

**Willamette River Greenway Code Amendments**

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**Amendments Guide:** The following types of text are included in the document below.

Existing Black Text = Existing land use code that will remain unchanged.

Underlined Blue Text = Text proposed for addition to the land use code.

~~Strikethrough-Red-Text~~ = Text proposed for removal from the land use code.

**Highlighted Text** = Text to be updated upon adoption of final ordinance.

\*Minor Revision on January 20, 2023: At EC 9.6885(2)(a)2, a year (“2014”) was added to the *edition of American National Standards Institute (ANSI) Section A300, Tree, Shrub and Other Woody Plant Maintenance Standard Practices*. This change is to correct a missing year citation from the previous code amendments. This creates consistency within the section, as the other references to ANSI standards also specific the “2014” edition.(See revision on Page 5)

## 9.0500 Definitions.

\* \* \*

### *Change of Use.*

- (A) Except as provided in (B), a change from the existing use to another land use according to the land use and permit requirement tables in this land use code.
- (B) As used in Willamette River Greenway Permits beginning at EC 9.8800, making a different use of the land or water than that which existed on December 6, 1975. It includes only a change that requires construction, alterations of the land, water, or other areas outside of existing buildings or structures and that substantially alters or affects the land or water. It does not include a change of use of a building or other structure that does not substantially alter or affect the land or water upon which it is situated. The sale of property is not in itself considered to be a change of use. An existing open storage area shall be considered to be the same as a building for purposes of defining “change of use” with regard to Willamette River Greenway permits.

*Intensification (as used in Willamette River Greenway Permits beginning at EC 9.8800).* Any additions that increase or expand the area or amount of an existing use, or the level of activity. Remodeling the exterior of a structure not excluded below is an intensification when it will substantially alter the appearance of the structure. Maintenance and repair that is usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or the protection of property are not an intensification of use. Residential use of lands within the Greenway includes the practices and activities customarily related to the use and enjoyment of one’s home. Landscaping, construction of driveways, modification of existing structures or construction of or placement of such subsidiary structures or facilities adjacent to the residence ~~or placement of such subsidiary structures~~ as are usual and necessary to such use and enjoyment shall not be considered an intensification. Seasonal increases in gravel operations shall not be considered an intensification of use.

\* \* \*

Water-dependent. A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

Water-related. Uses which are not directly dependent upon access to a water body but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.

\* \* \*

### **9.3725 S-RP Riverfront Park Special Area Zone – Review Procedures.**

The master site plan for developments proposed within the S-RP zone shall be reviewed through the conditional use permit process provided in this land use code. For the purpose of this review, the following criteria shall be applied in lieu of the criteria provided in EC 9.8090 Conditional Use Permit Approval Criteria – General.

- (1) *Criteria for all Development.*
  - (a) The proposed development shall be consistent with the Metropolitan Area General Plan, Riverfront Park Study, and other applicable policy documents or functional plans.
  - (b) Based on technical analysis (particularly with respect to transportation facilities), planned public facilities shall be shown to accommodate the requirements of the proposed development.
  - (c) The proposed development shall protect visual access from main entry points from Franklin Boulevard to the river/riparian vegetation.
- (2) *Criteria for Development Within Willamette River Greenway Boundaries.*
  - (a) Except as provided in subparagraph (b), development of properties zoned S-RP Riverfront Park Special Area Zone and located within the boundary of the Willamette River Greenway shall comply with the following:
    1. Compliance with the criteria in EC 9.3725(1) Criteria for all Development above.
    2. The height and bulk of the proposed development shall be designed to consider the impacts on public open space, especially the buffer strips along the Willamette River and Millrace, and to adhere to the height limitations specified along the Willamette River. Building setbacks shall be varied to avoid the effect of a continuous wall along the minimum setback line and to adhere to the requirement for protection of designated features (i.e., Millrace and pedestrian linkage to the Autzen Stadium footbridge).
    3. To the greatest possible degree, the intensification, change of use, or development will provide the maximum possible landscaped area, open space, or vegetation between the activity and the river.

4. To the maximum extent practicable, the proposed development shall provide for protection and enhancement of the natural vegetative fringe along the Willamette River. This means protection and enhancement of trees and understory characteristic of native vegetation within the riparian strip along the Willamette River. It also means removal, and active management to prevent reintroduction of, disturbance vegetation such as Himalayan blackberries and English ivy. As used herein, the riparian strip means the area between the top of the river bank and the water's edge.

5. To the greatest possible degree, necessary and adequate public access will be provided to and along the river by appropriate legal means.

(b) An applicant proposing to develop multiple-unit dwellings on properties zoned S-RP Riverfront Park Special Area Zone and located within the boundary of the Willamette River Greenway as allowed by EC 9.3710, shall elect to proceed either pursuant to the criteria in subsection (a) or pursuant to the criteria in EC 9.8812.

As used in this section, the words "greatest possible degree" are drawn from Statewide Planning Goal 15 (F.3.b.) and are intended to require a balancing of factors so that each of the identified Greenway criteria is protected to the greatest extent possible without precluding the requested use. Goal 15 (C.3.j.) provides that "lands committed to urban uses within the Greenway shall be permitted to continue as urban uses."

(3) *Interpretation.* In the event any of the terms used in these S-RP zone provisions require interpretation, the planning and development director shall be responsible for such interpretation.

\* \* \*

#### **9.5750 Telecommunication Devices – Siting Requirements and Procedures.**

\* \* \*

(5) *Construction of Transmission Tower.* Construction of a transmission tower, or a modification of an existing transmission tower to increase its height, shall be allowed as follows:

\* \* \*

(d) *Prohibited Zones and Locations.* No new transmission tower shall be permitted in any zones not included in subparagraphs (a) to (c) above, including the AG, R-2, R-3, R-4, H, NR, and PRO zones; or in the Willamette [River](#) Greenway, on Gillespie Butte above the elevation of 450 feet, on the ridgeline as defined in the South Hills Study or on Judkins Point.

