

Chapter 18.45

TREE PRESERVATION AND PROTECTION

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18.45.010 Short title.

This chapter shall be known and may be cited as the tree preservation ordinance of the City of Covington. (Ord. 04-08 § 2)

18.45.020 Purpose and intent.

The intent of this chapter is to establish regulations and procedures for preservation of trees, to preserve the character of the community, to successfully retain desirable trees on developing and redeveloping sites, and to maintain a viable tree canopy for the City of Covington.

Specifically the regulations contained in this chapter are intended to accomplish the following goals and objectives:

- (1) Promote the public health, safety and general welfare of the citizens of Covington;

- (2) Implement the purposes of the State Growth Management Act relating to conservation of natural resources;
- (3) Support and implement the City of Covington Comprehensive Plan and its Environmental Element;
- (4) Implement the goals of the State Environmental Policy Act (SEPA);
- (5) Improve the aesthetic quality of the built environment by reducing impacts on wetlands, streams and the natural environment;
- (6) Minimize erosion, siltation, water pollution, and surface and ground water runoff;
- (7) Preserve significant trees for the reduction of noise and air pollution, wind protection, animal habitat, slope stabilization and retention of ground water;
- (8) Assist with removing hazardous trees;
- (9) Provide for delivery of reliable utility services, for reasonable development of property, for reasonable preservation or enhancement of property values, and for increases in privacy for residential sites;
- (10) Promote building and site planning practices that are consistent with the City's natural topography, soils, and vegetation features;
- (11) Provide an appropriate amount and quality of tree retention related to future land uses;
- (12) Provide for increased areas of permeable surfaces that allow for infiltration of surface water into ground water resources, reduction in the quantity of storm water discharge, and improvement in the quality of storm water discharge; and
- (13) Provide for regulations that are clear, understandable, user friendly, easy to administer, and cost effective to enforce. (Ord. 04-08 § 2)

18.45.030 Definitions.

Unless otherwise clearly indicated by the context, certain words and phrases used in this chapter shall have the following meanings. Words used in the singular include the plural, and words used in the plural, include the singular. Words used in the masculine gender include the feminine.

“Arborist” means an individual trained in the art and science of planting, caring for, and maintaining individual trees, and is currently certified by the International Society of Arboriculture.

“Brushing” means an allowed practice of removing ground cover, shrubs and vegetation not defined as a tree to create better visibility on a site for purposes of public safety, surveying or marketing.

“Caliper” means the diameter of a tree trunk, applied only to new or replacement nursery-grown trees, measured six inches above the ground for up to and including four-inch caliper size trees and 12 inches above the ground for larger sizes.

“City” means the City of Covington, King County, Washington.

“Clearing” or “land clearing,” for purposes of this chapter, means the direct and indirect removal of trees, including topping and limbing, from any public or private undeveloped, partially developed, or developed lot, public lands, public right-of-way, or utility easement. This shall also include any destructive or inappropriate activity applied to a tree that will result in its death or effectively destroy the functionality. “Clearing” shall not include landscape maintenance, brushing, or pruning consistent with accepted horticultural practices which does not impair the health, survival or function of trees.

“Critical root zone” is the area where the tree’s roots are located and is the area surrounding a tree measured at a radial distance from the trunk equal to one foot for every one-inch diameter of tree.

“DBH” means diameter at breast height. DBH is a tree’s diameter in inches at four and one-half feet above the ground at the lowest point surrounding the trunk, and is used to measure existing trees on a site. On multi-stemmed or multi-trunked trees, the diameter shall be the diameter equivalent to the sum of trunk areas measured at DBH.

“Department” means the City of Covington Department of Community Development or its successor agency.

“Director” means the Community Development Director of the City of Covington or his or her duly authorized designee.

“Drip line” of a tree means an imaginary line on the ground created by the vertical projection of the foliage at its greatest circumference.

“Grading,” for purposes of this chapter, is any excavation, filling or combination thereof.

“Ground cover” means any living plant material normally terrestrial, growing low to the ground, or other small trees less than four inches in DBH and not defined as a tree, all of which are intended to stabilize soils and protect erosion.

“Hazard tree,” for purposes of this chapter, means any tree determined by an arborist to have a structural defect, combination of defects, or disease, resulting in the loss of a major structural component of that tree in a manner that will:

- (1) Damage a residential structure or accessory structure, place of employment or public assembly, or approved parking for a residential structure or accessory structure or place of employment or public assembly;
- (2) Damage an approved road or utility facility; or

(3) Prevent emergency access in the case of medical hardship.

“Heritage tree(s)” means any tree, or grove of trees, that has historical significance to a person, place or event; has attained significant size in height, caliper or canopy spread for its age and species to be a specimen tree; has special aesthetic qualities for its species to be unique or rare; is visible to the public and has exceptional value to the residents of the community; and is not a hazard as defined herein.

“ISA” means International Society of Arboriculture.

“Landscape architect” means an individual currently licensed by the State of Washington as a landscape architect.

“Land use application” means an application, supplied by the Department, which must be completed and accompany any submittal packet for the desired development permit.

“Normal and routine maintenance” means the standard practice and care of trees and vegetation normally required to maintain life, including watering, feeding or fertilizing, spraying, pruning and trimming according to best management practices, and removing of dead or unhealthy branches.

“Parks and Recreation Commission” means the named advisory commission that oversees the community parks, recreation, and forestry programs, and reports to the City Council.

“Person” means any individual, organization, society, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, governmental agency, public or private utility, cooperative, interstate body or other legal entity.

“Pruning” means cutting back of limbs larger than one and one-half inches in diameter.

“Significant tree,” for purposes of this chapter, means any healthy tree of six inches DBH or larger.

“Tree” means any woody plant characterized by one main stem or trunk and many branches, or multi-stemmed trunks which have a diameter individually or cumulatively of four inches DBH or larger.

“Tree appraisal” is a method of calculating the value of a tree, which shall be based on the “trunk formula method” as set forth in “The Guide for Plant Appraisal” authored by the Council of Tree and Landscape Appraisers.

“Tree enhancement plan” means a plan prepared by a certified arborist, licensed landscape architect, or certified forester and required of all commercial or industrial properties greater than two acres in size when any tree removal or tree clearing takes place. The tree enhancement plan shall combine tree preservation of existing trees to the extent feasible along with tree replacement and replanting equal to at least 15 percent of the number of significant trees existing on the site prior to any tree removal. The tree enhancement plan shall incorporate trees

in as many areas as feasible such as tree tracts, boundary trees, perimeter landscaping, parking lot landscaping, street and driveway trees, facade landscaping, or other viable stands of trees, considering the type of commercial or industrial development.

“Tree harvesting” means tree logging, felling, cutting, or taking of trees, standing or down, on privately or publicly owned land for sale or for commercial, industrial, or other use, governed under RCW 76.09.470.

“Tree inventory” means a detailed list of all trees of four inches DBH or larger, located on a site for which a tree permit is required, and which is prepared by a certified arborist, licensed landscape architect, certified forester, or other qualified tree professional. A tree inventory shall be included on a site plan drawn to scale, and provide the number, size, approximate height, specific location, and tree species of all trees of four inches DBH or larger, with a summary of all significant trees in sufficient detail for the City to review.

