

CITY OF NEWPORT

ORDINANCE NO. 2154

AN ORDINANCE AMENDING CHAPTERS 2.05, 8.10, 9.10, 9.15 AND 13.05 OF THE NEWPORT MUNICIPAL CODE RELATING TO THE PERMITTING PROCESS FOR PRUNING, PLANTING, AND REMOVING TREES FROM THE PUBLIC RIGHT-OF-WAY

Findings:

1. In 2011 the City of Newport put together a program for managing the tree canopy along its streets, parks and other public spaces in its successful pursuit of a "Tree City USA" designation from the National Arbor Day Foundation. Some elements of the program were implemented with Ordinance No. 2031 (2012) and Ordinance No. 2054 (2013). Other aspects of the program were deferred until they could be fully developed and vetted with policy-makers.
2. This ordinance addresses the remaining, unimplemented elements of that original effort, which include a revised permitting process for pruning and removing trees from the public right-of-way and the establishment of new standards for installing street trees in new subdivisions.
3. The City's existing permitting process for pruning and removing trees from the public right-of-way, implemented through the issuance of a right-of-way permit under Newport Municipal Code (NMC) Chapter 9.10, provides little in the way of guidance as to when it is or is not appropriate to remove trees. This creates uncertainty and can lead to inconsistent application of the rules.
4. The proposed amendments more clearly define the types of pruning and tree removal that can be authorized ministerially, by staff, and those requests that should be referred to a "Tree Board" for further consideration. The Newport Parks and Recreation Committee will serve as the Tree Board to adjudicate such requests, and to assist with developing and periodically updating a "Tree Manual" for the care of trees and other vegetation in parks, along public streets, and in other public places. This requires revisions to the scope of the Committee's responsibilities outlined in NMC Chapter 2.05.
5. In addition to the right-of-way permitting process in NMC Chapter 9.10, the City of Newport issues encroachment permits to persons seeking to improve undeveloped portions of the public road rights-of-way. This is often in the form of fences, retaining walls, or similar structures. The encroachment permit requirements, under NMC Chapter 9.15, include a requirement that a permit be obtained for "planting a tree." This language needs to be removed, as tree planting is most appropriately addressed under NMC Chapter 9.10.
6. Property owners commonly landscape undeveloped road rights-of-way between their

property line and the edge of the improved street, and it appropriate that owners abutting an undeveloped right-of-way be responsible for the care of the landscaping in the right-of-way. This includes the removal of dead or decaying trees or tree limbs that may pose a safety hazard. NMC Chapter 8.10 contains language that adequately addresses the issue. However, there are circumstances where the City may, at its discretion, want to remove dead, decaying or unsafe trees or tree limbs that pose a safety hazard. That the City may elect to take such action is not clearly articulated in the Municipal Code and it is appropriate that such language be added to NMC Chapter 8.10.

7. NMC Chapter 13.05, Subdivision Regulations, contains criteria for installation of street trees and landscaping within public rights-of-way that are associated with new development. These provisions need to be amended to ensure that such plantings are consistent with the adopted tree manual.
8. A program for managing the City of Newport's urban tree canopy is consistent with the Newport Comprehensive Plan goal of protecting, and where appropriate, enhancing the natural and scenic beauty of the Newport area (Goal 1, Physical Description Element). Trees are an important part of the City's view shed. Identifying tree species appropriate to the local climate, and putting in place standards for their placement and care enhances the survivability of plantings and improves the overall health and condition of the tree canopy.
9. Further, the proposed amendments are consistent with the Comprehensive Plan goal of assuring adequate planning for public facilities (Goal 1, Public Facilities Element). Establishing standards for the placement, maintenance, and removal of trees prevents premature damage to city water, sewer, street and sidewalk infrastructure attributed to tree growth; limits demands for tree maintenance beneath overhead utility lines; and reduces the chances that vegetation will obstruct public ways.
10. The proposed amendments were vetted with the Parks and Recreation Committee, and reviewed by the Planning Commission at work sessions on April 8, 2019 and May 13, 2019. On July 22, 2019, after accepting testimony at a duly noticed public hearing, the Newport Planning Commission recommended the City Council adopt the amendments.
11. The City Council held a public hearing on August 19, 2019 regarding the question of the proposed revisions and voted in favor of their adoption after considering the recommendations of the Parks and Recreation Committee, Planning Commission, and evidence and argument in the record.
12. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. The above findings are hereby adopted as support for the Council's following amendments.

Section 2. Ordinance No. 2031, adopted March 5, 2012, is hereby repealed. This does not affect those provisions of Ordinance No. 2031 implemented with Ordinance No. 2054, adopted June 12, 2013.

