City of Sherwood Oregon

Home of the Tualatin River National Wildlife Refuge

CITY COUNCIL MEETING PACKET

FOR

Tuesday, February 1, 2011

Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon

5:00pm Work Session

6:00pm Executive Session
(Pursuant to ORS 192.660(2)(f), Exempt Public Records)

7:00pm Regular City Council Meeting

City of Sherwood Oregon

Home of the Tualatin River National Wildlife Refuge

AGENDA

SHERWOOD CITY COUNCIL
February 1, 2011

5:00-6:00pm Work Session

6:00-7:00pm Executive Session
(Pursuant to ORS 192.660 (2)(f), Exempt Public Records)

7:00pm Regular City Council Meeting

Sherwood City Hall
22560 Pine Street
Sherwood, OR 97140

WORK SESSION 5:00PM

EXECUTIVE SESSION 6:00PM

REGULAR CITY COUNCIL MEETING

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. CONSENT:

A. Approval of January 15, 2011 City Council Minutes
B. Approval of January 18, 2011 City Council Minutes
C. Approval of January 22, 2011 City Council Minutes
D. Resolution 2011-010 Establishing a deadline date for filing Declaration of Candidacy form or Nomination Petition for the May 17, 2011 Election

5. PRESENTATIONS

A. Recognition of Eagle Scouts (Tentative)

6. PUBLIC HEARINGS

A. Ordinance 2011-001 Amending multiple sections of the Zoning and Community Development Code including Divisions II, III, V, and VIII (Zoe Monahan, Assistant Planner and Julia Hajduk, Planning Manager)

B. Ordinance 2011-002 Amending Title 12.12 and 12.20 of the Municipal Code relating to trees on other public property and Homeowner's Association authorization to review tree removal (Zoe Monahan, Assistant Planner and Julia Hajduk, Planning Manager)

7. CITIZEN COMMENTS

8. CITY MANAGER REPORT

9. COUNCIL ANNOUNCEMENTS

10. ADJOURN

How to Find Out What's on the Council Schedule:
City Council meeting materials and agenda are posted to the City web page at www.sherwoodoregon.gov, by the Friday prior to a Council meeting. Council agendas are also posted at the Sherwood Library/City Hall, the YMCA, the Senior Center, and the City's bulletin board at Albertson's. Council meeting materials are available to the public at the Library. The public may make copies of any Council meeting materials, at no charge.

To Schedule a Presentation before Council:
If you would like to appear before Council, please submit your name, phone number, the subject of your presentation and the date you wish to appear to the City Recorder Sylvia Murphy by calling 503-625-4246 or by e-mail to: citycouncil@ci.sherwood.or.us.

SHERWOOD CITY COUNCIL MINUTES
Tualatin Country Club
9145 SW Tualatin Road, Tualatin Oregon 97062
January 15, 2011
Annual Strategic Planning Work Session

WORK SESSION

1. **CALL TO ORDER:** Mayor Mays called the Work Session to order at 8:10am.

2. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Dave Grant, Councilors Linda Henderson, Robyn Folsom, Matt Langer and David Luman. Councilor Bill Butterfield was absent.

3. **STAFF PRESENT:** City Manager Jim Patterson, Public Works Director Craig Sheldon, Finance Director Craig Gibons, Police Chief Jeff Groth, Community Services Director Kristen Switzer, Community Development Director Tom Pessemier, Economic Development Manager Tom Nelson, IT Director Brad Crawford, Human Resource Manager Anna Lee, Accounting Manager Julie Blums and City Recorder Sylvia Murphy.

4. **TOPICS DISCUSSED:** 2011 Strategic Planning, City Manager Jim Patterson provided the Council members with a packet of meeting materials; 2011 Sherwood Strategic Planning Packet (see record, Exhibit A). The packet consisted of: Meeting agenda's for January 15th and January 22, 2011 Strategic Planning Sessions, Focus on the Future-Strategic Planning Process, City Manager Top 10 Issues for 2011-2012 and City of Sherwood Mission Statement and 2010 Goals and City of Sherwood Strategic Planning Process.

   The following department Director's and Manager's presented verbal presentations and provided documents to the Council members and explained their handouts: Craig Gibons Finance Director presented information on the Finance Department (see record, Exhibit B); Tom Pessemier Community Development Director presented information on the Community Development Division (Planning, Engineering, Building) (see record, Exhibit C); Anna Lee Human Resources Manager presented information on the Human Resource Department (see record, Exhibit D); Kristen Switzer Community Services Director presented information on the Community Services Department which included the Sherwood Public Library (see record, Exhibit E).

   The City Council took a meal break, 12:00pm-12:35pm then continued with staff presentations.

   Tom Nelson Economic Development Manager presented information on the Economic Development Department which included the Urban Renewal Agency (see record, Exhibit F); Craig Sheldon Public Works Director presented information on the Public Works Department (see record, Exhibit G); Brad Crawford, IT Director presented information on the Information Technology Department (see record, Exhibit H) and information on Sherwood Broadband (see record, Exhibit I), Sylvia Murphy City Recorder presented information on City Recorder/City

Council Department (see record, Exhibit J); and Police Chief Jeff Groth presented information on the Police Department (see record, Exhibit K). Council members asked clarify questions of the information presented by staff and no decisions were made by the Council.

City Manager Jim Patterson lead discussions on the processes of funding non-profit organizations and general Council discussion followed, no decisions were made by the Council.

5. ADJOURNED: Mayor Mays adjourned the work session at 4:40pm.

Sylvia Murphy, CMC, City Recorder

Keith S. Mays, Mayor

SHERWOOD CITY COUNCIL MINUTES
22560 SW Pine St., Sherwood, Or
January 18, 2011

WORK SESSION

1. **CALL TO ORDER:** Mayor Mays called the Work Session to order at 6:32pm

2. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Dave Grant, Councilors Linda Henderson, Robyn Folsom, Bill Butterfield, Matt Langer and David Luman.

3. **STAFF PRESENT:** City Manager Jim Patterson, Finance Director Craig Gibons, Community Development Director Tom Pessemier, Planning Manager Julia Hajduk, Assistant Planner Zoe Monahan and City Recorder Sylvia Murphy.

4. **MEDIA PRESENT:** Oregonian Reporter Eric Florip.

5. **TOPIC DISCUSSED:** Code Cleanup Phase 1.5, Zoe Monahan and Julia Hajduk presented a power point presentation on proposed changes to the City Code (see record, Exhibit A) and briefed the Council members.

6. **ADJOURNED:** Mayor Mays adjourned the Work Session at 6:58pm and convened to the regular Council meeting.

REGULAR COUNCIL MEETING

1. **CALL TO ORDER:** Mayor Mays called the meeting to order at 7:05pm.

2. **PLEDGE OF ALLEGIANCE AND ROLL CALL:**

3. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Dave Grant, Councilors Linda Henderson, Robyn Folsom, Bill Butterfield, Matt Langer and David Luman.

4. **STAFF PRESENT:** City Manager Jim Patterson, Police Captain Jim Reed, Finance Director Craig Gibons, Community Development Director Tom Pessemier, Community Services Director Kristen Switzer, Economic Development Manager Tom Nelson and City Recorder Sylvia Murphy.

   Mayor Mays addressed the Consent Agenda and asked for a motion.

5. CONSENT AGENDA

A. Approval of January 4, 2011 City Council Minutes
B. Resolution 2011-007 Accepting the 2009-2010 Annual Financial Report for the year ended June 30, 2010
C. Resolution 2011-008 Amending Resolution 2011-004 to correct an error in the Intergovernmental Agreement with the City of Wilsonville to reflect the correct dollar of the IGA

MOTION: FROM COUNCIL PRESIDENT DAVE GRANT TO APPROVE THE CONSENT AGENDA, SECONDED BY COUNCILOR MATT LANGER, ALL COUNCIL MEMBERS VOTED IN FAVOR.

Mayor Mays addressed the next agenda item.

6. NEW BUSINESS

A. Resolution 2011-009 Authorizing the City to enter into an Interstate Cooperative Procurement Agreement for Prefabricated Restrooms for Stella Olsen Park

Kristen Switzer Community Services Director came forward and explained the resolution.

Councilor Butterfield asked if the bathrooms had heat. Kristen replied there is not heat in the bathrooms but there's heat where the utilities are to hopefully keep the pipes from freezing. Kristen stated the plan is to close the women's and men's restrooms during the winter months and have only the family restroom open and said this allows for less maintenance. Kristen stated the Public Works department could also turn off the water if we anticipate having freezing temperatures.

Councilor Folsom asked what the project timeline is. Kristen replied assuming the resolution is adopted this evening, they are ready to submit the drawings to the State for approval and said the restroom itself takes 10-12 weeks to assembly. Kristen informed the Council the City still has to go through the planning process and still needs to design the site and have some site work done and the hope is to be done by early June in time for the summer events.

Councilor Luman asked if there were any environmental issues with the facility site. Kristen replied not that she is aware of.

Mayor Mays stated the resolution does not mention the balance of the funds coming from Parks SDC's and said this was the recommendation from the Parks Board. Mayor Mays stated the SDC funding is mentioned in the staff report and asked if this was sufficient. The City Recorder stated the staff report gives direction on funding.

With no other Council questions, Mayor Mays asked for a motion.

MOTION: FROM COUNCILOR LINDA HENDERSON TO ADOPT RESOLUTION 2011-009, SECONDED BY COUNCILOR ROBYN FOLSOM, ALL COUNCIL MEMBERS VOTED IN FAVOR.

Mayor Mays addressed the next agenda item.

7. PRESENTATIONS

A. Metro Update, Carl Hosticka

Mr. Hosticka Metro Councilor for District 3, came forward and provided the Council with an update for the coming year. Mr. Hosticka explained the makeup of the current Metro Board members and informed the Council of upcoming Metro seminars. Mr. Hosticka provided updates on Urban/Rural Reserves, expansion of the Urban Growth Boundary (UGB) and spoke of funding infrastructure of the expanded UGB. Mr. Hosticka spoke of mass transportation, the planning of the area between Tualatin and Wilsonville and the extension of 124th Ave. South and spoke of the Tonquin Trail from Wilsonville to the Tualatin River National Wildlife Refuge. Mr. Hosticka provided flyers for the Council and public on upcoming Metro sessions and a pamphlet explaining Metro services (see record, Exhibit B).

Mayor Mays thanked Mr. Hosticka and addressed the next agenda item.

8. CITIZEN COMMENTS-None

9. CITY MANAGER AND STAFF REPORTS

City Manager Jim Patterson recapped information provided in the Field House staff reports and commended Lance Gilgan Field House Manager for his valuable work at the Field House and his work with community groups.

Mayor Mays addressed the next agenda item.

10. COUNCIL ANNOUNCEMENTS-None

11. ADJOURNED

Mayor Mays adjourned the Council meeting at 7:40pm and convened to an Urban Renewal Agency Board of Directors meeting.

Sylvia Murphy, CMC, City Recorder

Keith S. Mays, Mayor

DRAFT

SHERWOOD CITY COUNCIL MINUTES
22560 SW Pine St., Sherwood, Or
January 22, 2011
Annual Strategic Planning & Council Training

WORK SESSION

1. **CALL TO ORDER:** Mayor Mays called the Work Session to order at 9am.

2. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Dave Grant, Councilors Linda Henderson, Robyn Folsom, Bill Butterfield, Matt Langer and David Luman.

3. **STAFF PRESENT:** City Manager Jim Patterson, Finance Director Craig Gibons, Human Resource Manager Anna Lee, Community Development Director Tom Pessemier, Administrative Assistant Kirsten Allen and City Recorder Sylvia Murphy.

4. **OTHERS PRESENT:** Jennie Messmer with League of Oregon Cities.

