TOWN OF YARROW POINT

Town Planning Commission Special Meeting

Monday, July 25, 2022 - 7:00 PM
Town Hall/Virtual
4030 95th Ave NE. Yarrow Point, WA. 98004

COMMISSION CHAIRPERSON | Carl Hellings

COMMISSIONER | Chuck Hirsch, David Feller, Jeffrey Shiu, Lee Sims

TOWN ATTORNIES | Scott Missall and Emily Miner

CLERK-TREASURER | Bonnie Ritter

DEPUTY CLERK | Austen Wilcox

Meeting Participation

Members of the public may participate in person at Town Hall or by phone/online. Town Hall has limited seating available up to 15 public members. Individuals who call in remotely who wish to speak live should register their request with the Deputy Clerk at 425-454-6994 or email depclerk@yarrowpointwa.gov and leave a message before 4:30PM on the day of the July 25, 2022, special Planning Commission meeting. Wait for the Deputy Clerk to call on you before making your comment. If you dial in via telephone, please unmute yourself by dialing *6 when it is your turn to speak. Speakers will be allotted 3-minutes for comments. Please state your name and whether you are a Yarrow Point resident. You will be asked to stop when you reach the 3-minute limit.

Join on computer, mobile app, or phone
1-253-215-8782
Meeting ID: 865 1724 5339#
https://us02web.zoom.us/j/86517245339

PLEDGE OF ALLEGIANCE

CALL TO ORDER: Commission Chairperson, Carl Hellings

ROLL CALL: Chuck Hirsch, David Feller, Jeffrey Shiu, Lee Sims

1. APPROVAL OF AGENDA:

2. STAFF REPORTS:

3. MINUTES:
May 23, 2022 special Planning Commission meeting

APPEARANCES/PUBLIC COMMENT:

Members of the public may speak concerning items that either are or are not on the agenda. The Council takes these matters under advisement. Please state your name and address and limit comments to 3 minutes. If you call in via telephone, please unmute yourself by dialing *6 when it is your turn to speak. Comments via email may be submitted to depclerk@yarrowpointwa.gov or regular mail to: Town of Yarrow Point 4030 95th Ave NE Yarrow Point, WA. 98004

REGULAR BUSINESS:

4. **AB 22-08 –** Proposed Code Amendments: Discussion and Possible Vote
5. **AB 22-09 –** Proposed Hedge Code Amendments: Discussion Only

6. ADJOURNMENT

To subscribe to our email list, email Town Hall at: townhall@yarrowpointwa.gov
Town of Yarrow Point 4030 95th Ave NE. Yarrow Point, WA. 98004
425-454-6994, www.yarrowpointwa.go

TOWN OF YARROW POINT
PLANNING COMMISSION SPECIAL MEETING MINUTES
May 23, 2022

The following is a condensation of the proceedings and is not a verbatim transcript.

CALL TO ORDER:
Substitute Planning Commission Chairman David Feller called the meeting to order at 7:06 p.m.

PRESENT:

Chairman:	Carl Hellings
Commissioners:	Chuck Hirsch Jeffrey Shiu David Feller Lee Sims
Staff:	Austen Wilcox – Deputy Clerk Emily Miner – Deputy Attorney Steve Wilcox – Building Official
Guests:	Carl Scandella – Councilmember Dicker Cahill – Resident Mary Jane Swindley – Resident Debbie Prudden – Resident

APPEARANCES:
MOTION: Motion by Chairman Hellings seconded by Commissioner Sims to add a second public appearance item to the agenda.
VOTE: 4 For, 0 Against. Motion carried.

MINUTES:
- April 18, 2022 Regular Meeting

MOTION: Motion by Commissioner Feller seconded by Commissioner Sims to approve the minutes of the April 18, 2022 regular meeting as presented.
VOTE: 4 For, 0 Against. Motion carried.

STAFF REPORTS:
Deputy Clerk Wilcox gave a recap of the May Council meeting:
• First review of 2023-2028 Capital Improvement and Transportation Improvement Plan. The Council will have a public hearing at the June Council meeting.

• Town entered into a design agreement with Puget Sound Energy to provide an underground conversion design for the 4000 - 4700 block of 94th.

• Approved lowest bidder for the 2022 Stormwater annual clean & camera project.

• Approved a Resolution approving and authorizing ILA Disposition of property agreement with KCWDl.

• Approval of Honorary Payment adjustment increase to the Mayor.

• Approval of two additional little lending libraries- one at Town Hall and the other at Road End Beach.

• A 25th work anniversary celebration at Town Hall between 5-7 will take place Public Works Coordinator Istvan.

REGULAR BUSINESS:

Chairman Feller seconded by Commissioner Sims moved to switch PCAB 22-07 to the top of regular business. Commissioner Sims seconded.

PCAB 22-07 – Review tree and hedge complaints

Building Official Steve Wilcox discussed his enforcement experience and examples of hedge code complaints in Yarrow Point.

The Planning Commission further discussed:

- Neighbor communication.
- Leyland Cypress issues; rapid growth and loss of sunlight.
- Challenging to enforce current code between two private property owners.
- Agreements are to hard find.
- "Spite" hedges.
- Hedges when they're not maintained can turn into trees.
- Code enforcement mediation services or use of a hearing examiner to resolve private property hedge code issues.

Commissioner Feller joined the meeting at 7:34p.m.

The Town Attorney recommends removing the town from the position of enforcing hedge code complaints between private properties.

The Planning Commission directed Town Legal Staff to present the following options at their next meeting.

- Definition of a hedge.
- Mitigation options for hedge code complaints.

APPEARENCES:

Debbie Prudden resident 3805 94th Ave NE discussed harm from hedge heights, sunlight loss, damage from non-bordering properties and code enforcement. She discussed right of way hedges that need maintenance, penalties, and mediation to provide resolution.

Mary Swindley resident at 3813 94th Ave NE discussed a current hedge complaint she is involved in. She recommends that Leyland Cypress hedges be outlawed in Yarrow Point.

DRAFT

Commissioner Feller left the meeting at 8:05p.m.

PCAB 22-05 – Discuss alternative incentives and funding options for tree mitigation from legal staff

Attorney Emily Miner discussed Council direction to the Planning Commission to research additional incentive options to encourage residents to retain significant trees. She provided detail on the options and the Planning Commission discussed.

Incentives:

- The Planning Commission has thoroughly researched incentives and funding options. There are limited resources and they do not have any recommendations currently. Attorney Miner will report to Council.

Enforcement Options:

- Replanting of trees and ensuring permits are obtained.
- Penalties.
- Education to public on tree code.
- Option to conduct additional outreach to companies performing work in Yarrow Point informing them of the new tree code requirements.

Assurance Options That Mitigation Trees Are Preserved:

- Record significant trees on title report.
- Require property owners to provide affidavit to buyers informing them that significant trees are on private property.
- Requiring a bond or deposit to make sure that trees are preserved.
- Tree contribution fund to use for trees that fail.

PCAB 22-06 – Discuss trees and hedges

The Planning Commission directed legal staff to bring back the following options at the next Planning Commission meeting:

- Awareness options provided by town notifying residents of significant tree on their property when they purchase.
- Code amendment options for a 1:1 up to the density requirement.

APPEARENCES:

Debbie Prudden resident at 3805 94th Ave NE discussed security deposits to assure the preservation of significant trees.

ADJOURNMENT:

MOTION: Motion by Commissioner Shiu seconded by Commissioner Sims to adjourn the meeting at 8:36 p.m.

VOTE: 4 For, 0 Against, 0 Abstain. Motion carried.

