



AGENDA

Lincoln City Planning Commission
Tuesday, September 1, 2020, 6:00 PM
Council Chambers,
801 SW Highway 101 - 3rd Floor, Lincoln City, OR 97367

1. **CALL TO ORDER, PLEDGE OF ALLEGIANCE, & ROLL CALL**
2. **AGENDA CHANGES OR REVISIONS**
3. **MINUTES**
 - 3.1. Planning Commission - Regular Meeting - Jul 21, 2020 6:00 PM
4. **FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS**
5. **PUBLIC HEARINGS/DELIBERATIONS**
6. **OLD BUSINESS**
7. **NEW BUSINESS**
 - 7.1. Revisiting the Approach to Revising the Tree Ordinance
8. **PLANNING COMMISSION TRAINING**
9. **REPORTS & COMMENTS**
10. **FUTURE AGENDA ITEMS & NEXT MEETINGS**
11. **ADJOURN**

All information for this meeting is available on the City of Lincoln City website at www.lincolncity.org, and this meeting will be televised live on Charter Channel 4 Lincoln City and rebroadcast at various times. Planning Commission meetings are streamed live on the Internet through a link on the City of Lincoln City website, and can also be viewed following the meeting. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, for a hearing impaired device, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Cathy Steere, City Recorder, at 541-996-1203.

**LINCOLN CITY PLANNING COMMISSION
MINUTES
July 21, 2020**

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, & ROLL CALL

Attendee Name	Title	Status	Arrived
Marci Baker	Commissioner	Present	
Kim Blackerby	Commissioner	Present	
Joshua Brainerd	Commissioner	Excused	
Patti Kroen	Chair	Present	
Lenny Nelson	Commissioner	Present	
Miles Schlesinger	Commissioner	Present	
MacNeale Smith	Commissioner	Present	

2. AGENDA CHANGES OR REVISIONS

No changes or revisions to the agenda

3. MINUTES

3.1.

MOTION:	Motion to adopt the minutes from the July 7, 2020 Planning Commission meeting
MOVER:	Lenny Nelson, Commissioner
SECONDER:	MacNeale Smith, Commissioner
AYES:	Baker, Blackerby, Kroen, Nelson, Schlesinger, Smith
EXCUSED:	Joshua Brainerd
RESULT:	Passed

4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS

1. Final Order 2020-05 SUB/PUD 2020-01

1. Discussion

City Attorney Richard Appicello introduced the conversation, saying that the findings and final order for the decision denying SUB/PUD 2020-01 was included in the meeting packet with a black spot for the Planning Commission to identify a legitimate basis for denial. There were conversations about trees, which are dealt with in condition #3. There were conversations about market absorption, which is not one of the applicable criteria. There was conversation about parking, but the application meets the code requirement for parking. That was in Anne Marie's testimony. The Planning Commission cannot change the requirements in the context of an application. The record has multiple instances of testimony from the City Engineer that a Traffic Impact Analysis is not triggered to require an exaction. Imposing a condition of approval or a denial seems to be inappropriate. When you have a prior approval

with improvements, those improvements should be bonded by code. If those prior things were not properly contracted or bonded, it is inappropriate to put that on the current developer.

Mr Appicello continued, say that there was also an alternate draft Final Order provided to the Planning Commission, and that in order to consider it, they would need to have a motion to reconsideration of the decision denying SUB/PUD 2020-01. If the motion is made and seconded and passes, it would take the commissioners back to deliberations, and then they could talk about the alternate Final Order. Mr Appicello summarized his comments by saying that the commissioners could discuss the basis for denial to complete the draft Final Order, or they could make a motion to reconsider the decision.

Chair Kroen asked Mr Appicello if the only way to consider the alternate document is to reopen deliberation. He confirmed that the commissioners could still make the same decision that they came to before, but that if they want to step back and discuss the alternate Final Order, the process is to make a motion to reconsider.

Commissioner Schlesinger said that he did not think revisiting the decision was necessary. He said that he thought the commissioners had voted against the application because the authority to build the subdivision had expired, and the previous applicants had not done the work that they were supposed to complete. He said that he does not see any reason to change his mind on that point.

Commissioner Nelson said that she would have liked more than 15 minutes to look at the draft alternative Final Order. She said that she thought the Planning Commission could stay with the original motion and fill in the blanks in the draft Final Order with the reasons why. One of the reasons would be that the surrounding traffic conditions are not suitable for this project.

Mr Appicello told the commissioners that there is no criterion in the code that a past failure of a project can be held against the applicants of a project. The substantial evidence in the record right now is that the project does not meet the triggers for a Traffic Impact Analysis, and that the requirements for the last phase do not apply to this project. The Planning Commission will decide how they want to decide, and the applicants are free to appeal to the City Council.

Chair Kroen said that the problem she has with the traffic issue is that the proposed project was a piece of a larger development that was brought to the Planning Commission in the past and there were requirements that the applicants seem to have gotten around by splitting the project into phases. Mr Appicello replied that the first approval would have had tied to it a requirement to enter into a contract or bond. The approval of this project is not related to the failure of that project. Developers break up projects all the time to avoid exaction. Maybe there should be a requirement in the code that treats these cumulatively, but we cannot be writing new code in this context.

Commissioner Schlesinger said that it is up to the Planning Commission to stop this ridiculous project which is poorly planned, and not one that should go forward - at least in the sense that the traffic plan is not made properly.

Commissioner Baker said that her understanding is that we do traffic impact studies for safety, and that it is known that one was required previously for this project when it was part

of the whole development. She asked whether, if there is a fire and a fire truck cannot get in to the neighborhood, the city liable for that, and said that she cannot ignore that, and the Planning Commission cannot put whole neighborhoods at risk.

