

XX.XX Tree Code Enforcement

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XX.XX.010 **Purpose and Intent.**

- A. The purpose of this chapter is to establish rules and procedures to enforce LMC Section XX.XX.XXX regarding trees.
- B. This chapter does not comprise the exclusive remedies or actions available to the city nor does it limit the authority of the city to take action in accord with its code, state and federal law, and/or as otherwise available.
- C. This chapter shall be enforced for the benefit of the health, safety, and welfare of the general public, and not for the benefit of any particular person or class of persons.
- D. It is the intent of this chapter to place the obligation for complying with its requirements upon the owner, occupier, tenant, manager, agent, or other person responsible for the condition of land and buildings situated within the City of Langley and within the scope of the Langley Municipal Code.
- E. No provision or any term used in this chapter is intended to impose any duty upon the City or any of its officers or employees that would subject them to damages in a civil action.

XX.XX.020 **Definitions.**

- A. "Certified Arborist" means an arborist certified by the ANSI National Accreditation Board as an ISA Certified Arborist.
- B. "Commercial tree work" means any of the following actions conducted within the City of Langley in exchange for financial compensation: removal or topping of trees larger than 12 inches DBH. Normal and routine pruning operations that do not meet the definition of major pruning are not commercial tree work.
- C. "Diameter at breast height" or "DBH" means the diameter of a tree trunk measured at 4.5 feet above ground. Diameter at breast height is equivalent to "diameter at standard height" or "DSH."
- D. "Planning Official" means the City's Planning Official or designee.

E. "Drip line" means an area encircling the base of a tree, the minimum extent of which is delineated by a vertical line extending from the outer limit of a tree's branch tips down to the ground.

F. "Repeat Violation(s)" means a violation of this chapter in any location by the same person, for which a notice of citation was issued and was not timely appealed or was denied on appeal, within twenty-four months of the issuance of such order

G. "Person responsible" or "responsible person" means the owner, occupier, tenant, manager, agent or other person who caused or is causing the code violation under this chapter or other regulation.

H. "Severe damage" means the severing of three or more major roots or the tap root, the greater than incidental stripping of bark from a significant tree, the greater than incidental application of herbicides within the drip line, topping the tree, or removal of more than one-third of the live crown.

I. "Significant tree" shall be defined pursuant to LMC 18.01.040.

J. "Topping" means the cutting back of limbs to stubs within the tree's crown, to such a degree as to remove the normal canopy and disfigure the tree; or the cutting back of limbs or branches to lateral branches that are less than one-half ($\frac{1}{2}$) of the diameter of the limb or branch that is cut.

K. "Tree removal" means removal of a tree(s) or vegetation, through either direct or indirect actions including, but not limited to, clearing, topping or cutting, causing irreversible damage to roots or trunks; poisoning; destroying the structural integrity; and/or any filling, excavation, grading, or trenching in the dripline area of a tree which has the potential to cause irreversible damage to the tree, or relocation of an existing tree to a new planting location.

L. "Tree service provider" means any person or entity engaged in commercial tree work.

XX.XX.030 Authority and Administration.

A. The Planning Official shall have the authority to administer and enforce this chapter and is authorized to adopt procedures, policies, rules or guidelines; conduct inspections; and prepare the forms necessary to carry out the purposes of this chapter.

B. In order to discourage unlawful significant tree removal or severe damage and otherwise promote compliance with applicable code provisions, if the Planning Official in response to field observations or other information available, determines that violations of the LMC 18.22.020(l) have occurred or are occurring the Planning Official may take the following actions:

1. Issue notice of citation, execute voluntary compliance agreements, assess civil penalties, and recover costs;
2. Require abatement, and if such abatement is not timely completed by the person or persons responsible for a code violation, undertake the abatement and charge the reasonable costs of such work;
3. Order work stopped at a property by means of a stop work order;

4. Suspend, revoke, or modify a permit previously issued by the city when other efforts to achieve compliance have failed; and
5. Forward a written statement providing all relevant information relating to the violation to the office of the city attorney with a recommendation to prosecute willful and knowing violations as misdemeanor offenses.

