



## Eugene Code Chapter 6

### Tree Preservation

**6.300 Definitions.** As used in section 6.305 to 6.330 of this Code, the following definitions apply:

**Fell.** To remove or sever a tree or the intentional use of any procedure the natural result of which is to cause the death or substantial destruction of the tree. Fell does not in any context include normal trimming, pruning, or topping of trees.

**Heritage tree.** Any tree of exceptional value to our community based on its size (relative to species), history, location, or species, or any combination of these criteria. The specific methodology for classifying a tree as a heritage tree shall be established by administrative rule of the city manager adopted pursuant to section 2.019 of this code.

**Logging plan.** A document describing the equipment to be used on site, the access roads, grading, skid paths and any other environmental change that will be affected to permit logging, as well as mitigation efforts designed to protect from the negative effects of the logging process all wetlands, riparian zones, habitat, neighboring residences, and such other areas as the city manager or designee determines is appropriate.

**Occupied parcel.** Real property within the boundaries of an ad valorem tax lot description as found in the Lane County, Oregon, ad valorem tax records with one or more dwellings thereon, or a parcel which has been approved for a dwelling.

**Parcel.** Real property within the boundaries of an ad valorem tax lot description as found in the Lane County, Oregon, ad valorem tax records.

**Plot plan.** Final subdivision plat, final PUD plan, or final major or minor partition, encompassing an entire contiguous ownership.

**Street tree.** A living, standing woody plant typically having a single trunk at least 1-1/2 inch in diameter at a point six inches above mean ground level at the base of the trunk, that is located within the street right-of-way.

**Tree.** A living, standing, woody plant having a trunk 25 inches in circumference (or approximately eight inches in diameter) at a point 4-1/2 feet above mean ground level at the base of the trunk.

*(Section 6.300 added by Ordinance No. 17072, enacted May 20, 1974; amended by Ordinance No. 18122, enacted February 22, 1978; Ordinance No. 18123, enacted March 13, 1978; Ordinance No. 18779, enacted April 22, 1981; Ordinance No. 19927, enacted July 12, 1993; and Ordinance No. 20056, enacted August 5, 1996, effective September 4, 1996.)*

## Tree Removal Standards

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### 6.305 Tree Felling Prohibition.

- (1) Except as provided in section 6.330, no person may fell more than five trees within a period of 12 consecutive months from a parcel of private property consisting of 20,000 or more square feet of area without a permit.
- (2) Except as provided in section 6.330, no person may fell one or more trees from a parcel of private property consisting of less than 20,000 square feet of area without a permit.
- (3) Notwithstanding subsections (1) and (2) of this section and section 6.330(b) of this code, no person shall remove a street tree without first obtaining a permit from the city manager specifically authorizing the removal of a street tree. Permit approval may be conditioned upon replacement of the street tree with another tree pre-approved by the city, or a requirement to pay to the city an amount sufficient to fund the planting and establishment by the city of a tree of similar value. The value of the existing street tree to be removed shall be calculated using the methods set forth in the edition then in effect of the Guide for Plant Appraisal published by the International Society of Arboriculture Council of Tree Landscape Appraisers.
- (4) Notwithstanding subsections (1) and (2) of this section and section 6.330(b) of this code, no person shall fell a heritage tree from within the public right-of-way except where such removal, and authorization for its removal, has been granted by the city because its removal is necessary to protect the public health, safety, or welfare.

*(Section 6.305 added by Ordinance No. 17072, enacted May 20, 1974; amended by Ordinance No. 18122, enacted February 22, 1968; Ordinance No. 18123, enacted March 13, 1978; Ordinance No. 19927, enacted July 12, 1993; and Ordinance No. 20056, enacted August 5, 1996, effective September 4, 1996.)*

### 6.310 Procedure for Obtaining Tree Felling Permit.

- (1) A person shall apply to the city manager or designee for a tree felling permit, on an application form developed by the city manager or designee.
- (2) The application shall be accompanied by an application fee in an amount established by the city manager pursuant to section 2.020 of this code.
- (3) The application also shall be accompanied by a logging plan if the applicant proposes to fell more than ten trees.
- (4) If the applicant proposes to fell ten or less trees, then the city manager or designee shall act on the permit within ten business days of receiving a completed application. The city manager or designee may extend the response time to up to 30 days if he/she determines that public notice of the application should be given and public comment taken pursuant to subsection (6) of this section, because substantial impacts on neighboring properties or on other natural values are anticipated.
- (5) If the applicant proposes to fell more than ten trees, then the city manager or designee shall act on the permit within 30 days of receiving a completed application, but only after giving public notice of the application and an opportunity to provide comments as provided in subsection (6) of this section.