“Tree owner” means the owner of the real property where 51 percent or more of the diameter of the trunk of the tree at ground level is located.

“Tree topping” is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree’s crown to such a degree so as to remove the normal canopy and disfigure the tree.

“Tree tract” is a separate portion of land, specifically set aside for the preservation, retention or protection of existing trees or the planting of new trees to maintain a beneficial tree canopy in a subdivision or on a development site and that meets minimum tree preservation requirements of this code. The tree tract shall be a separate designated lot(s) or tract(s) shown on the subdivision plat map, site development plan, or binding site plan and shall be recorded with appropriate description of purposes and restrictions. Restrictions applied to the tree tract will reserve the tract for the protection and preservation of trees in perpetuity. Tree tracts can be used for other open space uses when such use is compatible with trees and will not impact tree health. The tract shall be dedicated to, and owned and maintained by, the home owner(s), property owners association, or comparable entity.

“Vegetation” means any and all organic plant life growing at, below or above the soil surface. (Amended at request of department 2/08; Ord. 04-08 § 2)

18.45.040 Applicability of regulations.

(1) These regulations shall not be applicable to:

- (a) Any single-family or multifamily lot one acre or less in size;
- (b) Any commercial or industrial lot two acres or less in size; or
- (c) Any lot or tract with less than 20 “significant trees” as defined.

(2) These regulations shall apply to the following parcels of land unless further exempted in CMC 18.45.050:

(a) Any residentially zoned parcel of land between one acre and two acres in size that is subdivided regardless of the number of lots created, and which contains 20 significant trees. (See CMC 18.45.060(1), Minor Tree Removal Permits, and CMC 18.45.080, Tree preservation, tree tracts and tree replacement requirements.)

(b) Any residentially zoned parcel of land between one acre and two acres in size that is not subdivided but is either vacant of structures, or contains existing structures proposed for demolition, replacement, expansion or development, and which contains 20 significant trees where tree removal and/or land clearing is undertaken individually by itself or in conjunction with any required building or land use permit. (See CMC 18.45.060(1), Minor Tree Removal Permits, and CMC 18.45.080, Tree preservation, tree tracts and tree replacement requirements.)

(c) Any parcel of land two acres or greater in size that is subdivided regardless of the number of lots created, and which contains 20 significant trees. (See CMC 18.45.060(2), Major Tree Clearing Permits, and CMC 18.45.080, Tree preservation, tree tracts and tree replacement requirements.)

(d) Any parcel of land two acres or greater in size that is not subdivided but is either vacant of structures or contains existing structures proposed for demolition, replacement, expansion or development, and which contains at least 20 significant trees where any tree removal and/or land clearing is undertaken individually by itself or in conjunction with any required building or land use permit. (See CMC 18.45.060(2), Major Tree Clearing Permits, and CMC 18.45.080, Tree preservation, tree tracts and tree replacement requirements.)
(Ord. 04-08 § 2)

18.45.050 Exemptions from tree permits.

The following activities are exempt from both the minor tree removal permit and major tree clearing permit requirements of CMC 18.45.060, 18.45.070, and 18.45.080, unless they disturb any critical area or critical area buffer, or identified shoreline jurisdiction, or unless they cause a major adverse impact to runoff and diversion of storm water or streams, erosion, risk of landslide, infiltration of pollution into ground water, or major adverse impacts to safety and security of adjacent properties, as determined by the Director:

(1) Sites with 20 Significant Trees or Less. Any site, proposed for subdivision, development, redevelopment or building construction, regardless of size, which does not contain at least 20 significant trees as defined herein.

(2) Emergency Removal of a Hazard Tree or Trees. Emergency removal of hazard tree(s) as defined in order to prevent imminent danger to persons or structures. Such removal shall be reported to the City within 10 days of removal on a form provided by the City. This exemption shall not apply to existing trees located within designated tree tracts.

(3) Normal and Routine Maintenance of Existing Trees. Any normal and routine maintenance of existing trees, but not to include utility easements; provided, that said maintenance does not involve removal of healthy trees and is not detrimental to the health of any trees. Trenching or

digging to a depth of greater than one foot within the critical root zone and tree topping is not allowed.

(4) Commercial and Wholesale Nurseries and Tree Farms. Removal of trees which are being grown within commercial and wholesale nurseries or tree farms to be sold as landscape or Christmas trees.

(5) Tree Harvesting with a Forest Practices Permit. Any harvesting with a forest practices permit issued by the Washington State Department of Natural Resources under RCW 76.09.470.

(6) Residential Sites One Acre or Less and Commercial or Industrial Sites Two Acres or Less. Removal of trees, brushing and ground cover from single-family or multifamily residential lots of one acre or less, and commercial or industrial lots of two acres or less, as long as no critical area or its buffer is disturbed, and no land clearing, grading or filling is involved.

(7) Any Site in the Commercial or Industrial Zones, Provided a Tree Enhancement Plan is Submitted and Approved. Any site, tract, lot or subdivision located in the DN, CC, CN, or I zones, provided such sites, as part of their subdivision, development or redevelopment permit, submit a tree enhancement plan to replant trees as outlined in CMC 18.45.080(7).

(8) Removal of Trees on City-Owned Property for Installation of Utilities and Public Facilities and Maintenance of Property. Removal of trees on any city-owned right-of-way or tract for installation of any public infrastructure, including streets, utilities or public facilities, or for maintenance and operation of any existing facilities.

(9) Partial Exemption for Developed Single-Family and Multifamily Lots. On existing developed single-family and multifamily lots greater than one acre in size, removal of trees without a permit is allowed within an existing or proposed building footprint and within 30 feet of such building footprint. In addition, no permit is required for tree removal within 15 feet from all accessory structures, roads, driveways or utility easements associated with such building footprints. Exempted areas for tree removal are measured from the edge of a building wall, road, drive, or easement out to the critical root zones of any tree. (That portion of the lot or tract outside of the aforementioned area, which is exempted from tree removal permits, shall be treated as undeveloped and unplatted property for the purposes of this chapter and shall be governed by requirements for a major tree clearing permit, and preservation of trees in a tree tract, tree conservation easement or tree enhancement plan and tree replanting as outlined in CMC 18.45.060, 18.45.070, and 18.45.080.)

(10) Partial Exemption for Developed Commercial and Industrial Lots. On developed commercial or industrial lots greater than two acres in size, removal of trees without a permit is allowed within an existing or proposed building footprint and within 30 feet of such building footprint. In addition no permit is required for tree removal within 15 feet from all accessory structures, roads, driveways or utility easements associated with any primary building footprints. Exempted areas for tree removal are measured from the edge of a building wall, road, drive, or easement out to the critical root zones of any tree. (That portion of the lot or tract greater than the aforementioned area exempted from tree removal permits shall be treated as undeveloped

and unplatted property for the purposes of this chapter and shall be governed by requirements for a major tree clearing permit and preservation of trees in a tree tract, tree conservation easement or tree enhancement plan and tree replanting as outlined in CMC 18.45.060, 18.45.070, and 18.45.080.)

