

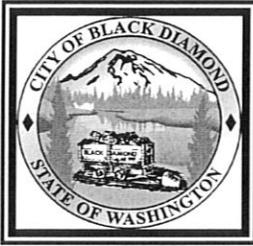


CITY OF BLACK DIAMOND
September 23, 2010 Workstudy Agenda
25510 Lawson St., Black Diamond, Washington

Workstudies are meetings for Council to review upcoming and pertinent business of the City. Public testimony is only accepted at the discretion of the Council.

4:00 P.M. – CALL TO ORDER, ROLL CALL

- 1.) Proposed Changes to the Tree Preservation Code - Mr. Nix
- 2.) Adjournment



CITY OF BLACK DIAMOND

Memorandum

TO: BLACK DIAMOND CITY COUNCIL

FROM: CHRIS BACHA, CITY ATTORNEY, AARON NIX, PARKS/NATURAL RESOURCES DIRECTOR

SUBJECT: PUBLIC AND YARROW BAY ATTORNEY COMMENTS ON TREE ORDINANCE FOR COUNCIL REVIEW

DATE: SEPTEMBER 23, 2010

1. Density Requirements May Violate RCW 82.02.020. This statute was applied by Division I of the Court of Appeals in the 2008 case of *Citizens' Alliance for Property Rights v. Sims*, 145 Wn. App. 649. The Court invalidated a king county clearing and grading regulation prohibiting a certain percentage of grading when developing land. Essentially, the court said that the requirement to not clear and grade amounted to an unlawful tax, fee or charge upon the property owner because the ordinance did not satisfy the requirement that the restriction on the use of the land be roughly proportional to the impact of each individual development. In other words, the court required that the clearing and grading limitations be determined on a case by case basis and could not be a set number that applies equally to all developments regardless of impact.

Yarrow Bay's attorney suggested that the rationale in the above decision could be applied to the density limitations in the proposed tree code upon removal of significant trees. In other words, the 20% density limitation would violate RCW 82.02.020 because there was no individualized determination of the impact of the development upon the trees.

Yarrow Bay's attorney suggested that the density limitations may be much more palatable if it allowed for clustering rather than density limits specific to individual lots.

Note: If the density requirements are removed (see discussion below) this comment would be moot.

2. Density limitations May Prohibit Higher Density: Yarrow Bay's attorney pointed out that the requirement to achieve densities on each lot may make it impossible to achieve certain densities on a development because the building footprint, utilities and driveways may conflict with the significant trees that must remain under the density requirements.

Yarrow bay suggested either allowing clustering or adding back the provision that exempted removal of trees within a certain distance of the buildings exterior walls, the driveways and utility corridors.

Note: If the density requirements are removed (see discussion below) this comment would be moot.

3. Site Design Guidelines. There were comments from Yarrow Bay's attorney, citizens and council members regarding the importance of requiring clustering of trees rather than scattering and segregating the trees. The density requirements essentially promote segregation while the site design guidelines under BDMC 19.30.040(b) & (c) promote clustering of vegetation. Clustering of the trees would provide the trees with greater protection and will result in less tree loss and fewer safety problems.

Changing the density requirements as suggested above would alleviate this problem and the conflict with the site design guidelines.

Note: The City could consider removing the density requirements and allow the site design guidelines to dictate how, when and where trees and other vegetation will be protected. The City could also add language in the site design guidelines that provides more protection for significant trees. Using the site design guidelines to protect significant trees and other vegetation would address many of the concerns being addressed in the density requirements.

4. BDMC 19.30.050(D) Exemption for Six Trees. A citizen commented on this section that it was not clear if applying for the exemption would allow a person to remove more than six trees.

I believe there may be some confusion over what the permit application is for. The intent was that in order to determine if the applicant's proposed tree cutting was exempt, the applicant must first file an application for a tree permit. If the City Administrator determined that the applicant met the exemption, then the applicant could proceed to cut the trees (up to the 6 trees under the 16" DBH limit and 36 month time period) without getting a permit. This provision was drafted this way to make sure the City has a record of the tree cutting and could make sure the tree cutting complied with the code requirements. The intent also was to make sure that the tree cutting exemption was not associated with development of the property.

Note: We could re-write this section to make it clearer.

5. BDMC 19.30.070 Tree Replacement. There were several comments that this section does not include any requirements for maintaining replacement trees and replacing them if the tree should die.

Note: Maintenance is addressed in BDMC 19.30.100 (Maintenance).

Other comments included the notion of requiring a diversity of native trees to a replanting palette, a time frame in which replacement trees must be planted, a way of marking newly planted trees and the idea of creating a tree board to help with tree-related issues.

Note: Staff agrees with the diversity comment and would recommend that trees be planted by the time final occupancy is given to a builder or developer. The notion of tree board is a policy decision.

6. BDMC 19.30.070(C)(1) One - to - One Replacement Ratio. Yarrow Bay's attorney suggested that the new language regarding density requirements was confusing because it related replacement of trees to density requirements. Her reading of the draft ordinance was that twenty percent of the significant trees must be retained. Thus, tree replacement is not relevant to the density requirements because property owners cannot meet density requirements by replacing removed trees.