C. The provisions of this chapter shall in no way adversely affect the rights of the owner, lessee, or occupant of any property to recover all costs and expenses incurred and required pursuant to this chapter from any person causing such violation.

D. In administering the provisions of this chapter, the Planning Official shall have the authority to waive any one or more such provisions so as to avoid substantial injustice; provided, that substantial injustice may not be based exclusively on financial hardship.

XX.XX.040 **Violation.**

It shall be a violation of this chapter for any person, firm or corporation to remove, clear or take any action detrimental to trees contrary to or in violation of any provision of this chapter, LMC 18.22.020, or to remove significant trees or any vegetation in the public right-of-way without a permit. Further, it shall be a violation of this chapter for any person, firm or corporation to knowingly aid and abet, counsel, encourage, hire, commend, induce, or otherwise procure another to violate or fail to comply with this chapter.

XX.XX.050 **Exemptions.**

A. The following activities are exempt from the provisions of this chapter:

1. Removal of tree(s) on private property that do not meet the definition of “significant tree” tree pursuant to LMC 18.01.040.
2. Significant trees may be removed immediately and without a permit if determined to be a hazard tree; provided that within 5 business days, the property owner applies for a tree removal permit, which shall include documentation from a certified arborist demonstrating that such significant tree was a hazard tree and removal was the only feasible method available to remedy the danger. Replacement of the significant tree shall be required in accordance with LMC 18.22.020.
3. Normal and routine pruning operations and maintenance.
4. Tree removal undertaken as part of tree and vegetation management and revegetation of public parkland and open spaces by public agencies or departments.

XX.XX.060 **Tree Service Provider Registration.**

A. Applicability

1. This Section XX.XX.060 establishes a public registration system for tree service providers operating within Langley.

2. Within 120 days of [effective date of ordinance], the Planning Official shall establish a tree service provider registration application process and public registry. Starting [90 days after effective date of ordinance], after the Planning Official has established the application process and public registry, no tree service provider may conduct commercial tree work unless it is listed on the City's tree service provider public registry. The Planning Official may promulgate rules as needed to support administration of the application process and public registry.
 3. Any commercial tree work must be done by a registered tree service provider.
 4. This Section XX.XX.060 does not regulate commercial tree work under the jurisdiction and oversight of the any public agency.
- B. Tree service provider registration required. A tree service provider must be registered by the Planning Official before it may conduct commercial tree work unless otherwise provided in subsection XX.XX.060(A)(4). A tree service provider registration shall be valid for one year from the date of issuance. The Planning Official shall publish a registry of registered tree service providers on a City web page available to the public. Registered tree service providers are required to renew their registration annually. Annual registration renewals shall require submittal to the Planning Official of documentation of continued compliance with this Chapter, provided that renewal may be denied pursuant to any rules administering this Section XX.XX.060 or as provided in Section XX.XX.070. A tree service provider registration shall be issued by the Planning Official to each applicant meeting the following requirements:
1. Possesses a current and valid Langley business license;
 2. Has at least one employee or a person on retainer who is a currently credentialed International Society of Arboriculture (ISA) certified arborist trained and knowledgeable to conduct work in compliance with American National Standards Institute (ANSI) Standard A-300 or its successor standard;
 3. Acknowledges in writing knowledge of City codes applicable to commercial tree work;
 4. Is not currently under suspension from registration under Section XX.XX.070 and does not have any outstanding fines or penalties related to commercial tree work activities owed to the City;
 5. Possesses a current and valid Washington State contractor registration under chapter 18.27 RCW; and
 6. Possesses a current certificate of insurance with an amount of insurance coverage determined by the Planning Official.
- C. Tree service provider activities.
1. A registered tree service provider shall comply with the following public notice requirements prior to conducting commercial tree work:
 - a. Provide the registered tree service provider's hiring entity with a notice that the hiring entity must post in a safe location at or adjacent to the commercial tree work site in a manner clearly visible from the public right-of-way at least three business days in advance of the commercial tree work.
 - b. The notice shall:

- 1) Include a brief description of the commercial tree work the registered tree service provider will be conducting and identifies whether said tree meets the City's definition of significant;
 - 2) Provide a copy of the tree service provider's registration; and
 - 3) Provide a copy of the tree removal permit.
2. A registered tree service provider is responsible for complying with best practices applicable to the particular commercial tree work for which they are retained, including but not limited to maintaining adequate supervisory control over workers conducting commercial tree work under their direct supervision.
 3. If a registered tree service provider is proposing to remove or conduct major pruning on a tree based on it being a hazardous tree, the following requirements apply:
 - a. The registered tree service provider applying for the hazardous tree removal permit must either have an employee or a person on retainer who is currently credentialed with an ISA Tree Risk Assessment Qualification;
 - b. The registered tree service provider must submit documents as required by the Planning Official, including a brief report that summarizes the factors contributing to the tree's risk rating. This report should include information on the overall health of the tree, the dimensions and structure of the tree, and analysis of potential targets should it or major parts of it fall. When deemed necessary by the Planning Official, the report should also include analyses of tissue samples to confirm disease or other issues concerning whether the tree poses a hazard to property or human safety; and
 - c. If the tree meets the City's definition of significant, the registered tree service provider shall engage another registered tree service provider to independently assess the tree and submit the application for its removal. The registered tree service provider that submits the application must be different from the registered tree service provider that will perform the removal or major pruning of the tree.

XX.XX.070 Enforcement.

A. Notice of citation.

1. Issuance. The Planning Official is authorized to issue a Notice of Citation to a responsible party, whenever the Planning Official determines that a violation of this subtitle has occurred or is occurring. The Notice of Citation shall be considered an order of the Planning Official.
2. Contents.
 - a. The Notice of Citation shall include the following information:
 - i. A description of the violation and the action necessary to correct it.
 - ii. The date of the notice.
 - iii. A deadline by which the action necessary to correct the violation must be completed.
 - iv. Assessment of civil penalties pursuant to LMC XX.XX.080.
 - v. Requirement for submittal of certified arborist's appraisal of the environmental loss.

vi. Requirement for submittal of real estate appraisal documenting economic benefit from unlawful tree removal.

b. A Notice of Citation may be amended at any time to correct clerical errors, add citations of authority, or modify required corrective action.

3. Service. The Planning Official shall serve the notice of citation upon a responsible party either by personal service or by first class mail to the party's last known address. If the address of the responsible party is unknown and cannot be found after a reasonable search, the notice may be served by posting a copy of the notice at a conspicuous place on the property. Alternatively, if the whereabouts of the responsible party is unknown and cannot be ascertained in the exercise of reasonable diligence, and the Planning Official makes an affidavit to that effect, then service may be accomplished by publishing the notice once each week for two consecutive weeks in the City official newspaper.

4. Nothing in this subtitle shall be deemed to obligate or require the Planning Official to issue a notice of citation or order prior to the initiation of enforcement action by the City Attorney's Office.

D. Stop-work Order. Whenever a continuing violation of this chapter will materially impair the Planning Official's ability to secure compliance with this chapter, when the continuing violation threatens the health or safety of the public, or when the continuing violation threatens or harms the environment, the Planning Official may issue a stop-work order specifying the violation and prohibiting any work or other activity at the site. The posting of the stop-work order on the site shall be deemed adequate notice of the stop-work order. The stop-work order shall be considered an order of the Planning Official. A failure to comply with a stop-work order shall constitute a violation of this chapter.

E. Review by Planning Official and Judicial Appeal.

1. A Notice of Citation, Planning Official's order, or invoice issued pursuant to this subtitle shall be final and not subject to further appeal unless an aggrieved party requests in writing a review by the Hearing Examiner within ten (10) days after service of the Notice of Citation, order or invoice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until five (5:00) p.m. on the next business day.