(11) Limited Exemption for Firewood Removal. Removal of up to four trees annually for personal use as firewood, not resale, from any residentially zoned parcel of land between one and 10 acres, provided the property owner does not remove trees below the minimum 20-tree threshold for tree preservation as required in CMC 18.45.080. (Ord. 04-08 § 2)

18.45.060 Permits and permit requirements.

Unless exempted under CMC 18.45.050, any person engaged in removal of trees or tree clearing in the City shall first obtain either a minor tree removal permit or major tree clearing permit as outlined below and shall meet the prescribed tree preservation or tree enhancement requirements. If any future development or construction is anticipated, such permits shall be reviewed and issued in conjunction with any required land use permit, engineering design permit, site development permit, binding site plan, subdivision, or building permit. A separate permit shall be required for each individual site on which the tree removal or land clearing is proposed. Individual tree removal or tree clearing permits may be applied for, reviewed, and issued according to this section as a separate, freestanding permit, if no development or construction is currently anticipated.

(1) Minor Tree Removal Permits.

(a) Minor tree removal permits are those permits involving removal of trees on lots greater than one acre and less than two acres in size, or on property or easements granted to public utilities, unless the activity falls within an exemption listed in CMC 18.45.050, in which case no permit is required;

(b) The minor tree removal permit required by this subsection shall be in addition to any other permit(s) which will or have been issued by the City or any other governmental agency with jurisdiction over all or part of the proposed activity or land which is part of the activity;

(c) A minor tree removal permit, with prescribed fee, shall require an application and site plan with two copies on a form to be provided by the Director, in accordance with permit submission requirements outlined in subsection (3) of this section;

(d) The Director shall review the minor tree removal permit and accompanying site plan and take action to approve, approve with conditions, or deny the permit. The City may ask for more detailed submittal information to meet the requirements of this code;

(e) A minor tree removal permit shall be a Type I permit governed by Chapter 14.30 CMC;

(f) A minor tree removal permit may be applied for as a freestanding permit by itself or in conjunction with any other associated land use application, engineering design permit, site development permit, binding site plan, subdivision, or building permit application.

(2) Major Tree Clearing Permits.

- (a) Major tree clearing permits are those permits involving any removal of trees, clearing and grading of land with trees, shrubs, or other ground cover on sites two acres in size or greater, unless the activity falls within an exemption listed in CMC 18.45.050, in which no permit is required;
- (b) The major tree clearing permit required by this subsection shall be in addition to any other permit(s) which will or have been issued by the City or any other governmental agency with jurisdiction over all or part of the proposed activity or land which is part of the activity;
- (c) A major tree clearing permit, with prescribed fee, shall require an application and site plan with two copies on a form provided by the Director, in accordance with permit submission requirements outlined in subsection (3) of this section;
- (d) The Director shall review the major tree clearing permit and accompanying site plans and take action to approve, approve with conditions, or deny the permit. The City may ask for more detailed submittal information to meet the requirements of this code;
- (e) A major tree clearing permit shall be a Type II permit governed by Chapter 14.30 CMC;
- (f) A major tree clearing permit may be applied for as a freestanding permit by itself or in conjunction with any other associated land use application, engineering design permit, site development permit, binding site plan, subdivision, or building permit application.

(3) Permit and Application Submission Requirements.

- (a) Minor Tree Removal Permit Submission Requirements. Minor tree removal permits shall be submitted on application forms provided by the Administrator and shall contain the following information outlined below:
 - (i) Completed application form, with one copy and appropriate fee;
 - (ii) The legal description or tax parcel number, and street address for the site;
 - (iii) A scaled site plan, with property lines, structures, north arrow and date;
 - (iv) A tree inventory, identifying the species type, size, approximate height, location, and number of both existing trees and those specific trees to be removed;
 - (v) A statement explaining the scope of work and time schedule for tree removal;
 - (vi) Information showing the location of existing and proposed improvements, if any, including but not limited to structures, roads, utilities, driveways and trails;
 - (vii) The approximate location of all critical areas and critical area buffers, and shoreline jurisdiction areas; and

(viii) Any other information, such as erosion and sediment control plans, if applicable, which the Director deems necessary and reasonable for an effective evaluation of the application for a minor tree removal permit.

(b) Major Tree Clearing Permit Submission Requirements. Major tree clearing permits shall be submitted on application forms provided by the Director, with any land use application, engineering design permit, site development permit, binding site plan, subdivision, or building permit on the same site; or by itself as a freestanding permit for any major tree clearing, land clearing or grading permit when no land use or building permit is anticipated. Permit submissions shall contain the following information:

- (i) Completed application form with three copies and appropriate fee;
- (ii) The legal description or tax parcel number, and street address for the site;
- (iii) If critical areas and their buffers, as defined in Chapter 18.65 CMC, exist on the property, then their exact location shall be identified on a topography map showing contours at not greater than five-foot intervals, as determined by a land surveyor. Included shall be any proposed tree cutting, land clearing, landscaping, and replanting activity, within or near such critical areas;
- (iv) A scaled site plan, with property lines, north arrow and date, showing the location of existing and proposed improvements;
- (v) A tree inventory with date of inventory, north arrow and scale, showing the location, number, size, height, species, and condition of existing trees, and a designation of any trees to be removed and proposed scope of work;
- (vi) The location, number, height, caliper, and species of any replanted trees pursuant to any tree replanting or tree enhancement plan requirements;
- (vii) Erosion and sediment control plans and mitigation;
- (viii) A tree protection plan with fencing details during construction;
- (ix) A proposed time schedule for tree clearing, replanting, land restoration, and implementation of erosion control measures;
- (x) A discussion and calculations demonstrating that the conditions and standards set forth in CMC 18.45.070 and 18.45.080 are satisfied;
- (xi) A performance guarantee quantity worksheet consistent with CMC 18.45.120; and
- (xii) Any other information which the Director deems necessary for an effective evaluation of the application for a major tree clearing permit.

(4) Permit Review – Administrative Provisions and Authority.

(a) Decision Types. Minor tree removal permits are a Type I decision, and major tree clearing permits are a Type II decision as defined in Chapter 14.30 CMC.

(b) Extent of Authority Within Permit Review Process. The Director shall have the authority to approve, modify, approve with conditions, or deny such permits in accordance with the intended purposes of this chapter as well as the standards and requirements set forth in CMC 18.45.060, 18.45.070, and 18.45.080. If the Director determines that the application complies with all criteria and standards set forth in this chapter, then a minor tree removal or major tree clearing permit shall be issued.

(c) Length of Permit Validity. Permits granted hereunder as a freestanding permit and not associated with another land use or building permit shall be valid for 180 days. One 180-day extension is allowed by the Director for reasonable, extenuating circumstances, and must be requested in writing prior to the expiration date. Otherwise a new permit shall be required. Permits granted hereunder which are associated with and accompany another land use, site development, or building permit shall be valid for the length of time associated with the accompanying land use permit, engineering design permit, site development permit, binding site plan, subdivision, or building permit.