Section 3. Section 2.05.040(D)(2) of the Newport Municipal Code is hereby amended to read:

2. To serve as the City's "Tree Board," with authority to approve or deny requests for public tree removal pursuant to Chapter 9.10 (Right-of-Way-Permits) and with the responsibility to study, investigate, develop and periodically update a written manual for the care, preservation, pruning, planting, replanting, removal and disposition of trees and plantings in parks, along public streets, and in other public places.
 - a. As part of this manual, a list of acceptable species shall be developed and maintained for planting trees along public streets. The list shall provide spacing and planting details for each species, and divide trees into three classes based upon mature height: small (under 30 feet); medium (30 to 50 feet) and large (over 50 feet);
 - b. The manual may include criteria for determining, and standards for protecting, heritage trees within the city. The purpose of the heritage tree designation is to recognize, foster appreciation of, and protect trees having significance to the community. Criteria may include such things as species rarity, age, size, quality, association with historical events or persons, or scenic enhancement;
 - c. A draft of the manual and any amendments thereof shall be presented to the City Council and, upon Council acceptance and approval, will constitute the official Tree Manual for the city. Adoption by the City Council shall be by resolution; and
 - d. The manual shall be reviewed at least once in every three-year period after initial approval.

Section 4. Section 8.10.160 of the Newport Municipal Code is hereby amended to read:

8.10.160 Abatement by City

- A. If the nuisance has not been abated within 10 days of posting or as within the time specified in the Council decision, the city manager may cause the nuisance to be abated by the city. The city manager may decide not to proceed with the abatement if the city lacks the resources to abate the nuisance. The City Manager may agree to extend the deadline for a reasonable

period of time so long as the owner or other responsible person is making reasonable efforts to abate.

- B. No abatement by the city on private property shall occur unless preceded by issuance of a judicial warrant authorizing entry and abatement, or in the alternative, written consent and release of liability by the property owner or person in charge of the property. The municipal judge shall have the authority to issue a warrant to enter and abate.
- C. The city shall keep an accurate record of the actual cost incurred by the city in abating the nuisance, including any administrative expenses, and any costs incurred in posting notice or holding the hearing. Staff time in preparation for and participation at the hearing shall also be included as a cost of abatement.

Section 5. Chapter 9.10 of the Newport Municipal Code is replaced in total as set forth in Exhibit A.

Section 6. Section 9.15.010(A) of the Newport Municipal Code is hereby amended to read:

- A. The following actions are prohibited within rights-of-way or on city property except as authorized by the city by a temporary encroachment permit:
 - 1. Placing or maintaining a structure.
 - 2. Excavation or fill, including placing of rocks or other landscaping materials.
 - 3. Landscaping activities, other than in the portion of the right-of-way immediately adjacent to property owned, controlled or possessed by the person.

Section 7. The following is added and made part of Section 13.05.015 of the Newport Municipal Code.

- M. **Street Trees.** Trees and other plantings may be installed within proposed or existing rights-of-ways provided they conform to the City's approved Tree Manual.


Section 8. **Effective Date.** This ordinance shall take effect 30 days after passage.

Date adopted and read by title only: September 3, 2019.

Signed by the Mayor on September 4, 2019.


Dean H. Sawyer, Mayor

ATTEST:


Margaret M. Hawker, City Recorder

CHAPTER 9.10 RIGHT-OF-WAY PERMITS

9.10.010 Definitions

The following definitions apply in this chapter.

- A. **Breast height** means the tree trunk's diameter as measured at four and one-half feet above the ground.
- B. **Cut** means to excavate in a right-of-way or, in the context of a tree, to fell or remove a tree or to do anything that has the natural result of causing the death or substantial destruction of a tree, including girdling and topping.
- C. **D.B.H. (diameter at breast height)** means the tree trunk's diameter as measured at four and one-half feet above the ground; for multi-trunked trees, the diameter of the two largest trunks combined.
- D. **Drip line** means the area under a tree's canopy as defined by an imaginary vertical line extending downward from the outermost tips of a tree's natural length branches to the ground.
- E. **Emergency** means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.
- F. **Girdling** means the cutting or removal of the outer bark and conducting tissues of a tree, potentially causing death by interrupting the circulation of water and nutrients.
- G. **Hazardous growth habit** means the development of a tree that, due to a combination of structural defect, disease, or existing disturbance, is subject to a high probability of failure; and such failure would result in a threat to persons or improved property.
- H. **Mitigation tree** includes any tree required by this chapter as a replacement for a tree removed.

