

ORDINANCE NO: 904

CITY OF LACEY

AN ORDINANCE RELATING TO TREE AND VEGETATION PROTECTION AND PRESERVATION AND MODIFYING CHAPTER 14.32 OF THE LACEY MUNICIPAL CODE BY REPEALING SECTION 14.32.045, ADDING NEW SECTIONS, 14.32.035, 14.32.045, 14.32.067 AND 14.32.069 AND AMENDING SECTIONS 14.32.010, .020, .030, .040, .050, .060, .065, .070, .080 AND .090, ALL OF THE LACEY MUNICIPAL CODE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, that Chapter 14.32 of the Lacey Municipal Code be modified by repealing Section 14.32.045, and the same is hereby repealed, by adding new Sections 14.32.035, 14.32.045, 14.32.067 and 14.32.069 and amending Sections 14.32.010, 14.32.020, 14.32.030, 14.32.040, 14.32.050, 14.32.060, 14.32.065, 14.32.070, 14.32.080 and 14.32.090 all to read as subsequently set forth in this ordinance. Sections 14.32.062 and 14.32.100 are set forth in this ordinance without amendment for ease of reference and as applying to the provisions of this ordinance. References to previous ordinance numbers do not constitute a part of this ordinance.

14.32.010 Short title. This chapter shall be known and may be cited as the "~~Land-Clearing-Code~~" Tree and Vegetation Protection and Preservation Ordinance of the city of Lacey. (Ord. 399 S1(part), 1975).

14.32.020 Purposes and permit criteria. These regulations are adopted for the following purposes and these purposes are to be used as criteria for the issuance of land clearing permits under Section 14.32.040 of this Chapter:

A. To promote the public health, safety, and general welfare of the citizens of Lacey without preventing the reasonable development of land;

B. To preserve and enhance the city's physical and aesthetic character by preventing indiscriminate removal or destruction of trees and ground cover;

C. To minimize surface water and ground water runoff and diversion and to prevent erosion and reduce the risk of slides;

D. To retain trees to assist in the abatement of noise and in protection from wind;

E. To acknowledge that trees and ground cover produce pure oxygen from carbon dioxide;

F. To promote building and site planning practices that are consistent with the city's natural topographical, soils, and vegetational features.

while At the same time ~~recognizing that~~ 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. ~~may require the removal of certain trees and ground cover;~~

G. To ensure prompt development, restoration and replanting and effective erosion control of property after land clearing;

H. To reduce siltation and water pollution from siltation in the city's streams and lakes;

I. To implement the goals and objectives of the Washington State Environmental Policy Act;

J. To implement and further the city's comprehensive plan;

K. To encourage protection of wildlife and/or wildlife habitat whenever possible. (Ord. 650 S1, 1982: Ord. 399 S1 (part), 1975).

14.32.030 Definitions.

A. "City" means the city of Lacey, Washington.

B. "Ground cover" means types of vegetation which are normally terrestrial and shall include trees less than four inches in diameter measured at twenty-four inches above the ground level.

C. "Land clearing" means the direct and indirect removal of trees and/or ground cover from any undeveloped or partially developed lot, public lands or public right-of-way.

D. "Trees" 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 twenty-four inches above the ground level.

E. A "hazard tree" means any tree with any a significant structural defect, disease, extreme size or combinations of these which make it subject to failure.

F. "Drip line" of a tree means an imaginary line on the ground created by the vertical projection of the foliage at its circumference. (Ord. 650 S2, 1982: Ord. 399 S1 (part), 1975).

G. "Brushing" means the practice of removing significant ground cover to create better visibility on a property for purposes such as marketing or surveying of said property.

H. "Tree Protection Professional" is a licensed professional with academic and/or field experience that makes him or her a recognized expert in tree preservation and management. The tree protection professional shall be a member of the Society of American Foresters, the Association of Consulting Foresters and shall have specific experience with tree management in the State of Washington. Additionally, the tree protection professional shall have the necessary training and experience to use and apply the

International Society of Arboriculture's guide to evaluation and management of trees, and to successfully provide the necessary expertise relating to management of trees specified in this chapter.

I. "Director" means Director of Community Development or his/her designatee.

14.32.035 The City's tree protection professional. In the interest of achieving professional assistance in the City's tree protection efforts and achieving consistency in tree protection decisions, the City shall contract with a professional that qualifies as a tree protection professional under the definition of this chapter. Said professional shall be responsible for providing the information and services required of a tree protection professional described herein.

In the interest of regional consistency of tree protection and management decisions, the City shall encourage the neighboring jurisdictions of Thurston County and Olympia to enter into an inner-local agreement for contracting of services from a tree protection professional.