City Manager Ron Chandler said that, ultimately, it is the role of the PC to make a decision. Staff came with recommendations. The Planning Commission needs to make a decision and describe the reasons why. The role of the Planning Commission is to take all of the information from the developer and the staff and to make a decision that is defensible. The City will have to defend the decision if it's challenged.

Mr Appicello reminded the commissioners of a recent training on quasi-judicial and legislative procedures. He said that the process of quasi-judicial procedures is rote. Does the application comply or not comply with the requirements of the code. Anne Marie Skinner said a number of times that the application complies with the code. When you take a position that you do not think it is fair because they are getting away with splitting up their projects - I understand that the code probably needs to be revised, but you don't get to write new code right now.

Chair Kroen asked whether it would be a dangerous precedent to set in the City? Mr Appicello responded that the code does not give direction to reach back to a prior approval and accumulate or aggregate all of the traffic impacts.

Commissioner Smith said that he wonders if the application can be recommended as technically correct but with reservation - that it sounds like it is technically correct, but the Planning Commission has significant reservations. Commissioner Schlesinger asked why the application would be technically correct if you have an expired permit and then you build six of the houses and then put in the road for another twelve.

Commissioner Nelson said that if the city needed no more than people who were competent to make rote decisions, it would not need a Planning Commission.

Chair Kroen said that the Planning Commission might want to go back and reopen deliberations and perhaps work a little more to craft the second document that Mr Richard sent. She said that, in addition to the issue of the street, she has six issues on her list. She suggested entertaining a motion to reconsider the decision, spending a little bit of time going over the six items that she identified, and then potentially bringing it back to the next meeting with a revised recommendation.

4.1.2.

MOTION:	Motion to reconsider the decision on SUB/PUD 2020-01 from the July 7, 2020 Planning Commission meeting
MOVER:	Kim Blackerby, Commissioner
SECONDER:	MacNeale Smith, Commissioner
AYES:	Baker, Blackerby, Kroen, Schlesinger, Smith
NAYS:	Lenny Nelson
EXCUSED:	Joshua Brainerd
RESULT:	Passed

3. Deliberation

Chair Kroen said that she wanted to quickly go through the six things that she would have put into the blanks in the this first Findings and Facts document that was included with the meeting packet:

"We have a brand new development agreement ordinance and it would be really nice if it actually was used. The application was submitted as needed housing, and while Lincoln City certainly has a need for affordable and workforce housing, this application presents neither. There is no housing included in the application, and likewise no development agreement. So no linkage there between what was suggested and what would actually happen.

"The second one we've beaten up pretty much. This is a piece of a larger development that was originally approved, that originated the traffic study. Sixteenth Street was not improved as the condition required - the permit lapsed. Basically Phase I and II included 28 lots. Seventy-five percent of those lots have not been developed, but then we were told that Phase II could not be done unless this phase was approved, indicating to me that it is an integral part of the larger project. And I think piecemealing this development now, the street improvement is required to address the cumulative impacts that would be ignored.

"The suggestion that this is affordable housing is questionable due to the costs associated with the extreme amount of prep and fill, plus retaining wall installation that apparently needs to be done to make the lots buildable. We were also told that 700 of the 730 trees or roughly 90% of the trees on the site need to be cleared and removed, and as Anne Marie stated, that the removal needs to be tied to a building permit. We don't have any building permits being applied for in this application, so it seems that clearcutting this acreage prior to the building permit is not consistent with our code. Particularly given the fact that 75% of the lots of Phase II remain undeveloped. That does make me nervous, that we would clear cut in advance of the development here. Perhaps that is mitigated by putting a time limit on the vertical structures.

"The multi-family requires a minimum of 250 square feet per unit that would be recreation area. In our hearing, we were told that the recreation area set aside is actually the drainage swale that would be left natural because it cannot be built upon. There is no plan to provide walking trails, benches, play structure, anything else within this recreation set-aside. I don't think that a recreation set-aside in a swale is consistent with recreation area. Sounds more like open space to me, and not consistent with our ordinance. So that's another question that I have. We didn't get any answer when I asked how the residents would actually recreate in that quote-unquote recreation area.

"The other, Richard has already talked about, was the expiration date. No building completion date was offered by the applicant, so would expect to see that as a condition of approval. There was also no tree replacement plan. There was no preliminary or final landscape plan offered by the applicant.

"So those are my six particulars that led me to want to deny this application."

Commissioner Nelson said that she thinks those are excellent reasons, and that what she sees happening here is the Planning Commission telling the developers what they need to do. Chair Kroen responded that planning departments or planning commissions often become

reaction departments. It would be nice if everyone came in with neat and tidy plans for development, but that has not been the experience.

Commissioner Blackerby asked Mr Appicello if there was anything in what Chair Kroen read that cannot be included in the findings. Mr Appicello replied that the first issue is that the applicant identified the development as needed housing under state law, which says you must have clear and objective criteria. We have clear and objective criteria. Staff apply the law at the time to the facts that been submitted in the application, and those facts either comply or do not comply. A developer can come in and ask to enter into a development agreement but that is not a by-right - so the first point that Chair Kroen brought up is not appropriate for those reasons. That this is a piece of a larger development that lapsed is factually correct. Our code does not say that if you are part of a development that lapsed we get to apply the cumulative impacts. If the City Engineer had something to hang her hat on, it would have been in her report, if there was something that allowed her to do that. So the second point is difficult to sustain. The issue of clearing the trees - the problem is that the condition says that the applicant will comply with the code. The code says you can build infrastructure and remove trees to build the infrastructure. The third basis stated is questionable because it is covered in Condition 3, which the applicant has already agreed to. The recreation is questionable, but the applicant said they were setting area aside for passive recreation, which we do value here.

