ORDINANCE NO. 05-2020

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, AMENDING CHAPTER 18.45 CMC TREE PRESERVATION AND PROTECTION.

WHEREAS, Chapter 35A.63 of the Revised Code of Washington ("RCW") empowers the City of Covington (the "City") to enact planning and environmental regulations; and

WHEREAS, the Washington State Constitution at article 11, section 11 grants cities the police power authority to protect the public health, safety, and welfare. Pursuant to that authority, a city may regulate the use of property. Cities may regulate property for purposes such as abating nuisances, enforcing building and health codes, zoning and planning, and environmental protection; and

WHEREAS, trees provide important aesthetic, environmental, and economic benefits and are an integral part of the City's character. These benefits come from significant contributions to stormwater management, public health improvement, energy use reduction, air pollution abatement, and overall quality of life; and

WHEREAS, the ecosystem, economic, and social services provided by trees will become even more important to the City of Covington as the population increases and economic development continues; and

WHEREAS, the planting of trees means improved water quality, which results in less runoff and erosion. This allows more recharging of the ground water supply and wooded areas help prevent the transport of sediment and chemicals into streams; and

WHEREAS, over the past decade trees have been removed at a greater rate than they have been replaced and the City is quickly losing one of the important characteristics that makes Covington special, its trees. Without amending the municipal code, trees within the City will systematically be eliminated through the development process; and

WHEREAS, the Natural Environment Element chapter of the City's Comprehensive Plan ("Comprehensive Plan") states as follows: "the City is committed to the thoughtful, well-planned stewardship of the natural environment, in order to preserve and improve the quality of life for its residents. The natural environment is a complex system of interrelated components including air, water, soils, plants, and animals. All of these systems are affected by human activity. Through thoughtful planning and implementation of local, state, and federal regulations, Covington seeks to accommodate development needed for growth while preserving the natural environment and protecting residents as well as public and private property, from natural hazards"; and

WHEREAS, the Natural Environment Element chapter of the Comprehensive Plan states as follows: "Unmatched quality of life requires thoughtful, well-planned stewardship of the natural environment. Stewardship of the natural environment is foundational for achieving citywide goals"; and

WHEREAS, the Natural Environment Element chapter of the Comprehensive Plan states as follows: "The quality of the natural environment is an important component of our quality of life. The natural environment provides a variety of valuable and beneficial functions, such as contributing to the clean air we breathe and the beauty of our surroundings"; and

WHEREAS, the Natural Environment Element chapter of the Comprehensive Plan states as follows: "The City strives to preserve and improve the natural environment by protecting significant trees, limiting impervious surfaces, and promoting low-impact development, energy conservation, mixed-use development, multi-modal transportation options, and other measures"; and

WHEREAS, the Natural Environment Element chapter of the Comprehensive Plan states as follows: "The City's approach to preserving and improving the natural environment includes adopting regulations that require new development to protect the natural environment and that provide incentives for environmental restoration"; and

WHEREAS, Goal NE-I of the Natural Environment Element chapter of the Comprehensive Plan states as follows: "Foster recognition of the significant role played by natural features and systems in determining the overall environmental quality and livability of Covington"; and

WHEREAS, Goal NE-II of the Natural Environment Element chapter of the Comprehensive Plan states as follows: "Recognize the value of vegetation in increasing the livability of Covington, and minimize the loss of vegetation as development occurs"; and

WHEREAS, Policy NE-6 of the Natural Environment Element chapter of the Comprehensive Plan states as follows: "Protect significant trees and limit unnecessary disturbance of vegetation, when possible, during all phases of development, and require mitigation as needed, including the appropriate ratio of replacement for trees removed during development"; and

WHEREAS, Policy LU-12 of the Land Use Element chapter of the Comprehensive Plan states as follows: "Promote the use of landscaping that can thrive in urban settings, conserve water, retain desirable trees, and is comprised of native plant materials"; and

WHEREAS, Policy NE-5 of the Natural Environment Element chapter of the Comprehensive Plan states as follows: "Maximize retention of a healthy tree cover and native vegetation and encourage restoration, replacement, and enhancement of unhealthy or disturbed trees and vegetation"; and

WHEREAS, Policy NE-1 of the Natural Environment Element chapter of the Comprehensive Plan states as follows: "Protect the ecological integrity of the natural environment while allowing for compatible growth and development"; and

WHEREAS, in February 2008, the City adopted its first comprehensive tree code in Chapter 18.45 of the Covington Municipal Code ("CMC"), "Tree Preservation and Protection." The initial development of the code spanned several years and involved the general public and the Ad Hoc Technical Subcommittee on Tree Ordinance Revisions; and

WHEREAS, in 2012, the City conducted an I-tree survey to determine the urban tree canopy throughout the City. The survey indicated the City had a canopy coverage of 37 percent; and

WHEREAS, in September 2018, an Urban Tree Canopy Assessment was completed to provide a baseline and benchmark of the City's tree canopy and interpret the results across a range of geographic boundaries. The result of the study indicated that in 2017, the city contained 30 percent urban tree canopy (or 1,130 of the City's 3,868 total acres) and contains possible planting areas ("PPA") of 16 percent; and

WHEREAS, the purpose of the proposed amendments to Chapter 18.45 CMC is to increase urban forestry canopy coverage throughout the City of Covington and to provide a mechanism to soften the impact of development on the natural environment; and

WHEREAS, the City's Planning Commission ("Planning Commission") work plan for 2019 and 2020 includes an evaluation of Chapter 18.45 CMC and eventual amendments to the existing code; and

WHEREAS, the Planning Commission is responsible for the review of amendments to the City's tree retention and protection ordinance and making modification recommendations; and

WHEREAS, the Planning Commission is required to hold a noticed public hearing and make a recommendation to the City Council as to whether the proposed amendments meet the criteria set forth in CMC 14.27.040 Decision criteria; and

WHEREAS, on January 15, 2020, City staff transmitted a copy of the proposed code amendments to the Washington State Department of Commerce for review and comment, pursuant to RCW 36.70A.106. Expedited review of the proposed code amendments was granted on January 29, 2020; and

WHEREAS, a legal notice of public hearing for the proposed amendments was published January 17, 2020 in the Covington/Maple Valley Reporter as well as posted on the City's website and at city hall; and

WHEREAS, pursuant to the State Environmental Policy Act ("SEPA") and Chapter 191-11 Washington Administrative Code ("WAC"), a Determination of Nonsignificance ("DNS") for non-project action was issued and noticed on January 17, 2020 for the proposed amendments; and

WHEREAS, pursuant to WAC 197-11-340(2), the Department provided a 14-day comment period for the DNS issued on the proposed amendments with an appeal and comment period ending January 31, 2020. One comment was received in favor of the proposed amendments and no appeals were filed; and

WHEREAS, the Planning Commission met on October 17, 2019 to discuss the current tree preservation and protection code and recommended that staff prepare a draft amendment for the November 21, 2019 Planning Commission Meeting; and

WHEREAS, at the November 21, 2019 meeting of the Planning Commission, staff provided a draft code amendment based on feedback received from the October 17, 2019 Planning Commission meeting; and

WHEREAS, the Planning Commission recommended that staff make further code modifications; and

WHEREAS, the Planning Commission reviewed the proposed amendments at their regularly scheduled meetings on January 2, 2020 and on January 16, 2020; and

WHEREAS, the Planning Commission and staff worked on the proposed amendments by focusing on modifications that are directly tied to existing policies as described in the Comprehensive Plan, the long-term vision of the City; and

WHEREAS, the Planning Commission held a community engagement workshop on January 16, 2020, to gather input from residents regarding what is important to them from a policy standpoint in relation to tree preservation and protection. The workshop was attended by more than 16 residents, and the Planning Commission was able to capture a sense of the residents' policy preferences; and

WHEREAS, the individuals who participated in the community engagement workshop on January 16, 2020 were asked to rank a set of seven policy statements in order of preference from most important to least important. Some of the policy statements were generated by staff, while others were taken directly out of the Comprehensive Plan. The top four policy statements selected were all policy statements from the Comprehensive Plan, and are referenced above; and

WHEREAS, on February 6, 2020 the Planning Commission held a properly noticed public hearing on the proposed amendments; and

WHEREAS, after the public hearing and review, the Planning Commission recommended that the City Council adopt the amendments to Chapter 18.45 CMC as proposed with the following modifications to CMC 18.45.130(6):

> Civil infraction violations of this Chapter shall be assessed a monetary penalty of $300 per inch of DBH of any significant tree, $600 per inch of DBH of any landmark tree, or $900 per inch of DBH of any heritage tree removed or damaged.