- I. **Person** means natural person, corporation, company, partnership, association, or district of any type, but does not include the City of Newport.
- J. **Pruning** means normal, seasonal maintenance pruning, trimming, shaping or thinning of a tree necessary to its health, growth and view maintenance where foliage reduction does not exceed one quarter of the total tree foliage.
- K. **Pruning (minor)** means the removal of living parts in an amount of 20% or less of the tree's mass within a five-year period.
- L. **Removal** means cutting or removing 50 percent or more of the crown, trunk or root system of a tree, or any action that results in the loss of aesthetic or physiological viability or causes the tree to fall or be in immediate danger of falling. Removal includes topping and girdling, but shall not include pruning performed to applicable standards.
- M. **Right-of-Way** includes all property dedicated to the public for transportation purposes and administered by the city, including streets, roads, bridges, alleys, sidewalks, trails, paths, and all other public ways and areas managed by the city. "Right-of-way" also includes public utility easements to the extent that the easement allows use by the permittee planning to use or using the public utility easement. "Right-of-way" includes the subsurface under and airspace over these areas. "Right-of-way" does not include the airwaves for purposes of CMRS, broadcast television, DBS and other wireless providers, or easements or other property interests owned by a single utility or entity.
- N. **Topping** means the severe cutting back of the tree's crown limbs to stubs to such a degree so as to remove the natural canopy and disfigure the tree.
- O. **Tree** means city-planted trees of any size, or a perennial woody plant, of eight feet or more in height, measuring four inches D.B.H. or larger, with a single main stem (the trunk or bole), or in some cases multiple trunks from which

branches and twigs extend to form a characteristic crown of foliage.

P. Tree care professional means a licensed tree care consultant, who is certified as an arborist by the International Society of Arboriculture, or other tree care professional approved by the city.

Q. Tunnel means an excavation requiring the removal of dirt or like material and does not include driving or forcing of pipe through the ground if all surfaces within the right of way remain undisturbed.

9.10.015 Applicability

The requirements of this chapter shall apply to all rights-of-way controlled or administered by the City of Newport, whether as a result of a dedication by plat or deed or agreement with Lincoln County or the State of Oregon. This chapter shall further apply to the pruning and removal of a tree which greater than 50% of the trunk at breast height is on city owned or controlled property, including rights-of-way and easements.

9.10.020 Permit Required

A. No person may cut, break, dig up, damage in any manner, undermine or tunnel for any purpose in any developed portion of a right-of-way, or obstruct any developed portion of right-of-way, without obtaining a right-of-way permit under this chapter. Developed portions of rights-of-way include all streets, sidewalks and any other paved or improved area. No person may cut, break, dig up, damage in any manner, undermine or tunnel within any portion of a right of way to place, modify, repair or maintain any utility facility without obtaining a right-of-way permit. No person may construct any street, sidewalk, trail or path within any right-of-way without a right-of-way permit. Application for permits shall be in the form prescribed by the city. Permits shall be issued for a limited time and shall specify the extent of the authority granted by the permit. No permit shall be issued unless the applicant has complied with or is not subject to Chapter 9.05.

- B. Any person who cuts, breaks, digs up, damages in any manner, undermines or tunnels under any unimproved portion of a right-of-way for non-utility purposes must obtain an encroachment permit pursuant to Chapter 9.15
- C. No person shall prune or remove a tree without obtaining a right-of-way permit. Minor pruning of trees in the city's right of way directly abutting private property to maintain minimum sidewalk and road clearance as described in NMC Chapter 14.17, Clear Vision Areas, shall be deemed exempt from this permitting requirement.

9.10.025 Tree Removal Requests and Authority

An individual may request permission from the city to remove trees.

- A. The city may ministerially approve or deny permits for removal of public trees fitting the following criteria:
 - 1. The tree is diseased, blighted, or insect infested.
 - 2. The tree is determined to be dead, or dying and not recoverable
 - 3. The tree is determined to have a significantly damaged root structure that will adversely impact the health and stability of the tree.
 - 4. The tree is determined to exhibit a hazardous growth habit.
 - 5. Removal of the tree is required to build allowable improvements such as driveway access(es).
- B. The Parks and Recreation Committee, serving as the city's "Tree Board," shall have authority to approve or deny requests for removal of public trees not fitting the criteria in Section 9.10.025(A)(1-5), and in other cases where the city chooses to refer the application to the Tree Board for a decision. In making a decision on whether to approve or deny a request for tree removal, the Tree Board shall consider the criteria listed below. The decision shall include findings that cite each of these criteria. These criteria are meant to be guides, and the varying importance or weight of each in determining the appropriateness of tree removal shall be as expressed in the findings:

1. Any of the following criteria shall be considered as aspects that may warrant approval of a tree removal request:
 - a. The tree is causing damage to improvements within the public right-of-way such as street pavement and sidewalks.
 - b. The tree is causing structural damage that includes, but is not limited to, foundations, water lines and sewer lines on private property.
 - c. An existing building footprint lies within the drip line of the tree.
 - d. Removal of the tree is being done for thinning purposes to enhance the health of other trees.
 - e. The removal would allow solar access for an otherwise extremely shaded property.
 - f. The removal is being done to enhance a view.
 - g. In the absence of potential denial criteria listed below, removal is for the owner's landscape improvement but does not jeopardize the aesthetics of the neighborhood.

