



LAND USE & ENVIRONMENT COMMITTEE

TUESDAY, FEBRUARY 22, 2022

10:30 A.M.

REMOTE ATTENDANCE

The Land Use & Environment Committee meeting will be conducted remotely. You may view or listen to the meeting by using one of the following platforms:

Live through Zoom: <https://us02web.zoom.us/j/85991222983>

Live or as a recording on YouTube: <https://youtu.be/ZjNMrB0XFNY>

Listen via telephone: **(888) 788-0099** or **(877) 853-5247** (Webinar ID: **859 9122 2983**)

AGENDA

TREE PERMIT EXEMPTION REGULATIONS

RYAN ANDREWS, PLANNING MANAGER

(STAFF REPORT)



LAND USE & ENVIRONMENT COMMITTEE

February 22, 2022

SUBJECT: LMC 14.32 Tree Regulations for Permit Exemptions

RECOMMENDATION: Receive a follow-up briefing on proposed revisions to LMC 14.32 for permit exemptions. The regulations will be formally considered by the City Council at a future meeting.

STAFF CONTACT: Scott Spence, City Manager *SS*
Rick Walk, Community and Economic Development Director *RW*
Ryan Andrews, Planning Manager *RA*

ORIGINATED BY: Community and Economic Development Department

ATTACHMENTS: 1. [Draft amendments to LMC 14.32](#)

FISCAL NOTE: None.

PRIOR REVIEW: Last review of proposed tree regulations was at December 9, 2021, City Council Work Session.

BACKGROUND:

On September 16, 2021 the City Council adopted the Urban Forest Management Plan (UFMP). The UFMP is the overarching policy document that guides the City's urban forestry vision and efforts. The implementation regulations for tree protection are contained in LMC 14.32 and have been reviewed and amended concurrently with the UFMP review and update.

At the work session on December 9th, the City Council reviewed proposed regulations in LMC 14.32 to remove healthy trees in homeowner's association open spaces and on commercial properties. Prior to final Council action, the Land Use and Environment Committee will review proposed amendments to permit requirements for single-family residential properties.

For single-family residential properties, a land clearing permit exemption is currently granted administratively for the removal of not more than five trees in a three-year period (LMC 14.32.050.D). When reviewing the exemption request, staff verifies that the tree ratio requirements of LMC 14T-18 have been met to ensure that the ratio of four trees per 5,000

s.f. is being met. Should the tree ratio be reduced below this threshold after removal, the applicant is required to replant to meet the requirement.

The permit requirement limiting the removal of a maximum of five trees in a three-year period was originally established to allow for the removal of a reasonable number of trees while also preventing complete removal of all trees on an individual lot. This permit requirement has acted as a de facto regulation whereby a tree exemption was issued administratively over the counter versus the removal of more than five trees in a three-year period which would require a land clearing permit approval. This requires approval of a land use application and associated report completed by the City's arborist which deters property owners from applying.

In 2006, LMC 14T-18 was added as a tree ratio regulation to overlay with the permit thresholds. Through discussions by the ad hoc tree committee and the Planning Commission, it was deemed that the five trees in a three-year period permit threshold was no longer necessary because the standards in LMC 14T-18 still applies to balance the needs of a property owner with maintaining a minimum number of trees.

The purpose of removing the threshold is that both the permit requirement associated with the five trees in a three-year period, and the standard of four trees per 5,000 square feet are confusing to administer and conflate permit thresholds with the regulations. This amendment will separate the permit threshold requirement from the standards. Additionally, the exemption language was established when average lot sizes were larger and the amendment will achieve better balance between small and large properties. The draft regulations will require any tree removals in excess of five to consult with the city's arborist who will review the site and provide education to the property owner.

If adopted, the proposed permit language contained in LMC 14.32.050.D. will still allow for individual lots be exempted from land clearing permit requirements provided the tree density minimums of 4 trees per 5,000 square feet are maintained (either with the number of trees retained on site or through replanting to meet the minimum ratio). This will still allow for typical tree removals to receive over-the-counter permits for removals. The only additional requirement would be that for requests of more than five trees to be removed on a lot, the applicant must have a tree report completed by the City's arborist. The report will allow the arborist to provide additional field education and outreach while also assessing the individual site and surroundings.

Staff will review the proposed amendments with the Land Use and Environment Committee prior to final Council action in March.

ADVANTAGES:

1. The amendments will provide additional clarity for both the public and the city staff administering LMC 14.32.

2. The amendments will achieve better balance between the requirements that apply to properties of different sizes.
3. The amendments will provide for additional education and outreach from the City's arborist to the public.

DISADVANTAGES:

1. Eliminating the five trees in a three-year period exemption level could be perceived as reducing the protection for trees on a lot. However, the tree ratio requirements established in 2006 are being retained resulting in the same requirements for the number of trees per lot.

Chapter 14.32

TREE AND VEGETATION PROTECTION AND PRESERVATION

CITY COUNCIL DRAFT AMENDMENTS

Sections:

14.32.010	Short title
14.32.020	Purposes and permit criteria
14.32.030	Definitions
14.32.035	The city's tree protection professional
14.32.040	Permits
14.32.045	Class IV forest practice applications
14.32.050	Exemptions
14.32.060	Application for permits
14.32.062	<i>Repealed</i>
14.32.063	Conformance to standards
14.32.064	Tree tract requirements
14.32.065	Tree replacement in tree tracts
14.32.066	Tree replacement and establishment of new trees on lots
14.32.067	Street tree requirements
14.32.068	Solar access considerations
14.32.069	Revegetation option
14.32.070	Additional considerations for commercial developments
<u>14.32.071</u>	<u>Additional considerations for homeowners association (HOA) open spaces</u>
14.32.072	Historical tree(s)
14.32.073	Financial security
14.32.080	Appeals
14.32.090	Violations
14.32.095	Requirements for foresters and contractors doing land clearing work in Lacey
14.32.100	Severability

14.32.010 Short title.

This chapter shall be known and may be cited as the Tree and Vegetation Protection /Urban Forest Management regulations of the city of Lacey. (Ord. 1269 §3, 2006; Ord. 904, 1991; Ord. 399 §1 (part), 1975).

14.32.020 Purposes and permit criteria.

These regulations are adopted for the following purposes and these purposes are to be used as criteria for the issuance of land clearing permits under LMC [14.32.040](#):

- A. To implement strategies for the management and protection of Lacey's urban forest resources pursuant to the goals and policies of the Lacey Urban Forest Management Plan;
- B. To implement the purposes of the State Growth Management Act relating to conservation of natural resources, including Lacey's urban forest resources, pursuant to RCW [36.70A.050](#), [36.70A.060](#) and [36.70A.080](#);
- C. To implement the purposes of the State Growth Management Act pursuant to RCW [36.70A.172](#), considering the many environmental benefits of the urban forest as described in Lacey's Urban Forest Management Plan;
- D. To promote the public health, safety, and general welfare of the citizens of Lacey without preventing the reasonable development of land;
- E. To preserve and enhance the city's physical and aesthetic character by preventing indiscriminate removal or destruction of trees and ground cover and to insure the protection of trees chosen to remain during construction;
- F. To minimize surface water and ground water runoff and diversion and to prevent erosion and reduce the risk of slides;
- G. To retain and utilize trees to assist in site planning, considering the abatement of noise, visual screening, protection from wind, and other site design issues;
- H. To acknowledge that trees and ground cover have significant environmental and quality of life benefits as identified in Lacey's Urban Forest Management Plan, such as the production of pure oxygen from carbon dioxide, the reduction of air pollution, help in providing clean water, control of soil erosion, use in design for energy efficiency and temperature control, noise attenuation, and wildlife habitat;
- I. To promote building and site planning practices that are consistent with the city's natural topography, soils, and vegetation features. At the same time certain factors may require the removal of certain trees and ground cover for things such as, but not limited to disease, danger of falling, proximity to existing and proposed structures and improvements, interference with utility services, ~~protection of scenic views~~, protection of solar access and the realization of a reasonable enjoyment of property;
- J. To insure prompt development, restoration, replanting, and effective erosion control of property after land clearing;
- K. To reduce water pollution from siltation in the city's streams and lakes;

- L. To implement the goals and objectives of the Washington State Environmental Policy Act;
- M. To implement and further the City's Comprehensive Land Use Plan and its Environmental Protection and Resource Conservation Element;
- N. To encourage protection of wildlife and/or wildlife habitat whenever possible. (Ord. 1269 §4, 2006; Ord. 904, 1991; Ord. 650 §1, 1982; Ord. 399 §1 (part), 1975).