Note: These comments make sense to staff. When this language was drafted, the intent was to allow trees that are removed for development to be replaced on a one-to-one basis. The language drafted does not make this clear and needs to be revised. The idea was that applicants would be required to maintain 20% of the onsite trees. The remaining trees that were to be removed would have to be replaced on a 1 to 1 ratio. Many jurisdictions allow tree removal up to 20% with no replacement. The sense that staff received from the committee was that they wanted any tree replaced if it was removed under a building permit application.

7. BDMC 19.30.070(D) Mitigation Fund. There was considerable comment from both council members and citizens relative to the dollar value given for replacement trees.

Note: It was clear that the concern related to a lack of understanding that the replacement value was not a penalty and was intended only to approximate the cost of the replacement trees required under the ratios that were established.

One council member suggested that this value should be based upon board feet of the tree that was removed.

Note: State law for valuing trees illegally removed allows the owner to be compensated for the loss allows based upon the board feet of the removed tree. In staff's (legal) view, it would not be appropriate to use this valuation method because the City does not own the trees and is not trying to recover the lost timber value of the tree. The concept is to create a fund to help the City fund vegetation replanting projects. Thus, the value should be based upon what it would cost to obtain and plant the replacement tree.

Note: Further, in many jurisdictions, tree replacement ratios are utilized only when violations occur, not as a mechanism for replacement for folks who do the right thing and obtain a permit. Staff believes that the location of this table is incorrect and needs to be moved under the violation section to be applied only when a violation occurs. In addition to replacement, many jurisdictions include a fine that may be assessed like we have in our ordinance.

Yarrow Bay pointed out that there are no standards that establish when the City Administrator would grant a request to make a payment to the tree fund in lieu of replacement of the tree.

Note: Staff agrees that if the City intends to allow deposits into the tree fund at the discretion of the City Administrator, standards do need to be developed. Another option is to allow the applicant to choose whether or not to replace the tree or pay into the fund. This is a policy decision.

8. BDMC 19.30.080 Variance. One citizen commented that the variance standards should include a requirement that the variance must comply with the GMA.

Note: Staff interprets this comment as a suggestion that the variance process look more like other variance processes applicable to land use regulations, like requiring that the variance be consistent with the comprehensive plan.

9. BDMC 19.30.090 (Protection of Trees). There were a number of comments on this section. A citizen asked that subsection (A) be re-written to expand the protective footprint prohibiting excavation during construction to an area beyond the roots of the tree.

Note: This comment was not too specific or practical but the idea was that roots needed to be protected.

Another person wanted the distance to be "at least" five feet beyond the drip line.

Yarrow Bay's attorney indicated that this limitation (as written) would make construction impossible because of the density limitations on each lot. It would be impossible to construct around the significant trees that they would have to retain on each site without intruding upon this five foot barrier.

Note: One option would be to leave the current language, but require an arborist's recommendation if it is seen as an issue by field inspection staff. In addition, if the density requirements are removed, Yarrow Bay's comments may no longer be relevant because the trees would likely be clustered at one location.

10. BDMC 19.30.120(D)(2)(c). One citizen suggested that this standard which would be considered when allowing a heritage tree to be de-classified was too broad. Using the term "impractical" would allow the applicant to argue that financial impacts could be considered when determining what is or is not impractical.

CITY OF BLACK DIAMOND
WASHINGTON

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY OF BLACK DIAMOND,
WASHINGTON, RELATING TO PRESERVATION OF
TREES; REPEALING AND RE-ENACTING CHAPTER
19.30 OF THE BLACK DIAMOND MUNICIPAL CODE;
PROVIDING FOR SEVERABILITY; AND ESTABLISHING
AN EFFECTIVE DATE**

WHEREAS, the City Council finds that trees and woodlands are an important asset to the natural ecosystem, beneficially contribute to the character of the community and positively influence the quality of life in the City; and

WHEREAS, the City Council further finds that conventional development without specific regulations to protect natural resources frequently encroaches upon, damages or eliminates important trees, other forms of vegetation and natural resources and that these trees, if preserved and maintained in an undisturbed and natural condition, constitute important physical, aesthetic, recreation and economic assets to residents of the City, visitors, businesses and the general public; and

WHEREAS, the City Council further finds that tree conservation is a cost effective method of reducing air pollution in urban environments, can reduce storm water runoff and lessen erosion by anchoring soil, and filter pollutants before reaching waterways, can protect wildlife habitat, reduce noise and energy consumption, and can improve physical and psychological health through the aesthetic, restorative qualities of natural, scenic settings; and

WHEREAS, City Council finds that tree conservation can yield tangible economic benefits including increased land value; lower heating and cooling costs; greater appeal to tourists, employers, and employees; and reducing costs for engineered alternatives to manage pollution, and

WHEREAS, in 2008, the City Council adopted City Ordinance No. 866 creating the “Tree Preservation Code” of the City with the objective to reduce tree loss during construction and development; reduce indiscriminate removal and destruction of trees; and to mitigate tree loss by requiring replacement of trees; and

