

ORDINANCE NO. 1617

CITY OF LACEY

AN ORDINANCE RELATED TO TREE AND VEGETATION PROTECTION AND PRESERVATION, AMENDING SECTIONS 14.32.020, 14.32.030, 14.32.040, 14.32.045, 14.32.050, 14.32.060, 14.32.069, 14.32.070, AND 14.32.090, ADDING A NEW SECTION 14.32.071, AND ADDING A NEW TABLE 14-T70, ALL OF THE LACEY MUNICIPAL CODE AND APPROVING A SUMMARY FOR PUBLICATION.

WHEREAS, in response to citizen concerns over tree policy issues, a Tree Task Force was formed to assist the Planning Commission in developing recommended changes to the Urban Forest Management Plan; and

WHEREAS, The Planning Commission reviewed the Tree Task Force's proposed amendments on May 4, 2021 and conducted a public hearing on May 18, 2021, at which public comments were received and considered; and

WHEREAS, neither the Tree Task Force nor the Planning Commission had full consensus on the issue of healthy tree removals in HOA open spaces; and

WHEREAS, on June 1, 2021, the Planning Commission held a worksession and unanimously recommend proposed amendments that did not include any new provisions for removal of healthy trees in HOA open spaces; and

WHEREAS, the City Council reviewed the recommended amendments at their July 8, 2021; September 9, 2021; and December 9, 2021 worksessions and requested staff to draft proposed regulations that provide a permit process and criteria for removal of healthy trees from HOA open spaces and commercial properties; and

WHEREAS, the City Council has reviewed the proposed amendments and finds that adoption of the proposed amendments would be in the interest of the citizens of Lacey.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, AS FOLLOWS:

Section 1. Section 14.32.020 of the Lacey Municipal Code is hereby amended as follows:

**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.

Section 2. Section 14.32.030 of the Lacey Municipal Code is hereby amended as

follows:

**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 (Title 222 WAC), 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.

~~JK.~~ “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.

Section 3. Section 14.32.040 of the Lacey Municipal Code is hereby amended as

follows:

**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 under the provisions of LMC 14.32.060;
- 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.

Section 4. Section 14.32.045 of the Lacey Municipal Code is hereby amended as

follows:

**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 as a land clearing permit under this chapter in accordance with the full administrative review procedures in Chapter 1 of the City of Lacey Development Guidelines and Public Works Standards.

Section 5. Section 14.32.050 of the Lacey Municipal Code is hereby amended as follows:

### 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 no more than ~~three~~~~five~~ trees in any ~~sixty~~~~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. 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.

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

Section 6. Section 14.32.060 of the Lacey Municipal Code is hereby amended as follows:

#### **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. Should there be no underlying land use application, the land clearing permit 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. 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.

Section 7. Section 14.32.069 of the Lacey Municipal Code is hereby amended as follows:

**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.~~

Section 8. Section 14.32.070 of the Lacey municipal Code is hereby amended as

follows:

**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.

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 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 Table 14-T70.

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;

Section 9. A new section 14.32.071 is hereby added to the Lacey Municipal Code, to read as follows:

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

A. Open Space Tracts may have different demands and issues than 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.. Trees located in open space Tracts shall 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 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 Table 14-T70.

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;

Section 10. Section 14.32.090 of the Lacey Municipal Code is hereby amended as follows:

**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.

Section 11. There is hereby added to the Lacey Municipal Code a new table, 14-T70, to read as follows:

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>                                       |

Section 12. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 13. CORRECTIONS. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to,

the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

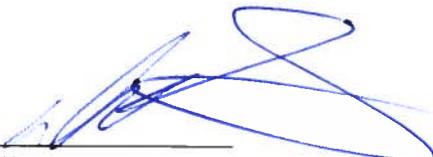
Section 14. The Summary attached hereto is hereby approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY,  
WASHINGTON, at a regularly-called meeting thereof, held this 16<sup>th</sup> day of  
June, 2022.

CITY COUNCIL

By:   
Mayor

Approved as to form:

  
\_\_\_\_\_  
City Attorney

Attest:

  
\_\_\_\_\_  
City Clerk

SUMMARY FOR PUBLICATION

ORDINANCE NO 1617

CITY OF LACEY

The City Council of the City of Lacey, Washington, passed on June 16, 2022, Ordinance No. 1617 entitled “AN ORDINANCE RELATED TO TREE AND VEGETATION PROTECTION AND PRESERVATION, AMENDING SECTIONS 14.32.020, 14.32.030, 14.32.040, 14.32.045, 14.32.050, 14.32.060, 14.32.069, 14.32.070, AND 14.32.090, ADDING A NEW SECTION 14.32.071, AND ADDING A NEW TABLE 14-T70, ALL OF THE LACEY MUNICIPAL CODE AND APPROVING A SUMMARY FOR PUBLICATION.”

The main points of the Ordinance are described as follows:

1. The Ordinance amends sections 14.32.020, 14.32.030, 14.32.040, 14.32.045, 14.32.050, 14.32.060, 14.32.069, 14.32.070, and 14.32.090 of the Lacey Municipal Code, related to tree and vegetation protection and preservation.
2. The Ordinance adds a new section 14.32.071 to the Lacey Municipal Code.
3. The Ordinance adds a new Table 14-T70 to the Lacey Municipal Code.
4. The Ordinance approves this Summary for Publication.

A copy of the full text of this Ordinance will be mailed without charge to any person requesting the same from the City of Lacey.

Published: June 20, 2022.