   City Manager Jim Patterson explained the meeting format and stated there was a change to the agenda as the City Attorney would not be presenting today.

5. **TOPIC DISCUSSED:**

   Jennie Messmer, Member Services Director with the League of Oregon Cities facilitated a training session and presented a power point presentation and provided the Council members with a copy of the presentation; City Council Workshop and a Handbook for Evaluating the City Administrator (see record, Exhibits A & B). General discussion occurred. Ms. Messmer provided Council with a document, "Council Relations" and due to time constraints the Council did not discuss the document (see record, Exhibit C).

   Mayor Mays thanked Ms. Messmer for the training session which concluded at 12:30pm.

   Craig Gibons Finance Director developed a list of Council comments, issues and concerns and lead discussions (see record, Exhibit D).

6. **ADJOURNED:** Mayor Mays adjourned the work session at 1:20pm.

Sylvia Murphy, CMC, City Recorder

Keith S. Mays, Mayor

DRAFT

City of Sherwood Oregon

Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2011-010

A RESOLUTION ESTABLISHING A DEADLINE DATE FOR FILING DECLARATION OF CANDIDACY FORM OR NOMINATION PETITION FOR THE MAY 17, 2011 ELECTION

WHEREAS, City Council Seat 5 was declared vacant via Resolution 2010-049; and

WHEREAS, Section 32 of the City Charter requires a vacancy to be filled at the next available election if more than 13 months remain in the term of the vacant seat; and

WHEREAS, more than 13 months remain in the term for City Council Seat 5 and the next available election is May 17, 2011; and

WHEREAS, to allow for a timely and efficient election process the City Council has elected to establish a deadline date for interested persons to file a Declaration of Candidacy form or Nomination Petition.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1: A Declaration of Candidacy form or Nomination Petition for City Council Seat 5 must be received by the City Recorder, Monday, not later than February 28, 2011 at 5pm to be eligible to participate in the May 17, 2011 election.

Section 2: This Resolution is effective upon its approval and adoption.

Duly passed by the City Council this 1st day of February 2011.

_____
Keith S. Mays, Mayor

Attest:

_____
Sylvia Murphy, CMC, City Recorder

Council Meeting Date: February 1, 2011
Agenda Item: Public Hearing

TO: Sherwood City Council
FROM: Zoe Monahan, Assistant Planner and Julia Hajduk, Planning Manager
Through: Tom Pessemier, Community Development Director
Subject: Code Clean-Up Phase 1.5 (Chapter 16 amendments)

EXECUTIVE SUMMARY

Summary*:* As part of a multi-phase code clean-up project with the goal of providing a more clear and usable code for both citizens and developers, the proposed amendments include updates to: 1) fence standards 2) street tree spacing, removal and replacement, and 3) recommended street tree list. The Planning Commission held a public hearing on December 14, 2010 and January 11, 2011 and forwarded a recommendation of approval to the Council. The Planning Commission recommendation is attached as Exhibit 1 and the proposed Chapter 16 amendments are attached as Exhibit 1-A.

Previous Council Action: None

Background/Problem Discussion: The City began the multi-phase code update in April 2010, adopting phase 1 updates in October 2010. The topics addressed in this application referred to as "Phase 1.5," were originally part of Phase II but they were separated to allow for these topics to move forward while the Planning Commission continued to consider the other Phase II topics. Phase 1.5 includes: 1.) a better defined and easier to use fence and wall standards, 2.) more clear street tree spacing standards, 3.) clear and objective street tree removal and replacement process and 4.) updated recommended street tree list.

The amendments include the relocation of a section regarding trees on other public property (such as in parks) from the development code to Chapter 12 of the municipal code as well as recommendations for a new section in Chapter 12 to implement a new process provided for in Chapter 16. Amendments to Chapter 16 are essentially land use actions and subject to different rules and processes; therefore amendments to chapter 12 and 16 will be considered under separate ordinance.

Additionally, the proposed amendments in Exhibit 1-A include a few additional staff modifications which were not part of the Planning Commission recommendation but help to ensure clarity and consistency within the development code. Specifically, we removed the provision to post *"on"* the tree and we clarified that the renewal of the HOA authorization approval would be a type II land use process.

Alternatives: Approve, approve with modifications or deny the Planning Commission recommendation.

Financial Implications: It is likely that there will be a cost associated with making the code updates. The City will be creating a new permit to remove and replace street trees. Currently, there is not a fee for the removal of street trees; however there is staff time and city dollars that are used in order to review the trees. Through the street tree review process it became clear that there should have been a fee established when the original street tree removal standards were put in place. It is anticipated that a fee will be established to cover staff time to review tree removal permits. It is also anticipated that a fee will be established for the HOA review to cover staff time and the required notice for a type IV review. The fees will be reviewed by the Budget Committee and City Council for the next fiscal year (July 2011).

Recommendation: Staff recommends that the City Council hold a public hearing and determine whether to accept the Planning Commission recommendation with the minor additional staff changes noted above and adopt the attached Ordinance or direct staff to make additional modifications to the proposed text changes based on additional information submitted.

Attachments:

Ordinance
Exhibit 1– PC Recommendation
1-A - Proposed Chapter 16 changes

DRAFT

City of Sherwood Oregon

Home of the Tualatin River National Wildlife Refuge

ORDINANCE 2011-001

AN ORDINANCE AMENDING MULTIPLE SECTIONS OF THE ZONING AND COMMUNITY DEVELOPMENT CODE INCLUDING DIVISION, II, III, V, AND VIII

WHEREAS, The Sherwood Zoning and Community Development Code has not been comprehensively updated in many years, and

WHEREAS, the City has undertaken a multi-phase, multi-year program to comprehensively update the development code to ensure that it is clear, consistent, and current; and

WHEREAS, the Planning Commission helped guide the development of proposed amendments after extensive public outreach and opportunity for public input; and

WHEREAS, phase 1.5 includes amendments to divisions II, III, V, VIII specifically related to the fences and walls standards as well as the street tree spacing, removal and replacement and recommended street tree list; and

WHEREAS, the proposed amendments were reviewed for compliance and consistency with the Comprehensive Plan, regional and state regulations and found to be fully compliant; and

WHEREAS, the proposed amendments were subject to full and proper notice and review and a public hearing was held before the Planning Commission on December 14, 2010 and continued to January 11, 2011; and

WHEREAS, the Planning Commission voted to forward a recommendation of approval to the City Council for the proposed development code modifications attached as Exhibits 1-A; and

WHEREAS, the analysis and findings to support the Planning Commission recommendation are identified in the attached Exhibit 1; and

WHEREAS, the City Council held a public hearing on February 1, 2011 and determined that the proposed changes to the Development Code met the applicable Comprehensive Plan criteria and continued to be consistent with regional and state standards.

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. Findings. After full and due consideration of the application, the Planning Commission recommendation, the record, findings, and of the evidence presented at the public hearing, the Council adopts the findings of fact contained in the Planning Commission

recommendation attached as Exhibit 1 finding that the text of the SZCDC shall be amended as documented in attached Exhibit 1-A.

Section 2. Approval. The proposed amendments for Plan Text Amendment (PA) 10-03 identified in Exhibits 1-A is hereby **APPROVED**.

Section 3. Manager Authorized. The Planning Department is hereby directed to take such action as may be necessary to document this amendment, including notice of adoption to DLCD and necessary updates to Chapter 16 of the municipal code in accordance with City ordinances and regulations.

Section 4. Applicability. The amendments to the City of Sherwood Zoning and Community Development Code by Sections 1 to 3 of this Ordinance apply to all land use applications submitted after the effective date of this Ordinance.

Section 5. Effective Date. This ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

Duly passed by the City Council this 1st day of February 2011.

_____
Keith S. Mays, Mayor

Attest:

_____
Sylvia Murphy, CMC, City Recorder

	AYE	NAY
Luman	____	____
Langer	____	____
Butterfield	____	____
Folsom	____	____
Henderson	____	____
Grant	____	____
Mays	____	____

City of Sherwood January 21, 2011
Planning Commission Recommendation to the City Council
File No: PA 10-03 Code Clean-Up Phase 1.5

Proposal: Amendments to the Development Code on this phase of the Code Clean-Up project will clarify the standards for fences and walls on residential and non-residential property, streamline the process for street tree removal and provide for flexibility in the spacing of required street trees. Specifically, the definition of a fence or wall has been clarified and hedges have been removed from the fence and wall standards. The street tree removal and replacement standards have been revised to streamline the process. The street tree spacing requirements have been updated to account for differences in trees and to take into account driveways and utilities that may conflict with the trees. The recommended street tree list has been revised to remove problem trees, fruit bearing trees and to add more appropriate trees.The proposed changes will modify the following code sections: Fences, Walls and Hedges (16.58.030), Classifications (16.72.010.A),Landscaping (16.92), On-Site Storage (16.98), Trees Along Public Streets or on Other Public Property (16.142.050) and Recommended Street Trees (16.142.080). The proposal also recommends moving the process for review and approval of trees on public property (other than street trees) to Chapter 12 of the Municipal Code.

The Planning Commission held a hearing on December 14, 2010 and January 11, 2011. After receiving comments at the December 14th hearing regarding concerns that the process might be costly and too complex and the desire to authorize the Homeowners Association (HOA) to have the ability to review tree removal and replacement, the Planning Commission directed staff to develop a process to authorize HOA's to regulate trees within their neighborhoods and to develop a three tiered process for consideration of street tree removal based on the size of the tree. After consideration of the public testimony and staff recommended changes, the Commission voted to forward the proposed amendments (attached to this report as Exhibit A) to the Council for approval.

I. BACKGROUND

A. Applicant: This is a City initiated text amendment; therefore the applicant is the City of Sherwood.

B. Location: The proposed amendment is to the text of the development code and, therefore applies citywide.

G. Review Type: The proposed text amendment requires a Type V review, which involves public hearings before the Planning Commission and City Council. The Planning Commission will make a recommendation to the City Council who will make the final decision. Any appeal of the City Council decision would go directly to the Land Use Board of Appeals. The proposal also recommends amendments to Chapter 12 of the Municipal code. Amendments to the Municipal Code are not land use decisions appealable to LUBA.

H. Public Notice and Hearing: Notice of the December 14, 2010 Planning Commission hearing on the proposed amendment was published in *The Times* on 12/2/10 and 12/9/10. In addition, as a courtesy, notice placed in the December edition of the Gazette. Notice was posted in 5 public locations around town and on the website on 11/22/10. Notification of the continuance of the hearing to January 11, 2011 was announced publicly at the Planning Commission meeting on

December 14, 2010. A courtesy notice of the continued public hearing was posted in the 5 public locations around town and on the website on December 21, 2010. The City also sent e-notice to the interested parties list and regular updates were provided in the City newsletter.

While this does apply citywide, it does not affect the permissible uses of any property; therefore Measure 56 notice was not required or provided. DLCD notice was provided 10/26/10.

I. Review Criteria:
The required findings for the Plan Amendment are identified in Section 16.80.030 of the Sherwood Zoning and Community Development Code (SZCDC).

J. Background:
The City underwent periodic review in 1989-1991 and the Zoning and Community Development Code was comprehensively reviewed and updated as part of that process. Since that time, there have been a number of updates to comply with regional and state laws, address local issues and in response to applications. Overtime the piece-meal updates resulted in the need to conduct a comprehensive audit and update of the code to ensure cross references are correct, standards are clear, and typographical errors are fixed. In addition, over time the trends and values have changed such that it is necessary to evaluate the standards to ensure they address current needs. To that end, the Council, Planning Commission and staff identified the need to conduct a comprehensive update of the Development Code. The Code Update project has been broken into phases to allow manageable portions to be reviewed and adopted prior to moving on to another phase. Phase I was adopted in October of 2010.