WHEREAS, the City desires to amend the Tree Preservation Code to provide for additional measures for the conservation and preservation of significant trees by, among other things, adopting site development guidelines, clarifying the exemptions from the requirements of the Tree Preservation Code, increasing the ratio for replacement of significant trees that are

removed, establishing a process for a variance from the requirements of the Tree Preservation Code, adopting requirements for the maintenance of replacement trees, providing for additional remedial measures, amending the enforcement provisions;

WHEREAS, the City Council finds that it is in the best interests of the public health, safety and welfare to amend the Tree Preservation Code as set forth herein;

NOW, THEREFORE, the City Council of the City of Black Diamond, Washington, do ordain as follows:

Section 1. Repeal and Re-enactment of BDMC Chapter 19.30 (Tree Preservation).
Chapter 19.30 of the Black Diamond Municipal Code is hereby repealed in its entirety and re-enacted as set forth below:

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~~citizen's 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

The following definitions shall apply in the interpretation and enforcement of this Chapter. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. If specific provisions of law, regulation or rule referred to herein be renumbered or re-codified, then the reference shall be read to refer to the renumbered or re-codified provision.

~~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. Development:~~ Land disturbing activities, including Class IV – general forest practices that are conversions from timber land to other uses; structural development, including construction or

installation of a building or other structures; the installation of utilities; creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure.

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.

Lot: Lot shall have the same meaning as that term is given pursuant to BDMC 17.08.010, as now or may hereafter be amended. In the case of a preliminary plat, lot shall include those lots proposed to be created upon recording of the final plat.

~~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 fremontii*);
3. Native alder (Native *Alnus* only);
4. Native willow (Native *Salix* only);
5. Lombardy poplar (*Populus nigra*).

Site: The portion of a single lot, or two or more contiguous lots that are under common ownership or documented legal control, which lot(s) is(are) directly subject to development.

Site Improvements: Changes to a site resulting from development.

19.30.040 Retention of Significant Trees

A. Permit Required. No person, corporation, agency or other entity shall remove any significant tree, as defined in this chapter, without first obtaining a tree removal permit pursuant to this chapter; ~~provided that~~, a permit shall not be required for situations specifically exempted by this chapter.

B. Minimum Density. In all ~~new~~ developments of land, ~~including additions to existing buildings and parking areas,~~ a minimum of 20 percent of all significant trees shall be retained on each lot that is subject to development; provided that, if there are fewer than 5 significant trees on a lot, at least one significant tree shall be retained. ~~Exceptions to~~ A variance from this

~~standard shall~~ may be requested and reviewed in accordance with ~~section~~ BDMC 19.30.080, Exception Variances.

C.- Site Design Guidelines. Site improvements shall be designed and constructed to meet the following guidelines:

(a) The site design incorporates trees as a site amenity, and reflects a strong emphasis on tree protection.

(b) To the extent possible, forested sites retain their forested look, value, and function after development. Trees should be protected within vegetated islands and stands rather than as individual, isolated trees scattered throughout the site.

(c) Site improvements should be designed to give priority to protection of trees with the following characteristics, functions, or location:

(i) Existing stands of healthy trees;

(ii) Healthy trees that have a reasonable chance of survival once the site is developed or will not pose a threat to life or property;

(iii) Trees that have a screening function or provide relief from glare, blight, commercial or industrial harshness;

(iv) Trees providing habitat value, such as riparian habitat;

(v) Trees within the required yard setbacks or around the site perimeter;

(vi) Trees having a significant land stability function;

(vii) Trees adjacent to public parks and open space.

(d) Building footprints, parking areas, roadways, utility corridors and other structures are designed and located with a consideration of tree protection opportunities.

(e) The project grading plans accommodate existing trees and avoid alteration to grades around existing significant trees.

(f) Required open space and recreational space is designed and located to protect existing stands of trees.

(g) The site design and landscape plans provide suitable locations and adequate area for replacement trees as required in BDMC 19.30.070, Tree Replacement.

(h) In considering trees for protection, avoid selecting trees that may become hazardous because of wind gusts, including trees adjacent to utility corridors where falling trees may cause power outages or other damage. Remaining trees may be susceptible to blow downs because of loss of a buffer from other trees, grade changes affecting the tree health and stability and/or the presence of buildings in close proximity.