## Tree Removal Standards

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- (6) Where public notice and a comment period is required before acting on an application, the city manager or designee shall identify abutting properties and others which are partly or wholly within 200 feet of the site on which the trees are to be felled. Written notice of the application shall be mailed by the city manager or designee to the owners and occupants of the identified properties, as well as to persons who have requested such notice. The notice shall provide that persons may submit written comments on the application as directed in the notice, for a period of 15 days from the date of the notice.

*(Section 6.310 added by Ordinance No. 17072, enacted May 20, 1974; amended by Ordinance No. 18123, enacted March 13, 1978; Ordinance No. 18779, enacted April 22, 1981; and Ordinance No. 19927, enacted July 12, 1993.)*

### **6.320 Criteria for Permit Issuance.**

- (1) The city manager or designee shall approve, approve with conditions, or deny a permit application based on consideration of the following criteria:
- (a) The condition of the trees with respect to disease, hazardous or unsafe conditions, danger of falling, proximity to existing structures or proposed construction, or interference with utility services or pedestrian or vehicular traffic safety;
  - (b) The topography of the land and the effect of felling on erosion, soil retention, stability of earth, flow and character of surface waters and streams, protection of nearby trees and windbreaks;
  - (c) The effect the trees' removal has on the environmental quality of the area, including scenic and wildlife habitat values;
  - (d) The necessity to remove trees in order to construct proposed improvements, or to otherwise utilize the applicant's property in a manner consistent with its zoning, this code, the Metro Plan, and other applicable adopted plans;
  - (e) Fire safety considerations where, in the opinion of the fire marshal, removal is necessary to protect existing or proposed structures;
  - (f) The adequacy of the applicant's proposals, if any, to plant new trees or native vegetation to mitigate the environmental effects of removal of the trees to be felled; and
  - (g) That the felling would be compatible with generally accepted principles of horticulture, silvaculture, ecology, or landscape architecture;
  - (h) The compatibility of the felling with guidelines adopted by the Oregon Department of Forestry.
- (2) In the event a plot plan for full development of the site has not been approved by the city, felling of trees shall be permitted only on a limited basis consistent with the preservation of the site's future development potential and preservation of important natural values as prescribed in the Metro Plan and this code, and consistent with the following criteria:
- (a) Wooded areas associated with natural drainage ways and water areas shall be retained to preserve riparian habitat and to minimize erosion;
  - (b) Wooded areas that will likely provide an attractive on-site amenity to occupants of future developments shall be retained;

## Tree Removal Standards

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- (c) Wooded areas along ridgelines and hilltops shall be retained for their scenic and wildlife habitat values;
  - (d) Wooded areas along property lines shall be retained to provide buffers from adjacent properties;
  - (e) Trees shall be retained in sufficiently large areas and dense stands so as to ensure against windthrow;
  - (f) Clear cuts of developable areas shall be avoided so as to retain a wooded character of future building sites, and preserve housing and design options for future city residents.
- (3)** The city manager or designee may attach conditions to the approval of a permit to ensure the replacement of trees, landscape or otherwise reduce the effects of the felling, and may require the posting of a bond to ensure that all conditions are met.

*(Section 6.320 added by Ordinance No. 17072, enacted May 20, 1974; amended by Ordinance No. 18053, enacted September 26, 1977; Ordinance No. 18123, enacted March 13, 1978; and Ordinance No. 19927, enacted July 12, 1993.)*

**6.325 Appeal.** Any person who is denied a permit, or is granted a permit with conditions, may appeal the denial or imposition of conditions, by filing a written notice of appeal with the city manager or designee within 15 days of the date of denial or the date of issuance of the permit with conditions imposed. In addition, any person who provided comments on an application pursuant to section 6.310(6), and who is dissatisfied with the action of the city manager or designee in granting a permit, whether with or without conditions, also may appeal by following the same procedures. The appeal shall be governed by section 2.021 of this code. The appeal must include the specific basis or bases upon which the appellant asserts that the decision was in error.

*(Section 6.325 added by Ordinance No. 17072, enacted May 20, 1974; amended by Ordinance No. 18123, enacted March 13, 1978; Ordinance No. 19926, enacted June 28, 1993; and Ordinance No. 19927, enacted July 12, 1993.)*

**6.330 Trees, Felling - Exceptions.** The requirements and restrictions of sections 6.305 to 6.310 of this code or rules adopted thereunder do not apply to:

- (a)** The action of any city officer or employee or of any public utility necessary to remove or alleviate an immediate danger to life or property; to restore utility service; or to reopen a public thoroughfare to traffic;
- (b)** An occupied parcel of private property consisting of less than 20,000 square feet of area;
- (c)** Felling of trees that are nuisances under section 6.010 of this code;
- (d)** Felling of trees that are in violation of section 7.640 of this code;
- (e)** Any felling necessary to install or maintain improvements such as streets and sewers within publicly owned and accepted rights-of-way or utility easements;
- (f)** That portion of a PUD and/or PUD subdivision development for which final approval has been obtained.

