



Staff Report

For City Council Meeting - 6/5/2024

Subject - Ordinances/Resolutions - Ordinance #942 Section 6.070(8) Preservation & Removal of Trees GZO Text Amendments

Synopsis: Below is the staff report synopsis from City Planner, Garrett Phillips.

CITY OF GEARHART STAFF REPORT

To: Gearhart City Council

From: Garrett Phillips, AICP City Planner

May 23, 2024

City File: Gearhart Zoning Ordinance Amendments: Section 6.070(8) Preservation and Removal of Trees Amendments

Attachments: Discussion Draft Changes to Planning Commission's Proposed Amendments

Planning Commission proposed legislative text amendments to the Gearhart Zoning Ordinance (GZO) Section 6.070(8) Preservation and Removal of Trees. The proposed amendments were drafted, deliberated over in open Planning Commission meetings, and refined over the course of several months in 2023. City Council held a hearing in January 2024 and declined to approve the amendments and requested that Planning Commission reconsider and continue working on the amendments. In March 2024, Planning Commission considered feedback from City Council, and discussed a limited scope of issues that City Council feedback was related to, making a new recommendation to City Council.

Planning Commission Process and Discussion

In the March 2024, the Planning Commission discussion centered around the following issues:

- **Clarifying Intent:** Clarifying the intent and rationale of Planning Commission's recommendations for City Council.
- **Process History:** Clarifying how many opportunities the public had to affect the draft ordinance.
- **More Protection for Trees:** Whether to recommend substantive changes to the draft ordinance, such as requiring more protection for trees.
- **Clarity on Tree Definitions and hazard and septic situations:** Whether to recommend

changes responding to City Council feedback on multi-trunk trees, invasive species, hazard situations, and emergency septic repair situations.

Clarifying Intent

- The Planning Commission’s intent for the draft amendments was to assist staff in keeping track of tree cutting activities, so that they can respond to inquiries from Gearhart residents about whether given instances of tree cutting are permitted. In March 2024, the Planning Commission reiterated their purpose.

Process History

- Planning Commission’s draft amendments were drafted and deliberated over in at least seven open Planning Commission meetings, with the topic posted on the Planning Commission’s agenda in public notices. City Council held a hearing on the matter, and then Planning Commission discussed the topic in an additional public meeting in March 2024. Few members of the public have testified, attended meetings, or reached out to City staff to discuss the amendments throughout the process.

More Tree Protections

- Throughout 2023, the scope of the Planning Commission’s discussion included potentially requiring more substantial protections for trees in more situations, for example, lowering the size and count thresholds for when trees are permitted to be cut down, providing additional protections to very large trees, and adding more restrictive decision criteria that would need to be met to permit tree cutting. After deliberating on these issues, the Planning Commission declined to recommend that they move forward in the draft ordinance. In their March 2024 meeting, the Planning Commission also declined to reconsider these issues.

Clarity on Tree Definitions and hazard and septic situations:

- Staff proposed draft ordinance changes in response to January 2024 City Council feedback on the following issues: multi-trunk trees, invasive species, hazard situations, and emergency septic repair situations.
- Planning Commission discussed staff’s draft ordinance changes, making minimal changes, and recommending that the City Council consider the resulting draft amendments reflected in the exhibit.

Staff requests feedback on the discussion draft amendments responding to “less” complex concerns, and confirmation of whether the Planning Commission wants to deliberate further in the coming months to respond to the “more” complex concerns.

City Council January 2024 Discussion

Summary of Individual City Council Member Concerns

Concern	
Require more protection for trees, potentially lowering the size threshold for what constitutes a tree.	The proposed amendments do not respond to this topic.

Include a purpose statement for the section	The proposed amendments do not respond to this topic.
Require consideration of methods other than whole tree removal, such as pruning or limb removal	The proposed amendments do not respond to this topic.
More public input should be obtained.	The Planning Commission held an additional public meeting with the topic announced on the agenda.
Dangerous tree mitigation should be allowed without any permit process that would slow it down. City staff should not be in the position of determining whether a tree is dangerous	The proposed amendments respond to this topic on the bottom of page 2, by allowing residents to remove a tree based on an arborist's recommendation without first obtaining a permit. The proposed amendments also allow for staff to make a determination that a hazard tree can be removed.
The permit process will require additional unfunded staff time.	Staff estimate that upon receiving a tree removal application form, it would take approximately 15 to 30 minutes on average to review the form, request any missing information from applicants, and issue/file the permit. Staff do not have a basis for estimating the number of applications that will be submitted, because applications have not been required in the past.
The amendments give inappropriate consideration to aesthetic while ignoring homeowners' rights to make their own decisions.	The proposed amendments do not respond to this topic, however the draft amendments presented in January 2024 and presented now do not add any restrictions on tree cutting.
Clarify tree definition so that the measurement is only applicable to the largest trunk/branch at breast height in cases of multi-trunk trees.	The proposed amendments respond to this topic in the "Definitions" section on page 1.

Change the tree definition to exempt several invasive species.	The proposed amendments respond to this topic in the "Definitions" section on page 1.
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Council Options:

- 1) Motion to approve amended draft Ordinance #942 reading once by title only;
- 2) Make further changes and motion to approve as amended;
- 3) Take other action desired by the Council.