2. Any of the following criteria shall be considered as aspects that may warrant denial of a tree removal request:
 - a. The tree is visually prominent.
 - b. The tree is of significant size.
 - c. The tree is part of a larger grove or grouping of trees and its removal will adversely affect the health and safety of the remaining trees within the grove or grouping.
 - d. The tree is on land that is sloped and removal of the tree may exacerbate erosion or soil slumping in the vicinity of the tree.
 - e. The tree acts as a privacy barrier for adjacent properties.

- C. The city may refer any tree removal application to the Tree Board for a decision at any time.

- D. A decision of the Tree Board becomes final 10 business days after the decision is issued. If the decision is to

approve the removal request, the permit shall be issued only after the decision becomes final. If there is no appeal filed, the decision of the Tree Board becomes final 10 business days after it (the decision) is issued. The permit to remove the tree(s) will not be issued until the decision becomes final.

9.10.030 Appeals of Tree Board Decisions

- A. Decisions of the Tree Board may be appealed to the City Council in writing within 10 calendar days of the date of the decision.
- B. The City Council shall set a date, time and place for a hearing on the appeal. Notice of the appeal hearing shall be mailed to the appellant at least ten (10) calendar days prior to the hearing. During the hearing, the appellant shall have an opportunity to present in writing or orally the grounds for the appeal. The decision and order of the City Council on such appeal shall be final and conclusive.

9.10.035 Permit Applications

- A. Applications for right-of-way permits shall be submitted on forms provided by the city and shall be accompanied by drawings, plans, and specifications in sufficient detail to demonstrate:
 - 1. That all work will be performed and any facilities will be constructed in accordance with all applicable codes, rules, and regulations.
 - 2. That all work will be performed and any facilities will be constructed by or for a franchisee in accordance with the franchise agreement.
 - 3. The location, route, and description of all of applicant's new facilities to be installed as well as all of applicant's existing facilities in the construction area, including a cross-section to show the facilities in relation to the street, curb, sidewalk, and right-of-way.
 - 4. The construction methods to be employed for protection of existing structures, fixtures, and facilities,

and a description of any improvements that the applicant proposes to temporarily or permanently remove or relocate.

- B. Applications for construction permits shall be accompanied by the following:
1. A verification that the drawings, plans, and specifications submitted with the application comply with all applicable technical codes, rules, and regulations. The city may require that the verification be by a registered professional engineer.
 2. A written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the city engineer.
 3. The permit fee in an amount to be determined by resolution of the City Council, unless otherwise provided in a franchise agreement or applicable state law. The fee shall be designed to defray the costs of city administration of the construction permit program. Permit fees shall not be charged to any franchisee operating under a currently valid franchise or to any other person using city rights-of-way under an agreement with the city that requires payment of a franchise fee.
- C. Applications for right-of-way permits for pruning and removing trees shall be accompanied by the following:
1. The number, diameter and species of trees requested to be pruned or removed;
 2. A site plan identifying the size, location and species of the tree(s) to be pruned or removed. Applicants may use aerial maps as a site plan.
 3. For pruning, a statement from a tree care professional indicating that the proposed pruning measures will not foreseeably lead to death or permanent damage to the tree(s).

4. For removals:
 - a. Reasons justifying the removal, referencing the criteria in Section 9.10.025;
 - b. A description of the proposed tree replacement including planting details specifying the number, size, species, cost and proposed replacement location(s). In lieu of replacing trees, the applicant may propose to pay into the city tree fund an amount equivalent to the value of the mitigation trees after installation, as detailed in Section 9.10.055 (E).
 - c. After clearly marking the tree(s) with brightly colored tape, the applicant shall take and include with the application photograph(s) of the tree(s) to be removed and the surrounding area.
 - d. The applicant may, at their discretion, submit a report by a tree care professional on the health and structure of the tree(s) to be removed and the impact of such removal upon surrounding trees. In no way should this be construed to mean that the city requires such a report, except as noted in subsection (e) below. Reports from other professionals (engineers, appraisers, etc.) may also be included in the application but are not required.
 - e. If the application is being made on the criteria in Section 9.10.025(A)(1-4), a formal report from a tree care professional establishing that one or more of the criteria for removal are being met may be required by the Public Works Department, in the case that the Department is unable to make its own determination.
 - f. If the application is being referred to the Tree Board, names and addresses of property owners within 200 feet of the abutting property (or outline of property that is held in common), as shown in the records of the County Assessor. If the property is within a homeowners association, then contact

information for the association shall also be provided.