Chair Kroen said that she does not have the code in front of her, but would like to look at the requirements for recreational space in planned unit developments. She said that it does seem to discuss requirements for recreation that are more than a swale.

Commissioner Schlesinger said that he values Mr Appicello's comments, but the Planning Commission has to represent the community, and this is not a good plan for the community because it has been piecemeal from the get-go. He said that he will not support it unless the applicant makes certain changes.

Commissioner Blackerby said that he agrees with Commissioner Schlesinger. He said that his opinion of the development has not changed - he does not think that it is for the good of the city and that he thinks that it is a sloppy plan at best.

Commissioner Baker said that she is in agreement with everyone else and that she would like to hear back on the wording in the code about recreation. She said that there was discussion about open space, but that she doesn't know if that is the same as the recreation area requirement - just leaving open space. The code requires recreation areas in the multifamily zone to provide places for families to recreate. Without hearing the words in the code, how are we supposed to know whether the application meets the requirement or not.

Commissioner Baker read section 17.52.260(F) of the Lincoln City Municipal Code, which discusses the requirements for recreation area for attached-single family developments. Mr Appicello said that some of the required space in the application is in backyards, and some of it is passive recreation. He said that he does not see anything in that section requiring facilities or active recreation. The definition of recreation does not include those things either.

Chair Kroen said that, if nothing else, the conversation has shown some glaring loopholes in the code. Commissioner Baker said that it sticks with her that the only testimony received was from a neighbor who was concerned with the traffic impacts.

4.1.4.

MOTION:	Motion to deny the application for SUB/PUD 2020-01 with the findings read during deliberation by Patti Kroen, and authorize Chair Kroen to sign the final order once it is put together
MOVER:	Lenny Nelson, Commissioner
SECONDER:	Miles Schlesinger, Commissioner
AYES:	Baker, Blackerby, Kroen, Nelson, Schlesinger, Smith
EXCUSED:	Joshua Brainerd
RESULT:	Passed

5. PUBLIC HEARINGS/DELIBERATIONS

None

6. OLD BUSINESS

None

7. NEW BUSINESS

None

8. PLANNING COMMISSION TRAINING

None

9. REPORTS & COMMENTS

Chair Kroen asked about the status of the search for a new senior planner. Mr Chandler said that, if all goes as planned, the new senior planner will begin by the end of July.

10. FUTURE AGENDA ITEMS & NEXT MEETINGS**11. ADJOURN**

Respectfully submitted,

James White
Assistant Planner

Patti Kroen
Chair



PLANNING COMMISSION STAFF REPORT
MEETING DATE: September 1, 2020

Report prepared by David Mattison, Senior Planner

Revisiting the Tree Ordinance Revisions

Agenda item added at the request of the City Manager and Planning Commission Chair.

LCMC 17.52.220 (PDF)

17.52.220 Tree protection and removal.

A. Scope. This section applies to all trees within the city wherever located.

B. Purpose. This purpose statement provides a general philosophy to guide the specific enforcement and implementation of provisions and criteria in this section.

1. Value of Trees. The city benefits from trees. Trees of varied types add to the aesthetic beauty of the community and provide important environmental benefits including: help clean the air, help control erosion, maintain water quality and provide noise barriers.

2. Intent. The intent of this section is to protect trees where appropriate, including taking reasonable measures in development to avoid tree removal, and to prohibit damage, mutilation, and destruction of valuable trees. Protection of trees is preferred over replacement. This section aims to:

- a. Establish regulations to protect trees;
- b. Encourage the preservation of trees in the city;
- c. Require the preservation of trees on property subject to development approval;
- d. Set standards for removal of trees;
- e. Control problems of soil erosion, destruction of scenic values and wildlife habitats;
- f. Improve air quality;
- g. Protect water quality; and
- h. Protect land from erosion.

3. Need for Exceptions. The city recognizes that, at the time of development, removing certain trees may be necessary to accommodate structures, streets, utilities, and other needed or required improvements within the development. The burden of proof is on the applicant to show removal is necessary, and that other alternatives are not feasible. Cost shall not be the sole factor in determining whether an alternative is feasible.

C. Definitions. The following definitions apply to regulations governing the preservation and removal of trees contained in this section exclusively:

“Arborist, certified” means a licensed tree care consultant, who is certified as an arborist by the International Society of Arboriculture, or other arborist approved by the city.

“Canopy cover” means the area above ground that is covered by the trunk and branches of the tree.

“Commercial forestry” means the removal of 10 or more trees per acre per calendar year for sale. Tree removal undertaken by means of an approved tree removal plan under subsection (F) of this section is not considered commercial forestry under this definition.

“Cut” means to fell or remove a tree or to do anything that has the natural result of causing the death or substantial destruction of a tree, including girdling and topping.

“Development” means grading, excavation, fill, or construction on a site requiring site plan review, conditional use approval, subdivision approval, or planned unit development approval.

“Diameter” means diameter of tree measured at four and one-half feet above grade on the uphill side. In the case of multi-stemmed or trunked trees, the diameter shall be the sum of diameters of all individual stems or trunks, measured at a point no more than six inches above the surrounding grade or measured six inches from the point where the stems digress from the trunk, whichever produces the larger measurement. If a tree has been removed and only a stump shorter than four and one-half feet remains, diameter shall be measured as the diameter of the top of the stump.