Recommended Motion: Staff needs direction from Council; this is a Council decision.

Legal Analysis: The ordinance would return in July for a second reading, taking effect 30-days later, if approved.

Financial Analysis: The ordinance as written implements a permit process similar to the Beaches & Dunes area permit. It's not intended to focus on amending restrictions. There will be no cost for the tree permit application.

Respectfully Submitted,



Chad



ORDINANCE NO. 942

AN ORDINANCE AMENDING THE CITY OF GEARHART ZONING ORDINANCE SECTION 6.070(8) PRESERVATION & REMOVAL OF TREES

WHEREAS, the City of Gearhart wants to clarify the measurement of trees needing a permit to be removed; and

WHEREAS, the City wants to collect more data on the number of trees being cut.

NOW, THEREFORE, the City of Gearhart ordains the Zoning Ordinance to read as follows:

Amendments

8. PRESERVATION AND REMOVAL OF TREES

A. Purpose: The purpose of this section is to recognize that trees are a significant aesthetic and environmental resource within the City of Gearhart and to create conditions favorable to the preservation of this plant heritage for the benefit of the current and future residents of the City. The purpose is not to prohibit the removal of all trees, but to ensure that mature trees are removed only where necessary, and to permit the reasonable development and use of property.

B. Definition: For the purpose of this section, “tree” is defined as follows: Any tree with a primary trunk greater than thirty-eight (38) inches in circumference as measured four and one half (4-1/2) feet above the existing grade, and excluding Common Hawthorn, English Holly, Cherry Laurel, and Tree of Heaven.

C. Applicability: This section applies to the removal of trees in the City of Gearhart, except that it does not apply to tree removal:

(1) in order to construct proposed improvements, including the placement of structures and on-site sewage disposal facilities, access ways, utilities, need to make essential grade changes, and other authorized activities.

(2) in the B.A.D. Overlay Zone the preservation and removal of trees are regulated by that zone in Section 3.12.

D. Requirements:

(1) Any person proposing to remove, cut down, or otherwise destroy a tree shall first obtain a minor or major tree removal permit from the City.

(2) One or more minor tree removal permits may be granted for the removal of up to five total trees within any twelve month period. Upon submittal of a complete application and verification by City staff that the proposed permit will not authorize the

removal of more than five trees in a 12 month period, and that the proposal is consistent with the Gearhart Zoning Ordinance, the permit shall be issued.

(3) Removal of more than five trees within any twelve month period may be permitted as a major tree removal permit. The Planning Commission may grant or deny a request for a major tree removal permit on the basis of the criteria set forth below in Section 6.070(8)(E), except as provided in Section 6.070(8)(F) below.

(4) Such conditions as are deemed necessary and appropriate to ensure the proper enforcement of this section may be made part of the major removal permit. Such conditions may involve, but are not limited to the following:

- a. The replacement of the trees proposed for removal with trees of a suitable type, size and location.
- b. A Plan for protecting trees on the project site during and after development.
- c. Restrictions on cuts, fills and grading within the vicinity of remaining trees.

(5) Tree removal that is to be undertaken in conjunction with a specific development project shall occur only after a building permit has been issued, or the Planning Commission or City Council has approved an activity requiring the removal of the trees.

(6) An approved tree removal permit shall be void after one year from its issuance unless a shorter period was specified as a condition for approval.

E. Criteria: The granting of a major tree removal permit shall be based on a finding that at least one of the following criteria is met:

(1) Necessity to remove trees which poses a safety hazard.

(2) Necessity to remove trees which are diseased. Evidence of disease may be provided by a qualified forester or arborist.

(3) Solar access; and the need to remove trees which deposit needles or other debris on rooftops. The burden of proof is on the applicant to show that other design alternatives which do not require the tree removal are not practical or will create a significant economic hardship.

F. Exception:

(1) A tree posing a safety hazard or dangerous condition may be removed without first obtaining a permit if an arborist recommends removal as the corrective action. In such cases, the condition and corrective action shall be documented in writing by an arborist, and submitted to the City with a tree removal application within 10 days after the corrective action has occurred.

(2) The City Administrator or designee may grant the immediate removal of trees which pose a safety hazard or dangerous condition, or for a required septic system emergency repair. In such cases, the septic system permit shall be submitted to the City with a tree removal permit within 10 days after the corrective action has occurred.

G. Appeals of a decision of the City Administrator or Planning Commission shall be in accordance with Section 13.060.

H. Enforcement. Enforcement of this section shall be in accordance with Article 15 of this ordinance, or by other ordinances the City Council may adopt to implement the purpose of this section.

Passed by the City Council of Gearhart this ____ day of _____, 2024.

Yeas: ____

Nays: ____

Absent: ____

Abstain: ____

Approved and signed by the Mayor of Gearhart this ____ day of _____, 2024.

Mayor Kerry Smith

ATTEST:

City Administrator, Chad Sweet

Discussion Draft Amendments to GZO Section 6.070(8) Preservation & Removal of Trees
This version displays the amendments proposed to City Council in regular black text, and discussion draft changes in response to January 2024 City Council comments and March 2024 Planning Commission Deliberation in tracked changes.

Key: -Deletions, Additions

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