(d) Suspension or Revocation Allowed. Permits may be suspended or revoked by the Director if granted on the basis of inaccurate or misleading information or upon the violation of any provision of this chapter.

(5) Tree Protection and Tree Fencing Standards. The following tree protection, fencing, and tree care standards shall be implemented and followed prior to, during, and subsequent to any subdivision, development, redevelopment, construction, tree clearing, or tree replacement as part of the conditions of any permit on land greater than one acre:

(a) No tree clearing shall be allowed on a site until all required permits have been obtained;

(b) An area of prohibited disturbance, generally corresponding to the critical root zone of a significant tree, shall be identified during the construction stage, and temporary fencing in accordance with subsection (5)(d) of this section shall be established prior to any tree clearing and/or grading. Fencing shall remain throughout construction. If any sign of disturbance is observed by the City within the tree protection area, a stop work order may be issued until corrections are made and any damage is restored;

(c) No impervious surfaces, fill, excavation, or storage of construction materials shall be permitted within tree protection zones as defined by such fencing or stakes;

(d) Construction fencing shall be placed along the boundary of the tree's critical root zone or tree tract. The location and material of the fence must be shown on the approved tree enhancement plan, tree clearing permit or clearing and grading plan. The fence material must be in place before any clearing, grading, tree cutting, or construction begins on the site and must remain in place until construction and final inspection are complete. The fence must meet one of the following standards:

(i) Five-foot high, orange, plastic, secured to the ground with seven-foot metal posts or T-posts; or

(ii) Five-foot high, steel or chain link, attached to concrete blocks.

The fence must be maintained in satisfactory condition throughout construction and repaired immediately if damaged, and failure to maintain said fence may result in a stop work order being issued until such time as the tree protection fence is repaired;

(e) A tree designated for preservation shall not have the soil grade altered within its critical root zone or within six feet of its trunk, whichever is greater. The grade may be lowered if a certified arborist with the concurrence of the Director determines the impact of lowering the grade within the area described in this subsection will not adversely affect the health of the tree;

(f) Trees shall not be designated for preservation if they are dead, diseased, or a hazard tree;

(g) Grade level changes described in subsection (5)(e) of this section shall be done according to a plan prepared by a certified arborist that includes measures to reduce adverse impacts on trees;

(h) No work shall be allowed within the critical root zone unless approved by the Director with appropriate mitigation measures;

(i) Any trees which are staked at the time of planting shall have stakes removed when appropriate for stability, but in no case longer than three years after planting, unless new staking measures are approved by the Director; and

(j) Alternative tree protection methods may be used if determined by the Director to provide equal or greater tree protection.

(6) Permit Fees. Fees for minor tree removal permits and major tree clearing permits shall be as specified in a fee resolution or by another method approved by the Covington City Council.

(7) Tree Removal Surrounding Existing or Proposed Building Footprints. Any existing residential lot or site greater than one acre in size or any existing commercial, or industrial lot or site greater than two acres in size, either of which is not subdivided, shall be allowed to remove trees without a tree permit, within a proposed building footprint, within 20 feet of the existing or proposed building footprint, and within 10 feet of any roadway, driveway, or utility easement, as described in CMC 18.45.050, Exemptions from tree permits, when such removal is undertaken with a valid building permit. Removal of any trees outside of these exempt areas, measured from the existing or proposed building footprint, and without a valid building permit, shall be required to obtain a minor tree removal permit or major tree clearing permit in accordance with this section.

(8) Additional Permit Restrictions or Requirements.

(a) Bald Eagle and Other Federal and State Requirements. All entities must comply with all applicable Federal and State laws, rules and regulations, including, without limitation, the Endangered Species Act, the Bald Eagle Protection Act, and the Migratory Bird Treaty Act, as now existing or hereinafter adopted or amended.

(b) Reporting Requirements for Removal of Hazard Tree(s). Emergency removal of hazard tree(s), as defined, without a permit, and as allowed in this title, shall be reported to the City within 10 days of removal on a form provided by the Director.

(c) Permits and Written Reports for Public Utilities Pruning or Removal of Trees. Pruning for above ground utility facilities and lines are allowed, but such utilities and/or its contractors shall submit a written statement to the City, in lieu of a permit, prior to tree pruning, indicating that no trees will be removed during pruning, and that any tree pruning will not cause significant structural defect to the trees. If trees are to be removed, the minor tree removal permit procedures shall apply, but replanting with appropriate trees for ROW or utility easement locations shall be required of the public utility, unless the Director determines in writing such replanting is inappropriate.

(d) Critical Areas and Shoreline Jurisdiction Exceptions and Limitations. Provisions of this chapter shall not apply to any critical area or critical area buffers, or any shoreline jurisdiction. Any removal or clearing of trees, ground cover, or other vegetation for these areas shall be governed by Chapters 16.05 and 18.65 CMC, and must comply with all limitations and restrictions for alterations of critical areas and critical area buffers in Chapter 18.65 CMC and shoreline jurisdiction areas in Chapter 16.05 CMC, as now existing or hereinafter adopted or amended.

(e) Permits Required for Removal of Trees in Tree Tracts, Tree Conservation Easements or as Part of Tree Enhancement Plans. Any trees required as part of any tree tract, tree conservation easement or tree enhancement plan under provisions of this chapter shall remain permanently unless a minor tree removal permit or major tree clearing permit under this section is obtained and replacement trees are planted in accordance with standards of this chapter. (Ord. 06-17 § 5 (Exh. C); Ord. 04-08 § 2)

18.45.070 Permit standards and conditions for all minor tree removal and major tree clearing.

Unless otherwise approved by the Director pursuant to any applicable exemptions, all minor tree removal and major tree clearing permits within the City shall conform to the following standards and conditions and be governed by such criteria for their issuance or denial:

(1) The tree clearing activity shall not significantly create or contribute to blowdowns, landslides, accelerated soil creep, settlement, subsidence or other hazards associated with strong ground motion and soil liquefaction;

(2) No topping of trees as defined herein is allowed as part of any regulated activity;

(3) The tree clearing activity shall not create or contribute to flooding, erosion or increased turbidity, siltation or other forms of pollution in any waters of the State;

(4) Tree clearing activity shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time, consistent with the anticipated construction schedule;

(5) Timber harvesting and conversion of forested lands to non-forestry use within the City of Covington shall not be permitted until such time as a valid forest practices application, permit and notification, under the State Forest Practices Act and Rules, has been submitted, evaluated and issued by the Washington State Department of Natural Resources. If, prior to tree harvesting or conversion of forested lands to non-forestry use, a lot owner has not received a permit for future conversion of the site to some non-forestry use or other permitted land use activity, the City shall prohibit application for any land use, development or engineering permit(s) for that site for a period of 10 years. This condition applies to the site, not site owner. All landowners of timbered or forested lands falling within applicable regulations of RCW 76.09.470 shall notify the City of Covington and the State Department of Natural Resources (DNR) and show proof of full compliance with RCW 76.09.470. Upon being contacted by a landowner under RCW 76.09.470, the City of Covington shall notify the State DNR and ensure compliance with such regulations; and

(6) To assure protection of the critical root zone, visual marking of the critical root zone with fencing shall be installed and remain in place throughout any construction. Those trees or ground cover designated for preservation shall not be damaged by scarring, grade changes, dumping or storage of materials, back filling or compaction of soil around trees, or by any other activity that can damage roots or trunks. Land clearing equipment and machinery shall at all times remain outside the critical root zone of any tree designated for retention, except where such area encompasses any road or constructed pathway, during which approved mitigation will be required for encroachment into such critical root zone. (Ord. 04-08 § 2)

18.45.080 Tree preservation, tree tracts and tree replacement requirements.

(1) Tree Preservation Methods for Residential Zones. The following tree preservation methods apply to all residential zoned lands on sites greater than one acre in size.