14.32.030 Definitions.

- A. "Brushing" means the practice of removing ground cover to create better visibility on a property for purposes such as marketing or surveying of said property.
- B. "Caliper" is the standard for trunk measurement of nursery stock. Caliper of the trunk shall be the trunk diameter measured six inches above the ground for up to, and including, four-inch caliper size and twelve inches above the ground for larger sizes.
- C. "City" means the city of Lacey, Washington.
- D. "Class IV forest practice activity" is a timber harvest, thinning or other activity as established in the Washington State Department of Natural Resources Forest Practices Regulations, whereby a property owner is allowed to harvest a limited amount of timber from their property within the city of Lacey, while still maintaining their rights to convert their property to a use inconsistent with growing timber.
- E. "DBH" is the diameter at breast height, measured four and one-half feet above the groundline on the high side of the tree.
- F. "Director" means director of community and economic development or his/her designee.
- G. "Drip line" of a tree is located by the vertical projection of a line at the tips of the outermost branches.
- H. "Ground cover" means grass, forbs, shrubs, and trees less than four inches in diameter measured four and one-half feet above the ground level (DBH).
- I. "Hazard tree" means any tree that is dead, dying, damaged, diseased, or structurally defective, recently exposed by adjacent clearing, or some other factor that will subject the tree to failure, and the tree could reasonably reach a target, as determined by the tree protection professional.
- J. "Historical tree" is a tree or group of trees designated as such by the city because of its historical value to the residents of the city.
- K. "Land clearing" means the direct and indirect removal of trees and/or ground cover from any public or private undeveloped, partially developed, or developed lot, public lands or public right-of-way. This shall also

include any destructive or inappropriate activity applied to a tree that will result in its death or effectively destroy the tree's appearance and/or functionality, such as topping.

~~K. "Historical tree" is a tree or group of trees designated as such by the city because of its historical value to the residents of the city.~~

L. "Root protection zone" is an area around the tree to be saved equal to one foot of radius for each one inch of tree diameter measured four and one-half feet above the ground line (DBH), unless otherwise designated by the city's tree protection professional.

M. "Site disturbance" is any action that requires a city of Lacey building permit.

N. "Specimen tree" is a tree that is unique or rare because of its exceptional size or quality, species, or value in a particular location.

O. "Topping" is the indiscriminate placement of cuts to reduce a tree's size. Topping is not an acceptable pruning practice in the city of Lacey.

P. "Tree" means any living woody plant characterized by one main stem or trunk and many branches, and having a diameter of four inches or more measured at four and one-half feet above the ground level (DBH).

Q. "Tree protection professional" is a certified professional with academic and/or field experience that makes him or her a recognized expert in urban forestry and tree protection during development. A tree protection professional shall be a member of the Society of American Foresters (SAF), the Association of Consulting Foresters of America (ACF), the American Society of Consulting Arborists (ASCA), or the International Society of Arboriculture (ISA), and shall have specific experience with urban tree management in the state of Washington. Additionally the tree protection professional shall be an ISA Certified Arborist or an ASCA Registered Consulting Arborist with the necessary training and experience to use and apply the International Society of Arboriculture's Guide for Plant Appraisal and to professionally provide the necessary expertise relating to management of urban trees specified in this chapter.

R. "Tree tract" is a portion of land designated for the preservation and protection of existing trees or the planting of new trees to maintain tree canopy at a development site. The tree tract shall be a separate designated lot(s) shown on the plat map, binding site plan, or site plan review map, and shall be recorded with appropriate description of purposes and restrictions. Restrictions applied to the tree tract will not allow any use other than the growing of trees in the tract, and will reserve the tract for the protection and preservation of trees in perpetuity. Tree tracts can be used for other open space uses when the uses are compatible with trees and will not impact tree health. The tract will be dedicated to, and owned and maintained by, the homeowners' or lot owners' association, or comparable entity. The tract may be dedicated to the city of Lacey for maintenance if approved by the city. Creation of tree tracts to save the best trees on a site may require modifications to the street locations, lot designs and/or other features of the site plan. (Ord. 1539 §19, 2019; Ord. 1417 §7, 2013; Ord. 1269 §5, 2006).

14.32.035 The city's tree protection professional.

The city shall contract with one or more professionals that qualify as a tree protection professional under the definition of this chapter. Said professional or professionals shall be responsible for providing the information and services required of a tree protection professional described herein.

Individual applicants will be responsible for payment of the costs and fees of the designated tree protection professional for projects necessitating work to be performed by the tree protection professional in accordance with Table [14T-66](#). The city shall be responsible for billing and collecting costs and fees charged to the applicant and transferring said payment to the tree protection professional unless the city has opted for some other mechanism of providing for the costs and fees, such as inclusion of such costs and fees in the schedule of application fees. (Ord. 1417 §8, 2013; Ord. 1269 §6, 2006; Ord. 1219 §2, 2004; Ord. 904, 1991; Ord. 650 §2, 1982; Ord. 399 §1 (part), 1975).

14.32.040 Permits.

No person, corporation, or other legal entity shall engage in timber harvesting or cause land clearing in the city without having complied with one of the following:

- A. Received a land clearing permit from the director;
- B. Having obtained approval of the proposed work under the processes described in LMC [14.32.050\(A\)](#);
- C. Having received an exemption from the director under the provisions of LMC [14.32.050](#). In such cases an exemption notice shall be required for posting at the site. (Ord. 1269 §7, 2006; Ord. 904, 1991; Ord. 545 §1, 1979; Ord. 517 §1, 1979; Ord. 399 §1 (part), 1975).

14.32.045 Class IV forest practice applications.

A. **Urban growth area.** Properties within the urban growth area are anticipated to be available for development with urban uses within the next twenty-year period. Pursuant to RCW [76.09.070](#) lands within the urban growth area are not considered appropriate for long-term timber production and harvesting which takes a full forty-year cycle. Forest management activities shall be consistent with the city's Comprehensive Land Use Plan and implementing regulations for the urban growth area. Forest management activities shall promote the goals and policies of the Lacey Urban Forest Management Plan. Forest practice applications shall meet the requirements specified in subsections [B](#), [C](#), [D](#) and [E](#) of this section.

B. **Conversions and timing.** Because conversion of properties within the urban growth area can reasonably be expected, significant land clearing of such properties shall only take place at the time of a valid land use

application. Tree tracts, open spaces and buffers can then be properly coordinated with the actual development plans.

To further the purposes, goals, and policies of the Urban Forest Management Plan, timber harvesting and conversion of forested lands within the urban growth area shall not be permitted until such time as a valid land use application for development is made; provided, however, requests may be made for maintenance and thinning of existing timber stands to promote the overall health and growth of the stand until said stand is converted and harvested pursuant to plans provided within a valid land use permit.

C. **Maintenance and thinning.** Class IV forest practice applications and applications for maintenance and thinning shall be reviewed by the city's tree protection professional who shall make recommendations on the request to the ~~land clearing~~[Site Plan Review](#) committee. Recommendations shall ensure that action shall improve the health and growth of the stand and preserve long-term tree protection alternatives to meet the goals of this chapter.

D. **Selective thinning limited.** Thinning activities shall be strictly limited to less than thirty-five percent of the volume every ten years. High grading or top-down thinning shall not be permitted. The remaining stand of trees should be healthy, long-term trees from the dominant and co-dominant crown classes. The stand shall be marked prior to the selective thinning operation, indicating which trees will be removed and saved.

