

Staff have attempted to illustrate Councilor Kloefer's comments in the following draft, for discussion purposes. Ordinance 942 does not include the changes in the following draft. The following draft would need to be modified at least in order make them feasible for staff to implement and to avoid legal risk. Broadly speaking, staff have identified that the Heritage Tree definitions would need to be more objective and changes that could delay the correction of hazard situations could place the City at legal risk or result in unnecessary damage to property or risk to people. Staff are available to refine these changes based on City Council direction.

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, Cherry Laurel, and Tree of Heaven.
- Heritage Tree definition. This would include any tree over 55 inches in circumference measured at 4.5 feet from the ground, a tree estimated to be older than 50 years, a tree with historical or unique aesthetic value, or a tree in a prominent location.
- Heritage Tree Root Zone Definition: The root zone is the diameter of the trunk at 4.5 feet above the ground times 12 inches in any direction from the trunk.

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 sewerage disposal facilities, access ways, utilities, and essential grade changes.

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

(3) Trees in riparian zones and wetlands and their buffers are regulated by the Freshwater Lake and Wetland Overlay Zone and by riparian area standards located throughout the Gearhart Zoning Ordinance.

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 a heritage tree or more than ~~five-three~~ trees within any twelve month period may be permitted as a major tree removal permit. The ~~Planning Commission City Council~~ 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. Replacement trees must measure at minimum 3" in diameter, measured four and ½ feet above ground, and must be planted within one year of tree removal.
 - 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~~ tree care specialist who will not be involved in their removal.
- (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

Councilor Kloefer's proposed amendments as interpreted by staff.

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 an immediate safety hazard or dangerous condition may be removed without first obtaining a permit if a tree care specialist~~arborist~~ recommends removal as the corrective action. In such cases, the condition and corrective action shall be documented in writing by ~~an arborista~~ tree care specialist, and submitted to the City with a tree removal application within 10 days after the corrective action has occurred. If more than one tree is involved, a permit is required to remove any tree after the first tree
- (7) The ~~City Administrator~~City Council 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.

Tree ordinance inclusions:

1. Heritage tree protection

In order to protect our most valued trees, council consideration and approval must be given for removal of any trees that fall under the Heritage Tree definition. This would include any tree over 55 inches in circumference measured at 4.5 feet from the ground, a tree estimated to be older than 50 years, a tree with historical or unique aesthetic value, or a tree in a prominent location.

2. Root zone protection

Any tree that is deemed to fall under the Heritage tree definition will also have its root zone protected from disruption. The root zone is the diameter of the trunk at 4.5 feet above the ground times 12 inches in any direction from the trunk.

③ Riparian Zone protection

All trees within the Riparian Zone are to be protected from removal and topping. The Riparian Zone includes areas adjacent to Necanic Creek, The Estuary, Mill Creek and the lake north of Pacific Way on the East Side. The protection zone is 58 horizontal feet from the high water mark. Exclusion to this area of trees that presents immediate

danger to an existing structure.

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.

city council

(3) Removal of more than ³ 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~~ and at least 3" in diameter at 4.6 feet from ground
- 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.

within 1 year of tree removal

(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 of 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~~ *tree care specialist who will not be involved in their removal.*

(X)

(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 ^{immediate} safety hazard or dangerous condition may be removed without first obtaining a permit if an ~~arborist~~ *tree care specialist* recommends removal as the corrective action. In such cases, the condition and corrective action shall be documented in writing by an ~~arborist~~ *tree care specialist* and submitted to the City with a tree removal application within 10 days after the corrective action has occurred. *If more than one tree is involved, a permit is required for any tree after the first tree.*

NO

(2) City Council ~~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.