“Girdling” means the cutting or removal of the outer bark and conducting tissues of a tree, potentially causing death by interrupting the circulation of water and nutrients.

“Hazardous tree” means a tree that by reason of emergency conditions, disease, infestation, age, or other condition presents a known and immediate hazard to persons or to public or private property.

“Pruning” means the cutting or trimming of a tree in a manner consistent with recognized tree maintenance practices.

“Removal” means cutting or removing 50 percent or more of the crown, trunk or root system of a tree, or any action that results in the loss of aesthetic or physiological viability or causes the tree to fall or be in immediate danger of falling. “Removal” includes topping, but shall not include pruning performed to applicable standards.

“Significant natural resource areas” means those lands described in Chapter 17.46 LCMC.

“Topping” means the severe cutting back of the tree’s crown limbs to stubs to such a degree so as to remove the natural canopy and disfigure the tree.

“Tree” means a perennial woody plant, typically of eight feet or more in height, with a single main stem (the trunk or bole), or in some cases, multiple trunks, from which branches and twigs extend to form a characteristic crown of foliage.

“Large tree” includes any tree that has a trunk at least six inches in diameter (see definition of diameter).

“Mitigation tree” includes any tree required by this section as a replacement for a tree removed.

“Protected tree” includes any tree preserved in a tree protection or landscape plan, any tree planted as mitigation for removed trees, any tree planted to fulfill a requirement of the city code, and any tree planted to replace protected trees that died or were removed.

D. Tree Removal Prohibitions.

1. Tree removal is prohibited, except as allowed in this section. Violations of this section are enforceable as Class B violations.
2. Topping is prohibited, except where necessary for utility work or public safety, in which case it requires a tree removal permit. The burden of proof is on the applicant to demonstrate in the permit application that topping is necessary, the only means of accomplishing the task, and preferable to removal. The city will rely on the most recent version of the ANSI A300 Standards for Tree, Shrub, and Other Woody Plant Maintenance to distinguish topping from pruning, and will keep a copy of the publication at the planning and community development department for review.
3. Removal of protected trees is prohibited. Protected trees must be maintained according to applicable tree protection plans, CC&Rs (conditions, covenants and restrictions), and other recorded agreements.
4. Removal of trees in wetlands that fall under the jurisdiction of state or federal government removed without concurrence from those state and/or federal agencies that have jurisdiction is prohibited.
5. Removal of trees as part of commercial forestry operations, as described in this section, is prohibited, and commercial forestry is not permitted, except as specifically allowed by this section.

E. When Tree Removal Is Allowed Without a Tree Removal Permit.

1. Generally.
 - a. In all cases, removal of trees must be conducted in a manner consistent with LCMC 12.08.050(B), which regulates land-disturbing activities.
 - b. Removal of trees less than six inches in diameter is permitted without a tree removal permit, unless they are protected trees.
2. Single-Family Dwellings and Duplexes or Two-Family Dwellings, and Attached Single-Family Dwellings. Removal of trees is allowed without a permit on a lot developed with a single-family dwelling, duplex or two-

family dwelling, or attached single-family dwelling, provided:

- a. The lot is not capable of further land division due to size or configuration, or if the lot is capable of further division, trees to be removed are within 100 feet of the dwelling; and
- b. No protected tree may be removed without a permit, except that any tree planted to fulfill the landscaping requirements in LCMC 17.52.100 for lots with single- and two-family dwellings may be removed, if replaced by a plant or plants with equal plant unit value, as described in LCMC 17.52.100(G)(1).

3. Public Utilities and Public Works.

- a. Removal of trees is allowed without a permit if performed by utility or city public works personnel to remove vegetation and trees that present a danger to life or property, to restore utility services, or to reopen a public thoroughfare to traffic.
- b. Removal of trees is allowed without a permit if performed by city public works personnel to remove trees that are deemed nuisances under Chapter 8.12 LCMC, Nuisances, or to remove trees necessary to install or maintain improvements on parklands, streets, sewers, or utilities within publicly owned and dedicated rights-of-way or public utility easements.

4. Dangerous and Nuisance Trees. Removal of a tree that is a hazard or a nuisance, affecting public safety as defined in LCMC 8.12.080, as demonstrated to the satisfaction of the director of planning and community development in consultation with the city engineer, as applicable to the circumstances.

F. When a Tree Removal Permit Is Required. Except as allowed in subsection (E) of this section, no person shall engage in or cause land clearance or tree removal without first having obtained a tree removal permit issued by the city.

1. A tree removal permit may be issued only for:

- a. Single-Family Dwellings, Duplexes, Two-Family Dwellings, and Attached Single-Family Dwellings. Removal of trees is allowed with a permit on a lot adjacent to a lot developed with a single-family dwelling, duplex or two-family dwelling, or attached single-family dwelling, provided:
 - i. The adjacent lot is owned by the owner of the developed lot or the owner of the developed lot has written permission from the owner of the adjacent lot, and the trees to be removed are within 100 feet of the dwelling; and
 - ii. No protected tree may be removed, except that any tree planted to fulfill the landscaping requirements in LCMC 17.52.100 for lots with single- and two-family dwellings may be removed, if

replaced by a plant or plants with equal plant unit value, as described in LCMC 17.52.100(G)(1).