APPROVED: ATTEST:

_____ _____

Carl Hellings, Chairman Austen Wilcox, Deputy Clerk

DRAFT

Business of The Town Planning Commission
Town of Yarrow Point, WA

Agenda Bill 22-08
July 25, 2022

Tree Code Amendments	**Proposed Planning Commission Action: Discussion and Possible Vote**

Presented by:	Deputy Town Attorney – Emily Miner
Exhibits:	Proposed Code Amendments

Summary:

At the May Planning Commission meeting, staffed discussed with Planning Commission the need for additional enforcement mechanisms for mitigation trees planted under the private property tree code. Planning Commission directed staff to prepare sample code amendments.

As previously discussed, it is important to put future property owners on notice of any trees planted for mitigation purposes. Trees planted for mitigation purposes tend to be smaller and thus easily overlooked. The proposed code amendments offer two different ways to ensure that future property owners receive notice of the need to maintain those mitigation trees.

Recommended Action:

Discuss options and vote on an enforcement mechanism.

Chapter 20.22

PRIVATE PROPERTY TREE CODE

Sections:

20.22.010 Title, purpose, and intent.
20.22.020 Definitions.
20.22.030 Tree removal and minimum significant tree density.
20.22.040 Exemptions.
20.22.050 Tree removal permit – Application process.
20.22.060 Tree removal permit – Notification.
20.22.070 Tree removal permit – Expiration.
20.22.080 Mitigation.
20.22.085 Required Notification.
20.22.090 Construction site tree protection.
20.22.100 Appeals.
20.22.110 Violation – Penalty for unpermitted tree removal.

20.22.010 Title, purpose, and intent.

A. Title. This chapter shall be known as the private property tree code of the town of Yarrow Point.

B. Purpose and Intent. The general purpose of the private property tree code is to protect, preserve, and replenish significant trees on private property in Yarrow Point in order to promote the public health, safety, and general welfare of the residents of the town. The private property tree code is intended to:

1. Retain the town's existing character;

2. Maintain an equitable distribution of significant trees on properties throughout the town;

3. Mitigate the consequences of significant tree removal through tree replacement;

4. Implement the goals and objectives of the town's comprehensive plan, the town's shoreline master program, and the State Environmental Policy Act. (Ord. 715 § 2 (Exh. A), 2021)

20.22.020 Definitions.

A. "Caliper" means the American Association of Nurserymen standard for trunk measurement of nursery stock. Caliper of the trunk shall be the trunk diameter measured six inches above the ground for up to and including four-inch caliper size and 12 inches above the ground for larger sizes.

B. "Crown" means the area of a tree containing leaf- or needle-bearing branches.

C. "Diameter at breast height (DBH)" means the diameter or thickness of a tree trunk measured at four and one-half feet from the ground.

D. Hazardous Tree. Any significant tree is considered hazardous when it has been assessed by a qualified professional and found to be likely to fail and cause an unacceptable degree of injury, damage, or disruption.

E. Mitigation Tree Species. Mitigation trees shall comply with the following: any evergreen tree species that has the potential to grow to the size of a significant tree or any deciduous tree species that has the potential to grow to the size of a significant tree. Species considered unsuitable for mitigation are identified in a document entitled "Yarrow Point Mitigation Vegetation," on file with the town clerk.

F. "Pruning" means the act of trimming or lopping off what is superfluous; specifically, the act of cutting off branches or parts of trees with a view to strengthening those that remain or to bringing the tree into a desired shape. Pruning that results in the removal of at least half of the live crown shall be considered tree removal.

G. "Qualified professional" means an individual with relevant education and training in arboriculture or urban forestry. The individual shall be an arborist certified by the International Society of Arboriculture (ISA) or a registered consulting arborist from the American Society of Consulting Arborists (ASCA). A qualified professional shall possess the ability to perform tree risk assessments, as well as experience working directly with the protection of trees during construction.

H. "Significant tree" means any tree that is at least 18 inches in diameter at DBH, as measured at four and one-half feet from the ground or any tree planted as mitigation. (Ord. 715 § 2 (Exh. A), 2021)

20.22.030 Tree removal and minimum significant tree density.
A. Removal. A tree removal permit shall be required for the removal of any significant tree.

B. Density. A minimum of one significant tree per 5,000 square feet of property shall be required and maintained following the removal of any significant tree.

C. The required tree density may be accomplished through the preservation and maintenance of existing stock, or through the planting of mitigation trees. When calculating the required number of trees per property, fractional tree portions shall be rounded up or down to the nearest whole number.

D. Significant tree trunks that straddle a private property line shall be assigned a tree density value of 0.49 for each property. (Ord. 715 § 2 (Exh. A), 2021)

20.22.040 Exemptions.
A. Emergency Tree Removal. Any hazardous tree that poses an imminent threat to life or property may be removed prior to the issuance of a tree removal permit. The town shall be notified within seven days of the emergency tree removal with evidence of the threat or status justifying the removal of the significant tree. The notification of emergency removal shall contain a site plan showing remaining significant trees on the lot with a calculation demonstrating compliance with the minimum significant tree density. The standard of one significant tree per 5,000 square feet of property, i.e., tree density, shall be documented and may be fulfilled through the remaining trees on site or through planting of mitigation trees.

B. Utility Maintenance. Trees may be removed by the town or utility provider in situations involving actual interruption of services provided by a utility only if pruning cannot solve utility service issues. Mitigation shall be required by the underlying property owner pursuant to YPMC 20.22.080 (Mitigation). Utility maintenance within the right-of-way shall conform to the town's public property tree code (Chapter 12.26 YPMC). (Ord. 715 § 2 (Exh. A), 2021)

20.22.050 Tree removal permit – Application process.
A. Any property owner intending to remove a significant tree shall submit a tree removal permit application on a form provided by the town. The application shall include:

1. The name, address, and contact information of the property owner and/or agent.

2. A site plan showing the location, size, and species of all significant trees, including those proposed for removal, on the property. For applications associated with construction or site development, the site plan must also label and identify all trees within 20 feet of the proposed construction and/or site development activity.

3. A tree protection plan per YPMC 20.22.090 (Construction site tree protection) for applications associated with construction or site development.

4. A mitigation plan, if required per YPMC 20.22.080 (Mitigation), indicating the location and species for all trees to be planted.

5. The current permit fee, as established by the town council.

B. Identification on Site. Concurrent with submittal of the tree removal permit application, the owner shall identify every significant tree proposed for removal by placing a yellow tape around the circumference of the tree at the DBH.

C. Shoreline Jurisdiction. Properties located within the town's shoreline jurisdiction (200 feet landward of Lake Washington) are subject to additional tree removal and replacement standards per the town of Yarrow Point Shoreline Master Program Section 5.6 – Vegetation Management.

D. Review by Staff and/or Town Arborist. Except in cases of emergency tree removal, the tree removal application shall be reviewed within 28 days in the case of permits not associated with development activity or shall be reviewed and issued concurrently with the site development or building permit, as applicable. (Ord. 715 § 2 (Exh. A), 2021)

20.22.060 Tree removal permit – Notification.
A notice of the proposed removal of one or more significant trees shall be posted within five business days of receipt of a complete application. The notice shall be posted by the town on site, on the appropriate mailbox pagoda, and on the town's website. The town shall send a letter via U.S. mail to all property owners abutting the site. The letter shall include a site plan with all trees identified for removal. A minimum two-week notification period shall be required prior to issuance of any tree removal permit. (Ord. 715 § 2 (Exh. A), 2021)

20.22.070 Tree removal permit – Expiration.
A tree removal permit shall expire six months from the date of issue, requiring reissuance of a new permit. (Ord. 715 § 2 (Exh. A), 2021)

20.22.080 Mitigation.
A. Whenever a significant tree is planned for removal pursuant to an issued tree removal permit, the applicant shall demonstrate that, after the removal of the tree(s), the property will meet the requirement of YPMC 20.22.030 (Tree removal and minimum significant tree density). Should the property fail to meet this requirement, the applicant shall provide a tree mitigation plan that satisfies the requirements of YPMC 20.22.030 (Tree removal and minimum significant tree density).