E. **Processing of applications.** Class IV forest practice applications shall be processed concurrently with, and using the same process as, the underlying land use application. Should there be no underlying land use application, the Class IV forest practice application shall be processed in accordance with the full administrative review procedures in Chapter 1 of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1417 §9, 2013; Ord. 1269 §8, 2006; Ord. 904, 1991).

14.32.050 Exemptions.

The following shall be exempt from land clearing permit requirements of this chapter but shall satisfy all standards and requirements of LMC [14.32.065](#) and other sections as noted below:

A. **Coordination with land use applications.** Projects requiring approval of the city of Lacey site plan review committee under Chapter [16.84](#) LMC, or projects requiring review by the hearings examiner or city council; provided, that land clearing on such projects shall take place only after approval and shall be in accordance with such approval and the standards of this chapter including the information requirements and standards of LMC [14.32.060](#).

B. **Hazard trees.** Removal of hazard trees in emergency situations involving immediate danger to life or property as determined by the city's tree protection professional.

C. **Unhealthy trees and groundcovers.** Removal of obviously dead or diseased trees or ground cover which may be a fire hazard as determined by the city's tree protection professional.

D. **Individual lot exemption.** Removal of trees on individual lots where tree density minimums are maintained per Table 14T-18. ~~of no more than five trees in any thirty six consecutive months or ground cover for the purposes of solar access, general property and utility maintenance, landscaping or gardening, provided a minimum tree threshold is maintained pursuant to LMC 14.32.066, and provided further this exemption does not apply to historical trees or trees and ground cover in an area designated as environmentally sensitive. For removal requests for more than five trees, review must be completed prior to permit issuance by the City's tree protection professional.~~ An exemption must be issued by the city of Lacey prior to the removal of trees under this exemption provision.

E. **Building footprint.** Removal of trees and ground cover within a maximum of ten feet (when required for construction) of the perimeter of the building line and any area proposed to be cleared for driveway, septic, sewer and water purposes, of a single-family or duplex dwelling to be constructed as indicated on the plot plan submitted to the building official with an application for a building permit; provided, however, the director may require minor modifications in siting and placement of driveways, utilities and septic tank drain field systems and sewer and water lines where such modifications will promote the goals of the chapter and still satisfy the need and function of improvements.

F. **Clear vision.** Removal of obstructions required by the vision clearance at intersections regulations of Chapter Four of the Development Guidelines and Public Works Standards. (Ord. 1417 §10, 2013; Ord. 1269 §9, 2006; Ord. 904, 1991; Ord. 650 §4, 1982; Ord. 399 §1 (part), 1975).

G. City owned property. Tree assessment, removal and replacement of trees on city owned property.

14.32.060 Application for permits.

A. *Pre-Submission Conference.* Prior to application for land use permits and actions such as a land division, commercial site plan review (SPR), or a conditional use permit (CUP), a pre-submission conference shall be required consistent with the requirements of chapter one of the Development Guidelines and Public Works Standards. The pre-submission conference is designed to review the proposed action and identify permit requirements and issues an applicant may incur if the project is implemented. As part of this review it should be made clear that the city of Lacey has an Urban Forest Management Plan and tree protection regulations that require early consideration of tree protection options, and that urban forest concepts and strategies shall be part of the early design considerations for new projects. Location and design of major infrastructure, buildings, and planned uses must consider the tree protection opportunities to further the purposes of the Urban Forest Management Plan.

B. *Applicable Requirements.* An application for a land clearing permit or information required by this chapter shall be submitted at the same time as a valid land use application or building permit on a form provided by the

city and shall be accompanied by such of the following documents and information as are determined to be necessary by the director:

1. *Site Plan*. Copies of the site plan, pursuant to requirements of chapter one of the Development Guidelines and Public Works Standards, which shall include the following information:
 - a. Name, address, and telephone number of the applicant and owner of property;
 - b. Legal description of property;
 - c. Date, north arrow, and adequate scale, as determined by the director, on the map or plot plan;
 - d. Topography map showing contours at not greater than ten-foot intervals of proposed clearing projects within areas of steep slopes, creeks and shorelines;
 - e. Location of proposed improvements, including, but not limited to, structures, roads, driveways, utilities, and storm drainage facilities. Said improvement locations shall also be staked on site to enable the city's tree protection professional and other city staff to review improvement locations and their relationship to the site and existing vegetation;
 - f. Approximate and general location, type, size and condition of trees and ground cover and a general identification of trees and ground cover which are to be removed.
2. *Tree Protection Professional Report*. On forested property greater in size than one acre or commercial property with one or more trees, or other sites the city deems it necessary because of special circumstances or complexity, the city's tree protection professional shall review the site and provide a report analyzing the site for tree protection consistent with the requirements of this chapter. The report should provide information important to urban forest management and options for consideration when developing preliminary designs. The report should suggest options for design to best achieve the purposes of the Urban Forest Management Plan and this chapter. The report shall include but shall not be limited to:
 - a. Information required under subsections [\(B\)\(1\)](#) through [\(7\)](#) of this section;
 - b. An analysis of technical information requested by the review body related to trees and forest practices;
 - c. Analysis of what portion of the site is best for designation of the tree tract if required, considering the intent of this chapter, soil type, topography, tree species, health of trees and reasonable project design limitations;
 - d. Recommendations for saving of individual tree specimens based upon the intent of this chapter, soil type, topography, tree species, health of trees, and reasonable project design limitations;

- e. A plan for protection of trees to be saved during construction including placement of construction fences, monitoring of construction activity and other measures necessary to ensure adequate tree protection;
- f. Consideration of the location of roads, other infrastructure, and buildings and potential options for alternative locations, if applicable, to best satisfy the purposes of the Urban Forest Management Plan;
- g. A timeline for tree protection activity;
- h. The final tree protection plan should be prepared on the site grading plan. All tree protection fences, trees to be saved, and trees to be removed should also be shown on the site demolition plan. Necessary save-tree pruning and selective thinning within tree tracts shall be detailed and trees marked as such. The tree protection plan and demolition plan should be part of the submittal to the city of Lacey and shall be approved by the tree protection professional. The tree protection plan shall be part of the contractor bid package and a copy of the tree protection plan shall be available to the contractors on site at all times during logging, clearing, and construction.

3. *Schedule.* A proposed time schedule for land clearing, land restoration, implementation of erosion control and any excavation or construction of improvements.

4. *Strategy for control.* A statement indicating the method to be followed in erosion control and restoration of land during and immediately following land clearing.

5. *Landscape plan.* Proposed landscape plan or written or graphic description of proposed action.

6. *Areas of saved trees.* Location of tree tracts, proposed buffers, open space, and other areas of the site where stands of trees are to be saved.

7. *Revegetation.* If the option for revegetation of the site or a portion of the site is proposed under LMC [14.32.069](#), information requirements described under LMC [14.32.069](#) shall be required at the time of application.

C. *Review Body.* Review shall take place as part of the underlying permit review process. The review body (site plan review committee, hearing examiner, or city council) shall review the application and make a decision in accordance with review requirements of the underlying permit.

D. *Expiration.* Any permit granted hereunder shall run with the underlying permit or shall expire eighteen months from the date of issuance. Upon a showing of good cause, a permit may be extended by the director for one six-month period. The permit may be suspended or revoked by the director because of incorrect information supplied or any violation of the provisions of this chapter. Minor amendments of a permit may be granted by the director. Major amendments may be accomplished only by making a new application and proceeding through the requirements of this chapter and chapter one of the City of Lacey Development Guidelines and Public Works Standards. Major alterations are changes that alter the intent of the original

decision. What constitutes a minor or major amendment shall be left up to the discretion of the director who may consult the review body for guidance.

E. *Permit Notice Posted.* No work shall commence until a permit notice has been posted on the subject site in a conspicuous location. The notice shall remain posted until the project has been completed.

F. *Preconstruction Conference.* Prior to the start of logging and land clearing activity, a preconstruction conference shall be held with the city tree protection professional to insure the contractors understand the necessary tree protection measures prescribed in the tree protection plan and that all required tree protection fences and other required tree protection activity is completed prior to the start of site work. (Ord. 1539 §20, 2019; Ord. 1269 §10, 2006).