After Planning Commission review it was determined that only a portion of the second phase would move forward at this time, while additional work is being completed for the remainder of Phase II. This phase, referred to as phase I.V (1.5) focuses on two elements: 1) fence standards clarification and 2) street tree removal and replacement as well as spacing requirements.

II. AFFECTED AGENCY, PUBLIC NOTICE AND PUBLIC COMMENTS

Agencies:
The City sent request for comments to the standard agency notification list. The City has received no responses to date.

Public:
Written public comments were received from one citizen, Neil Shannon, prior to the second Planning Commission hearing on January 11, 2011 regarding the proposed amendments to the street tree language. The City and Commission has also received input from the public during informal listening sessions which helped guide the proposed amendments under review.

The Commission received testimony from four citizens at the December 14, 2010 public hearing:
Neil Shannon indicated that he agreed with the proposed tree canopy diameter as one of the guidelines; however he expressed concerns regarding the protection of trees in the planter strips. Due to the number of items in the planter strips he does not believe that the trees are given a chance to survive. He was not in favor of requiring permits for the removal and replacement of trees and he feels that Homeowners Associations need to be more involved.

Noreen O'Connor expressed that she will happily take responsibility for her tree. She does not believe that there should be a fee to remove street tree that should not have been planted in the first place.

Trenna Landers, President of the Arbor Lane Homeowners Association, discussed the work that she has done over the past year in order to gain approval to replace the street trees in her neighborhood. She would like to see a plan that includes HOA's. She expressed the work that the HOA has done in hopes of working with the Parks Board to be granted the authority to approve the removal of trees when necessary.

Tim Voohies voiced his concerns with the homeowner's responsibility to maintain street tree.

Mr. Shannon also provided testimony at the January 11, 2011 public hearing, his testimony was regarding street trees and he discussed the tiered systems and the HOA process in greater detail as a follow up to his written comments.

III. REQUIRED FINDINGS FOR A PLAN TEXT AMENDMENT

The applicable Plan Text Amendment review criteria are 16.80.030.1 and 3

16.80.030.1 - Text Amendment Review
An amendment to the text of the Comprehensive Plan shall be based upon the need for such an amendment as identified by the Council or the Commission. Such an amendment shall be consistent with the intent of the Comprehensive Plan, and with all other provisions of the Plan and Code, and with any applicable State or City statutes and regulations.

The City has identified that the code is not always clear and embarked on this multi-phase code clean-up project to address issues that have arisen as a result to make it clearer, more user-friendly, and to reflect current trends and community values. The proposed changes represent the first half of the second phase. Recent input from the public has also made it clear that the required street trees and spacing have led to maintenance issues and the street tree removal process is unclear and cumbersome. The City has also received many comments over the years that the one-size-fits-all fence standards do not adequately accommodate the security needs for non-residential uses and the corner lot fence standards provide little opportunity for properties with corner lots to have privately fenced yards.

The Planning Commission has held a series of work sessions to discuss the proposed changes and considered public input before the changes were developed to obtain feedback on needed changes. Fences and walls (16.58.030), Trees along public Streets and other Public Property (16.142.050) as well as the Recommended Street Tree List (16.142.080) have been reviewed by both staff and the Commission.

In order to clarify standards in response to issues and questions that have arisen over the past years, the code sections for fences (16.50.030) has been updated with clearer definitions and separate regulations for residential and non-residential zones. Specifically, the definition of a fence has been changed to clarify that lattice and decorative toppers are included in the definition of a fence and that these features are included in the total height of the fence. The proposed language also clarifies that sound walls are not considered fences and provides a definition. The sound wall definition allows sound walls to be up to 20 feet tall which would not met the six foot tall fence standard in the past.

Because the corner lot fence standards were awkward in that the permitted six foot high fence was in relation to the house regardless of how far the house was setback from the property line, the standards for corner lot fencing is proposed to be modified to better reflect the intent while preserving more opportunity for property owners to fence their yards. The corner lot fence

standards are intended to ensure that a driver's vision is not obstructed by residential fences and to provide a more pedestrian friendly experience by preventing a six foot high fence along a sidewalk. The proposed language clarifies that the vision clearance standards apply and has identified that the fence must be eight feet back from the sidewalk to ensure that public utility easements are not covered. This eight foot setback will also ensure pedestrians do not have a tall fence right next to the sidewalk. The eight foot setback and the clear vision standards will provide clear vision along corner lots while still allowing homeowners to fence the majority of their yards for privacy.

Both the City Council and Planning Commission have received input from concerned residents recently about the street tree standards. Concerns relate to the process as well as the standards for installation of street trees and replacement of street trees that are permitted to be removed. The current standards do not take utilities, driveways, etc. into account and each development is required to provide one tree for every 25 feet of street frontage or two trees for every buildable lot, whichever is greater. The result is often trees spaced too close together such that the tree is not healthy or there are avoidable impacts to the sidewalk and utilities. To this end, the spacing standards are proposed to be updated to account for public utilities, driveways and street lights and mature canopy spread of the tree will determine what the spacing of the tree will be. The proposed code language also has an exemption to replacement of a street tree if the trees originally were planted too close and lead to problems with utilities and lifting the sidewalks.

Through the process of evaluating the existing standards and processes, it was determined that the Parks Board was not necessarily the most appropriate review body to consider the removal of street trees. After much discussion and several work sessions, a new process for the consideration of removal of street trees was developed. This process allows for consideration of removal and replacement as well as a removal without replacement. As proposed, removal of street trees under 5 inches diameter at breast height (DBH) is permitted without review provided they were replaced. Street trees between 5-10 inches DBH can be removed via a Type I administrative process if specific clear and objective standards are met. Street trees over 10 inches DBH are reviewed by a Type I administrative process if specific clear and objective standards; however they are encouraged to get work with the HOA, City, etc. to address issues and an arborist report documenting the need to remove the tree is required.

The process for removal of street trees 5 -10 inches DBH will require the person requesting the removal of the tree to apply for a tree permit. There will be a ten day period for others to object to the removal of the tree based on the outlined standards (i.e. they do not believe the tree meets the criteria for removal). If objections are raised an additional evaluation of the tree will take place to determine if the tree meets the criteria for removal. If there are no objections or the additional evaluation indicates that the tree meets the criteria for removal, the tree permit will be approved.

The process for removal of trees greater than 10 inches DBH requires the more detailed evaluation as part of the initial submittal and encourages the property owner to seek assistance from neighbors, HOAs or the City to address any issues that would enable the property owner to save the tree. There will be a ten day period for others to comment on the removal of the tree based on the outlined standards.

At the December 14, 2010 Planning Commission public hearing, testimony suggested that the Homeowner's Associations (HOAs) should be able to review the street trees within the HOA boundary. The Planning Commission expressed interest in this concept. They directed staff to develop a process to authorize active HOAs to review the street trees in their subdivision. As proposed, the process would be a Type IV land use review with a decision by the planning

commission. This process takes into consideration the initial authorization as well as the review process. The submittal requirements, review criteria and minimum conditions have been added to provide a clear authorization process. There are also HOA regulations that would need to be added to chapter 12 to regulate bylaws and provide an appeal process of an HOA decision without making the HOA's decision a land use decision.

These new processes eliminate the Parks Advisory Board review of street trees, clearly outline the requirements and allow for public awareness of the proposed removal and the ability to comment on whether the tree meets the specific criteria for removal.

The Parks Advisory Board will continue to review the tree removal requests for trees on public property, excluding street trees. However, to clarify that these reviews are not land use decisions, it is recommend as this section of the code will be moved from Chapter 16 to Chapter 12.12.

Upon review of the Comprehensive Plan, the following policies or strategies relate to all or some of the proposed amendments:

Chapter 4, Section E, Policy 1:

- Buffering techniques shall be used to prevent the adverse effects of one use upon another. These techniques may include varying densities and types of residential use, design features and special construction standards

Chapter 4, Section O, Policy 3:

- Encourage the use of visually appealing fencing throughout the City.
- Develop and maintain landscaped conservation easements along major roadways and parkway strips along minor streets.
- Develop and implement a tree ordinance which regulates the cutting of trees and the planting of street trees.

There are no comprehensive plan requirements that would conflict with the proposed code language.

<u>Applicable Regional (Metro) standards</u>
There are no known Metro standards that this proposed amendment would conflict with.

<u>Consistency with Statewide Planning Goals</u>
Because the comprehensive plan policies and strategies are not changing and the comprehensive plan has been acknowledged by the State, there are no conflicts with this text change. Further, there are no known state goals or standards that the proposed amendment would conflict with. DLCD provided verbal comments that the proposed changes 'look good". In addition, they generally support efforts to remove barriers in the code such as conflicts or lack of clarity.

As a whole, the amendments are consistent with and support Goal 2 (land use planning) by providing more clear standards. The code language is in conformance with state and federal plans. The proposed language will continue to be used city wide.

The process used to develop and review the proposed amendment is consistent with the Goal 2 requirements (and the development code):

- The Commission held multiple work sessions on the project;
- The web site was updated regularly to provide opportunity for people to get information and provide input on the project as a whole as well as input on specific topics;

- Non-scientific surveys were solicited and provided input from 47 individuals which helped inform the process;
- Staff attended, provided information and requested input at Parks Board meetings;
- Flyers announcing the project and opportunities for input were developed and made available throughout the City; and
- The Planning Commission held a "Listening Session" to get informal input as the proposed changes were being developed.

In addition to the public outreach provided before the proposed changes were developed and the public hearing set, formal notice was also published in the newspaper for two weeks prior to the hearing, published in the December issue of the Gazette, posted around town, placed in the library and on the web site. Courtesy notices were also provided on the web site, in the City Newsletter (the Archer), to the interested parties list and the most current list of HOA contacts.

FINDING: As discussed above in the analysis, there is a need for the proposed amendments and the amendments are consistent with the Comprehensive Plan and applicable City, regional and State regulations and policies.

16.80.030.2 – Transportation Planning Rule Consistency
A. Review of plan and text amendment applications for effect on transportation facilities. Proposals shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-12-0060 (the TPR). Review is required when a development application includes a proposed amendment to the Comprehensive Plan or changes to land use regulations.

FINDING: The amendment will not result in a change of uses otherwise permitted and will have no impact on the amount of traffic on the transportation system; therefore this policy is not applicable to the proposed amendment.

IV. RECOMMENDATION

Based on the above findings of fact, and the conclusion of law based on the applicable criteria, the Planning Commission forwards a recommendation of approval of PA 10-03 to the City Council.

V. EXHIBITS

A. Proposed development code changes (Chapter 16)
B. Proposed Title 12 changes (Exhibit 1 to Ordinance 2011-002)

16.58.030 FENCES~~,~~ AND WALLS ~~AND HEDGES~~
~~Generally~~

A. Purpose: The fence standards promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effect of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.

B. Definition: ~~For purposes of this Section, a corner lot adjoining two (2) City streets shall have both yards adjoining the streets considered as front yards.~~

1. Fence: A freestanding structure that provides a barrier between properties or different uses on the same property and is generally used to provide privacy and security. A fence may be open, solid, wood, metal, wire, masonry or other materials and includes lattice or other decorative toppers.
2. Wall: A solid structural barrier that is not intended to alter the grade.
3. Retaining wall: A solid barrier that provides a barrier to the movement of earth, stone or water and is used to alter the grade.
4. Sound wall - An exterior wall designed to protect sensitive land uses including parks, residential zones and institutional public zones from noise generated by roadways, railways, commercial and industrial noise sources.
5. Landscape feature: A trellis, arbor or other decorative feature that is attached to or incorporated within the fence.