*(Section 6.330 amended by Ordinance No. 17072, enacted May 20, 1974; amended by Ordinance No. 18053, enacted September 26, 1977; Ordinance No. 18122, enacted February 22, 1978; Ordinance No. 18123, enacted March 13, 1978; Ordinance No. 18779, enacted April 22, 1981; Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and Ordinance No. 19927, enacted July 12, 1993.)*

# Tree Removal Standards

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**ADMINISTRATIVE ORDER NO 58 00 01 F  
of the  
City Manager of the City of Eugene**

**AMENDING AND RENAMING TREE  
PRESERVATION ADMINISTRATIVE RULE R-6.305  
AND REPEALING ADMINISTRATIVE ORDER 58-96-22-F.**

**The City Manager of the City of Eugene finds that**

**A.** Pursuant to the authority of Sections 2.019 and Sections 6.305 through 6.330 of the Eugene Code, 1971, on February 7, 2000 the City Manager issued Administrative Order No 58-00-01 proposing the amendment and renaming of Tree Preservation Administrative Rule R-6.305.

**B.** Notice was provided to the Mayor and City Councilors persons who had requested notice and by publication in the Register Guard a newspaper of general circulation within the City for at least five consecutive days to wit on February 8, 9, 10, 11, and 12, 2000, and made available for inspection by interested persons at the Public Works Department, 1820 Roosevelt Blvd., Eugene, Oregon 97402 during normal business hours (8:00 a.m. to 5:00 p.m. Monday through Friday, exclusive of holidays).

**C.** The Notice provided that interested persons could submit written comments thereon for a period of 30 days from the first date of publication. No comments were received within the time or manner required by the notice.

Therefore, based upon the above findings, and the findings in Administrative Order No. 58-00-01, I hereby rename, and amend Tree Preservation Administrative Rule R-6.305 as follows:

**TREE REMOVAL PERMIT PROGRAM**

**ADMINISTRATIVE RULE R-6.305**

**R-6.305-A                      DEFINITIONS.**

As used herein, the following words and phrases mean:

<b><u>City Manager.</u></b>	The City Manager or his or her designee.
<b><u>Clear cut.</u></b>	Any harvest unit that leaves fewer than 50 trees per acre that are well distributed over the unit and that measure at least 11 inches dbh or that measure less than 40 square feet of basal area per acre.
<b><u>Correct.</u></b>	To remedy violations in a manner that results in compliance with the requirements and conditions of a permit.
<b><u>Critical root zone.</u></b>	An area surrounding a tree trunk, having a radius of 18 inches times the diameter breast height of the tree trunk.

## Tree Removal Standards

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<b><u>Diameter breast height dbh.</u></b>	The diameter of a tree trunk or trunks measured at 4.5 feet above mean ground level at the base of the trunk or trunks. For trees with multiple trunks diameter breast height shall be the sum of the diameters of all trunks measured at 4.5 feet above mean ground level at the common base of the trunks.
<b><u>Dwelling.</u></b>	A building, or portion thereof, occupied as a home, residence, or sleeping place, by one or more families, but excluding group care facilities hotels and motels.
<b><u>Enforcement action.</u></b>	A citation, civil penalty, abatement charge, or stop work order issued, assessed, or billed against a responsible person.
<b><u>Enforcement officer.</u></b>	The Director of the City Public Works Department, or his or her designee.
<b><u>Fell.</u></b>	To remove or sever a tree or the intentional use of any procedure the natural result of which is to cause the death or substantial destruction of the tree. Fell does not in any context include normal pruning, trimming, or topping of trees in accordance with standards as defined in the American National Standards Institute ANSI Section A300. Removal of more than 30 percent of the critical root zone of a tree or severing the cambial material on more than 50 percent of the circumference of the tree will be considered substantial destruction.
<b><u>Heritage tree.</u></b>	Any tree meeting the minimum point value using the heritage tree formula contained in Section 15.2 of the Urban Forest Management Plan as adopted by the Eugene City Council on October 14, 1992.
<b><u>Hinder.</u></b>	An action that inhibits the ability of City staff to investigate or mitigate violations of the Eugene Code, 1971 (EC) or this Rule. This includes, but is not limited to, providing false information, withholding pertinent information, or refusing to cooperate with City staff or authorized contract workers.
<b><u>Illegal felling.</u></b>	Tree removal for which a tree removal permit was not first obtained or cannot be obtained retroactively that violates EC sections 6.300 – 6.330. Failure to obtain a permit within five calendar days from the date the city notifies the responsible person a permit is required constitutes illegal felling, subject to civil penalties and other enforcement actions.
<b><u>Intentional.</u></b>	For purposes of the civil penalty matrix of this rule, to deliberately cause or take action, or to deliberately not take action for the purpose of achieving a predetermined result, constitutes an intentional act.
<b><u>Logging plan.</u></b>	A document describing the equipment to be used on site, the access roads, grading, skid paths and any other environmental change that will be effected to permit logging, as well as mitigation efforts designed to protect from the negative effects of the logging process all wetlands, riparian zones, habitat, neighboring residences, and such other areas as the City Manager (or designee) determines is appropriate.
<b><u>Negligence.</u></b>	For purposes of the civil penalty matrix of this rule, failure to exercise reasonable care.