14.32.062 Repealed.

Repealed by [Ord. 1192](#). 14.32.063 Conformance to standards.

All land clearing shall conform to the following standards and provisions unless otherwise recommended in a forest management plan, prepared by the city's tree protection professional and approved by the city, where the alternate procedures will be equal or superior in achieving the policies of this code. In addition, the following minimum standards and provisions shall be the governing criteria for the issuance or denial of land clearing permits under this chapter:

- A. **Tree tract.** Land clearing shall meet requirements for tree tracts as specified in LMC [14.32.064](#).
- B. **Soil stability.** The clearing will not create or contribute to landslides, accelerated soil creep, settlement and subsidence or hazards associated with strong ground motion and soil liquefaction.
- C. **Preservation.** The proposal shall contain reasonable provisions for the preservation of natural topography, water features, vegetation, drainage and other existing natural features on the site.
- D. **Runoff.** The clearing will not create or contribute to flooding, erosion or increased turbidity, siltation or other forms of pollution in a watercourse.
- E. **Sensitive areas.** No ground cover or trees which are within the designated buffer area of creeks, streams, lakes and other shoreline or wetland areas shall be removed, nor shall any mechanical equipment operate in such areas; provided, that conditions deemed by the director to constitute a hazard may be removed; and provided, that a property owner shall not be prohibited from making landscaping improvements where such improvements are consistent with the aims of this chapter. The designated buffer area shall be in accordance with the city's wetland protection ordinance as hereafter amended. Buffer areas shall be consistent with best available science guidelines and recommendations from the Washington State Department of Ecology for classification, protection and designation of wetlands and wetland buffer areas.

F. **Aesthetic character.** The clearing will be undertaken in such a manner as to preserve and enhance the city's aesthetic character. Vegetative screens or buffer strips shall be maintained or be reestablished in a timely manner with approved plantings along public rights-of-way and adjoining property boundaries.

G. **Erosion control.** Clearing operations shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time, consistent with an anticipated build-out schedule.

H. **Conformance with laws.** Land clearing activities shall be performed in accordance with all applicable laws, rules and regulations pertaining to air and water pollution, the Washington Forest Practices Act, and the Shoreline Master Program.

I. **Protection of roots.** Except for the use of existing roads and constructed pathways, land clearing machinery shall be kept outside of the root protection zone of any trees designated for retention. Damaging of trees designated for retention by making cuts or fills, trenching, compacting of the soil, draining concrete rinsate, attaching wires or other devices to the trees, piling of materials, modification of drainage within the root protection zone, breaking of tree stems or branches, removal of desirable groundcovers from under tree, or otherwise damaging the roots or root zone of the tree shall be considered a violation of this chapter and shall require mitigation pursuant to the requirements of LMC [14.32.090\(C\)](#). All requirements for protection of trees and vegetation detailed in plans prepared by the city's tree protection professional or in land clearing conditions required by staff such as fencing and other protection measures shall be satisfied.

J. **Clearing of individual lots with land division approvals prohibited.** Where a land division of property is concerned, only areas where streets and utilities are to be constructed can be cleared of trees and ground cover. No such rights-of-way clearing of trees or ground cover shall take place until preliminary short plat, preliminary plat or preliminary binding site plan approval has been granted and engineered plans for road construction have been approved by the city and said road areas have been surveyed and staked to enable city staff to confirm road locations. No tree removal or brushing shall take place on lots or in open space areas of a preliminary short plat or preliminary plat except through the provisions of LMC [14.32.069](#). Additionally, no tree removal or brushing shall take place on lots or in open space areas of a final land division except through the provisions of LMC [14.32.069](#), or on a lot by lot basis after individual building permit applications have been made and land clearing activities have been approved for said individual lots pursuant to the requirements of LMC [14.32.050](#) or [14.32.060](#).

K. **Intent.** Land clearing shall meet the intent and requirements of Lacey's Urban Forest Management Plan. (Ord. 1496 §22, 2016; Ord. 1269 §11, 2006).

14.32.064 Tree tract requirements.

Every commercial project over one acre in size, and every land division over two acres in size shall be required to designate a tree tract(s) to further the goals of the Urban Forest Management Plan for maintenance and no net loss of tree canopy in the city of Lacey.

A. **Tree tract basic standard.** The tree tract or tracts shall generally cover five percent or more of the site and shall represent the primary strategy for maintaining the tree canopy. All developing properties shall create a tree tract equal to five percent of the gross site area.

B. **Tree tract credit for required open space area.** Land divisions and most binding site plans require provision of open space as a requirement of the approval process. Up to one hundred percent of the requirement for a tree tract(s) may be satisfied in combination with the open space requirement provided the following conditions apply:

1. The open space area can function for necessary recreation activities, is located in the most strategic location of the site to provide centralized recreation functions or combined with adjacent open space identified for a public park;
2. The open space satisfies open space needs as identified in the City Comprehensive Plan for outdoor recreation;
3. The location is the best site for the tree tract(s) based upon urban forestry principles and intent of the Urban Forest Management Plan.
4. If the open space and tree tract location requirements are not compatible, the requirement for open space may be reduced to provide for the full tree tract requirement provided the following conditions apply:
 - a. There shall be adequate area set aside for tot lot and subdivision park activities to satisfy the expected needs of the subdivision residents, as determined by the city parks and recreation department director;
 - b. In no case shall the combined amount of land in the open space and tree tract(s) be less than the original open space requirement for the development.
5. Cash or like value of land area and improvements may be donated to the city in lieu of a tree tract. Any cash donated to the city shall be deposited in the city tree account. The city shall then utilize those funds for planting trees in other areas of the city. Acceptance of such a donation will be at the discretion of the site plan review committee and consistent with city policies for the provisions of establishing tree tracts.

C. **Ownership.** Tree tracts shall be held in common ownership by the homeowner's or lot owner's association or a comparable entity. Tree tracts may be deeded to the city of Lacey if approved by the city.

D. **Priority of tree types.** Trees to be protected must be healthy, windfirm, and appropriate to the site at their mature size, as identified by a qualified professional forester. In designing a development project's tree tract, the applicant shall protect the following types of trees in designated tract(s) in the following order of priority, unless Endangered Species Act-listed species in accordance with LMC [14.33.117](#) are present:

1. **Historical trees.** Trees designated as historical trees under LMC [14.32.072](#).
2. **Specimen trees.** Unusual, rare, or high quality trees.
3. **Critical area buffer.** Trees located adjacent to critical area buffers.
4. **Significant wildlife habitat.** Trees located within or buffering significant wildlife habitat.
5. **Other high quality.** Individual trees or groves of trees. (Ord. 1496 §23, 2016; Ord. 1417 §11, 2013; Ord. 1269 §12, 2006).

14.32.065 Tree replacement in tree tracts.

Tree replacement is required where no trees exist in the tree tract, where tree canopy coverage in the tree tract is less than one hundred percent, where unhealthy, unsuitable, or hazardous trees occur within the tree tract, where gaps in the stand require replanting, or where underplanting is necessary for future stand replacement. The tree tract shall be replanted to achieve ninety percent canopy coverage within fifteen years. Replacement trees will be a minimum of 1.5 inch caliper for deciduous species and 6-7 foot tall for conifers unless otherwise recommended by the city tree protection professional. Conifers will be native to the Pacific Northwest. Deciduous tree species will be compatible with the other trees in the tract, and will provide wildlife, aesthetic, and other amenities to the tract. (Ord. 1269 §13, 2006).

14.32.066 Tree replacement and establishment of new trees on lots.

Tree planting is required on all newly developed single and multi-family residential, commercial, and industrial lots, and all properties on which a class IV forest practice occurs. A minimum tree threshold, according to the provisions of this section, is required on all developed lots where tree removal or other site disturbance is proposed.

When trees are planted on individual lots the species shall be appropriate for the size of the lot and the space planted pursuant to guidance provided in the Urban Forest Management Plan and, if applicable, as provided on approved revegetation or landscaping plans developed for the land division.