9.10.040 Notice of Tree Removal Requests

The city will determine the level of notification needed based on the approval criteria in section 9.10.025.

- A. If the application is not being referred to the Tree Board, then no notification is needed.
- B. For all other trees the city shall notify all property owners within 200 feet of the property for which the permit is being requested. The notice shall be sent via US Mail prior to the next Tree Board meeting and shall include the following:
 - 1. The address (or legal description) of the abutting property
 - 2. A copy of the applicant's site plan
 - 3. A description of the trees to be removed including the diameter and species
 - 4. The reasons stated by the property owner justifying the removal
 - 5. The expected Tree Board's decision date
 - 6. How to request a copy of the decision
 - 7. The appeal rights and process
 - 8. The address and contact information of city staff for questions and comments

9.10.045 Review by City Engineer

The city engineer, after reviewing the materials submitted with the application, shall notify the applicant if changes in the construction plans are needed and what city requirements must be met.

9.10.050 Permit Issuance

Upon a determination that the application and supporting information complies with the requirements of this chapter, the city engineer shall issue a permit authorizing construction in the rights-of-way or pruning or removal of public trees, subject to conditions that the city engineer deems appropriate to

ensure compliance with this chapter. In order to minimize disruption to transportation and to coordinate work to be performed in the right-of-way, the permit may specify a time period within which all work must be performed and require coordination of construction activities. The city engineer may impose conditions regulating the time, place and manner of performing the work as the city engineer may deem reasonably necessary.

9.10.055 Tree Removal and Replacement

- A. If permission for tree removal is granted, all costs of removal, cleanup and replacement shall be borne by the person requesting the removal. Trees are to be removed at least flush with ground level, stumps shall be ground, and all debris removed.
- B. Any person granted a tree removal permit shall replace each removed tree with at least one mitigation tree within an abutting right-of-way, or an approved alternate public property in the city. If approval criteria in Section 9.10.025(A)(1-4) apply, then 1 mitigation tree is required for each tree that is removed. All other tree replacements shall be in accordance with the table below.

DBH of tree to be removed (inches in diameter 4.5' above the ground)	Number of mitigation trees to be planted
>4" (if city planted)	1
4" - 6"	1
> 6" to 12"	2
>12" to 18"	3
>18" to 24"	4
>24" to 30"	5
>30"	8

- C. The Tree Board may consider other types of landscaping in lieu of trees. The type, amount and arrangement of said landscaping shall be clearly illustrated on a plan provided

by the applicant and shall be approved by the Tree Board if it is found that the proposed landscaping:

1. provides aesthetic improvements, and,
2. the planting of replacement trees is not practical or desirable for the public, and,
3. the landscaping will not create a hazard or otherwise impede pedestrian or vehicular traffic.

D. The preferred replacement site shall be the right-of-way abutting the applicant's property from which a tree is being removed. Provided one or more of the mitigation trees cannot be located viably on the property from which a tree is removed, the city may require that the applicant plant one or more mitigation trees on other public property within the city. The city, in conjunction with the Tree Board, shall select an appropriate planting site on open space, a park, or other public land suitable for new trees.

E. In lieu of replacing trees, the applicant may propose to pay into the city tree fund an amount equivalent to the value of the mitigation trees after installation. The in-lieu payment amount shall be equivalent to the cost of the mitigation trees, plus the cost of delivery, installation, and maintenance for a period of one year, in an amount of \$250.00 per tree, or such other amount established by City Council resolution. The in-lieu payment approved and received shall be used by the city for planting and maintenance of mitigation trees on city owned property. Any unspent funds shall be carried forward from year to year for the purpose of maintaining the city's urban forest.

F. The planting of mitigation trees shall take place in such a manner as to reasonably ensure that the trees grow to maturity. Any mitigation tree dying within one year of the date of planting shall be replaced by the applicant. Mitigation trees, including trees meant to replace a previously planted mitigation tree that has died within one year, shall be planted within six months of the date of issuance of a tree removal permit or death of a mitigation

tree, unless the city engineer has granted an extension of time no longer than six months due to season or unforeseen circumstances. Failure to complete mitigation within the allotted time frame shall be considered a violation of this chapter and subject to the penalties provided for in Section 9.10.130.