C. ~~Types of Fences~~Applicability:
The following standards apply to walls, fences~~, hedges~~, lattice, mounds, and decorative toppers. The standards do not apply to vegetation, sound walls and landscape features up to four (4) feet wide and at least 20 feet apart. ~~and screens of all types (or a combination thereof) whether open, solid, wood, metal, wire, masonry, plant vegetation or other materials.~~

D. Location - Residential Zone:
1. Fences up to forty-two inches (42") high are allowed in required front building setbacks.
2. Fences up to six feet (6') high are allowed in required side or rear building setbacks, except fences adjacent to public pedestrian access ways and alleys shall not exceed forty-two inches (42") in height unless there is a landscaped buffer at least three (3) feet wide between the fence and the access way or alley.
~~3. Rear (flag) lot access drives shall be separated from abutting property(ies) by a minimum of forty-two inch (42") sight-obscuring fence or a 42"-72" high landscape hedge within a four (4) foot landscape buffer. Alternatively, where existing mature trees and vegetation are suitable, the Planning Supervisor may waive the fence/buffer in order to preserve the mature vegetation.~~
3. Fences on corner lots may not be placed closer than eight (8) feet back from the sidewalk along the corner–side yard.

4. ~~Additionally, all~~ All fences shall be subject to the clear vision provisions of Section 16.58.010.

~~(Ord. 2006-021)~~
5. A sound wall is permitted when required as a part of a development review or concurrent with a road improvement project. A sound wall may not be taller than 20 feet.

E. Location – Non-Residential Zone:
1. Fences up to eight feet (8) high are allowed along front, rear and side property lines, subject to Section 16.58.010. (Clear Vision) and building department requirements.
2. A sound wall is permitted when required as a part of a development review or concurrent with a road improvement project. A sound wall may not be taller than 20 feet.

~~Provisional Locations:~~
~~1. On corner lots in residential areas, where a home is characterized as back-to-back (See diagram adopted herein as shown in the illustration of these text provisions):~~
~~a. A six-foot (6') fence may extend into the required second front yard in an amount not to exceed fifty percent (50%) of the distance measured between the house and sidewalk.~~
~~b. Said fence may not extend beyond eight feet (8') from the rear of the house toward the front.~~
~~2. On corner lots in residential areas where a home is characterized as back-to-front (See diagram adopted herein as shown in the illustration of these text provisions):~~
~~a. A six-foot (6') fence may extend into the second required front yard in an amount no greater than five feet (5') from the house.~~
~~b. Said fence may not extend beyond eight feet (8') from the rear of the house to the front.~~
~~3. Fences in yards affecting cul-de-sacs are exempt from this Subsection.~~
~~F. Provisional Conditions: The following conditions are applied to those fences constructed pursuant to Subsection E.~~
~~1. The clear vision standards of Section 16.58.010 apply and take precedence over these provisions in the event of conflict between this Section and Section 16.58.030.~~
~~2. Wire/chain link fencing is not allowed along any residential street frontage.~~
~~G~~

F. General Conditions – All Fences
1. In all cases, the following standards ~~are applied~~apply:
a. Fences must be structurally sound and maintained in good repair. ~~Fences~~ A fence may not be propped up in any way from the exterior side.
b. Chain link fencing is not allowed in any required residential front yard setback.
c. The finished side of the fence must face the street or the neighboring property. This shall not preclude finished sides on both sides.
~~d. Wood fences along side yards that are shared between two properties shall be a "good neighbor" design with alternating boards~~
d. Buffering: If a proposed development is adjacent to a~~n~~ dissimilar use such as commercial use adjacent to a residential use, or development adjacent to an existing farming operation, a buffer plan that includes, but is not limited to, setbacks, fencing, landscaping, and maintenance via a homeowner's association or managing company shall be submitted and approved as part of the preliminary plat or site plan review process per Section 16.90.020 and Chapter 16.122.
e. In the event of a conflict between this section and the clear vision standards of Section 16.58.010, the standards in section 16.58.010 prevail.
f. Fences and walls shall not be located within or over a public utility easement without an approved- right--of–way permit.
g. The height of a fence or wall is measured from the actual adjoining level of finished grade measured six (6) inches from the fence. In the event the ground is sloped, the lowest grade within six (6) inches of the fence shall be used to measure the height.

~~H. Administrative Variance: The City Manager or his/her designee may grant an administrative variance to this Section.~~
~~I. Abatement of Fences in Non-Compliance~~
~~1. Fences that do not conform to Subsection E of this Code must come into compliance when the house is sold, when other permits are issued, or by September 1, 2003, whichever is earlier. Fences constructed~~

~~affecting cul-de-sacs or fences creating inadequate site distances pursuant to Section 16.58.010 must come into compliance immediately.~~
~~2. Chain link fences forty-two inches (42") or under in front yard setbacks, erected prior to adoption of this ordinance, or other fences which, when installed, were legal under the Municipal Code of Ordinances effective at that time, are exempt from Subsection (I)(1).~~
~~J. Penalties: Violations of this Section shall be subject to the penalties defined by Section 16.02.040. (Ord. 96-1014 § 1; 93-964; 86-851)~~

Chapter 16.72 PROCEDURES FOR PROCESSING DEVELOPMENT PERMITS
16.72.010 Generally

A. Classifications
Except for Administrative Variances, which are reviewed per Section 16.84.020, and Final Development Plans for Planned Unit Developments, which are reviewed per Section 16.40.030, all quasi-judicial development permit applications and legislative land use actions shall be classified as one of the following:
1. Type I
The following quasi-judicial actions shall be subject to a Type I review process:
a. Signs
b. Property Line Adjustments
c. Interpretation of Similar Uses
d. Temporary Uses
e. Final Subdivision Plats
f. Final Site Plan Review
g. Time extensions of approval, per Sections 16.90.020; 16.124.010
h. Type II Home Occupation Permits
i. Interpretive Decisions by the City Manager or his/her designee
j. Tree Removal Permit – a street trees over five (5) inches DBH, per Section 16.142.050.B.2 and 3.
2. Type II
The following quasi-judicial actions shall be subject to a Type II review process:
a. Land Partitions
b. Expedited Land Divisions - The Planning Director shall make a decision based on the information presented, and shall issue a development permit if the applicant has complied with all of the relevant requirements of the Zoning and Community Development Code. Conditions may be imposed by the Planning Director if necessary to fulfill the requirements of the adopted Comprehensive Plan, Transportation System Plan or the Zoning and Community Development Code.
c. "Fast-track" Site Plan review, defined as those site plan applications which propose less than 15,000 square feet of floor area, parking or seating capacity of public, institutional, commercial or industrial use permitted by the underlying zone, or up to a total of 20% increase in floor area, parking or seating capacity for a land use or structure subject to conditional use permit, except as follows: auditoriums, theaters, stadiums, and those applications subject to Section 16.72.010.4, below.
d. "Design Upgraded" Site Plan review, defined as those site plan applications which propose between 15,001 and 40,000 square feet of floor area, parking or seating capacity and which propose a minimum of eighty percent (80%) of the total possible points of design criteria in the "Commercial Design Review Matrix" found in Section 16.90.020.4.G.4.
e. Industrial "Design Upgraded" projects, defined as those site plan applications which propose between 15,001 and 60,000 square feet of floor area, parking or seating capacity and which meet all of the criteria in 16.90.020.4.H.1.
f. Homeowner's Association street tree removal and replacement program extension
~~f. Tree Removal Permit – a street tree over 10 inches DBH, per Section 16.142.050.B.3.~~
3. Type III

The following quasi-judicial actions shall be subject to a Type III review process:
a. Conditional Uses
b. Variances, including Administrative Variances if a hearing is requested per Section 16.84.020.
c. Site Plan Review -- between 15,001 and 40,000 square feet of floor area, parking or seating capacity except those within the Old Town Overlay District, per Section 16.72.010.4, below.
d. Subdivisions -- Less than 50 lots.
4. Type IV
The following quasi-judicial actions shall be subject to a Type IV review process:
a. Site Plan review and/or "Fast Track" Site Plan review of new or existing structures in the Old Town Overlay District.
b. All quasi-judicial actions not otherwise assigned to a Hearing Authority under this section.
c. Site Plans -- Greater than 40,000 square feet of floor area, parking or seating capacity.
d. Site Plans subject to Section 16.90.020.4.G.6.
e. Industrial Site Plans subject to Section 16.90.020.4.H.2.
f. Subdivisions -- More than 50 lots.
5. Type V
The following legislative actions shall be subject to a Type V review process:
a. Plan Map Amendments
b. Plan Text Amendments
c. Planned Unit Development -- Preliminary Development Plan and Overlay District.

Chapter 16.92 LANDSCAPING*
Sections:
16.92.010 LANDSCAPING PLAN
16.92.020 LANDSCAPING MATERIALS
16.92.030 LANDSCAPING STANDARDS
16.92.040 INSTALLATION AND MAINTENANCE
* Editor's Note: Some sections may not contain a history.

16.92.010 LANDSCAPING PLAN
All proposed developments for which a site plan is required pursuant to Section 16.90.020 shall submit a landscaping plan which meets the standards of this Chapter. All areas not occupied by structures, paved roadways, walkways, or patios shall be landscaped or maintained according to an approved site plan. Maintenance of existing non-invasive native vegetation is encouraged within a development and required for portions of the property not being developed.
(Ord. 2006-021; 86-851 § 3)

16.92.020 LANDSCAPING MATERIALS
A. Varieties
Required landscaped areas shall include an appropriate combination of native evergreen or deciduous trees and shrubs, evergreen ground cover, and perennial plantings. Trees to be planted in or adjacent to public rights-of-way shall meet the requirements of this Chapter.
(Ord. 2006-021; 86-851 § 3)

B. Establishment of Healthy Growth and Size
Required landscaping materials shall be established and maintained in a healthy condition and of a size sufficient to meet the intent of the approved landscaping plan. Specifications shall be submitted showing that adequate preparation of the topsoil and subsoil will be undertaken.
(Ord. 86-851 § 3)

C. Non-Vegetative Features

Landscaped areas as required by this Chapter may include architectural features interspersed with planted areas, such as sculptures, benches, masonry or stone walls, fences, rock groupings, bark dust, semi-pervious decorative paving, and graveled areas. Impervious paving shall not be counted as landscaping. Artificial plants are prohibited in any required landscaped area.
(Ord. 2006-021; 86-851 § 3)

D. Existing Vegetation
All developments subject to site plan review as per Section 16.90.020 and required to submit landscaping plans as per Section 16.92.020 shall preserve existing trees, woodlands and vegetation on the site to the maximum extent possible, as determined by the Review Authority, in addition to complying with the provisions of Section 16.142.060, and Chapter 16.144.
(Ord. 2006-021; 94-991 § 1; 86-851)

16.92.030 LANDSCAPING STANDARDS
A. Perimeter Screening and Buffering
A minimum six (6) foot high sight-obscuring wooden fence, decorative masonry wall, or evergreen screen shall be required along property lines separating single and two-family uses from multi-family uses, and along property lines separating residential zones from commercial or industrial uses. For new uses adjacent to inventoried environmentally sensitive areas, screening requirements shall be limited to vegetation only so as to preserve wildlife mobility. In addition, plants and other landscaping features may be required by the Review Authority in locations and sizes necessary to protect the privacy of residences and buffer any adverse effects of adjoining uses.
(Ord. 2006-021; 86-851 § 3)

B. Parking and Loading Areas

1. Total Landscaped Area
A minimum of ten percent (10%) of the lot area used for the display or parking of vehicles shall be landscaped in accordance with this Chapter. In addition, all areas not covered by buildings, required parking, and/or circulation drives shall be landscaped with plants native to the Pacific Northwest in accordance with this Chapter.
(Ord. 2006-021; 86-851 § 3)

