ORDINANCE NO. 1542

AN ORDINANCE AMENDING THE WEST LINN MUNICIPAL CODE RELATING TO THE COMMUNITY TREE ORDINANCE

THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

Section 1: Chapter 8 of the West Linn Municipal Code is amended to read as follows:

8.500 PURPOSE. The purpose of Sections 8.500 to 8.798 is to ensure that the City and any areas that may become part of the City of West Linn will continue to realize the benefits provided by its urban forest, and to establish a process and standards which will minimize uncontrolled cutting or destruction of trees or wooded areas within West Linn. It is the intent of Sections 8.500 to 8.798 to establish, maintain, and increase the quality of tree cover on public and private lands within the City; maintain City trees in a healthy and non-hazardous condition through good arboricultural practices; and to provide a stable and sustainable urban forest. Sections 8.500 to 8.798 also recognize the value of the urban forest for its effect enhancement of the urban environment in the following ways:

1. Healthy, well-maintained trees enhance business and residential environmental and property values.

2. Trees reduce air pollution by trapping dust on their leaves and in their bark, while also absorbing gaseous and liquid pollutants in their leaves and roots and returning oxygen to the atmosphere.

3. Tree roots stabilize the soil and impede erosion.

4. Trees reduce summer heat by blocking direct sunlight and glare. Evaporation of moisture from the leaves cools the surrounding air and moderates temperatures. Trees preserve and enhance water quality in streams and rivers.

5. Trees soften the geometric rigidity and hard surfaces of streets and buildings.

6. Trees muffle and buffer city noises.

7. Trees are recognized by a majority of residents as an essential component to community livability and quality of life. Trees foster a sense of connection to the natural environment and are widely considered to be a key component to the overall aesthetics of a community.

It is the goal of the City of West Linn, through implementation of this ordinance and through other measures designed to encourage and promote tree conservation and planting on both public and private lands, to maintain and increase tree canopy coverage within the City. In addition to and separate from this ordinance are standards concerning trees and tree protection in the Community Development Code (CDC).

8.510 DEFINITIONS.

Basal Flare: That portion of a tree where there is a rapid increase in diameter at the confluence of the trunk and root crown.

Building footprint: The two-dimensional configuration of an existing building's perimeter boundaries as measured on a horizontal plane at ground level.

Business Days: Monday through Friday – exempting any holidays.

Calendar Days: All days as noted on a calendar, inclusive of weekends and holidays.

Certified Arborist: An individual who has either obtained certification as an arborist from the International Society of Arboriculture, or who is a member of the American Society of Consulting Arborists.

City Arborist: The person designated as such by the City Manager.

City Manager: The City Manager or his/her designee.

City Right of Way: Land that is not owned by a private individual or company that has been either deeded or dedicated to the City for a public purpose. As referred to with a road, the area of the road and area adjacent to the road in City ownership.

DBH: Diameter at Breast Height is a tree's diameter (circumference) at 4-1/2 feet or 54 inches above the highest natural ground level. DBH measured in this fashion is considered the accepted method for measuring the size of a tree, by both industry and scientific standards.

Dead Tree: A tree that is dead or has been damaged beyond repair or is in an advanced state of decline (where an insufficient amount of live tissue, green leaves, limbs, or branches exists to sustain life) and has been determined to be such by a certified arborist.

Disturbance: All of the various activities from construction or development that may damage trees.

Drip line area: The area under the tree's canopy as defined by an imaginary vertical line extending downward from the outermost tips of a tree's natural length branches to the ground.

Erosion: Detachment and movement of soil, rock fragments, mulch, fill, or sediment.

Excessive pruning: Removal of more than one-third of the functioning leaf, stem, or root area of a tree in any twelve-month period, or removal of foliage so as to cause the

unbalancing of a tree. Removal of more than one-third of functioning leaf, stem, or root area is considered a tree removal.

Groves: A group of two or more trees with meeting or overlapping canopies. The trees need not be the same species.

Hazard tree: Any tree with a structural defect and/or disease which makes it subject to a high probability of failure, and which threatens persons or property, including other trees.

Hazardous Growth Habit: The development of a tree that, due to a combination of structural defect, disease, or existing disturbance, is subject to a high probability of failure; and such failure would result in a threat to persons or improved property.

Heritage Tree: A tree designated by the City Council as having significant historic or community value to the City of West Linn.