The following table provides a summary of the required minimum tree requirements and replacement for developed and developing properties. (See *Table 14T-18*).

TABLE 14T-18

Type of Development	Lot Size	Required New or Saved Trees	Tree Size **
Developing Single- and Multifamily Lots	Less than 3,500 ft ²	2	2.0" Caliper measured 6" above the base Deciduous 7' Tall Conifers
	3,500 ft ² to 4,999 ft ²	3	2.0" Caliper measured 6" above the base Deciduous 7' Tall Conifers
	5,000 ft ² to 6,499 ft ²	4	2.0" Caliper measured 6" above the base Deciduous 7' Tall Conifers
	6,500 ft ² to 7,499 ft ²	5	2.0" Caliper measured 6" above the base Deciduous 7' Tall Conifers
	7, 500 ft ² or over	4 trees per 5,000 ft ²	2.0" Caliper measured 6" above the base Deciduous 7' Tall Conifers
Developed Single-Family and Multifamily Lots	All***	4 trees per 5,000 ft ² *	2.0" Caliper measured 6" above the base Deciduous 7' Tall Conifers
Developing Commercial or Industrial	All	2 Trees per 10,000 ft ² *	2.0" Caliper measured 6" above the base Deciduous 7' Tall Conifers
Developed Commercial/Industrial/Multifamily Proposing an Addition, Tree Removal, or Other Site Disturbance	All	2 Trees per 10,000 ft ²	2.0" Caliper measured 6" above the base Deciduous 7' Tall Conifers
Class IV Forest Practice Activity	All	Replanting required when average stocking (basal area) falls below 80 ft ² per acre – Tree spacing required is 10 ft on center	Seedlings or transplants 1+1, 2-0, 2-1, P+1, or 1-2

* In addition to all tree tract requirements and landscape ordinance requirements.

** Tree species will be selected from the general tree list in the Lacey Urban Forest Management Plan.

*** Developed single-family lots seven thousand five hundred square feet or larger proposing tree removal in accordance with LMC [14.32.050\(D\)](#), that do not currently meet the required tree density of four trees per five thousand square feet, shall be required to replant the number of trees equal to the number removed.

A. **Replacement tree location.** The applicant's proposed location of transplanted or replacement trees shall be subject to city approval as part of the tree plan. Replacement trees should be planted according to the following priority:

1. **On-Site.**
2. **Off-site.** When space is unavailable for planting the required trees on-site, then they may be planted at another approved location within the city of Lacey or Lacey's growth area.

B. **City tree account.** When on-site and off-site locations are unavailable, the applicant shall pay an amount of money equal to the replacement cost of the replacement trees into the city's tree account. The replacement cost is the retail cost of the tree plus all cost of planting and maintenance for three years.

C. **Tree replacement.** Replacement trees shall meet the required quality and priority. On sites where there are currently inadequate numbers of existing trees, or where the trees are inappropriate for protection as determined by the tree protection professional, then replacement tree planting shall be required. In designing a development project and in meeting the required tree stocking the following trees shall be planted in the following order of priority:

1. **Buffers.** Trees in or adjacent to critical area and/or significant wildlife habitat.
2. **Tree tracts.** Trees to replace unhealthy or unsuitable trees for tree tracts with no trees or inadequate numbers of trees.
3. **Landscaping.** Trees required to be protected or planted as a requirement of this chapter are in addition to any required to be planted by the Landscaping Ordinance Chapter [16.80](#) LMC. Protected trees within any required landscaping area can be used to satisfy the required spacing in the landscaping requirements. For residential subdivisions this may include entrance landscaping, traffic islands, separate deeded tree tracts, and other common areas.

D. **Replacement tree quality.** Replacement trees shall meet the quality, caliper, and root-ball size standards delineated in the Urban Forestry Management Plan and the current edition of the American Standard for Nursery Stock (ANSI Z60.1). Trees shall be healthy and free of damage, insects, and disease, be well-branched and show evidence of cultural care in the nursery to create quality trees.

E. **Replacement tree planting standards.** Trees shall be planted pursuant to the industry planting standards delineated in the Urban Forestry Management Plan. (Ord. 1496 §111 (part), 2016; Ord. 1417 §13 (part), 2013; Ord. 1269 §14, 2006).

14.32.067 Street tree requirements.

Street trees are required on all public streets within all new developments. The species of tree shall be selected from the street tree list or the general tree list in the Lacey Urban Forest Management Plan. The required tree spacing depends on the expected tree size at age thirty. Landscape trees are required in all alleys. Street trees can be counted towards tree replacement requirements for individual lots. (Ord. 1269 §15, 2006).

14.32.068 Solar access considerations.

While trees have long been used to complement solar planning and site design such as providing deciduous trees in strategic locations to cool areas in summer and providing solar access in winter, providing of adequate solar access may sometimes conflict with protection of existing trees, particularly conifers. When established city goals designed for different purposes conflict, balancing of different community and individual needs must be accomplished. In implementing the goals of this chapter, the review body shall give due consideration to valid solar access needs together with any specific solar access policies that may hereafter be adopted. (Ord. 1496 §24, 2016; Ord. 1269 §16, 2006).

14.32.069 Revegetation option.

Based upon recommendations in a report by the [city's tree protection professional](#), removal of areas of vegetation that might normally be saved may be permitted if extensive revegetation is accomplished and standards for [tree tract\(s\)](#) are satisfied pursuant to the requirements of LMC [14.32.064](#) and [14.32.065](#). Such alternatives may be desirable for sites with significant physical limitations such as topography, soil type or proposed small lot sizes (less than sixty-five hundred square feet). Additionally, limitations of existing [trees](#) such as unsuitable species or poor health of a particular [tree](#) stand may make such options desirable.

On a site with documented special circumstances, an alternative allowing removal of vegetation normally saved may be approved with a comprehensive revegetation plan developed by the [city's tree protection professional](#). ~~At a minimum, the plan shall include:~~

~~A. **General information.** Information required under LMC [14.32.060](#).~~

~~B. **General standards.** Consideration of the standards provided in LMC [14.32.063](#).~~

~~C. **Justification.** An evaluation of what circumstances are present in specific areas of the site to make incorporation of topography and existing vegetation undesirable and recommendations on what areas if any can be designed to accommodate existing vegetation.~~

~~D.—**Consideration of functions and values.** Consideration of overstory and understory vegetative species to provide wildlife habitat and meet specific purposes important to the neighborhood environment and project design such as buffers, green belts, open spaces, street trees, urban beautification, solar access, and other functions and purposes deemed desirable and appropriate to the anticipated use.~~

~~E.—**Landscape plan map.** A comprehensive map showing location, number, species and size of planned vegetative improvements. The plan shall also consider the particular circumstances of the site and proposed project, and detail species selected based upon the anticipated use of the property consistent with the site's zoning designation, permitted uses, and lot size.~~

~~F.—**Timing.** A time line for completion of improvements.~~

~~G.—**Value of vegetation.** An appraisal of the value of vegetation being removed under this option. Said appraisal must be accomplished pursuant to the most recent guidelines established by the International Society of Arboriculture in its "Guide for Plant Appraisal" and be completed by the city tree protection professional.~~

~~H.—**Commensurate value replaced.** Said plan shall provide for a commensurate value of vegetation to be installed as is to be taken out under this option. Said amount shall be above and beyond what is normally required for landscaping in the projects not utilizing this option. The calculated value of the revegetation shall include only appraised value of the trees and vegetation and shall not include the applicant's administrative or labor costs, or the costs of the city's tree protection professional.~~

~~I.—**Maintenance.** A three year maintenance plan including provision for an irrigation system, weed control and a shrub and tree maintenance program.~~

~~J.—**Protection strategy for vegetation to be saved.** If any existing vegetation is to be saved, a plan shall be provided for the protection of said vegetation during construction activity, including fencing and other protective measures deemed necessary by the city's tree protection professional.~~