~~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 and any land use or building permit. A tree replacement plan shall be approved by the Natural Resources Director prior to commencing planting.~~

19.30.050 Exemptions

The following actions are exempt from the ~~permit and density requirements provisions of this chapter~~Chapter:

A. Emergency removal of any hazardous significant trees necessary to remedy an immediate imminent threat to persons or property;

B. Removal of significant 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) or for the improvement of the public rights-of-way or easements;

C. Removal of obviously dead or diseased trees. Prior to removal of an obviously dead or diseased significant tree, the property owner or person in control of the property shall file an application for a tree removal permit with the Community Development Department City Clerk and request exemption from the requirement to obtain a tree removal permit. The City Administrator, or designee, may grant an exemption upon satisfaction that the significant tree is dead or diseased. In cases where conflicts arise ~~on~~ regarding the status condition or health of a tree, the City can require the applicant to submit a certified arborist's report ~~be submitted to the City. A~~ The certified arborist report shall identify the tree or trees and the status condition and health of the tree(s) ~~health~~, including whether or not the diseased tree should be removed. The certified arborist and the arborist's report must be submitted and approved by the City prior to tree removal. The cost for the certified arborist shall be borne entirely by the applicant;

D. A property owner or person in control of the property may remove Removal of no more than six (6) significant trees under (16) inches in caliper, in any thirty-six (36) consecutive months. Prior to removal, the property owner, or person in control of the property, shall file an application for a tree removal permit with the Community Development Department City Clerk and request exemption from the requirement to obtain a tree removal permit. The City Administrator, or designee, may grant an exemption from the permit requirement , subject to the following conditions:

- ~~1. _____~~ There is no current application for ~~construction or~~ development on the subject ~~site~~lot;
2. The tree(s) is(are) 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~~ At least two significant trees must remain on each lot the property; and
4. Removal of the trees will not reduce the density of significant trees on the lot below the density requirements of BDMC 19.30.040(B).
- ~~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 three (3) feet of the building exterior wall or less than ten (10) feet from~~
the building exterior walls, driveways, or utilities ;

~~EF.~~ Trees that have been grown for the purpose of sales of Christmas trees or commercial landscaping materials by commercial nurseries and tree farms; and

~~FG.~~ 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; and.

19.30.060 Tree Removal Permits

A. Tree Removal Permit Required. A tree removal permit is required for the removal of significant trees that are subject to this unless the tree removal is exempt from the permit requirements of this chapter. No person shall remove a significant tree except pursuant to a tree removal permit lawfully issued pursuant to this Chapter or pursuant to an exemption granted herein. All applications for a tree removal permit shall be filed with the Community Development Department Clerk, or designee, using a form provided by the City. The tree removal permit fee shall be set by resolution or ordinance of the City Council.

A tree plan, meeting the following requirements and standards, shall be submitted as part of a permit application for tree removal.

B. Persons Authorized to Apply. No person may apply for a tree removal permit under this Chapter unless that person is the owner or person in control of the property or has been otherwise authorized in writing by the property owner to apply for the tree removal permit on behalf of the property owner.

BC. Tree Plan Required. All applications for a tree removal permit under this Chapter, for which there is no exemption or request for an exemption, shall include a tree plan showing the location, species, and size of new trees to be planted and the location of any significant tree to be removed. A tree plan for significant tree removal when associated with the development of property, shall meet the following requirements and standards:

Existing Development/Level I Tree Plan.

1. Existing Development/Level I Tree Plan. A Level 1 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 impervious surface. The following information shall be provided as part of the plan:

- a. A site plan showing aAll proposed development or expansion of structures, parking, driveways, roadways, lanes, sidewalks and pathways, and retaining walls.;
- b. The site plan will show Aall significant trees located within the property lot or lots subject to development and shall depict those significant trees to be retained in order to meet the minimum density requirements of BDMC 19.30.040(B).; and
- 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.~~

C2. 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.

~~2D. For new development subject to a Level II Plan, a~~ 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 improvement design should integrate significant trees into required landscaping.

19.30.070 Tree Replacement

A. ~~Each Level I and Level II application for a Tree-tree Removal-removal Permit-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 all be planted on the site from which significant trees are removed; provided that, if a variance is granted pursuant to BDMC 19.30.080 to allow location of the replacement tree off-site, the location must be approved by the City Administrator. or, if on-site replacement is demonstrated to be impractical, at an approved offsite location~~

~~on an off-site location determined by the City.~~

C. Replacement trees must meet the following criteria:

1. Significant trees required to be replaced to meet the density requirements pursuant to BDMC section 19.30.040 (B), shall, unless a variance is granted, be replaced on the basis of a one to one ratio regardless of the size of the significant tree that has been removed. In all other circumstances, sSignificant trees must be replaced with an equivalent number of trees based on Diameter at Breast Height (DBH) in accordance with the following table;

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

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 ~~one and half~~^{three} (1.53) inch in caliper (DBH), evergreen trees ~~must~~^{shall} be a minimum of ~~six~~^{twelve} (6+2) 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 for a tree removal permit can request payment of a flat fee into the removal mitigation fund in lieu of tree replacement. If such request is granted by the City Administrator, or designee, the applicant may deposit the amount of \$50~~¹⁰⁰.00 per for each replacement tree that would be required in accordance with the tree replacement ratios identified in section 19.30.070.C.6~~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 Exceptions Variance.