ISA: International Society of Arboriculture.

Injury: A wound resulting from any activity, including but not limited to excessive pruning, cutting, trenching, excavating, altering the grade, or paving/compaction within the tree protection zone of a tree. Injury shall include bruising, scarring, tearing or breaking of roots, bark, trunk branches or foliage, herbicide or poisoning, or any other action forseeably leading to the death or permanent damage to tree health.

Permit Fee: A fee for tree removal permits shall be established by Council resolution.

Protected Tree: All trees that are specifically designated to be saved on private property pursuant to an approved development permit, or for which the City Manager has not issued a tree removal permit. Protected trees are to be indicated on building permit or development plans submitted for approval.

Protected Tree Fencing: A temporary enclosure erected around a tree to be protected at the boundary of the tree protection zone. The fence serves three primary functions: 1) to keep the foliage crown, branch structure and trunk clear from direct contact and damage by equipment, materials, or disturbances; 2) to preserve roots and soil in an intact and non-compacted state; and 3) to identify the tree protection zone in which no soil disturbance is permitted and activities are restricted.

Soil Compaction: The compression of soil particles that may result from the movement of heavy machinery and trucks, storage of construction materials, structures, paving, etc. within the tree protection zone. Soil compaction can result in atrophy of roots and potential death of the tree, with symptoms often taking years to manifest.

Street Tree: Any tree planted by the City or authorized to be planted by another party in a Right of Way and designated as such. Street Trees do not include existing native or non-native trees or new plantings that are not authorized by the City.

Topping: The severe cutting back of a tree's limbs within the tree's crown so as to remove the natural canopy and disfigure the tree.

Tree: For the purposes of determining whether a tree removal permit is required, the following definition of Tree is used. Only those trees that meet or exceed the size standards stipulated in this definition require permits to be removed. It is to be explicitly understood, however, that within this Ordinance there are some references to "Tree" or "Trees" (such as with street trees or replacement trees) where the term "Tree" is used (because it would be cumbersome to invent a different term) but to which the size requirements do not apply.

Any woody, perennial plant, deciduous, evergreen, or coniferous, having a main stem or trunk of a minimum of 6 inch DBH for Oregon white oak, Pacific madrone, and Pacific dogwood, and 12 inch DBH for all other tree species. Trees with multiple trunks will be measured at the 54-inch standard and computed as a total DBH. Plants that otherwise meet the above description but are typically grown as shrubs will not be considered trees. Some typical examples of these we see commonly are hazelnut, photinia, and laurel. (Note: Also see Exemptions -- Section 8.560)

Tree Appraisal: A method of determining the monetary value of a tree as it relates to the real estate value of the property, neighborhood, or community. When required, a certified arborist determines the appraisal by adjusting a tree's basic value by its condition, location, and species using the most recent edition of the *Guide for Plant Appraisal*, published by the Council of Tree and Landscape Appraisers.

Tree Canopy: For the purposes of determining tree removal, it is the sum total of the branch and leaf structure of a tree including the trunk and/or trunks. When referred to as the City tree canopy, it refers to the total ground area that is shielded by tree foliage as would be determined from an aerial view of the City.

Tree Protection and Preservation Plan: A plan prepared by a certified arborist that outlines measures to preserve protected trees on a project site. This plan shall include requirements for pre-construction, treatments during demolition and/or construction, establishment of a tree protection zone for each tree, tree monitoring and inspection schedule, and provide for continuing maintenance of those trees after construction according to the requirements in this Manual.

Tree Protection Zone (TPZ): Unless otherwise specified by a project arborist or City Arborist, the area of temporary fenced tree enclosure. The Tree Protection Zone is a restricted activity zone where no soil disturbance is permitted, unless otherwise approved. The TPZ will normally be measured at ½ foot radius per caliper inch for any given tree.

Tree Removal: Any of the following: (1) Complete removal, such as cutting to the ground or extraction, of a tree; (2) Taking any action foreseeably leading to the death of a tree or permanent damage to its health; including but not limited to excessive pruning, cutting, girdling, poisoning, over watering, unauthorized relocation or transportation of a tree, or trenching, excavating, altering the grade, compacting the soil or paving within the drip line area of a tree; (3) removal of more than one-third of functioning leaf and stem area of a tree in any 12-month period, or removal of foliage so as to cause the unbalancing of a tree is considered as removal for purposes of this ordinance. For fruit-bearing trees, see Section 8.560.

