



# CITY OF MEDINA

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## MEMORANDUM

DATE: November 16, 2021  
TO: Medina Planning Commission  
FROM: Stephanie Keyser, AICP, Planning Manager  
RE: Tree Code Enforcement – Supplemental Trees

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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

### **Total Tree Permits**

At the September meeting, it was asked for Staff to return with the number of tree permits that the city has received/issued over the past few years. There are six different kinds of permits: tree

administrative right-of-way removal; tree non-administrative right-of-way removal; hazard tree removal; tree performance; tree restoration; tree with building/development. The table below includes the permits from 2016 to October 13, 2021. Incomplete or withdrawn applications have not been included.

Year	# of Tree Permits
2021	56 (as of 10/13/2021)
2020	81
2019	80
2018	45
2017	58
2016	57

### **Deposit vs. Bond**

Although most cities accepted both a deposit and a bond in the examples we looked at in September, if we are having the city arborist continue to do billable work for five years after a project is finalized, it seems that a deposit would be the appropriate mechanism.

### **Access and Monitoring**

This is a reminder that whatever enforcement or monitoring system is established, it will be effective for future tree permits. This means that whenever someone comes in for a pre-application meeting, or when the city arborist meets with a property owner on site, those are opportunities to reinforce the educational piece. Making applicants aware of a monitoring-for-survival program will hopefully help with compliance.

We have discussed the city sending a staff member to inspect the supplemental tree(s) after the project is completed. Another option could be to allow homeowners to ‘recertify’ themselves by submitting a mini arborist report with pictures (if this is offered the city should create its own form/template). It should be discussed if it is appropriate to allow this for the entire monitoring period. For example, if we decide to require recertification in years 1, 3 and 5, perhaps allowing a homeowner to submit the certification themselves during years 1 and 3, however making it a requirement that staff confirms survival in the last year.

The actual logistics of setting up a monitoring program are beyond Planning Commission’s authority. However, the easiest way to track something like this would be in our permitting system and would be similar to the report for expiring permits. Due dates can be established, monthly reports can be run, and reminder letters and emails can be sent.

## **Supplemental Tree Identification**

To help move the conversation along, staff recommends the following be included in the recommendation package:

### Mapping Platform

The city should invest in a platform that will enable staff to map the trees on site when a tree permit is submitted. A broad benefit of a tool like this would be the beginning of a parcel-by-parcel comprehensive tracking of the tree activity in the city. This would not only include the supplemental trees, but we would be able to identify those lots that had Legacy and Landmark trees rather than just speculating. This information would be valuable for staff to relay to the public when a property went on the market. In addition to requiring a notice on title, letting a realtor or potential buyer know up front that a site has supplemental trees that must survive and then being able to print out a map that shows them where they are located would be beneficial.

### Notice on Title

The city should require applicants put a notice on title for the supplemental trees. This is the only way to truly ensure that if a property changes owners, that the new owner will at least be made aware that certain trees on their new property cannot be removed or let die.

### Tree Tags

As part of the final inspection, the city arborist should attach a tag onto the supplemental trees (if applicable). This will be an identifier for staff during the monitoring period as well as the homeowner.

## **Examples**

These are the same examples that were in September's packet.

## **City of Duval**

### **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.

**City of Redmond**

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.

## **City of Issaquah**

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.