

ORDINANCE NO. 74-2004

AN ORDINANCE AMENDING ATTACHMENT C
TO ORDINANCE NO. 54-89, THE CITY OF
RIVERGROVE'S LAND DEVELOPMENT ORDINANCE

Approved by the Planning Commission of the City of Rivergrove on February 2, 2004.

Submitted to the Rivergrove City Council on March 8, 2004.

Re-Submitted to the Rivergrove City Council on May 10, 2004.

Adopted by the Rivergrove City Council on May 10, 2004.

Larry Barrett, Mayor

Date

Mike Collmeyer, City Recorder

Date

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BEFORE THE CITY COUNCIL OF
THE CITY OF RIVERGROVE, OREGON

WHEREAS, the City of Rivergrove has adopted a Comprehensive Plan and Land Development Ordinances to guide and control the future development within the City of Rivergrove; and

WHEREAS, the Comprehensive Plan and Land Development Ordinances are designed to ensure that the characteristics of future development are appropriate to the needs of the area and will be reasonably compatible with the livability and development of abutting property; and

WHEREAS, the Comprehensive Plan and Land Development Ordinances are designed to guide and control the future development within the City of Rivergrove in a manner that will preserve the residential character of the City and will protect and preserve as much as possible the natural conditions (especially the native vegetation) of the area; and

WHEREAS, the Comprehensive Plan requires that wildlife and plant habitat considerations be integrated into the land use decision-making process; and

WHEREAS, the Comprehensive Plan encourages, especially in Environmentally Sensitive Areas, the preservation of existing wildlife habitat and major stands of trees to the maximum extent practical;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF RIVERGROVE ORDAINS AS FOLLOWS: The Rivergrove Land Development Ordinance (Attachment C to Ordinance #54-89) is hereby amended as follows:

ORDINANCE NO. 74-2004

AMENDMENTS TO THE LAND DEVELOPMENT ORDINANCE

Section 5.100. Tree Cutting is amended to read as follows:

Section 5.100. Tree Cutting

(a) DEFINITIONS

- 1) “Tree”: Any standing woody plant having a trunk 11.5 inch diameter (36" inch circumference) measured 4.5 feet from the ground (DBH diameter-breast-height). “Tree” does not include any plant on the Nuisance Plant List.
- 2) “Cutting”: Felling or removal or any procedure that has the natural result of causing the death or substantial destruction of a tree; cutting does not include trimming, limbing, pruning or topping within the bounds of accepted arboricultural practices. Cutting includes damage inflicted upon the root system of the tree.

(b) APPLICATION FOR PERMIT

- 1) A permit is required for each tree cut within the City of Rivergrove. Application is to be made and permit to be obtained from the City before the tree is cut. For permits issued under Emergency conditions, see part (c) below.
- 2) Permits or emergency permits for the first three trees not located in a Water Quality Resource Area¹ cut on a single lot or parcel in any twelve, consecutive calendar months: Approval will be granted by the City without a hearing. Such permits will be granted promptly upon submission of a written application. There will be no fee charged for this type of permit.
- 3) Permits for cutting trees beyond the first three trees cut on a single lot or parcel in any twelve, consecutive calendar months and for trees located in a Water Quality Resource Area: Written application must be made to the City for approval by the Planning Commission at one of its meetings. The first three trees cut on a single lot or parcel in any twelve, consecutive calendar months include any trees cut under emergency conditions in accordance with subsection (c) below.

¹ For a determination of Water Quality Resource Areas within the City of Rivergrove, see Rivergrove Land Development Ordinance # 70-2001.

- 4) The application shall contain the number, size, species, and location of the trees to be cut, the time and method of cutting or removal. In addition, the applicant shall furnish other information as may be required by the City.
- 5) If the tree cutting permit is approved, a fee of \$20 per tree (plus costs incurred by the City for all administrative, legal, engineering and planning requirements associated with the application) will be assessed starting with the fourth tree for that twelve month period. The application will not require review by staff unless directed by the Planning Commission.
- 6) Notwithstanding subsection 5) above, a single fee of \$20.00 (plus costs incurred) will be assessed for a permit application that deals solely with dead, dangerous, and dying trees.

(c) EMERGENCIES

In emergency conditions that require the immediate cutting or removal of trees to avoid danger or hazard to persons or property, an emergency permit may be issued by the Mayor, the President of the City Council or the Chairman of the Planning Commission, without formal application or payment of a fee. If they are unavailable, it shall be lawful to cut trees without a permit to the extent necessary to avoid an immediate danger or hazard. If a tree is cut under the provisions of this section, without an application having been filed, the property owner shall report the action taken to one of the aforementioned people within 7 days after such removal and provide information and evidence as may be reasonably required to explain and justify the action. If the evidence and information presented by the property owner does not justify the emergency tree cutting standards set forth, the application shall be denied and the property owner shall be subject to the penalties set forth in the Rivergrove Land Development Ordinance (RLDO).

(d) CRITERIA FOR ISSUANCE OF PERMITS

A tree cutting permit may be issued by the Planning Commission as requested in the application; may be issued in part and denied in part, or may be issued subject to compliance by the applicant with reasonable conditions to be imposed in order to promote the purpose of this Ordinance. The application does not require review by staff unless directed by the Planning Commission. A permit shall state the period of time for which it is valid. A permit issued for the reason that an improvement is to be constructed upon the premises shall contain a provision that a permit is not valid until a building permit or development permit has been issued for the construction of the improvement. The burden is on the applicant to show that granting of a permit would be consistent with the stated purposes of the

Rivergrove Land Development Ordinance (RLDO). The following criteria shall be considered:

- 1) The condition of the trees with respect to dead, dying, dangerous, proximity to existing or proposed structures or development, and interference with utility services or traffic safety. For the purposes of Section 5.100:
 - a. “Dead” means the tree is lifeless.
 - b. “Dying” means the tree is in an advanced state of decline because it is diseased, infested by insects or rotting and cannot be saved by reasonable treatment or pruning, or must be removed to prevent spread of the infestation or disease to other trees.
 - c. “Dangerous” means the condition or location of the tree presents a clear public safety hazard or a foreseeable danger of property damage to an existing structure and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

The planning commission may require the retention of dead or dying trees located in wetlands, natural areas, stream corridors, parks or open space areas, in order to provide for wildlife habit and natural processes, unless the tree presents a potential hazard to persons or property or conflicts with development.

- 2) The necessity to remove trees in order to construct proposed improvements, or to otherwise utilize the applicant’s property in a reasonable manner.
- 3) The topography of the land and the effect of tree removal on erosion, soil retention, stability of earth, flow of surface waters, protection of nearby trees, windbreaks, and a desirable balance between shade and open space.
- 4) The number of trees existing in the neighborhood, the character and property uses in the neighborhood, and the effect of tree removal upon neighborhood characteristics, beauty and property values.
- 5) The planning commission may require an adequate mitigation plan be submitted as a condition of approval for the permit, including requiring the submission of a drainage plan if appropriate.

e) EVIDENCE OF VIOLATION

- 1) If a tree is removed without a tree cutting permit, a violation may be determined by measuring the stump. A stump measured at the ground that is 44” or more in circumference shall be considered prima facie evidence of a violation.

- 2) Removal of the stump of a tree cut without a tree cutting permit prior to the determination is a violation.
- 3) Proof of violation shall be deemed prima facie evidence that such violation is that of the owner of the property upon which the violation was committed. Prosecution of or failure to prosecute the owner shall not be deemed to relieve any other responsible individual property owner, legal entity, or collective parties.

f) APPEAL

A decision made by the Planning Commission may be appealed to the City Council. A Notice of Appeal must be submitted in writing within 10 days after the denial, shall briefly state the facts and grounds of appeal and shall be signed by the appellant. Following receipt of the Notice of Appeal the matter shall be set for hearing no later than 45 days from the date of receipt. The appellant shall be notified of the hearing date.

g) PENALTIES

- 1) Cutting a tree in violation of the Ordinance, breach of a term or conditions of a permit granted under this Ordinance, or violation of any other provision of this Ordinance is an offense punishable by fine not to exceed \$1,500.00. The unlawful cutting of each individual tree is a separate offense.
- 2) The City retains the authority to require the applicant to replace any illegally removed trees pursuant to a plan, and meet any conditions as set forth by the Planning Commission. No future permits or approvals for any use of the subject property shall be granted without compliance with the plan.
- 3) The property owner has the burden to prove that the criteria for granting a permit are satisfied or that cutting is allowed without a permit.