Visually Prominent: Visible from 1000 feet of the tree. Removal of a visually prominent tree would result in a marked difference in a view from an adjacent property or from a public right-of-way.

8.520 PERMIT AUTHORITY: The City Manager, or designee, shall have the authority to issue tree removal permits. In the absence of the City Manager, the City Council shall delegate this authority to another City employee.

8.530 CITY APPROVAL REQUIRED: Unless specifically exempted, any removal of a tree as defined by this ordinance within the City of West Linn on public or private lands shall require a tree removal permit.

8.535 BUSINESS LICENSE REQUIRED: It shall be unlawful for any person to engage in the business, occupation or profession of tree pruning or removal within the corporate limits of the City of West Linn without first obtaining a business license therefore as provided in sections 7.000 to 7.080 of this code.

8.540 FEES: The City Council shall have the authority to set a tree removal permit fee schedule, and approve appropriate permit application forms. Such fees shall be adopted by ordinance of the City Council. The fee for a tree removal permit shall be zero.

8.560 EXEMPTIONS

ORCHARD TREES, TREE FARMS, AND COMMERCIAL NURSERIES EXEMPTION: The City shall not require a permit for removal of trees that are being grown for orchard trees, tree farms and commercial nurseries.

FRUIT BEARING TREES, NON-COMMERCIAL, EXEMPTION: Recognizing that the generally accepted pruning of some trees, such as fruit-bearing trees, requires significantly more pruning without damage to the trees, such pruning shall be exempt from the permitting process.

DEVELOPMENT REVIEW AND BUILDING PERMIT PROCESS:

A. Development Review

1. Any tree which has been approved for removal through the development review process (governed by the Community Development Code, or CDC), either as part of the provision of public improvements or as part of the ultimate development of the site, shall not require an additional tree-removal permit. However, any tree not approved for removal through the development review process, but later is found to require removal during the public improvement or grading review process, shall require approval of a tree removal permit by the City. In such cases, in addition to the findings in Section 8.630, the City may consider whether alternative public improvements or grading plans are feasible and can result in saving the threatened tree.

2. Non-compliance with CDC governed trees shall result in enforcement in accordance with section 8.740 of this code, in addition to any penalties set forth in the CDC.

B. Building Permits

1. Trees that are within the otherwise approved footprint of a project requiring a building permit will not need an additional permit for removal.

2. The City may require the applicant to make minor modifications to a building plan to save significant trees on the property, provided other City mandated regulations, such as lot setback distances, are met, Minor modifications include but are not limited to moving the footprint to a different location on the lot and changes to the driveway shape and location.

C. Details and specifications regarding tree protection and removal for trees governed by the CDC and building permits can be found in the City's Tree Technical Manual.

TREE REMOVAL

8.610 CONTENTS OF APPLICATION FOR TREE REMOVAL: A permit shall be required to remove any tree in West Linn unless such permit is waived by the City Manager. For the purposes of this ordinance, only trees meeting the criteria set forth in the definitions section (8.510) and Street Trees section (8.720) are required to get a permit. Trees of smaller diameter than the standards stipulated in WLMC 8.510 do not require a permit to be removed.

The application shall include:

1. A completed Tree Removal Permit Application. This includes the following information:

    a. The owner's name, address, and phone number
    b. The site address for the tree removal
    c. The number, diameter, and species of trees requested to be removed
    d. Reasons justifying the removal, referencing the criteria in section 8.630
    e. The owner's signature and date

2. A site plan of the property upon which the tree proposed for removal is located. Applicants may use maps available through the City's GIS mapping system. The site plan should show the following:
    a. The location of the tree(s) to be removed
    b. The location of any existing building footprint(s)
    c. The location of any new or planned building expansion(s). (This applies to construction that is exempt from permitting under the Building Code.)
    d. The location of any paved or concreted areas on the property.

3. After clearly marking the tree(s) on the property with brightly colored tape, the applicant shall take and include with the application photograph(s) of the tree(s) to be removed and the surrounding area.

4. The applicant may, at their discretion, submit a report by an arborist on the health and structure of the tree(s) to be removed and the impact of such removal upon surrounding trees. In no way should this be construed to mean that the City requires such a report, except as noted below. Reports from other professionals (engineers, appraisers, etc.) may also be included in the application but are not required.
    a. If the application is being made on the criteria in Section 8.630 A-2 "damaged root structure that will lead to death," then a formal report from an arborist is required.