~~K.—**Land division elements considered.** If the project involves a land division, the landscaping plan should include a comprehensive treatment of tree tracts, open space areas, green belt areas, buffers, common areas, and street frontages (street trees and parkways). All common improvements shall be completed prior to the final land division, approval or financial security provided to the city in a form acceptable to the city in the amount of one hundred fifty percent of the estimated costs including two years maintenance and twenty percent replacement.~~

~~L.—**Required consideration for clearing individual lots with land division approval.** If a developer desires to clear individual lots within the land division at the same time as road areas, this may be done if it is consistent with the approved plans and the following conditions are satisfied:~~

~~1.—**Valuation of vegetation.** An average valuation of vegetation on individual lots shall be provided with a conceptual plan of typical yard landscaping of equal value. Such conceptual plan shall contain specific guidelines for revegetation of individual lots and said guidelines shall be incorporated into protective covenants and lot owner's association articles of incorporation;~~

~~2. **Financial security.** Financial security is provided to the city in a form acceptable to the city at one hundred fifty percent of the estimated costs of improvements of individual lots based upon the conceptual typical yard-landscaping plan.~~

~~3. **Meets requirements.** A detail of how the revegetation plan satisfies the requirements for tree tract(s) pursuant to this chapter. (Ord. 1269 §17, 2006; Ord. 1208 §56, 2003; Ord. 904, 1991).~~

14.32.070 Additional considerations for commercial developments.

Commercial projects generally have different demands than residential areas. Commercial sites have parking lots to serve the traveling public, they have larger buildings, and they may have need of significant utility infrastructure to service commercial uses. While Lacey has the same goals to maintain our tree canopy and to save significant stands of trees, urban forestry requirements for commercial areas need to be crafted to acknowledge and plan for differences in site design and construction requirements. In addition to other requirements of this ordinance, commercial sites shall have emphasis on the following considerations and requirements:

- A. Early planning prior to project design shall consider the stands of trees on the site. For a land use application to be considered complete a tree inventory with consideration of urban forestry issues shall be required to be submitted with the land use application. The tree inventory and evaluation shall be utilized in the design layout of the site. Existing trees and protection opportunities shall play an important role in site design;
- B. The major strategy for tree protection on commercial sites will be designation of a tree tract(s) pursuant to the requirements of LMC [14.32.068](#). Analysis and recommendations of the tree protection professional will determine if certain individual trees should have special emphasis based upon their health and significance, individual site conditions, and retention opportunities. A review of these recommendations shall be provided in the tree protection professional's report;
- C. The selection of the location of the tree tract(s) and individual trees shall be chosen early on at the pre-submission stage, before design of the site, and it shall consider the best location of the site to address urban forestry issues. The design of the commercial site layout shall work within the framework of tree protection opportunities for designation of the tree tract and individual trees;
- D. Deciduous trees are generally encouraged for parking areas because of advantages for solar access considerations (shading in summer and solar access in winter), temperature and climate control factors (reducing temperature in parking lots in summer), pollution control advantages (broad leaves absorption of gases and removal filtering of particulate matter), and options for providing tree canopy coverage over parking sites and drive lanes. Select deciduous trees can also be chosen for root character that will not damage asphalt and parking lot overlays. For these advantages, planting of select deciduous trees will generally be a good choice to provide canopy coverage in parking lots for commercial sites over the long term. It is also important to restore some native conifers to the project site. This can occur in larger planter islands or as a backdrop to

buildings or as foundation plantings to breakup concrete facades. The tree protection professional's report shall reflect these considerations, shall indicate the best areas for removal of trees to accommodate parking needs (based upon indigenous tree areas with the least protection value) and shall recommend replacement of trees;

E. In some cases commercial sites may require extensive grading because of the nature of the topography and other development requirements. For this reason, and the emphasis on provision of a designated tree tract to achieve canopy goals, some flexibility may be permitted for grading to provide for intensive infrastructure needs of the project design. Provided, the design takes advantage of tree protection opportunities to provide an attractive, functional and unique shopping experience. This flexibility is not intended to limit creative development with the site. Where possible, commercial developments should seek to use variations in terrain to create an interesting development scheme. (Ord. 1269 §18, 2006).

F. Trees planted in planter strips, medians, and tree wells with grates shall follow City of Lacey Development Guidelines and Public Works Standards in Chapter 4B.125, Landscape/Planter Areas for specific site preparation requirements and Drawings 4-29 and 4-30.

G. Trees located in an existing tree tract or landscaping of a commercial development may not be removed, unless approved through the following procedures:

1. **Permit Required.** No tree on existing commercial development shall be removed without first applying for and receiving a land clearing permit. The applicant for the permit shall be the property owner. An application for a tree removal permit shall be submitted on a form provided by the city. The applicant must state the justification for removal on the tree removal application;

2. **Review.** The director or her/his designee shall review the application for tree removal, the tree protection professional's report and any applicable information. In the review, the following factors will be considered:

1. Documented history of property damage caused by the tree(s).
2. The size and location of the tree(s) causes typical maintenance, pruning and dead branch removal infeasible due to cost or is physically not practicable by tree care professionals.
3. The tree does not meet criteria for a specimen tree

3. **Replanting.** Any tree permitted to be removed under this subsection shall be mitigated by planting replacement trees at a ratio required by the table below:

Table 14-T70

<u>Size of tree to be removed (inches at DBH)</u>	<u>Minimum Number of trees to be replanted</u>
<u>Less than 6</u>	<u>1</u>

<u>6 and up to 12</u>	<u>2</u>
<u>More than 12 and up to 20</u>	<u>3</u>
<u>More than 20 and up to 25</u>	<u>5</u>
<u>More than 25</u>	<u>7</u>

Replacement trees will be a minimum of 1.5 inch caliper for deciduous species and 6-7 foot tall for conifers unless otherwise recommended by the city tree protection professional. Conifers will be native to the Pacific Northwest. Deciduous tree species will be compatible with the other trees in the open space, and will provide wildlife, aesthetic, and other amenities to the open space. If the site cannot accommodate the amount of replanting required, the City's tree account may be used pursuant to 14.32.066 (B).

4. Tree Protection Professional Report The city's tree protection professional shall review the site and provide a report analyzing the site for tree replacement consistent with the requirements of this chapter. The report should provide information important to urban forest management and options for consideration when developing replanting plans. The report should suggest options for design to best achieve the purposes of the Urban Forest Management Plan and this chapter. The report shall include but shall not be limited to:

a. Analysis of what portion of the open space is best for replanting, considering the intent of this chapter, soil type, topography, tree species, health of trees and reasonable project design limitations;

b. Recommendations for replacement tree species based upon the intent of this chapter, soil type, topography, tree species, health of trees, and reasonable project design limitations;

c. Consideration of the location of roads, other infrastructure, and buildings and potential options for alternative locations, if applicable, to best satisfy the purposes of the Urban Forest Management Plan

d. A timeline for tree replacement

e. An irrigation and watering plan to maintain replacement tree health and survival

5. Decision. The director or her/his designee shall issue their decision in writing to include rationale supporting the decision pursuant to procedures and requirements of section 1E.030 (Limited Administrative Review of Applications) of the Development Guidelines and Public Works Standards;

14.32.071 Additional considerations for homeowners association (HOA) open spaces.

AA. —Open Space Tracts may have different demands and issues then individual residential parcels or designated tree tracts. —While open space Tracts are recognized by the Plan as key areas for preserving, maintaining or planting trees to meet the community’s tree canopy goal, there are instances when otherwise healthy trees may need to be removed for reasons such as tree species suitability, maintenance, or liability. In cases were otherwise healthy trees are removed, replanting shall occur to maintain the community’s tree canopy goal.