2. A hearing shall be held in accordance with the rules and procedures established by LMC 18.37 EMC.

3. The Hearing Examiner will review the basis for issuance of the Notice of Citation, order, or invoice and all information received by the deadline for submission of additional information for consideration as part of the review. The Hearing Examiner may request clarification of information received and a site visit. After the review is completed, the Hearing Examiner may:

- a. Sustain the Notice of citation, order, or invoice; or
- b. Withdraw the Notice of citation, order, or invoice; or
- c. Continue the review to a date certain for receipt of additional information; or
- d. Modify or amend the Notice of citation, order, or invoice.

4. The Hearing Examiners' decision shall be final, and is appealable only to the Island County Superior Court pursuant to LMC 18.37.210.

F. Referral to City Attorney for Enforcement. If a responsible party fails to correct a violation or pay a penalty as required by a Notice of Citation, or fails to comply with a Planning Official's order, the Planning Official may refer the matter to the City Attorney's Office for civil or criminal enforcement action. Judicial enforcement of a violation of this subtitle shall be by de novo review in Municipal Court.

G. Filing Notice or Order. A Notice of citation, voluntary compliance agreement, or an order issued by the Planning Official or court, may be filed with the Island County Department of Records and Elections.

H. Change of Ownership. When a Notice of citation, voluntary compliance agreement or an order issued by the Planning Official or court has been filed with the Island County Department of Records and Elections, a Notice of citation or an order regarding the same violations need not be served upon a new owner of the property where the violation occurred. If no Notice of citation or order is served upon the new owner, the Planning Official may grant the new owner the same number of days to comply as was given the previous owner. The compliance period for the new owner shall begin on the date that the conveyance of title to the new owner is completed.

XX.XX.080 Civil Penalties.

A. Any person, firm or corporation who is responsible for the removal, topping, severe damage, or other action detrimental to a tree in violation of this chapter or any notice of citation issued by the Planning Official pursuant to this chapter shall be subject to the damages and penalties established herein.

B. In addition to the assessment of damages for economic benefit and/or environmental loss, civil penalties shall be assessed in accordance with Table 1, based on the diameter at breast height (DBH) of the unlawfully removed or damaged tree trunk. If the DBH of an unlawfully removed or damaged tree cannot be established, the diameter of the remaining stump top shall be used in lieu of DBH.

Table 1: Civil Penalties

Unlawfully Removed or Damaged Tree DBH	Penalties per Tree: Private property (except critical areas)	Penalties per Tree: On City property; in Right-of-Way; Within Critical area or buffer; Protected Through Easement or Similar
Trees less than 6 inches	N/A	\$1,000
Larger than 6 and up to 12 inches	N/A	\$3,000
Larger than 12 and up to 18 inches	\$3,000	\$5,000
Larger than 18 and up to 26 inches	\$6,000	\$9,000
Larger than 26 and up to 30 inches	\$15,000	\$20,000
Larger than 30 inches	\$20,000	\$30,000
Tree stump has been eliminated	\$10,000	\$15,000

C. Illegal removal or severe damage shall be subject to a certified arborist's appraisal of the environmental loss from such removal or damage. In cases of removal where only the tree stump remains, or has been eliminated, the arborist's appraisal of the environmental loss may be based on probable DBH. The resulting monetary amount estimated for the environmental loss shall be paid by the property owner as damages in addition to the penalties set forth in Table 1 above.

D. Where the violation provides the property owner with economic benefit (e.g., increased property value, savings of construction costs), the amount of the economic benefit shall be assessed in addition to the penalties set forth in Table 1 above. A real estate appraisal, paid for by the property owner, shall determine the increased market value of the property that the violator derives from the violation.

E. The per tree penalty for repeat violations shall be determined by multiplying the penalty per tree amount in Table 1 by the number of violations. For example, the penalty per tree amount for second-time violations is multiplied by two, and the penalty per tree amount for third-time violations is multiplied by three, and so on.

XX.XX.090 **Waiver.**

A. Upon written request by the property owner, the Planning Official may elect to reduce the penalty, or not to seek penalties under the following circumstances.