## Tree Removal Standards

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<b><u>Notice of violation.</u></b>	Written notice of a lack of adherence to a condition of a permit or failure to obtain the proper permit for felling a tree, or other violation of EC sections 6.300 – 6.330, or this rule. A notice of violation initiates the process for enforcement action.
<b><u>Notice to correct.</u></b>	Notice to correct A notice to a responsible person of a condition that is in violation of EC sections 6.300 - 6.330, a permit, or this rule, and of the time within which the correction shall be made.
<b><u>Occupied parcel.</u></b>	Real property comprising a single tax lot, upon which a dwelling has been constructed, or for which a building permit has been issued for the construction of a dwelling.
<b><u>Parcel.</u></b>	Real property within the boundaries of an ad valorem tax lot description as found in the Lane County, Oregon, ad valorem tax records.
<b><u>Plot plan.</u></b>	Final subdivision plat, final Planned Unit Development (PUD) plan, or final major or minor partition, encompassing an entire contiguous ownership.
<b><u>Protected natural resource area.</u></b>	For purposes of the civil penalty matrix of this rule, a riparian setback area, conservation area, sensitive area, wetland, or wetland buffer area.
<b><u>Responsible person.</u></b>	An individual, partnership, joint-venture, firm, company, cooperative, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity that: <ul style="list-style-type: none"> <li>(a) Owns the property on which the tree is located, or the property that abuts a public way where the tree is located; or</li> <li>(b) Is in charge of the property on which the tree is located or the property that abuts a public way where the tree is located; or</li> <li>(c) Is the person who causes the violation to come into or continue inexistence.</li> </ul>
<b><u>Street tree.</u></b>	A living, standing woody plant typically having a single trunk at least 1-1/2 inches in diameter at a point six inches above mean ground level at the base of the trunk, that is located within the street right of way.
<b><u>Tree.</u></b>	A living, standing, woody plant having a trunk or trunks with a minimum cumulative circumference of 25 inches at a point 4-1/2 feet above mean ground level at the base of the trunk or with a minimum cumulative diameter breast height (dbh) of 8 inches.
<b><u>Unavoidable accident.</u></b>	For purposes of the civil penalty matrix of this rule, a situation whereby the person responsible for the tree could not have taken any action that would have prevented the violation.
<b><u>Violation.</u></b>	Felling a tree without obtaining a permit either prior to, or retroactive to the felling; failure to adhere to the requirements of a permit; or failure to make a correction within the time required in a written notice to correct. Each tree illegally felled, each condition of a permit that is not adhered to, and each violation not corrected within the time required in the written notice constitutes a separate violation.

## Tree Removal Standards

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### **R-6.305-B            APPLICABILITY**

The felling of trees without a permit is prohibited by Sections 6.300 – 6.330 of the Eugene Code, 1971 (EC). In addition, requirements and conditions may be imposed on tree removal permits. This rule provides the process and procedures for processing applications, establishes criteria for approval, and establishes an enforcement program designed to discourage violations of a tree removal permit, EC sections 6.300 to 6.330 or this rule, and establishes a matrix for assessment of an administrative civil penalty for such violations.

### **R-6.305-C            PERMIT REQUIRED.**

1. Unless exempt pursuant to R-6.305-K, no person may fell more than five trees within a period of 12 consecutive months from a parcel of private property consisting of 20,000 or more square feet of area without first obtaining a permit.

2. Unless exempt pursuant to R-6.305-K, no person may fell one or more trees from a parcel of private property consisting of less than 20 000 square feet of area without first obtaining a permit.

3. Notwithstanding subsections 1 and 2 of this section and Section 6.330(b) of the Eugene Code 1971, no person shall remove a street tree without first obtaining a permit from the City Manager specifically authorizing the removal of a street tree, Permit approval may be conditioned upon replacement of the street tree with another tree pre-approved by the City or a requirement to pay to the City an amount sufficient to fund the planting and establishment by the City of a tree of similar value. The value of the existing street tree to be removed shall be calculated using the plant appraisal method established by the Council of Tree and Landscape Appraisers.

