

Town of Yarrow Point

Ordinance No. 753

AN ORDINANCE OF THE TOWN OF YARROW POINT AMENDING YARROW POINT MUNICIPAL CODE BY REPEALING IN ITS ENTIRETY CHAPTER 20.22 AND ADOPTING A NEW CHAPTER 20.22 TO ESTABLISH NEW REGULATIONS RELATED TO TREES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Town of Yarrow Point has established standards and procedures governing the removal, retention, preservation, maintenance, and replacement of significant trees through the regulations codified at Chapter 20.22 Yarrow Point Municipal Code (“YPMC”); and

WHEREAS, the Town Council finds that in order to better accomplish the goals of retaining, preserving, maintaining and replacing significant trees, substantial revisions to Chapter 20.22 YPMC are needed; and

WHEREAS, the Town Council directed Town staff and the Planning Commission to prepare updated tree code regulations that better accomplish the goals of the Town; and

WHEREAS, the Planning Commission held multiple meetings to discuss and consider the tree code amendments; and

WHEREAS, the Town held an open house on March 5, 2024 to solicit public feedback on the tree code amendments; and

WHEREAS, on April 24, 2024, the Planning Commission voted to recommend approval of the tree code amendments,

WHEREAS, on June 18, 2024, a public hearing notice announcing the Town Council public hearing on the tree code amendments was published in the Seattle Times, and posted at Town Hall and on the Town’s website; and

WHEREAS, the Town Council held a duly noticed public hearing on the tree code amendments on July 9, 2024; and

WHEREAS, on July 22, 2024, notice was given to the Department of Commerce pursuant to RCW 36.70A.106, and no comments were received; and

WHEREAS, on August 27, 2024, the State Environmental Protection Act (SEPA) Threshold Determination of Non-significance was published in Seattle Times, and in the SEPA registry, and posted on the Town’s website; and

WHEREAS, after considering the Town Staff and Planning Commission recommendations, public testimony received in the public hearing, the Yarrow Point Town Council desires to approve and to adopt the final version of the tree code amendments as set forth in this Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF YARROW POINT, WASHINGTON AS FOLLOWS:

SECTION 1. Findings. The foregoing recitals are hereby adopted as findings of fact in support of the adoption of this Ordinance.

SECTION 2. Repeal and Replace. Chapter 20.22 of the Yarrow Point Municipal is hereby repealed in its entirety and replaced as set forth in Exhibit A attached and incorporated herein.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this Ordinance.

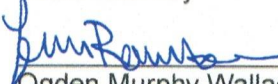
SECTION 4. Corrections. The Town Clerk-Treasurer and codifiers of the ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

SECTION 5. Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the Town. This Ordinance shall take full force and effect five (5) days after the date of publication.

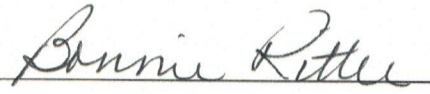
Approved by the Town Council of the Town of Yarrow Point on this 8th day of October, 2024.


Katy Kinney Harris, Mayor

Approved as to form:
Town Attorney


Ogden Murphy Wallace, PLLC

Attest/Authenticated:


Bonnie Ritter, Town Clerk-Treasurer

PUBLISHED BY THE TOWN COUNCIL: October 8, 2024
PUBLISHED: October 14, 2024
EFFECTIVE DATE: October 15, 2024
ORDINANCE NO.: 753

EXHIBIT A

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	Heritage Tree Removal Requirements
20.22.050	Emergency Tree Removal Requirements.
20.22.060	Tree removal permit – Application process.
20.22.070	Tree removal permit – Review.
20.22.080	Tree removal permit – Notification.
20.22.090	Tree removal permit – Expiration.
20.22.100	Tree mitigation.
20.22.110	Fee-in-lieu bonding for mitigation trees.
20.22.120	Tree Permit - Construction site.
20.22.130	Tree Permit Appeals.
20.22.140	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. Trees are integral to Yarrow Point's community. Protecting and maintaining trees is essential to further the town's comprehensive plan and preserve the community's unique character, and to improve the quality of life. The purpose of the private property tree code is to protect, preserve, and replenish significant trees on private property in the town while allowing for the flexibility to develop and utilize private property. Yarrow Point recognizes that trees significantly further these goals by:

1. Increasing the town's climate resilience by reducing urban heat island effects and decreasing the town's impact on climate change;
2. Aiding in the control of drainage and restoration of denuded, and promoting soil stabilization and enrichment of soil by the prevention of erosion and the enhancement of sedimentation;
4. Providing a visual buffer against traffic and a buffer against noise pollution;
5. Reducing costs associated with storm water control, treatment, and utility maintenance, by mitigating the adverse impacts of land-disturbing activities such as land instability, sedimentation, pollution of waterways, soil erosion, and runoff;
6. Enhancing local property values;
7. Improving air quality by absorbing air pollutants, reducing carbon dioxide, and generating oxygen;
8. Providing protection from severe weather and moderating the effects of winds and temperatures;

9. Improving surface water quality and control; and

10. Providing varied and rich habitats for wildlife.

C. Intent. Yarrow Point recognizes that removal of significant or heritage trees may result in the loss of these benefits to the town and its residents. The private property tree code aims to balance the benefits provided by trees while recognizing resident's ability to develop and utilize their private property. The private property tree code is intended to:

1. Maintain an equitable distribution of significant trees on properties throughout the town;
2. Mitigate the consequences of significant tree removal through tree replacement;
3. Implement the goals and objectives of the town's comprehensive plan, the town's shoreline master program, and the State Environmental Policy Act;
4. Protect property owner's ability to remove trees when they are hazardous;
5. Preserve and enhance the town's physical and aesthetic character;
6. Prevent untimely and indiscriminate removal or destruction of significant trees except as provided for in accordance with this chapter;
7. Improve the town's air quality and reduce air pollution;
8. Give property owners flexibility in development and mitigation approaches;
9. Promote building and site planning practices consistent with the purpose and intent of this chapter;
10. Allow for property development and redevelopment consistent with the Town's character;
11. Ensure prompt development, restoration, and replanting of new trees after tree removal;
12. Encourage best practices for the planting and managing of trees appropriately to minimize hazards, nuisances, and maintenance costs; and
13. Protect trees to further the benefits identified above in (B).

20.22.020 Definitions.

A. "Applicant" means any person that has applied for a tree removal permit pursuant to this chapter.

B. "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.

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

D. "Diameter at Standard Height or "DSH" means the diameter or thickness of a tree trunk measured at four and one-half feet from the ground.

E. "Hazardous Tree". Any significant tree is considered hazardous when it has been assessed by a qualified professional and found at a minimum to have a "probable" to "imminent" likelihood of failure based on the TRAQ method.

F. "Heritage Tree" means any significant tree with a DSH of 36" or greater.

G. "Mitigation Tree" means any tree planted to comply with this chapter's requirements or an existing tree which has been selected to be preserved as a mitigation tree.

H. "Mitigation Tree Species" means tree species that have the potential to grow to the size of a significant tree.

I. "Pruning" means the act of trimming or lopping off what is superfluous; specifically, the act of cutting off branches or parts of trees with the intent of strengthening those that remain or to bringing the tree into a desired shape. Pruning resulting in the removal of at least 30 percent of the live crown, as determined by the Town Arborist, shall be considered tree removal.

J. "Qualified Professional" means an individual 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 have a TRAQ certification, as well as experience working directly with the protection of trees during construction.

K. "Root Protection Zone" or "RPZ" means the ground area around a tree with one foot of radius in all directions for each inch of DSH.