B.B. **Trees** located in open space Tracts ~~sshall not be removed~~, unless approved through the following procedures:

—1. **Permit Required.** No open space tree shall be removed without first applying for and receiving a land clearing permit. The applicant for the permit shall be the property owner. An application for a tree removal permit shall be submitted on a form provided by the city. The applicant must state the justification for removal on the tree removal application;

2. **Review.**—

The director or her/his designee shall review the application for tree removal, the tree protection professional’s report and any applicable information. In the review, the following factors will be considered:

4. Documented history of property damage caused by the tree(s).
5. The size and location of the tree(s) causes typical maintenance, pruning and dead branch removal infeasible due to cost or is physically not practicable by tree care professionals.
6. The tree ~~does not meet criteria for a specimen tree~~

3. **Replanting.** Any tree permitted to be removed under this subsection shall be mitigated by planting replacement trees at a ratio ~~of ,,,,,,,:~~ required by the table below:

Table 14-T70

<u>Size of tree to be removed (inches at DBH)</u>	<u>Minimum Number of trees to be replanted</u>
<u>Less than 6</u>	<u>1</u>

<u>6 and up to 12</u>	<u>2</u>
<u>More than 12 and up to 20</u>	<u>3</u>
<u>More than 20 and up to 25</u>	<u>5</u>
<u>More than 25</u>	<u>7</u>

Replacement trees will be a minimum of 1.5 inch caliper for deciduous species and 6-7 foot tall for conifers unless otherwise recommended by the city tree protection professional. Conifers will be native to the Pacific Northwest. Deciduous tree species will be compatible with the other trees in the open space, and will provide wildlife, aesthetic, and other amenities to the open space. If the site cannot accommodate the amount of replanting required, the City's tree account may be used pursuant to 14.32.066 (B).

4. Tree Protection Professional Report The city's tree protection professional shall review the site and provide a report analyzing the site for tree replacement consistent with the requirements of this chapter. The report should provide information important to urban forest management and options for consideration when developing replanting plans. The report should suggest options for design to best achieve the purposes of the Urban Forest Management Plan and this chapter. The report shall include but shall not be limited to:

a. Analysis of what portion of the open space is best for replanting, considering the intent of this chapter, soil type, topography, tree species, health of trees and reasonable project design limitations;

b. Recommendations for replacement tree species based upon the intent of this chapter, soil type, topography, tree species, health of trees, and reasonable project design limitations;

c. Consideration of the location of roads, other infrastructure, and buildings and potential options for alternative locations, if applicable, to best satisfy the purposes of the Urban Forest Management Plan

d. A timeline for tree replacement

e. An irrigation and watering plan to maintain replacement tree health and survival

45. Decision. The director or her/his designee shall issue their decision in writing to include rationale supporting the decision pursuant to procedures and requirements of section 1E.030 (Limited Administrative Review of Applications) of the Development Guidelines and Public Works Standards;

14.32.072 Historical tree(s).

A. **Purpose.** The purpose of the historical tree designation is to protect trees with a historical significance and to establish a register of these trees. Historical trees require protection due to their special value in that they are irreplaceable. They may be associated with historic figures, events, or properties; or be rare or unusual species; or they may have aesthetic value worthy of protection for the health and general welfare of the residents of this city.

Therefore, the purpose of this section is:

1. **Protection and maintenance.** To provide for the protection and proper maintenance of historical trees, to minimize disturbance to the trees, and to prevent other environmental damage from erosion or destruction of wildlife habitat;
2. **Health, safety, welfare.** To protect the health, safety and general welfare of the public;
3. **Goals and objectives.** To implement the goals and objectives of the city's Urban Forest Management Plan.

B. **Historical Tree Registration.** The city shall prepare and thereafter maintain a list of historical trees within the city limits. The inventory may include a map identifying the location of the trees and a brief narrative description of each historical tree. The historical tree inventory shall be prepared and amended at any time following the procedures established below.

1. **Nomination.** A tree may be nominated for historical tree status by the property owner, a neighborhood organization, or any person by submitting a map, a photograph, and a narrative description including the location, species, approximate age, and the characteristics on which the nomination is based;
2. **Review.** The director, upon receipt of a nomination, shall review the nomination and confer with the city tree protection professional and other city staff as may be appropriate. Notice of the nomination shall be mailed to the property owner and shall be posted by the city on the subject site for a period of ten days. The director shall inspect the tree, consider public comments, and decide in each case whether or not the tree is to be designated a historical tree. The city shall place each designated historical tree on the historical tree register. In the event the owner of the tree does not approve of its designation as a historical tree, the nomination will be disapproved;

3. **Notification of the director's decision.** Notice of the director's decision shall be mailed to the property owner and shall be posted by the city on the subject site for a period of ten days;
 4. **Appeal.** Any person may appeal the director's decision to the hearing examiner;
 5. **Hearing examiner.** The hearing examiner shall hold a public meeting on the appeal pursuant to the procedures specified in section 1.C.050 (Quasi-Judicial Review of Applications) of the City of Lacey Development Guidelines and Public Works Standards. The hearing examiner will make a decision which will constitute a recommendation to the city council. All recommendations of the hearing examiner will be considered by the city council at the next available council meeting;
 6. **Notification of registration.** Each property owner who has one or more registered historical trees shall be notified by first class mail of the designation within thirty days of designation;
 7. **Recording of historical tree covenant.** Each property owner who has one or more registered historical trees shall execute a historical tree covenant in a form agreeable to the city. The historical tree covenant shall require that the tree be maintained in a manner which is consistent with the provisions of this chapter. The historical tree covenant shall be recorded by the county auditor. Recording fees shall be paid by the applicant;
 8. **Duration of covenant.** The historical tree covenant shall be effective from the date of recording until such a time that a tree removal permit has been issued by the director pursuant to this section;
 9. **Education benefits.** From time to time the city may prepare public information programs on historical trees and provide qualified professional tree care advice to owners of the historical trees;
- C. **Limitation on removal.** Subject to the exceptions enumerated in subsection D of this section, no person shall remove, or cause to be removed, any historical tree.
- D. **Removal Procedures.** Historical trees shall not be removed except through the procedures established in this section.
1. **Permit Required.** No Historical tree shall be removed without first applying for and receiving a land clearing permit. The applicant for the permit shall be the property owner or the city. An application for a tree removal permit shall be submitted on a form provided by the city. The applicant must state the justification for removal on the tree removal application;
 2. **Review.** If justification for removal is based upon health of the tree, and a visual inspection by the director cannot establish that the tree is dead, diseased, or hazardous, the applicant shall pay for the city tree protection professional to make a determination. If it is determined by the tree protection professional that the tree is dead, diseased, or otherwise hazardous and cannot be saved, the director may approve the removal. If the tree is determined to be healthy, or with treatable infestation or infection, the director may deny the permit.

If justification is due to reasons other than health of the tree, the director shall confer with other city personnel as may be appropriate in evaluating the justification and make a decision pursuant to the procedures and requirements of section 1E.030 (Limited Administrative Review of Applications) of the Development Guidelines and Public Works Standards;

3. **Notification.** If the director decides that a permit is justified, notice of the director's decision shall be mailed to the applicant, all parties of record, and posted by the city on the subject site for a period of ten days, during which no work shall commence. No work shall commence during the notice periods or when appeals are pending disposition;

4. **Appeal.** The property owner or any person residing or owning property within three hundred feet of the tree may appeal the director's decision to the hearing examiner, whether that decision is positive or negative. Appeals must be submitted in writing within ten days of the posting of the director's decision;

5. **Hearing examiner.** The hearing examiner shall hold a public meeting on the appeal pursuant to the procedures specified in section 1K.050 (Quasi-Judicial Review of Applications) of the Development Guidelines and Public Works Standards. The hearing examiner will make a decision which will constitute a recommendation to the city council. All recommendations of the hearing examiner will be considered by the city council at the next available council meeting. The city council decision shall be final. No work shall commence during the notice periods or when appeals are pending disposition;

6. **Permit for tree removal timing.** Any tree removal permit granted under this chapter shall be valid for one year. In addition to the permit, the property owner will execute a revocation of covenant in a form agreeable to the city. The revocation of covenant shall be recorded by the county auditor. Recording fees shall be paid by the property owner. (Ord. 1269 §19, 2006).

