



CITY OF MEDINA

501 EVERGREEN POINT ROAD | PO BOX 144 | MEDINA WA 98039-0144
TELEPHONE 425-233-6400 | www.medina-wa.gov

MEMORANDUM

DATE: September 28, 2021
TO: Medina Planning Commission
FROM: Stephanie Keyser, AICP, Planning Manager
RE: Tree Code Enforcement – Supplemental Trees

In July, Planning Commission received direction from Council to consider the enforcement piece of the tree code, specifically as it relates to the survival of supplemental tree plantings. Although the code does require supplemental trees to be healthy for at least five years after planting, there is currently no mechanism to follow up on their survival.

Potential problems include:

- How to determine which trees on site are supplemental so that the city can be sure those trees are surviving? As built? Tags?
- How to ensure future property owners know what trees on site are supplemental and need to be retained? Notice on title?
- How to ensure the city can gain access to the property to ensure and enforce the survival requirements? Gaining access to properties has been challenging as the city has had to implement a new stormwater management system this past year.
- How to administer and enforce such a program? Will this require an additional full-time employee? Will this require the hiring of a consultant?

Potential solutions that have been discussed include:

- Require an as-built once construction has been completed but before the project is finalized, that identifies all supplemental trees by species and location.
- Require as-builts to be recorded on title with an agreement and acknowledgement that the trees need to be retained so that all future owners are aware of this
- Educational outreach to residents of new program requirements
- Increase the permit fee and/or require a deposit that will cover the cost of the city having to administer this program

EXAMPLES

In July it was requested for Staff to come back with examples of what other jurisdictions are doing when it comes to tree enforcement. Most cities do not have penalties for tree removal

beyond the action being tied to general code enforcement procedures. An infraction therefore results in civil penalties and being a gross misdemeanor. Duvall, Redmond, and Issaquah all require bonds to ensure the survival of the trees and for there to be follow up which ensures the supplemental tree's survival. Duvall and Redmond's bonds are released after 5 years and Issaquah after 3. Pierce County requires a notice on title and an example of that document is attached.

Below is code from **Duvall**:

Maintenance.

- A. Any existing retained tree or supplemental tree shown on an approved tree retention plan, and any other tree required by the City to be planted, shall be maintained in healthy condition by the property owner or homeowners association for a period of five (5) years following issuance of the certificate of occupancy for the individual lot or development. After five (5) years, all trees on the property are subject to DMC 14.40.030.
 - 1. Trees shall be monitored and maintained for a period of five (5) years to ensure that retained trees were not compromised by adjacent development and that supplemental, replacement, and transplanted trees are surviving. The director may extent the monitoring and maintenance period beyond five (5) years if determined necessary to ensure successful establishment of supplemental and replacement trees.
 - 2. During years 1, 3, and 5 of the monitoring period, trees shall be monitored by a qualified arborist and reports submitted to the City that verify the health of all trees on the approved tree retention plan.
 - 3. Any tree found to be dead or dying shall be replaced by tree(s) that, at minimum, replace the tree's density credit.
 - 4. Any tree found to be unhealthy shall be assessed for opportunity for preventative measures to improve tree health, and shall be identified for additional review in future years of the monitoring period. Reasonable preventative measures to improve tree health, as recommended by a qualified professional arborist, shall be implemented as annual maintenance. For trees found to be unhealthy in year 5 of the monitoring period, the director may require additional supplemental planting based on review of monitoring information submitted by the property owner / home owner's association.
- B. Maintenance Bond for New Development Sites. A maintenance bond, cash deposit, or other security in a form acceptable to the City attorney covering ten (10) percent of the cost of the performance assurance bond amount established for all site landscaping per DMC Chapter 14.38, shall be in place prior to the release of a performance bond and shall be required to be held by the City for five years following issuance of building occupancy permit for the development site.
 - 1. The director is authorized to notify the owner of any property upon which trees were retained or supplemental trees were planted as a condition of approval under this chapter that trees are not being adequately maintained, and the specific nature of such failure to maintain. The notice shall specify a date by which the property owner shall be expected to comply.

