referral to a collection agency. Collection of costs, fees, and penalties may be, in addition to any other remedy provided for by law, pursued through a contract collection agency or small claims court or entered into the City's lien docket in the manner provided by SRC 20J.410 and a lien for the entire amount placed against the real property pursuant to SRC 20J.180.

(b) All fines and penalties collected pursuant to this chapter, including those related to the cost of restoration and appraised monetary value of regulated trees, shall be deposited into the City Tree Fund. All other administrative costs related to enforcing this chapter shall be applied to the General Fund

Sec. 86.120. Stop work orders; permit revocation; civil penalties; enforcement.

(a) Stop work orders and permit revocation. The Director may suspend work or revoke a permit specifying the basis for the suspension or revocation that must be remedied prior to resuming other work on the project, upon a finding that:

- (1) The work is not authorized by a valid permit;
- (2) Inaccurate information was used to obtain the permit;
- (3) The applicant is not complying with the terms of the permit or this chapter;

- (4) The work is, or threatens to become, risk to property or public safety; is adversely affecting or about to adversely affect adjacent property or rights-of-way; or is otherwise adversely affecting the public health, safety, or welfare; or
- (5) The permit was issued in error.
- (b) *Rescinding a stop work order or revocation.* Penalty fees shall be paid to the City and deposited to the Salem City Tree Fund as required before a stop work order or permit revocation is rescinded.
- (c) *Civil penalty.* Any person who fails to comply with the requirements of this chapter, or the terms of a permit issued hereunder; who undertakes an activity regulated by this chapter without first obtaining a permit; or who fails to comply with a stop work order issued pursuant to this chapter, shall be subject to a civil penalty and associated costs and appraisals.
- (1) Unauthorized City tree removal shall be subject to a civil penalty not to exceed \$2,000.00 per violation. The civil penalty shall be determined in accordance with the applicable administrative rule and will be based, in part, on the class of tree removed. The civil penalty is in addition to the cost of restoration pursuant to SRC 86.105(c) plus the value of the tree as calculated in accordance with the applicable administrative rule. ~~in addition to the value of the tree as calculated in accordance with applicable administrative rules (or in the absence of administrative rules, in accordance with the most current edition of Council of Tree and Landscape Appraisers "Guide for Plant Appraisal").~~
- (2) All other violations shall be subject to a civil penalty not to exceed \$2,000.00 per violation. Each day that a violation continues shall constitute a separate violation.
- (d) *Civil penalties against agents.* Any person who acts as the agent of, or otherwise assists, a person who engages in an activity that would be subject to a civil penalty may likewise be subject to a civil penalty.
- (e) *Injunctive relief.* The City may seek injunctive relief against any person who has willfully engaged in violation of this chapter, such relief to be in effect for a period not to exceed five years.
- (f) License Revocation. Violation of this chapter shall be grounds for denial, revocation, or refusal to renew a tree trimmer license issued by the City.

Stewarding Our Oregon Oaks Project: Willamette University

Website: <https://growing-oaks.wixsite.com/my-site-4>

Email: growing-oaks@willamette.edu

November 5, 2022

Salem Public Works Department, 555 Liberty Street SE, Room 325, Salem, Oregon 97301.

RE: SRC CHAPTER 86 UPDATES

To the Salem Planning Commission,

We are a group of students from Willamette University promoting the growth and protection of the Oregon white oak through our grant-funded project: Stewarding Our Oregon Oaks. We would like to propose the following definitions be added to Salem Revised Code (SRC) Chapter 86, pursuant to proposed change C in the public hearing notice:

- *Heritage tree* means a tree designated as a heritage tree pursuant to SRC 808.010(a) (The Council may, by resolution, designate a heritage tree upon nomination by the property owner, in recognition of the tree's location, size, or age; botanical interest; or historic or cultural significance)
- *Significant tree* means:
 - (a) A rare, threatened, or endangered tree of any size, as defined or designated under state or federal law and included in the tree and vegetation technical manual;
 - (b) An Oregon white oak (*Quercus garryana*) with a dbh of 20 inches or greater; and
 - (c) Any other tree with a dbh of 30 inches or greater, but excluding:
 - (1) Tree of heaven (*Ailanthus altissima*);
 - (2) Empress tree (*Paulownia tomentosa*);
 - (3) Black cottonwood (*Populus trichocarpa*); and
 - (4) Black locust (*Robinia pseudoacacia*).