Individual applicants will be responsible for payment of costs of the tree protection professional for projects necessitating work to be performed by the tree protection professional with the exception of work in determining an exempt project. Provided however, that the City shall be responsible for billing and collecting costs charged to the applicant and transferring said payment to the tree protection professional unless the City has opted for some other mechanism of providing for the costs, such as inclusion of costs in application fees.

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 Building-Official Director;

B. Having obtained approval of the proposed work under the processes described in Section 14.32.050-A;

C. Having received an exemption from the Building-Official Director under the provisions of Section ~~14-32-045~~ 14.32.050.

14.32.045 Urban Growth Management Boundary. Areas within the urban growth management boundaries established pursuant to the urban growth management agreement are anticipated to be developed with urban uses within

the next five to ten year period. Pursuant to RCW 76.09.070 lands within the urban growth management area are not considered appropriate for reforestation and long term timber production and harvesting which takes a full 30 year cycle. Timber management activities shall be consistent with the City's land use plans and ordinances for the Urban Growth Area.

Because conversion of current timbered properties within the urban growth management area can reasonably be expected, significant land clearing of such area needs to take place at the time of a valid land use application to properly coordinate preservation of trees within open spaces and buffers with actual development plans. To further the purposes of the urban growth management agreement and goals of the Tree Protection and Preservation Ordinance, timber harvesting and conversion of timbered lands within the urban growth management boundaries 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. Such requests shall be reviewed by the City's tree protection

professional who shall make recommendations on the request to the Land Clearing Committee. Recommendations shall ensure that action shall improve the health and growth of the stand and preserve long term alternatives for preservation of trees and meeting of the goals of this ordinance. Additionally, thinning activities shall be strictly limited to less than 40% of the volume and trees.

14.32.050 Exemptions. The following shall be exempt from all provisions land clearing permit requirements of this chapter -except Section 14.32-065 but shall satisfy all standards and requirements of section 14.32.065 and other sections as noted below:

A. Projects requiring approval of the City of Lacey Site Plan Review Committee under Chapter 16.84 of this code, 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 section 14.32.060;

B. Removal of hazard trees and ground cover in emergency situations involving immediate danger to life or property or substantial fire hazards as determined by the City's tree protection professional;

C. Removal of obviously dead or diseased ground cover or trees;

D. Removal of less than six trees in any twelve thirty six consecutive months or ground cover for the purposes of solar access, general property and utility maintenance, landscaping or gardening;

E. 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 and septic 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 where such modifications will promote the goals of the ordinance and still satisfy the need and function of improvements.

F. Removal of obstructions required by the vision clearance at intersections regulations of Chapter 12.24 of this code. (Ord. 650 S4, 1982: Ord. 399 S1(part), 1975).

14.32.060 Application for permits.

A. 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 ~~building-official~~ Director:

1. Three Seven prints of the plot plan 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 ~~building-official~~ 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. A proposed time schedule for land clearing, land restoration, implementation of erosion control and any excavation or construction of improvements;

3. A statement indicating the method to be followed in erosion control and restoration of land during and immediately following land clearing;

4. Proposed general landscape plan or written or graphic description of proposed action;

-----5. The names and addresses of all adjacent landowners;

5. Location of proposed buffers, open space, and other areas of the site where stands of trees are to be saved.

6. On timbered property greater in size than one acre or commercial property with more than 15 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 and preservation consistent with the requirements of this ordinance. The report shall include but shall not be limited to:

a. Information required under item 1 through 5 above;

b. An analysis of technical information requested by the site plan review committee related to trees and forest practices;

c. Analysis of what portion of the site is best for designation of the treed open space and buffers, 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.

6- 7. Other information as deemed appropriate to this chapter and necessary by the Director or site plan review committee.

8. If the option for revegetation of the site or a portion of the site is proposed under section 14.32.069 of this chapter information requirements described under section 14.32.069 shall be required at the time of application.

B. The building official Director shall refer the application to the site plan review committee who shall review the application and make a decision within ten working days from the date of submission of a completed application, unless an extension is authorized by the applicant. The site plan review committee shall return the application to the building official Director for issuance or denial of a permit.

C. Any permit granted hereunder shall expire one year from the date of issuance. Upon a showing of good cause, a permit may be extended by the building official Director for one six-month period. Approved plans shall not be amended without authorization of the building official. The permit may be suspended or revoked by the building official 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. 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 site plan review committee for guidance.