(a) When land greater than one acre in size is subdivided, regardless of the number of lots created, if at least 20 significant trees exist on the site prior to subdivision, trees shall be preserved in one or more tree tracts and subject to a tree preservation plan, prepared by a certified arborist, landscape architect, or forester, and submitted and approved as part of either a minor tree removal permit or a major tree clearing permit. Any site with at least 20 significant trees, but which cannot meet the tree preservation requirements with existing trees, shall be required to supplement any required tree tract with tree plantings at least two inches in caliper from the published City list of Pacific Northwest native trees as outlined in subsection (9) of this section. Cutting of significant trees on a site and proposing replanting of trees when the tracts do not contain the required minimum 20 significant trees is not allowed without specific review and approval of the Director after the tree tracts are proposed. As many significant trees as practical shall be preserved and identified in the required tree preservation plan.

(b) When land is proposed for development, redevelopment, construction or demolition, on sites greater than one acre in size, without a subdivision of land, involving removal of trees,

if at least 20 significant trees exist on the site prior to development, trees outside of any proposed building footprint or partially exempted tree removal area outlined in CMC 18.45.060(7) shall be preserved and protected with a tree conservation easement filed with the County. Future subdivision of such land may modify any required conservation easement as long as applicable tree preservation requirements are met. Any site with at least 20 significant trees but which cannot meet the tree preservation requirements with existing trees shall be required to supplement any required tree conservation easement with tree plantings at least two inches in caliper from the published City list of Pacific Northwest native trees as outlined in subsection (9) of this section. Cutting of significant trees on a site and proposing replanting of trees when the tracts do not contain the required minimum 20 significant trees is not allowed without specific review and approval of the Director after the tree tracts are proposed. As many significant trees as practical shall be preserved and identified in the required tree preservation plan.

(2) Tree Preservation Methods for Commercial and Industrial Zones. The following standards apply to commercial and industrial sites greater than two acres in size, whether part of a formal subdivision or part of any development, redevelopment, construction or building permit:

(a) Trees shall be preserved through a tree enhancement plan, submitted and approved with the engineering design permit and approved by the Director. There is no minimum size or percentage of land required to be devoted to tree preservation or tree enhancement. Instead, all commercial and industrial development must prepare and submit a tree enhancement plan which combines preservation of existing trees and tree replanting that will best provide tree enhancement within and/or surrounding any proposed commercial and industrial development. Up to 15 percent of the existing significant trees on site prior to development should be retained within the tree enhancement plan, or they shall be replanted at a two-to-one ratio. Such tree enhancement plan shall be prepared by a certified arborist, licensed landscape architect or qualified forester. Replanting shall be from the published City list of Pacific Northwest native trees as outlined in subsection (9) of this section.

(b) The Director shall have the authority to reduce the required tree replacement ratio where such requirement would conflict with the urban design intent of Chapter 18.31 CMC. In such cases the Director shall ensure that representative native vegetation is retained or replanted totaling at least five percent of the site area and that enhanced landscaping is provided in excess of the requirements contained in CMC 18.31.130.

(3) Tree Preservation Standards for Residentially Zoned Properties Greater Than One Acre in Size. The following standards apply to sites greater than one acre in size for all residentially zoned properties, whether part of a formal subdivision or any development or redevelopment permit, where trees shall be preserved in tree tracts or a tree conservation easement, regardless of the size or number of lots. Tree tract or tree conservation easement size and percentage of sites devoted to tree preservation shall meet the following standards, and multiple tree tracts are allowed:

(a) For sites between one acre and five acres, the total area devoted to tree tracts or tree conservation easements shall be five percent of the total land within the subdivision or on the site of any development, less any critical areas. The minimum size of a tree tract shall be 2,178 square feet.

(b) For sites five acres or greater, up to 30 acres, the total area devoted to tree tracts or tree conservation easements shall be seven percent of the total land within the subdivision or on the site of any development, less any critical areas. The minimum size of a tree tract shall be 7,000 square feet.

(c) For sites 30 acres or greater, the total area devoted to tree tracts or tree conservation easements shall be nine percent of the total land within the subdivision or on the site of any development, less any critical areas. The minimum size of a tree tract shall be 15,000 square feet.

(d) Tree Tract or Tree Conservation Easement Boundary. The tree tract or easement boundary shall be at least five feet from the critical root zone of any trees to be protected and preserved within the tract or easement.

(e) Location of Tree Tract or Tree Conservation Easement. Tree tracts or easements should be located according to the priority location list in subsection (5) of this section.

(f) Alternative Tree Canopy Plan. As an alternative to the above prescriptive standards for minimum size and number of tree tracts or easements, and minimum percentage of significant trees to be saved, an applicant may accomplish required tree preservation within any proposed subdivision by preserving 20 percent of the total existing tree canopy in tree tracts on the site. The exact amount of existing tree canopy on the site prior to subdivision shall be satisfactorily demonstrated on ortho-photo maps, flown and verified within the last three years, and supplied by the applicant as part of a major tree clearing permit and required "tree preservation plan."

(4) Tree Preservation Percent Requirements for Significant Trees in Residential Zones. In accordance with subsection (3) of this section, a minimum number of significant trees shall be preserved within all tree tracts or tree conservation easements in residential zones. The total land area devoted to tree tracts or easements as required under this chapter shall contain significant trees equal to at least 15 percent of the number of identified significant trees on the site prior to subdivision or development, but in no case less than 20 significant trees.

(5) Priority Location of Tree Tracts and Concurrent Reduction in Percent Requirements for Land Devoted to Tree Tracts in Residential Zones. Placement of tree tracts is encouraged in certain areas to enhance their viability and to complement natural and environmental features of the property. The following priority locations are encouraged for placement of all trees in designated tree tracts. When such tree tracts are located according to the following priority, a subdivision or development is eligible for up to a one percent reduction in the percent requirements for land devoted to tree tracts. For example, if a 10-acre site is required to set aside seven percent of the total site area for tree preservation in tree tracts according to subsection (3)(b) of this section,

and those tracts are located adjacent to an identified critical area, then a reduction to six percent of the total site area for tree tracts may be allowed by the Director.

(a) Priority Locations for Tree Tracts.