2. Adjacent to Public Rights-of-Way or Abutting Other Private Property
a. A landscaped strip at least ten (10) feet in width shall be provided between rights-of-way and any abutting off-street parking, loading, or vehicle use areas. Landscaping shall include any combination of evergreen hedges, dense vegetation, earth berm, grade, change in grade, wall, bio-swales or fence, forming a permanent year-round screen, except in clear vision areas as per Section 16.58.030.
b. ~~Rear (flag) lot~~The access drive~~s~~ to a rear lot (i.e. flag lot) shall be separated from abutting property(ies) by a minimum of forty-two inch (42") sight-obscuring fence or a 42"-72" high landscape hedge within a four (4) foot wide landscape buffer. Alternatively, where existing mature trees and vegetation are suitable, the City Manager or Manager's designee ~~Planning Supervisor~~ may waive the fence/buffer in order to preserve the mature vegetation.
(Ord. 86-851 § 3)

3. Perimeter Landscaping
A ten (10) foot wide landscaped strip shall be provided between off-street parking, loading, or vehicular use areas on separate abutting properties or developments. A minimum six (6) foot high sight-obscuring fence or plantings shall also be provided, except where equivalent screening is provided by intervening buildings or structures.
(Ord. 86-851 § 3)

4. Interior Landscaping

A minimum of fifty percent (50%) of required parking area landscaping shall be placed in the interior of the parking area. Landscaped areas shall be distributed so as to divide large expanses of pavement, improve site appearance, improve safety, and delineate pedestrian walkways and traffic lanes. Individual landscaped areas shall be no less than sixty-four (64) square feet in area and shall be provided after every fifteen (15) parking stalls in a row. Storm water bio-swales may be used in lieu of the interior landscaping standard.
(Ord. 2006-021; 86-851 § 3)

5. Landscaping at Points of Access

When a private access-way intersects a public right-of-way or when a property abuts the intersection of two (2) or more public rights-of-way, landscaping shall be planted and maintained so that minimum sight distances shall be preserved pursuant to Section 16.58.010.
(Ord. 86-851 § 3)

6. Exceptions

For properties with an environmentally sensitive area and/or trees or woodlands that merit protection per Chapters 16.142 and 16.144, the landscaping standards may be reduced, modified or "shifted" on-site where necessary in order to retain existing vegetation that would otherwise be removed to meet the above referenced landscaping requirements. The maximum reduction in required landscaping permitted through this exception process shall be no more than 50%. The resulting landscaping after reduction may not be less than five feet in width unless otherwise permitted by the underlying zone. Exceptions to required landscaping may only be permitted when reviewed as part of a land use action application.

(Ord. 2006-021)

C. Visual Corridors

Except as allowed by subsection F, new developments shall be required to establish landscaped visual corridors along Highway 99W and other arterial and collector streets, consistent with the Natural Resources and Recreation Plan Map, Appendix C of the Community Development Plan, Part II, and the provisions of Chapter 16.142.
(Ord. 91-922 § 3; 86-851)

Chapter 16.98 ON-SITE STORAGE*

Sections:

16.98.010 RECREATIONAL VEHICLES AND EQUIPMENT
16.98.020 SOLID WASTE AND RECYCLING STORAGE
16.98.030 MATERIAL STORAGE
16.98.040 OUTDOOR SALES AND MERCHANDISE DISPLAY

* Editor's Note: Some sections may not contain a history.

16.98.010 RECREATIONAL VEHICLES AND EQUIPMENT

Recreational vehicles and equipment may be stored only within designated and improved off-street parking areas. Such areas shall meet the screening and landscaping requirements of Section 16.92.030.

16.98.020 SOLID WASTE AND RECYCLING STORAGE

All uses shall provide solid waste and recycling storage receptacles which are adequately sized to accommodate all solid waste generated on site. All solid waste and recycling storage areas and receptacles shall be located out of public view. Solid waste and recycling receptacles for multi-family, commercial, industrial and institutional uses shall be screened by six (6) foot high sight-obscuring fence or masonry wall and shall be easily accessible to collection vehicles.
(Ord. 2006-021; 86-851 § 3)

16.98.030 MATERIAL STORAGE

A. GENERALLY

Except as otherwise provided herein, external material storage is prohibited, except in commercial and industrial zones where storage areas are approved by the Review Authority as part of a site plan or as per Section 16.98.040.

(Ord. No. 2010-05, § 2, 4-6-2010; Ord. 89-901 § 1; 86-851)

B. Standards

Except as per Section 16.98.040, all service, repair, storage, and merchandise display activities carried on in connection with any commercial or industrial activity, and not conducted within an enclosed building, shall be screened from the view of all adjacent properties and adjacent streets by a six (6) foot to eight (8) foot high, sight obscuring fence subject to chapter 16.58.030. In addition, unless adjacent parcels to the side and rear of the storage area have existing solid evergreen screening or sight-obscuring fencing in place, new evergreen screening no less than three (3) feet in height shall be planted along side and rear property lines. Where other provisions of this Code require evergreen screening, fencing, or a landscaped berm along side and rear property lines, the additional screening stipulated by this Section shall not be required.

(Ord. 89-901 § 1)

C. Hazardous Materials

Storage of hazardous, corrosive, flammable, or explosive materials, if such storage is otherwise permitted by this Code, shall comply with all local fire codes, and Federal and State regulations.

(Ord. 89-901 § 1)

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Division VIII. ENVIRONMENTAL RESOURCES

Chapter 16.142 PARKS, OPEN SPACES AND TREES

16.142.050 ~~Trees Along Public Streets or on Other Public Property~~ Street Trees

A. ~~Trees Along Public Streets~~ Installation of Street Trees on New or Redeveloped Property
Trees are required to be planted to the following specifications along public streets abutting or within any new development or re-development. Planting of such trees shall be a condition of development approval. The City shall be subject to the same standards for any developments involving City-owned property, or when constructing or reconstructing City streets. After installing street trees, the property owner shall be responsible for maintaining the street trees on the owner's property or within the right of way adjacent to the owner's property.

1. ~~Tree l~~Location: Trees shall be planted within the planter strip along a newly created or improved street~~s~~. In the event that a planter strip is not required or available, the trees shall be planted on private property within the front yard setback area or within public street right-of-way between front property lines and street curb lines or as required by the City.
~~(Ord. 2006-021)~~

2. ~~Tree s~~Size: ~~A~~Trees shall have a minimum trunk diameter of two (2) inches DBH and minimum height of six (6) feet. Diameter at Breast Height (DBH) shall be measured as defined by the International Society of Arboriculture.

~~5~~3. ~~Tree t~~Types: Developments shall include a variety of street trees. The trees planted shall be chosen from those listed in 16.142.080 of this Code.

4. Required Street Trees and Spacing
a. The minimum spacing is based on the maximum canopy spread identified in the recommended street tree list in section 16.142.080 with the intent of providing a continuous canopy without openings between the trees. For example, if a tree has a canopy of 40 feet, the spacing between trees is 40 feet. If the tree is not on the list, the mature canopy width must be provided to the planning department by a certified arborist.
b. All new developments shall provide adequate tree planting along all public streets. The number and spacing of trees shall be determined based on the type of tree and the spacing standards described in a. above and considering driveways, street light locations and utility connections. Unless exempt per c. below, trees shall not be spaced more than 40 feet apart in any development.
c. A new development may exceed the 40-foot spacing requirement under section b. above, under the following circumstances;
(1). Installing the tree would interfere with existing utility lines and no substitute tree is appropriate for the site; or
(2). There is not adequate space in which to plant a street tree due to driveway or street light locations, vision clearance or utility connections, provided the driveways, street light or utilities could not be reasonably located elsewhere so as to accommodate adequate room for street trees; and
(3). The street trees are spaced as close as possible given the site limitations in (1) and (2) above.
(4). The location of street trees in an ODOT or Washington County right-of-way may require approval, respectively, by ODOT or Washington County and are subject to the relevant state or county standards.

~~3. Tree spacing: A minimum of one (1) tree for every twenty-five (25) feet of public street frontage, or two (2) trees for every buildable lot, whichever yields the greater number of trees. Double fronting lots shall have a minimum of one (1) street tree for every twenty-five (25) feet of frontage. Corner lots shall have a minimum of three (3) street trees.~~

~~4~~(5). For arterial and collector streets, the City may require planted medians in lieu of paved twelve (12) foot wide center turning lanes, planted with trees to the specifications of this subsection.

~~5. Tree types: Developments shall include a variety of street trees. The trees planted shall be chosen from those listed in 16.142.080 of this Code.~~

~~(Ord. 2006-021)~~

B. Removal and Replacement of Street Trees

The removal of a street tree shall be limited and in most cases, necessitated by the tree. A person may remove a street tree as provided in this section. The person removing the tree is responsible for all costs of removal and replacement. Street trees less than five (5) inches DBH can be removed by right by the property owner or his or her assigns, provided that they are replaced. A street tree that is removed must be replaced within six (6) months of the removal date.

1. Criteria for All Street Tree Removal for trees over five (5) inches DBH

No street tree shall be removed unless it can be found that the tree is:

a. Dying, becoming severely diseased, or infested or diseased so as to threaten the health of other trees, or

b. Obstructing public ways or sight distance so as to cause a safety hazard, or

c. Interfering with or damaging public or private utilities, or

d. Defined as a nuisance per City nuisance abatement ordinances.

2. Street trees between five (5) and ten (10) inches DBH may be removed if any of the criteria in 1. above are met and a tree removal permit is obtained.

a. The Tree Removal Permit Process is a Type I land use decision and shall be approved subject to the following criteria:

(1). The person requesting removal shall submit a Tree Removal Permit application that identifies the location of the tree, the type of tree to be removed, the proposed replacement and how it qualifies for removal per Section 1. above.

(2). The person shall post a sign, provided by the City, ~~on or~~ adjacent to the tree for ten (10) calendar days prior to removal that provides notice of the removal application and the process to comment on the application.

(3). If an objection to the removal is submitted by the City or to the City during the ten (10) calendar day period, an additional evaluation of the tree will be conducted by an arborist to determine whether the tree meets the criteria for street tree removal in Section 1. above. The person requesting the Tree Removal Permit shall be responsible for providing the arborist report and associated costs.

(4). Upon completion of the additional evaluation substantiating that the tree warrants removal per Section 1. above or if no objections are received within the 10 day period, the tree removal permit shall be approved.

(5). If additional evaluation indicates the tree does not warrant removal, the Tree Removal Permit will be denied.

3. Street trees over ten (10) inches DBH may be removed through a Type I review process subject to the following criteria.

a. The applicant shall provide a letter from a certified arborist identifying:

(1) The tree's condition,

(2) How it warrants removal using the criteria listed in Section 1. above, and identifying any reasonable actions that could be taken to allow the retention of the tree.

b. The applicant shall provide a statement that describes whether and how the applicant sought assistance from the City, HOA or neighbors to address any issues or actions that would enable the tree to be retained.

c. The person shall post a sign, provided by the City, adjacent to the tree for ten (10) calendar days prior to removal that provides notice of the removal application and the process to comment on the application.

~~c~~d. Review of the materials and comments from the public confirm that the tree meets the criteria for removal in Section 1. above.

C. Homeowner's Association Authorization

The Planning Commission may approve a program for the adoption, administration and enforcement by a homeowners' association (HOA) of regulations for the removal and replacement of street trees within the geographic boundaries of the association.

1. An HOA that seeks to adopt and administer a street tree program must submit an application to the City. The application must contain substantially the following information:
   a. The HOA must be current and active. The HOA should meet at least quarterly and the application should include the minutes from official HOA Board meetings for a period not less than 18 months (six quarters) prior to the date of the application.
   b. The application must include proposed spacing standards for street trees that are substantially similar to the spacing standards set forth in 16.142.050.A above.
   c. The application must include proposed street tree removal and replacement standards that are substantially similar to the standards set forth in 16.142.050.B above.
   d. The application should include a copy of the HOA bylaws as amended to allow the HOA to exercise authority over street tree removal and replacement, or demonstrate that such an amendment is likely within 90 days of a decision to approve the application.
   e. The application should include the signatures of not less than 75 percent of the homeowners in the HOA in support of the application.