B. Mitigation trees shall be a minimum of 10 feet tall or have a three-inch caliper, and have a full well-developed crown.

C. Mitigation requirements shall be met within six months of tree removal. In the case of concurrent new construction, mitigation requirements shall be met prior to final inspection. Trees planted as mitigation shall be maintained with adequate water and care to survive a three-year warranty period or be replaced. (Ord. 715 § 2 (Exh. A), 2021)

OPTION 1:

20.22.085 Notice Required.

When mitigation trees are planted pursuant to YPMC 20.22.080, a Town-approved site plan required pursuant to YPMC 20.22.050 shall be recorded on the property title by the applicant and submitted to the Town. The face of the site plan must include a statement that the provisions of YPMC Chapter 20.22 as currently enacted or hereafter amended control the maintenance and removal of the subject trees, and provide for any responsibility of the property owner for the maintenance or correction of any latent defects or deficiencies.

OPTION 2:

20.22.085 Notice Required.

When mitigation trees are planted pursuant to YPMC 20.22.080, and a Town-approved site plan has been issued, it shall be unlawful for the owner of the subject property to sell, transfer, mortgage, lease or otherwise dispose of the subject property unless such owner has first furnished the grantee, transferee, mortgagee or lessee a true copy of the Town-approved site plan and furnished to the Town a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such site plan and fully accepting the responsibility without condition for ensuring compliance with YPMC Chapter 20.22.

20.22.090 Construction site tree protection.
A. All significant trees to be retained on a construction site, and all trees on the adjacent and otherwise affected town rights-of-way, and all trees on adjacent private properties impacted by site development as regulated under YPMC Title 20, or construction as regulated under YPMC Title 15, shall be protected during such activity.

B. The property owner shall submit a report prepared by a qualified professional that evaluates the significant trees on site, as well as all trees in the adjacent areas impacted by the proposed construction. Tree protection measures shall be clearly described and illustrated on a site plan. Best management practices shall be employed as referenced in "Tree Protection on Construction and Development Sites: A Best Management Guidebook for the Pacific Northwest," or other such guidance as approved by the town arborist.

C. The town may waive the requirement for a report when it is determined by the town staff that the scope of the project will not impact the significant tree(s) on site or any trees on adjacent properties.

D. A stop work order may be issued by the building official if site tree protection guidelines are not followed. (Ord. 715 § 2 (Exh. A), 2021)

20.22.100 Appeals.
Any tree permit applicant aggrieved by any action of the town relating to a tree removal permit may, within 10 days of such action, file a notice of appeal to the town council, setting forth the reasons for such appeal and the relief requested. The town council shall hear and determine the matter and may affirm, modify, or disaffirm the administrative decision within 60 days of timely appeal. (Ord. 715 § 2 (Exh. A), 2021)

20.22.110 Violation – Penalty for unpermitted tree removal.
A. A violation of any of the provisions of this chapter shall be a civil violation and any person, corporation or other entity that violates this chapter shall receive a fine of $10,000 per violation, plus $1,000 per inch of diameter (DBH) for each significant tree over 18 inches DBH that is removed without a permit; provided, that the maximum fine for the removal of each significant tree shall not exceed $25,000. It shall be a separate offense for each and every significant tree removed in violation of this chapter.

B. In addition to the penalty set forth in subsection A of this section, significant trees that were unlawfully removed or damaged shall be replaced in accordance with YPMC 20.22.080 (Mitigation).

C. Fines levied under this chapter shall be deposited into a tree mitigation account and shall be used by the town for acquiring, maintaining, and preserving wooded areas, and for the planting and maintenance of trees within the town's public places and rights-of-way. (Ord. 715 § 2 (Exh. A), 2021)

Business of The Town Planning Commission
Town of Yarrow Point, WA

Agenda Bill 22-09
July 25, 2022

Hedge Code Amendments	**Proposed Planning Commission Action: Discussion Only**

Presented by:	Deputy Town Attorney – Emily Miner
Exhibits:	Sample codes from • Normandy Park • Lynwood • Medina

Summary:

As discussed during the May Planning Commission meeting, there are ambiguities in the definition of the Town's Hedge Code.

Chapter 17.08 YPMC states that a "hedge exist whenever a row of two or more trees, shrubs, or other plants constitute a barrier in excess of six linear feet and establish a boundary, or hinder free passage of humans or animals on the surface of the ground, or screen or obscure vision, or baffle sound."

The code then prohibits hedges in the setback from exceeding 6 feet in height. YPMC 17.12.030.

Finally, there is an entirely separate section for hedge code enforcement in Chapter 17.32 YPMC. The procedure outlined in Chapter 17.32 YPMC is separate and distinct from the Town's standard code enforcement process established in Chapter 1.08 YPMC.

The definition of "hedge" is also problematic because it includes the word "tree" which creates a conflict with the private property tree code at Chapter 22.02 YPMC.

These ambiguities in the code create challenges for enforcement, as illustrated by the Town Building Official's presentation. Mr. Wilcox noted that it is difficult to enforce the code because of how flexible the hedge definition is. He further noted that during his ten plus years working in Yarrow Point, he has mediated 40-50 hedge complaints and in only one case did the offending hedge owner reduce the hedge height to the code mandated 6 feet. In all other cases, the parties agreed to a negotiated hedge height taller than 6 feet.

He also stated that the increasing prevalence of Leland Cypresses appears to have increased the number of hedge complaints. This is because of how quickly these types of plants grow. While initially planted as a hedge, they quickly grow into trees, and it is extremely challenging to maintain a "hedge" that is 30-50 feet tall.

Governmental regulations are based on ensuring the public's health, safety, and welfare. From this perspective, the Town has no public policy reason to regulate hedges between private properties. Hedges between private properties do not infringe on the sight lines for safe travel, nor damage public streets and sidewalks, nor cause harm to utility lines – in short, they do not impact the public sphere. Thus, there is little to justify governmental regulation of such hedges.

As you'll see from the sample codes, there are some jurisdictions that still regulate hedges, but most have moved away from private property hedge regulations likely due in part to the lack of governmental purpose in such regulations and the challenges of enforcement – it can be difficult to gain access to the backyards of private properties where these hedges exist.

In contrast, there is good public policy to support a hedge code that addresses right-of-way hedge concerns. In a 2016 Washington State Supreme Court decision, the court held that a municipality can be held liable for hazardous conditions on its roads created by sight-obstructing roadside vegetation. *Wurthrich v. King County*. The court noted that whether a condition is inherently dangerous does not depend on whether the condition "exists in the roadway itself." This means requiring property owners to maintain hedges that adjacent to the ROW to ensure a clear line of site on the roadway.

With this background context, there are few different ways to proceed with revising the YPMC:

1. Eliminate the private property component of the hedge code and create regulations for hedges adjacent to the ROW. This follows sound public policy and can be clearly enforced.
2. Retain and revise the private property component of the hedge code, and develop regulations for hedges adjacent to the ROW but have different enforcement mechanisms for each hedge category. Since Mr. Wilcox has noted the challenges of enforcing hedges between private properties and the fact that most times, the parties agree to higher height than the code allows for, staff is recommending than the parties submitting the complaint go to mediation rather than have Town staff be involved. This reduces staff time, ensures there is a neutral third party available to resolve the matter, and allows for flexible resolutions. One option for a mediation resource is Resolution Washington https://www.resolutionwa.org/. The City of Medina has taken this approach for their view and sunlight ordinance. See attached example.
3. In conjunction with the options above, consider creation of a permitted plant species list (or alternatively, a prohibited plant species list) that regulates what kind plants can be used as hedges. This could assist with enforcement if only certain plants of certain heights were allowed to be planted as hedges.