A. ~~Where exceptional conditions that prevent full compliance with the minimum density requirements of BDMC 19.30.040(B) or the requirement for on-site replacement of significant trees pursuant to BDMC 19.30.070, Retention of significant trees, Tree Replacement, the applicant may request an exceptiona variance. A request for any exceptiona variance shall be submitted in writing by the property owner for consideration by the City Administrator, and shall accompany the application for a tree removal permit reviewed under this division. Chapter. The written request shall fully state all substantiating facts and evidence pertinent to the exception request, and include supporting maps or plans. The City Administrator may also require the recommendation of a certified arborist approved by the City Administrator to aid in reviewing an exceptiona variance request. The cost to the City for the certified arborist shall be borne entirely by the applicant. The City may require the applicant to make an advance deposit to be applied to the cost of the certified arborist.~~

B. ~~(1) Exception Criteria. An exception shall not be granted unless criteria (1)(a) and (1)(b) 1 and 2 of this section are satisfied:~~

1. (a) — The exception variance is necessary because:
 - (i)a. — There are special circumstances related to the size, shape, topography, location or surroundings of the subject property; or
 - (ii)b. — Strict compliance with the provisions of this code may jeopardize reasonable use of property;
 - (iii)c. — Proposed vegetation removal, replacement, and any mitigative measures proposed are consistent with the purpose and intent of the regulations;
 - (iv)d. — The granting of the exception or standard reduction will not be detrimental to the public welfare or injurious to other property in the vicinity.

- (b) — 2. If an exception variance is granted below to the required minimum retention standard density requirement of 250 percent, tree replacement shall be in accordance with the tree replacement table identified in section 19.30.70C(1).

19.30.0980 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~~ all heritage and significant trees.

- B. Tree protective fencing shall be installed along the outer edge and completely ~~surrounds~~ surrounds the drip line of significant trees and all heritage 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 all heritage trees and the significant trees to be preserved, nor shall any impervious surface be installed within 5 feet of the drip line of any heritage trees or the significant trees to be preserved.

- F. Directional felling shall be used to avoid damaging any heritage trees or significant trees designated for protection.

19.30.100 Maintenance.

A. (1)—All required replacement trees and relocated trees shown on an approved tree removal permit shall be maintained in healthy condition by the property owner, and the person in control of the property, throughout the life duration of the project necessary to complete all site improvements, unless otherwise approved by the City Administrator in a subsequent tree removal permit.

(2)B. —Cutting and Pruning.

(a)1.— ~~Protected trees~~Heritage trees and significant shall not be topped. Topping is defined as the severe cutting back of limbs to stubs larger than 3" in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Significant and heritage trees severely damaged by storms or other causes or certain trees under utility wires or other obstructions, where other pruning practices are impractical are exempt from this prohibition.

(b)2. —Street trees shall be cut or pruned only under the supervision of the City of Black Diamond Public Works Department.

(c)3. —Pruning and maintenance of ~~protected~~Heritage trees and significant trees shall be consistent with best management practices in the field of arboriculture and further the long-term health of the tree. Pruning shall mean the selective removal of portions of branches from a tree so as to modify the tree(s) shape or profile or alter the tree's appearance.

(d)4. —~~Excessive pruning~~Thinning or windowing of significant or heritage trees shall not be allowed unless necessary to protect life and/or property or where other pruning practices are impractical because of the tree has been severely damaged by storms or other causes or for certain trees under utility wires.

19.30.110 Enforcement.

(1)A. Application of BDMC Ch. 8.02. The provisions of this Chapter shall constitute a regulation within the meaning of section 8.02.020 BDMC, a violation of which is subject to the code enforcement provisions and penalties set forth at BDMC Chapter 8.02 together with the code enforcement provisions, penalties and remedies set forth in BDMC 19.30.

B. Monetary Penalties. Any person found to have removed a significant tree in violation of BDMC 19.30.060 or found to have damaged a significant tree or heritage tree in violation of BDMC 19.30.090 or BDMC 19.30.100, shall be subject to a monetary penalty in the amount of \$1,000 for each such violation.

C. Remedies. In addition to such other corrective action the hearing examiner may order upon finding a person to be in violation of BDMC 19.30.060, the hearing examiner shall order replacement of each significant tree unlawfully removed or payment of the in-lieu of fee, in accordance with the provisions of BDMC 19.30.070. Remediation. Any person who removes a tree in violation of the conditions of a tree removal permit or in violation of Chapter 19.30 of the Dupont Municipal Code shall be subject to remedial measures. The following provisions shall apply in instances where such remedial measures are required:

~~(a) The applicant shall satisfy the permit provisions as specified in BDMC 19.30.060, Tree Removal Permits.~~

~~(b) Remedial measures must conform to the purposes and intent of this division. In addition, remedial measures must meet the standards specified in BDMC 19.30.070, Tree Replacement~~

~~(c) Remedial measures must be completed within the time frame specified by the Administrator.~~

~~(2) Penalties. The Administrator may impose a penalty of up to \$1,000 per incident for removal of or damage to significant trees in violation of this division.~~

19.30.120090 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, ~~verify willingness to obtain~~ consent in writing of the affected property owner, 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 may 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.

E. Heritage trees warrant protection from unnecessary removal. No person may remove a heritage tree except as provided in BDMC 19.30.120. Any person removing a Removal of heritage trees shall be subject to a \$24,000 fine and may be required to replacement each removed heritage tree in accordance with the ratios identified in section 19.30.070C.