b. Multifamily Dwellings, Commercial or Industrial Sites, Undeveloped Sites, Trees More Than 100 Feet from Single-Family Dwellings and Duplexes or Two-Family Dwellings, and Attached Single-Family Dwellings on the same lot. Removal of trees is allowed with a permit for the following reasons only:

i. **Diseased or Dead.** Removal of dead trees or diseased tree(s) weakened by age, storm, fire or other injury. If a visual inspection by the city staff cannot establish that the tree is dead or diseased, the applicant shall, at the applicant's cost, obtain the services of a certified arborist to make that determination. If the arborist determines that the tree is dead or diseased and cannot be saved, the director of planning and community development shall approve its removal;

ii. **Solar Access.** Removal of tree(s) to allow solar access to the south face of buildings during solar heating hours, taking into account latitude, topography, microclimate, existing development, existing vegetation, and planned uses and densities, which cannot be accomplished by pruning as demonstrated by an appropriate professional;

iii. **Surveyor Access.** Selective removal of tree(s) and vegetation to allow reconnaissance surveys, topographical determinations of a project site, coring to permit geotechnical evaluation and soil surveys, and similar efforts, to the extent the applicant demonstrates such removal is necessary to perform such surveys;

iv. **Spread of Disease, Insects and Threat of Natural Hazard.** Where removal is necessary to prevent the spread of disease or insects declared to be a nuisance by a government agency or certified arborist, or to correct or eliminate a verified natural hazard to the property owner, surrounding properties, or the community at large;

v. **Selective Thinning on Open Space and Park Zoned Land.** Where crowding is impairing the health and vigor of trees as determined by an appropriately qualified forester, after notice and hearing pursuant to LCMC 17.76.020 and 17.76.030 the city council may allow selective thinning on property zoned open space or park according to an acceptable maintenance plan to improve the health of the forest and using the lowest impact forestry methods practical;

vi. **Development.** Removal of tree(s) for the placement of structures and other improvements, in accordance with subsection (F)(9) of this section and provided:

(A) The city has approved a site plan, subdivision, planned unit development or building permit; and

(B) The city has approved a tree protection plan, if required by subsection (H) of this section.

2. Conditions. The city may place conditions on any tree removal permit as appropriate to assure that the tree removal is conducted in a manner consistent with this section and LCMC 12.08.050(B), which regulates land disturbing activities. Where conditions of a permit conflict with requirements of this section, the more restrictive shall apply.

3. Review Process. If part of a project that requires subdivision review, site plan review, or a conditional use permit, the permit for tree removal shall be processed as part of development or conditional use permit review. Other tree removal applications shall be reviewed by the director of planning and community development, who may require an erosion control plan to determine conformance with Chapter 12.08 LCMC, Grading and Erosion Control, and rules issued by the public works department.

Where a tree protection plan is required for development review, the city shall not issue a tree removal permit until the applicant has demonstrated compliance with all conditions of the development approval that are required to be met prior to the start of any land clearing, grading, or construction.

4. Fee. The city council may adopt by resolution a fee to cover the actual or average costs of reviewing or issuing a tree removal permit.

5. Authority. The city manager or the city manager's designee, including the director of planning and community development in the case of development approval, or the public works director in the case of a public works permit, is authorized to issue, extend, enforce, and revoke a tree removal permit.

6. Permit Notice and Appeal.

a. The city shall provide notice of decision or hearing in conjunction with the required notice for subdivision, partition, site development review, planned development or conditional use and in accordance with Chapter 17.76 LCMC, Administrative Provisions. Notice shall not be required for other tree removal permits.

b. Appeals of a tree removal permit shall be as provided in this title for quasi-judicial land use decision. Administrative decisions by the director of planning and community development may be appealed to the planning commission, which shall be the final appeal. Decisions of the planning commission, not including appeals of administrative decisions, may be appealed to the city council in the same manner as provided for in Chapter 17.76 LCMC.

c. The city shall not issue a tree removal permit approved in conjunction with a development review until the time allowed for appeals has passed and no appeal has been filed, or after all appeals have been exhausted. The timely filing of an appeal shall have the effect of suspending the issuance of a permit pending the outcome of the appeal.

7. Display of Permit – Inspection. The tree removal permit shall be kept on site during permitted activities. The permit grantee shall allow city representatives to enter and inspect the premises at any reasonable time, and failure to allow inspection shall constitute a violation of this section.

8. Duration. A tree removal permit shall be effective for 18 months from the date of approval. Upon written request by the applicant prior to the expiration of the existing permit, a tree removal permit shall be extended for a period of up to one year if the approval authority finds that the applicant is in compliance with all prior conditions of permit approval and that no material facts stated in the original application have changed.

9. Tree Removal for Development. Removal of tree(s) for the placement of structures and other improvements shall comply with the following:

a. Timing of Permit Issuance.

i. Building. A permit for tree removal from individual building lots shall be issued in conjunction with, and not prior to, issuance of the building permit.

ii. Infrastructure. A tree removal permit may not be issued under this subsection for removal for installation of street, gutter, curb, sidewalk, sanitary sewer, storm sewer, and water system improvements until the city engineer has given final approval to the design of the improvements and to the grading and erosion control plans, and, to the extent otherwise required by this section or this code, the owner has entered into a public infrastructure improvement agreement for the improvements and provided financial security therefor, including for tree mitigation; and the director of planning and community development has approved a tree protection and mitigation plan, if required.

iii. Phased Developments. For phased developments, a separate tree removal permit is required for each phase of infrastructure development, which will not be issued until such time as public works approves commencement of grading for the phase. Tree removal permits issued for infrastructure development shall apply only to the minimum area necessary to accommodate the improvements.

b. Tree removal shall conform to the approved tree protection and replacement plan, if required by subsection (H) of this section, and to subsection (I) of this section, Tree Protection and Replacement Plan Required.

c. Revegetation. Immediately following completion of the improvements, areas disturbed by tree removal shall be revegetated in accordance with the requirements of LCMC 17.52.100(F), (G), (H), and (I).

d. Bond Required. Whenever trees are removed that according to this chapter require replacement, if removal is in conjunction with a development, the anticipated cost of replacement trees and vegetation required shall be covered by the bonding mechanism approved for the development, or a separate bond expressly for the purpose of required tree replacement.