Recommended Action:

Discuss options.

Chapter 18.35

FENCES, WALLS AND HEDGES

Sections:

18.35.010 General.
18.35.020 Definitions.
18.35.030 Design and ornamental features.
18.35.040 Findings – Hedges.
18.35.041 Rights established.
18.35.042 Process for resolution of obstruction disputes.
18.35.043 Hedge claim preparation.
18.35.044 Binding arbitration.
18.35.045 Litigation.
18.35.046 Apportionment of costs.
18.35.047 Limitation.
18.35.048 Application.
18.35.050 Variance and appeal procedures.

18.35.010 General.

(1) In the R-5 and single-family zones, fences and walls shall not be more than four feet in height in the front yard setback nor more than six feet in height in the side or rear yard setbacks, as measured from the top of the fence or wall to the lowest original grade.

(2) At a road intersection, no sight obstruction is permitted within 10 feet from the intersection. Obstructions such as fences and hedges located over 10 feet and up to 20 feet from the intersection shall not be more than 42 inches in height. (See Fig. 1, Sight Distance Triangle).

(3) For R-5 and single-family lots fronting on First Avenue South, the front yard fence and wall height maximum may be increased to six feet to provide noise attenuation, privacy and protection; provided, that the provisions of subsection (2) of this section regarding restrictions on fence and hedge height at intersections shall apply.

(4) A fence permit shall be required for any fence or wall over six feet in height. Height shall be measured from the top of the fence or wall to the lowest original grade.

(5) A fence permit shall be required for any fence or wall within an environmentally sensitive area or its buffer.

(6) No fence, wall or hedge shall be located in a public right-of-way.

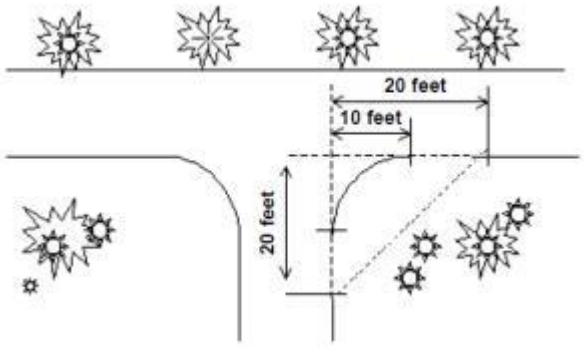
(7) No fence, wall or hedge shall be allowed where it creates a hazard or obstruction to users of the road, sidewalk or nearby property.

(8) Where a retaining wall protects a cut below the natural grade and is located on the line separating lots or parcels, the retaining wall may be topped by a fence or wall of the same height that would otherwise be permitted at the location if no retaining wall existed.

(9) Where a retaining wall contains a fill, the height of the wall retaining the fill shall be included within the permissible height of a fence, except a protective fence not more than 42 inches in height may be erected at the top of the retaining wall. Any portion of a protective fence over 72 inches above the base of the fill at the retaining wall shall be an openwork fence as defined in NPMC 18.35.030.

(10) Fence, hedge or screening requirements adopted as part of Chapter 18.100 NPMC, Design Standards and Guidelines, covering the RM-1800, RM-2400 and commercial zoning districts shall be followed where there is a conflict between this chapter and the design standards.

Fig. 1 Sight Distance Triangle[1]



(Ord. 888 § 2 (Exh. A), 2012; Ord. 752 § 1, 2005).

18.35.020 Definitions.
"Complainant" means a complaining property owner in the city of Normandy Park who alleges that a hedge located on the adjacent property of another is causing an unreasonable obstruction of preexisting views or sunlight.

"Hedge" means a row of closely planted trees, shrubs or grasses forming a fence, screen or boundary.

"Hedge owner" means the record owner of the real property on which a hedge is located.

"Owner" means any individual, firm, partnership, corporation, trust or other legal entity owning property in the city of Normandy Park.

"Primary living or entertaining area" means an area located on the lot. The determination of primary living or entertaining area is to be made on a case-by-case basis.

"Substantial obstruction of sunlight" means the loss of a substantial portion of direct or indirect sunlight in a primary living or entertaining area or in a significant portion of the complainant's real property.

"View" means an actual or potential vista. (Ord. 790 § 1, 2007; Ord. 752 § 1, 2005).

18.35.030 Design and ornamental features.
(1) Fences, both new and rebuilt, should be made of material such as masonry, ornamental metal, wood, or some combination thereof. The use of chain link fencing is prohibited in a front yard unless it is fully screened from view by year-round vegetation or is vinyl-coated with a neutral color (i.e., green, black, brown).

(2) Notwithstanding any required permits, the following may be constructed without a variance:

(a) A trellis added to the top of a fence up to two additional feet higher than the allowed height, but not more than a height of eight feet.

(b) An arbor to a maximum height of nine feet over a gate, walkway or entrance.

(c) Decorative or ornamental features such as, but not limited to, columns, posts or other vertical focal points, spaced no less than eight feet apart, up to two additional feet higher than the allowed height to a maximum height of eight feet.

(d) An openwork name sign over a driveway.

(3) For purposes of regulation under this chapter, a trellis shall be considered to be a fence, subject to the same height limitations and permit requirements. A trellis that has a horizontal element wider than 36 inches measured perpendicular to the fence or trellis shall be considered an arbor, subject to an arbor's siting requirements. (Ord. 752 § 1, 2005).

18.35.040 Findings – Hedges.
This section is enacted in recognition of the importance of views and sunlight to properties within the city of Normandy Park and to provide a fair and structured mechanism for resolving hedge disputes relating to views and sunlight. This chapter is based upon the following findings which are adopted by the city council of Normandy Park.

(1) It is in the interest of the public welfare, health and safety to establish standards for the resolution of view and sun obstruction claims and to establish a structure for resolution of such claims which will provide a reasonable balance between the values of hedge ownership and view and sunlight related values.

(2) When a view or sunlight obstruction dispute arises, the parties should act reasonably to resolve the dispute through friendly communication, thoughtful negotiation, compromise and other traditional means. Those disputes which are not resolved through such means may be resolved by following the procedures established herein.

(3) It is the intent of the city that the provisions of this chapter receive thoughtful and reasonable application. It is not the intent of the city to encourage clear-cutting or substantial denuding of any property of its trees by overzealous application of the provisions of this chapter. (Ord. 790 § 2, 2007; Ord. 752 § 1, 2005).

18.35.041 Rights established.
Hedges, or other plantings having a barrier, screen or partition nature, shall not be more than 10 feet in height when located within 10 feet of any adjacent owner's property line; provided, that no hedge more than 10 feet in height and within 10 feet of the property line shall create a nuisance or safety hazard, or unreasonably interfere with access to sunlight and/or views enjoyed by the complainant. The provisions of NPMC 18.35.010(2) regarding restrictions on fence and hedge height at intersections shall apply.

A person shall have the right to preserve and seek restoration of views or sunlight which existed at any time since they purchased, when such views or sunlight are from the primary living or entertainment area and have subsequently been unreasonably obstructed by the hedge.

In order to establish such rights pursuant to this chapter, the person must follow the process established in this chapter. In addition to the rights described in this section, private parties have the right to seek remedial action for imminent danger caused by trees. (Ord. 790 § 3, 2007).

18.35.042 Process for resolution of obstruction disputes.
The following process shall be used in the resolution of view and sunlight obstruction disputes:

(1) Initial Reconciliation. A complainant who believes that hedge growth on the property of another has caused unreasonable obstruction of views or sunlight from a primary living or entertaining area shall notify the hedge owner in writing of such concerns. Notification should, if possible, be accompanied by a personal discussion to enable the complainant and hedge owner to attempt to reach a mutually agreeable solution.

