

ORDINANCE NO. 08-866

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY WASHINGTON, CREATING A NEW CHAPTER 19.30 OF THE BLACK DIAMOND MUNICIPAL CODE REGARDING TREE PRESERVATION

WHEREAS, the City Council finds that the preservation of significant trees is consistent with the goals and policies of the City Comprehensive Plan in that they are an integral part of the City's vision as contained in the Comprehensive Plan, the Black Diamond Urban Growth Area Agreement, and the Black Diamond Area Open Space Agreement and further find that trees stabilize soil and control water pollution, conserve energy, reduce storm water runoff, improve air quality, provide habitat to wildlife, preserve the forested character of the Pacific Northwest that citizens value, and also help mitigate the effects of global warming by helping to offset the carbon emissions from development; now, therefore

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, ORDAINS AS FOLLOWS:

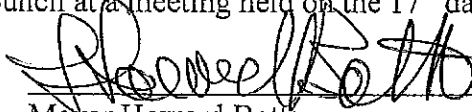
SECTION 1. There is hereby added a new Chapter 19.30 to the Black Diamond Municipal Code which shall be entitled "Tree Preservation", and shall read as set forth in the attached Exhibit A, which is hereby incorporated by reference.

SECTION 2. This Ordinance shall be in full force and effect five days after its passage, approval, posting and publication as provided by law. A summary of this Ordinance may be published in lieu of publishing the Ordinance in its entirety.

SECTION 3. If any provision of this Ordinance is determined to be invalid or unenforceable for any reason, the remaining provisions of this Ordinance shall remain in force and effect.

Introduced the 17th day of July, 2008.


Passed by a majority of the City Council at a meeting held on the 17th day of July, 2008.



Mayor Howard Botts

Attest:

Approved as to Form:


Brenda L. Streepy, City Clerk
Published: 7/22/08
Posted: 7/18/08
Effective Date: 7/27/08

Loren D. Combs, City Attorney

Chapter 19.30

TREE PRESERVATION

Sections:

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19.30.010 Intent

A. The City recognizes the importance of trees for the benefits they provide to property values and to the environment. Trees stabilize soil and control water pollution, conserve energy, reduce storm water runoff, improve air quality, provide habitat to wildlife, and preserve the forested character of the Pacific Northwest that citizens value. Preserving trees in large quantities also contributes to a reduction in global warming.

B. The objectives of this chapter include reducing tree loss during construction and development; reducing indiscriminate removal and destruction of trees; and mitigating tree loss by requiring replacement of trees.

19.30.020 Applicability

The requirements of this chapter shall apply any time of any land alteration, whether pursuant to a permit for clearing, grading, land alteration, land disturbance, building construction or land development, or on an existing developed site.

19.30.030 Additional Definitions

A. Caliper : Standard for trunk diameter measurement of nursery stock. Caliper of the trunk shall be the trunk diameter measured at DBH (Diameter at Breast Height), which is four and one-half feet above grade.

B. Drip Line: An area encircling the base of a tree delineated by a vertical line descending from the outer limit of a tree's branch tips to the ground.

C. Heritage Tree: A tree of unique significance to the community that may be associated with historic figures, events or properties; be of rare or unusual species; or may have aesthetic value worthy of preservation for the health and general welfare of the community.

D. Significant Tree: Any healthy tree that is at least six (6) inches in caliper, excepting nonsignificant trees. A tree growing with multiple stems shall be considered significant if at least one of the stems, as measured at a point six (6) inches from where the stems digress from the main trunk, is at least four (4) inches in diameter. Any tree that is planted to fulfill requirements of this chapter shall be considered significant, regardless of size or species.

E. Nonsignificant Tree: any tree under six (6) inches caliper or those included on the following list, regardless of size:

1. Black locust (*Robinia pseudoacacia*);
2. Cottonwood (*Populus freemontii*);
3. Native alder (Native *Alnus* only);
4. Native willow (Native *Salix* only);
5. Lombardy poplar (*Populus nigra*).

19.30.040 Retention of Significant Trees

No person, corporation, agency or other entity shall remove any significant or heritage tree, as defined in this chapter, without first obtaining a tree removal permit pursuant to this chapter. Provided, a permit shall not be required for situations specifically exempted by this chapter.

