



MEDINA, WASHINGTON

AGENDA BILL

Monday, November 8, 2021

Subject: Tree Code Update

Category: Public Hearing

Staff Contact(s): Stephanie Keyser, Planning Manager; Emily Miner, City Attorney

Summary

In September 2020, City Council placed a review of the tree code on the Planning Commission's work plan. The direction was to focus on regulations related to "land under development".

Planning Commission spent this past year reviewing the existing tree code, focusing largely on the land under development. However, as part of the review process, amendments to other portions of the code have been suggested. This is a natural evolution when undertaking code amendments because by nature, the various code provisions in a chapter are integrated and intersect with each other. Thus, when one section of code is updated, it tends to necessitate a review of other code sections to maintain uniformity and consistency across the code.

Accordingly, while the code amendments presented to Council predominately address the direction to consider amendments to standards relating to land under development, the amendments also include suggested updates to address inconsistencies, streamline procedures, and remove redundancies.

Background

Throughout the 2021, Planning Commission reviewed tree permits that had been approved since the adoption of the previous update in 2015 and also completed a detailed analysis of the existing tree code.

The results indicated that: (1) there was a discrepancy in the current code between two sections (Tree Retention Requirements and Minimum Performance Standards for Land Under Development), (2) the code lacked guidance on where trees should be retained and/or replanted, and (3) the fees associated with the fee-in-lieu option were not creating a disincentive.

In order to address the discrepancies, inconsistencies, and lack of clarity around existing regulations, Planning Commission identified the following topics for consideration:

- the definition of a significant tree
- better legacy tree protection
- the specific tree species that the city requires/encourages
- long-term survival rates and enforcement
- the numerical tree replacement requirement
- the location of trees, both removal and replacements
- making sure the code is simple and flexible

Planning Commission Recommendations

After extensive consideration over the course of the last year, the Planning Commission made the following recommendations:

Code Reference	Proposed change
MMC 16.12 "S" definitions	The definition of a significant tree did not need to be amended because 6 inches was the appropriate size.
MMC 20.52.120 (Legacy and Landmark Tree protection measures)	A new tree category should be created for trees larger than 50" inches (Landmark Trees), and the threshold for Legacy Trees should be reduced from 50" to 36"
MMC Table 20.52.130(B) (Minimum preservation standards for land under development)	Increase the significant tree density ratio requirement for .35 to .4. for land under development
MMC Table 20.52.130(C) (Minimum preservation standards for land under development)	A reduction in the values of the tree credit section by .25
MMC 20.52.140(C) (Supplemental tree standards and priorities) and MMC 20.52.320(A)(3)(c) (Tree preservation plan)	A locational requirement for the placement of supplemental trees
MMC 20.52.320(A)(3)(d) (Tree preservation plan)	Additional requirements for larger lots (+20,000 s.f) under development
MMC 20.52.330 (Fee-in-Lieu)	The option of selecting to pay a fee in lieu of replacement or supplemental trees should only be permitted if the city arborist determines there is insufficient area to replant on site. Additionally, the fee should be tied to the most current council of tree and landscaper appraiser guide for plant appraisal so that the City doesn't have to periodically raise the fees

The changes recommended by Planning Commission largely focused on addressing tree regulations for land under development. However, some of the recommended changes do impact land not under development. Specifically, changing the definition of a legacy tree and adding a definition for landmark trees does impact property owners of land not under development. Planning Commission determined, after extensive consideration, that because mature, larger trees are an important component of the City and something that draws people to the City, such trees should have an increased level of protection.

Trees with 36” DBH are already identified in the code as the bookend of a new grouping of trees. For the existing fee-in-lieu section, the contribution rate of replacing an existing significant tree is broken into three categories: significant trees to less than 20” DBH; 20” DBH to less than 36” DBH; and 36” DBH and greater. Additionally, the city’s arborist suggested using 36” DBH. Accordingly, the Planning Commission’s recommendation was to lower the legacy tree threshold from 50” DBH to 36” DBH, in accordance with the city arborist suggestion and as way to enhance protections for a larger number of trees.

The focus of public comments has been regarding the amendments of the legacy tree definition. The primary concern is that the reduced tree size for legacy trees will create an undue burden on property owners seeking to remove a tree on land that is not underdevelopment. Planning Commission did consider the burden of mitigation when discussing this proposal as the current code requires 50% of the removed DBH from a Legacy tree as mitigation. A sliding scale relative to lot size was agree upon: less than 10,001 requires a 10% removed DBH mitigation; from 10,001 to 13,000 requires a 15% removed DBH mitigation; from 13,001 to 15,000 requires a 25% removed DBH mitigation; from 15,001 to 20,000 requires a 35% removed DBH mitigation; and greater than 20,000 requires a 50% removed DBH mitigation.

City Arborist Recommendations

The City Arborist also reviewed the code and made several suggestions. Staff have included his comments and revisions in the code and responded to his comments as applicable.

City Attorney Recommendations

Part of the Council’s overall direction to the City Manager and staff has been to reduce complexity in the City’s codes and processes. To that end, the City Attorney’s office has also conducted a holistic analysis of the tree code and has suggested edits that will streamline and clarify processes and procedures. Specific recommendations are included in redline in the code and key recommendations are summarized below:

Code Reference	Concern	Recommendation
MMC 20.52.100 (Designation of	The current designation of certain activities as “land under development” is challenging	Eliminate references to 4-year review periods and consolidate the requirements

land Under Development)	because it requires tracking permits for a parcel of property over time and determining whether the number of permits, types of proposed modifications or removal of trees rises to the level specified in the code that would trigger the “land under development” classification. Historically, there has never been a tracking system in place to monitor permits for one property over time so it is not possible to conduct any analysis of each permit to determine whether the “land under development” threshold has been triggered.	to simply say that if a significant tree is proposed to be removed in conjunction with a building permit, a ROW permit or land use or shoreline permit, then the project is considered “under development” and must comply with the land under development standards.
MMC 20.52.310 (Tree activity permits)	The tree activity permits include many redundancies and ambiguities. Further, there are no permits for the removal of hazard or nuisance trees nor removal of trees for land not under development, but no supplemental trees are required.	Review and revise to eliminate inconsistencies and redundancies. Also recommend codified permits related to hazard/nuisance tree removal and removal of trees on land not under development if no supplemental trees are required.
MMC 20.52.340(B) (Tree Protection measures during construction)	These requirements relate to construction mitigation.	Relocate construction mitigation conditions to the construction activity permit requirements

Next Steps

The purpose of this first reading of the tree code amendments is to review and consider the proposed recommendations by Planning Commission, the City Arborist, and the City Attorney. Additionally, the Council will hold a public hearing to receive public comment on the draft code.

At the conclusion of the public hearing, Council has a number of options: (1) adopt the code as presented, (2) adopt the code with specific revisions, (3) direct staff to make specific amendments to the code and bring those back for Council consideration, or (4) direct Planning Commission to review and consider other amendments.

Attachment

1. Tree Code

Budget/Fiscal Impact: N/A

Recommendation: Discussion and possible direction.

City Manager Approval:

Proposed Council Motion: N/A

Time Estimate: 30 minutes