2. Upon the failure to perform the required maintenance within the date specified by the notice, the director is authorized to collect funds under the maintenance bond or other security, and cause the required maintenance to be completed.
3. When funds have not been set aside or the performance assurance has expired, the director is authorized to request the city attorney to institute legal action to recover the cost of the required maintenance, and upon receipt of the funds to cause the maintenance to be done.
4. Maintenance as used in this section includes replacement of dead, diseased or damaged trees, preventative measures to improve health of unhealthy trees, and repair of irrigation systems.
5. In subdivisions or site plans where the right-of-way contains retained or supplemental trees, the adjacent property owner, homeowner's association or like mechanism, is required to maintain that landscaping. Such requirement shall be noted on the face of the plat or site plan. If there are such requirements that are maintained by an organization other than the adjacent homeowner, or if there are common areas on a property, a homeowner's association is required.

C. Cutting and Pruning.

1. Protected trees shall not be topped; any tree topping shall result in requirements for replacement tree(s) and fines, as determined consistent with 14.40.100 and review of the tree topping activity by the director.
2. Street trees, on all public streets, shall be cut or pruned only under the supervision of, or with the approval of, the city of Duvall public works department.
3. Pruning and maintenance of protected trees shall be consistent with best management practices in the field of arboriculture and further the long-term health of the tree.

Redmond requires a performance assurance:

Performance Assurance.

To mitigate damages should they occur as a result of unauthorized tree removal, the applicant shall submit a bond, letter of credit or other means of assurance acceptable to the Administrator. The following provisions shall apply to such performance assurance:

(1) **Tree Protection Assurance.** The applicant shall post a performance bond or other acceptable security device to ensure the installation, maintenance and adequate performance of tree protection measures. The amount of this bond shall equal 150 percent of the City's estimated cost of replacing each protected tree. The estimated cost per tree shall be the tree base fee established by City Council. Prior to issuance of the certificate of occupancy, any protected tree found to be irreparably damaged, severely stressed or dying shall be replaced according to the standards identified under RCDG 20D.80.20-130(1), Remediation. The bonding period shall be five years. The Administrator may release all or part of the bond prior to the conclusion of the

bonding period if the applicant demonstrates that the requirements of this section have been satisfied and there is evidence that the protected trees will survive.

(2) **Tree Maintenance Assurance.** Where replacement trees are required pursuant to this section, the applicant shall post a replacement tree maintenance bond or other acceptable security device to ensure the survival of replacement trees. The amount of the maintenance bond shall equal 150 percent the cost of plant material, periodic fertilizing and pruning, and labor until tree survival is ensured. Where possible, the bond may be combined with the landscape maintenance bond, required by Chapter 20D.80.10 RCDG, Landscaping and Natural Screening, which shall include a security covering 10 percent of the cost of the remaining plant materials. In the event a required replacement tree becomes irreparably damaged, severely stressed or dies, the tree shall be replaced according to the standards in RCDG 20D.80.20-080, Tree Replacement. Replacement trees damaged due to natural disasters such as wind storms, hail, ice or snow storms, earthquakes and the like shall be exempt from replacement. The bonding period shall be three years. The Administrator may release all or part of the bond prior to the conclusion of the bonding period if the applicant demonstrates that the requirements of this section have been satisfied and there is evidence that the replacement trees will survive.

(3) The required assurances shall be submitted prior to issuance of a tree removal permit.

(4) The applicant shall provide an estimate of the costs associated with the required performance bond or other security as described above. In lieu of an applicant's estimate, the performance assurance shall be equal to City Staff's best estimate of possible costs to meet the above requirements. In no case shall the performance assurance exceed an amount equal to two and one-half times the current cost of replacing the plants in accordance with RCDG 20D.80.20-080, Tree Replacement.

(5) The performance assurances shall not be fully released without final inspection and approval of completed work by the City, submittal of any post-construction evaluations or following any prescribed trial maintenance period required in the permit.

(6) Performance assurances provided in accordance with this section may be redeemed in whole or in part by the City of Redmond upon determination by the Administrator that the applicant has failed to fully comply with approved plans and/or conditions.