G. Replacement of Trees Lawfully Removed.

1. Applicability. The standards of this section apply to trees removed with a permit required by subsection (F) of this section that are more than 100 feet from a building subject to site plan review, or conditional use approval, or that are removed to allow development of parking in excess of the amount of required parking, or that are removed for purposes other than compliance with a governmental requirement. If the tree being removed is dead, dying, diseased or dangerous to life or property, replacement is encouraged, but not required, unless the tree is a protected tree, in which case replacement is required.

2. Replacement Requirement. Removed trees six inches or more in diameter must be replaced on a one-for-one basis.

3. Pre-Development Tree Removal. Any trees that were located in the areas described in subsection (G)(1) of this section that were removed within one year prior to application for a tree permit shall be included among those required to be replaced under subsections (G)(1) and (G)(2) of this section.

4. Tree Replacement Specifications – Species, Size and Location. When replacement of a tree or trees legally removed is required by subsection (G)(2) of this section, the number, species and size shall be governed by all of the following:

a. Species. The city prefers native trees, including conifers; however, the planning commission or director of planning and community development shall take into consideration site compatibility as well as the property owner's preference, provided the species of replacement tree is expected to mature to approximately the same environmental and aesthetic value as the tree being removed.

b. Size. The minimum diameter of a replacement tree shall be one and one-half inches. The planning and community development director or planning commission may adjust the size requirement for tree species where the applicant demonstrates to the satisfaction of the director of planning and community development that the minimum size would be unreasonable or impractical in the circumstances.

c. Location. Trees shall be replaced according to a planting plan provided by the applicant and approved by the director of planning and community development, showing all preserved and replacement trees.

5. Planting Site. The preferred replacement site shall be on the property from which a tree is being

removed. Provided one or more of the replacement trees cannot be located viably on the property from which a tree is removed, the director of planning and community development may either require that (a) the applicant pay an in-lieu payment into the city tree fund an amount equivalent to the value of the replacement trees after installation, as provided in this subsection, or that (b) the applicant plant one or more replacement trees on other private or public property within the city, with the consent of the owner and under a management plan approved by the city. The planting location of mitigation trees on city property shall be determined by the city council, whose authority is hereby delegated to the city manager. The city manager, in conjunction with staff, shall select an appropriate planting site on open space, a park, or other public land suitable for new trees.

6. In-Lieu Payment. The in-lieu payment amount shall be equivalent to the cost of the replacement trees, plus the cost of delivery, installation, and maintenance for a period of one year. The in-lieu payment approved and received shall be used by the city for planting and maintenance of mitigation trees on city-owned property. Any unspent funds shall be carried forward from year to year for the purpose of meeting the intent of this chapter to maintain the city's urban forest.

7. Responsibility to Replace Mitigation Trees. The planting of replacement trees shall take place in such a manner as to reasonably ensure that the trees grow to maturity. Any mitigation tree planted on private property dying within one year of the date of planting shall be replaced by the owner of the property.

8. Timing of Replacement. Replacement trees, including trees meant to replace a previously planted mitigation tree that has died within one year, shall be planted within six months of the date of issuance of a tree removal permit or death of a mitigation tree, unless the director of planning and community development has granted an extension of time no longer than six months due to season or unforeseen circumstances. Failure to complete mitigation within the allotted time frame shall be considered a violation of this chapter and subject to the penalties provided for in subsection (K) of this section.

H. Design Modifications for Tree Retention – Design Modifications of Public Improvements. The planning commission, with input from the city engineer, may adjust design specifications of public improvements to accommodate tree retention where possible and where it would not interfere with safety.

I. Tree Protection and Replacement Plan Required.

1. Applicability. Requirements of this subsection apply to any lot, parcel or combination of lots or parcels for which an application for a subdivision, site plan review, planned unit development or conditional use is filed if the proposed project will involve tree removal.

2. Elements of a Tree Protection Plan. The owner of lots or parcels specified in subsection (I)(1) of this section shall provide a tree protection plan for the planting, maintenance, removal and protection of trees, prepared by a certified arborist to meet the approval of the director of planning and community development

and the city engineer. The tree protection plan shall include all of the following items; however, the director of planning and community development and the city engineer may waive one or more of the items where the required information already has been made available to the city, or is not necessary to review the application.