WHEREAS, the proposed amendments meet the decisional criteria set forth in CMC 14.27.040; and

WHEREAS, the City Council, upon review of the facts and findings and recommendations of the Planning Commission, and after review and information provided by City staff, find that all applicable and substantive requirements of the law have been met, that adoption of this ordinance promotes the public health, safety, and general welfare of the community and the adoption of this ordinance serves the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. **Findings of Facts.** The "whereas" provisions listed above are adopted as Findings of Fact and are incorporated by reference as if fully set forth herein.

Section 2. **Amendments to Chapter 18.45 CMC.** Chapter 18.45 CMC Tree Preservation and Protection is hereby amended as set forth in the attached Exhibit A, which is incorporated herein by this reference.

Section 3. **Corrections.** The City Clerk and the codifiers of this ordinance are authorized to make necessary clerical 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 4. **Severability.** If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance or its application to any persons or circumstances.

Section 5. **Effective Date.** This Ordinance shall be effective five days after passage and publication as provided by law.

Passed by the City Council of the City of Covington on the 24th day of March 2020.

Mayor Jeff Wagner

ATTESTED:

Sharon Scott, City Clerk

APPROVED AS TO FORM:

/s/ Mark Orthmann, remote attendance

Mark Orthmann, City Attorney

PUBLISHED: March 27, 2020
EFFECTIVE: April 1, 2020

EXHIBIT A

Chapter 18.45
TREE PRESERVATION AND PROTECTION

Sections:

18.45.010 Short title.
18.45.020 Purpose and intent.
18.45.030 Definitions.
18.45.040 Applicability of regulations.
18.45.050 Exemptions from tree permits.
18.45.060 Permits and permit requirements.
18.45.070 Permit standards and conditions for all minor tree removal and major tree clearing.
18.45.080 Tree ~~preservation~~ retention~~, tree tracts~~ and tree replacement requirements.
18.45.090 Tree protection standards
~~18.45.090 Heritage tree(s).~~
18.45.100 Tree maintenance standards and best pruning practices.
18.45.110 Tree preservation modification and departure options.
18.45.120 Performance guarantees, liability, insurance and licensing.
18.45.130 Enforcement, violations and penalties.
18.45.140 Appeals.
18.45.150 Severability.

18.45.010 Short title.

This chapter shall be known and may be cited as the tree preservation and protection regulations ~~ordinance~~ of the City of Covington.

18.45.020 Purpose and intent.

The intent of this chapter is to establish regulations and procedures for preservation of trees, to preserve the character of the community, to successfully retain desirable trees on developing and redeveloping sites, and to maintain a viable tree canopy for the City of Covington. Specifically, the regulations contained in this chapter are intended to accomplish the following goals and objectives:

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

(2) Implement the purposes of the State Growth Management Act relating to conservation of natural resources;

(3) Support and implement the City of Covington Comprehensive Plan, specifically the ~~and its~~ Land Use Element and Natural Environmenta~~l~~ Element;

(4) Implement the goals of the State Environmental Policy Act (SEPA);

(5) Improve the aesthetic quality of the built environment by reducing impacts on ~~wetlands, streams~~critical areas and the natural environment;

(6) Minimize erosion, siltation, water pollution, and surface and ground water runoff;

(7) Preserve significant trees for the reduction of noise and air pollution, wind protection, animal habitat, slope stabilization and retention of ground water;

(8) Assist with removing ~~hazardous~~ at risk trees;

(9) Provide for delivery of reliable utility services, for reasonable development of property, for reasonable preservation or enhancement of property values, and for increases in privacy for residential sites;

(10) Promote building and site planning practices that are consistent with the City's natural topography, soils, and vegetation features;

(11) Provide an appropriate amount and quality of tree retention related to future land uses;

(12) Provide for increased areas of permeable surfaces that allow for infiltration of surface water into ground water resources, reduction in the quantity of storm water discharge, and improvement in the quality of storm water discharge; and

(13) Provide for regulations that are clear, understandable, user friendly, easy to administer, and cost effective to enforce.

18.45.030 Definitions.

For the purposes of this Chapter 18.45 CMC, the words and phrases below shall be defined as set forth herein. If not defined in this Chapter 18.45 CMC, ~~Unless otherwise clearly indicated by the context, certain words and phrases used in this chapter shall have the following meanings~~the definitions provided in Chapter 18.20 CMC shall be applicable. In the event of a conflict between the definitions set forth in this Chapter 18.45 CMC and the definitions set forth in Chapter 18.20, the definitions in Chapter 18.45 CMC shall govern. Words used in the singular include the plural, and words used in the plural, include the singular. Words used in the masculine gender include the feminine gender.

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

"At risk tree," means any significant tree determined by a qualified arborist through a tree risk assessment as a likely source of imminent danger to life or property, or determined to have a structural defect, combination of defects, or disease, resulting in the loss of a major structural component of that tree in a manner that is likely to:

(1) Damage a residential or accessory structure, place of employment or public assembly, or approved parking for a residential structure or accessory structure or place of employment or public assembly;

(2) Damage an approved road or utility facility; or

(3) Prevent emergency access by first responders.

"Best management practices (BMPs)," means adherence to tree health care standards detailed in the current edition of the American National Standards Institute (ANSI) A300 and the current edition of the International Society of Arboriculture (ISA) BMPs including the special companion publication to the ANSI A300, Best Management Practices for Utility Pruning of Trees.

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

"Caliper" means the diameter of a tree trunk, applied only to new or replacement nursery-grown trees, which shall be measured six inches above the ground for trees with a caliper/diameter up to and including four- inches. For trees with a diameter greater than four inches, measured six inches above the ground, the caliper ~~size trees and~~shall be measured at 12 inches above the ground~~ for larger sizes~~.

"Canopy," means the part of the tree crown composed of leaves and small twigs or the collective branches and foliage of a group of trees' crowns.

"City" means the City of Covington, King County, Washington.

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

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

"Critical root zone (CRZ)" means the International Society of Arboriculture (ISA) definition of CRZ, which is an area equal to a one-foot radius from the base of the tree's trunk for each one inch of the tree's diameter at four and one half feet above grade (referred to as Diameter at Breast Height). Example: A 24-inch diameter tree at four and one half feet above grade would have a critical root zone radius (CRZ) of 24 feet. In this example, the total protection zone, including trunk, would be 50 feet in diameter.

"Crown" means that portion of the tree's stem that is occupied by branches with live foliage.

