

ORDINANCE NO. 817

AN ORDINANCE RELATING TO LAND USE AND AMENDING MUNICIPAL CODE CHAPTERS 17.140 (PUBLIC LAND TREE REMOVAL) AND 17.162 (PROCEDURES FOR DECISION MAKING--QUASI-JUDICIAL)

WHEREAS, the City of Scappoose has adopted development regulations that provide for public input prior to the removal of trees on publicly owned land, except in the case of emergency, and

WHEREAS, the proposed amendments would amend the Public Land Tree Removal regulations for clarity and to identify the applicable approval authority, and

WHEREAS, legal and public notices have been provided as required by law; and

WHEREAS, the Planning Commission held a hearing on the application on August 11, 2011 and the City Council held a hearing on the application on September 6, 2011; and

WHEREAS, City Council finds that the amendments are in the public interest; now therefore,

THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

Section 1. Chapter 17.140 of the Scappoose Municipal Code is hereby amended as indicated in Exhibit A, attached hereto and hereby incorporated by reference.

Section 2. Chapter 17.162 of the Scappoose Municipal Code is hereby amended as indicated in Exhibit B, attached hereto and hereby incorporated by reference.

Section 3. In support of this ordinance, the City Council adopts the recommendation of the Scappoose Planning Commission and the findings of fact in the Staff Report dated August 25, 2011, attached hereto as Exhibit C.

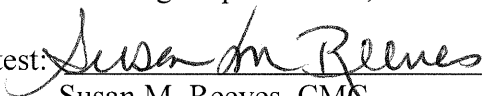
PASSED AND ADOPTED by the City Council this 19th day of September, 2011, and signed by the Mayor and City Recorder in authentication of its passage.

CITY OF SCAPPOOSE, OREGON



Scott Burge, Mayor

First Reading: September 6, 2011
Second Reading: September 19, 2011

Attest: 

Susan M. Reeves, CMC
City Recorder

**Exhibit A of Ordinance No. 817
Amendments to Scappoose Municipal Code Chapter 17.140**

(Language to be omitted is ~~struck through~~, proposed language additions are double underlined)

Chapter 17.140

PUBLIC LAND TREE REMOVAL

Sections:

17.140.010	Purpose.
17.140.020	Permit required/applicability.
<u>17.140.025</u>	<u>Administration and approval process.</u>
17.140.030	Criteria for issuance of permits.
<u>17.140.031</u>	<u>General provisions.</u>
17.140.035	Expiration of approval.
17.140.040	Emergencies--Authority.
17.140.050	Application submission requirements.

17.140.010 Purpose. The city is now benefitted by large numbers of trees which add to the aesthetic beauty of the community, help clean the air and provide visual and noise barriers. The purpose of this chapter is to prohibit the unnecessary removal of trees on publicly owned land without opportunity for public input while allowing removal of ~~tree(s) that may cause a hazard~~trees in specific instances.

17.140.020 Permit required/applicability. A. ~~This~~The provisions of this chapter shall apply to all publicly owned or maintained properties and to street trees as regulated by Chapter 17.104.

B. No person shall cut a tree(s) upon these properties without first obtaining a permit from the city ~~and approval from the planning commission.~~

C. For the purpose of this chapter, tree removal shall not include tree topping and pruning under power and utility lines, or pruning of trees located with visual clearance areas.

D. For the purpose of this chapter, tree removal permits shall be required for all trees having a trunk six inches or more in diameter, measured four feet above the ground level.

17.140.025 Administration and approval process. A. Applications shall be processed according to Chapter 17.162.

B. The planning commission shall be the approval authority for requests associated with timber harvesting and clearing from designated public recreation areas. Timber harvesting shall also comply with the provisions of Chapter 9.22, Timber Harvesting and Exporting Rules.

C. The planner shall be the approval authority for all other requests.

17.140.030 Criteria for issuance of permits. A. The planner may approve, approve with conditions, or deny an application for following criteria shall be used by the planning commission for the issuance or nonissuance of a tree cutting permit based on the criteria below.

To issue a permit, the following criteria must be satisfied: A permit for tree removal may be granted if any of the following criteria apply:

1. The trees are unsafe, dead, or diseased as determined by a Certified Arborist and there is a danger the trees may fall on existing or proposed structures;

2. The trees conflict with public improvements or interfere with utility services or traffic safety;

3. The proposed removal is part of an approved development project, a public improvement project, or a street tree improvement program; or

4. The trees are causing repeated and excessive damage to sidewalks or other public or private improvements or structures.