#### **9.6885 Tree Preservation and Removal Standards.**

(1) **Exemptions from Standards.** The standards in this section do not apply to activities regulated under EC 9.4900 through 9.4890, or an application for development activity that includes or will result in:

\* \* \*

- (c) Land Use Approvals. Any tree removal on property subject to an approved Conditional Use Permit, Planned Unit Development, Site Review, or Subdivision, or Willamette River Greenway Permit that includes a tree removal/preservation plan or conditions related to tree removal or retention. In those areas, that plan or city approved modifications thereto control tree removal. This exemption does not apply to the removal of a street tree, which must be authorized by a permit issued pursuant to EC 6.305.

\* \* \*

- (2) **Tree Preservation and Removal Standards**. The standards in this subsection apply only to land use applications processed under EC 9.8100, EC 9.8325, EC 9.8445, and EC 9.8520, and EC 9.8812. Unless exempt under subparagraph (b) below, no permit for a development activity subject to this section shall be approved until the applicant demonstrates compliance with the standards in this subsection.

- (a) Definitions. For the purposes of this subsection (2), the following definitions apply:
1. Critical Root Zone (CRZ). That area surrounding a tree that has a radius of 12 inches multiplied by the diameter breast height expressed in inches of the tree trunk or trunks.
  2. Tree Removal. To fell or sever a tree or to use any procedure the natural result of which is to cause the death or substantial destruction of the tree. Substantial destruction includes actions that destroy more than 20% of the critical root zone of a tree, or topping, or severing the cambial material on 50% or more of the circumference of the tree trunk. Remove does not in any context include those pruning standards as defined in the 2014 edition of American National Standards Institute (ANSI) Section A300, Tree, Shrub and Other Woody Plant Maintenance Standard Practices in effect at the time the pruning occurs.
- (b) For the purposes of this subsection (2), the South Hills Area is defined as all property located within the City's adopted Urban Growth Boundary, above an elevation of 500 feet, and:
1. South of 18th Avenue,
  2. South of Franklin Boulevard and East of the intersection of 18th Avenue and Agate Street, or
  3. If 18th Avenue were extended from the intersection of 18th Avenue and Willow Creek Road directly west to the Urban Growth Boundary, the area south of that extension of 18th Avenue.

(c) For the purposes of this subsection (2), the Willamette River Greenway is defined as all lands within the adopted Willamette River Greenway Boundary established by Resolution No. 2592, and the Willamette River Greenway Setback is that area identified on the Willamette River Greenway Setback Map adopted as Exhibit X to Ordinance No. XXXXX.

- (d) Exemptions. A proposed development shall be exempt from the requirements of EC 9.6885(2) if any of the following apply:
1. Except as provided in subparagraphs 4. and 5., the area of the development

site is less than 20,000 square feet.

2. [Except as provided in subparagraph 5.](#), ~~f~~Five or fewer significant trees exist on the development site prior to development.
3. [Except as provided in subparagraph 5.](#), ~~t~~The development site is zoned R-2 Medium- Density Residential, R-3 Limited High-Density Residential, R-4 High Density Residential, GO General Office, C-2 Community Commercial, or C-3 Major Commercial zones.
4. Notwithstanding subparagraph 1., development sites that include property at or above 900 feet elevation are subject to the requirements of EC 9.6885(2), regardless of the area of the development site.
5. [Notwithstanding subparagraphs 1. through 4. above, any portion of a development site located within Willamette River Greenway Tree Preservation Zones 1-3, as depicted on Figure 9.6885\(2\)\(e\), shall be subject to the requirements of EC 9.6885\(2\).](#)

*~~(de)~~ **Tree Preservation Requirements.** Unless adjusted per EC 9.8030(13), significant trees must be preserved in accordance with the requirements of Table 9.6855(2)~~(de)~~. Minimum preservation is based on the total existing Diameter Breast Height (d.b.h.) of significant trees within each specific location category prior to development. Maximum mitigation is the percentage of the minimum preservation that may be mitigated according to subsection 2. below.*

Table 9.6885(2) <del>(ed)</del> Tree Preservation and Mitigation		
Location Category	Minimum Preservation	Maximum Mitigation
Outside the South Hills Area	40%	100%
Within the South Hills Area, between 500 feet and 900 feet elevation	50%	50%
Within the South Hills Area, at or above 900 feet elevation	50%	0%
<a href="#">Willamette River Greenway Tree Preservation Zone 1 (See Figure 9.6885(2)(e))</a>	<a href="#">50%</a>	<a href="#">0%</a>
<a href="#">Willamette River Greenway Tree Preservation Zone 2 (See Figure 9.6885(2)(e))</a>	<a href="#">50%</a>	<a href="#">50%</a>
<a href="#">Willamette River Greenway Tree Preservation Zone 3 (See Figure 9.6885(2)(e))</a>	<a href="#">40%</a>	<a href="#">100%</a>

1. A Tree Preservation and Removal Plan is required except as provided in EC 9.6885(2)~~(ed)~~ or EC 9.6885(2)~~(ed)~~3. The plan must be prepared by a certified arborist, licensed landscape architect, licensed engineer, or licensed surveyor and shall provide the following:
  - a. A table, organized by the location categories listed in Table 9.6885(2)~~(de)~~, listing all significant trees on the development site and including the following information for each listed tree:

- (1) Diameter Breast Height (d.b.h.)
  - (2) Preservation, removal, or mitigation status
  - (3) Common name, genus and species
- b. A site plan that includes the following information:
- (1) The locations of all significant trees on the development site, the Diameter Breast Height (d.b.h.) for each significant tree, whether each significant tree is to be preserved, removed, or mitigated according to EC 9.6885(2)(~~e~~)2., and the location of the critical root zone (CRZ) for each significant tree to be preserved.
  - (2) The location of all existing and/or proposed public and private utility easements, driveways, and areas of grading or excavation on the development site.
  - (3) The location of all existing development on the site as well as the location of development proposed in the land use application that triggers the requirement for a Tree Preservation and Removal Plan.
  - (4) Proposed lot or parcel boundaries.
  - (5) For development sites with any portion located within the South Hills Area, identification of areas at or above 500 feet elevation and areas at or above 900 feet elevation.
- c. A written statement from a certified arborist or licensed landscape architect that the Tree Preservation and Removal Plan meets EC 9.6885(2)(~~e~~) Tree Preservation Requirements. If the Tree Preservation and Removal Plan is prepared by a certified arborist or licensed landscape architect, then the written statement otherwise required by this subparagraph is not required.
2. Mitigation. An applicant may elect to mitigate a portion of the minimum preservation of significant trees on the development site as provided below:
- a. The maximum d.b.h. that can be mitigated shall be based on location category as provided in Table EC 9.6885(2)(~~e~~) Tree Preservation and Mitigation.
  - b. Proposed subdivisions in areas outside of the South Hills Area [and outside of the Willamette River Greenway Boundary](#) may mitigate up to 100% of the minimum tree preservation requirement by either:
    - (1) Providing that lots up to 7,000 square feet in area will contain a minimum of two trees and lots 7,000 square feet or more will contain a minimum of three trees; or,
    - (2) Providing one replacement tree for each significant tree designated for mitigation.
  - c. [Required mitigation may only occur within the Willamette River Greenway Setback if the proposed trees to be planted are selected from the native trees included on the City's adopted list of plant species for sites at or below 500 feet in elevation, attached as Exhibit F to Ordinance No. 20351.](#)
  - d. Installation and Maintenance. Unless otherwise specified, each significant tree designated for mitigation must be replaced with one tree selected from the approved species listed in Table 9.6885(2)(~~e~~)2 within one year from the date of removal or prior to final occupancy,

whichever is later. Trees planted in accordance with subparagraph [\(2\)\(e\)2.b.\(1\)](#) must be planted prior to final occupancy. At the time of planting, deciduous trees used for replacement must have a minimum diameter of 2 inches and evergreen trees used for replacement must be a minimum of 5 feet in height as measured according to the 2014 edition of the American Standard for Nursery Stock (ANSI Z60.1), published by the American Nursery and Landscape Association. [Any mitigation trees to be planted within the Willamette River Greenway Setback shall be selected from the native trees included on the City’s adopted list of plant species for sites at or below 500 feet in elevation, attached as Exhibit F to Ordinance No. 20351.](#)

[de.](#) The maximum mitigation allowance may be adjusted in accordance with EC 9.8030(13).

<b>Table 9.6885(2)(<del>e</del>)2. Approved Species List</b>	
<b>Genus and Species</b>	<b>Common Name</b>
Abies koreana	Silver Korean Fir
Abies pinsapo	Spanish Fir
Acer circinatum	Vine Maple
Acer ginnala	Amur Maple
Acer glabrum var. douglasii	Rocky Mountain Maple
Acer griseum	Paperbark Maple
Acer macrophyllum	Big Leaf Maple
Acer rubrum	Red Maple
Acer saccharum	Sugar Maple
Alnus rhombifolia	White Alder
Alnus rubra	Red Alder
Amelanchier alnifolia	Pacific Serviceberry
Arbutus menziesii	Pacific Madrone
Arbutus unedo	Strawberry Madrone
Arbutus 'Marina'	Marina Strawberry Tree
Betula nigra	River Birch
Calocedrus decurrens	Incense Cedar
Carpinus betulus	European Hornbeam
Carpinus caroliniana	American Hornbeam
Castanopsis cuspidate	Japanese Chinquapin
Catalpa speciose	Northern Catalpa
Cedrus atlantica	Atlas Cedar
Cedrus deodara	Deodar Cedar
Cedrus libani	Cedar of Lebanon
Celtis occidentalis	Common Hackberry
Cercidiphyllum japonicum	Katsura Tree



**Table 9.6885(2)(de)2. Approved Species List**

<b>Genus and Species</b>	<b>Common Name</b>
Chrysolepis chrysophylla	Golden Chinquapin
Cinnamomum chekiangense	Camphor Tree
Cornus nuttallii	Pacific Dogwood
Corylus colurna	Turkish Filbert
Cupressus arizonica	Arizona Cypress
Cupressus bakeri	Modoc Cypress
Cupressus leylandii	Leyland Cypress
Fraxinus latifolia	Oregon Ash
Fraxinus ornus	Flowering Ash
Ginkgo biloba (fruitless cultivars only)	Ginkgo
Koelreuteria paniculate	Goldenrain Tree
Maackia amurensis	Maackia
Nyssa sylvatica	Tupelo, Black Gum
Ostrya virginiana	American Hophornbeam
Oxydendrum arboreum	Sourwood
Parrotia persica	Persian Ironwood
Picea smithiana	Morinda Spruce
Pinus ponderosa	Ponderosa Pine
Pinus ponderosa var. benthamiana	Willamette Valley Ponderosa Pine
Pinus wallichiana	Himalayan Pine
Pistacia chinensis	Chinese Pistachio
Platanus acerifolia	London Plane
Prunus virginiana	Chokecherry
Pseudotsuga menziesii	Douglas Fir
Quercus acutissima	Sawtooth Oak
Quercus agrifolia	Coast Live Oak
Quercus alba	White Oak
Quercus bicolor	Swamp White Oak
Quercus chrysolepis	Canyon Live Oak
Quercus douglasii	Blue Oak
Quercus frainetto	Hungarian Oak
Quercus gambelii	Gambel Oak
Quercus garryana	Oregon White Oak
Quercus hypoleucoides	Silver Oak
Quercus ilex	Holly Oak
Quercus kelloggii	California Black Oak
Quercus lobata	Valley Oak
Quercus macrocarpa	Bur Oak