We also propose the following amendments to each upon their addition to Section 86:

- Oregon white oaks be added under the heritage tree definition as a new subsection, a heritage species, thus granting any tree of the species the same protections given to individually designated heritage trees.

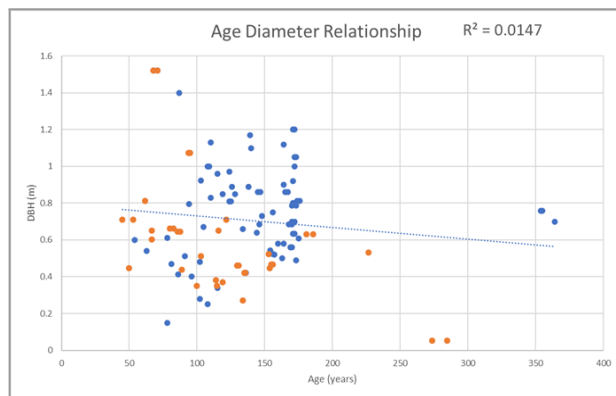
OR:

- The threshold for an Oregon white oak's designation as a significant tree be lowered from a dbh of 20 inches to 16 inches.

Our project believes that all Oregon white oaks are valuable to our community, both as a cultural and historical beacon and as a significant indicator and contributor to wildlife in Salem and the Willamette Valley.

The Oregon white oak has a large cultural significance due to its deep connection with the indigenous peoples of the Willamette Valley. According to [Oregon Encyclopedia](#), Native Americans created controlled fires to keep the oaks' habitat, the oak savanna, open for hunting and herb collection; they also used their acorns for soup, bread, or other traditional recipes. However, after the arrival of white colonizers and the [subsequent genocide](#) of the Kalapuya tribes, these practices were forced to end. The results have been both long-lasting and [devastating](#) for the species, with an estimated 15% of its original, pre-colonial habitat remaining. As a part of our [mission](#), Growing Oaks advocates for the preservation of Oregon white oak habitats as a form of racial justice and reconciliation with indigenous groups, and we feel that this is not achievable under the current city codes.

Due to this cultural significance and the Oregon white oak's long standing relationship with the indigenous people of the Willamette Valley, it is especially essential to protect older trees that harbor the most history. However, age in Oregon white oak trees is highly difficult to determine based on external features alone, as no significant relationship has been shown between diameter and age. A survey was done by the [Oak Salvage](#) project of 153 trees, of which 42% were able to be aged and measured. When these 64 data points are plotted on a graph (right), the line of best fit has a very low coefficient of determination. The correlation between dbh (diameter at breast height), the current indicator of tree value under Salem city codes, and age is therefore shown to be very insignificant: according to this study, only 1.47% of the variability observed in age is determined by dbh. Given how much variation is present, it is better to take a cautious, conservative approach to the dbh threshold, thus protecting more historical landmarks instead of less.



The biodiversity Oregon white oaks provide to their environments is also a key factor in their importance and the need for their preservation. Oregon white oaks provide shelter, food, and habitat to [over 200 species](#) of animals and insects, including several threatened or endangered species, as well as mycorrhizal fungi that reside in the root systems of older trees. The aforementioned destruction of much of their habitat has also directly impacted many of these species, and it is critical to conserve as many of these remaining trees as possible.

We believe that the best way to protect this vital species is through the changes to Salem Revised Code (SRC) Chapter 86 previously outlined. Thank you for your time and consideration.

Sincerely,
The Growing Oaks Team



November 4, 2022

Laurel Christian
Development Services Planner II
City of Salem
555 Liberty Street SE, Room 325
Salem, OR 97301

RE: Code Amendment Case No. CA22-03

Ms. Christian,

Thank you for the opportunity to offer written testimony on the proposed amendments to Salem Revised Code Chapter 86 (SRC 86). AKS Engineering & Forestry, LLC has relevant experience in complying with these requirements on a variety of projects. We hope our experience is valuable to the refinement of SRC 86 and we appreciate your consideration of our input.