8.620 PERMIT PROCESS. Upon receipt of a permit request for tree removal, the City Manager shall take the following steps:

Upon receipt of an application for a Tree Removal Permit, the City Arborist shall take the following steps:

1. Determine if the application is complete. A complete application shall include all information requested on the application and as defined in Section 8.610 - Contents of Application for Tree Removal.

If the application is incomplete, notify the applicant within 10 business days of the deficiencies and information necessary to complete the application.

2. Once the application is complete:

   a. The City will visit the site to identify and verify the specific tree(s) requested for removal and will note the following:
      (1) The accuracy of the application, including the location of the tree(s)
      (2) That the tree(s) are visibly identified with brightly colored tape
      (3) The diameter and species of the tree(s)

   b. The City will determine the level of notification needed based on the approval criteria in section 8.630.

      (1) If approval criteria A.1.a. through d. apply, then no notification is needed.
      (2) If approval criteria A.1.a. through d. and denial criteria A.2.a. and c. do not apply the City shall erect a sign on the right of way on the subject property, clearly visible from the public right-of-way, giving notice of the proposed tree cutting, including the same or similar information as provided on the property owner notice below. The sign shall be placed on the property at least 10 days prior to the issuance of a decision on the permit. If the property has no frontage on a public right-of-way, a second sign shall be placed on the nearest such right-of-way directing individuals to the property.
      (3) For all other trees the City shall, in addition to the sign notification described above, notify all property owners within 500 feet of the property for which the permit is being requested. The notice shall be sent via US Mail at least 10 business days prior to the issuance of a decision, and shall include the following:

         (a) The address (or legal description) of the property
         (b) A copy of the applicant's site plan
         (c) A description of the trees to be removed including the diameter and species
         (d) The reasons stated by the property owner justifying the removal
         (e) The expected City Manager's decision date
         (f) How to request a copy of the decision on the application
         (g) The appeal rights and process (see Section 8.640)

(h) The address and contact information of the City staff person for questions and comments

3. Within 20 business days of completion of the application, issue a decision on the permit request, using the decision-making criteria defined in Section 8.630. The City shall mail a copy of the decision to the applicant and any other individual or organization requesting a copy of the decision within two business days of the decision. Upon special request, additional information may be included with the mailed decision, including, but not limited to the appeal rights and process, public comments received by the City, and comments on how the decision criteria in section 8.630 were applied.

4. Final Decision date and Issuance of permit: A decision of the City Arborist becomes final 10 business days after it (the decision) is issued. If the decision is to grant the permit, the permit shall be issued only after the decision becomes final. If there is no appeal filed, the decision of the City Arborist becomes final 10 business days after it (the decision) is issued. The permit to remove the tree(s) will not be issued until the decision becomes final.

8.630 TREE REMOVAL PERMIT CRITERIA.

A. In making a determination whether to grant a permit, the City shall consider the criteria listed below. The decision shall include findings that cite each of these criteria. These criteria are meant to be guides, and the varying importance or weight of each in determining the appropriateness of tree removal shall be as expressed in the findings:

1. Any of the following criteria shall be considered as aspects likely to warrant approval of a tree removal permit:

a. The tree is determined to be dead, or dying and not recoverable.

b. The tree is determined to have a significantly damaged root structure that will adversely impact the health and stability of the tree. Such a determination shall be based upon a report provided by the applicant. The report shall be reviewed and verified by the City Arborist.

c. The tree is determined to exhibit a hazardous growth habit.

d. The tree is interfering with utility service in such a manner that full restoration or maintenance of service requires removal of the tree.

e. The tree encroaches in the public right-of-way so as to cause damage to improvements within the public right-of-way such as street pavement and sidewalks.

f. The tree is causing structural damage that includes, but is not limited to, foundations, water lines and sewer lines.

g. The basal flare of the tree is within 10 feet of an existing building footprint.

h. An existing building footprint lies within the drip line of the tree.

i. Trees that have been maintained in the applicant's property for the purpose of growing fruit which are no longer bearing fruit or have suffered a significant reduction in fruit bearing.

j. Removal of trees is being done for thinning purposes to enhance the health of other trees.

k. In the absence of denial criteria listed below, removal is for the owner's landscape improvement but does not jeopardize the aesthetics of the neighborhood.

l. The removal would allow solar access for an otherwise extremely shaded property.