14.32.073 Financial security.

The review body may require financial security in such form and amounts as may be deemed necessary to assure that the work shall be completed in accordance with the permit. Financial security, if required, shall be furnished by the property owner, or other person or agent in control of the property at one hundred fifty percent of the estimated tree and vegetation replacement costs or appraised value. (Ord. 1269 §20, 2006).

14.32.080 Appeals.

Any decision of the city of Lacey in the administration of this chapter may be appealed in accordance with Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §55, 2002; Ord. 904, 1991; Ord. 399 §1 (part), 1975).

14.32.090 Violations.

A. **Violation general.** Violation of the provisions of this chapter or failure to comply with any of the requirements shall constitute a misdemeanor and such violation shall be punished as provided by LMC Title 9 for the commission of a misdemeanor. Each day such violation continues shall be considered a separate, distinct offense. The city's code enforcement officer shall promptly investigate all complaints of illegal tree removals.

B. **Penalties.** Any person who commits, participates in, assists or maintains such violation may be found guilty of a separate offense and suffer the penalties as set forth in subsection A of this section.

C. **Mitigation required.** In addition to the penalties set forth in subsections [A](#) and [B](#) of this section, any violation of the provisions of this chapter shall be mitigated by comprehensive treatment of environmental impacts through revegetation of the affected site. In assessing environmental damage, the city's tree protection professional shall determine the extent and value of vegetation removed or damaged and other environmental damage inconsistent with the intent and requirements of this chapter. In assessing environmental damage, the tree protection professional shall consider what the outcome of the site should have been had the proposed project been designed around existing topography and vegetation and all appropriate vegetation saved. The tree protection professional shall use the methodology in the current edition of the International Society of Arboriculture's "Guide for Plant Appraisal" in determining the value of removed and damaged vegetation.

D. **Environmental damage reviewed.** If the violation is discovered after evidence has been removed, the city tree protection professional shall use whatever resources are immediately available to determine environmental damage which may include aerial photographs, other photographs, interviews with adjacent property owners, receipts of timber sales off the site, and any other records available that have a bearing on the quantity and quality of vegetation removed or environmental damage sustained. The tree protection professional also may estimate the appraised value of removed vegetation at the site by analyzing the best case growing capability of the site given soil conditions, health of surrounding tree stands and type of species suspected of being removed. The determination of environmental damage made by the tree protection professional shall be given substantial weight in a court of law.

E. **Revegetation.** Once the value of the environmental damage is determined, a comprehensive plan for revegetation of the site shall be prepared by the tree protection professional considering the purposes of this chapter and the specific elements provided in LMC [14.32.069](#). The plan shall provide for a value of new vegetation commensurate with the determined value of environmental damage at the site. The violator shall be fully responsible for implementation of the plan, accomplishment of all improvements and maintenance of said improvements.

F. **City tree account.** If the cost of restoration of the site is less than the true value of environmental damage at the site, the balance shall be paid to the city tree account. The city shall then utilize those funds for planting trees in other areas of the city.

G. **Appeal.** The determination of the city tree protection professional regarding the environmental damage at the site may be appealed to the city hearings examiner pursuant to the requirements of LMC [14.32.080](#).

H. **Hearing examiner review.** In review of the tree protection professional's decision, the hearing examiner shall determine if the tree protection professional's decision accurately reflects the criteria set forth in LMC [14.32.020](#).

I. **Relevant facts.** Additionally, the city hearings examiner may consider any other facts the examiner determines are relevant to the specific situation.

J. **Reduction of monetary value.** In cases where the determined value of environmental damage far exceeds the site restoration requirements, and extenuating circumstances the examiner determines are relevant to the case are present, the hearing examiner may reduce the monetary value assigned to the environmental damage, provided the hearing examiner shall reduce the determined compensation only when all of the following criteria are demonstrated by the applicant:

1. **Professional forester or certified arborist.** A professional forester, certified arborist, or other professional who could have alerted the applicant of tree protection requirements was not involved in the action leading to the violation;
2. **Monetary gain.** The violation action was not associated with a tree harvesting operation for monetary gain;
3. **Previous record.** The applicant has no previous record of tree and vegetation protection and preservation ordinance violations.

K. **Monetary compensation.** If all of the above criteria are demonstrated, the hearing examiner may reduce the monetary compensation required. In determining the monetary compensation reduction, the hearing examiner shall consider the following factors:

1. **Person responded.** Whether the person responded to staff attempts to contact the person and cooperated with efforts to review the site and arrive at an agreement on site restoration;
2. **Due diligence.** Whether the person showed due diligence and/or substantial progress in site restoration;
3. **Code interpretation.** Whether a genuine code interpretation issue exists;
4. **Other factors.** Any other factors considered relevant to the situation by the hearings examiner.

L. **Limitation on reduction.** In fixing the amount of compensation, the hearings examiner shall not reduce the determined compensation by more than thirty percent of the true value of the environmental damage as determined by the tree protection professional; provided further, that no reduction shall be given in cases where the true value of environmental damage does not exceed the cost of restoration determined necessary by the city's tree protection professional; provided further the hearing examiner may double the monetary

compensation if the violation is a repeat violation. In determining the amount of increased compensation, the examiner shall also consider the criteria of this section.

M. Appeal of hearing examiner determination. Appeals of violation determinations by the city hearing examiner shall be appealed to Superior Court. An appeal of the hearing examiner decision must be filed with Thurston County Superior Court within twenty calendar days from the date the hearing examiner decision was mailed to the person to whom the decision on monetary compensation was made. (Ord. 1269 §21, 2006; Ord. 935 §2 (part), 1992).

14.32.095 Requirements for foresters and contractors doing land clearing work in Lacey.

In order to assure compliance with the standards and requirements of this chapter, “Tree and Vegetation Protection/Urban Forest Management,” foresters, arborists, and logging and land clearing contractors or others involved in land clearing operations in the city of Lacey shall be required to sign and submit a “Statement of Tree and Vegetation Protection Acknowledgment” to the city of Lacey. This statement shall attest such forester’s or contractor’s knowledge of the city of Lacey’s tree and vegetation protection requirements. This statement shall be required in conjunction with normal city licensing requirements for persons performing work in the city of Lacey. The required statement shall be in substantially the following form:

“I, _____, a duly licensed professional contractor in the State of Washington, or professional forester, hereby attest that I have read and am knowledgeable of Chapter [14.32](#), “Tree and Vegetation Protection/Urban Forest Management”, of the city of Lacey.

“I further attest that, as a professional doing land clearing work in the city of Lacey, I am accountable for following the city’s tree and vegetation protection and conservation requirements, including obtaining a land clearing permit or exemption prior to performing land clearing work, as defined by Chapter 14.32.030(C) of the Lacey Municipal Code, as well as following all conditions and requirements of said permit or exemption.

“I attest that if I fail to follow tree protection requirements I will be held jointly responsible with the landowner for any restitution required as a result of environmental damage determined by the city tree protection professional to be the result of improper land clearing activities at the site. This may result in claims against my bond pursuant to Section [18.27.040](#) of the Revised Code of Washington and other monetary penalties as allowed by this chapter or State law.”

Private professionals involved in land clearing operations who do not provide the above statement shall be prohibited from performing land clearing services in the city of Lacey. Said professionals who do not provide this statement and perform land clearing services in the city of Lacey shall be considered in violation of this chapter and may be prosecuted under this chapter, the city’s civil penalties ordinance, or as otherwise provided by law. All foresters, arborists, loggers, or other land clearing contractors involved in land clearing operations

shall be jointly responsible with the landowner for any land clearing violation and restitution required at a site as a result of improper land clearing activity. (Ord. 1269 §22, 2006; Ord. 935 §2 (part), 1992).

14.32.100 Severability.

If any section, paragraph, subsection, clause or phrase of this chapter is for any reason held to be unconstitutional or invalid such decision shall not affect the validity of the remaining portions of this chapter. (Ord. 904, 1991; Ord. 399 §1 (part), 1975).

The Lacey Municipal Code is current through Ordinance 1568, passed July 9, 2020.

Disclaimer: The city clerk's office has the official version of the Lacey Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

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