(2) Mediation. If the initial reconciliation attempt fails, the complainant shall propose mediation as a timely means to settle the obstruction dispute. Acceptance of mediation by the hedge owner shall be voluntary, but the hedge owner shall have no more than 30 days from service of notice to either accept or reject the offer of mediation. If mediation is accepted, the parties shall mutually agree upon a mediator within 10 days. It is recommended that the services of a professionally trained mediator be employed. Mediation may be arranged through the Seattle-King County Alternate Dispute Resolution Center. The mediation meeting may be informal. The mediation process may include the hearing of the viewpoints of lay or expert witnesses and shall include a site visit to the properties of the complainant and the hedge owner. The parties are encouraged to contact immediate neighbors and solicit input. The mediator shall consider the purposes and policies set forth in this chapter in attempting to help resolve the dispute. The mediator shall not have the power to issue binding orders for restorative action, but shall strive to enable the parties to resolve their dispute by written agreement in order to eliminate the need for binding arbitration or litigation. (Ord. 790 § 4, 2007).

18.35.043 Hedge claim preparation.
(1) In the event that the initial reconciliation process fails, and mediation either is declined by the hedge owner or fails, the complainant must prepare a hedge claim and provide a copy to the hedge owner in order to pursue either binding arbitration or litigation under the authority established by this chapter.

(2) A hedge claim shall consist of all of the following:

(a) A description of the nature and extent of the alleged obstruction, including pertinent and corroborating physical evidence. Evidence may include, but is not limited to, photographic prints, negatives or slides. Evidence of the date of property acquisition by the complainant must be included;

(b) The location of all hedges alleged to cause the obstruction, the address of the property upon which the hedges are located, and the present hedge owner's name and address;

(c) Evidence of the failure of initial reconciliation to resolve the dispute. The complainant must provide evidence that written attempts at reconciliation have been made and have failed. Evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence;

(d) Evidence that mediation has been attempted and has failed, or has been declined by the hedge owner;

(e) The specific restorative actions proposed by the complainant to resolve the unreasonable obstruction. (Ord. 790 § 5, 2007).

18.35.044 Binding arbitration.
In those cases where the initial reconciliation process fails and where mediation is declined by the hedge owner or has failed, the complainant must offer in writing to submit the dispute to binding arbitration, and the hedge owner may elect binding arbitration. The hedge owner shall have 30 days from service of notice to accept or reject binding arbitration. If accepted, the parties shall agree on a specific arbitrator within 21 days, and shall indicate such agreement in writing.

The arbitrator shall use the provisions of this chapter to reach a fair resolution of the dispute and shall submit a complete written report to the complainant and the hedge owner. The report shall include the arbitrator's findings with respect to NPMC 18.35.042(1) and (2), a pertinent list of all mandated restorative actions with any appropriate conditions concerning such actions, and a schedule by which the mandates must be completed. Any decision of the arbitrator may be enforced by civil action by either party. A copy of the arbitrator's report shall be filed with the city clerk. (Ord. 790 § 6, 2007).

18.35.045 Litigation.
In those cases where binding arbitration is declined by the hedge owner, then civil action may be pursued by the complainant for resolution of the view or sunlight obstruction from the hedge under the provisions and guidelines set forth in this chapter. The complainant must state in the lawsuit that mediation and arbitration were offered and not accepted. A copy of any final resolution of the litigation shall be filed with the city clerk. (Ord. 790 § 7, 2007).

18.35.046 Apportionment of costs.
(1) Mediation and Arbitration. The complainant and hedge owner shall each pay 50 percent of mediation or arbitration fees, unless they agree otherwise or allow the mediator or arbitrator discretion to allocate costs.

(2) Restorative Action. The costs of restorative action shall be determined by mutual agreement or through mediation, arbitration, court decision or settlement. (Ord. 790 § 8, 2007).

18.35.047 Limitation.
This chapter shall not be construed to affect obligations imposed by easements, covenants or agreements. (Ord. 790 § 9, 2007).

18.35.048 Application.
(1) This chapter shall not apply to hedges located on property owned by the city (not including rights-of-way). Individuals who are adversely affected by hedges located on property owned by the city may approach the city for requested relief. The potential for obstruction of views or substantial obstruction of sunlight shall be considered by the city when planting hedges on property owned by the city.

(2) This chapter shall not apply to hedges located within city rights-of-way. (Ord. 790 § 10, 2007).

18.35.050 Variance and appeal procedures.

(1) The city manager or designee may grant a variance from the height restrictions of this chapter for special needs such as, but not limited to, game courts or protective requirements; provided, that:

(a) The owner or representative of the owner shall submit a detailed plan and written presentation of reasons why the height restriction should be allowed to be exceeded;

(b) The city shall send, at the applicant's expense, the request and its accompanying documents to all property owners in the surrounding area, as defined in subsection (6) of this section; and

(c) There is no written objection to the requested variance.

(2) The city manager or designee may conduct research to determine the need for a variance and any impacts on the surrounding area, and may request the advice of a consultant, whose services shall be payable by petitioner.

(3) If there is an objection in writing which cannot be resolved by agreement, the hearing examiner shall conduct a public hearing, with proper legal notice of the hearing to all property owners in the surrounding area as provided in Chapter 18.150 NPMC.

(4) The hearing examiner shall base his or her determination solely on the information furnished by the petitioner, the objector(s) and the city manager or designee, and shall not grant the variance unless the hearing examiner finds that the requested variance is reasonably required and will not unreasonably interfere with the rights of the objecting property owners.

(5) Any party aggrieved by a decision of the hearing examiner may appeal the decision to the King County superior court, following the procedure given in Chapter 18.150 NPMC.

(6) For the purposes of this variance procedure, the owners of surrounding properties shall be those owning properties adjacent to petitioner's property, those across the street from any proposed fence and those within 100 feet of the proposed fence.

(7) The appellant shall pay in accordance with the appeals fee schedule established by resolution of the city council. (Ord. 924 § 2(K), 2015; Ord. 833 § 9, 2009; Ord. 752 § 1, 2005).

---

[1] Code reviser's note: In Fig. 1, the vertical measurement of "20 feet" was added editorially at the request of the city.

21.02.390 Hedge.
"Hedge" means a row of closely planted shrubs or trees forming a boundary or barrier. (Ord. 2020 § 2, 1994; Ord. 190 Art. IV § 408, 1964)

Chapter 21.10

FENCE, HEDGE AND VISION OBSTRUCTION REGULATIONS

Sections:
21.10.050 Purpose.
21.10.100 Fence and hedge standards.
21.10.200 Electric fences.
21.10.300 Barbed wire fences.
21.10.400 Vision obstruction by signs along public streets.
21.10.900 Exceptions.

21.10.050 Purpose.
The purpose of this chapter is to provide regulations for fences, hedges, and other partially or totally vision obscuring installations to assure that desirable objectives of providing privacy, security, and screening of certain uses from streets and less intense uses can be met while minimizing undesirable obstruction of views, light, air, and motorists' and pedestrians' vision. It is recognized that along streets these goals may conflict. Fences along streets provide privacy and security, but long expanses of such fencing generally are undesirable due to the visual monotony and restricted vistas such expanses create. Moreover, fencing needs along streets differ between front yards, which are traditionally open and unobscured and contain vehicular access to streets, and side and rear yards, where family activities more often take place and thus require more privacy. Therefore, it is further stated that exceptions to the regulations of this chapter to allow site-screening fences in front yards are strongly discouraged and that where these regulations allow a continuous expanse of site-screening fencing along side and/or rear property lines abutting a street, the adverse aesthetic impacts of such fencing should be mitigated. (Ord. 2020 § 6, 1994; Ord. 1473 § 1, 1985; Ord. 1257 § 1, 1982)

21.10.100 Fence and hedge standards.
The following regulations shall apply to all fences, hedges, and other vision-obscuring structures:

A. Height and Composition of Fences and Hedges, and General Standards.

1. Vision-Obscuring Fences and Hedges. "Vision-obscuring fences and hedges" shall mean solid or partially open fences and hedges more than three feet in height, but not exceeding six feet in height or eight feet in height with an attached adornment (i.e., arbor, trellis, or other decorative features attached on the top of a fence) in residential-zoned areas and not exceeding eight feet in height in commercial-zoned areas. Maximum height shall be measured from the elevation of the ground adjacent to the fence or hedge on the higher side.

2. Non-Vision-Obscuring Fences and Hedges. "Non-vision-obscuring fences and hedges" shall include solid or partially open fences and hedges not exceeding three feet in height, and open fences not exceeding six feet in height or eight feet in height with an attached adornment in residential zones and eight feet in height in commercial zones. "Open fences" shall mean those fences consisting of open chain link, widely spaced board rails or other materials which provide adequate driver visibility through the fence. Rail fences shall consist of horizontal rails not more than four inches wide and at least one foot between rail edges. Deviation from horizontal rails and from these dimensions may be allowed, providing the applicant can demonstrate to the satisfaction of the appropriate city officials that such deviation will provide at least as much visibility through the fence. Maximum height shall be measured from the elevation of the ground adjacent to the fence on the higher side; however, within sight distance triangles (see subsections (B)(1)(b) and (B)(1)(c) of this section) maximum height of solid or partially open fences and hedges not exceeding three feet shall be measured from the elevation of the street adjacent to such sight distance triangle.

3. Maintenance. All fences and hedges shall be maintained in a condition of repair so as not to be dangerous to human life or a danger to the property.

4. Conflicting Limitations. Where the limitations of this chapter conflict with site-screening or fencing required by this or other city ordinances, requirements relating to the site-screening and other required fences shall apply, subject only to adequate provisions for driver visibility.

5. Continuous Fencing Along Streets. Where continuous fencing along a street between intersections is allowed due to the length and/or number of side and/or rear lot lines abutting that street, landscaping shall be required between the fence and the property line in order to mitigate the adverse aesthetic impacts of such fencing. Where such landscaping is required, the fence may be built along the property line except for offset sections to contain the landscaping.

Such landscaping shall consist of ornamental landscaping of low plantings and high plantings. The minimum height of trees shall be eight feet for evergreen trees and 10 feet for all other species. Trees shall be spaced a maximum of 25 feet on center with branches eliminated to a height of six feet where necessary to prevent vision obstruction. Low evergreen plantings or a mixture of low evergreen and deciduous plantings with a maximum height of 30 inches, in bark or decorative rock, shall be provided so as to achieve 50 percent groundcover within two years.

B. Location of Fences and Hedges.

1. Residential Zones. Non-vision-obscuring fences and hedges may be located on any portion of a residential-zoned lot. Vision-obscuring fences and hedges may be located on portions of a residential-zoned lot other than the following:

a. Within 15 feet of the front lot line.

b. Within a triangular area at street intersections. Such “intersection sight distance triangle” is defined as having two sides of 30 feet, measured along the property lines from the property corner at the street intersection, and a third side connecting the ends of the two aforementioned sides.

c. Within a triangular area adjacent on one side to a street, and on a second side to a property having frontage on and requiring access from that street. Such “driveway sight distance triangle” is defined as having two sides of 15 feet measured along the property lines from the property corner common to the subject and adjacent property, and a third side connecting the end points on the two aforementioned sides. If any adjacent lot is undeveloped, it shall be construed as having access from all adjacent streets until the direction of access has been established, either by development or by waiver of right of direct access as per RCW 58.17.165.

d. However, fences, walls and hedges between three and six feet in height or fences up to eight feet in height with an attached adornment that comply with applicable design guidelines may be located in any portion of a multiple-family residential-zoned lot as long as they are not located within intersection and driveway sight distance triangles, do not obstruct driver and pedestrian visibility, comply with applicable Lynnwood Citywide Design Guidelines, as adopted by reference in LMC 21.25.145(B)(3), and are approved through project design review (Chapter 21.25 LMC).

2. Commercial Zones. In commercial zones, vision-obscuring or non-vision-obscuring fences or hedges up to eight feet in height may be located on side and rear property lines and within side and rear yards, but not nearer to any public street than a point equal to the closest part of any building thereon to that street.

However, fences, walls and hedges up to six feet high that comply with applicable design guidelines may be located in any portion of a commercial-zoned lot as long as they are not located within intersection and driveway sight distance triangles, do not obstruct driver and pedestrian visibility, comply with applicable Lynnwood Citywide Design Guidelines, as adopted by reference in LMC 21.25.145(B)(3), and are approved through project design review (Chapter 21.25 LMC).

C. Referrals to Hearing Examiner. Any fence or wall approved through project design review (Chapter 21.25 LMC) does not have to be approved by the hearing examiner. The hearing examiner may review applications for fence permits in the following situations:

1. Appeal. As an appeal of an administrative determination when:

a. An applicant proposes a fence which he/she believes meets the stated purpose of this section, but does not strictly conform to the regulations;

b. City staff believes that a proposed fence, while meeting regulations, may still obstruct visibility to such an extent that hazardous conditions would exist; or

c. There is a disagreement between staff and an applicant regarding interpretation of the fence and hedge regulations.

In such cases, the hearing examiner may stipulate standards for fence composition, height, and location.

2. Variance. As a variance, when an applicant believes the regulations of this chapter cause hardship. (Ord. 3192 § 5, 2016; Ord. 2388 § 6, 2001; Ord. 2020 § 6, 1994; Ord. 1582 § 1, 1987; Ord. 1473 §§ 1, 2, 1985; Ord. 1257 §§ 1, 2, 1982; Ord. 849 § 1, 1976; Ord. 686 § 1, 1973; Ord. 615 § 2, 1971; Ord. 190 Art. X § 10.1, 1964)

21.10.200 Electric fences.
Electric fences are permitted provided they comply with the requirements in this section.

An electric fence using an interrupted flow of current at intervals of about one second on and two seconds off shall be limited to 2,000 volts at 17 milliamperes current. All electric fences shall be posted with permanent signs a minimum of 36 square inches in area at intervals of 100 feet, stating that the fence is electrified. Electric fences manufactured by an established and reputable company and sold as a complete assembled unit carrying a written guarantee that complies with the requirements of this paragraph can be installed by an owner if the controlling elements of the installation carry a “U.L. Approved” seal. (Ord. 2020 § 6, 1994; Ord. 190 Art. X § 10.2, 1964)

21.10.300 Barbed wire fences.
No fences incorporating barbed wire are permitted except that barbed wire may be used on top of a six-foot high solid or chain link fence surrounding a public utility, an industrial plant site or a whole property, or barbed wire may be used when the fence is not a property line fence. (Ord. 2020 § 6, 1994; Ord. 190 Art. X § 10.3, 1964)

21.10.400 Vision obstruction by signs along public streets.
The legal setback for signs shall comply with the sign regulations of Chapter 21.16 LMC. This limitation does not apply to signs established or required by a public agency to service a public purpose. (Ord. 2310 § 29, 2000)

21.10.900 Exceptions.
The director may allow fences that do not conform to the regulations of this title at the following situations if the director finds that such fences are needed to protect the public health and safety:

A. Outdoor recreation establishments or park and recreation facilities; or

B. To prohibit illegal dumping.

As part of approving fences under this section, the director may impose conditions or limitations on fences allowed under this section in order to insure that such fences conform with the purpose and intent of this chapter and this title. (Ord. 2295 § 15, 2000)

CHAPTER 14.08. TREES—VIEW AND SUNLIGHT OBSTRUCTION

14.08.010. Purpose and findings.

This chapter is enacted to provide a voluntary mechanism for the resolution of disputes involving preserving and enhancing views and access to sunlight between Medina neighbors. It should not be construed to provide rights beyond those entitled under Washington law. The city has no right or obligation to enforce any of the provisions in MMC 14.08.030 through 14.08.150. This chapter is enacted in recognition of the importance of views and sunlight to properties within the City of Medina and to provide a fair and structured mechanism for resolving disputes relating to views and sunlight. The Medina comprehensive plan recognizes the importance of views and access to sunlight as well as the importance of preservation of trees and other vegetation. This chapter is based upon the following findings which are adopted by the city council of Medina following extensive study and public input from multiple public hearings.

A. Among the features that contribute to the attractiveness and livability of the City of Medina are its trees, both native and introduced, and the views obtained from a variety of elevations throughout the city.

B. Trees, whether growing singly, in clusters or in woodland settings, provide a wide variety of psychological and tangible benefits for both residents and visitors. Trees contribute to the natural environment by modifying temperatures and winds, replenishing oxygen to the atmosphere and water to the soil, controlling soil erosion, and providing wildlife habitat. Trees contribute to the visual environment by providing scale, color, silhouette and mass, by creating visual screens and buffers to separate structures, and by promoting individual privacy. Trees contribute to the economic environment of the city by stabilizing property values and reducing the need for surface drainage systems. Trees contribute to the cultural environment by becoming living landmarks of the city's history and providing a critical element of nature in the midst of urban development.

C. Views also produce a variety of significant and tangible benefits for both residents and visitors to the city. Views contribute to the economic environment by substantially enhancing property values. Views contribute to the visual environment by providing inspiring panoramic vistas. Views of attractive subjects with significant horizontal expanse add substantial value to real property. Such views are considered significant in adding to the value of real property by the King County assessor. Access to plentiful sunlight enhances livability and promotes the general welfare of the entire community.

D. Trees, views and access to sunlight and the benefits to be derived from each may come into conflict. Tree planting locations and species selections may produce both intended beneficial effects on the property where they are planted, and unintended deleterious effects on neighboring properties. Trees may block light, cause the growth of moss, harbor plant disease, retard the growth of grass and interfere with the enjoyment of views and sunlight, leading to the lessening of property values.

E. With appropriate safeguards requiring consideration of all the factors set forth herein, affected property owners requesting view or sunlight access improvement can be given substantial relief without infringing upon the rights of the owners of properties containing trees.

F. It is in the interest of the public welfare, health and safety to establish standards for the resolution of view and sun obstruction claims and to establish a structure for resolution of such claims which will provide a reasonable balance between the values of tree ownership and view and sunlight related values.

G. When a view or sunlight obstruction dispute arises, the parties should act reasonably to resolve the dispute through friendly communication, thoughtful negotiation, compromise and other traditional

means. Those disputes which are not resolved through such means may be resolved by following the procedures established herein.

H. It is the intent of the city that the provisions of this chapter receive thoughtful and reasonable application. It is not the intent of the city to encourage clear-cutting or substantial denuding of any property of its trees by overzealous application of the provisions of this chapter.

(Code 1988 § 18.16.010; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 1, 2007)

14.08.020. Definitions.

The definitions contained in Chapter 16.12 MMC shall apply to this chapter except that the definitions of this section shall apply in the case of any conflict with the definitions in Chapter 16.12 MMC.

A. *Complainant* means a complaining property owner in the City of Medina who alleges that trees located on the property of another are causing an unreasonable obstruction of preexisting views or sunlight.

B. *Owner* means any individual, firm, partnership, corporation, trust or other legal entity owning property in the City of Medina.

C. *Tree* means a woody perennial plant which usually, but not necessarily, has a single trunk and a height of 15 feet or more, or has a diameter of five inches measured one foot above the root crown; references herein to "tree" shall include the plural. "Tree" shall also include any plant material or shrubbery planted or growing in a dense continuous line 20 feet in length or longer so as to form a thicket or naturally grown fence with an average height in excess of eight feet.

D. *Historic tree* means any tree whose age precedes the incorporation of Medina in 1955.

E. *Tree owner* means the record owner of the real property on which a tree is located.

F. *View* means an actual or potential vista.

G. *Significant view* means an actual or potential vista observable from within a primary living or entertaining area of a residence which has a significant horizontal expanse and which includes a vista of the surface of Lake Washington, the opposite shore of Lake Washington, Mercer Island, a bridge, the Olympic or Cascade Mountains, Mount Rainier, the golf course or the skylines of Seattle or Bellevue.

H. *Substantial deprivation of sunlight* means the loss of a substantial portion of direct or indirect sunlight in a primary living or entertaining area or in a significant portion of the complainant's real property.

I. *Primary living or entertaining area* means an area located between the exterior walls of a residence from which a view is observed most often by the occupants relative to other portions of the residence. The determination of primary living or entertaining area is to be made on a case-by-case basis.

J. *Dense screening* means trees which are planted or growing closely together which combine to block views or obstruct access to sunlight.

K. *Objective evaluation* means an evaluation based upon the values assigned to tree ownership, views and access to sunlight by reasonable persons in the community as opposed to the views of individual parties.

L. *Windowing* means a form of thinning by which openings or "windows" are created to restore views or sunlight.

(Code 1988 § 18.16.020; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 2, 2007)

14.08.030. Rights established.

A person shall have the right to use the processes set forth in this chapter and to seek to preserve and restore views or sunlight which existed at any time since he or she purchased or occupied a property, when such views or sunlight are from the primary living or entertainment area and have subsequently been unreasonably obstructed by the growth of trees.

In addition to the rights described in this section, private parties have the right to seek remedial action for imminent danger caused by trees.

All persons are advised that trees which are located within public rights-of-way are governed by Chapter 16.52 MMC and that properties undergoing development are subject to the tree preservation and landscaping requirements of Chapter 16.52 MMC.

(Code 1988 § 18.16.030; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 3, 2007)

14.08.040. Unreasonable obstruction—Nuisance.

The unreasonable obstruction of views or sunlight by planting, uncontrolled growth or maintenance of trees satisfying the minimum requirements for relief in MMC 14.08.050(A) constitutes a private nuisance subject to redress as provided in this chapter. If a person shall plant, maintain or permit to grow any tree which unreasonably obstructs the view from or sunlight reaching the primary living or entertainment area of any other parcel of property within the City of Medina as set forth in MMC 14.08.050, then a complainant shall have the rights set forth in this chapter.

(Code 1988 § 18.16.040; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 4, 2007)

14.08.050. City guidelines concerning restorative action.

A. *Minimum requirements.* No complainant shall be entitled to seek restorative action unless the complainant meets one of the following minimum criteria:

1. If the application is based on loss of view: that the claimant has a significant view as defined herein or has had a significant view at some time since purchasing the property; that the tree alleged to be interfering with a significant view is located within 300 feet of the exterior wall of a primary living or entertaining area from which the significant view could be seen; and that more than 60 percent of the horizontal expanse of that portion of the view which is seen over the property of the tree owner is obscured by trees or structures located on the tree owner's property.

2. If the application is based on interference with access to sunlight: that the claimant suffers from a substantial deprivation of access to sunlight which had existed at some time subsequent to purchasing the property; and that the tree allegedly causing the substantial deprivation of sunlight is located within 50 feet of the complainant's property line.