**Table 9.6885(2)(de)2. Approved Species List**

<b>Genus and Species</b>	<b>Common Name</b>
Quercus myrsinifolia	Chinese Evergreen Oak
Quercus palustris	Pin Oak
Quercus phellos	Willow Oak
Quercus rubra	Red Oak
Quercus shumardii	Shumardii Oak
Quercus suber	Cork Oak
Quercus wislizeni	Interior Live Oak
Rhamnus purshiana	Cascara Buckthorn
Salix lucida ssp. Lasiandra	Pacific Willow
Salix scouleriana	Scouler’s Willow
Sciadopitys verticillate	Japanese Umbrella Pine
Sequoia sempervirens	Coast Redwood
Sequoiadendron giganteum	Giant Sequoia
Stewartia pseudocamellia	Stewartia
Styrax japonicus (japonica)	Japanese Snowbell
Taxodium distichum	Bald Cypress
Taxus brevifolia	Pacific Yew
Thuja plicata	Western Red Cedar
Tilia Americana	American Linden
Tilia cordata	Little Leaf Linden
Tilia tomentosa	Silver Linden
Tsuga canadensis	Canadian Hemlock
Tsuga heterophylla	Western Hemlock
Tsuga mertensiana	Mountain Hemlock
Tsuga sieboldii	Southern Japanese Hemlock
Ulmus americana	American Elm
Ulmus carpinifolia	Smoothleaf Elm
Ulmus parvifolia	Chinese Elm
Ulmus propinqua	Japanese Elm
Umbellularia californica	California Bay Laurel
Zelkova serrata	Zelkova

3. Tree Preservation Area Alternative.
  - a. A Tree Preservation and Removal Plan is not required if the applicant chooses to preserve at least 50 percent of the total existing d.b.h. of significant trees on the development site within one or more tree preservation area(s) and the following requirements are met:

- (1) Tree preservation area(s) must be delineated and shown on a site plan submitted for approval by the City.
- (2) Applicant must provide written certification from a certified arborist or licensed landscape architect stating that the area(s) designated for tree preservation include(s) at least 50 percent of the total existing d.b.h. of significant trees on the development site.
- (3) No trees within the Willamette River Greenway Setback may count toward the 50 percent preservation requirement.
- b. Mitigation is not allowed when the Tree Preservation Area Alternative is used to meet tree preservation requirements, except as approved through an adjustment review according to EC 9.8030(13).
4. Protection Standards. The following notes must be included on the final plan set submitted for approval by the City and shall apply at the time of development:
  - a. "Protective fencing for trees identified to be preserved shall be installed by the applicant and inspected by the City prior to beginning any development activities. All protective tree fencing must remain in place until completion of all construction activities; any relocation, removal, or modification of the protective fencing shall only occur under the direction of a certified arborist and a written explanation of the reason for the relocation, removal, or modification of the protective fencing from the certified arborist must be provided to the City."
  - b. "At the time of building permit, a site plan in compliance with the approved tree preservation and removal plan is required."
  - c. "No excavation, grading, material storage, staging, vehicle parking or other construction activity shall take place within protective tree fencing areas."
  - d. "The removal of trees not designated to be preserved is optional; removal may occur at the owner's discretion."
  - e. "Any tree designated for mitigation must be replaced with one tree selected from the approved species listed in Table 9.6885(2)(~~e~~)2 within one year from the date of removal or prior to final occupancy, whichever is later. At the time of planting, deciduous trees used for replacement must have a minimum diameter of 2 inches and evergreen trees used for replacement must be a minimum of 6 feet in height as measured according to the 2014 edition of the American Standard for Nursery Stock (ANSI Z60.1), published by the American Nursery and Landscape Association. Maintenance of replacement trees is the ongoing responsibility of the property owner."
  - f. "In the event a tree designated to be preserved must be removed because it is dead, diseased, dying, or hazardous, documentation of the tree's dead, diseased, dying, or hazardous condition by a certified arborist must be provided to the City prior to tree removal. The tree must be replaced with one replacement tree

selected from the approved species list in Table 9.6885(2)(e)2. At the time of planting, deciduous trees used for replacement must have a minimum diameter of 2 inches and evergreen trees used for replacement must be a minimum of 6 feet in height as measured according to the 2014 edition of the American Standard for Nursery Stock (ANSI Z60.1), published by the American Nursery and Landscape Association. Maintenance of replacement trees is the ongoing responsibility of the property owner.”

(ef) Street Tree Removal. If the proposal includes removal of any street tree(s), removal of those street trees has been approved, or approved with conditions according to the process at EC 6.305 Tree Felling Prohibition.

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**9.7005 Pre-application Conference.**

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(3) Willamette River Greenway Permits.

\* \* \*

**9.7030 Recordation of Certain City Decisions.**

\* \* \*

(9) Willamette River Greenway Permit and any modifications.

\* \* \*

**9.7055 Applications and Review Authorities.**

\* \* \*

Table 9.7055 Applications and Review Authorities						
R = Recommendation, D = Decision Maker, A = Appeal Review Authority						
Application	Type	Planning Director	Hearings Official	Historic Review Board	Planning Commission	City Council
* * *						
Willamette <u>River</u> Greenway Permit – <u>Clear and Objective</u>	III		D		A	
<u>Willamette River Greenway Permit - General</u>	<u>III</u>		<u>D</u>		<u>A</u>	
Willamette <u>River</u> Greenway Permit, Modification	II	D	A			
* * *						

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**9.7305 Type III Application Requirements and Criteria Reference.**

\* \* \*

<b>Table 9.7305 Type III Application Requirements and Criteria</b>	
<b>Type III Applications</b>	<b>Beginning Reference</b>
* * *	
<a href="#">Willamette River Greenway Permit – Clear and Objective</a>	<a href="#">EC 9.8800</a>
Willamette <a href="#">River</a> Greenway Permit - General	EC 9.8800

\* \* \*

**9.7210 Notice of Application.**

- (4) Within 10 days of the city’s determination that an application is complete, but no less than 20 days before the planning director makes a decision, written notice of the application shall be mailed to all of the following:
- (a) Applicant.
  - (b) Owners and occupants of the subject property.
  - (c) Owners and occupants of properties located within 300 feet of the perimeter of the subject property.
  - (d) Neighborhood group or community organization officially recognized by the city council that includes the area of the subject property.
  - (e) Community organizations that have submitted written requests for notification.
  - (f) For final partitions, final subdivisions, and final PUDs, to interested parties of record from the tentative decision.
  - (g) For modification applications, to persons who requested notice of the original application that is being modified.
  - (h) [For Willamette River Greenway Permit modification applications, to the Oregon Department of Transportation and Oregon Parks and Recreation Department, by certified mail, return receipt requested.](#)

\* \* \*

**9.7220 Notice of Decision.**

- (1) Within 5 days after the planning director renders a decision, notice of the decision shall be mailed to the following:

- (a) Applicant.
- (b) Owner and occupants of the subject property.
- (c) Neighborhood group or community organization officially recognized by the city that includes the area of the subject property.
- (d) Any group or individual who submitted written comments during the comment period.
- (e) Those groups or individuals who requested notice of the decision.
- (f) Property owners and occupants of property located within 300 feet of the perimeter of the subject property.
- (g) [For decisions on Willamette River Greenway Permit modification applications, to the Oregon Department of Transportation and Oregon Parks and Recreation Department.](#)

\* \* \*

**9.7305 Type III Application Requirements and Criteria Reference.**

\* \* \*

<b>Table 9.7305 Type III Application Requirements and Criteria</b>	
<b>Type III Applications</b>	<b>Beginning Reference</b>
Adjustment Review (when part of a Type III Application)	EC 9.8015
Conditional Use Permits (CUP)	EC 9.8075
Historic Landmark Designation	EC 9.8150
Planned Unit Development, Tentative Plan	EC 9.8300
<a href="#">Willamette River Greenway Permit – Clear and Objective</a>	<a href="#">EC 9.8800</a>
Willamette <a href="#">River</a> Greenway Permit - <a href="#">General</a>	EC 9.8800
Zone Changes*	EC 9.8850

\* \* \*

**9.7315 Public Hearing Notice.**

\* \* \*

- (2) At least 30 days prior to the hearing, written notice of the public hearing and the nature of the request shall be mailed to all of the following:

\* \* \*

- (f) For Willamette [River](#) Greenway [P](#)ermits, public hearing notice shall also be provided to the Oregon Department of Transportation [and Oregon Parks and Recreation Department, by certified mail, return receipt requested.](#)

**9.7335 Notice of Decision.**

\* \* \*

- (e) For Willamette [River](#) Greenway [P](#)ermits, to the Oregon Department of Transportation [and Oregon Parks and Recreation Department](#).

\* \* \*

**9.7340 Expiration.**

\* \* \*

- (4) Unless the decision specifies otherwise, a Willamette [River](#) Greenway [P](#)ermit approval shall expire 18 months after the effective date of approval unless actual construction or alteration has begun under a required permit, or in the case of a permit not involving construction or alteration, actual commencement of the authorized activity has begun. However, the applicant may submit a modification application at any time before the 18-month period has expired, requesting an extension of the approval period. The applicant may request more than one extension. Under no circumstances, however, can the total combined extension periods exceed 36 months from the original expiration date. Within S-DR, upon approval of a Willamette [River](#) Greenway Permit concurrently with Type V code amendments and other plan amendments, plan adoption, or zone change; the Willamette [River](#) Greenway [P](#)ermit shall remain in effect so long as the S-DR zone remains in effect.

\* \* \*

**9.7605 Filing of Appeal of Planning Director's Decision.**

- (1) Within 12 days of the date of the mailing of the planning director's decision, the decision may be appealed to the hearings official or historic review board according to the appeal review authority specified in Table 9.7055 Applications and Review Authorities by the following:
  - (a) Applicant.
  - (b) Owner of the subject property.
  - (c) Neighborhood group officially recognized by the city that includes the area of the subject property.
  - (d) Any person who submitted written comments in regards to the original application.
  - (e) A person entitled to notice of the original application.
  - (f) A person adversely affected or aggrieved by the initial decision.
- (2) The appeal shall be submitted on a form approved by the city manager, be accompanied by a fee established pursuant to EC Chapter 2, and be received by the city no later than 5:00 p.m. of the 12th day after the notice of decision is mailed. The record from the planning

director's proceeding shall be forwarded to the appeal review authority. New evidence pertaining to appeal issues shall be accepted.

- (3) The appeal shall include a statement of issues on appeal ~~and be limited to the issues raised in the appeal~~. The appeal statement shall explain specifically how the planning director's decision is inconsistent with applicable criteria. [Appeals of planning director decisions on applications for permit as defined in ORS Chapter 227 shall not be limited to the issues raised in the appeal statement. Appeals of planning director decisions on all other applications shall be limited to the issues raised in the appeal statement.](#)

\* \* \*

**9.7615 Public Hearing Notice.**

- (3) At least 20 days prior to the hearing, written notice shall be mailed to all of the following:
- (a) Applicant.
  - (b) Owner of the subject property.
  - (c) Appellant.
  - (d) Neighborhood group or community organization officially recognized by the city that includes the area of the subject property.
  - (e) Any person who provided written comments prior to the close of the public comment period.
  - (f) Owners of property within 100 feet of the perimeter of the subject property.
  - (g) [For Willamette River Greenway Permit modifications, public hearing notice shall also be provided to the Oregon Department of Transportation and Oregon Parks and Recreation Department.](#)

\* \* \*

**9.7635 Notice of Decision.**

- (4) Within 5 days after a decision by the appeal review authority is rendered, notice of the decision shall be mailed to all of the following:
- (a) Applicant.
  - (b) Owner of the subject property.
  - (c) Appellant.
  - (d) Any person who provided oral or written testimony in a timely manner during the hearing procedures.
  - (e) Any person who requested notice of the appeal decision.



(f) For Willamette River Greenway Permit modification decisions, notice of the decision shall also be provided to the Oregon Department of Transportation and Oregon Parks and Recreation Department.

\* \* \*

**9.7665 Public Hearing Notice.**

(5) At least 10 days prior to the hearing, written notice of the hearing shall be mailed to the following:

- (a) Applicant.
- (b) Owner of the subject property.
- (c) Appellant.
- (d) Neighborhood group or community organization officially recognized by the city that includes the area of the subject property.
- (e) Any person who submitted written comments in regards to the original application.
- (f) Any person who requested notice of the previous decision or of the appellate hearing.

(g) For Willamette River Greenway Permits, public hearing notice shall also be provided to the Oregon Department of Transportation and Oregon Parks and Recreation Department.

\* \* \*

**9.7685 Notice of Decision.**

(6) Within 5 days after the planning commission's decision is rendered, written notice of the decision shall be mailed to all of the following:

- (a) Applicant.
- (b) Owner of the subject property.
- (c) Appellant.
- (d) Any person who provided oral or written testimony in a timely manner during the hearing procedures.
- (e) Any person who requested notice of the appeal decision.

(f) For Willamette River Greenway Permits, notice of the decision shall also be provided to the Oregon Department of Transportation and Oregon Parks and Recreation Department.

\* \* \*

**9.8005 Applicability and Effect of Application Requirements, Criteria, and Concurrent Review.**

\* \* \*

(2) If an initial proposal also requires an application be submitted for one or more of the following:

\* \* \*

(e) Willamette [River](#) Greenway permit; or

\* \* \*

**9.8030 Adjustment Review - Approval Criteria.**

The planning director shall approve, conditionally approve, or deny an adjustment review application. Approval or conditional approval shall be based on compliance with the following applicable criteria.

\* \* \*

(13) Tree Preservation and Removal Standards Adjustment.

The minimum tree preservation requirement and maximum mitigation allowance of EC 9.6885(2) may be adjusted if one of the conditions listed in subparagraph (a) below applies and the proposed design complies with the criteria in subparagraphs (b) ~~through (e)~~:

(a) Conditions. To qualify for an adjustment, one of the following conditions must apply:

1. Strict compliance with tree preservation and removal standards is not feasible due to other requirements of this code or existing site constraints such as topography or other natural features; or,
2. An adjustment to the minimum tree preservation and/or mitigation requirement is necessary in order to achieve a net density greater than 75 percent of the maximum [net density for the applicable zone](#) ~~allowed under this land use code~~; or,
3. The existing trees required to meet the minimum preservation requirement are unlikely to survive the level and type of anticipated development due to susceptibility to windthrow or other natural causes of failure.

(b) [Criteria. To qualify for an adjustment, the proposed design must meet the following criteria:](#)

- [1.](#) The proposed reduction ~~to~~ [in](#) the minimum tree preservation requirement or increase in mitigation allowance is necessary to accommodate a reasonable level of development.
- [2.](#) In no case shall [the](#) minimum tree preservation [requirement](#) be reduced below 30% for areas at or above 900 feet elevation [and areas within the Willamette River Greenway Tree Preservation Zone 1, as depicted on Figure 9.6885\(2\)\(e\)](#).
- ~~(c)~~ [3.](#) Except for areas at or above 900 feet elevation [and areas within the Willamette River Greenway Tree Preservation Zone 1 as depicted on Figure 9.6885\(2\)\(e\)](#), proposals may mitigate up to 100% of the minimum tree preservation requirement if the following requirements are met:

- [A1.](#) For proposed subdivisions, new trees must be planted so that lots up to 7,000 square feet in area will contain a minimum of two trees and lots 7,000 square feet or more will contain a minimum of three trees.

- B2. For all other developments, the proposed design must provide one tree per dwelling unit.

~~New trees planted to meet subsection 1. or 2. above are subject to the requirements at EC 9.6885(2)(e)2.c. Installation and Maintenance. Trees planted to meet applicable landscape standards may count toward these requirements. Existing trees on the development site that are under 8 inches Diameter Breast Height (d.b.h.) and listed in Table 9.6885(2)(e)2. Approved Species List may be designated for preservation and counted toward these requirements (in lieu of planting new trees).~~

4. For areas at or above 900 feet elevation, and areas within the Willamette River Greenway Tree Preservation Zone 1 as depicted on Figure 9.6885(2)(e), mitigation is limited to 10% of the minimum preservation requirement.
5. For areas within the Willamette River Greenway Tree Preservation Zone 2 as depicted on Figure 9.6885(2)(e), mitigation is limited to 20% of the minimum preservation requirement.
6. New trees planted to meet mitigation requirements are subject to the requirements at EC 9.6885(2)(e)2.c. Installation and Maintenance.
7. Trees planted to meet applicable landscape standards may be counted toward mitigation requirements.
8. Except as provided in subparagraph (9), existing trees that are located on the development site may be designated for preservation and counted toward mitigation requirements in lieu of planting new trees if:
  - A. The tree measures under 8-inches Diameter Breast Height (d.b.h.); and
  - B. The tree is listed in Table 9.6885(2)(e)2. Approved Species List.
8. The provisions of subparagraph (8) do not apply to portions of a development site located within the Willamette River Greenway. Existing trees may be designated for preservation and counted toward mitigation requirements in lieu of planting new trees if:
  - A. The tree measures under 8-inches Diameter Breast Height (d.b.h.);
  - B. The tree is a species included on the City's adopted list of plant species for sites at or below 500 feet in elevation, attached as Exhibit F to Ordinance No. 20351; and
  - C. The tree is located on the development site and within the Willamette Greenway Boundary but outside of the Willamette River Greenway Setback. No existing trees located within the Willamette River Greenway Setback may count toward mitigation requirements.

(c) For purposes of EC 9.8030(13):

1. "Willamette River Greenway" means all lands within the adopted Willamette River Greenway Boundary established by Resolution No. 2592.
2. "Willamette River Greenway Setback" is that area identified on the Willamette River Greenway Setback Map adopted as **Exhibit X to Ordinance No. XXXXX**.

