

Chapter 16.12

TREE PRESERVATION

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16.12.010 Purpose and intent.

It is the purpose and intent of this chapter to:

- A. Implement the town's comprehensive plan goals and the policies of the conservation element;
- B. Preserve, maintain and protect the visual appearance and natural wooded character of the town;
- C. Preserve wildlife habitat, and to reduce the impacts of development on storm drainage and water resources;
- D. Preserve trees in buffer and setback areas and those trees which have been determined by the Director to constitute a unique historical, ecological or aesthetic value to the community or lot, tract or parcel of which they are located;
- E. Enhance tree protection efforts and promote site planning and horticultural practices consistent with reasonable use of property;
- F. Provide guidance to property owners conducting routine tree management activities;
- G. Enhance the quality of the town's natural environment during land development activities; and prohibit clear cutting of the town's urban forest. (Ord. 05-452 § 1(part), 2005)

16.12.020 Definitions.

As used in this chapter:

"Arborist" means an individual with related training and experience to demonstrate competency in arboriculture or urban forestry and must be certified by the International Society of Arboriculture.

"Critical root zone" means the area around a tree requiring protection, as determined by an arborist; generally the area surrounding a tree trunk at a distance equal to one foot for every inch of tree diameter at breast height (DBH).

"Developed lot, tract or parcel" means any share, portion or division of real property, whether developed or partially developed with a structure requiring a building permit.

"Diameter" means a straight line passing through the center of a tree from side to side measured at 4.5 feet above grade (DBH). The methodology to compute the diameter shall be the circumference of the tree at that point divided by 3.1416.

"Director" means the Public Works Director, or his or her designee.

"Emergency tree removal" means removal of a tree located on private property that creates an emergent threat to persons or property.

"Hazard tree" means a tree with a structural defect and/or disease which makes it subject to a high probability of failure and is in proximity to a target, as determined by the Director.

"Hedge tree" means a tree, typically in a group or row of similar tree type, that is regularly maintained to a certain height at least every three years to act as a screen or demarcation of a property line.

"Land development activity" means any activity requiring permits or other approvals for the purposes of land clearing, grading/land modification, subdivisions or short subdivisions, an increase in lot coverage, or the construction or alteration of any building, utility or improvement.

"Replacement tree" means any tree of a species native to the Pacific Northwest that is planted, or is an existing tree that is designated by the Director as a substitute for a removed tree.

"Routine property maintenance" means any work on a developed lot, tract or parcel that results in the loss of a tree but does not require a development application, as defined in WMC Sections 14A.04.020(3) and (10).

"Tree" means a tree with a main trunk of eight inches or more in diameter.

"Tree permit" means the permit granted by the town to remove a tree(s).

"Tree removal" means the removal of a tree, through either direct or indirect actions, including, but not limited to, clearing, topping or cutting; which causes irreversible damage to roots or trunks; poisoning; destroying the structural integrity; and/or filling, excavation, grading, or trenching in the critical root zone of a tree which has the potential to cause irreversible damage to the tree.

"Undeveloped lot, tract or parcel" means any share, portion or division of real estate on which no structure requiring a building permit exists and which may be further developed or subdivided in accordance with the town's zoning regulations. For the purposes of this chapter, lots, tracts or parcels that are in the process of being developed with an approved development permit are considered undeveloped.