The City shall not accept and/or issue any land use or building permit for a period of six years from the date of verification that any significant tree has been removed from a site if a tree removal permit was not first obtained pursuant to this chapter. Whenever trees are removed in violation of this chapter, replacement shall be required per 19.30.070 prior to the City accepting and/or issuing any land use or building permit. A tree replacement plan shall be approved by the Natural Resources Director prior to commencing replanting.

19.30.050 Exemptions

The following actions are exempt from the provisions of this chapter:

- A. Emergency removal of any hazardous trees necessary to remedy an immediate threat to persons or property;
- B. Removal of trees within or adjacent to public rights-of-way or easements, at the direction of the City, for the protection of the public safety (such as obstructions inhibiting visibility at intersections);
- C. Removal of obviously dead or diseased trees;
- D. Removal of no more than six (6) trees in any thirty-six (36) consecutive months, subject to the following conditions:
 1. there is no current application for construction or development on the subject site;
 2. the tree is not within an easement protecting a regulated critical area, designated primary or secondary open space, or a required buffer area; and
 3. the tree is not one of the last two significant trees on the property;
- E. The removal of trees for the construction of a new or addition to an existing single family dwelling or duplex, where the trees are located less than ten (10) feet from the building exterior walls, driveways, or utilities ;
- F. Trees that have been grown for the purpose of sales of Christmas trees or commercial landscaping materials by commercial nurseries and tree farms;
- G. Harvesting with a Class II or Class III forest practices permit issued by the Washington State Department of Natural Resources under RCW 76.09.050. Provided that, the City shall not accept and/or issue any land use or building permit for six years from the date of approval of a Class II or Class III forest practices permit.

19.30.060 Tree Removal Permits

A. A permit is required for the removal of trees that are subject to this chapter. A tree plan, meeting the following requirements and standards, shall be submitted as part of a permit application for tree removal.

B. Existing Development/Level I Tree Plan.

1. A Level I Tree Plan is required for changes to existing development, including all residential, commercial, industrial or institutional sites that involve a land disturbance or expansion of buildings or parking. The following information shall be provided as part of the plan:

- a. All proposed development of structures, parking, driveways, roadways, lanes, sidewalks and pathways, and retaining walls.
- b. All significant trees located within the property.
- c. Planting plan including location, species, and size of new trees to be planted.

2. For existing development subject to a Level I Plan, all significant trees within any required perimeter planting area, critical area, buffer, designated primary or secondary open space, or native growth protection area shall be retained, except for driveways, lanes, or streets necessary for access and as approved by the City. In all other areas, site design should integrate significant trees into required landscaping.

C. New Development/Level II Tree Plan

1. A Level II Tree Plan is required for new development, including residential, commercial, industrial or institutional developments that involve land disturbance, parking areas, roads, buildings, or other construction. The Tree Plan must be completed by a certified professional forester, arborist, or landscape architect and must provide the following information:

- a. Information required for a Level I Plan; and
- b. Description of off-site trees that could be affected by proposed activity.

2. For new development subject to a Level II Plan, all significant trees within any required perimeter planting area, buffer, designated primary or secondary open space, or native growth protection area shall be retained, except for driveways, lanes, or streets necessary for access and as approved by the City. In all other areas, site design should integrate significant trees into required landscaping.

19.30.070 Tree Replacement

A. Each Level I and Level II Tree Removal Permit shall require a tree replacement plan. With the exception of significant trees that are relocated, each significant tree removed shall be replaced by new trees based on Diameter at Breast Height (DBH) as required by the table below.

B. Replacement trees shall be planted on the site from which significant trees are removed or, if on-site replacement is demonstrated to be impractical, on an off-site location determined by the City.

C. Replacement trees must meet the following criteria:

1. Significant trees must be replaced with an equivalent number of trees based on Diameter at Breast Height (DBH);
2. New trees shall meet or exceed current American Nursery and Landscape Association or equivalent organization's standards for nursery stock;
3. New trees shall be planted in locations appropriate to the species' growth habit and horticultural requirements;

4. New trees must be located away from areas where damage is likely.
5. Deciduous replacement trees shall be a minimum of three (3) inch in caliper (DBH), evergreen trees must be a minimum of twelve (12) feet in height; and
6. Trees shall be watered as necessary to ensure survival and growth during their first two growing seasons after planting.

