

**TOWN OF BEAUX ARTS VILLAGE
ORDINANCE NO. 358**

AN ORDINANCE OF THE TOWN OF BEAUX ARTS VILLAGE, WASHINGTON
ADOPTING REQUIREMENTS FOR THE PROTECTION OF TREES ON PRIVATE
RESIDENTIAL PROPERTY IN THE TOWN AND ALLOWING FOR THEIR ORDERLY AND
LIMITED REMOVAL UNDER CERTAIN CIRCUMSTANCES.

WHEREAS, the Town of Beaux Arts Village (“Town”) has a responsibility to preserve and protect its unique woodland asset, as stated in the Town’s Comprehensive Plan: “A notable amenity of the Town is the mature stand of evergreen and deciduous trees on all property within its boundaries. Ordinances preserving this tradition continue to be appropriate”; and

WHEREAS, the Town recognizes the importance of “Landmark Trees” and “Significant Trees”; and

WHEREAS, the Town, after careful study by the Tree Committee, and at the conclusion of a tree-cutting moratorium wishes to continue to protect certain trees on private property by limiting their removal; and

WHEREAS, on November 20, 2007 and on February 13, 2008, the Planning Commission conducted public hearings to gather additional input into the development of regulations for the limited removal of trees; and

WHEREAS, the Town Council has reviewed the recommendations of the Planning Commission and the proposed ordinance at a public hearing on July 1, 2008; **NOW THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF BEAUX ARTS VILLAGE, WASHINGTON, AS FOLLOWS:

Section 1. Title, Purpose, and Interpretation.

1.1. Title. This Ordinance shall be known as the Tree Code of the Town of Beaux Arts Village, Washington.

1.2. Purpose and Intent. The general purpose and intent of the ordinance is to protect and preserve certain mature vegetation (“Protected Trees”) within the Town, in order to promote the beauty and tranquility of the residential characteristics of the Town through furtherance of the original concept as established in 1908 and in the existing Comprehensive Plan, and to provide for the orderly and limited removal of certain mature vegetation if conditions for a “Tree Removal Permit” are met.

1.3. Interpretation. In the interpretation and application of this ordinance, its provisions shall be construed to be the minimum requirements.

Section 2. Definitions.

Diameter: Circumference, measured in feet at a height of four and one-half (4 ½) feet above the surrounding ground surface, divided by 3.14.

Hazardous Tree: Any Protected Tree with structural defects, disease, or both, which makes it a significant damage or injury risk factor, when the hazardous condition cannot be lessened by reasonable and proper arboricultural practice, as determined by a Qualified Professional and reviewed by the Town Arborist.

Landmark Tree: Any living coniferous tree, evergreen tree, madrone tree, oak tree, or big leaf maple having a minimum diameter of three (3) feet, measured at a height of four and one-half (4-½) feet above the surrounding ground surface.

Mature Tree: Any evergreen or deciduous tree (excluding holly and/or laurel) having a diameter greater than six inches.

Protected Tree: Any Landmark or Significant Tree on private property, with the exception of holly and laurel; and any tree planted as mitigation.

Protected Tree Species: Any coniferous tree, evergreen tree, madrone tree, oak tree, or big leaf maple. Holly and laurel are not protected tree species.

Qualified Professional: An individual with relevant education and training in arboriculture or urban forestry. The individual must be an arborist certified by the International Society of Arboriculture (ISA) or a registered consulting arborist from the American Society of Consulting Arborists (ASCA). A qualified professional must possess the ability to perform tree risk assessments and prescribe appropriate measures necessary for the preservation tree during development.

Root Protection Zone: The zone established around the base of a tree to protect its root system from damage during earth disturbance or construction activities.

Significant Tree: Any living coniferous tree, evergreen tree, madrone tree, oak tree, or big leaf maple having a diameter greater than one (1) and less than three (3) feet; or any tree planted as mitigation.

Tree Unit: The diameter of any Mature Tree. If less than one hundred percent (100%) of the tree's diameter is on the applicant's property, that portion of the diameter on the applicant's property may be used in the applicant's calculation of Tree Units for his/her lot.

Tree Units per Lot: The combined total of all measured Tree Units for a given property.

Section 3. Town Arborist. The Office of Town Arborist is hereby established for the purpose of assisting the Town, when called upon to do so, in supervising and administering the provisions of this code.

Section 4. Tree Removal.

- 4.1. A Tree Removal Permit shall be required for the removal of any Protected Tree.
- 4.2. A Landmark Tree or Significant Tree, as defined in this Code, may only be removed if
 - 4.2.1. The tree is determined to be hazardous; or
 - 4.2.2. The tree is within the footprint of a proposed building for which a building permit has been issued; or
 - 4.2.3. The tree would become hazardous by the construction of the permitted building; or
 - 4.2.4. The removal complies with the 20% limitation of section 5 of this Code.

Section 5. Tree Removal – Limitation.

- 5.1 All property owners shall be allowed to remove any Protected Tree located within the building footprint of a proposed building associated with a building permit, including those tree(s) outside of the footprint which would become hazardous by the construction of the permitted building.
- 5.2 All property owners shall be allowed to remove up to 20% of the Protected Tree Units on their lot within any twelve-month period. Hazardous trees are exempt from the 20% limitation. At a minimum, one Protected Tree may be removed per each twelve-month period.
- 5.3. All property owners seeking to remove one or more trees shall retain a minimum of one tree unit per 1,000 sq. ft. of lot area or shall plant mitigation trees to meet a minimum of one tree unit per 1,000 sq. ft. of lot area.

Section 6. Tree Removal Permit – Application Process.

6.1 Application. Any property owner wishing to remove a Protected Tree must first submit an application for a Tree Removal Permit to the Town Clerk. The application shall include:

- 6.1.1. The name, address, and telephone number of the property owner and his/her agent, if applicable;
- 6.1.2. A plot plan showing the approximate location, size, and species of all Protected Trees, including those proposed for removal. For Applications based on new construction, the plot plan must show all improvements and their impact on the identified Protected Trees.
- 6.1.3. A tree protection plan that conforms to Section 13 of this Code, if required;
- 6.1.4. If the tree is hazardous, or could become hazardous as a result of new construction for which a permit will be issued, a report from a Qualified Professional, as described in Section 6.4, is required for review by the Town Arborist; and
- 6.1.5. A mitigation plan, if required under Section 12, indicating the location and species for all trees to be planted.

6.2 Identification On Site. Concurrent with submitting the application, the property owner shall identify each and every tree proposed for removal by tying a yellow tape around the circumference

of each and every tree proposed for removal at an approximate height of four and one-half (4 ½) feet above the ground.

6.3 Review by Town Arborist. Except in cases involving an emergency tree removal, the Town Clerk shall forward the application, including all documents listed in Section 6.1, to the Town Arborist for a prompt review and a site visit, if needed. The Town Arborist must complete the review within thirty (30) days of the application date. Failure to complete within this time period shall be deemed approval.

6.4. The Town Arborist shall review the application for accuracy and completeness and shall prepare a report, which shall include the following items, as appropriate:

- 6.4.1 the plot plan;
- 6.4.2 the mitigation plan;
- 6.4.3 the Qualified Professional's hazardous tree assessment;
- 6.4.4 the tree protection plan;
- 6.4.5 Assessment of the condition of the tree planned for removal;
- 6.4.6 Suggested alternatives to tree removal.

6.5 Application complete. The Tree Removal Permit application will be considered complete when the Town Clerk receives the Town Arborist's report and approval and the permit fee from the applicant.

Section 7. Tree Removal Permit – Fees. A permit fee shall be assessed for every tree-removal-permit application submitted to the Town Clerk. Permit fees shall be set by resolution of the Council and shall be paid at the time the permit is submitted. In addition, applicants will be billed by the Town for the time spent by Town consultants in review and administration of any Tree Removal Permit.

Section 8. Tree Removal Permit – Notification.

8.1. A Notice for the removal of a Protected Tree shall be posted no more than 5 business days after the Town Clerk receives a complete application. The Notice shall be posted on all mailbox stands within the Town, identifying the site and the tree(s) to be removed.

8.2. Concurrent with this posting, a Notice for removal shall be mailed to all adjacent property owners.

8.3. Commencing with the posting of the notices, a fourteen (14) day notification period shall be required for all tree removal permit applications that are associated with the 20% allowance of Section 5.

8.4 In cases involving the removal of a hazardous tree, this notification requirement shall be waived.

Section 9. Tree Removal Permit – Issuance.

9.1. A Tree Removal Permit for a hazardous tree shall be issued upon receipt of a complete application by the Town Clerk.

9.2. A Tree Removal Permit for any removal associated with the construction of a building shall be issued only upon receipt of a complete application and in conjunction with the issuance of a building permit.

9.3. A Tree Removal Permit for the removal of one or more significant tree(s) that meets the 20% limitation of Section 5 shall be issued by the Town Clerk only at the conclusion of the notification period.

Section 10. Tree Permit – Expiration. Any Tree Removal Permit shall expire six months from the date of issuance.

Section 11. Emergency Tree Removal. A Protected Tree may be removed without a tree removal permit in an emergency situation involving immediate danger to life or property so long as the following requirements are met:

11.1. The Town is notified within five (5) business days of the tree having been removed.

11.2. The Town is provided within five (5) days all information from a Qualified Professional or utility it may reasonably request in order to verify the emergency.

Section 12. Mitigation.

12.1. Whenever a Protected Tree will be legally removed pursuant to a valid Tree Removal Permit, the Applicant shall demonstrate after the removal of the tree(s), the lot will meet the requirements of Section 5.3 of this ordinance. Should the lot fail to meet this requirement, the Applicant must provide a tree mitigation plan that satisfies the requirements of Section 5.3.

12.2. Mitigation trees shall be a minimum of eight (8) feet tall, have a full, well-developed crown of foliage, and count as a minimum of one tree unit.

12.3. Mitigation requirements must be met within 6 months of the tree removal. In the case of concurrent new construction, mitigation requirements must be met before final inspection. Trees planted as mitigation must be maintained with adequate water and care to survive a three year warranty period or be replaced.

12.4. Trees planted as mitigation are protected trees and may only be removed as qualified in Section 4.3.

12.5. Trees planted as mitigation, shall be one of the Protected Tree species, or other native tree, as agreed upon by the Town.

Section 13. Construction Site Tree Protection.

13.1. All Protected Trees impacted by site development or construction must be protected during such activity. The Town Arborist shall be consulted as necessary, to determine appropriate protection for such trees.

13.2. Exceptions to this requirement may be requested and must be accompanied by a report prepared by a Qualified Professional. Exceptions will be granted by the Town in its sole discretion only if an appropriate alternative plan for protection of all Protected Trees is provided and approved by the Town Arborist. Such approval shall be obtained prior to the issuance of any site development or construction permit.

13.3. A Stop-Work Order will be issued by the Building Official if site tree protection guidelines are not followed.

Section 14. Tree Removal -- Exception. Exceptions to Sections 4 and 5 of this ordinance may be permitted upon application to the Board of Adjustment. No exception shall be approved or approved with modifications unless the Board finds that at least three of the following criteria have been met:

14.1. The exception is necessary because:

14.1.1 There are special circumstances related to the size, shape, topography, location or surroundings of the subject property.

14.1.2. Strict compliance may jeopardize reasonable use of the property.

14.1.3. Proposed vegetation removal, replacement, and any mitigating measures proposed are consistent with the purpose and intent of the regulations.

14.1.4 The granting of the exception will not be injurious to other property in the vicinity.

14.2 If the Board grants an exception, tree replacement shall be consistent with Section 12 of this ordinance.

Section 15. Appeals. Any tree-permit applicant aggrieved by any action of the town relating to a Tree Removal Permit or Tree Removal Exception may, within ten (10) days of such action, file a notice of appeal to the Town Council, setting forth the reasons for such appeal. The Town Council shall hear and determine the matter and may affirm, modify or disaffirm the administrative decision or decision of the Board at the Council's next regularly scheduled meeting.

Section 16. Penalty for Unpermitted Tree Removal or Intentional Destruction. A violation of any of the provisions of this Code shall be a civil infraction and any person, corporation or other entity found guilty thereof shall be punished by a fine as follows:

16.1. Any person removing or intentionally destroying a Significant Tree that would have otherwise been approved for removal had the proper procedures been followed shall be fined \$1,000.00 per tree.

16.2. Any person removing or intentionally destroying a Significant Tree that would have otherwise been prohibited from removal shall be fined \$10,000.00 per tree.

16.3. Any person removing or intentionally destroying a Landmark Tree without a permit shall be fined \$25,000.00 per tree.

16.4. Any person removing or intentionally destroying a mitigation tree without a permit shall be required to submit a mitigation plan per Section 12 of this ordinance.

16.5. Fines levied under this Code shall be deposited into a tree mitigation account and shall be used by the town for acquiring, maintaining, and preserving wooded areas, and for the planting and maintaining of trees within the town.

Section 17. Validity. If any section, paragraph, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs, clauses, or phrases subsequently may be found by competent authority to be unconstitutional or invalid.

Section 18. Effective Date. This ordinance shall take effect five (5) days after its passage and publication.

PASSED BY THE COUNCIL OF THE TOWN OF BEAUX ARTS VILLAGE and signed in authentication of its passage on this 1st day of July, 2008.

John Rose, Mayor

ATTEST:

APPROVED AS TO FORM:

Sue Ann Spens, Clerk-Treasurer

Wayne Stewart, Town Attorney

I certify that copies of the above ordinance were posted as required by law in the Town of Beaux Arts Village, Washington, on the ____ day of _____, 2008.

Sue Ann Spens, Clerk-Treasurer