"Year" means a twelve-month period beginning on the day a tree permit is issued by the town. (Ord. 05-452 § 1(part), 2005)

16.12.030 Applicability.

The provisions of this chapter shall apply to the removal of tree(s) from any private lot, parcel, or tract within the corporate limits of the town of Woodway. No person, corporation or other entity shall engage in tree removal without first obtaining a tree permit approved by the town. Tree permits shall apply to the land parcel and are not specific to the applicant/individual. (Ord. 05-452 § 1(part), 2005)

16.12.035 Exemptions.

The removal of any of the following species is exempt from tree permit and replacement requirements in this chapter: English laurel (*Prunus laurocerasus*) and other Laurel species, English holly (*Ilex crenata*), and nonnative cultivated fruit trees, including, but not limited to, apple (*Malus sp.*), pear (*Pyrus sp.*), cherry (*Prunus sp.*), plum (*Prunus sp.*), peach (*Prunus sp.*), apricot (*Prunus sp.*), nectarine (*Prunus sp.*). (Ord. 05-452 § 1(part), 2005)

16.12.040 Prohibited tree removal.

Tree removal is prohibited in each of the following circumstances:

- A. Without receiving an approved permit, unless such activity is exempt;
- B. On those specific portions of lots, tracts or parcels that contain steep slopes, wetlands, stream corridors and associated buffers listed on the town's environmentally sensitive areas map;
- C. For undeveloped lots, tract or parcels proposals, removal of more than five percent of the trees located on the lot, tract or parcel in any one year;
- D. For routine property maintenance, removal of trees that exceed the maximum number set forth in Section 16.12.060(B)(Table 1) of this chapter. (Ord. 05-452 § 1(part), 2005)

16.12.050 Permit required.

- A. A permit is required for removal of a tree(s) alone or in conjunction with a use requiring an approved development application, and shall be valid for one year following the date of permit approval, after which it cannot be renewed, extended, or in any way applied in a cumulative manner to any future year.
- B. Every person, corporation or entity proposing to engage in activities regulated by this chapter shall first submit an application for a tree permit.
- C. The applicant shall indicate on the permit application the location of the trees to be removed in relation to his or her property boundaries and be duly responsible for their removal and any replacement requirements.
- D. An application for removal of a hazard tree may require a tree assessment by an arborist who must sufficiently describe how the tree: (1) meets the criteria of a hazard tree, as defined in Section 16.12.020 of this chapter; and

(2) the hazard cannot be lessened with reasonable and proper arboricultural practices nor can the target be removed.

- E. Emergency tree removal may be done immediately but shall require a tree permit to include description and proof of emergent threat and to be filed with the town within seven days of the removal. (Ord. 06-472A, 2006; Ord. 06-472, 2006; Ord. 05-452 § 1(part), 2005)

16.12.060 Provisions for routine property maintenance.

- A. Review Criteria. The Director shall review the application and approve the permit, with or without conditions as soon as possible but not to exceed twenty-one days of a completed application, provided that the application demonstrates compliance with the following criteria:
 1. The proposal is consistent with the purposes of this chapter set forth in Section 16.12.010 of this chapter;
 2. The proposal is consistent with the tree removal and replacement requirements of Section 16.12.080 of this chapter;
 3. The proposal will not likely result in harm to flora or fauna species, including, but not limited to, eagles, other raptors, pileated woodpeckers and band-tailed pigeons; nor to those species listed as state endangered, threatened, sensitive, and candidate species and priority habitats, as identified by the state of Washington Department of Fish and Wildlife.
- B. Inspection. The Director may inspect the tree(s) identified for removal.
- C. Maximum Tree Removal and Tree Replacement Requirements. Table I of this section lists the total number of trees that may be removed in any one year and the number of removed trees that are subject to the replacement provisions of Section 16.12.080 of this chapter for each zone district.

Table I. Maximum Number of Removed Trees and Replacement Requirements per Zone District

A. Zone District	B. Maximum # of Trees that may be Removed/Year*	C. Required Replacement Trees	D. Maximum # of Trees that may be Removed in Setback Areas/Year
UR	Two	One	One
R-14.5	Two	One	One
R-43	Four	Two	Two
R-87	Six	Three	Three

*Notes:

- a. The number of trees in column B also includes trees in setback areas listed in column D.
- b. Replacement trees shall be a number that equals at least fifty percent of the number of trees removed per year. Where fifty percent equals less than a whole number, the replacement trees shall be rounded up to the next whole number.
- c. Parcels in the UR, R-14.5 and R-43 zone districts that are at least one hundred percent greater in size than the minimum lot size of the zone district in which the parcel is located, may increase the number of trees that can be removed and shall be replaced. The specific number of removed and replaced trees shall correspond to the quantities listed in Table I of this section for the zone district with the minimum lot area that most closely approximates the subject parcel's lot size. The calculation of parcel area shall not include land areas devoted to wetlands, steep slopes, stream corridors and associated buffers.
- D. Removal and Replacement of Hedge Trees. Removal of any hedge tree does not apply toward the maximum tree removal allowed per year in Table I of this section, but shall require a one for one replacement pursuant to Section 16.12.080 of this chapter.
- E. Exemption from Tree Replacement. Hazard trees and emergency tree removals are exempt from tree replacement. (Ord. 05-452 § 1(part), 2005)

16.12.070 Provisions for land development activities.

- A. Permit Application. Proposals to remove trees in conjunction with a land development activity shall submit an application for a tree permit to the town for review prior to undertaking any tree removal activities.

1. The Director shall review the application in conjunction with any other land development applications and approve, deny or condition the permit prior to issuance of any other development permits issued by the town.
 2. Applicants proposing to remove trees in conjunction with a land development activity shall submit the following information concurrent with the development application:
 - a. Graphic scale and north arrow;
 - b. Vicinity map and property address;
 - c. Location of all existing and proposed improvements;
 - d. Location and delineation of slopes greater than fifteen percent, wetlands and water courses, or other areas, with any associated buffer areas, as required by the environmentally sensitive ordinance, and any open areas and associated buffers;
 - e. Public roads and rights-of-way;
 - f. Property line boundaries;
 - g. Location, size, species, and critical root zone of all trees, within the area to be impacted, including an indication or schedule of which trees will be retained, removed and/or replaced;
 - h. Location and design of proposed protective barrier for all retained trees; and
 - i. Location, species and size of all replacement trees to be planted.
- B. Review Criteria. The Director shall review the application consistent with the following provisions:
1. The proposal is consistent with the purposes of this chapter set forth in Section 16.12.010 of this chapter;
 2. The proposal is consistent with the tree removal and replacement requirements of Section 16.12.080 of this chapter;
 3. The proposal will not likely result in harm to flora or fauna species, including, but not limited to, eagles, other raptors, pileated woodpeckers and band-tailed pigeons; nor to those species listed as state endangered, threatened, sensitive, and candidate species and priority habitats, as identified by the state of Washington Department of Fish and Wildlife;
 4. That the proposal will not likely result in negative impacts to soil or hydrology of the site and adjacent properties;
 5. When there are feasible and prudent location alternatives on-site for proposed building structures or other site improvements, viable wooded areas and trees are to be preserved. This may require site redesign, including, but not limited to: redesign of streets, sidewalks, stormwater facilities, utilities; changing the shape and size of the parking lot; reducing or limiting proposed site grading; and changing the location of driveways, buildings or building lots; provided, however, that no yard setback variance shall be granted in order to comply with the provisions of this section.
- C. Inspection. The Director may inspect the tree(s) identified for removal.
- D. Reimbursement. The applicant must reimburse the town for any related costs that the town incurs in processing this permit, including, but not limited to, arborist consultation.
- E. Tree Assessment and Standards.
1. Trees to be preserved must be healthy, wind-firm, and appropriate to the site at their mature size, as identified by an arborist. Declaration of hazard tree(s) must meet the criteria outlined in Section 16.12.050(D) of this chapter. Trees growing in a grove or part of a stand must be considered part of group when determining retention potential.
 2. The arborist must determine the critical root zone to establish the limits of disturbance around the trees to be retained on-site and include proper tree protection standards that shall be incorporated into grading, demolition and other appropriate site plans.
 3. The arborist must include discussion of any off-site trees or adjacent trees which could be adversely affected by the proposed activity and the proposed mitigation for such impact.

The Director may require additional information to support findings and conclusions, and that can include soil or diagnostic testing, photographs of claimed disease/defect, or another professional opinion paid for by the applicant.

- F. Tree Protection During Construction. Prior to initiating tree removal on the site, vegetated areas and individual trees to be preserved shall be protected from potentially damaging activities pursuant to the following standards:
1. Placing Materials Near Trees. No person may conduct any activity within the protected area of any tree designated to remain, including, but not limited to, parking equipment, placing solvents, storing building material and soil deposits, dumping concrete washout and locating burn holes.
 2. Objects on Trees. During construction, no person shall attach any object to any tree designated for protection.

3. Protective Barrier. Before development, land clearing, filling or any land alteration for which a tree removal permit is required, the applicant:
 - a. Shall erect and maintain readily visible temporary protective tree fencing constructed of chain link and to a height of at least four feet. This protective tree fence shall be placed along the outer edge and completely surrounding the protected area of all retained trees or groups of trees, as determined by an arborist. Other type of fencing may be authorized by the Director;
 - b. Shall install highly visible signs spaced no further than fifteen feet along the entirety of the protective tree fence. The sign must be approved by the town and shall state at a minimum "TREE PROTECTION AREA, ENTRANCE RESTRICTED" and shall reference the appropriate code and provide the current Public Works Department phone number to report violations;
 - c. Shall prohibit excavation or compaction of earth or other potentially damaging activities within the barriers;
 - d. Shall maintain the protective barriers in place until the Director authorizes their removal or a final certificate of occupancy is issued, whichever occurs first;
 - e. Shall ensure that any landscaping done in the protected zone subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.
4. Additional Protection. In addition to the above, the Director may require the following:
 - a. Cover with mulch to a depth of at least six inches or with plywood or similar material the areas adjoining the critical root zone of a tree in order to protect roots from damage caused by heavy equipment;
 - b. Minimize root damage by excavating a two-foot deep trench, at edge of critical root zone, to cleanly sever the roots of trees to be retained;
 - c. Have corrective pruning performed on protected trees in order to avoid damage from machinery or building activity;
 - d. Maintain trees throughout construction period by watering and fertilizing.

G. Grade.

1. The grade shall not be elevated or reduced within the critical root zone of trees to be preserved without the Director's authorization. The Director may allow coverage of up to one-half of the area of the tree's critical root zone with light soils (no clay) to the minimum depth necessary to carry out grading or landscaping plans, if it will not imperil the survival of the tree. Aeration devices may be required to ensure the tree's survival.
2. If the grade adjacent to a preserved tree is raised such that it could slough or erode into the tree's critical root zone, it shall be permanently stabilized to prevent suffocation of the roots.
3. The applicant shall not install an impervious surface within the critical root zone of any tree to be retained without the authorization of the Director. The Director may require specific construction methods and/or use of aeration devices to ensure the tree's survival and to minimize the potential for root-induced damage to the impervious surface.
4. To the greatest extent practical, utility trenches shall be located outside of the critical root zone of trees to be retained. The Director may require that utilities be tunneled under the roots of trees to be retained if the Director determines that trenching would significantly reduce the chances of the tree's survival.
5. Trees and other vegetation to be retained shall be protected from erosion and sedimentation. Clearing operations shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time. To control erosion, shrubs, ground cover and stumps shall be maintained on the individual lots, where feasible. Where not feasible, appropriate erosion control practices shall be implemented pursuant to current adopted Storm Water Management Manual.