9.10.060 Compliance with Permit

All construction shall be in accordance with the permit and approved plans and specifications. The city engineer shall be provided access to the work site and the opportunity to inspect any work in the right-of-way. The permittee shall provide, upon request, any information needed by the city engineer to determine compliance with applicable requirements. All work that does not comply with all permit requirements shall either be corrected or removed at the sole expense of the permittee. The city is authorized to issue stop work orders to assure compliance with this chapter or other generally applicable ordinance.

9.10.065 Notice of Construction

Except in an emergency, the permittee shall notify the city engineer not less than two working days prior to any excavation or construction in the right-of-way.

9.10.070 Construction in Right-of-Way

The permittee shall complete all construction within the right-of-way so as to minimize disruption of the right-of-way and utility service and without interfering with other public and private property within the rights-of-way. All construction work within rights-of-way, including restoration, must be completed within 120 days of issuance of the construction permit unless an extension or alternate schedule has been approved by the city engineer. The permittee shall comply with traffic control procedures and standards.

9.10.075 Coordination of Construction

- A. All permittees shall make a good faith effort to coordinate their construction schedules with those of the city and other users of the rights-of-way.

- B. Unless otherwise agreed to in writing by the city, or needed to provide service to customers, or in the case of an emergency, at least 60 days prior to the installation or upgrading of utility facilities or a utility system (as defined in Chapter 9.05) that requires a cut or opening in the street of 400 linear feet or greater, the person intending to perform such work shall provide notice to the city and all other utilities identified by the city as utilities that are franchised or permitted to place facilities within the project area.
 - 1. The notice must be provided in a manner that documents receipt of notice by utilities.
 - 2. The notice shall state the anticipated location, project schedule and general description of the proposed work.
 - 3. No permits for work shall be issued until notice has been given to all other utilities, unless otherwise agreed to as part of the permit process.

- C. All utilities performing work in the rights-of-way subject to the notice requirement set forth in paragraph 2 of this section shall cooperate with other utilities with permits to do work in the same location at or near the same time to coordinate construction and co-locate facilities.

- D. Nothing in this section shall require a utility to reveal proprietary information. A utility shall signify any proprietary information as such and the city will protect such information from disclosure to the extent allowed by law.

- E. The notification requirement set forth in paragraph 2 of this section shall not be required for the installation of facilities in new developments that are being processed through the private development review process.

9.10.080 As-Built Drawings

Upon request by the city, a permittee shall provide city with two complete sets of engineered plans in a form acceptable to the city showing the location of the facilities the permittee installed or constructed within the rights-of-way pursuant to the permit. Nothing in this section requires a utility to reveal proprietary information. A utility shall identify all proprietary information provided to the city and the city will not disclose that information unless the district attorney or court determines that the information is not exempt from disclosure under Oregon public records law.

9.10.085 Restoration of Rights-of-Way and City Property

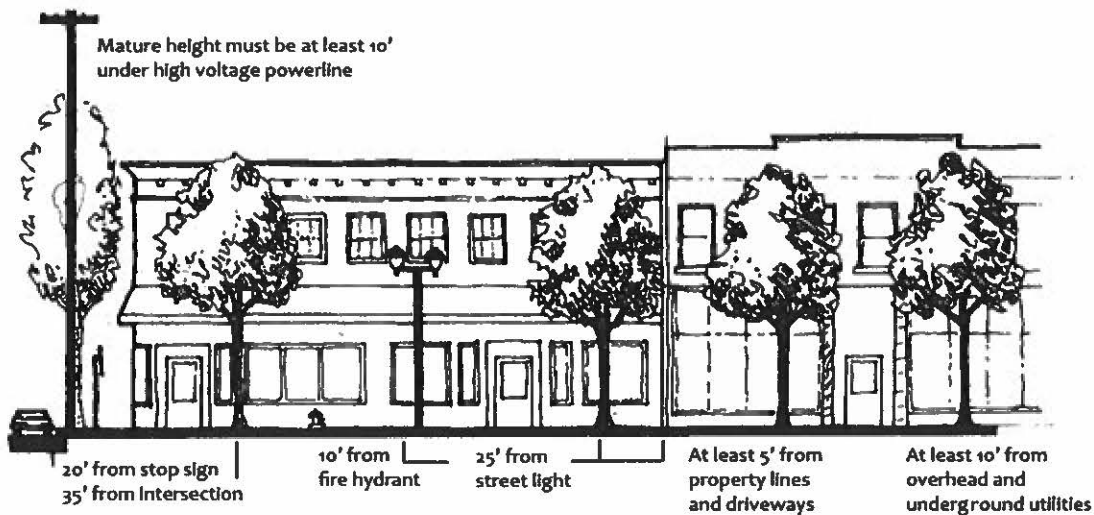
- A. When a permittee does any work in, or affecting any rights-of-way or city property, it shall, at its own expense, promptly remove any obstructions when no longer needed and restore such the right-of-ways or city property to good order and condition as existed prior to the work being undertaken, unless otherwise directed by the city.
- B. If weather or other conditions do not permit the complete restoration required by this section, the permittee shall temporarily restore the affected rights-of-way or property. The temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the city.
- C. If the permittee fails to restore rights-of-way or property to good order and condition, the city shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding thirty (30) days to restore the rights-of-way or property. If, after notice, the permittee fails to restore the rights-of-way or property to as good a condition as existed before the work was undertaken, the city shall cause such restoration to be made at the expense of the permittee. The city may either charge the permittee for the cost of the improvement or deduct the cost from the security provided under [Section 9.10.100](#).

- D. A permittee shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property from the work.
- E. The permittee shall restore all streets, alleys, roads and other public ways or places that it disturbs to essentially the same condition the area was in prior to permittee's work. The permittee shall perform all work in compliance with applicable rules, regulations, ordinances, or orders. The city engineer may issue orders to ensure compliance with this chapter and proper protection of public and private property. If the permittee fails to make repairs or provide restoration in response to any order within the time allowed under the order, city may make those repairs at the expense of the permittee.

9.10.090 Planting, Maintenance and Removal of Trees

- A. Public plantings shall adhere to the following standards:
 - 1. Only those species identified in the city's adopted Tree Manual may be planted along public streets;
 - 2. Spacing between trees shall be in accordance with recommendations contained in the adopted Tree Manual;
 - 3. Only those trees listed as small trees, forbs/herbs, shrubs and grasses in the adopted Tree Manual may be planted under or within 10 lateral feet of any overhead utility wire, underground water line, sewer line, transmission line or other utility;
 - 4. Trees shall be set back from curbs and sidewalks by the size classification in the adopted Tree Manual, as follows: small trees, three feet; medium trees; four feet; and large trees, six feet;

5. No tree shall be planted closer than 35 feet from a street corner, measured from the point of nearest intersecting curbs, curb lines, or edge of pavement; and
6. No tree shall be planted closer than 25 feet from any street light. No Street Tree shall be planted closer than 20 feet from any stop or yield sign. No Street Tree shall be planted closer than 10 feet from any fire hydrant.



- B. Removal of trees is allowed without a permit if performed by the City or its authorized agent to remove vegetation and trees that present a danger to life or property, to restore utility services, or to reopen a public thoroughfare to traffic.
- C. Removal of trees is allowed without a permit if performed by the City or its authorized agent to remove trees that are deemed nuisances under Chapter 8.10 NMC, Nuisances, or to remove trees necessary to install or maintain improvements on parklands, streets, sewers, or utilities within publicly owned and dedicated rights-of-way or public utility easements.

- D. The city manager may order the removal of any tree, or part thereof, irrespective of the adopted Tree Manual, upon a determination that such action is necessary to resolve an unsafe condition or prevent damage to public improvements.
- E. No person shall remove or injure any public tree, except in accordance with the provisions specified in this Chapter.

9.10.095 Right-of-Way Preservation and Restoration Policy

- A. Except as provided in Subsection C., after any street has been constructed, reconstructed, paved or overlaid by any person, the driving surface of the pavement shall not thereafter be cut or opened for a period of four years.
 - 1. The city engineer shall make the final determination on what construction or improvement will result in a limitation and shall create, maintain, and make available to the public a list of the streets and street segments subject to the limitation. Only streets named on the list shall be subject to the limitation.
 - 2. The limitation period shall begin upon the city's acceptance of the completed street or street improvements.
- B. Except as provided in Section C., after the installation or upgrading of utilities that require a cut or opening in the street of 400 linear feet or greater, the pavement surface within that cut or opening shall not be cut or opened for a period of 12 months, provided that the person requesting to cut or open such a surface received notice of the prior street cut or opening pursuant to [Section 9.10.075](#). The 12-month limitation period shall begin upon the utility's completion of the restoration of the street.
- C. The city engineer shall grant exceptions to the prohibitions set forth in Subsections A. and B.:
 - 1. In emergency situations (as defined in Subsection D.).
 - 2. When cutting or opening the street is required to locate existing facilities when tunneling, boring, or pushing under the street (e.g., "potholing").

3. To provide or maintain utility services to a property when no other reasonably practicable alternative exists within the right-of-way or existing utility easement. The city engineer may grant exceptions to the limitations imposed by Subsections A. and B. when, in the sole discretion of the city engineer, compelling circumstances warrant the cutting or opening of the street.
 - a. In granting an exception, the city engineer may impose conditions determined to be appropriate to completely restore the street and provide equivalent surface quality, durability, and rideability. Conditions may include surface grinding, base and sub-base repairs, or similar work, and may include up to a full-width surface paving of the roadway.
 - b. The city engineer may develop and maintain guidelines for use in determining the appropriate restoration conditions that may be imposed under subsection (a), and may consider the guidelines and any other relevant circumstances in imposing restoration conditions.
 - c. In the event that the city engineer requires the partial or full repaving of a street segment, the city engineer may require that a financial security in a form acceptable to the city be provided to the city in the amount of the estimated cost of the repaving prior to performing any work in the city's rights-of-way.
 - d. The denial of a request for an exemption, or the conditional approval of an exemption, under this section may be appealed to the city manager, who shall have 15 business days to determine if the denial or conditional approval complies with the terms of this chapter. Appeals must be in writing and received by the city manager not more than 15 business days after notice of the denial or conditional approval of the request.

D. Notwithstanding the provisions of this section, in emergency situations or in circumstances where action is needed to restore or provide utility service, any person cutting or opening a street subject to the limitations of this section shall, when reasonably feasible, seek verbal authorization from the city engineer for an exception. Whether or not verbal authorization was given, the utility operator shall apply for a permit for such work as soon as reasonably practicable, but not more than 48 hours after commencing work, and the owner of the facility shall be subject to any restoration conditions imposed by the city engineer pursuant to paragraph 3.

9.10.100 Financial Security

When the city, in its sole discretion, determines that financial security is needed to assure street or sidewalk restoration, the permittee shall provide a financial security in a form acceptable to the city in an amount equal to at least 110% of the estimated costs of restoration of the right-of-way. The financial security shall remain in force until 60 days after substantial completion, including restoration of rights-of-way and other property, as determined by the city. The financial security shall guaranty timely completion, construction in compliance with applicable plans, permits, codes and standards, proper location, restoration of rights-of-way and other property, and timely payment and satisfaction of all claims, demands or liens for labor, material, or services. The city may provide for different financial security requirements or waive financial security requirements in a franchise agreement.

9.10.105 Unusual Conditions

The city engineer may grant the permit even if all standards of this chapter are not met if the city engineer determines that each of the following conditions is present:

A. There are peculiar physical conditions not ordinarily existing in similar districts in the city or the nature of the business or operation makes compliance with all standards impossible or impractical;

- B. The public interest, particularly safety, health, and general welfare is not adversely affected;
- C. The granting of the permit will not adversely affect the rights of adjacent property owners or residents; and
- D. The application of the standards of this chapter would work unnecessary hardship upon the applicant, property owner, tenants, or residents.

9.10.110 Repairs

The permittee shall, at its own expense, repair and restore the area in which the work was performed to as good or better condition than before such work was undertaken.

9.10.115 Inspection and Approval

The permittee must notify the city engineer upon completion for inspection of the work to determine compliance with the requirements of this chapter, prior to final approval of the work. Approval by the city does not relieve the permittee of its obligation to maintain, repair, or reconstruct the site of the excavation so as to maintain a condition acceptable to the city engineer.

9.10.120 Barricades and Safety Measures

Whenever any person, under authority of this chapter or otherwise, places any obstruction or makes any excavation in a right-of-way, the person shall keep the obstructions or excavation properly safeguarded by substantial barricades and display lighted red lanterns or other lights or flares from dusk until daylight. Whenever, in the opinion of the city engineer, the public safety is endangered by such obstructions or excavations so as to require constant supervision from dusk to daylight to insure that all barricades are in proper condition and location, all warning lights are burning and all traffic is properly routed around such barricades, the permittee shall be responsible for furnishing such supervision.

9.10.125 Liability for Accidents

Every person placing any obstruction or making any excavation or improvement in the right-of-way shall be responsible to anyone for any injury by reason of the presence of the obstructions, excavation, or improvement, when the obstruction, excavation, or improvement is the cause of the injury and shall also be liable to the city, in the event that the city is held responsible for any action or claims or otherwise arising out of the presence of the obstruction, excavation, or improvement in the right-of-way. The city will endeavor to provide notice to the responsible person of any claim arising out of the placement of an obstruction or arising from any excavation or improvement in the right-of-way.

9.10.130 Violation - Penalties

Failure to comply with a provision of this chapter is a civil infraction.