- a. Identification of the location, size and species of all existing, large trees and protected trees.
- b. An accurate topographical survey, subdivision map or plat map that bears the signature of a qualified, registered surveyor or engineer, and showing:
 - i. The shape and dimensions of the property, and the location of any existing and proposed structures or improvements;
 - ii. The location of the individual large trees and protected trees on the site, and indicating species, approximate height, diameter, canopy spread and common name; and
 - iii. The location of existing and proposed easements, as well as setbacks required by existing zoning requirements.
- c. In lieu of the map or survey required in subsection (1)(2)(b) of this section, an applicant proposing to remove trees may provide aerial photographs with overlays, GIS documentation, or maps approved by the director of planning and community development, that clearly indicate the information required by this subsection.
- d. Arborist Report. The report, prepared by a certified arborist, shall describe all large trees and all protected trees on the site and any large or protected trees removed within the period of one year prior to application for a tree permit. The report shall include the following:
 - i. Information on the health and condition of all large trees and protected trees;
 - ii. Information on species, common name, diameter, and approximate height and age of all large trees and protected trees; and
 - iii. Indication of those subject to removal or transplanting.
- e. Tree Identification. Unless specifically exempted by the director of planning and community development and the city engineer, a statement that any trees proposed for removal will be identified by a method obvious to a site inspector, such as tagging, painting, or flagging, in addition to clear identification on construction documents.
- f. Replacement Plan. A detailed description and map of the proposed tree replacement program,

meeting the standards of subsection (l)(2) of this section and including the information on the number, size, species, and cost.

g. Covenants, Conditions and Restrictions (CC&Rs). Where the applicant is proposing to remove trees on common areas in a recorded subdivision or planned unit development, the applicant shall provide a copy of the applicable CC&Rs, including any landscaping provisions.

h. Tree Protection Program. A program describing how preserved trees will be protected during tree removal and construction that meets the requirements of subsection (l) of this section, unless specifically exempted by the director of planning and community development. The tree protection program shall commit the property owner to a maintenance plan that promotes the vitality of all protected trees.

3. Recording of Tree Protection Plan. Approved tree protection plans shall be recorded, either separately or included in development agreements required in LCMC Titles 16 and 17 for planned unit developments (PUDs) and subdivisions. The property owner shall record a deed restriction as a condition of approval of any development permit affected by this section to the effect that trees preserved and planted in accordance with an approved tree protection plan may be removed only with a permit and only for the reasons described in subsection (E) of this section, in which case the tree shall be replaced. The form of this deed restriction shall be subject to approval by the director of planning and community development and the city attorney. Except as provided in this subsection, removal of a tree designated for protection under a tree protection plan recorded as a condition of development approval shall constitute a Class B violation.

J. Protection Standards Related to Construction.

1. Applicability. These standards apply to all construction or development that requires a tree removal permit.

2. Standards.

a. All trees required to be protected must be clearly labeled as such.

b. The property owner shall give notice to the city a minimum of two business days (at least 48 hours) in advance of any grading or clearing of the site.

c. The property owner shall permit the city to enter the site at any time to review compliance with the tree protection plan and tree removal permit.

d. No person may conduct any construction activity likely to be injurious to a tree designated to remain, including, but not limited to, placing solvents, building material, or construction equipment, or

depositing soil, or placing irrigated landscaping, within the drip line, unless a plan for such construction activity has been approved by the director of planning and community development or the planning commission based upon the recommendation of an arborist.

e. No person shall attach any device or wire to any tree unless needed for tree labeling or protection.

f. Protective Barrier.

i. Before development, land clearing, excavation, filling, or any land alteration for which a tree removal permit is required, the developer shall delineate clearly the exterior property lines of the project.

ii. The developer shall erect and maintain barriers adequate to prevent incursion of machinery within drip lines of trees the tree protection plan identifies to be preserved in and within drip lines of trees on adjoining properties.

iii. Barriers must be sufficiently substantial to withstand nearby construction activities, and the most appropriate and protective barrier shall be utilized. Plastic tape or similar forms of markers do not constitute barriers. For street rights-of-way and utility easements, however, barriers may consist of stakes set a maximum of 50 feet apart along the outside perimeters of areas to be cleared and connected with ribbon, plastic tape, rope, or similar material used for demarcation.

iv. Selection and installation of demarcations and barriers must be approved by the director of planning and community development or the city engineer prior to commencement of grading or tree removal. Protective barriers shall remain in place until the city authorizes their removal or issues a final certificate of occupancy, whichever occurs first.

K. Violation – Enforcement.

1. Responsibility/Liability. The owner and the owner's agents and contractors, including but not limited to an arborist, contractor, engineer or other person responsible for clearing, grading, construction or tree removal on a project, are responsible for meeting the requirements of this section and shall have joint and separate liability for any violation of this section.

2. Violations Defined. A violation of this section includes cutting, damaging, or removing a tree:

a. Without a valid tree removal permit; or

b. In noncompliance with, or breach of, any condition of approval of a tree removal permit, tree protection plan, or tree maintenance plan; or

- c. In noncompliance with any condition of any city permit including but not limited to a building permit, public works permit, approved tree protection plan, covenants, codes and restrictions (CC&Rs) imposed by a condition of approval and required to be reviewed and approved by the city, or other development approval that results in damage to, or contributes to the decline or failure of, a tree or its root system; or
 - d. In noncompliance with any recorded covenant; or
 - e. In noncompliance with any other section of this title or code.
3. Remedies. If the city manager or the city manager's designee has reason to believe that a violation of this chapter has occurred, then he or she may do any or all of the following:
- a. Require the owner of the land on which the tree was located to submit sufficient documentation, which may include a written statement from a certified arborist, demonstrating that removal of the tree was authorized by law;
 - b. Issue a stop work order, as provided in subsection (K)(4) of this section;
 - c. Issue a citation pursuant to Chapter 1.16 LCMC with an expedited hearing;
 - d. File an action to temporarily restrain and/or permanently enjoin the owner from continuing to violate this section;
 - e. Take any other action allowed by law.
4. Authorization to Enforce Compliance. The director of planning and community development, the building official, and the public works director are each authorized to issue a stop work order, withhold approval of a final plat or public works permit, or withhold issuance of a certificate of occupancy, permits or conduct of required inspections or acceptance of work until the provisions of this section, including any conditions attached to a public works permit, tree protection plan or tree removal permit, have been fully met.
- a. Use of Stop Work Order. In the event any grading, clearing, excavation, filling, construction or land-disturbing activity on the property is about to occur, is occurring or has occurred in such a manner that preserved trees or trees required to be protected on the site are in imminent danger of damage or removal from such activities, any person authorized to enforce this chapter may order all work on the site to cease until adequate safeguards are in place as follows:
 - i. Notification. Based on sufficient evidence that activities on site are likely to cause or have caused harm to trees required to be protected, city staff shall immediately notify any responsible person on the project that a stop work order is imminent and that all work on the site shall cease.