2. An application for approval of a tree removal and replacement program under this section shall be reviewed by the City through the Type IV land use process. In order to approve the program, the City must determine:
   a. The HOA is current and active.
   b. The proposed street tree removal and replacement standards are substantially similar to the standards set forth in 16.142.050.B above.
   c. The proposed street tree spacing standards are substantially similar to the standards set forth in 16.142.050.A above.
   d. The HOA has authority under its bylaws to adopt, administer and enforce the program.
   e. The signatures of not less than 75 percent of the homeowners in the HOA in support of the application.

3. A decision to approve an application under this section shall include at least the following conditions:

a. Beginning on the first January 1 following approval and on January 1 every two years thereafter, the HOA shall make a report to the City Planning Department that provides a summary and description of action taken by the HOA under the approved program. Failure to timely submit the report that is not cured within 60 days shall result in the immediate termination of the program.
b. The HOA shall comply with the requirements of Section 12.20 of the Sherwood Municipal Code.

4. The City retains the right to cancel the approved program at any time for failure to substantially comply with the approved standards or otherwise comply with the conditions of approval.
   a. If an HOA tree removal program is canceled, future tree removals shall be subject to the provisions of section 16.142.050.
   b. A decision by the City to terminate an approved street tree program shall not affect the validity of any decisions made by the HOA under the approved program that become final prior to the date the program is terminated.
   c. If the city amends the spacing standards or the removal and replacement standards in this section (SZCDC 16.142.050) the City may require that the HOA amend the corresponding standards in the approved street tree program.

5. An approved HOA tree removal and replacement program shall be valid for 5 years; however the authorization may be extended as approved by the City, through a Type II Land Use Review.

D. Exemption from Replacing Street Trees
A street tree that was planted in compliance with the code in effect on the date planted and no longer required by spacing standards of section A.4. above may be removed without replacement provided;

1. Exemption is granted at the time of tree removal permit or Type II street tree removal approval, or authorized Homeowner's Association removal per Section 16.142.050.C. above.
2. The property owner provides a letter from a certified arborist stating that the tree must be removed due to a reason identified in the Tree Removal criteria listed in Section 16.142.050.B.1. above, and.
3. The letter describes why the tree cannot be replaced without causing continued or additional damage to public or private utilities that could not be prevented through reasonable maintenance.

E. Notwithstanding any other provision in this section, the City Manager or the Manager's designee may authorize the removal of a street tree in an emergency situation without a tree removal permit when the tree poses an immediate threat to life, property or utilities. A decision to remove a street tree under this section is subject to review only as provided in ORS 34.100.

~~Prohibited Trees and Shrubs~~
~~1. Poplar, conifer, cottonwood, willow, ailanthus, any other native tree species, and fruit and nut trees, are prohibited along public streets as such trees tend to grow in such manner as to interfere with or damage public streets and utilities, or cause an unwarranted increase in the maintenance costs of same.~~
~~2. Poplar, cottonwood, and willow trees are prohibited on other public or private property not along public streets, when, in the City's determination, such trees may tend to interfere with or damage public streets and utilities, or cause an unwarranted increase in the maintenance costs of same. English ivy, holly and Himalayan blackberries are also prohibited on public property~~
~~C. Removal and Cutting of Trees~~

~~1. For the purposes of this Section, "removal and cutting" shall be defined as the falling or removal of a tree, or any other deliberate action by any person, the natural result of which is to cause the death or substantial destruction of the tree. Prohibited removal and cutting activities do not include normal trimming or pruning when done in accordance with generally accepted arborcultural practices. The authorizations required by this subsection shall not apply to any removal or cutting associated with development activities authorized by the land use approvals contemplated by this Section 16.142.060. Subsection C of this Section shall only govern the removal or cutting of trees along public streets or of trees and woodlands on public property not part of a land use application.~~
~~2. Any tree located on public property or along public streets, as per this Section, shall not be subsequently removed or cut without the authorization of the Parks Advisory Board, unless removal or cutting is necessitated by the tree:~~
~~a. Dying, becoming severely diseased, or infested or diseased so as to threaten the health of other trees, or~~
~~b. Obstructing public ways or sight distance so as to cause a safety hazard, or~~
~~c. Interfering with or damaging public or private utilities, or~~
~~d. Being defined as a nuisance as per City nuisance abatement ordinances, or~~
~~e. Otherwise becoming a hazard to life or property, in the City's determination.~~
~~3. All requests for authorization to remove or cut trees or woodland shall be made in writing stating reasons and circumstances necessitating removal or cutting. The Parks Advisory Board shall consider the request in open session at any duly convened Board meeting. Any Board authorization for the removal and cutting of such trees or woodlands shall be made in writing, setting out the reasons for the removal or cutting, and any limitations or conditions attached thereto. Such written authorization shall be issued to the party requesting the removal or cutting, and maintained in City records, as per other Notices of Decision required by this Code. Any tree or woodland removed per this Section shall be replaced with a new tree or trees selected from Appendix J of this Code. The party initiating the request for tree or woodland removal is responsible for all costs of replacement, including installation. This Section shall apply to any party requesting tree or woodland removal or cutting, including the City.~~
~~4. In the specific circumstances listed in subsection C2 of this Section only, the City Manager or his or her designee may administratively authorize the immediate removal of such trees or woodlands without Parks Advisory Board review. Any administrative authorization for the removal or cutting of such trees or woodlands shall be made in writing setting out the reasons for the removal or cutting, and any limitations or conditions attached thereto. Such written authorization shall be issued to the party requesting the removal or cutting, and maintained in City records as per other Notices of Decision required by this Code. Any tree or woodland removed as per this Section shall be replaced with a new tree or trees selected from Appendix J of this Code. The party initiating the request for tree or woodland removal shall be responsible for all costs of said replacement, including installation. This Section shall apply to any party requesting tree or woodland removal or cutting, including the City.~~

~~D~~F. Trees on Private Property ~~c~~Causing ~~d~~Damage
Any tree, woodland or any other vegetation located on private property, regardless of species or size, that interferes with or damages public streets or utilities, or causes an unwarranted increase in the maintenance costs of same, may be ordered removed or cut by the City Manager or his or her designee. ~~without Parks Advisory Board review.~~ Any order for the removal or cutting of such trees, woodlands or other vegetation, shall be made and ~~processed as per~~reviewed under the applicable City nuisance abatement ordinances.

~~E~~G. Penalties
The abuse, destruction, defacing, cutting, removal, mutilation or other misuse of any tree planted on public property or along a public street as per this Section, shall be subject to the penalties defined by Section 16.02.040, and other penalties defined by applicable ordinances and statutes, provided that each tree so abused shall be deemed a separate offense.

**Please note that the code language for trees on public property has been removed and it is recommended that this section (former 16.142.050.C.2) be moved to chapter 12.12. of the municipal code via separate ordinance.*

THIS PORTION INTENTIONALLY LEFT BLANK REFER TO NEXT PAGE

16.142.080
A. Recommended Street Trees
TABLE INSET:

Common Name	**Botanical Name**	**Canopy Spread**
Acer - Maple		
Cavalier Norway Maple	Acer platanoides cavalier - ~~Cavalier Norway Maple~~	
Cleveland Norway Maple	p. cleveland	30’
Cleveland II Norway Maple	p. cleveland	25’
Columnar Norway Maple	p. columnare	15’
Fairway Sugar Maple (sugar maple)	p. fairway	40’
Olmsted Norway Maple	p. olmsted	20-25’
~~Summershade Maple~~	~~p. summershade~~	35-50’
Roughbark Maple	Acer triflorum	20’
Trident Maple	Acer buergeranum	20’
Rocky Mountain Glow Maple	Acer grandidentatum 'Schmidt'	15’
David's Maple	Acer davidii	20’
Metro Gold Hedge Maple	Acer campestre 'Panacek'	25’
Red Sunset Maple (Old Town)	Acer rubrum red sunset - Red Sunset Maple (Old Town) (Provided that a root barrier is installed)	25-40’
Royal Red Maple	r. royal red	20-25’
Gerling Red Maple	r. gerling	25-35’
Tilford Red Maple	r. tilford	30’
Carpinus - Hornbeam		
Pyramidal European Hornbeam	Carpinus betulus ~~pyramidals~~ pyramidalis	30-40’
Pyramidal European Hornbeam	b. columnaris	15’
Pyramidal European Hornbeam	b. fastigiata	15-20’
	~~**Cercidiphyllum - Katsura Tree**~~	
	~~c. japonicum~~	20-50”

Eastern Redbud	~~Cercix~~Cercic, canadenis - Canadian Red Bud	10-20’
Fraxinus - Ash		
	~~americana~~	35-50’
	~~americana~~	35-50’
Dr. Pirone Ash	angustifolia dr. pirone	
	~~oxycarpa flame~~	
Raywood Ash	raywoodi	20’
Oregon Ash	latifolia	25-40’
Ginkgo		
	~~bilboa~~	50-60’
Autumn Gold	bilboa	25-35’
Fairmount	bilboa	15-25’
Gleditsia		
Honey Locust	triacanthos sunburst	20-30’
Liquidamber		
American Sweetgum	styraciflua	40’
Liriodenrod		
	~~tulipifera~~	30-50’
Magnolia		
Evergreen Magnolia	grandiflora vars	
Southern Magnolia	grandiflora	40’
Dr. Merrill Magnolia	kobus dr. merrill	15-20’
Edith Bogue Magnolia	Magnolia grandiflora 'Edith Bogue'	15’

	~~Platanus~~	
	~~aceriflora~~	65-80’
Purnus - Cherry - Plum		
Double Flowering Cherry	avium plena	30-40’
Scanlon Globe Cherry	avium scanlon	30-40’
Japanese Cherry	serrulata vars (nonweeping)	15-30’
Okame Cherry	okame	20-30’
Blireana Plum	blireana	20’
~~Newport Plum~~	~~cerasifera newport~~	~~15-20’~~
Pissardi Plum	pissardi	10’
~~Thundercloud Plum~~	~~thundercloud~~	~~20’~~
Krauter's Vesuvius Plum	vesuvius	15’
Amur Chokecherry	maacki	25-30’
Redbark Cherry	serrula	20-30’
~~Alberti Cherry~~	~~padus alterti~~	10-20’
~~Spaethi Cherry~~	~~spaethi~~	~~15-20’~~
~~Chokecherry~~	~~virginiana var. mellanocarpa canada red~~	~~10-20’~~
European Birdcherry	padus	35’
Bigflowered Birdcherry	grandiflora	10-20’
Rancho Birdcherry	berg	15-20’
Purpleleaf Birdcherry	purpurea	10-20’
Prairifire Crabapple	Malus 'Prairifire'	20’
Quercus		
Crimson Spire Oak	Quercus alba x Q. robur 'Crimschmidt'	15’
Pin Oak	palustris	35’
	~~rubra~~	30-50’
Tilia - Linden		

American Linden	americana	35-40’
Little Leaf Linden	cordata	40’
	~~glenleven~~	
	~~redmond~~	
Crimean Linden	euchlora	20-30’
Silver Linden	tomentosa	40’
Bicentennial Linden	bicentennial	30’
Greenspire Linden	greenspire	20’
Salem Linden	salem	20-30’
Chancellor Linden	Tilia cordata 'Chancole'	20’