- (i) Adjacent to identified critical areas and critical area buffers.
- (ii) Adjacent to existing public or private parks.
- (iii) Adjacent to existing trails or trail systems.
- (iv) Adjacent to existing stands of significant trees on adjacent property boundaries.
- (v) Adjacent to existing storm water retention systems.
- (vi) Adjacent to significant wildlife habitat areas.
- (vii) Adjacent to contrasting land uses where establishing a tree buffer will enhance both properties and reduce potential impacts of dissimilar land uses.

(6) Reduction of Size of Tree Tracts for Preserving Multiple Significant Trees. A one percent reduction in the percent requirements for land devoted to tree tracts may be granted if the required tree tract contains at least 10 native coniferous trees greater than 12 inches DBH. Such trees must be documented as healthy and likely to resist “blowdowns” in a wind storm by a certified arborist as part of the tree plans submitted with any subdivision or development application. This one percent reduction in area devoted to tree tracts shall not be combined with other percent reductions allowed in subsection (5) of this section. Total required land amounts devoted to tree tracts may only be reduced up to a maximum of one percent either by priority location incentives in subsection (5) of this section or by multiple significant tree preservation incentives in this subsection (6).

(7) Replanting Standards for Sites Deficient in Trees and Not Able to Meet Tree Tract Requirements For Sites Proposed For Subdivision, Development, or Redevelopment. Any residential site greater than one acre in size, or commercial/industrial site greater than two acres in size, which contains a minimum of 20 significant trees, but still lacks significant trees sufficient to meet required standards after proposed development, as determined by the Director and as outlined in this section, shall be required to supplement any existing significant trees with new plantings of trees up to the required significant tree minimum. Tree species for new tree plantings shall be selected from a list of Pacific Northwest native trees published by the City. At least 60 percent must be coniferous. All trees shall be at least two inches in caliper. Replanting of trees to bring a tree tract up to the 20 tree minimum shall be at a ratio of two to one for the deficient number of significant trees less than the required 20 tree minimum.

(8) Maintenance of Tree Tracts. All tree tracts required under this code shall require a permanent maintenance agreement to be approved by the City on forms provided by the Director, which designates the private home owner association, property owner association, or other private entity responsible for said maintenance of trees. All tree tracts shall provide a guarantee for reasonable accessibility for future tree maintenance.

(9) Pacific Northwest Native Trees Required. Any tree(s) to be planted as part of the requirements of this chapter to fulfill tree tract, tree conservation easement, tree preservation or tree enhancement plan standards for residential, commercial or industrial property, when sufficient trees do not exist on site, shall be Pacific Northwest native trees on the City-published list. In addition they shall be at least two-inch caliper and shall contain a mix of at least 60 percent coniferous trees.

(10) Three-Year Survivability. Any original or replanted trees required under a tree tract requirement, tree conservation easement or tree enhancement plan as part of the provisions of this chapter shall survive at a rate of 90 percent of the required trees for at least three years from either the date of issuance of the freestanding tree removal permit or tree clearing permit, the date of acceptance of final construction in a subdivision plat, the date of final occupancy for any development or redevelopment permit, or the date of final occupancy for any building permit, whichever is applicable. Required trees that do not meet the 90 percent survival rate for three years shall be replanted at the property owner's expense. Such replanted trees shall then be required to again survive for three years or be replanted at the owner's expense. A financial guarantee for all planting or replanting of required trees under this chapter shall be required on forms acceptable to the City as prescribed in CMC 18.45.120(1). Tree planting or replanting shall occur between October 1st and May 1st of each year, unless written approval is granted by the Director and reasonable provisions are made for irrigation and survivability of replanted trees. Tree planting may be deferred to the next appropriate planting season upon written request and approval by the Director. (Ord. 10-10 § 3 (Exh. C); Ord. 04-08 § 2)

18.45.090 Heritage tree(s).

A heritage tree(s) may be voluntarily designated within the City as outlined in this section following specific criteria herein. In addition, if designated, specific requirements will apply for cutting or removal of such designated heritage tree(s). Removal or cutting of designated heritage tree(s) may also require mitigation as prescribed herein.

(1) Designation of Heritage Tree(s).

(a) The City may inventory and maintain a register of heritage tree(s). The inventory shall be the responsibility of the Parks and Recreation Commission.

(b) A property owner may propose to the City that a heritage tree(s) located on such property be designated as a heritage tree(s). Any city resident may propose that a heritage tree(s) located on public property be designated as such. No tree(s) may be designated without the approval of the property owner(s) on which the tree(s) or any portion of the tree's branches or canopy, is located. Once approval is given, however, it may not subsequently be withdrawn by the property owner or by a subsequent property owner without a subsequent permit action by the City to remove and mitigate said removal.

(c) If the Director determines the tree(s) satisfies the definition of heritage tree and approves the proposed heritage tree(s) designation, it shall be memorialized in a covenant signed by the City and the property owner(s) and in a form acceptable to the City. The covenant shall require that the heritage tree(s) be maintained in a manner that is consistent

with the provisions of this section. The covenant shall be recorded by the County. The City shall pay recording fees. The covenant and designation shall be effective from the date of recording until such time as a tree permit has been issued for the removal or cutting of the heritage tree(s).

(d) Upon request of a property owner, the City shall provide reasonable advice and consultation on maintenance of any heritage tree(s) without charge to the property owner.

(2) Heritage Tree(s) Permit Removal Requirements.

(a) A tree permit to remove a heritage tree(s) as a result of construction work will be granted only if the applicant has used reasonable best efforts to design and locate the project so as to avoid having to remove the heritage tree(s).

(b) A tree permit to remove a heritage tree(s) other than as a result of construction work will be granted only if the applicant demonstrates that the tree removal is necessary for safety, removal of hazardous trees, removal of diseased or dead branches or trees, or if retention of the tree(s) will have a material, adverse and unavoidable detrimental impact on the use of the property.

(3) Heritage Tree(s) Selection Criteria. For any individual tree(s) to be listed as a heritage tree(s), such tree(s) must be in a healthy growing condition, and one or more of the following shall exist:

(a) The tree has a DBH of 18 inches or greater;

(b) The tree has a distinctive size, shape, or location, or is of a distinctive species or age which warrants heritage tree status;

(c) The tree is distinctive due to a functional or aesthetic relationship to a natural resource, such as trees located along stream banks or trees located along ridge lines;

(d) The tree has a documented association with a historical figure, property, or significant historical event; or

(e) The tree serves significant benefit for wildlife habitat such as nesting or feeding.

(4) Mitigation Required for Removal of Heritage Tree(s).

(a) Heritage Tree(s) Development Review. When development is proposed for property which contains a heritage tree(s), and the Director determines that the proposed development may affect a heritage tree(s), the property owner must have a heritage tree preservation plan prepared by an ISA certified arborist demonstrating how the heritage tree(s) will be protected and preserved. A heritage tree(s) shall be preserved unless the Parks and Recreation Commission determines that the tree may be removed based on the criteria for heritage tree removal found in subsections (2) and (4) of this section.