Compliance with SRC 86 has been problematic where tree removal is necessary to construct public street improvements when they are conditioned by the City in a land use decision. When constructed, these infrastructure improvements are dedicated to the City to deliver essential services such as transportation, sewer, water, and stormwater management facilities that benefit the citizens of Salem. The problems arise from the conflicting and competing public work standards that govern the design of these essential facilities and street tree preservation. Typically, the facilities are constructed as part of boundary street improvements in conjunction with a Subdivision, or street frontage improvements in conjunction with a Site Plan Review or Design Review for multiple family projects. In other jurisdictions we serve, it is uncommon that a standalone or additional process to remove street trees is required in situations where public improvements warrant such tree removal.

The current and amended process under SRC 86 complicates and adds uncertainty to the development process in the following ways:

- The process for evaluating reasonable alternatives under proposed SRC 86.075(b)(2) is not clear or objective. The code is unclear as to what alternatives are reasonable to include in the evaluation, how many alternatives require evaluation, and the degree to which the Director is willing to deviate from the objective public works design standards to entertain those alternatives.
- The definitions of the tree classifications under proposed SRC 86.010 rely heavily on subjective and value laden language (e.g. “exceptional ecologic, aesthetic, or historic qualities”, “healthy, structurally stable”, and “viable lifespan”). The subjective nature of the tree classification definitions prevent an Applicant from preparing a reasonable alternatives analysis with an acceptable degree of certainty that the relevant trees are included in the analysis.
- The subjective and discretionary nature of the process is not appropriate for a Type I application. Type I procedures are used when there are clear and objective standards and criteria that do not require interpretation or the exercise of policy or legal judgment in their application (SRC 300.100 Table 300-1). As discussed previously, the process for identifying alternatives that are included in the reasonable alternatives analysis, the definitions of the tree classifications under SRC 86.010, and the Director’s willingness to deviate from the objective public works design standards to

entertain alternative street designs all involve subjective and value-laden policy judgements that are outside the scope of the Type I process.

- The subjective nature of the process means that it cannot be applied to applications for housing projects, including Subdivision applications and multifamily housing projects that require Design Review and Site Plan Review. ORS 197.307(4) states that a local government may apply only clear and objective standards, conditions, and procedures regulating the creation of housing, and such standards, conditions, and procedures cannot have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay. As previously discussed, the proposed process relies heavily on subjective and value laden language that runs afoul of ORS 197.307(4). For this reason, the process cannot be applied to housing applications.
- The City implicitly acknowledges the challenges in complying with these procedures by exempting City projects from the permitting requirements in SRC 86 (proposed SRC 86.050(b)). The permitting process for public infrastructure projects required in conjunction with land use approvals should be exempt from these requirements in the same way that City-initiated public infrastructure projects are exempt.

Please consider the following suggestions for addressing the deficiencies in the current draft of the amendment that relate to the construction of public improvements required by land use decisions:

- Treat these essential public improvements the same way the City-initiated public improvements are treated by exempting them from the permitting requirements under SRC 86.
- Revise the definition of Class 1 trees by striking the subjective language under proposed subsection (C) as follows:
Class 1 Tree means a tree that is healthy, structurally stable, and is one of the following: (A) a Heritage Tree; (B) a "significant tree" pursuant to SRC 808.005.; or (C) a tree with exceptional ecological, aesthetic, or historic qualities as determined by the City Forester or Planning Administrator.
- Revise the definitions of Class 2 and Class 3 trees to be consistent with the definition of *tree* in SRC 808.005 (10 inches or more DBH).

This is not an exhaustive list of suggestions. We encourage the City to review SRC 86 to make the process as clear, objective, and transparent as possible. Thank you for the opportunity to provide feedback on this amendment. We appreciate your thoughtful consideration of our input.

Sincerely,

AKS ENGINEERING & FORESTRY, LLC



Curt Fisher, Land Use Planner
3700 River Rd N, Suite 1, Keizer, OR 97303
(503) 400-6028 | fisherc@aks-eng.com



Laurel Christian

From: Roz Shirack <rozshirack7@gmail.com>
Sent: Thursday, November 10, 2022 2:33 PM
To: Shelby Guizar
Cc: Laurel Christian
Subject: Public Works Code Amendment Case No. CA22-03 to Chapter 86 (Trees on City Owned Property)

SCAN Comments for Planning Commission's November 15, 2022, public hearing, item 5.1:

The SCAN Land Use Committee has reviewed the proposed amendments to chapter 86 and supports the staff report.

Thank you,
Roz Shirack, Chair
SCAN Land Use Committee