2. Any of the following criteria shall be considered as aspects likely to warrant denial of a tree removal permit:

a. The tree is visually prominent.

b. The tree is generally healthy and of sound structure.

c. The tree is of significant size.

d. The tree is part of a larger grove or grouping of trees, and its removal will adversely affect the health and safety of the remaining trees within the grove or grouping.

e. The tree is on land that is sloped, and removal of the tree may exacerbate erosion or soil slumping in the vicinity of the tree.

f. The tree acts as a privacy barrier for adjacent properties.

g. Tree removal is solely to improve a view.

B. The City shall deny a tree removal permit if any of the following criteria is met:

1. The tree is designated by the City of West Linn as a heritage tree, unless one of the criteria 8.630.A. 1. a. through d. above applies and the hearing is followed, as noted in Section 8.710.

2. The tree is located within an open space drainageway, drainageway transition area, wetland, wetland transition area, Willamette River Greenway area, or Tualatin River protection zone as defined by the West Linn Community Development Code, unless one of the criteria 8.630 1. a. through d. above apply.

3. The tree is protected by an existing tree conservation easement, unless criterion 8.630 1. a. through d. above apply.

C. It is encouraged, but not mandated, that the property owner replace a tree that is removed.

8.640 APPEAL: Any decision of the City Arborist regarding a tree removal permit may be appealed to the City Manager if such appeal is filed within 10 business days of the date of the City Arborist's decision. The written appeal shall include a statement from the appellant listing the errors the appellant believes the City Arborist has made in issuing the decision. Any decision of the City Manager regarding a tree removal permit may be appealed to the City Council if such appeal is filed within 10 business days of the date of the City Manager's decision. If appealed, the City Council shall cause a public hearing to be held, notice to be given in a manner similar to the original notice, and in addition shall publish notice of the hearing in a newspaper of general circulation at least 10 business days prior to the hearing. The City Council shall consider the same approval criteria as considered by the City Arborist and City Manager. Any decision of the City Council shall be final.

Note: All references to business days shall mean working days, Monday through Friday, not counting Federal or State holidays.

8.650 TIME LIMITS. If the City Arborist does not issue a decision within 20 business days from the submittal of a complete tree cutting application, or the City Council does not consider an appeal of the City Manager's decision within 30 business days of the filing of such appeal, the permit shall be deemed to be approved.

An approved tree-removal permit shall be valid for twelve months from the date of issuance.

8.710 HERITAGE TREES.

Heritage Trees.

1. Heritage trees shall be those trees designated by the City Council following review of a nomination form submitted by a citizen and accepted, in writing, by the property owner. If a proposed Heritage Tree is on private property, the property owner must give written consent to the Heritage Tree Application before such application can proceed. The written consent of the property owner shall include provisions for the City to have reasonable access to the tree for maintenance and such necessary pruning as is required. It shall also be expressly understood that the Heritage Tree designation, once approved by the City Council, shall be an encumbrance on the property containing the Heritage Tree and shall be listed as a deed restriction. Such legal costs associated with this provision shall be borne by the City.

2. The following criteria shall be used:

Minimum circumference at 5 feet above ground level = point value 5

Rapid growing (Douglas Fir, Giant Sequoia, etc.) – 138"
Moderate growing (Oregon White Oak, Scarlet Oak) – 107"
Slow and smaller growing (Ginkgo, Madrone) – 86"

Location factor point values:

6	Commercial areas
5	Yard adjacent to street
4	Side yard
3	Wooded lot within subdivision
1	Forested area

Condition factor point values:

5	Excellent – perfect form, little or no dead wood, all limbs have good attachments, no sign of decay
4	Very good – good form, multi-leaders, but with good attachments, 10% or less large dead wood
2	Good – unbalanced or incomplete crown, tight limb angles, 15% - 20% larger dead wood
1	Poor – evidence of some decay, 20%-30% larger dead wood, history of being topped
0	Very poor - structurally unsound, extensive decay, dieback, poor form, unbalanced or greatly reduced crown.

Historical factor is determined by the tree's relative historic significance. Historic significance may be determined by the tree's association with historic or famous events, the cultural history of the nation, state, community or person or persons who have significantly contributed to the history of the nation, state or community. Local historians may be called upon for research assistance for this category. Point values:

5	Very significant
4	Significant
3	Somewhat significant

2 Marginally significant
1 Not significant

Formula: size x location x condition x historical factor = heritage tree points

Trees shall accumulate a minimum off 180 points to receive consideration as a heritage tree.