(b) A tree preservation plan shall be composed of the following:

- (i) A site plan indicating the location of proposed heritage tree(s).
 - (ii) The methods to be used to preserve the heritage tree(s).
 - (iii) If a heritage tree(s) is proposed for removal, a narrative statement outlining the reasons why the heritage tree(s) should be removed.
 - (iv) A mitigation plan indicating the replacement trees or additional new trees to be placed on the site. The mitigation plan should demonstrate, to the extent possible, that the character of the site will not substantially change as a result of the development.
- (c) Site design adjustments may be allowed in some cases, as follows:
- (i) The Director may grant a variance to front, side, and/or rear yard setback standards by up to 20 percent to retain a heritage tree(s). The adjustment shall be the minimum necessary to accomplish preservation of heritage tree(s) on-site and shall not conflict with the International Building Code or any other permit conditions placed on the property.
 - (ii) The Director may grant a 10 percent variance to the lot size and/or a 10 percent variance to the lot width and/or lot depth standards in approving a short plat or other land division if necessary to retain heritage tree(s). The Director may accept a preliminary plat application and recommend approval to the hearing body of a plat which provides for similar variance to lot size, width and depth standards if necessary to retain heritage tree(s). (Ord. 04-08 § 2)

18.45.100 Tree maintenance standards and best pruning practices.

The Director shall prepare and distribute educational materials describing any required, recommended, or accepted tree maintenance and tree care standards for any tree tracts, preservation or enhancement trees, or replacement trees required under this chapter and any best pruning practices, policies, techniques, and procedures for any trees required under this chapter. (Ord. 04-08 § 2)

18.45.110 Tree preservation modification and departure options.

(1) The purpose of this section is to provide an opportunity for departure or modification of the prescribed tree tract standards or tree enhancement plans under a major tree clearing permit when the specific prescriptive standards of the code are difficult to meet, yet still encourage creative or unique design of viable tree stands in the preservation of trees and tree tracts on all regulated sites greater than two acres in size. The Director shall have authority, consistent with the special conditions stated herein, to modify specific requirements and/or impose alternative standards and requirements in unique or special circumstances to assure the fulfillment of the stated purpose of this chapter and to allow for flexibility and creative design of viable tree stands in preservation of significant trees.

(2) In order to grant a specific modification or departure from prescribed requirements for tree preservation or tree tracts, an applicant, through an alternative tree preservation and mitigation plan, must: (a) demonstrate reasonable efforts to save as many trees as possible, (b) submit a

tree preservation and mitigation plan, prepared by a certified arborist, that adequately mitigates for the loss of trees from proposed development, and (c) indicate how the alternative tree preservation and mitigation plan equally or better meets the intent and purpose of this chapter and its tree preservation goals. Alternative options for preservation and mitigation of trees shall include a combination of new tree planting and preservation of a reasonable number of existing significant trees on site, when feasible.

(3) A departure or modification of the prescriptive standards for tree preservation or tree tracts shall be allowed when existing regulations seriously restrict development of the site, in the opinion of the Director, and only if tree tracts detract from the site's ability to accomplish at least two of the following special site conditions:

- (a) The ability to preserve natural or native plant areas;
- (b) The ability to preserve unique wildlife habitat;
- (c) The ability to preserve large numbers of significant or heritage trees;
- (d) Opportunities to support the value and functions of critical areas or critical area buffers;
- (e) Instances where insufficient significant trees exist on a site that has a unique size, shape or topography;
- (f) Instances where the only significant trees are isolated, scattered throughout a site, and/or not able to be concentrated in viable tree tracts;
- (g) A site must comply with special vegetation or view easements or corridors; or
- (h) Instances where provision of required infrastructure and public safety access requires removal of significant trees. (Ord. 04-08 § 2)

18.45.120 Performance guarantees, liability, insurance and licensing.

(1) Performance Guarantees.

- (a) Prior to the issuance of a major tree clearing permit pursuant to CMC 18.45.060, the applicant shall post with the City a form of performance guarantee/financial security, in the amount of 150 percent of the estimated cost of replacing and planting trees consistent with the tree preservation requirements, but in any event not less than \$3,000. Said financial security shall be executed by the owner and/or applicant and a corporate surety authorized to do business in the State of Washington as a surety. All guarantees shall be in a form approved by the City Attorney and shall include penalty provisions consistent with this chapter for failure to comply with the conditions of the permit.
- (b) The City shall withhold issuance of a major tree clearing permit until the required performance guarantee/financial security is approved by the City Attorney and filed with the City. The City may enforce said guarantees according to their terms and pursuant to any and all legal and equitable remedies.

(c) The performance guarantee shall be released pursuant to a prescribed timeline in the agreement to assure survival of any trees preserved or replanted.

(2) Liability. The owner of private property for which a major tree clearing permit application is submitted may be required to provide a hold harmless/indemnification agreement and covenant not to sue approved by the City and recorded with King County prior to the issuance of the permit. Said agreements shall be negotiated and in a form approved by the City Attorney, and shall run with the land and be binding on the applicant and his/her successors, heirs and assigns for such period of time as shall be determined appropriate by the City. Nothing in this chapter shall be deemed to impose any liability upon the City or upon any of its officers or employees, or to relieve the owner or occupant of any private property from the duty to keep in safe and healthy condition the trees upon their property.

(3) Insurance. Prior to issuing a permit or approving an application, the City may require the applicant to provide a certificate of general liability insurance, with limits of liability in an amount acceptable to the City Attorney, from an insurance company authorized to do business in Washington State, insuring against injury to persons and damage to property, and may require that the City be named as an additional insured.

(4) Licensing. Any person, individual, or corporation, unless an employee or direct agent operating under authority of the City, involved in any tree removal, tree clearing, or tree replanting as part of tree preservation or enhancement related to this chapter, shall first have obtained a valid and current business license from the City of Covington. (Ord. 04-08 § 2)

18.45.130 Enforcement, violations and penalties.

(1) Enforcement, Interpretation and Administration. It shall be the duty of the Director to enforce and interpret the provisions of this chapter. The Director shall have authority to interpret the intent, purpose, provisions, conditions, and standards contained herein; to issue permits and impose conditions on such permits; to enforce the provisions and requirements of this chapter; to establish administrative procedures and guidelines necessary to administer the provisions of this chapter; to conduct inspections; and to prepare the forms necessary to carry out the purposes of this chapter.

(2) Authorized Actions. In addition to other remedies, the City may bring injunctive, declaratory or other actions to enforce this chapter.

(3) Stop Work Orders/Permit Revocation. The Director may suspend work or revoke a permit, as appropriate, if it is found that:

(a) Land clearing or tree removal is not authorized by a valid permit;

(b) Inaccurate information was used to obtain a permit;

(c) The permittee is not complying with any terms of the permit or approved plans;

(d) Work, in the Director's judgment, is a hazard to property or public safety, is adversely affecting or about to adversely affect adjacent property or rights-of-way, a drainage way,

watercourse, environmentally critical area, or storm water facility, or is otherwise adversely affecting the public health, safety, or welfare;

(e) Adverse weather is causing significant problems on- or off-site;

(f) Any land clearing or tree removal is being done prior to or outside of other required land use, engineering, building, or site development permits; or

(g) The required project surety has been expended to the point that it no longer provides assurance of the completion of the project in compliance with the terms of the permit.