Diameter Breast Height (DBH) ~~"DBH" means diameter at breast height. DBH~~ is a tree's diameter in inches at four and one-half feet above the ground at the lowest point surrounding the trunk, and is used to measure existing trees on a site. ~~On multi-stemmed or multi-trunked trees, the diameter shall be the diameter equivalent to the sum of trunk areas measured at DBH.~~ Where a tree splits into several trunks below DBH, the DBH for the tree is the square root of the sum of the DBH for each individual trunk squared (example with three trunks: DBH = square root of $[(\text{stem } 1)^2 + (\text{stem } 2)^2 + (\text{stem } 3)^2]$).

~~"Department" means the City of Covington Department of Community Development or its successor agency.~~

"Development," is the division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargements of any structure; any mining, excavation, landfill, stockpiling, clearing or land disturbance; and any use or extension of use of the land.

~~Director" means the Community Development Director of the City of Covington or his or her duly authorized designee.~~

"Drip line" ~~of a tree means an imaginary line on the ground created by the vertical projection of the foliage at its greatest circumference.~~ of a tree is the outermost circumference of the tree's canopy, from which water drips onto the ground. The "dripline area" is taken to include the soil and roots that lie within that circumference.

"Excessive canopy raising," means the excessive removal of lower canopy limbs (especially on conifers), by reducing the live crown ratio (the ratio of live crown to total tree height) lower than 60 percent of the original crown. Excessive canopy raising can pose a high risk. A trees hinge point changes under wind load forces. Articulation occurs significantly higher on the upper stem not accustomed to these load forces, which significantly increases chances of upper stem failure.

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

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

~~(1) Damage a residential structure or accessory structure, place of employment or public assembly, or approved parking for a residential structure or accessory structure or place of employment or public assembly;~~

~~(2) Damage an approved road or utility facility; or~~

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

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

"Imminent danger" means a condition which could cause serious or life-threatening injury or death at any time.

"Invasive tree," is a species that was introduced by humans to locations outside of the trees native range that spread and persist over large areas. Invasive species negatively impact natural ecosystems by displacing native species, reducing biological diversity, and interfering with natural succession. Tree species known to be invasive in the Pacific Northwest are listed below. The City may determine that additional tree species should be classified as invasive if the species clearly exhibits the detrimental characteristics of invasive species.

Common Name	Species Name
Norway maple	Acer platanoides
Sycamore maple	Acer pseudoplatanus
Horse chestnut	Aesculus hippocastanum
Tree-of-heaven	Ailanthus altissima
European white birch	Betula pendula
English/European hawthorn	Crataegus monogyna
English holly	Ilex aquifolium
Princess tree	Paulownia tomentosa
White poplar	Populus alba
Sweet cherry	Prunus avium

Common Name	Species Name
Cherry laurel	Prunus laurocerasus
Portugal laurel	Prunus lusitanica
Black locust	Robinia pseudoacacia
European mountain ash	Sorbus aucuparia
Siberian elm	Ulmus pumila

"ISA" means International Society of Arboriculture.

"ISA TRAQ," Tree Risk Assessment Qualified, a designation administered by the International Society of Arboriculture.

"Landmark Tree" means a significant tree that is equal to or greater than twenty-two (22) inches DBH.

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

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

"Limits of disturbance" means the boundary between the area of minimum protection around a tree and the allowable site disturbance as determined by a Qualified Arborist.

"Multi-stemmed tree" means a tree that has one trunk at ground level but that splits into two or more trunks above ground level. Trees whose trunks diverge below ground level are considered separate trees.

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

"Nuisance tree" is a species that is known to be weak-wooded and unstable, or one that exhibits other traits that render it prone to creating nuisance conditions for persons and property located in close proximity to such trees. Tree species categorized as nuisance trees in the City are listed below. The City may determine that additional tree species should be classified as nuisance trees if the species clearly exhibits the detrimental characteristics of nuisance species.

Common Name	Species Name
Red alder	Alnus rubra
Black cottonwood	Populus trichocarpa

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

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

"Protected tree" means a tree and associated understory vegetation that is identified for retention and protection on an approved tree protection and replacement plan and/or permanently protected by easement, tract, or covenant restriction.

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

"Qualified arborist" is an individual who is a certified professional with academic and field experience that makes them a recognized expert in urban forestry and tree protection during development. A qualified arborist shall be a member of the International Society of Arboriculture (ISA) and/or the Association of Consulting Arborists and shall have specific experience with urban tree management in the state of Washington. Additionally the qualified arborist shall be a certified arborist or board certified master arborist, as certified by the ISA, and be ISA Tree Risk Assessment Qualified and have the necessary training and experience to use and apply the appraisal methodology prescribed in the current edition of the ISA Plant Appraisal Guide.

"Remove" or "removal" is the act of removing a tree by digging up, cutting down, or any act which causes the tree to die within a period of three years, including, but not limited to: damage inflicted on the root system by machinery, storage of materials, or soil compacting, or changing the ground level in the area of the tree's root system; damage inflicted on the tree permitting infections or infestation; excessive pruning; topping; paving with concrete, asphalt, or other impervious material within the drip line; or any other action which is deemed harmful to the tree.

"Risk" in the context of trees is the likelihood of a tree failure occurring combined with the severity of the associated consequences of such failure to a target.

"Significant tree," for purposes of this chapter, means ~~any healthy tree of six inches DBH or larger.~~a tree that is in a healthy condition and is a noninvasive species, which is:

(1) Any deciduous tree that is twelve inches or more in diameter at DBH;

(2) Any coniferous tree that is six inches or more in diameter at DBH;

(3) A required replacement tree of any size; or

(4) Any tree that is six inches or more at DBH that is located within critical areas or the shoreline jurisdiction.

"Target" or "risk target" means people, property, or activities that could be injured, damaged, or disrupted by a tree.

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

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

"Tree enhancement plan" means a plan prepared by a ~~certified~~ qualified arborist~~, licensed landscape architect, or certified forester~~ and required of all commercial or industrial properties ~~greater than two acres in size~~ when any tree removal or tree clearing takes place. The tree enhancement plan shall combine tree retention and preservation of existing trees pursuant to CMC 18.45.080(1) ~~to the extent feasible along~~ with the tree replacement and replanting requirements of CMC 18.45.080(2) ~~equal to at least 15 percent of the number of significant trees existing on the site prior to any tree removal.~~ The tree enhancement plan shall incorporate trees in as many areas as feasible such as tree tracts, boundary trees, perimeter landscaping, parking lot landscaping, street and driveway trees, facade landscaping, or other viable stands of trees, considering the type of commercial or industrial development.

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

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

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

"Tree risk assessment" means the systematic process conducted by a qualified arborist or tree risk assessor to identify, analyze, and evaluate tree risk. Tree risk assessment shall be

conducted in accordance with the American National Standards Institute (ANSI) A300 and the current edition of the International Society of Arboriculture (ISA) BMPs: Tree Assessment.

"Tree Risk Management," means the application of policies, procedures and practices used to identify, evaluate, mitigate, monitor, and communicate tree risk.

"Tree topping" ~~is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.~~ is an extreme form of crown reduction that removes whole tops of trees or large branches and/or trunks from the tops of trees, leaving stubs or lateral branches that are too small to assume the role of a terminal leader, which is the vertical stem at the top of the trunk. Tree topping severely cuts back large trees to a predetermined size in a manner that:

(1) Leaves large exposed wounds that can become infested;

(2) Ruins tree structure;

(3) Removes too much foliage, disrupting the tree's energy storage;

(4) Stimulates vigorous new growth, which is prone to breakage;

(5) Increases tree maintenance costs; or

(6) Destroys a tree's appearance and value.

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

"Understory vegetation" means small trees, shrubs, and groundcover plants, growing within the dripline or critical root zone (CRZ) of a significant tree.

~~"Vegetation" means any and all organic plant life growing at, below or above the soil surface.~~

-"Viable (tree)" means a significant tree that a qualified arborist has determined to be in good health with a low risk of failure, is relatively windfirm if isolated or exposed, is a species that is suitable for its location, and is therefore worthy of long-term retention.