4. Notwithstanding subsections 1 and 2 of this section and Section 6.330(b) of the Eugene Code 1971 no person shall fell a heritage tree from within the public right-of-way except where authorization for its removal has been granted by the City because its removal is necessary to protect the public health safety or welfare.

5. If a tree is felled without a permit the responsible person may still seek a tree felling permit from the City Manager by filing an application as described in R-6.305-D and R-6.305(E). If the City Manager determines that a tree felling permit would have been granted if the responsible person had filed a complete application prior to felling the tree(s) in question, the City Manager may issue a permit in the following circumstances and subject to the following conditions:

- (a) The application is accompanied by the fee described in R-6.305-G.6;
- (b) The tree felling was not one for which public notice and comments were required under R-6.305-D;
- (c) The responsible person has already complied with or agrees to comply with all conditions imposed by the permit; and
- (d) The City Manager determines that the responsible person's failure to apply for a tree felling permit prior to felling the tree was not a knowing attempt to evade the requirements of EC 6.305 to 6.330 or these rules.

A person who obtains a permit pursuant to this subsection and complies with all the conditions therein shall not be subject to a penalty under R-3.605-I, but shall pay an enhanced fee as provided in R-6.305-G.6. A person who applies for a tree felling permit pursuant to this subsection shall have no right to appeal the denial of such permit or to appeal the conditions of the permit, if granted.



## Tree Removal Standards

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### **R-6.305-D            APPLICATION PROCEDURE.**

1. Applications for a tree felling permit shall be filed with the City Manager, on an application form developed by the City Manager. The applicant shall provide an application technical report, with supporting material as necessary, which shows how the proposed felling meets the permit approval criteria in Section R-6.305-E. The application shall be accompanied by an application fee in an amount established by the City Manager pursuant to Section 2.020 of the Eugene Code, 1971.
2. If the applicant proposes to fell more than ten trees, the application also shall be accompanied by a logging plan.
3. If the applicant proposes to fell ten or fewer trees, the City Manager shall act on the permit within ten business days of receiving a completed application. The response time may be extended by the City Manager for up to 30 business days upon a determination that public notice of the application should be given and public comment taken pursuant to subsection 5 of this section, because substantial impacts on neighboring properties or on other natural values are anticipated.
4. If the applicant proposes to fell more than ten trees, the City Manager shall act on the permit within 30 business days of receiving a completed application, but only after giving public notice of the application and an opportunity for comments as provided in subsection 5 of this section. The City Manager shall provide written notification to the applicant when an application is deemed complete and accepted for processing.
5. If public notice and a comment period is provided or required before acting on an application, the City Manager shall identify abutting properties and others which are partly or wholly within 200 feet of the site on which the trees are to be felled. Written notice of the application shall be mailed by the City Manager to the owners and occupants of the identified properties as shown on the Lane County tax assessment records, as well as to persons who have requested notice of an application to fell trees on the site. The notice shall provide that persons may submit written comments on the application as directed therein, for a period of 15 calendar days from the date of the notice. The applicant, and all persons who submitted written comments and provided a return address, shall be mailed notice of the decision of the City Manager and advised of the right to appeal the action, and the manner in which to do so.
6. The City Manager may attach conditions to the approval of a permit in order to reduce the effects of tree removal, including but not limited to conditions requiring the replacement of trees, replacement of landscaping, measures to protect the critical root zone of trees identified to be retained, measures to protect adjacent properties, and may require the posting of a performance bond. The City Manager may issue a stop work order, and may withhold future development permits, building permits, or certificates of occupancy for the site until all conditions are met.

### **R-6.305-E            CRITERIA FOR PERMIT APPROVAL.**

The City Manager shall approve, approve with conditions, or deny a tree felling permit application based on the criteria set forth in this section.

- (a) The applicant shall provide an application technical report, with supporting material as necessary, which shows how the proposed tree felling is consistent with at least one of the following three criteria:
  - (1) The trees are diseased, or otherwise present hazardous or unsafe conditions due to danger of falling, proximity to existing structures or proposed construction, or interference with utility service or pedestrian or traffic safety. To meet the criterion for removal due to hazard or unsafe conditions due to danger of falling, the applicant must provide a tree hazard report prepared by an arborist certified by the

[www.eugene-or.gov/bps](http://www.eugene-or.gov/bps)

## Tree Removal Standards

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International Society of Arboriculture which documents the existence of the hazard or unsafe condition and recommends the tree(s) removal.

(2) The trees need to be removed in order to construct improvements or otherwise utilize the property consistent with its zoning, the Eugene Code, 1971, and adopted plans. To meet the criterion for removal in order to construct improvements, the applicant must be in possession of the appropriate building or right-of-way use permit if such a permit is required to construct the improvements which necessitate the tree(s) removal.