3. Upon a tree being designated as a Heritage Tree, a plaque so designating may be placed upon or near said tree. It shall become the obligation of the Parks and Recreation Department to maintain such tree. A Heritage Tree may not be removed without a public hearing at least 30 days prior to the proposed date of removal.

4. This section is intended to give, and does hereby give full and complete authority to the City Manager over any and all heritage trees in the City upon written consent of private property owners.

8.720 STREET TREES

A. Street Tree Plan and List of Trees.
Street trees shall not fall under the definition of tree as provided in the definition portion of this ordinance.

1. It is in the best interest of the City that a Street Tree Plan be developed and established for the planting, maintenance and replacement of trees in and along its streets. This section is adopted for the purpose of providing for such a plan and for the establishment of regulations necessary to carry out its purpose.
2. The City shall prepare or cause to be prepared a Street Tree Plan for the planting and maintenance of trees in the streets of the City.
3. The Street Tree Plan should include, but shall not be limited to, a series of maps of City streets upon which is designated a scheme for the planting of trees and the designation of streets for certain types of trees. Such maps shall show the interval between existing trees and the approximate place where each new tree is to be planted.
4. A survey of the street trees presently existing in the City and their condition may be taken.
5. Approval and amendments of the Street Tree Plan shall be based on consideration of the following criteria:
   a. Existing and planned street width.
   b. Existing and planned utilities.
   c. Pedestrian and vehicular traffic.
   d. Proposed trees are included in the City Arborist's listing of approved species.

6. The City Arborist shall maintain a list of approved varieties of trees that may be planted on any street within the City in accordance with the Street Tree Plan. Approval shall be based upon considerations such as maturity, height, susceptibility to disease or pests, reasonable expected freedom from nuisance characteristics and general suitability for any particular locations. The City Arborist's listing of approved varieties shall not prevent the seeking of approval of unlisted varieties.

B. Funding.

1. A separate account shall be established and maintained for revenues and expenditures created by the street tree program.

2. Property owners of new developments will pay a set amount per street tree in new developments. The money collected will be used by the City to purchase and install street trees and the amount will be based on the current price of 1.75 inch caliper nursery stock installed to City standards. The number of trees in new developments will be set at two per lot, and four for corner lots, for single family homes. For multi-family housing and commercial developments the number of trees will be based on linear feet of street frontage with one tree per 25-40 feet of frontage.

C. Planting of Street Trees.

1. The City may plant street trees along the streets of the City in accordance with the Street Tree Plan or approved development plan.
2. It shall be unlawful for any person to plant or set out any tree or authorize or cause or procure any person to plant or set out any tree in or upon any part of any street or public right-of-way without:
   a. Obtaining from the City Arborist a written permit to do so; and
   b. Complying in all respects with the conditions set forth in such written permit and with the provisions of this ordinance.

3. All applications for such permit shall describe work to be done and the variety, size and precise location of each tree to be planted. Upon review of the application:
   a. If the City Arborist has found that the proposed planting is in accord with the Street Tree Plan, the City Arborist shall grant a permit, and the trees shall become part of the City's street tree inventory.
   b. If the City Arborist finds that the proposed planting is not in accord with the Street Tree Plan, but that the trees proposed to be planted have a reasonable likelihood of prospering and the application specifies the location, variety and grade of each tree and method of planting, including among other things, the supplying of suitable soil, then the City Arborist may grant a permit, and the tree shall become part of the City's street tree inventory.

4. The permit shall be good only for the planting season stated.

5. All street trees shall be planted in accordance with specifications in the Tree Technical Manual.

D. Protection of Street Trees.

1. It shall be unlawful for any person to attach or keep attached to any tree in or upon any public street or to the guard or stake intended for the protection of such tree, any ropes, wires, chains, or other device whatsoever, except that the same may be attached to any tree as support or protection thereof.

2. During the erection, repair, alteration or removal of any buildings or structure, it shall be unlawful for the person in charge of such erection, repair, alteration or removal to leave any tree in or upon any street in the vicinity of such building or structure without a good and sufficient guard or protector as to prevent injury to such tree arising out of, or by reason of such erection, repair, alteration or removal. See West Linn Tree Technical Manual for details regarding tree protection during construction.