B. The planning commission may approve, approve with conditions, or deny an application for a tree cutting permit associated with timber harvesting and clearing from designated public recreation areas based on the following criteria:

1. The recreational purposes of the site are protected to the extent possible;

2. A certified forester has prepared a timber harvesting and reforestation plan identifying the location, species, size, and number of trees to be removed and replanted;

3. The proposal is for selective cutting rather than clear cutting;

4. The plan provides adequate buffers for adjoining properties and riparian corridors;
and

5. Evidence has been submitted to demonstrate appropriate erosion control measures and other protective steps to maintain soil and slope stability and water quality.

~~A. The trees are diseased and there is a danger the trees may fall on existing or proposed structures or interfere with utility services or traffic safety;~~

~~B. There is not a need to retain the tree(s) due to the topography of the land because there will be no effect from the tree removal on erosion, soil retention, stability of earth, flow of surface waters;~~

~~C. There is not a need to retain the tree(s) to protect nearby trees as windbreaks, and as a desirable balance between shade and open space;~~

~~D. The applicant's proposals, if any, to plant new trees or vegetation as a substitute for the tree(s) to be cut, will restore the aesthetic value of the removed trees.~~

17.140.031 General provisions. A. The applicant shall be responsible for all costs associated with the tree removal and shall ensure that all work is done in a manner which maintains safety to individuals and public and private property.

B. The applicant shall replace each removed tree on a one-for-one basis within one year of approval. Replacement trees for all permits other than timber harvesting and clearing shall comply with the standards of Section 13.28.020 (Public Tree Standards). If site conditions do not allow replacement near the location of the trees removed, the approval authority may authorize replanting at other locations.

C. For all permits other than timber harvesting and clearing, the applicant shall remove or grind stumps and surface roots at least six inches below grade.

D. Following removal of the tree(s), the applicant shall perform erosion control, slope stability measures, and seeding to restore the surface.

17.140.035 Expiration of approval. A. Approval of a tree removal permit shall be effective for a six-month period.

B. The ~~planning commission~~approval authority may renew the permit for a maximum period up to one year upon finding that:

1. All of the conditions of approval have been satisfied;
2. There has been no change in the original approved application ~~approved by the planning commission;~~
- ~~3. There have been no changes to the applicable comprehensive plan policies on which the approval was based;~~
4. The applicable approval criteria in Section 17.140.030 are satisfied;
5. The applicant certifies that he/she is complying with the conditions of approval and agrees to comply in the future.

C. The planner may revoke a tree removal permit if the conditions are not satisfied as required by the original permit.

17.140.040 Emergencies--Authority. In the event of emergency conditions requiring the immediate cutting or removal of trees in order to avoid damage to persons or property, a permit shall not be required. However, only the trees constituting an actual threat to life or property shall be removed without the issuance of a permit. The planner shall be notified the number of trees removed and their location. The applicant shall be required to complete necessary slope stability measures as outlined by Chapter 17.86 if site warrants.

17.140.050 Application submission requirements. A. All applications shall be made on forms provided by the planner and shall be accompanied by the site plan and narrative.

- B. The site plan and narrative shall include:
1. The specific location of the property by address and assessor map number and tax lot and a scaled site plan indicating parcel dimensions and structure locations;
 2. The number, size, species and location of the trees to be cut and an assessment of tree health by a Certified Arborist if health is the basis for the request;
 3. The time and method of cutting or removal and the reason for the tree removal;
 4. The number, size, species and location of the replacement trees to be planted~~Information concerning any proposed landscaping or planting of new trees to replace the cut trees;~~ and
 5. A narrative as to how the criteria in Sections 17.140.030 and 17.140.031 are satisfied.

Exhibit B of Ordinance No. 817
Amendments to Scappoose Municipal Code Chapter 17.162

(Language to be omitted is ~~strikethrough~~, proposed language additions are double underlined)

Chapter 17.162

Procedures for Decision Making--Quasi-Judicial

[...]