1. The notice of citation or stop work order was issued in error; or
2. The civil penalties were assessed in error; or
3. As appropriate to resolve litigation; or
4. In accordance with policies created by the Planning Official.

B. The Planning Official shall state in writing the basis for a decision to waive penalties. The Planning Official's decision shall be final and is not subject to administrative appeal.

XX.XX.100 **Recovery of Costs, Penalties, and Damages.**

A. Any person responsible for a violation of this code may be assessed costs as provided in this section.

B. The Planning Official may assess the following costs and charges for any enforcement actions, investigations, and corrective actions taken under this chapter:

1. Reasonable legal fees and costs which shall include, but are not limited to, legal personnel costs and expert witness fees, both direct and related, incurred to enforce the provisions of this chapter as may be allowed by law;
2. Personnel costs which shall include, but are not limited to, administrative employee costs, and law enforcement or related enforcement agencies costs, both direct and related, incurred to enforce the provisions of this chapter;
3. Abatement costs as itemized by the city when undertaking an abatement of a violation under this chapter; and

4. Actual expenses and costs of the city in preparing notices, specifications, and contracts; in accomplishing or contracting and inspecting the work; monitoring the property consistent with the orders of compliance; hauling, storage, disposal expenses; the costs of any required printing, mailing, or court filing fees; and the costs of recording any liens or releases of liens on title.

C. Such costs are due and payable thirty days from mailing of the invoice. The City may charge all such unpaid costs, penalties, and damages as a lien against the property where the violation occurred, and that the unpaid amount may be a joint and several personal obligation of all persons responsible for the violation(s)

XX.XX.110 **Restoration.**

A. In addition to any other remedies available, violators of this chapter may be responsible for restoring unlawfully damaged areas in conformance with a restoration plan, approved by the Planning Official, which provides for repair of any environmental and property damage, and restoration of the site; and which results in a site condition that, to the greatest extent practicable, equals the site condition that would have existed in the absence of the violation(s). In addition, the Planning Official may require the replacement of any significant tree, as determined by a professional, city-approved arborist, at a ratio of up to 4:1 if removed in violation of this section.

B. In the event that restoration and/or replacement planting is required, the planting must be completed, and photos of the replacement trees submitted to the city within 12 months from the date of approval. Photos received after 12 months, unless an extension has been requested, will automatically be assessed an additional 10% of the violation fee. Further failure to comply with the planting requirements shall result in additional fees for every seven days the failure continues past the initial 12-month requirement. Such additional fees shall also be 10% of the original violation fee. Planting shall occur between the months of October and March.

XX.XX.120 **City Abatement.**

A. Abatement. Upon prior approval by the Planning Official, the City may abate a condition which was caused by or continues to be a violation of this chapter or other regulation when:

1. A Notice of Citation or stop work order has been issued, the period for filing an appeal with the hearing examiner has expired, and the required correction has not been completed; or
2. A Notice of Citation or stop work order has been issued, a timely appeal was filed, the appellant failed to appear at the scheduled hearing or a hearing was held as provided in this chapter and the required correction has not been completed by the date specified by an order of the hearing examiner; or
3. The condition is subject to summary abatement as provided for in this chapter or other provisions of city or state law.

B. Summary Abatement. When a violation causes a condition, the continued existence of which constitutes an immediate and emergent threat to the public health, safety, or welfare or to the environment, the city may summarily, and without prior notice to the person responsible, abate the

condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

C. Authorized Action by the City. Using any lawful means, the city may enter upon the subject property and may remove or correct the condition which is subject to abatement. The city may seek judicial process as it deems necessary to affect the removal or correction of such condition.

D. No Cause of Action Against City. No cause of action shall lie against the city or its agents, officers, or employees for actions reasonably taken, or not taken, to prevent or cure any immediate threats.

E. Recovery of Expenses. All expenses and costs incurred by the city in abating the violation shall be billed to the person responsible for the violation and shall become due and payable to the city within thirty calendar days.

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