E. Permit Requirements and Conditions.

The City maintains sole authority over the planting, pruning and removal of all trees and foliage on City property, including, but not limited to, street trees in the City's Right of Way. Private individuals shall only be allowed to prune, remove or plant any tree on City property, including the Right of Way, with express written permission of the City. However, such small scale and minor pruning of street trees in the City's right of way directly abutting private property shall be done by that property owner to maintain minimum sidewalk and road clearance as described in Section 8.720. Any such minor pruning shall only be deemed exempt from this permitting provided that it is the minimum reasonable amount necessary to achieve the clearance minima.

Should a citizen so desire, a request can be made to the City to have a City tree removed. The request will be reviewed, utilizing the guidelines for tree removal as presented herein. Minimum size thresholds shall not apply for street trees.

F. Maintenance.

1. It shall be the responsibility of the property owner adjacent to any street tree to maintain the tree according to the tree maintenance standards detailed in the City's Tree Technical Manual. Maintenance includes replacement of trees that are dead, or in need of replacement due to injury, disease, etc. A fee may be paid to the City in lieu of replacement. In this case the City shall replace the tree at the time of its regular scheduled street tree plantings.

2. All street trees must be pruned to ISA Pruning Standards for Shade Trees. See pruning guidelines in Tree Technical Manual for details.

3. Street trees having branches projecting into the street or sidewalk shall be pruned by the owners of the property adjacent to where the trees are growing and shall be done according to the requirements for tree branch clearance over street and sidewalk areas, and signs as set forth in this ordinance.

4. Limbs of trees may be allowed to project over the sidewalk area at an elevation of not less than 7 1/2 feet above the sidewalk level, and over the street area at an elevation of not less than 10 feet above the street level. However, on any street designated as an arterial and where parking has been prohibited, limbs of trees shall be pruned to a height of not less than 13 feet above the street level. Trees, which are not trimmed so as to meet the above specifications, shall be deemed to present an unreasonable risk of harm to persons or property.

5. The City may cause to be pruned and maintained, all of the trees within the City street right of way.

6. A private utility maintaining its utility system in a street may prune or cause to be pruned in accordance with the terms and conditions of their franchise agreement with the City.

7. It shall be unlawful for any person, firm, or City department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted by the City Arborist.

8.730 EMERGENCY PERMIT PROCESS

A. The City Manager or designee shall have the authority to issue an emergency tree-removal permit if the condition of the tree presents an immediate danger of collapse, and/or represents a clear and present hazard to persons or property.

For purposes of this section, a hazardous growth habit which will likely result in failure of the tree prior to consideration of the permit through the normal process means that the tree is already leaning, with the surrounding soil heaving, or showing other clear signs of imminent failure, and that the problem cannot be resolved through pruning, trimming, or other preventive maintenance.

B. An emergency tree-removal permit shall not require mailed or posted notice.

C. An emergency tree-removal permit denial may not be appealed to the City Council.

D. If the City Manager denies an emergency tree-removal permit, the applicant may apply for a tree-removal permit through the standard process.

E. A property owner may remove a tree which he/she has determined is in imminent danger of falling and/or posing a threat to life and/or property prior to the ability of the City to consider issuing an emergency tree removal permit (e.g., on a weekend day). In such cases, within five business days of the tree's removal, the property owner shall provide written and photographic documentation of the condition of the tree prior to removal. If the City Manager does not agree with the property owner's decision, the property owner may be subject to enforcement and mitigation action pursuant to Section 8.740.

F. Any officer of the Police Department or the Fire District may also require removal of a tree if, in the judgment of the officer during the performance of his or her public duties, the tree is in a hazardous or dangerous condition threatening life and/or property.

8.740 NON-COMPLIANCE, PENALTY, AND ENFORCEMENT: Any violation of the terms of Sections 8.500 to 8.798 is a class A civil infraction. Each tree involved in the violation constitutes a separate offense. In addition, the city attorney shall institute any necessary legal proceedings to enforce the provision of this section. These rights shall be in addition to any other remedies allowed by law. Upon discovery of a violation, the City shall notify the violator of the alleged violation and of the procedures and potential penalties associated with said violations.