B. Recommended Street Trees under Power Lines
Acer ginnala -- Amur Maple 20’ spread
Acer campestre -- Hedge Maple 30’ spread
Acer palmatum -- Japanese Maple 25’ spread
Acer griseum -- Paperbark Maple 20’ spread
Acer circinatum -- Vine Maple 25’ spread
Amelanchier x grandiflora -- Apple Serviceberry 20’ spread
Amelanchier Canadensis -- Shadblow Serviceberry 20’ spread
Cercis Canadensis -- Eastern Redbud 25-30’ spread
Clerodendrum trichotomum -- Glorybower Tree 20’ spread
Cornus florida -- Flowering Dogwood 20-25’ spread
Cornus kousa -- Japanese Dogwood 25’ spread
Crataegus phaenopyrum -- Washington Hawthorn 25’ spread
Crataegus x lavellei -- Lavelle Hawthorn 20’ spread
Fraxinus excelsior globosum -- Globe-Headed European Ash 12-15’ spread
Fraxinus ornus -- Flowering Ash 20-30’ spread
Fraxinus oxycarpa aureopolia -- Golden Desert Ash 18’ spread
Koelreuteria paniculata -- Goldenrain Tree 10-20’ spread
Laburnum x waterii -- Golden Chain Tree 15’ spread
Malus -- Flowering Crabapple 20-25’ spread
Prunus -- Flowering Cherry 20-25’ spread
Pyrus calleryana -- Flowering Pear "Cleveland Select" 20 spread
Styrax japonica -- Japanese Snowbell 25’ spread
Syringa reticulata -- Japanese Tree Lilac 20-25’ spread

C. Prohibited Street Trees
Acer, Silver Maple
Acer, Boxelder
Ailanthus, gladulosa - Tree-of-heaven
Betula; common varieties of Birch
Ulmus; common varieties of Elm
Morus; common varieties of Mulberry
Salix; common varieties of willow

Coniferous Evergreen (Fir, Pine, Cedar, etc.)
Populus; common varieties of poplar, cottonwood and aspen
Female Ginkgo

D. Alternative Street Trees
Trees that are similar to those on the recommended street tree list can be proposed provided that they are non-fruit bearing, non-invasive and not listed on the prohibited street tree list. A letter from a Certified Arborist must be submitted, explaining why the tree is an equivalent or better street tree than the recommended street trees that are identified in this section.

Council Meeting Date: February 1, 2011

Agenda Item: Public Hearing

TO: Sherwood City Council

FROM: Zoe Monahan, Assistant Planner and Julia Hajduk, Planning Manager
Through: Tom Pessemier, Community Development Director

Subject: Code Clean-Up Phase 1.5 (Chapter 12 amendments)

EXECUTIVE SUMMARY

Summary*:* As a part of the Code Clean-up process, the Planning Commission has recommended relocation of the standards for trees on public property and new standards to implement an HOA process to be located in Chapter 12 under a separate ordinance. The Planning Commission recommendation for amendments to the development code coupled with the attached amendments to the Chapter 12 of the Municipal Code. The Chapter 12 amendments are Exhibit 1.

Previous Council Action: None

Background/Problem Discussion: Exhibit 1 contains the proposed changes to Chapter 12. The Council, in the proceeding agenda item was asked to make changes to remove the "Trees on Other Public Property" out of the development code to make it clear that they are not land use decisions however there is still an identified need to have a review process for the removal of trees on public property. The regulation of these trees will fit best in Chapter 12 as this section of the municipal code addresses parks. The Parks Advisory Board will continue to regulate these trees.

Also, the addition of the homeowner's association authorization process creates a need to have regulations for their approval and appeal process.It has been determined that this process is best located in Chapter 12 as well the homeowner's association decisions will not be a land use decision.

Alternatives: Approve, approve with modifications or deny the Planning Commission recommendation.

Financial Implications: None

Recommendation: Staff recommends that the City Councilhold a public hearing and determine whether to adopt the attached Ordinance or direct staff to make additional modifications to the proposed text changes based on additional information submitted.

Attachments:

Ordinance
Exhibit 1– Proposed amendments to chapter 12.

City of Sherwood Oregon
Home of the Tualatin River National Wildlife Refuge

ORDINANCE 2011-002

AN ORDINANCE AMENDING TITLE 12.12 and 12.20 OF THE MUNICIPAL CODE RELATING TO TREES ON OTHER PUBLIC PROPERTY AND HOMEOWNER'S ASSOCIATION AUTHORIZATION TO REVIEW TREE REMOVAL

WHEREAS, the City adopted section 12.12 into Municipal Code in 1974 via Ordinance 653 § 1-24, which established Chapter 12.12 Parks and Other Public Areas; and

WHEREAS, theZoning and Community Development Code language addressing "trees on other public property" was adopted by Ordinance 91-922 § 3 as a part of a periodic review; and

WHEREAS, the "trees on other public property" regulations were removed from Chapter 16.142.050 by Ordinance 2011-001 to make it clear that the Parks Advisory Boards decision to remove trees on other public property is not a land use decision; and

WHEREAS, The Parks Advisory Board and the city want to retain the process to review "trees on other public property"; therefore the removed code language should be inserted into Chapter 12.12 Parks and Other Public Areas; and

WHEREAS, Ordinance 2011-001 also established a process to authorize homeowner's associations to review street trees in their neighborhoods which also requires code requirements that describe the responsibilities and appeal process; and

WHEREAS, once authorization is granted to an HOA through a land use action the subsequent HOA decisions are not land use actions; and

WHEREAS, the proposed Homeowner's Association authorization standards should be added to the municipal code as chapter 12.20;

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. Findings. After full and due consideration of the evidence presented, the Council finds that the text of the Sherwood Municipal Code shall be amended to include chapter 12.12.190 "Trees on Other Public Property (not street trees)" and the addition of chapter 12.20 "Homeowner's Association Authorization"; therefore, the Council adopts the amendments contained in Exhibit 1.

Section 2. Approval. The proposed amendment for the Municipal Code Amendment identified in Exhibit 1, is hereby **APPROVED**.

Section 3. Manager Authorized. The City Manager is hereby directed and authorized to take such action as may be necessary to document this amendment, including necessary updates to Chapter 12 of the municipal code in accordance with applicable City ordinances and regulations.

Section 4. Effective Date. This ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

Duly passed by the City Council this 1st day of February 2011.

_____
Keith S. Mays, Mayor

Attest:

_____
Sylvia Murphy, CMC, City Recorder

	AYE	NAY
Luman	____	____
Langer	____	____
Butterfield	____	____
Folsom	____	____
Henderson	____	____
Grant	____	____
Mays	____	____

Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES
Chapters:
12.02 Right-of-Way Permits
12.04 Street Construction Specifications
12.08 Sidewalks Construction and Repair
12.12 Parks and Other Public Areas
12.16 Utility Facilities in Public Right-of-Way
12.20 Street Tree – Homeowner's Association Authorization

Chapter 12.12 PARKS AND OTHER PUBLIC AREAS
Sections:
12.12.010 Policy of city council.
12.12.020 Delegation of authority.
12.12.030 Regulations prescribed by council.
12.12.040 City employees not affected.
12.12.050 Closures.
12.12.060 Damage--Payment for restoration.
12.12.070 Parks--Sales and services for hire restricted.
12.12.080 Parks--Advertising and decorative devices forbidden.
12.12.090 Parks--Intoxicating liquor prohibited.
12.12.100 Parks--Rubbish accumulation prohibited.
12.12.110 Parks--Vandalism prohibited.
12.12.120 Parks--Firearms or fireworks prohibited.
12.12.130 Parks--Molesting animals, birds and fish prohibited.
12.12.140 Parks--Fishing and bathing restrictions.
12.12.150 Parks--Notice mutilation prohibited.
12.12.160 Parks--Animals running at large prohibited.
12.12.170 Parks--Use of established entrance required.
12.12.180 Parks--"No admittance" areas.
12.12.190Parks -- Trees on Other Public Property (not street trees)
12.12.~~190~~ 200 Permit for large groups required.
12.12.~~200~~ 210 Permit--Exhibition required.
12.12.~~210~~ 220 Permit--Subject to ordinances and regulations.
12.12.~~220~~ 230 Public convenience stations.
12.12.~~230~~ 240 Traffic regulations.
12.12.~~240~~ 250 Violation--Penalty.

12.12.010 Policy of city council.
The city council, except as otherwise expressly provided, declares its intention to exercise general supervision, management and control of all public parks, public parkways, public squares, public grounds, including but not restricted to streets, boulevards, paths, sidewalks, greenways, rest areas, playgrounds and other areas, hereinafter collectively referred to as "public areas," whether publicly or privately owned, dedicated, leased or otherwise set aside for public use and not under the supervision or control of any other public agency; and the council declares its intention to prescribe rules and regulations as herein set forth or from time to time as necessary, with respect to such public areas.

All public areas as herein designated for general public use shall be kept and maintained for the use and benefit of the public, subject to such reasonable and necessary rules and regulations as herein prescribed or as may be from time to time adopted to protect and preserve the enjoyment, convenience and safety of the general public in the use thereof.
(Ord. 653 § 1, 1974)

12.12.020 Delegation of authority.
The city administrator is authorized to make such reasonable rules and regulations and to establish permit fees and permit deposits not inconsistent with this and other city ordinances and the policies of the council as herein enunciated, as may be necessary for the control and management of the public areas hereinabove designated. All such rules and regulations shall be set forth in writing, be reviewed and approved by the city park commission to the extent deemed necessary by the city administrator, shall be posted in conspicuous places in the areas affected thereby, for the guidance of the general public and individual users. When adopted, one copy of each rule and regulation shall be kept and maintained in a file for that purpose in the office of the city recorder with the approval of the park commission endorsed thereon.
If any person feels aggrieved by any such rule or regulation, he or she may appeal to the council by filing with the city recorder a remonstrance against such rule or regulation, which shall be placed on the agenda of the council at its next regular meeting; and until amended or repealed by the council, such rule or regulation shall remain in full force and effect.
(Ord. 653 § 2, 1974)

12.12.030 Regulations prescribed by council.
The council finds that it is in the public interest and necessary for the peace, health and safety of the general public that the rules and regulations set forth in this chapter be enforced, and for the purposes herein set forth are adopted.
(Ord. 653 § 3, 1974)

12.12.040 City employees not affected.
Nothing contained herein shall prevent the performance of any act or duty by city employees which has been duly authorized by the park commission, city administrator or public works director or police department.
(Ord. 653 § 4, 1974)

12.12.050 Closures.
No person shall ride, drive or walk on such parts or portions of the parks or pavements as may be closed to public travel, or interfere with barriers erected against the public.
(Ord. 653 § 5, 1974)

12.12.060 Damage--Payment for restoration.
A. Owners or persons in control of, or persons who permit the entry of, any dog, horse or other animal into any public area under the control of the city, in addition to any penalties imposed by this chapter for violation hereof, shall be held liable for, and shall pay to the city, the full value of repair or restoration of any public property damaged or destroyed; and if not paid upon demand by the city, recovery of same may be sought by action brought in the name of the city in any court of competent jurisdiction.