\* \* \*

## 9.8800 Purpose of Willamette River Greenway Permits

~~Intensification of uses, changes in use, or developments require special consideration before being permitted within the boundaries of the Willamette. Special consideration is required~~ The purpose of

Willamette River Greenway Permits is to implement Oregon Statewide Planning Goal 15, Willamette River Greenway, which is designed to protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River. ~~Urban uses may be allowed but conditions of approval may be imposed as are deemed necessary to carry out the purpose and intent of the Willamette River Greenway, and to insure that any intensification of uses, changes in use, or developments within the Willamette Greenway boundaries are compatible with nearby uses within the Willamette Greenway.~~ Protection, conservation, enhancement, and maintenance of the qualities of lands within the Willamette River Greenway is achieved through the following measures:

- (1) Review of intensification of uses, changes in use, and developments proposed within the boundaries of the Willamette River Greenway.
- (2) Imposition of conditions of approval as necessary to carry out the purpose and intent of the Willamette River Greenway.

#### **9.8805 Willamette River Greenway Permits - Applicability**

Willamette River Greenway permit applications are required for intensification of uses, changes in use, or developments within the boundaries of the Willamette River Greenway according established by Resolution No. 2592 Adopting a Willamette River Greenway Boundary. ~~Willamette Greenway permit procedures may apply to Site Review applications when site review approval is required in addition to Willamette Greenway permit approval. No development permit shall be issued by the city prior to approval of the Willamette River Greenway permit.~~

#### **9.8810 ~~General Requirements-~~ Willamette River Greenway Permits - Application Requirements**

- (1) Willamette River Greenway Permit applications shall be considered in accordance with the Type III application procedures contained in EC 9.~~7000-7300~~ through EC 9.~~7340-7835~~ Application Procedures, unless considered concurrently with a Type IV or Type V application.
- (2) If the intensification of use, change in use, or development that triggers the requirement for a Willamette River Greenway Permit includes or proposes housing, the written statement submitted with the Willamette River Greenway Permit application shall clearly state whether the applicant is electing to proceed under the Clear and Objective approval criteria in EC 9.8812, or whether the applicant is electing to proceed under the General approval criteria in EC 9.8815.
- (23) No development permit shall be issued by the city when a Willamette River Greenway Permit is required for a proposed development until the Willamette River Greenway Permit has been approved and becomes effective. Development permits shall be consistent with the terms and conditions of that Willamette River Greenway Permit.

#### **9.8811 Willamette River Greenway Setback – Clear and Objective**

- (1) The Willamette River Greenway Setback is established to protect, maintain, preserve, and enhance the natural, scenic, historic, and recreational qualities of the Willamette River Greenway.

- (2) The Willamette River Greenway Setback is only applicable when the applicant elects to proceed under the Clear and Objective approval criteria in EC 9.8812.
- (3) The location of the Willamette River Greenway Setback is established by the Willamette River Greenway Setback Map adopted as **Exhibit X to Ordinance No. XXXXX**.
- (4) No structures, other than the structures listed in subsection (4) may be built within the Willamette River Greenway Setback.
- (5) For purposes of review under the Clear and Objective approval criteria at EC 9.8812, the City has determined that pedestrian paths and/or public accessways that are proposed or otherwise required pursuant to EC 9.8812(4) are the only structures within the Willamette Greenway Setback necessary to support water-related and/or water-dependent uses; therefore, pedestrian paths and/or public accessways that are proposed or otherwise required pursuant to EC 9.8812(4) are the only new structures that may be constructed within the Willamette River Greenway Setback pursuant to a Willamette River Greenway Permit approved under EC 9.8812.

#### **9.8812 Willamette River Greenway Permit Approval Criteria – Clear and Objective**

Unless an applicant proposing an intensification of use, change in use, or development that proposes or includes housing elects to use the General criteria contained in EC 9.8815, approval, approval with conditions, or denial of a Willamette River Greenway Permit that proposes or includes housing shall be based solely on compliance with the following approval criteria:

##### (1) Greenway Setback.

(a) The application shall include a site plan that clearly depicts the location of the Willamette River Greenway Setback on the subject property, as shown on the Willamette River Greenway Setback Map referenced at EC 9.8811(3).

(b) Consistent with the requirements of EC 9.8811(4), the application shall not propose any new structures located within the Willamette River Greenway Setback except pedestrian paths or public accessways proposed pursuant to EC 9.8812(4).

##### (2) Building Facade.

(a) For any new buildings, the maximum length of any building façade located within 100 feet of the Willamette River Greenway Setback is 75 feet.

##### (3) Landscaping.

(a) A landscape area that meets the requirements of EC 9.6210 Low Screen Landscape Standard (L-2) shall be provided along the length of the Willamette River Greenway Setback. The landscape area shall be located on the opposite side of the Willamette River Greenway Setback from the river and shall be a minimum depth of 10 feet. These requirements are not adjustable under the provisions of EC 9.6210(2)(b) or EC 9.8030(3)(c).

- (b) Solid or Masonry walls are not permitted within the Willamette River Greenway Setback, or within the landscape area required by subparagraph (a).
- (c) Fences are not permitted within the Willamette River Greenway Setback. Fences located on property located within Willamette River Greenway Boundary and within 300 feet of the Willamette River Greenway Setback may not be constructed of barbed wire, chain link fencing, or cyclone fencing and must be at least 50 percent open (unobstructed to both light and air) to allow views through the fence.
- (d) The landscape area required by subparagraph (a) must be planted exclusively with native plants included on the City's adopted list of plant species for sites at or below 500 feet in elevation, attached as Exhibit F to Ordinance No. 20351.

(4) Access.