17.162.090 Approval authority responsibilities. A. The planner shall have the authority to approve, deny or approve with conditions the following applications:

1. Interpretations subject to Section 17.01.050;
2. Determination of parking requirements for unlisted uses;
3. Determination of visual clearance area pursuant to Chapter 17.102;
4. Determination of access, egress and circulation plan (not subject to planning commission approval) pursuant to public works design standards;
5. Sign, sign exception, and sign variance pursuant to Chapter 17.114;
6. Minor variance pursuant to Chapter 17.134;
7. Type I home occupation pursuant to Chapter 17.142;
8. Sensitive land permits (for applications not subject to planning commission approval) pursuant to Chapter 17.84, Chapter 17.85, Chapter 17.86, and Chapter 17.89; and
9. Public land tree removal not associated with timber harvesting and clearing from designated public recreation areas.

B. The planner may refer any application for review to the planning commission.

C. The planning commission shall conduct a public hearing in the manner prescribed by this chapter and shall have the authority to approve, approve with conditions, approve with modifications or deny the following development applications:

1. Recommendations for applicable comprehensive plan and zoning district designations to city council for lands annexed to the city;
2. A quasi-judicial comprehensive plan map amendment except the planning commission's function shall be limited to a recommendation to the council. The commission may transmit its recommendation in any form and a final order need not be formally adopted;
3. A quasi-judicial zoning map amendment shall be decided in the same manner as a quasi-judicial plan amendment;
4. Conditional use pursuant to Chapter 17.130;
5. Major variance pursuant to Chapter 17.134;
6. Sensitive land permits and variances pursuant to Chapter 17.84, Chapter 17.85, and Chapter 17.86 for applications requiring planning commission action;
7. Type II home occupation pursuant to Chapter 17.142;
8. Historic overlay district exterior alteration and new construction applications pursuant to Chapter 17.82;
9. Public land tree removal associated with timber harvesting and clearing from designated public recreation areas;
910. Appeal of a decision made by the planner; and
- ~~1011.~~ Any other matter not specifically assigned to the planner, or the city council under this title.

D. Upon appeal or recommendation, the city council shall conduct a public hearing in the manner prescribed by this chapter and shall have the authority to approve, deny or approve with conditions the following development applications:

1. The formal imposition of plan and zone designations made to lands annexed to the city;
2. Appeals of quasi-judicial plan and zone amendments;
3. Matters referred to the council by the planning commission;
4. Review of decisions of the planning commission, whether on the council's own motion or otherwise.

Exhibit C of Ordinance No. 817

DCTA1-11

August 25, 2011

Amendments to Public Land Tree Removal regulations

CITY OF SCAPPOOSE STAFF REPORT

Request: Amend the Development Code to grant authority to the planner to decide most applications for public land tree removal while retaining Planning Commission authority over some applications. Update the approval criteria and procedural requirements for public land tree removal applications.

Applicant: City of Scappoose

PROPOSAL & RATIONALE

The City of Scappoose proposes to amend Chapters 17.140 and 17.162 of the Development Code regarding Public Land Tree Removal permit requirements for street trees and other trees on public land. The current set of regulations has not been amended since at least 1995. Over the years, concerns have been raised by property owners, and the Planning Commission and staff have identified opportunities for improvement.

The proposed amendments would achieve the following changes:

- Grant authority to the planner to decide most applications for public land tree removal while retaining Planning Commission authority over timber harvesting applications on designated public recreation areas (e.g., the City's 80-acre recreational area on the hill);
- Align the approval criteria with the types of situations leading to tree removal; and
- Clarify the application submittal requirements, including an arborist report for applications based on the health of the trees.

PUBLIC NOTICE

Notice of the proposed amendments to the Development Code was published in the newspaper on July 27, August 3, and August 10, 2011. Staff received no written comments from the public regarding this application.

RECOMMENDATION

Based on the applicable statutes, rules, comprehensive plan provisions and implementing ordinances, the Planning Commission recommends adoption of the proposed amendments by the City Council.

FINDINGS OF FACT

1. The following Statewide Planning Goals have been considered by the City of Scappoose in the formation of the language contained within this request:

Goal 1: Citizen Involvement

Objective: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Finding:

This application complies with the citizen involvement processes included in the City's acknowledged Comprehensive Plan and Development Code, which is consistent with Statewide Planning Goal 1. The Planning Commission and City Council will hold public hearings on the proposal prior to adopting any amendments to the Scappoose Municipal Code. Notice of the proposal and hearings was published in the local newspaper on July 27, August 3, and August 10, 2011. Citizens may submit written or verbal testimony regarding the proposed amendments. This process allows for citizens to communicate their input into the Development Code amendment review conducted by the City. For this application, the Planning Commission's hearing date is August 11, 2011, while the City Council's hearing date is September 6, 2011. This process complies with the Goal.