18.45.040 Applicability of regulations.

~~(1) These regulations shall not be applicable to:~~

~~(a) Any single-family or multifamily lot one acre or less in size;~~

~~(b) Any commercial or industrial lot two acres or less in size; or~~

~~(c) Any lot or tract with less than 20 "significant trees" as defined.~~

(1) The provisions of this chapter shall be applicable to all residential, commercial, and industrial lots, and property located outside the public right-of-way, including but not limited to parcels, tracts, and easements owned by public agencies such as parks and stormwater ponds.

(2) When any other chapter of the Covington Municipal Code conflicts with this chapter or when the provisions of this chapter are in conflict, the provision that provides more protection to the environment, critical area or shoreline judication shall apply, unless the provision conflicts with Federal or State laws or regulations. Provided, in the event of a conflict between the definitions set forth in this chapter and the definitions set forth in Chapter 18.20 CMC, the definitions in this Chapter 18.45 CMC shall prevail.

(3) If there is any conflict between Chapter 18.65 CMC or Chapter 16.05 CMC requirements the most restrictive applies. Should a conflict occur between the provisions of this chapter or between this chapter and the laws, regulations, codes, or rules promulgated by any other authority having jurisdiction within the City, the requirement which most supports the provisions of Chapter 18.65 CMC or Chapter 16.05 CMC shall be applied, except when constrained by Federal or State law, or where specifically provided otherwise.

18.45.050 Exemptions from tree permits.

The ~~following~~ activities below are exempt from both the minor tree removal permit and major tree clearing permit requirements of CMC 18.45.060, 18.45.070, and 18.45.080~~,~~. Provided, replanting pursuant to CMC 18.45.080(3) is still required. Exempt tree removal, without a permit, and as allowed herein, shall be reported to the City on a form provided by the City within 21 days of removal. The use of the exemptions listed below for the removal of replanted trees and landscaping as required pursuant to Chapter 18.40 CMC is prohibited, unless ~~they~~ such trees disturb any critical area or critical area buffer, or identified ~~shoreline jurisdiction~~shoreline jurisdiction, or unless ~~they~~ such trees cause a major adverse impact to runoff and diversion of storm water or streams, erosion, risk of landslide, infiltration of pollution into ground water, or other major adverse impacts to safety and security of adjacent properties, as determined by the Director:

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

public safety or public or private property from imminent danger in response to emergencies declared by the City, county, state or federal governments. In the case of a declared emergency, the written approval requirement herein shall be waived.

(2) ~~Emergency Removal of a Hazard Tree or Trees. Emergency removal of hazard tree(s) as defined in order to prevent imminent danger to persons or structures. Such removal shall be reported to the City within 10 days of removal on a form provided by the City. This exemption shall not apply to existing trees located within designated tree tracts.~~ Emergency Removal of an At Risk Tree or Trees. Removal of an at risk tree following a tree risk assessment and recommendation by a qualified arborist that the tree is a safety risk and should be removed. For a tree to be considered an at risk tree it must be defective either in some part or as a whole, with risk for failure and a target that is threatened. Trees are declared at risk if a tree risk assessment has been completed and mitigation is required to prevent a failure from causing damage affecting the target. The City may, at its sole discretion and in consideration of ISA tree risk assessment guidance, waive the qualified arborist requirement if City staff conducts an on-site inspection and determines that a tree clearly and obviously constitutes a risk. City staff should consider the following conditions when conducting a tree risk assessment:

(a) Whether the tree is dead, diseased, decayed, dying, burned, or otherwise damaged;

(b) Whether the tree has multiple weak branch attachments, broken and/or hanging limbs;

(c) Whether the foliage is sparse and/or discolored;

(d) Whether there is evidence of root rot/exposed, undermined or pruned roots or a restricted root area;

(e) If leaning, what the degree of such lean is and whether roots are broken or the soil heaving or cracking;

(f) Whether the tree top is broken on conifers; and

(g) Whether there are targets such as buildings, parking, or traffic or pedestrian facilities below the tree and whether those target(s) can be moved.

Upon such inspection, staff may determine that further review by a qualified arborist is required before making a determination as to whether a tree constitutes a risk.

(3) Normal and Routine Maintenance of Existing Trees. Any normal and routine maintenance of existing trees, but not to include utility easements; provided, that said maintenance does not involve removal of healthy trees and is not detrimental to the health of any trees. Trenching or digging to a depth of greater than one foot within the critical root zone and tree topping is not allowed.

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

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

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

(6)~~(7) Any Site in the Commercial or Industrial Zones, Provided a Tree Enhancement Plan is Submitted and Approved. Any site, tract, lot or subdivision located in the DN, CC, CN, or I zones, provided such sites, as part of their subdivision, development or redevelopment permit, submit a tree enhancement plan to replant trees as outlined in CMC 18.45.080(7).~~ Removal of an invasive tree if located outside of a designated critical area and associated buffer, or within shoreline jurisdiction.

(7) Removal of a nuisance tree if located outside of a designated critical area or it's associated buffer, or within shoreline jurisdiction.

(8) Removal of Trees on City-Owned Property for Installation of Utilities and Public Facilities and/or Maintenance of Property. Removal of trees on any city-owned right-of-way or tract for installation of any public infrastructure, including streets, utilities or public facilities, or for maintenance and operation of any existing facilities This exemption includes the removal of trees on all publicly owned land, parks, storm ponds, and critical area tracts dedicated to the City.

(9) Removal of trees where the trunks are located within 10 feet of an existing building that will remain on a site.

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

~~(10) Partial Exemption for Developed Commercial and Industrial Lots. On developed commercial or industrial lots greater than two acres in size, removal of trees without a permit is allowed within an existing or proposed building footprint and within 30 feet of such building footprint. In addition no permit is required for tree removal within 15 feet from all accessory structures, roads, driveways or utility easements associated with any primary building footprints. Exempted areas for tree removal are measured from the edge of a building wall, road, drive, or easement out to the critical root zones of any tree. (That portion of the lot or tract greater than the aforementioned area exempted from tree removal permits shall be treated as undeveloped and unplatted property for the purposes of this chapter and shall be governed by requirements for a major tree clearing permit and preservation of trees in a tree tract, tree conservation easement or tree enhancement plan and tree replanting as outlined in CMC 18.45.060, 18.45.070, and 18.45.080.)~~

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

(10) The removal of three trees on lots less than or equal to 7,200 square feet and one additional tree for every 7,200 square feet of lot area up to a maximum of six significant trees per lot within a 36-month period.

(11) Removal of significant trees in emergency situations involving immediate danger to life or property or substantial fire hazards as determined by the City in its sole discretion.

18.45.060 Permits and permit requirements.

Unless exempted under CMC 18.45.050, any person engaged in removal of trees or tree clearing in the City shall first obtain either a minor tree removal permit or major tree clearing permit as outlined below and shall meet the prescribed tree preservation or tree enhancement requirements in this Chapter 18.45 CMC. If any future development or construction is anticipated, such permits shall be reviewed and issued in conjunction with any required land use permit, engineering design permit, site development permit, binding site plan, subdivision, or building permit. A separate permit shall be required for each individual site on which the tree removal or land clearing is proposed. If no development or construction activity is currently anticipated, individual tree removal or tree clearing permits may be applied for, reviewed, and issued according to this section as ~~a~~ separate, freestanding permits.~~, if no development or construction is currently anticipated.~~ All critical area regulations set forth in Chapter 18.65 CMC and all shoreline regulations set forth in Chapter 16.05 CMC are applicable. Additionally, within the shoreline jurisdiction, a shoreline exemption permit may be required in conjunction with the tree removal permit in some cases.