- (a) The following standards apply to any proposed housing that will result in 5 or more dwelling units on one development site:
  - 1. Where the development site abuts publicly owned land, on-site pedestrian paths shall be provided from the property line nearest to the Willamette River to main building entrances. Where required, these on-site pedestrian paths shall be a minimum of 3 feet wide, and be constructed of concrete, asphalt, or any pervious surface that complies with the Americans with Disabilities Act, unless adjusted in accordance with EC 9.8030(22).
  - 2. Where the development site is located more than 500 feet from a public access point shown on **Exhibit X to Ordinance No. XXXXX**, the City may require the dedication and improvement of a public accessway, consistent with the standards at EC 9.6805, extending from the property line of the development site to existing public ways that provide a connection to or along the Willamette River. The public accessway shall be a minimum 10 feet in width, constructed in accordance with public improvement standards. For purposes of this subsection "within 500 feet" means a straight-line measurement between any point on the perimeter of the development site and the closest public access point shown on **Exhibit X to Ordinance No. XXXXX**.

(5) Tree Preservation. Tree preservation is required in accordance with the applicable provisions of EC 9.6885(2), Tree Preservation and Removal Standards.

**9.8815 Willamette River Greenway Permit Approval Criteria - General**

Approval, approval with conditions, or denial of a Willamette Greenway Permit not otherwise processed according to the provisions of EC 9.8812, shall be based on compliance with the following approval criteria~~Willamette Greenway permit approval may be granted only if the proposal conforms to all the criteria in subsections (1) through (4), and the applicable standards of subsection (5) as follows:~~

- (1) To the greatest possible degree, the intensification, change of use, or development will provide the maximum possible landscaped area, open space, or vegetation between the activity and the river.

- (2) To the greatest possible degree, necessary and adequate public access will be provided [to](#) and along the Willamette River by appropriate legal means.
- (3) The intensification, change of use, or development will conform with applicable Willamette [River](#) Greenway policies as set forth in the Metro Plan.
- (4) In areas subject to the Willakenzie Area Plan, the intensification, change of use, or development will conform with that plan's use management considerations.
- (5) In areas not covered by subsection (4) of this section, the intensification, change of use, or development shall conform with the following applicable standards:
  - a. Establishment of adequate setback lines to keep structures separated from the Willamette River to protect, maintain, preserve, and enhance the natural, scenic, historic, and recreational qualities of the Willamette [River](#) Greenway. Setback lines need not apply to water related or water dependent ~~activities-uses~~ as defined in ~~the Oregon Statewide Planning Goals and Guidelines (OAR 660-15-000 et seq.)~~ [EC 9.0500](#).
  - b. Protection of significant fish and wildlife habitats as identified in the Metropolitan Plan Natural Assets and Constraints Working Paper. Sites subsequently determined to be significant by the Oregon Department of Fish and Wildlife shall also be protected.
  - c. Protection and enhancement of the natural vegetative fringe along the Willamette River to the maximum extent practicable.
  - d. Preservation of scenic qualities and viewpoints as identified in the Metropolitan Plan Natural Assets and Constraints Working Paper.
  - e. Maintenance of public safety and protection of public and private property, especially from vandalism and trespass in both rural and urban areas to the maximum extent practicable.
  - f. Compatibility of aggregate extraction with the purposes of the Willamette River Greenway and when economically feasible, applicable sections of state law pertaining to Reclamation of Mining Lands (ORS Chapter 517) and Removal of Material; Filling (ORS Chapter 541) designed to minimize adverse effects to water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise, safety, and to guarantee necessary reclamation.
  - g. Compatibility with recreational lands currently devoted to metropolitan recreational needs, used for parks or open space and owned and controlled by a general purpose government and regulation of such lands so that their use will not interfere with adjacent uses.

[\(6\) The proposed development is designed and sited to minimize impacts to the natural environment by addressing the following:](#)

[\(a\) Tree Preservation. Significant trees are preserved to the greatest possible degree, with trees having the following characteristics given the highest priority for preservation:](#)

[1. Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria;](#)

2. Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow;
  3. Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement;
  4. Trees that provide a buffer between potentially incompatible land uses;
  5. Trees located along the perimeter of the lot(s) and within building setback areas;
  6. Trees and stands of trees located along or within view from the river;
  7. Trees with significant habitat value;
  8. Trees adjacent to public parks, open space and streets;
  9. Trees located along a water feature; and,
  10. Heritage trees.
- (b) Restoration or Replacement. The proposal mitigates, to the greatest possible degree, the loss of significant trees and vegetation through restoration or replacement, as follows:
1. Planting of replacement trees along stream corridors, or within common areas; or,
  2. Restoration of fish and wildlife habitat, native plant habitat, wetland areas, and riparian vegetation.
- (7) As used in this section, the words "the greatest possible degree" are drawn from Oregon Statewide Planning Goal 15 (F.3.b.) and are intended to require a balancing of factors so that each of the identified Willamette River Greenway criteria is met to the greatest extent possible without precluding the requested use.
- (86) When site review approval is required, the proposed development will be consistent with the applicable site review criteria.
- (97) The proposal complies with all applicable development standards for features explicitly ~~addressed~~included in the application. An approved adjustment to a standard pursuant to provisions beginning at EC 9.8015 of this land use code constitutes compliance with the standard.

**9.8825 Modifications to a Willamette River Greenway Permit.**

After the effective date of ~~approval of final plans~~ Willamette River Greenway Permit approval, modifications ~~to the approved final plans~~ of the Willamette River Greenway Permit, as provided in EC 9.7230 and EC 9.7340, may be considered in accordance with the Type II Application Procedures contained in EC 9.7200 through EC 9.7230. The planning director shall decide whether to grant the requested modification based on the following criteria:

- (1) The modification will be consistent with the conditions of the original approval; and



- (2) The modification will result in insignificant changes in the physical appearance of the development, the use of the site, and impact on the surrounding properties.

If determined to be consistent with the above criteria, the planning director shall approve the request. The applicant retains the ability to submit the requested modification as a new Willamette [River](#) Greenway permit application based on the Type III procedural requirements. Nothing in this land use code shall preclude the applicant from initially submitting the requested modification as a new Willamette [River](#) Greenway permit application.

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