Size of Tree Removed (DBH)	Number of Replacement Trees Required
6" – 9"	3
9" – 12"	4
12" – 16"	5
>16"	6

D. In lieu of onsite tree replacement, the City shall create a “Significant Tree” removal mitigation fund. As an option, an applicant can pay a flat fee of \$50.00 per each tree removed into this fund. These funds will be utilized in replanting projects throughout the City of Black Diamond, as determined by the City.

E. When at least forty percent (40%) of the total site area is preserved as non-disturbed open space, critical areas and their associated buffers, or other areas subject to a conservation easement, the tree replacement requirement shall not apply. Provided, however, the Natural Resources Director shall require the retention of significant trees in areas that will be located in public right-of-ways, landscape and open space areas that will be open to the public or owned and controlled by an association, unless the Director determines preservation of the trees would unreasonably interfere with the construction of needed infrastructure.

19.30.080 Protection of Trees During Construction

The following best management practices shall be applied to protect trees during development or construction activities.

- A. All construction activities, including staging and traffic areas, shall be prohibited within five feet of the drip line of protected trees.
- B. Tree protective fencing shall be installed along the outer edge and completely surround the drip line of significant trees to be protected prior to any land disturbance.
- C. Tree protective fencing shall be a minimum of four feet high and be highly visible. Signs must be posted on the fence reading “Tree Protection Area.”
- D. Trees to be retained shall be watered appropriately during and immediately after construction and shall be protected from erosion and sedimentation.
- E. The grade shall not be changed within 5 feet of the drip line of the trees to be preserved, nor shall any impervious surface be installed within 5 feet of the drip line of the trees to be preserved.
- F. Directional felling shall be used to avoid damaging trees designated for protection.

19.30.090 Heritage Trees

The purpose of the heritage tree designation is to recognize trees with a unique significance to the community, to establish a register of these trees, and to provide additional means for their protection. Heritage trees may be associated with historic figures, events or properties; be of rare

or unusual species; or may have aesthetic value worthy of preservation for the health and general welfare of the community.

A. The City shall maintain a heritage tree register and map, which may be amended at any time pursuant to the process in this section.

1. Trees can be nominated for designation by individual citizens, community groups, city staff, or any board or commission of the City.

2. Staff shall review an application and make a recommendation to the City Council, which shall have the final authority for designating heritage trees.

3. Trees designated as heritage trees shall be classified as follows:

a. Historical – a tree which by virtue of its age, its association with or contribution to a historical structure or district, or its association with a noted citizen or historical event;

b. Specimen – age, size, health and quality factors combine to qualify the tree as unique among the species in Black Diamond and Washington State;

c. Rare – one or very few of a kind, or is unusual in some form of growth or species;

d. Significant grove – outstanding rows or groups of trees that impact the city's landscape.

B. Upon receipt of a nomination, the Natural Resources Director shall review the request and provide mailed notice of the nomination to the property owner and provide other public notice such as to invite public comment for a period of not less than ten (10) days. The director shall inspect the tree, consider public comments, and formulate a recommendation to the City Council for its consideration at a regular Council meeting no less than 60 days after the nomination is made.

C. Each property owner who has one or more registered heritage trees shall be notified by first class mail of the designation within thirty (30) days of the Council's action.

D. Heritage tree declassification. Any heritage tree may be removed from heritage tree status by action of the City Council following the written request of the property owner, provided that if the request is based upon whether the tree is of poor health, diseased or no longer alive, the Natural Resources Director may approve the request.

1. The request shall be filed with the Natural Resources Director. If the request for decertification is based upon the health of the tree, and a visual inspection by the director cannot establish that the tree is dead, diseased, or hazardous, the applicant shall pay for an outside certified arborist or forester to make a determination. If it is determined that the tree is dead, diseased, or otherwise hazardous and cannot be saved, the director may approval the removal. If the tree is determined to be healthy, or with treatable infestation or infection, the director shall deny the permit.

2. In its evaluation of whether to declassify a heritage tree, the City Council shall consider the following:

a. if the tree may be considered hazardous according to this chapter;

b. if the tree no longer meets the criteria for initial designation as specified in subsection (A) of this section;

c. retention of the tree would make reasonable use of the property allowed under the current zoning district impractical or impossible in that development would not be allowed to meet the maximum density/intensity allowed by that zoning district.