(1) Minor Tree Removal Permits.

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

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

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

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

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

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

(2) Major Tree Clearing Permits.

(a) Major tree clearing permits are those permits involving any removal of trees, clearing and grading of land with trees, shrubs, or understory vegetation ~~other ground cover~~ on sites one ~~two~~ acre~~s~~ in size or greater, unless the activity falls within an exemption listed in CMC 18.45.050, in which no permit is required;

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

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

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

(e) A major tree clearing permit shall be a Type II permit governed by Chapter 14.30 CMC;

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

(3) Permit and Application Submission Requirements.

(a) Minor Tree Removal Permit Submission Requirements. Minor tree removal permits shall be submitted on application forms provided by the ~~Administrator~~ Director and shall contain the following information outlined below:

(i) Completed application form, with one copy and appropriate fee;

(ii) The legal description or tax parcel number, and street address for the site;

(iii) If critical areas and their buffers, as defined in Chapter 18.65 CMC, or shorelines, as defined in Chapter 16.05 CMC, exist on the property, then their exact location shall be identified on a topography map showing contours at not greater than five-foot intervals, as determined by a land surveyor. Any proposed tree cutting, land clearing, landscaping, and replanting activity, within or near such critical areas or shoreline shall be included on such map;

(~~iii~~iv) A scaled site plan that clearly depicts the limits of disturbance, existing trees and their critical root zones, the location of any critical area or shoreline with in 200 of the property and the applicable buffers and setbacks, ~~with~~ property lines, structures, north arrow, and date;

(~~i~~v) A tree inventory completed by a qualified arborist, identifying the species type, size, approximate height, location, and number of both existing trees and those specific trees to be removed;

(vi) A statement explaining the scope of work and time schedule for tree removal;

(vii) Information showing the location of existing and proposed improvements, if any, including but not limited to structures, roads, utilities, driveways and trails;

(viii) The approximate location of all critical areas and critical area buffers, and shoreline jurisdiction areas; and

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

(b) Major Tree Clearing Permit Submission Requirements. Major tree clearing permits shall be submitted on application forms provided by the Director, with any land use

application, engineering design permit, site development permit, binding site plan, subdivision, or building permit on the same site; or by itself as a freestanding permit for any major tree clearing, land clearing or grading permit when no land use or building permit is anticipated. Permit submissions shall contain the following information:

(i) Three copies of the c~~C~~ompleted application form ~~with three copies~~ and appropriate fee;

(ii) The legal description or tax parcel number, and street address for the site;

(iii) If critical areas and their buffers, as defined in Chapter 18.65 CMC, or shorelines and their buffers and setbacks, as defined in Chapter 16.05 CMC, exist on the property, then their exact location shall be identified on a topography map showing contours at not greater than five-foot intervals, as determined by a land surveyor. Included shall be any proposed tree cutting, land clearing, landscaping, and replanting activity, within or near such critical areas or shoreline;

(iv) A scaled site plan that clearly depicts the limits of disturbance, existing trees and their critical root zones, the location of any critical area or shoreline within 200 feet of the property and the applicable buffers and setbacks,~~,~~ ~~with~~ property lines, north arrow and date, showing the location of existing and proposed improvements;

(v) A tree inventory completed by a qualified arborist with the date of inventory, ~~north arrow and scale,~~ showing the location, number, size, height, species, and condition of existing trees, and ~~a designation of~~designating any trees to be removed, ~~and~~ proposed scope of work a north arrow, and scale;

(vi) The location, number, height, caliper, and species of any replanted trees on site that were planted pursuant to any tree replanting or tree enhancement plan requirements;

(vii) Erosion and sediment control plans and mitigation;

(viii) A tree protection plan with fencing details during construction;

(ix) A proposed time schedule for tree clearing, replanting, land restoration, and implementation of erosion control measures;

(x) A discussion and calculations demonstrating that the conditions and standards set forth in CMC 18.45.070 and 18.45.080 are satisfied;

(xi) A performance guarantee quantity worksheet consistent with CMC 18.45.120; and

(xii) Any other information which the Director deems necessary for an effective evaluation of the application for a major tree clearing permit.

(4) Permit Review – Administrative Provisions and Authority.

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

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

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

(d) Suspension or Revocation Allowed. Approved ~~P~~permits may be suspended or revoked by the Director ~~if granted~~ on the basis of inaccurate or misleading information within the application therefor or upon the violation of any provision of this chapter.

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

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

(b) ~~An area of prohibited disturbance~~A tree protection area, ~~generally~~ corresponding to the critical root zone of a significant tree, shall be identified by a qualified arborist during the construction stage, and temporary fencing in accordance with subsection (5)(d) of this section shall be ~~established~~ installed around the tree protection area prior to any tree clearing and/or grading. Fencing shall remain throughout construction. No disturbance to the tree protection area is authorized and, ~~I~~if any sign of disturbance is observed ~~by the City~~ within the tree protection area by the City, a stop work order may be issued until corrections are made and any damage is restored;

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

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

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

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

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

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

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

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

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

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

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

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

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

(7)~~(8)~~ Additional Permit Restrictions or Requirements.

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

(b) Reporting Requirements for Removal of ~~Hazard Tree~~At Risk Tree(s). Emergency removal of at risk tree~~hazard tree~~(s), ~~as defined,~~ without a permit, and as allowed ~~in this title~~herein, shall be reported to the City on a form provided by the Director within ~~10~~ 21 days of the emergency removal ~~on a form provided by the Director~~.

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

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

(e) Permits Required for Removal of Trees in Tree Tracts, Tree Conservation Easements or as Part of Tree Enhancement Plans. Any trees required as part of any tree tract, tree conservation easement or tree enhancement plan under provisions of this chapter shall remain permanently unless a minor tree removal permit or major tree clearing permit

under this section is obtained and replacement trees are planted in accordance with standards of this chapter.

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

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

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

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

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

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

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

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

18.45.080 ~~Tree~~ Tree retention, preservation, ~~tree tracts~~ and tree replacement requirements.

(1) Tree ~~Preservation Methods~~Retention and Preservation for All ~~for Residential~~ Zones. The following tree ~~preservation methods~~retention and preservation percentages apply to all ~~residential zoned lands on sites greater than one acre in size~~residential, commercial, and industrial zoned properties unless exempt pursuant to CMC 18.45.050, Exemptions:~~.~~

(a) R-1 Zoned Lots. A minimum of 40 percent of the significant trees shall be retained within areas unconstrained by critical areas and outside shoreline jurisdiction.

(b) R-4 and R-6 Zoned Lots. A minimum of 35 percent of the significant trees shall be retained within areas unconstrained by critical areas and outside shoreline jurisdiction.

(c) R-8, R-18, and MHO Zoned Lots. A minimum of 25 percent of the significant trees shall be retained within areas unconstrained by critical areas and outside shoreline jurisdiction.

(d) CC, GC, MC, TC, and I Zoned Lots. A minimum of 25 percent of the significant trees shall be retained within areas unconstrained by critical areas and outside shoreline jurisdiction.