B. Any person who shall utilize the public areas herein described and who shall damage or destroy any public property under the control of the city, in addition to any penalties imposed by this chapter for violations hereof, shall be held liable for, and shall pay to the city, the full value of repair or restoration of any public property damaged or destroyed, and if not paid upon demand by the city, recovery of same may be sought by action brought in the name of the city in any court of competent jurisdiction.
(Ord. 653 § 6, 1974)

12.12.070 Parks--Sales and services for hire restricted.
It is unlawful for any person to sell or offer for sale an article or perform or offer to perform any service for hire in any of the parks without a written permit for such concession properly and regularly granted by the city administrator with concurrence and approval by the park commission.
(Ord. 653 § 7, 1974)

12.12.080 Parks--Advertising and decorative devices forbidden.
It is unlawful for any person to place or carry any structure, sign, bulletin board or advertising device of any kind whatever, or erect any post or pole or the attachment of any notice, bill, poster, sign wire, rod or cord to any tree, shrub, fence, railing, fountain, wall, post or structure, or place any advertising, decorative or other device of any kind whatever, on any of the bases, statues, bridges or monuments in any park; provided, that the park commission may by a written permit, allow the erection of temporary decoration on occasions of public celebration or holidays.
(Ord. 653 § 8, 1974)

12.12.090 Parks--Intoxicating liquor prohibited.
It is unlawful for any person to take into or upon any park any intoxicating liquor, for other than his or her own use. No intoxicated person shall enter or remain in any of the parks. The sale or dispensing of malt beverages containing not more than four percent of alcohol by weight, shall be allowed only after obtaining a permit to do so from the city park commission, subject to approval of the city council and the Oregon Liquor Control Commission.
(Ord. 653 § 9, 1974)

12.12.100 Parks--Rubbish accumulation prohibited.
It is unlawful for any person to obstruct the free use and enjoyment of any park by misuse of refuse containers or by placing any straw, dirt, chips, paper, shavings, shells, ashes, swill or garbage, or other rubbish, or refuse or debris, in or upon any park, or to distribute any circulars, cards or other written or printed matter in any park.
(Ord. 653 § 10, 1974)

12.12.110 Parks--Vandalism prohibited.
It is unlawful for any person to remove, destroy, break, injure, mutilate or deface in any way any structure, monument, statue, vase, fountain, wall, fence, railing, vehicle, bench, tree, shrub, fern, plant, flower or other property in any park.
(Ord. 653 § 11, 1974)

12.12.120 Parks--Firearms or fireworks prohibited.

It is unlawful for any person to use firearms, firecrackers, fireworks, torpedoes or explosives of any kind in any park.
(Ord. 653 § 12, 1974)

12.12.130 Parks--Molesting animals, birds and fish prohibited.
It is unlawful for any person to use any weapon, stick, stone or missile of any kind to the destruction, injury, disturbance or molestation of any wild or domestic animal, fowl or fish within the park limits.
(Ord. 653 § 13, 1974)

12.12.140 Parks--Fishing and bathing restrictions.
It is unlawful for any person to fish, wade, swim or bathe in any of the parks except in the places designated by regulation for such purposes. The park commission shall have authority to allow fishing in the waters of any park of the city by posting adjacent to such waters a sign or signs stating that such fishing is authorized, and by posting age limits, such fishing may be restricted to juveniles or other persons under the age as designated by the sign; and it is unlawful for any person over the age limit as posted to fish in any such waters of a city park.
(Ord. 653 § 14, 1974)

12.12.150 Parks--Notice mutilation prohibited.
It is unlawful for any person to injure, deface or destroy any notice of the rules and regulations for the government of the parks which shall have been posted or permanently fixed by order or permission of the park commission.
(Ord. 653 § 15, 1974)

12.12.160 Parks--Animals running at large prohibited.
It is unlawful for the owner, possessor or keeper of any animal to permit such animal to roam at large in any park, and, if such animal is found in any park, it may be impounded.
(Ord. 653 § 16, 1974)

12.12.170 Parks--Use of established entrance required.
No one shall enter or leave the parks except at an established entrance, and no one shall enter or remain in the parks after the hours fixed by regulation.
(Ord. 653 § 17, 1974)

12.12.180 Parks--"No admittance" areas.
No person shall enter any building, enclosure, or place within any of the parks upon which the words, "no admittance" shall be displayed or posted by sign, placard or otherwise.
(Ord. 653 § 18, 1974)

12.12.190 Parks -- Trees on Other Public Property (not street trees)
Trees and woodlands on public property shall be preserved to provide clean air and a natural environment for the community.
A. The Parks Advisory Board may authorize or require the removal of any tree on public property, excluding a street tree, that is;

1. Dying, becoming severely diseased, or infested or diseased so as to threaten the health of other trees;

2. Obstructing public ways or sight distance so as to cause a safety hazard;
3. Interfering with or damaging public or private utilities;
4. A nuisance under City nuisance abatement ordinances; or
5. Otherwise constitutes a hazard to life or property, in the City's determination.

B. The City Manager or Manager's designee may order the removal of a tree on public property in an emergency situation without Parks Advisory Board approval when the tree poses an immediate threat to life, property or utilities. A decision to remove a tree on public property under this section is subject to review only as provided in ORS 34.100.

C. A tree that is removed under this section must be replaced unless it is determined by a certified arborist that it cannot be replaced without additional or continued damage to public or private utilities that cannot be prevented through reasonable maintenance.

12.12.~~190~~ 200 Permit for large groups required.

Use of the public areas herein described for organized group picnics, political or religious gatherings, or groups consisting of more than one hundred fifty (150) persons in attendance at any one time, is unlawful unless a written permit has been issued with the approval of the park commission or designated agent thereof.

(Ord. 653 § 19, 1974)

12.12.~~200~~ 210 Permit--Exhibition required.

Any person claiming to have a permit from the city shall produce and exhibit such permit upon request of the park commissioner or the police department.

(Ord. 653 § 20, 1974)

12.12.~~210~~ 220 Permit--Subject to ordinances and regulations.

All permits issued by the city shall be subject to the city's ordinances. The persons to whom such permits are issued shall be bound by the rules, regulations and ordinances as fully as though the same were inserted in such permits. Any person or persons to whom such permits shall be issued shall be liable for any loss, damage or injury sustained by any person whatever by reason of the negligence of the person or persons to whom such permit shall be issued, as well as for any breach of such rules, regulations and ordinances, to the person or persons so suffering damages or injury.

(Ord. 653 § 21, 1974)

12.12.~~220~~ 230 Public convenience stations.

A. It is unlawful for any person to blow, spread or place any nasal or other bodily discharge, or spit, urinate or defecate on the floors, walls, partitions, furniture, fittings, or on any portion of any public convenience station or in any place in such station, excepting directly into the particular fixture provided for that purpose. Nor shall any person place any bottle, can, cloth, rag, or metal, wood or stone substance in any of the plumbing fixtures in any such station.

B. It is unlawful for any person to stand or climb on any closet, closet seat, basin, partition or other furniture or fitting, or to loiter about or push, crowd or otherwise act in a disorderly manner, or to interfere with any attendant in the discharge of his or her duties, or whistle, dance, sing, skate, swear, or use obscene, loud or boisterous language within any public convenience station, or at or near the entrance thereof.

C. It is unlawful for any person to cut, deface, mar, destroy, break, remove or write on or scratch any wall, floor, ceiling, partition, fixture or furniture; or use towels in any improper

manner, or waste soap, toilet paper, or any of the facilities provided in any public convenience station.
(Ord. 653 § 22, 1974)

12.12.~~230~~ 240 Traffic regulations.
Except as may be otherwise specifically prescribed by this chapter or other city ordinances, the motor vehicle code of the city regulating street traffic shall be in full force and effect in all public areas described in this chapter.
The following regulations are made applicable to public areas within the city and subject to the city's control:
A. No one shall ride or drive any bicycle, motorcycle, motor vehicle, truck, wagon, horse, or any vehicle or animal in any part of the parks, except on the regular drives designated therefor; provided, that baby carriages and such vehicles as are used in the park service are not included in the foregoing prohibition.
B. No one shall drive any moving van, dray, truck, heavy-laden vehicle, or vehicle carrying or ordinarily used in carrying merchandise, goods, tools, materials or rubbish, except such as are used in the park service, over any drive or boulevard in any of the parks; provided, however, the city park commission in its discretion may grant permission in writing for vehicles to carry materials over park drives or boulevards to buildings abutting on parks when no other road, street or way is accessible or passable.
C. No one shall hitch horses or other animals to any tree, shrub, fence, railing or other structure, except such as are provided for such purpose, or allow horses or other animals to stand unhitched while the rider or attendant is beyond reach of such horse or other animal.
D. It is unlawful for any person to park any motor vehicle on any park or playground area in the city, except in regularly designated parking areas. The police department shall have and exercise authority to tow any vehicle found parked in a park or playground area not designated for parking purposes, and to impound such vehicle and to impose and collect the fees for towing and storage.
E. It is unlawful for any person to store, park or leave standing unattended for a continuous period of more than twenty-four (24) hours, any motor vehicle, boat, trailer, conveyance or other personal property within any public area under the city's control.
(Ord. 653 § 23, 1974)

12.12.~~240~~ 250 Violation--Penalty.
Any person violating any provision of this chapter or any rule or regulation adopted pursuant hereto, upon conviction, shall be punishable by a fine of not more than five hundred dollars ($500.00).
(Ord. § 98-1049 § 7: Ord. 653 § 24, 1974)

12.20Street Tree – Homeowner's Association Authorization:

12.20.010 Purpose

The purpose of this section is to allow an active homeowners association to regulate the assessment, removal and replacement of street trees within the boundaries of the association in a

less regulatory manner than required under the Sherwood Development Code (SZCDC 16.142). It is intended by the city that a homeowners association that is delegated authority under this section will adopt, administer and enforce a system of regulations for the evaluation and, if necessary, removal and replacement of street trees in the public right-of-way that is substantially similar to the system of regulations set forth in the city development code. It is further intended that a street tree program administered by the HOA will allow greater flexibility to assess and craft solutions for the management of street trees within the boundaries of the HOA and at less cost to the property owner and the community.

12.20.020 Authority of Homeowners Association to Adopt and Administer Program

A. A homeowners' association (HOA) may apply to the city under SZCDC 16.142 for authority to adopt, administer and enforce a program for regulating the assessment, removal and replacement of street trees within the boundaries of the association. An HOA with an approved street tree program shall administer and enforce the program as approved by the city.

B. For purposes of this section 12.20, a "street tree" is a tree that is planted within the planter strip along a street. In the event that a planter strip is not required or available, the trees shall be planted on private property within the front yard setback area or within public street right-of-way between front property lines and street curb lines or required by the City.

12.20.030 Adoption into Bylaws

An HOA that is approved to administer a program for street tree removal and replacement shall incorporate the program standards and procedures into its bylaws. A copy of the amended bylaws must be submitted to the City Planning Department on the January 1 immediately following adoption. In the event the provisions in the bylaws concerning the street tree program are amended, the HOA shall submit a copy of the amendments to the City Planning Department within 90 days of the amendment.

12.20.040 Final Decision by HOA; Appeal

A. An HOA with an approved street tree program shall include in the program an opportunity to appeal a decision by the HOA. If the decision is made by a person or committee that is subordinate to the HOA Board, the program shall allow for an appeal to the Board. A final decision by the HOA Board must be in writing and must set forth the basis for the decision. A copy of the written decision must be provided to the affected property owner and to the person who filed the appeal, if different, within five business days of the date the decision.

B. A final decision by the HOA Board may be appealed to the city manager within 14 days of the date of the final decision. The appeal shall be in writing and shall include a description of the error alleged in the board's decision.

1. Upon receipt of an appeal, the city manager shall set a date for the matter to be heard by the city manager in the regular course of business. The person filing the appeal, the affected property owner, and the HOA Board may appear and submit written and verbal testimony and evidence. The person filing the appeal has the burden of proving by substantial evidence that the Board made a legal or factual error in its decision.

2. The City manager may request testimony or evaluation of the evidence by the city planning manager for the purpose of substantiating the claims made by the parties. The person filing the appeal shall have an opportunity to rebut any evidence submitted by the planning manager.

3. The city manager shall determine whether the HOA Board made a decision that is in substantial compliance with the street tree program as approved by the City. The city manager may make an independent assessment of substantial compliance with the applicable standards and procedures and is not limited to the record that was before the HOA Board.

4. The city manager shall issue a written decision within 30 days of the date of the hearing. The decision shall set forth the basis for the decision and the evidence relied upon. The city manager's decision is final, subject to review only as provided in ORS 34.010 to 34.100.