(3) The Fire Marshal issues a written determination that the tree(s) need to be removed in order to protect from fire danger structures which exist or for which a building permit has been issued.

(b) In addition to compliance with at least one of the criteria in subsection (a) of this section, the applicant shall show in their application technical report how all tree felling complies with all of the following criteria:

(1) The logging plan meets or exceeds Oregon Department of Forestry guidelines;

(2) The methods of proposed removal and mitigation are compatible with generally accepted principles of arboriculture, horticulture, silviculture, ecology and landscape architecture;

(3) Adequacy of the proposal to plant vegetation to mitigate environmental effects of the removal of the trees to be felled To meet this criterion the applicant must detail the trees or other vegetation to be planted to mitigate the loss of the trees being proposed for removal If no mitigation planting is proposed the applicant must show why mitigation planting is not possible or appropriate;

(4) The proposal minimizes or mitigates the effect the tree removal will have on the environmental quality of the area including scenic and wildlife habitat values and;

(5) Considering the topography of the land the proposal minimizes or mitigates the effect of the felling on erosion soil retention stability of earth flow and character of surface waters and steams and nearby trees and windbreaks.

(6) Except as provided in subparagraph (7) of this subsection, no motorized vehicles other than vehicles with rubber tires shall be used to remove trees from a lot nor shall a road be constructed as part of any logging permit.

(7) An exception to the criteria of subparagraph (6) of this subsection may be granted by the City if the applicant can demonstrate to the satisfaction of the City that wooded areas along ridgelines and hilltops would be retained for their scenic and wildlife habitat values and wooded areas along property lines would be retained to provide buffers from adjacent properties.

(c) In addition to compliance with the criteria in subsections (a) and (b) of this section, in the event a plot plan for full development of the property has not been approved, the applicant shall show in the application technical report how the proposed tree felling is also in compliance with all of the following criteria:

## Tree Removal Standards

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- (1) The felling must be consistent with preservation of the site's future development potential and preservation of important natural values as prescribed in the Metro Plan and the Eugene Code, 1971;
- (2) Wooded areas associated with natural drainageways and water areas shall be retained to preserve riparian habitat and to minimize erosion;
- (3) Wooded areas that will likely provide an attractive on-site amenity to occupants of future developments shall be retained;
- (4) Wooded areas along ridgelines and hilltops shall be retained for their scenic and wildlife habitat values;
- (5) Wooded areas along property lines shall be retained to provide buffers from adjacent properties;
- (6) Trees shall be retained in sufficiently large areas and dense stands so as to ensure against windthrow; and
- (7) Clear cuts of developable areas shall be avoided so as to retain a wooded character of future building sites and to preserve housing and design options for future City residents.

### **R-6.305-F                    PERMIT ISSUANCE.**

1. Except as provided in subsection 2 of this section, a permit shall be effective on the date issued or such other date as may be specified in the permit.
2. If an application is granted after public notice and an opportunity for comment is provided under R-6.305-D-5, the permit shall not be effective for a period of 15 days from the date of the decision of the City Manager, or, in the event an appeal is filed under Section R-6.305-J, seven days from the date of the decision of the hearings officer. If no written public comment is received the permit can become effective on the date issued if the applicant waives their right to appeal. Any tree felling pursuant to the permit shall constitute a waiver of the applicant's right to appeal.
3. A permit shall expire at midnight on the one year anniversary of the effective date of the permit.
4. At the written request of the applicant, the City Manager may grant time extensions to complete the work under a permit.
  - (a) A time extension shall not exceed 12 months.
  - (b) No more than 2 two time extensions shall be granted.
  - (c) No additional trees may be removed under a time extension.

### **R-6.305-G                    ENFORCEMENT.**

1. **Abatement.** If a violation of EC 6.300 - 6.330, this rule, or a condition of a permit is occurring and the enforcement officer finds that failure to act promptly will seriously prejudice the public health, welfare, or environment, the enforcement officer may initiate abatement proceedings pursuant to EC Sections 6.005 to 6.115, and may at the same time issue a Notice of Civil Penalty without issuing any prior orders or attempting to secure voluntary compliance or correction of the violation.
2. **Notice to Correct.** When the enforcement officer finds a violation of EC 6.300 - 6.330, this rule, or a condition of a permit is occurring and the enforcement officer believes that the violation may be corrected, and when corrected, will prevent or fully remediate any harm from the violation, the

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## Tree Removal Standards

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enforcement officer may in his or her discretion issue a Notice to Correct to the responsible person. A Notice to Correct shall identify the condition constituting the violation and the time within which the correction is to be made. In addition to any other penalties that may be imposed for the original violation, a failure to comply with a Notice to Correct is a violation subject to the penalties provided in these rules. A Notice to Correct is not appealable.