19.30.130. Duty not creating liability.

Nothing in this chapter is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE ____ DAY OF _____, 20__.

CITY OF BLACK DIAMOND

Rebecca Olness, Mayor

|

ATTEST/AUTHENTICATED:

Brenda Martinez, City Clerk

Approved as to form:

Chris D. Bacha
Kenyon Disend,
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:
Effective Date:

REDLINE VERSION

CITY OF BLACK DIAMOND
WASHINGTON

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY OF BLACK DIAMOND,
WASHINGTON, RELATING TO PRESERVATION OF
TREES; REPEALING AND RE-ENACTING CHAPTER
19.30 OF THE BLACK DIAMOND MUNICIPAL CODE;
PROVIDING FOR SEVERABILITY; AND ESTABLISHING
AN EFFECTIVE DATE**

WHEREAS, the City Council finds that trees and woodlands are an important asset to the natural ecosystem, beneficially contribute to the character of the community and positively influence the quality of life in the City; and

WHEREAS, the City Council further finds that conventional development without specific regulations to protect natural resources frequently encroaches upon, damages or eliminates important trees, other forms of vegetation and natural resources and that these trees, if preserved and maintained in an undisturbed and natural condition, constitute important physical, aesthetic, recreation and economic assets to residents of the City, visitors, businesses and the general public; and

WHEREAS, the City Council further finds that tree conservation is a cost effective method of reducing air pollution in urban environments, can reduce storm water runoff and lessen erosion by anchoring soil, and filter pollutants before reaching waterways, can protect wildlife habitat, reduce noise and energy consumption, and can improve physical and psychological health through the aesthetic, restorative qualities of natural, scenic settings; and

WHEREAS, City Council finds that tree conservation can yield tangible economic benefits including increased land value; lower heating and cooling costs; greater appeal to tourists, employers, and employees; and reducing costs for engineered alternatives to manage pollution, and

WHEREAS, in 2008, the City Council adopted City Ordinance No. 866 creating the “Tree Preservation Code” of the City with the objective to reduce tree loss during construction and development; reduce indiscriminate removal and destruction of trees; and to mitigate tree loss by requiring replacement of trees; and

WHEREAS, the City desires to amend the Tree Preservation Code to provide for additional measures for the conservation and preservation of significant trees by, among other things, adopting site development guidelines, clarifying the exemptions from the requirements of the Tree Preservation Code, increasing the ratio for replacement of significant trees that are

removed, establishing a process for a variance from the requirements of the Tree Preservation Code, adopting requirements for the maintenance of replacement trees, providing for additional remedial measures, amending the enforcement provisions;

WHEREAS, the City Council finds that it is in the best interests of the public health, safety and welfare to amend the Tree Preservation Code as set forth herein;

NOW, THEREFORE, the City Council of the City of Black Diamond, Washington, do ordain as follows:

Section 1. Repeal and Re-enactment of BDMC Chapter 19.30 (Tree Preservation).
Chapter 19.30 of the Black Diamond Municipal Code is hereby repealed in its entirety and re-enacted as set forth below:

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 citizen's 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 Definitions

The following definitions shall apply in the interpretation and enforcement of this Chapter. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. If specific provisions of law, regulation or rule referred to herein be renumbered or re-codified, then the reference shall be read to refer to the renumbered or re-codified provision.

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.

Development: Land disturbing activities, including Class IV – general forest practices that are conversions from timber land to other uses; structural development, including construction or

installation of a building or other structures; the installation of utilities; creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure.

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.

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.

Lot: Lot shall have the same meaning as that term is given pursuant to BDMC 17.08.010, as now or may hereafter be amended. In the case of a preliminary plat, lot shall include those lots proposed to be created upon recording of the final plat.

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.

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*).

Site: The portion of a single lot, or two or more contiguous lots that are under common ownership or documented legal control, which lot(s) is(are) directly subject to development.

Site Improvements: Changes to a site resulting from development.

19.30.040 Retention of Significant Trees

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

B. Minimum Density. In all development of land, a minimum of 20 percent of all significant trees shall be retained on each lot that is subject to development; provided that, if there are fewer than 5 significant trees on a lot, at least one significant tree shall be retained. A variance from this standard may be requested and reviewed in accordance with BDMC 19.30.080, Variances.