H. Directional Felling. Directional felling of trees shall be used to avoid damage to trees designated for retention.

I. Additional Requirements. The Director may require additional tree protection measures.

J. Maximum Tree Removal and Replacement. Notwithstanding other sections of this chapter, tree removal for land development on undeveloped lots, tracts or parcels shall not exceed five percent of the trees located outside of the proposed building footprint, access, utility easements, steep slopes, wetlands, stream corridors and associated buffer locations on the property. Such removed trees shall be replaced pursuant to Section 16.12.080 of this chapter and at a ratio of one replacement tree for each removed tree.

K. Exemptions from Replacement. The following activities conducted under an approved land development permit on undeveloped lots are exempt from tree replacement:

1. Removal of hazard trees;
2. The removal of trees within the planned building footprint and within fifteen feet of the foundation. (Ord. 05-452 § 1(part), 2005)

16.12.080 Tree replacement.

Tree removal activities related to routine property maintenance or land development that require tree replacement shall be subject to the following:

- A. Replacement trees required pursuant to Table 1 of Section 16.12.050 of this chapter shall be at least three feet in height, as measured from the grade at installation, and shall remain in a healthy condition for a minimum of five years after installation.
- B. Replacement trees for hedge trees shall be at least six feet in height, as measured from the grade at installation, and shall remain in a healthy condition for a minimum of five years after installation. Replacement tree species need not be native.
- C. Trees removed from the setback areas of lots, tracts or parcels shall be replaced in the setback areas.
- D. All replacement trees shall be installed within six months of initial tree removal with a preference for installation within the site's designated setbacks unless otherwise permitted by the Director.
- E. Any replacement tree that is unhealthy within five years of planting must be replaced with a new replacement tree, with the same requirement for continued health and replacement.
- F. The Director shall have the right to inspect the health and condition of replacement trees at any time within five years of installation.
- G. Replacement trees shall not be installed in easements for public facilities or utilities. (Ord. 05-452 § 1(part), 2005)

16.12.090 Sureties.

The Director may require a surety to be posted to secure the applicant's compliance with the conditions of the permit approval. The surety shall be equal to one hundred twenty-five percent of the estimated cost of tree replacement of the property, as determined by the Director. (Ord. 05-452 § 1(part), 2005)

16.12.100 Enforcement and penalties.

- A. Failure to submit an application for a tree permit shall be a violation under Section 1.14.100 of this code and may be subject to the penalties contained therein.
- B. Removal of a tree inconsistent with this chapter shall be a violation and shall require the offending party to replace the removed tree(s) at a ratio of three replacement trees to each one removed tree; and result in a penalty in the amount of one thousand dollars assessed for each tree that is damaged, destroyed or removed. Each tree removed shall constitute a separate violation. An amount equal to the revenue derived from illegal tree removal shall be added to the penalty for the violation.
- C. Stop work orders may be issued by the Director whenever there is a violation. The posting of the stop work order on the site shall be deemed adequate notice of the order. A failure to comply with a stop work order shall constitute a separate violation of Section 1.14.100 of this code. (Ord. 05-452 § 1(part), 2005)

16.12.110 Appeals.

- A. Appeals of administrative decisions made under this chapter are to the Hearing Examiner in accordance with WMC Chapter 2.56. An appeal fee shall be submitted to the town prior to processing the appeal as follows:
 - 1. If any party wishes to have the Hearing Examiner conduct an appeal hearing, then the appeal fee is three hundred dollars and one-half of the actual costs of the Hearing Examiner, regardless of the decision.
 - 2. The appellant shall pay a deposit of the appellant's share of the estimated cost of the Hearing Examiner's service. Any amount not needed to pay the actual costs of the Hearing Examiner shall be refunded at the conclusion of the appeal process.
- B. Timely filing of an appeal shall stay the effect of order, permit, decision determination or other action related to the removal of any tree being appealed until the appeal is disposed of by the Hearing Examiner or withdrawn.
- C. The Hearing Examiner shall give substantial weight to the Director's decision and the burden of showing that the Director's decision was clearly erroneous shall be upon the appellant. (Ord. 05-452 § 1(part), 2005)