Goal 2: Land Use Planning

Objective: To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Finding:

The proposal to amend the Municipal Code is consistent with the City's regulations regarding legislative land use decisions. Legislative decisions require a Planning Commission recommendation to the City Council, which then makes a decision based on stated findings. The Planning Commission and City Council hearings are open to the public.

The procedural requirements for the proposed Development Code amendment are contained in the Scappoose Municipal Code, which involve assessment of the application's merits, notice to affected parties, and public hearings. The proposal is to perform minor text amendments to the public land tree removal regulations. Notice of the proposed amendment has been provided to the Oregon Department of Land Conservation and Development (DLCD) as required. DLCD staff has not commented on the proposal. The City's decision is based on findings of fact. This action complies with Goal 2.

Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces

Objective: To protect natural resources and conserve scenic and historic areas and open spaces.

Finding:

The City's public land tree removal regulations provide mechanisms that help preserve natural resources, namely the existing tree cover within the City. The proposed amendments would continue to protect trees on public land, consistent with the objectives under Goal 5.

Statewide Planning Goals 3-4 and 6-19 are not applicable to this application.

2. The following Goals and Policies from the Scappoose Comprehensive Plan have been considered by the City of Scappoose in the formation of the language contained within this proposal:

GOAL FOR TRANSPORTATION

12) Enhance the aesthetics of all streets and roadways through planting and maintenance of street trees.

Finding:

Amending the public land tree removal regulations will continue to ensure that there is opportunity for public input prior to removal of street trees and other trees on public land. This mechanism will further the goal of maintaining street trees. The applicable GOAL FOR TRANSPORTATION is satisfied.

POLICIES FOR NATURAL FACTORS AND LOCAL RESOURCES

21) Require mitigation for tree loss caused by development and redevelopment and replacement of trees lost because of clearing for development and other reasons and to promote practices that result in net gains in the urban forest.

Finding:

It has been the practice of the Planning Commission to require mitigation on most approvals for public land tree removal. The proposed amendments would codify requirements for tree replacement. The applicable POLICY FOR NATURAL FACTORS AND LOCAL RESOURCES is satisfied.

3. The following sections of Title 17 of the Scappoose Municipal Code (Scappoose Development Code) Plan have been considered by the City of Scappoose in the formation of the language contained within this proposal:

Chapter 17.140 PUBLIC LAND TREE REMOVAL

17.140.010 Purpose. *The city is now benefitted by large numbers of trees which add to the aesthetic beauty of the community, help clean the air and provide visual and noise barriers. The purpose of this chapter is to prohibit the unnecessary removal of trees on publicly owned land without opportunity for public input while allowing removal of tree(s) that may cause a hazard.*

Finding:

The overall purpose of the Public Land Tree Removal regulations remains to provide an opportunity for public input prior to issuance of tree removal permits. The proposed amendments would differentiate between applications suitable for review by the planner and those which necessitate a Planning Commission hearing and would more clearly spell out the circumstances under which a permit may be granted. Section 17.140.010 is satisfied.

Chapter 17.160 PROCEDURES FOR DECISION MAKING—LEGISLATIVE

17.160.120 The standards for the decision. A. The recommendation by the planning commission and the decision by the council shall be based on consideration of the following factors:

- 1. Any applicable statewide planning goals and guidelines adopted under Oregon Revised Statutes Chapter 197;*
- 2. Any federal or state statutes or rules found applicable;*
- 3. The applicable comprehensive plan policies and map; and*
- 4. The applicable provisions of the implementing ordinances.*

B. Consideration may also be given to:

Proof of a substantial change in circumstances, a mistake, or inconsistency in the comprehensive plan or implementing ordinance which is the subject of the application.

Finding:

The Planning Commission's recommendations and the City Council's decisions are based on applicable statewide planning goals and guidelines, federal and state statutes and rules, Comprehensive Plan policies, and provisions of the Scappoose Municipal Code, as detailed in the findings. The City has publicized the proposed amendments and held hearings in accordance with applicable laws. The City is amending the public land tree removal regulations to clarify approval criteria and streamline procedures. Section 17.160.120 is satisfied.