**3. Stop Work Order.** Upon finding an activity is occurring that violates EC 6.300 - 6.330, this rule, or a condition of a permit, the enforcement officer may issue a stop work order to the responsible person. The stop work order need not require the cessation of all operations on the premises, only those activities causing or contributing to the violation. In addition to any other penalties that may be imposed, failure to comply with the enforcement officer's order issued under this subsection constitutes a violation of this rule and the provisions of Chapter 6 of the Eugene Code, 1971 under which it is promulgated, punishable as set forth in EC Sections 6.990, 6.992, and 6.995.

**4. Notice of Violation.** The enforcement officer may issue a notice of violation to a responsible person who fails to obtain the proper permit for felling a tree, fails to adhere to a condition of a permit, fails to comply with a Notice to Correct, fails to comply with a stop work order, or violates EC sections 6.300 - 6.330 or this rule.

**5. Administrative Civil Penalty.** Following the procedures set forth in paragraphs I and J of this rule, the enforcement officer may issue a notice of violation and impose an administrative civil penalty upon a responsible person for violation of the provisions of EC sections 6.300 - 6.330, this rule, or a condition of a permit. Failure to pay the administrative civil penalty within ten days after it becomes final constitutes a violation of this rule and the Eugene Code, 1971. In addition to any other enforcement mechanisms authorized by the Eugene Code, 1971, this rule, or federal or state law, the enforcement officer may withhold issuance of requested licenses or permits, issue a notice to correct, stop work order, or revoke or suspend any issued licenses or permits if the responsible person fails or refuses to pay an administrative civil penalty imposed pursuant to this rule within the ten day period. If the violation resulting in the imposition of the administrative civil penalty occurred on real property and the penalty remains unpaid for a period of 30 days or more after becoming final, the full amount of the unpaid penalty and or fine shall be assessed against the real property upon which the violation occurred and entered as a lien in the docket of City liens. Notice of the assessment and docketing shall be given to the responsible person at the time the assessment is made. Interest at the rate prescribed by Section 2.022 of the Eugene Code, 1971 shall commence on the date the lien is entered on the lien docket, and the lien shall be enforced in the same manner as liens for street improvements.

**6. Enhanced Permit Fee.** If a tree is felled without a permit, the responsible party may apply for a permit within five working days of the Notice of Violation or other written notice pursuant to R-6.305-C.5. The fee for the first tree felling permit obtained subsequent to the tree felling shall be twice the amount of the established permit fee in effect at the time the permit is applied for. The fee for any future permits applied for subsequent to the tree felling by the same responsible person at the same, or any other location within the city, shall be ten times the amount of the established permit fee at the time the permits are applied for.

**7. Replacement Fee.** If a street tree or other public tree is illegally felled, a replacement fee shall be assessed in addition to all other fines, penalties, or other enforcement mechanisms set forth in this rule, associated codes, and or other associated rules or orders. The fee shall be calculated using the plant appraisal method established by the Council of Tree & Landscape Appraisers.

**8. Service of Notices Orders.** All notices/orders shall be served by personal service or sent by certified mail and first class mail. Any notice/order served by mail shall be deemed received for

## Tree Removal Standards

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purposes of any time computations hereunder, three days after the date mailed, if to an address within this state, and seven days after the date mailed, if to an address outside this state.

**9. Remedies not Exclusive.** The enforcement mechanisms set forth herein are not exclusive, and are in addition to any other remedies available under provisions of the Eugene Code, 1971 and federal and state law.

### **R-6.305-I Determination of Amount of Civil Penalty.**

Notwithstanding the provisions of Administrative Rule R-2.018, the amount of the administrative civil penalty to be assessed under Section H of this rule shall be determined in accordance with the following formula(s), which take into consideration the factors required in Section 2.018 of the Eugene Code, 1971:

- 1. Illegal Felling of a Tree.** Each tree felled constitutes a separate violation.

#### **Penalty calculation**

**$((A+C+G) \div 100)$ , x M x Z** where:

A = Number of past Tree Preservation violations times 10

C = Cause where unavoidable accident 0 negligence 20 intentional 25

G = Gravity point total not to exceed 80 points

M = maximum penalty allowed

Z = "0" If cause is an unavoidable accident, "1" if cause is negligence or intentional

Gravity Point	Points
Tree would likely have been classified as a heritage tree, had significant historic value, was rare, or was an unusual specimen	50
Damage to tree creates health and safety risks to persons or property that must be mitigated, which may include total removal of damaged trees, or removal of tree creates health and safety risks to persons or property which must be mitigated by other means	25
Was a street tree	20
Tree was located in protected natural resource area	20
Attributes that made an area sensitive were damaged during the removal process	10
Removal of tree increased danger of wind fall of other trees	20
Tree provided privacy barrier, wind control, safety barrier, light/glare shield	10
Tree was located in area with highly erodible or unstable soils	10
Tree provided habitat for threatened, endangered or other protected species	25

- 2. Failure to Adhere to or Complete a Condition of a Permit.** Each condition of a permit not adhered to or completed constitutes a separate violation. Each day the condition exists beyond the correction time of the Notice of Violation or Notice to Correct constitutes a separate violation.