C. Site Design Guidelines. Site improvements shall be designed and constructed to meet the following guidelines:

- (a) The site design incorporates trees as a site amenity, and reflects a strong emphasis on tree protection.
- (b) To the extent possible, forested sites retain their forested look, value, and function after development. Trees should be protected within vegetated islands and stands rather than as individual, isolated trees scattered throughout the site.
- (c) Site improvements should be designed to give priority to protection of trees with the following characteristics, functions, or location:
 - (i) Existing stands of healthy trees;
 - (ii) Healthy trees that have a reasonable chance of survival once the site is developed or will not pose a threat to life or property;
 - (iii) Trees that have a screening function or provide relief from glare, blight, commercial or industrial harshness;
 - (iv) Trees providing habitat value, such as riparian habitat;
 - (v) Trees within the required yard setbacks or around the site perimeter;
 - (vi) Trees having a significant land stability function;
 - (vii) Trees adjacent to public parks and open space.
- (d) Building footprints, parking areas, roadways, utility corridors and other structures are designed and located with a consideration of tree protection opportunities.
- (e) The project grading plans accommodate existing trees and avoid alteration to grades around existing significant trees.
- (f) Required open space and recreational space is designed and located to protect existing stands of trees.
- (g) The site design and landscape plans provide suitable locations and adequate area for replacement trees as required in BDMC 19.30.070, Tree Replacement.
- (h) In considering trees for protection, avoid selecting trees that may become hazardous because of wind gusts, including trees adjacent to utility corridors where falling trees may cause power outages or other damage. Remaining trees may be susceptible to blow downs because of loss of a buffer from other trees, grade changes affecting the tree health and stability and/or the presence of buildings in close proximity.

19.30.050 Exemptions

The following actions are exempt from the permit and density requirements of this Chapter:

- A. Emergency removal of any hazardous significant trees necessary to remedy an imminent threat to persons or property;
- B. Removal of significant 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) or for the improvement of the public rights-of-way or easements;

C. Removal of obviously dead or diseased trees. Prior to removal of an obviously dead or diseased significant tree, the property owner or person in control of the property shall file an application for a tree removal permit with the Community Development Department and request exemption from the requirement to obtain a tree removal permit. The City Administrator, or designee, may grant an exemption upon satisfaction that the significant tree is dead or diseased. In cases where conflicts arise regarding the condition or health of a tree, the City can require the applicant to submit a certified arborist's report to the City. The certified arborist report shall identify the tree or trees and the condition and health of the tree, including whether or not the diseased tree should be removed. The certified arborist and the arborist's report must be submitted and approved by the City prior to tree removal. The cost for the certified arborist shall be borne entirely by the applicant;

D. A property owner or person in control of the property may remove no more than six (6) significant trees under (16) inches in caliper, in any thirty-six (36) consecutive months. Prior to removal, the property owner, or person in control of the property, shall file an application for a tree removal permit with the Community Development Department and request exemption from the requirement to obtain a tree removal permit. The City Administrator, or designee, may grant an exemption from the permit requirement subject to the following conditions:

1. There is no current application for development on the subject lot;
2. The tree(s) is(are) not within an easement protecting a regulated critical area, designated primary or secondary open space, or a required buffer area;
3. At least two significant trees must remain on each lot; and
4. Removal of the trees will not reduce the density of significant trees on the lot below the density requirements of BDMC 19.30.040(B).

E. Trees that have been grown for the purpose of sales of Christmas trees or commercial landscaping materials by commercial nurseries and tree farms; and

F. 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. Tree Removal Permit Required. A tree removal permit is required for the removal of significant trees unless the tree removal is exempt from the permit requirements of this Chapter. No person shall remove a significant tree except pursuant to a tree removal permit lawfully issued pursuant to this Chapter or pursuant to an exemption granted herein. All applications for a tree removal permit shall be filed with the Community Development Department using a form provided by the City. The tree removal permit fee shall be set by resolution or ordinance of the City Council.

B. Persons Authorized to Apply. No person may apply for a tree removal permit under this Chapter unless that person is the owner or person in control of the property or has been otherwise

authorized in writing by the property owner to apply for the tree removal permit on behalf of the property owner.

C. Tree Plan Required. All applications for a tree removal permit under this Chapter, for which there is no exemption or request for an exemption, shall include a tree plan showing the location, species, and size of new trees to be planted and the location of any significant tree to be removed. A tree plan for significant tree removal when associated with the development of property, shall meet the following requirements and standards:

1. Existing Development/Level I Tree Plan. 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 impervious surface. The following information shall be provided as part of the plan:
 - a. A site plan showing all proposed development or expansion of structures, parking, driveways, roadways, lanes, sidewalks and pathways, and retaining walls;
 - b. The site plan will show all significant trees located within the lot or lots subject to development and shall depict those significant trees to be retained in order to meet the minimum density requirements of BDMC 19.30.040(B); and
 - c. Planting plan including location, species, and size of new trees to be planted.
2. New Development/Level II Tree Plan. 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.

D. 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 improvement design should integrate significant trees into required landscaping.

19.30.070 Tree Replacement

A. Each application for a 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; provided that, if a variance is granted pursuant to BDMC 19.30.080 to allow location of the replacement tree off-site, the location must be approved by the City Administrator.

C. Replacement trees must meet the following criteria:

1. Significant trees required to be replaced to meet the density requirements pursuant to BDMC section 19.30.040 (B), shall, unless a variance is granted, be replaced on the basis of a one to one ratio regardless of the size of the significant tree that has been removed. In all other circumstances, significant trees must be replaced with an equivalent number of trees based on Diameter at Breast Height (DBH) in accordance with the following table;

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

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 one and half (1.5) inch in caliper (DBH), evergreen trees shall be a minimum of six (6) feet in height.

6. Trees shall be watered as necessary to ensure survival and growth during their first two growing seasons after planting.