The City Manager shall make a determination of whether the violation was knowing, willful and intentional on the part of the violator. If the City Manager determines that there is ample reason to believe that the violation was accidental or unintentional, the violator shall be permitted the opportunity to mitigate the violation through voluntary compliance process as found in Section 8.740(A). Intentional violators shall be subject to penalties as listed on 8.740(B) as well as the tree replacement requirements of 8.740(A)(1). Fines and penalties shall be submitted to the West Linn Municipal Court pursuant to the rules and procedures and authority of the Municipal Court to assess fines and other penalties for violation of the West Linn Municipal Code.

A. Voluntary compliance process. A voluntary compliance agreement shall contain the following:

1. A commitment by the violator to submit and carry out a tree replacement program that is approved by the City Manager. The agreement shall require at minimum the planting of replacement trees at a 1:1 inch per inch (circumference) ratio to the trees removed illegally. The size and quality of

the mitigation nursery stock shall be approved by the City. If the applicant's property is deemed inadequate in size to accommodate the replacement trees, then a fee may be paid into the Tree Canopy Replacement Fund at the minimum rate for installation of a 1.75 inch caliper tree to City standards.

2. Payment of a fee deposit, calculated based upon anticipated staff time devoted to investigation of the violation and review and approval of the voluntary compliance agreement and related compliance inspections. The actual staff time shall be tracked and charged against the fee deposit. At the conclusion of the process, any unused funds in the deposit shall be refunded. If the deposit funds run out prior to completion of the voluntary compliance process, the violator shall pay an additional deposit calculated as necessary to complete the process. If the violator does not pay such an additional deposit, the voluntary compliance process shall be terminated and the City Manager shall initiate enforcement action against the violator.

3. Trees that have been planted as part of a mitigation planting will not be covered by the minimum thresholds for trees requiring a permit for removal.

B. Penalties. Any person, firm, or corporation causing the illegal removal of a tree who does not enter into a voluntary compliance agreement may upon conviction be fined a sum not to exceed the equivalent of three times the appraised value of the tree based on the latest revision of the Council of Tree and Landscape Appraisers evaluation method plus cost of prosecution including attorney's fees for each tree removed, but in any case an amount not less than $500.00.

8.750 ABATEMENT.

Abatement.

1. When any tree located on private property is dead (and deemed to create a hazard) or infested with a disease or insects or is, in the opinion of the City Arborist, infectious and may spread such disease or insects to other trees in the City or otherwise an imminant hazard to persons or property, the City may remove or treat the tree or cause same to be removed or treated. Such removal or treatment shall be the responsibility of the property owner.

2. The City may abate or remove, or cause to be abated or removed, any tree located in the street right of way, or which encroaches from private property into the street right of way because of age, disease or other debilitating cause, death, insecure root system, or any other condition which, in the opinion of the City, causes its continued existence to be detrimental to the public interest.

3. If sections of the Community Tree Ordinance impose an undue hardship on an individual property owner, assistance by a grant-in-aid may be available through the City Manager's office pursuant to the City's Grant-In-Aid Policy.

8.760 TREE CANOPY REPLACEMENT ACCOUNT

A. An account shall be established and maintained for various tree related revenues and expenditures.

Sources of revenue for this account include the following:

1. Fees paid as part of voluntary compliance mitigation.
2. Fees paid as part of development mitigation.
3. Fines paid for non-compliance.
4. Gifts received by the City for the purpose of tree canopy replacement.

Expenditures for this account may include but are not limited to the following:

1. New tree installations on City property.
2. Natural area restorations on City property.
3. Street tree replacement programs.
4. New street tree installations in older neighborhoods.

8.795 FEES/CLASSIFICATION OF FEES AND COSTS: Fees shall be established by ordinance of the City Council and may be amended by Council resolution from time to time. The City Council determines that the fees and costs imposed by this ordinance are not a tax subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

8.797 DISCLAIMER OF LIABILITY: Nothing contained in Section 8.500 to 8.798 shall be deemed to impose any liability upon the City, its officers or employees, or to relieve the owner of any private property from the duty to keep any tree, shrub or plant on his property or under his control in such condition as to prevent it from constituting a hazard or an impediment to travel or vision upon any public right-of-way, park, or public place within the City.

8.798 GENERAL PROVISIONS: If any provision or any portion thereof contained in this ordinance is held to be unconstitutional, invalid or unenforceable, the remainder of this ordinance, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

PASSED AND APPROVED this 27th day of November 2006.

Norman B. King, Mayor

ATTEST:

Witness

Approved as to Form:

City Attorney