The Director may issue the permittee/violator a written stop work order specifying the nature of the violation which must be remedied prior to resuming any work on the project. If the permittee does not comply with the order within the time specified, the Director may enter the project site and perform the required work. All costs incurred by the City in performing such work shall be drawn against any financial guarantee posted by the permittee to ensure the enforcement of the provisions of this chapter. In the absence of sufficient financial guarantee or surety, the City may place a lien against the property in the amount of funds expended to perform the required work and any corrective action.

(4) Mitigation and Restoration Plan. Violators of this chapter or a permit issued hereunder shall be responsible for restoring unlawfully damaged areas in conformance with a plan, approved by the Director, which provides for mitigation, repair of any tree damage, and restoration of the site, and which results in a site condition that, to the greatest extent practical, equals the site condition that would have existed in the absence of the violation(s). Violators shall be liable for environmental damage caused thereby and shall be required to mitigate such damage as follows:

(a) Mitigation and Assessment of Tree Value.

(i) In assessing the environmental damage resulting from a violation of this chapter, the Director shall determine the amount and value of the trees and/or ground cover improperly removed or damaged, the cost of replacing said trees and vegetation, and the extent and value of any other environmental damage occasioned by any violation. To determine those values, the Director shall utilize the recommendations of the International Society of Arboriculture.

(ii) In assessing the environmental damage resulting from a violation of this chapter, a certified arborist shall prepare and submit to the Director a report describing the likely condition of the site had the land clearing activities been conducted in compliance with the requirements of this chapter.

(iii) The Director may also estimate the probable worth of trees and/or ground cover removed by analyzing the best case growing capability of the site, taking into consideration the soil conditions, the health of surrounding tree stands and the type of species believed to have been removed, or whatever resources are available to determine environmental damage.

(iv) Under no circumstances shall environmental damage be less than cost of planting and maintenance to comply with the minimum tree preservation or replanting requirements.

(b) Restoration and Timely Compliance.

(i) When the Director has determined the value of the environmental damage by a violation of this chapter, the Director shall have a comprehensive plan prepared for the restoration of the site which shall include a time schedule for compliance. The cost of preparing such plan shall be assessed against the violator. Said plan shall provide for the rehabilitation of the site and for the installation of new trees and/or ground cover whose value is commensurate to the value of the environmental damage.

(ii) If the Director determines that the cost of restoring the site is less than the value of environmental damage occasioned to the site, then the City may utilize said funds for planting trees, shrubs or other native vegetation in other areas of the City.

(iii) Within the time established in the plan for completion of the mitigation, the applicant and/or property owner shall complete all restoration required therein, including maintenance of trees for three years.

(iv) In the event the violator does not timely implement the restoration plan, the City shall implement the plan by utilizing City employees or by employing a private contractor. Upon completion of said work, the costs thereof shall be due and owing to the City from the violator and the surety, if any, as a joint and separate liability. In addition, the City may seek restitution from the violator through liens or any other available legal means. The violator and the surety shall be jointly and severally responsible for any restoration costs and attorneys' fees incurred by the City.

(5) Prohibition of Further Approvals. The City shall not accept, process, or approve any application for a subdivision or any other land use, building or development permit, or issue a certificate of occupancy for property on which a violation of this chapter has occurred until the violation is cured by restoration or other means accepted by the Director and by payment of any penalty imposed for the violation.

(6) Penalties.

(a) Criminal. Any person, firm, or corporation who knowingly violates or fails to comply with any term or provision of a tree removal or major tree clearing permit in this chapter shall be deemed to have committed a misdemeanor, and if found guilty, shall be subject to a fine not to exceed \$1,000, or imprisonment not to exceed 90 days or both such fine and imprisonment. Each day shall be a separate offense. In the event of a repeated and/or continuing violations or failure to comply, subsequent violations shall constitute a gross misdemeanor punishable by a fine not to exceed \$5,000 or imprisonment not to exceed 365 days or both such fine and imprisonment. Continuing violation shall mean the same type of violation which is committed within a year of the initial violation.

(b) Civil. As an additional concurrent penalty, it shall be a civil infraction for a person, firm, or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, or corporation found to have committed a civil infraction shall be assessed a monetary penalty in accordance Chapter 1.30 CMC.

(c) Revocation of Business License and Prohibition of Future Tree Removal or Tree Clearing Activity. Any person who commits, participates in, assists or maintains such violation of this chapter shall also be guilty of a misdemeanor and may have their Covington business license revoked for one year and may be prohibited from conducting any tree removal, land clearing or grading activities for a period of one year.

(7) Public Nuisance. Any violation of the provisions of this chapter or a violation of a permit issued hereunder is declared to be a public nuisance and may be abated through proceeding for injunctive or similar relief in superior court or other court of competent jurisdiction. (Ord. 04-08 § 2)

18.45.140 Appeals.

(1) Minor Tree Removal Permits (Type I Decision). Minor tree removal permits are Type I decisions with no administrative appeal as specified in Chapter 14.30 CMC.

(2) Major Tree Clearing Permits (Type II Decision). Major tree clearing permits are Type II decisions and may be appealed to the Hearing Examiner as specified in Chapters 2.25 and 14.45 CMC.

(3) Appeal of Director's Interpretation and Determination of This Chapter. The Director's determination or interpretation while administering or enforcing any and all provisions of this chapter, including issuance, conditioning or denial of any permit, or tree preservation plan, or tree enhancement plan, may be appealed to the City's Hearing Examiner in accordance with Chapters 2.25 and 14.45 CMC.

(4) Hearing Examiner Modification of Director's Decision. The City's Hearing Examiner may modify or amend the Director's determination or interpretation based on the following criteria:

- (a) Whether the violation involved tree removal for monetary gain;
- (b) Whether the appellant has previously violated or intentionally violated provisions of this chapter;
- (c) Whether the Director's determination or interpretation substantially exceeds or understates the actual intent and purpose of this chapter; or
- (d) Whether the violation was intended or was in reckless disregard of provisions of this chapter.

(5) Appeals Involving Determination of Environmental Damages. For any appeals involving determination of environmental damage as outlined in CMC 18.45.130(4)(a), the Hearing Examiner shall not reduce the Director's valuation of any environmental damage if said amount does not exceed the actual cost of restoring the site pursuant to said restoration plan. If an

appeal involves determination of environmental damages as outlined in CMC 18.45.130(4)(a), and if the Hearing Examiner determines that the Director's valuation of environmental damage should be reduced, then the Examiner shall compute the amount of said reduction based upon the following factors:

(a) Whether the appellant voluntarily cooperated with the City's efforts to view and restore the site;

(b) Whether the appellant demonstrated due diligence and/or substantial progress in implementing the site restoration plan; and

(c) Whether the appellant has presented a genuine issue pertaining to the interpretation of any provision of this chapter. (Ord. 02-09 § 12; Ord. 04-08 § 2)

18.45.150 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. 04-08 § 2)