#### **Penalty calculation**

**$((A+C+E+G) \div 100)$ , x M x Z** where:

A = Number of past Tree Preservation violations times 10

C = Cause where unavoidable accident 0 negligence 20 intentional 25

E = Effort to correct the violation point total (see Table E)

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## Tree Removal Standards

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G = Gravity/Magnitude component point total (see Table G)

M = maximum penalty allowed

Z = "0" If cause is an unavoidable accident, "I" if cause is negligence or intentional

<b>Table E: Effort</b>	Points
Major Effort – Took all steps feasible to correct violation within time frame	0
Moderate Effort – Took some steps to stabilize situation or to correct violation within time frame, additional effort required, gravity and magnitude improved by effort	5
Little or No Effort- Took minimal or no effort to correct violation – violation still exists with same or increased gravity and magnitude	10
Hindered Effort – Withheld information, provided false information or otherwise hindered efforts to correct violation	20

<b>Table G: Gravity/Magnitude</b>	Points
Failure to adhere or implement condition creates health and safety risks to persons or property	30
Failure to re-vegetate or otherwise stabilize up to 25% of required area	5
Failure to re-vegetate or otherwise stabilize 25-50% of required area	10
Failure to re-vegetate or otherwise stabilize 50-75% of required area	15
Failure to re-vegetate or otherwise stabilize 75-100% of required area	25
Failure to stabilize steep slope (25% or more)	10
Failure to stabilize moderate slope ( 10% to 24%)	5
Failure to adhere to or implement condition results in damage that the condition was designed to prevent (e.g. failure to put protective fencing results in large equipment damaging preservation tree)	20
Failure to adhere to or implement condition impacts riparian, sensitive area, or conservation area	15
Violation of notice or procedural requirements – zero or very minimal work has begun in violation of the notice or procedural requirements has begun	5
Violation of notice or procedural requirements – moderate to major work has begun in violation of the notice or procedural requirements has begun	10

### **R-6.305-I                      APPEAL.**

1. Any person who is denied a permit, or is granted a permit with conditions, or a responsible person to whom a Notice of Violation, or a Notice of Imposition of an Administrative Civil Penalty is issued, may appeal the denial, imposition of conditions, Notice of Violation, or Civil Penalty, by filing a written notice of appeal with the City Manager within 15 days of the date of denial or the date of issuance of the permit with conditions, or date of issuance of the Notice. The appeal shall be accompanied by the fee established by the City Manager pursuant to Section 2.020 of the Eugene Code, 1971.

2. Any person who provided written comments on an application pursuant to R-6.305-D-5, and who is dissatisfied with the action of the City Manager in granting a permit, whether with or without conditions, may appeal the decision by following the same procedures as set forth in subsection 1 of this section.

3. The appeal shall be governed by Section 2.021 of the Eugene Code, 1971 and shall describe in writing the specific basis or bases upon which the appellant asserts that the decision was in error.

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## Tree Removal Standards

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4. The decision of the hearings officer is final, and may include a determination to refund the appeal fee to the appellant if the hearings officer finds the appeal is not frivolous.

### **R-6.305-K                      EXCEPTIONS TO PERMIT REQUIREMENTS.**

The permit requirements and other restrictions of this Rule do not apply to:

- (a) That portion of a PUD and or PUD subdivision for which final approval has been obtained;
- (b) An occupied parcel of less than 20 000 square feet;
- (c) The action of any City officer or employee or of any public utility necessary to remove or alleviate an immediate danger to life or property; to restore utility service; or to reopen a public thoroughfare to traffic;
- (d) The felling of trees that the Urban Forester has determined are nuisances under Section 6.010 of the Eugene Code, 1971. The Urban Forester may require a tree health or hazard report to be submitted by an arborist certified by the International Society of Arboriculture in support of the removal as professional testimony the tree(s) constitute a nuisance.;
- (e) The felling of trees that are in violation of Section 7.640 of the Eugene Code, 1971; or
- (f) Any felling of trees located within publicly owned and accepted right-of-way necessary to install or maintain public improvements such as streets and sewers within publicly owned and accepted rights of way or utility easements. Were publicly owned improvements are being constructed by private individuals, no tree removal may take place prior to execution of the order to proceed for the construction of the public improvements by the City Engineer.

Administrative Order No. 58-96-22-F is repealed, as of the effective date of this order.