D. 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. (Ord. 650 S5, 1982: Ord. 399 S1(part), 1975).

14.32.062 Application fees. Application fees for land clearing permits shall be as established by resolution of the City Council. (Ord. 666 S39, 1982).

14.32.065 Conformance to standards. All land clearing shall conform to the following standards and provisions unless otherwise recommended in a forest management plan, prepared by the City's tree protection professional

and approved by the City, where the alternate procedures will be equal or superior in achieving the policies of this code. In addition, the following minimum standards and provisions shall be the governing criteria for the issuance or denial of land clearing permits under this chapter:

A. The clearing will not create or contribute to landslides, accelerated soil creep, settlement and subsidence or hazards associated with strong ground motion and soil liquefaction.

B. The proposal shall contain reasonable provisions for the preservation of natural land and water features, vegetation, drainage and other indigenous natural features on the site.

C. The clearing will not create or contribute to flooding, erosion or increased turbidity, siltation or other forms of pollution in a watercourse.

D. No ground cover or trees which are within fifteen the designated buffer area feet of the ordinary high water mark of creeks, streams, lakes and other shoreline or wetland areas or within ten feet of the top of the bank of same shall be removed, nor shall any mechanical equipment operate in such areas; provided, that conditions deemed by the building official Director to constitute a public nuisance may be removed; and provided, that a property owner shall not be prohibited

from making landscaping improvements where such improvements are consistent with the aims of this chapter. The designated buffer area shall be in accordance with the City's Wetland Protection Ordinance as hereafter adopted or amended. Until such time as a Wetland Protection Ordinance is adopted, buffer areas shall be consistent with guidelines and recommendations from the Washington State Department of Ecology for classification, protection and designation of wetland buffer areas.

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

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

G. The clearing activities shall be performed in accordance with all applicable laws, rules and regulations pertaining to air and water pollution, the State Forest Practices Act, and the Shoreline Master Program.

H. Except for the use of roads and constructed pathways, land clearing machinery shall be kept outside of the drip line of any remaining

trees designated for retention. Damaging of roots, trunks or ground cover of any remaining trees shall be avoided. designated for retention by scarring, back filling of trees with heavy soil or compaction of soil around trees or any other activities that may cause damage of roots, trunks or surrounding ground cover shall be considered a violation of this chapter and shall require mitigation pursuant to the requirements of Section 14.32.090C. All requirements for protection of vegetation detailed in plans prepared by the City's tree protection professional or in land clearing conditions required by staff such as fencing and other protection measures shall be satisfied.

~~-I: - -The -remaining -trees -shall -not -be -backfilled -with -heavy -clay soils:--(Ord:--650-S6;--1982):~~

I. Where a subdivision or short plat of property is concerned, only areas where roads and common improvements are to be constructed can be cleared of trees and ground cover prior to final plat approval. No such clearing of trees or ground cover shall take place until preliminary short plat or preliminary plat approval has been granted and engineered plans for road construction have been approved by the City and said road areas have been surveyed and staked to enable City staff to confirm road locations. No

tree removal or brushing shall take place on lots or in open space areas of a preliminary short plat or preliminary plat except through the provisions of Chapter 14.32.069. Additionally, no tree removal or brushing shall take place on lots or in open space areas of a final short plat or final plat except on a lot by lot basis after individual building permit applications have been made and land clearing activities have been approved for said individual lots pursuant to the requirements of Chapter 14.32.050 or 14.32.060.

14.32.067 Solar Access considerations. While trees have long been used to compliment solar planning and site design such as providing deciduous trees in strategic locations to cool areas in summer and providing solar access in winter, providing of adequate solar access may sometimes conflict with preservation of existing trees, particularly evergreen trees. When established City goals designed for different purposes conflict, balancing of different community and individual needs must be accomplished. In implementing the goals of this ordinance, the site plan review committee shall give due consideration to valid solar access needs

together with any specific solar access policies that may hereafter be adopted.

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. Such alternative may be desirable for sites with significant physical limitations such as topography, soil type or proposed small lot sizes. Additionally, limitations of existing trees such as particular species or deteriorated 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. Information required under section 14.32.060 of this chapter;

B. Consideration of the standards provided in sections 14.32.065 of this chapter;

C. 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 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. A comprehensive map showing location, number, types of species and size of planned vegetative improvements;

F. A time line for completion of improvements;

G. An estimate of the value of vegetation that would normally be saved but that is being removed under this option. Said estimate must be accomplished pursuant to the most recent guidelines established by the International Society of Arboriculture in its "Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens".

H. 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 vegetative material and shall not include the applicant's administrative or labor costs, or the costs of the City's tree protection professional.

I. A maintenance plan including provision for an irrigation system, and a grass, shrub and tree maintenance program;

J. 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. If the project involves a subdivision of property or a binding site plan, the landscaping plan should include a comprehensive treatment of open space areas, green belt areas, buffers, common areas, and street frontages (street trees and parkways). All common improvements shall be completed prior to final plat approval or financial security provided to the City in a

form acceptable to the City in the amount of 150% of the estimated costs including two years maintenance and 20% replacement.

If a developer desires to clear individual lots within the subdivision or binding site plan 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. 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 is provided to the City in a form acceptable to the City at 150% of the estimated costs of improvements of individual lots based upon the conceptual typical yard landscaping plan;

3. Prior to building permits being issued on individual lots, a specific landscaping plan shall be prepared for each lot and submitted to the City at the time of building permit application. The specific plan

shall follow the general parameters of the required conceptual yard landscaping plan. All improvements shall be completed prior to occupancy or in accordance with financial security agreements provided under herein.

L. If the lot or parcel is not associated with a subdivision or binding site plan approved under subsection K above, no clearing or brushing of lots shall take place under this option until a specific lot landscaping plan has been approved and a building permit issued. Improvements shall be completed prior to occupancy or financial security provided to the City in a form acceptable to the City in the amount of 150% of the estimated costs of improvements.

14.32.070 -Performance -bond Financial security. The site plan review committee may require -bondsfinancial security in such form and amounts as may be deemed necessary to assure that the work shall be completed in accordance with the permit. BondsFinancial security, if required, shall be furnished by the property owner, or other person or agent in control of the property at 150% of the estimated cost of improvements.

~~-In-lieu-of-a-surety-bond,-the-applicant-may-file-a-cash-bond-or
instrument-of-credit-with-the-building-official-in-an-amount-equal-to-that
which-would-be-required-in-the-surety-bond.--The-amount-of-such-bond-shall
not-exceed-the-estimated-cost-of-the-total-restoration-work-planned.--(Ord.
399-S1(part),-1975).~~

14.32.080 Appeals. Any person or persons aggrieved by any action of the Site Plan Review Committee may within ten days of such action file a notice of appeal with the City Council Hearings Examiner pursuant to the process and procedure outlined in Chapter 2.30 setting forth the reasons for such an appeal.

~~The-city-council-shall-hear-and-determine-the-matter-and-may-affirm,
modify-or-disaffirm-the-administrative-decision-within-twenty-days-of-the
filing-of-notice-of-appeal.--(Ord.-399-S1(part),-1975).~~ The decision of
the Examiner shall be final unless appealed to City Council pursuant to
section 2.30.160.

14.32.090 Violations.

A. Violation of the provisions of this chapter or failure to comply with any of the requirements shall constitute a gross misdemeanor and such violation shall be punished as provided by Title 9 of this code for the commission of a misdemeanor. Each day such violation continues shall be considered a separate, distinct offense.

B. 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 hereof.

C. In addition to the penalties set forth in sections A and B hereof, any violation of the provisions of this chapter is hereby ~~declared to be a public nuisance and may be abated through proceedings for injunctive or similar relief in superior court or other court of competent jurisdiction:~~ 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 recommendations of the International Society of Arboriculture in determining the value of removed and damaged vegetation.

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 from the site or environmental damage sustained. The tree protection professional also may estimate the probable worth 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 removal. The determination of environmental damage made by the tree protection professional shall be given substantial weight in a court of law.

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 section 14.32.069 of this chapter. 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.

Total costs of the violation and environmental restoration shall be the sole responsibility of the violator including the City's administrative costs resulting from enforcement of the violation, costs of the tree protection professional, costs of preparation of the restoration plan, and implementation and completion of the environmental restoration.

The City shall bill the violator for all costs that accrue to the City as a result of the violation and the violator shall be responsible for the costs including administrative and overhead costs. In the event of nonpayment, the City shall pursue all methods available to it to ensure payment.

including liens and court action. Furthermore, no land use permits or approvals shall be issued on property involving the violation, until requirements of the chapter are satisfied including payment of all fees and costs to be paid to the City as provided herein.

14.32.100 Severability. If any section, paragraph, subsection, clause or phrase of this chapter is for any reason held to be unconstitutional or invalid such decision shall not affect the validity of the remaining portions of the chapter.

The summary of this ordinance, which is attached hereto, is approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, this 14th day of March, 1991.

CITY COUNCIL

By Kay M. Boyd
Mayor

Attest:

Charlotte D. Taylor
City Clerk

Approved as to form:

[Signature]
City Attorney

Published March 17, 1991
Summary