Staff shall make reasonable attempts to inform the owner and developer by any means, including, but not limited to, telephone, facsimile, or electronic communication;

ii. Written Form. The order shall be in written form, copied to the property owner, and include a brief description of the violations or imminent harm that are required to be immediately addressed;

iii. Posted Sign. A sign declaring the stop work order shall be posted on the site;

iv. Duration. The stop work order shall not be lifted until adequate safeguards, including any amendments to an agreement between the applicant and the city, a development approval, a tree protection plan, a tree removal permit, a public works permit, or other applicable permit, are reviewed and approved by the city;

v. Removal of Stop Work Order. The stop work order shall be removed after the city staff responsible for the matter has determined there is no longer a need for the order;

vi. Settlement. Whenever the city has issued a citation for violation of this code in connection with activities leading to issuance of a stop work order or order to cease and desist activities on land, the city and owner may agree to resolve the citations by means of settlement in lieu of further prosecution. Any monies paid in lieu of fines shall be deposited in the city tree fund. Any such settlement agreement shall be approved by the city council.

5. Violation – Penalties. A violation of this section shall be enforced as a Class B violation pursuant to Chapter 1.16 LCMC. Any person convicted of a violation of this section shall be subject to civil penalties including a fine up to the maximum amount provided by this code, with illegal removal of or damage to one tree constituting a single violation. In addition to the monetary fine, a person convicted of a violation under this section shall be required to remedy any damage caused by the violation.

a. Upon conviction of a violation of this section, a person shall be required to mitigate the unlawful tree cutting or removal by replacing the removed trees with like kind trees. If the director of planning and community development makes a determination that one or more of the replacement trees cannot be located viably on the property from which a tree is removed, the municipal court judge shall impose as a penalty a forfeiture in the amount of money equivalent to the cost of the replacement trees, plus the cost of delivery, installation, and maintenance for a period of one year.

b. In the event replacement trees are required to be planted as mitigation for unlawfully removed or damaged trees, the replacement trees must be planted in accordance with the specifications for tree replacement in subsection (K)(7) of this section.

c. The municipal court judge is authorized to impose an enhanced penalty of twice the value of the unlawfully removed or damaged trees where the tree removal was conducted in violation of this section

and in disregard of any Lincoln City permit or approval.

6. Alternative Sentence for Multiple Violations. In the event a person is convicted of more than one violation of this section, the following alternative sentence may be imposed:

If a person has gained money or property through the commission of an offense under this section, then upon conviction thereof, the municipal court judge may sentence the person to pay an amount, fixed by the court, not to exceed double the amount of the gain from the commission of the offense. "Gain" is defined as the amount of money or value of property derived from the commission of the violation, less the amount of money or value of property seized by or surrendered to the city. "Value" shall be the greater of the market value or replacement cost as determined by a licensed professional in the tree, nursery, or landscape field.

7. Specifications for Replacement of Unlawfully Removed Trees. Replacement of a tree removed in violation of this section shall be according to the following:

a. Species. A replacement tree shall be a substantially similar species, taking into consideration site characteristics. If a replacement tree of the species of the tree removed or damaged is not reasonably available, the director of planning and community development may allow replacement with a different species of equivalent or greater natural resource value; and

b. Size and Number. If a replacement tree of the size cut is not reasonably available on the local market or would not be viable, the director of planning and community development shall require replacement with more than one tree of the maximum size reasonably available and viable, so that the sum of the calipers is equal to or greater than the estimated caliper of the tree removed or damaged. If this number of trees cannot be located viably on the subject property, the director of planning and community development may require one or more replacement trees to be planted on other property within the city, either public property or, with the consent of the owner, private property, or may accept fees in lieu of planting as described in subsection (G)(6) of this section; and

c. Manner of Planting. The planting of a replacement tree shall take place in a manner reasonably calculated to allow growth to maturity.

8. Exclusivity. The remedies set out in this section shall not be exclusive, and the city may take any action authorized by law to enforce this section.

9. Any person designated to enforce violations of city ordinances may enforce this section.

L. Tree Board.

1. Purpose. An advisory board is hereby established to advise staff and city council on matters relating to

trees.

- a. The tree board shall make recommendations on a tree manual implementing the requirements of this section and that establishes guidelines for tree selection, installation, and maintenance, using best practices. The city council shall adopt the tree manual by resolution.
- b. The tree board shall make recommendations on suggested tree species for use in planting and landscaping in Lincoln City, Oregon.
- c. The tree board shall make reports from time to time as it deems advisable on ordinance revisions and enforcement, information concerning tree disease or infestation, and other matters related to trees.

2. Members. The city council by ordinance shall establish the number of members and any membership qualifications of the tree board. (Ord. 2015-10 §§ 5, 6; Ord. 2011-04 § 1; Ord. 2010-03 § 1; Ord. 2008-16 § 1; Ord. 2002-09 § 2; Ord. 92-17 § 4; Ord. 84-2 § 4.220)