D. The City shall create a “Significant Tree” removal mitigation fund. An applicant for a tree removal permit can request payment of a fee into the removal mitigation fund in lieu of tree replacement. If such request is granted by the City Administrator, or designee, the applicant may deposit the amount of \$100.00 for each replacement tree that would be required in accordance with the tree replacement ratios identified in section 19.30.070.C.6. These funds will be utilized in replanting projects throughout the City of Black Diamond, as determined by the City.

19.30.080 Variance.

A. Where exceptional conditions that prevent full compliance with the minimum density requirements of BDMC 19.30.040(B) or the requirement for on-site replacement of significant trees pursuant to BDMC 19.30.070, the applicant may request a variance. A request for a variance shall be submitted in writing by the property owner for consideration by the City Administrator, and shall accompany the application for a tree removal permit reviewed under this Chapter. The written request shall fully state all substantiating facts and evidence pertinent to the exception request, and include supporting maps or plans. The City Administrator may also require the recommendation of a certified arborist approved by the City Administrator to aid in reviewing a variance request. The cost to the City for the certified arborist shall be borne entirely by the applicant. The City may require the applicant to make an advance deposit to be applied to the cost of the certified arborist.

B. Exception Criteria. An exception shall not be granted unless criteria 1 and 2 of this section are satisfied:

1. The variance is necessary because:
 - a. There are special circumstances related to the size, shape, topography, location or surroundings of the subject property; or
 - b. Strict compliance with the provisions of this code may jeopardize reasonable use of property;
 - c. Proposed vegetation removal, replacement, and any mitigative measures proposed are consistent with the purpose and intent of the regulations;
 - d. The granting of the exception or standard reduction will not be detrimental to the public welfare or injurious to other property in the vicinity.

2. If a variance is granted to the required minimum density requirement of 20 percent, tree replacement shall be in accordance with the tree replacement table identified in section 19.30.70C(1).

19.30.090 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 all heritage and significant trees.

- B. Tree protective fencing shall be installed along the outer edge and completely surrounds the drip line of significant trees and all heritage 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 all heritage trees and the significant trees to be preserved, nor shall any impervious surface be installed within 5 feet of the drip line of any heritage trees or the significant trees to be preserved.

- F. Directional felling shall be used to avoid damaging any heritage trees or significant trees designated for protection.

19.30.100 Maintenance.

- A. All required replacement trees and relocated trees shown on an approved tree removal permit shall be maintained in healthy condition by the property owner, and the person in control of the property, throughout the duration of the work necessary to complete all site improvements, unless otherwise approved by the City Administrator in a subsequent tree removal permit.

B. Cutting and Pruning.

- 1, Heritage trees and significant shall not be topped. Topping is defined as the severe cutting back of limbs to stubs larger than 3" in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Significant and heritage trees severely damaged by storms or other causes or certain trees under utility wires or other obstructions, where other pruning practices are impractical are exempt from this prohibition.
2. Street trees shall be cut or pruned only under the supervision of the City of Black Diamond Public Works Department.
3. Pruning and maintenance of Heritage trees and significant trees shall be consistent with best management practices in the field of arboriculture and further the long-term health of the tree. Pruning shall mean the selective removal of portions of branches from a tree so as to modify the tree(s) shape or profile or alter the tree's appearance.
4. Thinning or windowing of significant or heritage trees shall not be allowed unless necessary to protect life or property or where other pruning practices are impractical because of the tree has been severely damaged by storms or other causes or for certain trees under utility wires.

19.30.110 Enforcement.

A. Application of BDMC Ch. 8.02. The provisions of this Chapter shall constitute a regulation within the meaning of section 8.02.020 BDMC, a violation of which is subject to the code enforcement provisions and penalties set forth at BDMC Chapter 8.02 together with the code enforcement provisions, penalties and remedies set forth in BDMC 19.30.

B. Monetary Penalties. Any person found to have removed a significant tree in violation of BDMC 19.30.060 or found to have damaged a significant tree or heritage tree in violation of BDMC 19.30.090 or BDMC 19.30.100, shall be subject to a monetary penalty in the amount of \$1,000 for each such violation.

C. Remedies. In addition to such other corrective action the hearing examiner may order upon finding a person to be in violation of BDMC 19.30.060, the hearing examiner shall order replacement of each significant tree unlawfully removed or payment of the in-lieu of fee, in accordance with the provisions of BDMC 19.30.070.

19.30.120 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, obtain consent in writing of the affected property owner, 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 may 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.

E. Heritage trees warrant protection from unnecessary removal. No person may remove a heritage tree except as provided in BDMC 19.30.120. Any person removing a heritage tree shall be subject to a \$2,000 fine and may be required to replace each removed heritage tree in accordance with the ratios identified in section 19.30.070C.

19.30.130. Duty not creating liability.

Nothing in this chapter is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE ____ DAY OF _____, 20__.

CITY OF BLACK DIAMOND

Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:

Brenda L. Martinez, City Clerk

Approved as to form:

Chris D. Bacha
Kenyon Disend,
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Date of Publication:
Effective Date: