

CITY OF BLACK DIAMOND WASHINGTON

ORDINANCE NO. 11-961

**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, modifying 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, and amending the enforcement provisions; and

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 and protect wildlife, improve the appearance of the community, provide buffering and screening, provide shade and wind protection, conserve water supplies, 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; mitigating tree loss by requiring replacement of trees; and protecting significant and heritage trees.

C. It is further the intent of this chapter that it be interpreted in a manner that is consistent with the applicable provisions of BDMC Ch. 18.72 (Landscaping).

19.30.020 Applicability

Except as provided pursuant to BDMC 19.30.050 (Exemptions), the requirements of this chapter shall apply to any removal of a significant tree or heritage tree, and shall apply, without limitation, 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 measurement of the trunk shall be taken six inches above the ground.

Critical Root Zone – An area equal to 1-foot radius from the base of the tree’s trunk for each 1 inch of the diameter at 4.5 feet above grade (Referred to as diameter at breast height (DBH)).

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.

Significant Tree: Any healthy tree that is at least six (6) inches diameter at breast height, 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 diameter at breast height 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. General Site Design Guidelines. Site improvements associated with land development shall be designed and constructed to meet the following guidelines:

1. The site design incorporates trees as a site amenity, and reflects a strong emphasis on tree protection.
2. 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.
3. Site improvements should be designed to give priority to protection of trees with the following characteristics, functions, or location:
 - a. Existing stands of healthy trees;
 - b. Healthy trees that have a reasonable chance of survival once the site is developed or will not pose a threat to life or property;
 - c. Trees that have a screening function or provide relief from glare, blight, commercial or industrial harshness;
 - d. Trees providing habitat value, such as riparian habitat;
 - e. Trees within the required yard setbacks or around the site perimeter;
 - f. Trees having a significant land stability function;
 - g. Trees adjacent to public parks and open space.
 - h. Trees that are significant trees or heritage trees.
4. Building footprints, parking areas, roadways, utility corridors and other structures are designed and located with a consideration of tree protection opportunities.
5. The project grading plans accommodate existing trees and avoid alteration to grades around existing significant trees.
6. Required open space and recreational space is designed and located to protect existing stands of trees.
7. The site design and landscape plans provide suitable locations and adequate area for replacement trees as required in BDMC 19.30.070, Tree Replacement.
8. 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.
9. The landscape requirements set forth in BDMC Ch. 18.72, when applicable.
10. To the extent possible, without reducing development densities from those indicated in the comprehensive plan, the site improvements and landscape plans should be designed to give priority to protection of significant trees and heritage trees.
11. In the event that a proposed site design will result in retainage of less than twenty (20) percent of all significant trees within the site, not including wetlands and sensitive areas and their associated buffers, alternative site designs should be evaluated and considered to determine if an alternative design will better achieve the values, objectives, and guidelines set forth in this chapter without reducing development densities.

19.30.050 Exemptions

The following actions are exempt from the requirements of BDMC 19.30.040, 19.30.060, 19.30.070, 19.30.080 and 19.30.090:

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 exemption application for tree removal with the Community Development Department and request exemption from the requirement to obtain a tree removal permit. The Mayor or his/her designee may grant an exemption upon satisfaction that the significant tree is dead or diseased and should be removed. 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. The owner or person in control of a lot may remove no more than six (6) significant trees under (16) inches diameter at breast height, in any period of thirty-six (36) consecutive months. Prior to removal, the owner, or person in control of the lot, shall file an exemption application for tree removal with the Community Development Department and request exemption from the requirement to obtain a tree removal permit. The Mayor or his/her 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, a 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 approved as part of the landscape plan pursuant to BDMC 19.30.060(C).

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 or Class IV forest practices permit issued by the Washington State Department of Natural Resources under RCW 76.09.050. Provided that, land use and building permits may be denied in accordance with RCW Ch. 76.09 for six years from the date of approval of a Class II or Class III or Class IV 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, size of new trees to be planted, the schedule for replanting, and the location of any significant tree to be removed. Unless otherwise provided in a level I or Level II tree plan, replanting shall take place no later than one year after the tree removal permit is issued. A tree plan for significant tree removal when associated with the development or redevelopment of property, shall meet the following requirements and standards, and may be incorporated within the landscaping plan if such a plan is required pursuant to BDMC Chapter 18.72:

1. **Redevelopment/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 site subject to development and shall depict those significant trees to be retained in order to meet the guidelines of BDMC 19.30.040(B); and
 - c. Planting plan including location, species, size of new trees to be planted and a schedule for replanting.
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 contents of the Tree Plan must be certified by a certified professional forester, arborist, or landscape architect and must provide the following information:
 - a. Information required for a Level I Plan;
 - b. Description of off-site trees that could be affected by proposed activity; and

- c. In the event that the proposed tree plan will result in retainage of fewer than twenty (20) percent of all significant trees within the site, not including wetlands and sensitive areas and their associated buffers, the tree plan shall include a description of alternative site designs that were evaluated and considered by the applicant to provide greater protection of significant trees and a detailed explanation of why such alternative site designs were rejected.

D. All significant trees within any required perimeter planting area, sensitive area, wetland, buffer, designated primary or secondary open space, or native growth protection area shall be retained, except for driveways, lanes, or streets necessary for access as approved by the City. In all other areas, site improvement design should integrate significant trees into required landscaping.

E. The determination to deny, approve, or approve with conditions a Tree Removal Permit shall be made by the Mayor or his/her designee based upon the requirements and guidelines set forth in this Chapter. Permit applications shall be processed as a type 1 application in accordance with the requirements for type 1 applications set forth at BMC Ch. 18.08; provided that, if the application is made in conjunction with another development permit application with a higher level decision, the application shall be processed in accordance with the procedures applicable to the higher level decision.

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 on a 1:1 removal to replacement ratio.

B. Replacement trees shall be planted on the site from which significant trees are removed. If on-site replacement is not feasible, an off-site location may be approved by the City Administrator.

C. Replacement trees must meet the following criteria:

1. Native trees are preferred over non-native trees;
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 and marked appropriately;
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, evergreen trees shall be a minimum of six (6) feet in height; and
6. The time period for planting of replacement trees shall conform to standards for transplanting trees as set forth in ANSI A300, part 6, as now exists or may hereafter be amended, or such other comparable standard as may be approved by the Mayor or his/her designee.

7. Trees shall be watered as necessary to ensure survival and growth during their first two growing seasons after planting. Dead trees shall be replaced within the two-year planting period to ensure survival.

D. The City shall create a “Significant Tree Removal Mitigation Fund”. An applicant for a tree removal permit can, at the election of the applicant, pay a tree removal mitigation fee in the amount of \$500 for each tree removed into the removal mitigation fund in lieu of replacement. These funds will be maintained by the City and utilized in replanting projects throughout the City of Black Diamond and for the designation and protection of heritage trees, as determined by the City.

19.30.080 Protection of Trees During Construction

A. During land alteration and construction, in order to provide for the protection and health of retained significant trees, the applicant shall utilize the best management practices for tree protection as set forth in the *Best Management Practices Guidebook for the Pacific Northwest* published by Oregon State University, © 2009, or such other manual or standards generally accepted in the industry and approved by the Mayor or his/her designee.

B. Unless alternative best management practices for tree protection are approved by the Mayor or his/her designee, the following best management practices shall be applied to protect trees during land alteration or construction activities:

1. An area of prohibited disturbance, generally corresponding to the critical root zone, shall be identified prior to the construction stage of significant trees and all heritage trees to be protected prior to any land disturbance.

2. 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.”

3. Trees to be retained shall be watered appropriately during and immediately after construction and shall be protected from erosion and sedimentation.

4. 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.

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

C. If during redevelopment activities on a site, an applicant proposes to remove a significant tree in lieu of compliance with the best management practices set forth in subsection B, the Mayor or his/her designee may approve alternative best management practices for tree protection to the extent reasonably necessary to retain the significant tree impacted by such activities.

19.30.090 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 Mayor or his/her designee 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.

19.30.100 Enforcement.

A. Application of BDMC Chapter 8.02. The provisions of this Chapter shall constitute a regulation within the meaning of BDMC 8.02.020, 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 Chapter 19.30.

B. Abatement. In cases where significant trees are removed without a required tree removal permit, corrective action shall include the requirement that each tree removed shall be replaced with the number of replacement trees, based on Diameter at Breast Height (DBH), as set forth in the following table:

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

In the alternative to tree replacement, corrective action may include a requirement for payment in to the Significant Tree Removal Mitigation Fund the amount of \$500.00 for each replacement tree that would be required in accordance with the tree replacement ratios set forth in the above table.

C. Replacement trees shall meet the requirements of BDMC 19.30.070(C).

D. 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.

19.30.110 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;

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

B. Upon receipt of a nomination, the Mayor or his/her designee 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 City 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 City Council's action. The City may file such written designation for record with the King County Recorder's Office.

D. The City, with the consent of the Property Owner, may place an informational sign or marker at or near the location of the heritage tree to inform the public of its designation as a heritage tree.

E. Heritage tree declassification. Any heritage tree may be removed from heritage tree status upon approval of the City Council following the written request of the property owner; provided that, if the request is made because the tree is of poor health, diseased or no longer alive, the request may be approved by the Mayor or his/her designee.

1. The request shall be filed with the Community Development Department. If the request for decertification is based upon the health of the tree, and a visual inspection by the Mayor or his/her designee 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 approve the removal. If the tree is determined to be healthy, or with treatable infestation or infection, the Mayor or his/her designee 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.

F. Heritage trees warrant protection from unnecessary removal. No person may remove a heritage tree except as provided in BDMC 19.30.110. Any person removing a heritage tree shall be subject to a \$2,000 monetary penalty and may be required to replace each removed heritage tree in accordance with the ratios identified in BDMC 19.30.100(B).

G. Protection of Heritage Trees. Heritage trees represent a valuable and irreplaceable public resource. It is therefore in the public interest and a policy of the City to identify, protect and preserve such trees. The City will consider development and implementation of programs to carry out such polices when resources are made available to do so. Such programs may include, but are not limited to, preservation and protection of heritage trees through protective covenants, easements, and dedications.

19.30.120. 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.

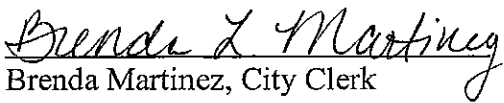
ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 16 DAY OF June, 2011.

CITY OF BLACK DIAMOND



Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:


Brenda Martinez, City Clerk

Approved as to form:

Chris D. Bacha
Kenyon Disend,
City Attorney

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Passed by the City Council:
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