(2) Tree Replacement Required. Any significant tree lawfully removed pursuant to the provisions of CMC 18.45.050, Exemptions, or CMC 18.45.060, Permits and Permit Requirements, shall be subject to the following replacement requirements:

(a) Each significant tree shall be replaced by two replacement trees;

(b) Each landmark tree shall be replaced by three replacement trees;

(c) Each heritage tree shall be replaced by five replacement trees;

(d) Replacement coniferous trees shall be at least six feet in height;

(e) Replacement deciduous trees shall be at least two and one-half inches DBH;

(f) In order to restore and enhance a site as nearly as practicable to its pre-removal character and function, replacement trees shall be primarily conifer and native species to Washington;

(g) Nonnative replacement trees shall be recommended by a qualified arborist as having characteristics suitable to the proposed location of planting, or shall be otherwise approved by the City;

(h) The condition of replacement trees shall meet or exceed current American Nursery and Landscape Association or equivalent organization's standards for nursery stock;

(i) Financial guarantees for replacement trees may be required consistent with the provisions of Chapter 14.105 CMC;

(j) Installation of required replacement trees shall be in accordance with the International Society of Arboriculture's best management practices for arboriculture including, but not limited to, soil assessment, sampling, amendments, and conservation, which ensure the tree's long-term health and survival;

(k) The Director may consider smaller-sized replacement trees if the applicant can demonstrate that smaller trees are more suited to the species, the site conditions, and the purposes of this section, and that such trees will be planted in sufficient quantities to meet the intent of this section;

(l) Replacement trees that are less susceptible to laminated root rot shall be considered for tree replacement. Douglas Fir trees shall not be allowed as a replacement species. The following less susceptible trees may be used as replacement trees:

(i) Coast redwood,

(ii) Incense cedar,

(iii) Ponderosa pine,

(iv) Jeffrey pine,

(v) Lodgepole pine,

(vi) Knobcone pine,

(vii) Sugar pine,

(viii) Western white pine,

(ix) White bark pine,

(x) limber pine,

(xi) Sitka spruce,

(xii) Western red cedar,

(xiii) Alaskan-cedar, and

(xiv) All hard woods;

(m) All replacement trees shall, upon planting, be designated as significant trees regardless of their size. Replacement trees shall not be removed after planting.

Exemptions to allow for tree removal, as provided in CMC 18.45.050, do not apply to replacement trees;

(n) Tree replacement in conjunction with tree removal within critical areas shall be consistent with the replacement ratios required in this section;

(o) Tree replacement within the shoreline jurisdiction, as regulated by Chapter 16.05 CMC, has the potential for different replacement ratios. Additionally, a shoreline letter of exemption is likely to be required for tree removal and planting within the shoreline jurisdiction.

(3) Incentives. The following incentives are available for higher levels of landmark or heritage tree preservation:

(a) Landmark Trees or Heritage Trees. The permanent preservation of a healthy landmark or heritage tree pursuant to CMC 18.45.080 shall receive a tree retention credit as follows:

(i) 150 percent tree credit for a landmark tree or 200 percent credit for a heritage tree pursuant to the following provisions:

(1) Preservation of a landmark or heritage tree must be part of a continuous canopy adjacent to an environmentally critical area and associated buffer;

(2) Preservation of a landmark or heritage tree must be part of a continuous canopy adjacent to a public park and/or other protected open space; or

(3) Preservation of a landmark or heritage tree must be part of any other on-site and/or off-site continuous canopy.

(ii) 125 percent credit for a landmark tree or 150 percent credit for a heritage tree pursuant to the following provisions.

(1) Preservation of a landmark or heritage tree must provide relief from identified environmental impacts;

(2) Preservation of a landmark or heritage tree must provide perimeter connectivity and/or off-site screening;

(3) Preservation of a landmark or heritage tree must be able to be incorporated into required landscaping; or

(4) An isolated cluster of landmark or heritage trees.

To qualify for this incentive, all landmark or heritage trees proposed for permanent preservation shall be outside of any environmentally critical area and associated buffer.

(4) Location for Tree Replacement – On Site. The location of replacement trees shall be consistent with a report produced by a qualified arborist and peer reviewed by a qualified professional to ensure land capability. Unless approved for one or more of the alternatives set forth in subsection (5) of this section, replacement trees shall be planted on the site from which significant trees are removed and may be approved for the following areas on site:

(a) On-site replacement trees approved to be located within environmentally critical areas and associated buffers shall receive a 125 percent credit toward the tree replacement requirement.

(b) On-site replacement trees approved to be located within the perimeter of a stormwater facility shall receive a 100 percent credit toward the tree replacement requirement.

(c) On-site replacement trees approved to be located in places other than subsections (a) and (b) of this section shall receive a 100 percent credit toward the tree replacement requirement.

(5) Location for Tree Replacement – Alternatives Sites Subject to City Approval. The location of replacement trees shall be consistent with a report produced by a qualified arborist. Replacement costs, including materials plus labor, shall be at the applicant's expense. When on-site replacement cannot be completely achieved, the following alternatives may be considered, subject to City approval:

(a) Off-Site Tree Replacement.

(i) The number of replacement trees shall be the same as described in CMC 18.45.080(2). Replacement costs (material plus labor) shall be at the applicant's expense.

(ii) Allowable sites for receiving off-site replacement plantings may include public lands, open space areas, open space tracts, delineated environmentally critical areas and associated buffers. A receiving site shall be within the Covington city limits or upon land owned by the City, if the City determines off-site planting is appropriate and warranted.

(iii) Allowable sites for receiving off-site replacement plantings may include private properties and other properties owned by a homeowner's association, including but not limited to open space areas, open space tracts, recreational tracts, delineated environmentally critical areas and associated buffers. An agreement between the receiving site and the sending site shall be executed and recorded against the title of both properties, and an easement shall be granted to the City allowing entry to the property to ensure compliance with the provisions of this chapter and survivability of the trees. Trees to be replaced shall be contained within a tree protection easement and subject to the financial guarantee provisions of Chapter 14.105 CMC.

(b) Fee in lieu. It is the City's intent to preserve and replace trees on site. Only in rare cases, and as a last resort, may a fee in lieu of tree replacement be allowed, subject to approval by the Director. The Director may allow up to 25 percent of the required replacement trees to be converted to a tree unit credit basis through the fee in lieu of tree replacement. The amount of the fee shall cover the cost of a tree, installation (labor and equipment including staking and mulching), maintenance (including watering, warranty, and monitoring) for five years, and fund administration. Such costs shall be determined by the City. All fees shall be paid to the City prior to final site plan or final plat approval, or the issuance of a tree removal permit, or any permit authorizing removal of trees to be replanted pursuant to this chapter, whichever applies. In no case shall a tree credit in lieu replacement be less than $2,000 per tree. Funds generated by fee in lieu of tree replacement shall be used to plant replacement trees on public property.

(c) Landscape Restoration. Where appropriate, other measures designed to mitigate the loss of trees by restoring all or parts of the forest landscape and its associated benefits may be considered. Measures, as determined by the director, may include, but are not limited to:

(i) Creation of wildlife snags from trees that would otherwise be removed;

(ii) Replacement of certain ornamental trees with native shrubs and groundcover;

(iii) Replacement of at risk or short-lived trees with healthy new trees that have a greater chance of long-term survival;

(iv) Daylighting and restoration of stream corridors with native vegetation consistent with Chapter 18.65 CMC; and

(v) Protection of nonsignificant trees to provide for the successional stages of forest development.

(6) Tree Replacement Guidelines and Requirements. The following order of preference shall be considered for tree replacement:

(a) Replacement trees should be planted to reestablish or enhance tree clusters where they previously existed;

(b) Where possible, replacement trees should be planted adjacent to environmentally critical areas and the shoreline jurisdiction. Replacement trees may be planted within a designated open space tract, environmentally critical area tract, or shoreline buffer where it is determined by a qualified arborist in conjunction with a qualified biologist that such planting enhances and complements existing vegetation and environmental functions;

(c) Replacement trees shall be planted in locations appropriate to the species' growth habit and horticultural requirements;

(d) Replacement trees shall be located away from areas where damage is likely;

(e) Replacement trees shall be located to provide screening of the development from adjacent properties, where appropriate;

(f) Replacement trees shall be planted in areas that connect or are adjacent to a designated open space tract or environmentally critical area tract or other open space, where appropriate;

(g) Replacement trees shall be integrated into the required landscape plans, if any, for a development; and

(h) Replacement trees to be planted next to or under power lines shall be selected with consideration of the trees' maturation and maintenance requirements.

(7) Tree Maintenance. All required retention trees, replacement trees, and relocated trees shown on an approved permit, whether located on site or off site, shall be maintained in healthy condition by the applicant throughout the life of the project, unless otherwise approved by the Director in a subsequent permit or approval. Healthy condition can be achieved by employing, as appropriate, the following preventative measures, consistent with best management practices for maintaining the health of the tree:

(a) Trees shall not be topped;

(b) Excessive canopy raising shall not be allowed unless necessary to protect life and property;

(c) Visible deadwood on trees to be protected or relocated shall be pruned;

(d) Fertilizer shall be applied to enhance the vigor of stressed trees;

(e) Use of soil amendments and soil aeration in tree protection and planting areas;

(f) Application of mulch over tree drip line areas; and

(g) Proper water availability during and immediately after construction.

~~(a) When land greater than one acre in size is subdivided, regardless of the number of lots created, if at least 20 significant trees exist on the site prior to subdivision, trees shall be preserved in one or more tree tracts and subject to a tree preservation plan, prepared by a certified arborist, landscape architect, or forester, and submitted and approved as part of either a minor tree removal permit or a major tree clearing permit. Any site with at least 20 significant trees, but which cannot meet the tree preservation requirements with existing trees, shall be required to supplement any required tree tract with tree plantings at least two inches in caliper from the published City list of Pacific Northwest native trees as outlined in subsection (9) of this section. Cutting of significant trees on a site and~~

~~proposing replanting of trees when the tracts do not contain the required minimum 20 significant trees is not allowed without specific review and approval of the Director after the tree tracts are proposed. As many significant trees as practical shall be preserved and identified in the required tree preservation plan.~~

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

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

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

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

~~enhanced landscaping is provided in excess of the requirements contained in CMC 18.31.130.~~

~~(3)~~ **18.45.090** ~~Tree~~ **Tree protection standards.** ~~Preservation Standards for Residentially Zoned Properties Greater Than One Acre in Size. The following standards apply to sites greater than one acre in size for~~

(1) Trees retained, preserved, or replaced within all applicable residential~~ly~~, commercial, or industrial zoned properties, whether part of a formal subdivision or any development or redevelopment permit, ~~where trees~~ shall be preserved ~~in~~within tree tracts or a tree conservation easement, regardless of the size or number of lots. Property owners are responsible for the viability of protected trees, including normal care, maintenance, and pruning, so that such trees can achieve their 30-year maturity goals. Should a protected tree become diseased to the point that it must be removed or die, the property owner is responsible for replacing the protected tree with a tree or trees that will achieve the original canopy coverage for which the protected tree was planted to achieve.

(2) There shall be no minimum tree tract size or percentage of land required to be devoted to tree preservation or tree enhancement. The tree tract shall be designed and sized appropriately to protect the critical root zone associated with all trees designated for retention, preservation, and replacement, at full mature age, pursuant to the provisions of CMC 18.45.080, however, the following measures are required:~~Tree tract or tree conservation easement size and percentage of sites devoted to tree preservation shall meet the following standards, and multiple tree tracts are allowed:~~

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

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

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

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

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

(b)~~(f) Alternative Tree Canopy Plan. As an alternative to the above prescriptive standards for minimum size and number of tree tracts or easements, and minimum percentage of significant trees to be saved, an applicant may accomplish required tree preservation within any proposed subdivision by preserving 20 percent of the total existing tree canopy in tree tracts on the site. The exact amount of existing tree canopy on the site prior to subdivision shall be satisfactorily demonstrated on ortho-photo maps, flown and verified within the last three years, and supplied by the applicant as part of a major tree clearing permit and required "tree preservation plan."~~ No portion of a tree tract shall be less than 20-feet in width.

(3) Designation. Any application and/or plan required for new development shall show all significant trees designated for protection. These areas may be shown by labeling them as "Protected Significant Trees" or such other designation as approved by the Director. Protected vegetation, including protected trees, shall not be modified, harmed, or removed except as provided in this section.

(4) Preservation. An approval for new development shall require the significant trees to be retained are permanently preserved within a tract, easement, or other permanent protective mechanism. The location, purpose, and restrictions of these protected areas shall be shown on the face of the deed, plat, binding site plan, covenant, or similar document, and shall be recorded with the King County Recorder's Office or its successor. The recorded document shall include the requirement that the protected areas shall not be removed, amended, or modified without the written approval of the City.

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

(5) Priority Location of Tree Tracts~~ and Concurrent Reduction in Percent Requirements for Land Devoted to Tree Tracts in Residential Zones~~. Placement of tree tracts is encouraged in certain areas to enhance their viability and to complement natural and environmental features of the property. The ~~following~~ priority locations below are encouraged for placement of all trees in designated tree tracts. When such tree tracts are located according to the following priority, a subdivision or development is eligible for up to a one percent reduction in the tree retention percentage requirement~~s~~ outlined in CMC 18.45.080. ~~for land devoted to tree tracts. For example, if a 10-acre site is required to set aside seven percent of the total site area for tree preservation in tree tracts according to subsection (3)(b) of this section, and those tracts are~~

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

(a) Priority Locations for Tree Tracts.

(i) Adjacent to identified critical areas and critical area buffers.

(ii) Adjacent to existing public or private parks.

(iii) Adjacent to existing trails or trail systems.

(iv) Adjacent to existing stands of significant trees on adjacent property boundaries.

(v) Adjacent to existing storm water retention systems.

(vi) Adjacent to significant wildlife habitat areas.

(vii) Adjacent to contrasting land uses where establishing a tree buffer will enhance both properties and reduce potential impacts of dissimilar land uses.

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

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

(6)~~(8)~~ Maintenance of Tree Tracts. All tree tracts required under this code shall require a permanent maintenance agreement to be approved by the City on forms provided by the Director, which designates the private home-owners association, property owner association,

or other private entity responsible for said maintenance of trees. All tree tracts shall provide a guarantee for reasonable accessibility for future tree maintenance.

(7)~~(9)~~ Pacific Northwest Native Trees Required. Any tree(s) to be planted as part of the requirements of this chapter to fulfill tree tract, tree conservation easement, tree preservation or tree enhancement plan standards for residential, commercial or industrial property, when sufficient trees do not exist on site, shall be Pacific Northwest native trees included on the City-published list~~.~~; however, the Director may approve climate appropriate, drought tolerant alternatives if they demonstrate there is a reason not to use native trees. In addition, they shall be at least two-inch caliper and shall contain a mix of at least 60 percent coniferous trees.

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

~~**18.45.090 Heritage tree(s).**~~

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

~~(1) Designation of Heritage Tree(s).~~

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

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

~~owner without a subsequent permit action by the City to remove and mitigate said removal.~~

~~(c) If the Director determines the tree(s) satisfies the definition of heritage tree and approves the proposed heritage tree(s) designation, it shall be memorialized in a covenant signed by the City and the property owner(s) and in a form acceptable to the City. The covenant shall require that the heritage tree(s) be maintained in a manner that is consistent with the provisions of this section. The covenant shall be recorded by the County. The City shall pay recording fees. The covenant and designation shall be effective from the date of recording until such time as a tree permit has been issued for the removal or cutting of the heritage tree(s).~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(i) A site plan indicating the location of proposed heritage tree(s).~~

~~(ii) The methods to be used to preserve the heritage tree(s).~~

~~(iii) If a heritage tree(s) is proposed for removal, a narrative statement outlining the reasons why the heritage tree(s) should be removed.~~

~~(iv) A mitigation plan indicating the replacement trees or additional new trees to be placed on the site. The mitigation plan should demonstrate, to the extent possible, that the character of the site will not substantially change as a result of the development.~~

~~(c) Site design adjustments may be allowed in some cases, as follows:~~

~~(i) The Director may grant a variance to front, side, and/or rear yard setback standards by up to 20 percent to retain a heritage tree(s). The adjustment shall be the minimum necessary to accomplish preservation of heritage tree(s) on-site and shall not conflict with the International Building Code or any other permit conditions placed on the property.~~

~~(ii) The Director may grant a 10 percent variance to the lot size and/or a 10 percent variance to the lot width and/or lot depth standards in approving a short plat or other land division if necessary to retain heritage tree(s). The Director may accept a preliminary plat application and recommend approval to the hearing body of a plat which provides for similar variance to lot size, width and depth standards if necessary to retain heritage tree(s).~~

18.45.100 Tree maintenance standards and best pruning practices.

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

18.45.110 Tree preservation modification and departure options.

(1) The purpose of this section is to provide an opportunity for departure from or modification of the prescribed tree tract standards or tree enhancement plans under a major tree clearing permit when the specific prescriptive standards of the code are difficult to meet, while ~~yet still encourage~~ encouraging creative or unique design of viable tree stands in the preservation of trees and tree tracts on all regulated sites ~~greater than two acres in size~~. The Director shall have authority, consistent with the special conditions stated herein, to modify specific requirements and/or impose alternative standards and requirements in unique or special circumstances to assure the fulfillment of the stated purpose of this chapter and to allow for flexibility and creative design of viable tree stands in preservation of significant trees. Any modification or departure cannot reduce the requirements of Chapters 18.65 or 16.05 CMC.

(2) In order to grant a specific modification or departure from prescribed requirements for tree preservation or tree tracts, an applicant, through an alternative tree preservation and mitigation plan, must: (a) demonstrate reasonable efforts to save as many trees as possible, (b) submit a tree preservation and mitigation plan, prepared by a ~~certified~~ qualified arborist, that adequately mitigates for the loss of trees from proposed development, and (c) indicate how the alternative tree preservation and mitigation plan equally or better meets the intent and purpose of this chapter and its tree preservation goals. Alternative options for preservation and mitigation of trees shall include a combination of new tree planting and preservation of a reasonable number of existing significant trees on site, when feasible.

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

(a) The ability to preserve natural or native plant areas;

(b) The ability to preserve unique wildlife habitat;

(c) The ability to preserve large numbers of significant, landmark, or heritage trees;

(d) Opportunities to support the value and functions of critical areas or critical area buffers;

(e) Instances where insufficient significant trees exist on a site that has a unique size, shape or topography;

(f) Instances where the only significant trees are isolated, scattered throughout a site, and/or not able to be concentrated in viable tree tracts;

(g) A site must comply with special vegetation or view easements or corridors; or

(h) Instances where provision of required infrastructure and public safety access requires removal of significant trees.

18.45.120 Performance guarantees, liability, insurance and licensing.

(1) Performance Guarantees.

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

(b) The City shall withhold issuance of a major tree clearing permit until the required performance guarantee/financial security is approved by the City Attorney and filed with the City. The City may enforce said guarantees according to their terms and pursuant to any and all legal and equitable remedies.

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

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

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

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

18.45.130 Enforcement, violations and penalties.

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

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

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

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

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

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

(d) Work, in the Director's judgment, that is an imminent danger ~~hazard~~ to property or public safety, is adversely affecting or about to adversely affect adjacent property or rights-of-way, a drainage way, watercourse, environmentally critical area, or storm water facility, or is otherwise adversely affecting the public health, safety, or welfare;

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

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

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

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

(4) Mitigation and Restoration Plan. Violators of this chapter or a permit issued hereunder shall be responsible for restoring unlawfully damaged areas in conformance with a plan, approved by the Director, which provides for mitigation, repair of any tree damage, and restoration of the site, and which results in a site condition that, to the greatest extent practical, equals the site

condition that would have existed in the absence of the violation(s). Violators shall be liable for environmental damage caused thereby and shall be required to mitigate such damage as follows:

(a) Mitigation and Assessment of Tree Value.

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

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

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

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

(b) Restoration and Timely Compliance.

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

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

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

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

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

(6) Penalties.

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

(~~b~~a) Initial Violation – Civil Penalties. Any person, firm, or corporation who violates or fails to comply with any term or provision of this Chapter or of an exemption, a minor tree removal, or major tree removal permit issued under this chapter shall be deemed to have committed ~~As an additional concurrent penalty, it shall be~~ a civil infraction violation. ~~for a person, firm, or corporation to violate or fail to comply with any term or provision of this chapter.~~ Each day the violations are ongoing without remedy shall be a separate infraction. Civil infraction violations of this Chapter shall be assessed a monetary penalty of $300 per inch of DBH of any significant tree, $600 per inch of DBH of any landmark tree, or $900 per inch of DBH of any heritage tree removed or damaged in violation of this Chapter. If the DBH cannot be measured, the monetary penalty shall be assessed per inch based on the diameter of the remaining tree stump. If the DBH cannot be measured, the monetary penalty shall be assessed per inch based on the diameter of the remaining tree stump. Removal of any tree in violation of this chapter shall require replacement planting as described in CMC 18.45.080. ~~A person, firm, or corporation found to have committed a civil infraction shall be assessed a monetary penalty in accordance Chapter 1.30 CMC.~~ All civil infraction violations issued pursuant to this chapter shall be enforced in accordance with the procedures set forth in Chapter 1.30 CMC.

(b) Subsequent Violation – Criminal Penalties. Any person who engages and/or causes another to engage in a subsequent violation of this Chapter shall be deemed to have committed a misdemeanor, and if found guilty, shall be subject to a fine not to exceed $1,000, imprisonment not to exceed 90 days, or both such fine and imprisonment. Each separate violation and each day that passes before such violation is resolved shall be considered a separate criminal misdemeanor offense. In the event of any subsequent violation within five years of the first criminal violation, such violation shall constitute a gross misdemeanor, punishable by a fine not to exceed $5,000 or imprisonment not to exceed 365 days or both such fine and imprisonment. Removal of any tree in violation of this chapter shall require replacement planting as described in CMC 18.45.080. All criminal infraction violations issued pursuant to this chapter shall be enforced in accordance with the procedures set forth in Chapter 9.05 CMC.

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

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

18.45.140 Appeals.

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

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

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

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

(a) Whether the violation involved tree removal for monetary gain;

(b) Whether the appellant has previously violated or intentionally violated provisions of this chapter;

(c) Whether the Director's determination or interpretation substantially exceeds or understates the actual intent and purpose of this chapter; or

(d) Whether the violation was intended or was in reckless disregard of provisions of this chapter.

(5) Appeals Involving Determination of Environmental Damages. For any appeals involving determination of environmental damage as outlined in CMC 18.45.130(4)(a), the Hearing Examiner shall not reduce the Director's valuation of any environmental damage if said amount does not exceed the actual cost of restoring the site pursuant to said restoration plan. If an appeal involves determination of environmental damages as outlined in CMC 18.45.130(4)(a), and if the Hearing Examiner determines that the Director's valuation of environmental damage should be reduced, then the Examiner shall compute the amount of said reduction based upon the following factors:

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

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

(c) Whether the appellant has presented a genuine issue pertaining to the interpretation of any provision of this chapter.

18.45.150 Severability.

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