Below is **Issaquah's** code:

Maintenance – Landscape bond required and tree maintenance.

A. Landscape Bond Required and Procedures:

1. All landscapes need to be maintained in a safe, healthy and attractive manner in perpetuity. All existing landscapes within the City shall also be kept weed and litter free and the plant material shall be maintained in good growing condition. The property owner shall replace any unhealthy or dead plant materials in conformance with the approved landscape plans and shall maintain all landscape material. The property owner is the responsible entity to ensure the

landscaping is maintained in an appropriate manner, regardless of any second party landscape maintenance agreements.

2. To insure that all plant material used in landscapes shall be maintained in a healthy growing condition, a cash deposit or other acceptable security worth fifty (50) percent of the value of the landscaped plant material, cost of labor, irrigation and materials shall be posted with the City prior to receipt of a temporary or final Certificate of Occupancy. The cash deposit will be returned in three (3) years if the plants remain in a healthy growing condition and have achieved full coverage (replacement of all plants will not be required if full coverage has been met). The Planning Director/Manager may accept other suitable security as permitted in Chapter 18.04 IMC, Procedures.

3. If any portion of the required landscaping dies within three (3) years, the City shall notify the property owner, in writing, and require replacement within sixty (60) days. If the landscape is not replaced within the specified time period, the City may use whatever portion of the deposit is needed to replace the dead landscaping. The City may use either City employees or private contractors to replace the landscaping, and may assess the property owner all actual costs against the deposit, if it is sufficient. An additional three (3) year cash deposit or other security device at fifty (50) percent of the value of the landscaping may be required at the discretion of the Planning Director/Manager if a significant amount of the plants need to be replaced.

4. Regular maintenance procedures shall be as follows:

- a. Litter pickup;
- b. Mowing turf;
- c. Edging turf;
- d. Weeding planting beds;
- e. Sweeping;
- f. Irrigation;
- g. Fertilization as needed per manufacturer's specifications to keep plants healthy and actively growing;
- h. All mulches used in planter beds shall be kept at least six (6) inches away from the crown of shrubs and trees;
- i. Pruning to required heights and widths; and
- j. Pest and disease control (all chemical products and application methods shall be approved by the City Parks Department).

5. It is recognized that these procedures may vary due to weather conditions, seasonal events, etc. The above guidelines are to serve as a standard for normal maintenance operations.

B. **Tree Maintenance:** The following regulations shall apply to all significant and protected trees. The City Arborist is authorized to make adjustments to the standards and requirements on a case-by-case basis using best professional judgment.

1. An irrigation method, approved by the City, shall be provided to all newly planted protected trees through an establishment period.

2. All pruning shall be done to the most recent ANSI standards (A300-1995 and Z133.1-1994). Canopy raising, canopy cleaning, and canopy thinning as defined in IMC 18.12.030, Definitions, are permitted; provided, that they do not meet the definition of excessive pruning in IMC 18.12.030, Definitions. No permit shall be required for maintenance pruning.

3. Tree topping is prohibited, except under the following circumstances:

- a. Branches interfering with utility lines.
- b. Significant canopy dieback has occurred.
- c. Storm damage or prior incorrect pruning requires correction.

If illegal tree topping has occurred, the property owner shall have a certified arborist develop and implement a five (5) year pruning schedule in addition to monetary fines and required tree replacement.

Pierce County requires a notice on title (attached). This is something that, if we require, would need to be recorded prior to the projected being finalized.

After Recording Return To:

Title Notification Form Tree Conservation and Landscaping

Tax Parcel Number:

Address:

Legal Description:

Present Owner:

NOTICE: This property contains tree conservation and/or landscape areas as defined by Title 18J, Pierce County Code. The site was the subject of a development proposal under application number _____, filed on _____ . A tree conservation and/or landscape plan was approved on _____ ; the approved plan can be found in the Planning and Land Services Online Permit system under the application number. Plant maintenance requirements and plant removal restrictions may apply.

Signature (s) of owner: X _____
X _____

Dated this _____ day of _____, 20__

_____, Notary, Residing in _____
Signature of Notary

Expires _____