B. *Additional elements for consideration.* No claimant shall be entitled to seek restorative action unless the claimant's view or access to sunlight is unreasonably obstructed based upon an objective evaluation. In determining whether view or access to sunlight is unreasonably obstructed, the following guidelines, if relevant, shall be considered:

1. The extent of the alleged view obstruction, expressed as percentage of the total view, and calculated by means of a survey or by photographs or both;

2. The extent to which one or more of the unique view features described in MMC 14.08.020(G) are obstructed;
3. The extent to which the tree causes shade, reducing access to sunlight;
4. The extent to which the tree provides benefits to the tree owner or others including but not limited to visual screening, wildlife habitat, soil stability (as measured by soil structure, degree of slope and extent of root system), energy conservation and/or climate control;
5. The extent to which the tree affects neighboring vegetation;
6. The visual quality of the tree, including but not limited to species characteristics, size, form, texture, color, vigor, location and other tree factors, including such items as indigenous tree species, specimen tree quality and rare tree species;
7. The extent to which the provisions of Chapter 16.50 MMC, Critical Areas, and of Chapter 16.52 MMC, Tree Management Code, may be inconsistent with any portion of the relief requested;
8. The extent to which the proposed action may have an adverse affect on the health or stability of other trees.

(Code 1988 § 18.16.050; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 5, 2007)

14.08.060. Objective criteria to govern.

In determining whether relief may be granted, the objective criteria set forth in this chapter shall govern. No party shall be entitled to an unobstructed view.

(Code 1988 § 18.16.060; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 6, 2007)

14.08.070. Methods of relief.

Methods of relief that may be granted include pruning, thinning, windowing, topping, or removal of the tree.

(Code 1988 § 18.16.070; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 7, 2007)

14.08.080. Limitations on relief.

Any relief which may be granted shall be limited by the following standards:

A. No relief shall be granted unless the relief will substantially improve a significant view or access to sunlight.
B. Only the least invasive procedure which would grant reasonable relief can be required.
C. Removal will not be required unless pruning or topping would not provide adequate relief.
D. If removal or topping are required, on the request of the tree owner, the tree shall be replaced at the complainant's expense. The replacement tree shall be chosen by the tree owner from a list of trees established by the city which will not cause a reoccurrence of the unreasonable obstruction.
E. If one or more methods of relief would provide reasonable relief to the complainant, the reasonable desires of the tree owner shall govern.

(Code 1988 § 18.16.080; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 8, 2007)

14.08.090. Limitations on pruning.

All pruning ordered to be performed will conform to the following limitations:

A. No more than one-third of the tree canopy shall be removed during any growing season.

B. If the tree canopy is raised, removal of the lower branches shall not exceed 25 percent of the total tree canopy.

C. In pruning to reduce the height of a tree, all cuts shall be made to strong laterals or to the parent limb. Whenever possible, limbs shall be cut back to laterals that are at least one-third the size of the parent limb.

D. Pruning shall be evenly distributed throughout a tree's canopy.

E. When appropriate based on the genus of the tree, pruning shall be performed only during the horticulturally approved times.

F. In addition to the standards set forth herein, pruning shall comply with guidelines for pruning established by the National Arborist Association.

(Code 1988 § 18.16.090; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 9, 2007)

14.08.100. Process for resolution of obstruction disputes.

The following process shall be used in the resolution of view and sunlight obstruction disputes:

A. *Initial reconciliation.* A complainant who believes that tree growth on the property of another has caused unreasonable obstruction of views or sunlight from a primary living or entertaining area shall notify the tree owner in writing of such concerns. Notification should, if possible, be accompanied by a personal discussion to enable the complainant and tree owner to attempt to reach a mutually agreeable solution.

B. *Mediation.* If the initial reconciliation attempt fails, the complainant shall propose mediation as a timely means to settle the obstruction dispute.

Acceptance of mediation by the tree owner shall be voluntary, but the tree owner shall have no more than 30 days from service of notice to either accept or reject the offer of mediation. If mediation is accepted, the parties shall mutually agree upon a mediator within 10 days.

It is recommended that the services of a professionally trained mediator be employed. Mediation may be arranged through the Seattle-King County Alternate Dispute Resolution Center.

The mediation meeting may be informal. The mediation process may include the hearing of the viewpoints of lay or expert witnesses and shall include a site visit to the properties of the complainant and the tree owner. The parties are encouraged to contact immediate neighbors and solicit input. The mediator shall consider the purposes and policies set forth in this chapter in attempting to help resolve the dispute. The mediator shall not have the power to issue binding orders for restorative action, but shall strive to enable the parties to resolve their dispute by written agreement in order to eliminate the need for binding arbitration or litigation.

(Code 1988 § 18.16.100; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 10, 2007)

14.08.110. Tree claim preparation.

In the event that the initial reconciliation process fails, and mediation either is declined by the tree owner or fails, the complainant must prepare a tree claim and provide a copy to the tree owner in order to pursue either binding arbitration or litigation as set forth in this chapter. A tree claim shall consist of all of the following:

A. A description of the nature and extent of the alleged obstruction, including pertinent and corroborating physical evidence. Evidence may include, but is not limited to, photographic prints, negatives or slides. Evidence of the date of property acquisition by the complainant must be included.

B. The location of all trees alleged to cause the obstruction, the address of the property upon which the trees are located, name and address.

C. Evidence of the failure of initial reconciliation to resolve the dispute. The complainant must provide evidence that written attempts at reconciliation have been made and have failed. Evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence.

D. Evidence that mediation has been attempted and has failed, or has been declined by the tree owner.

E. The specific restorative actions proposed by the complainant to resolve the unreasonable obstruction.

(Code 1988 § 18.16.110; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 11, 2007)

14.08.120. Binding arbitration.

In those cases where the initial reconciliation process fails and where mediation is declined by the tree owner or has failed, the complainant must offer in writing to submit the dispute to binding arbitration, and the tree owner may elect binding arbitration.

The tree owner shall have 30 days from service of notice to accept or reject binding arbitration. If accepted, the parties shall agree on a specific arbitrator within 21 days, and shall indicate such agreement in writing.

The arbitrator shall use the provisions of this chapter to reach a fair resolution of the dispute and shall submit a complete written report to the complainant and the tree owner. The report shall include the arbitrator's findings with respect to MMC 14.08.050(A) and (B), a pertinent list of all mandated restorative actions with any appropriate conditions concerning such actions, and a schedule by which the mandates must be completed. A copy of the arbitrator's report shall be filed with the city clerk. The decision of the arbitrator is binding on the parties. Any decision of the arbitrator may be enforced by civil action, as provided by law.

(Code 1988 § 18.16.120; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 12, 2007)

14.08.130. Litigation.

In those cases where binding arbitration is declined by the tree owner, then civil action may be pursued by the complainant for resolution of the view or sunlight obstruction dispute under the provisions and guidelines set forth in this chapter.

The complainant must state in the lawsuit that mediation and arbitration were offered and not accepted. A copy of any final resolution of the litigation shall be filed with the city clerk.

(Code 1988 § 18.16.130; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 13, 2007)

14.08.140. Apportionment of costs.

A. *Mediation and arbitration.* The complainant and tree owner shall each pay 50 percent of mediation or arbitration fees, unless they agree otherwise or allow the mediator or arbitrator discretion to allocate costs.

B. *Restorative action.* The costs of restorative action shall be determined by mutual agreement or through mediation, arbitration, court decision or settlement.

(Code 1988 § 18.16.140; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 14, 2007)

14.08.150. Limitation.

This chapter shall not be construed to affect obligations imposed by easement, covenants or agreements.

(Code 1988 § 18.16.150; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 15, 2007)

14.08.160. Application.

A. This chapter shall not apply to trees located on property owned by the city (not including rights-of-way). Individuals who are adversely affected by trees located on property owned by the city may approach the city park board for requested relief. The potential for obstruction of views or substantial obstruction of sunlight shall be considered by the city when planting trees on property owned by the city.

B. This chapter shall not apply to trees located within city rights-of-way which trees shall continue to be subject to the requirements of Chapter 16.52 MMC.

C. This chapter shall not apply to historic trees.

(Code 1988 § 18.16.160; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 16, 2007)