L. "Significant tree" means any tree that is at least 12 inches at DSH or any of the following trees at the listed DSH:

1. Cascara, *Rhamnus purshiana*, with a DSH of 6" or greater;
2. Douglas Hawthorn, *Crataegus douglasii*, with a DSH of 6" or greater;
3. Dwarf or Rocky Mountain Maple, *Acer glabrum* var. *Douglasii*, with a DSH of 6" or greater;
4. Grand fir, *Abies grandis*, with a DSH of 8" or greater;
5. Lodgepole Pine / Shore Pine, *Pinus contorta*, with a DSH of 8" or greater;
6. Mountain Hemlock, *Tsuga mertensiana*, with a DSH of 6" or greater;
7. Oregon Ash, *Fraxinus latifolia*, with a DSH of 8" or greater;
8. Pacific Crabapple, *Malus fusca*, with a DSH of 6" or greater;
9. Pacific Dogwood, *Cornus nuttallii*, with a DSH of 6" or greater;
10. Pacific Madrone, *Arbutus menziesii*, with a DSH of 6" or greater; or
11. Pacific Yew, *Taxus brevifolia*, with a DSH of 6" or greater; or
12. Sitka Spruce, *Piceae Sitchensis*, with a DSH of 8" or greater.

M. "Tree Risk Assessment Qualification" or "TRAQ" means a qualification credential established and issued by the International Society of Arboriculture and its Chapters for the purpose of standardizing tree risk assessments.

20.22.030 Tree removal and minimum significant tree density.

A. Permit Required. A tree removal permit shall be required for the removal of any significant tree.

B. Density. The minimum significant tree density requirement is one significant tree per 5,000 square feet of lot area.

C. Density Compliance. An applicant shall demonstrate compliance with the minimum tree density requirement when:

1. a significant and/or heritage tree is proposed to be removed; or
2. a new building permit with a valuation of \$50,000 or more that proposes to construct a new structure, and/or change the existing building envelope and/or increase the impervious surface is proposed.

D. Density Implementation. The tree density requirement may be accomplished through the preservation and maintenance of existing significant trees, or through the planting of mitigation trees, or through the designation of existing non-significant or non-heritage trees as mitigation trees, or a combination thereof.

E. Calculation. When calculating the required tree density per property, fractional tree portions shall be rounded up or down to the nearest whole number.

F. Shared Trees. Significant tree trunks that straddle a private property line shall be assigned a tree density value of 0.49 for each property.

G. Best Management Practices. When undertaking tree removal, best management practices shall be employed as referenced in "Tree Protection on Construction and Development Sites: A Best Management Guidebook for the Pacific Northwest".

20.22.040 Heritage Tree Removal Requirements.

A. Additional requirements. In addition to the requirements identified elsewhere in this chapter, applicants for heritage tree removal shall adhere to the requirements listed in this subsection.

B. Setback Area. A heritage tree in a setback may not be removed unless:

1. The tree is a hazardous tree; or
2. The applicant can establish that the items listed below cannot be located without removing the heritage tree:
 - a. Driveways;
 - b. Paved areas;
 - c. Swimming pools;
 - d. Low decks;
 - e. Piers & pier houses; or
 - f. Underground structures.

3. The applicant can establish that a proposed structure in the buildable area cannot be located without causing existing significant trees to become hazardous trees.

C. Buildable Area. A heritage tree in the area of the property where structures may be located may not be removed unless:

1. The tree is a hazardous tree; or
2. The applicant can establish that the structure footprint cannot be located without removing the trees.

D. Mitigation required. Pursuant to YPMC 20.22.100(A), mitigation is required when a heritage tree is removed. Each heritage tree shall be replaced with a mitigation tree except when the only available planting locations are:

1. Underneath existing tree canopy;

2. Within 5 feet of retaining walls;
3. Within 10 feet of an existing or proposed structure;
4. Within 5 feet of a bulkhead;
5. Within 5 feet of the Ordinary High Water Mark;
6. Within 5 feet of underground utilities;
7. Within a ROW sight triangle as established by the Town Engineer;
8. Smaller than 5' in diameter planting area: or
9. When YPMC 20.22.100(G) cannot be implemented.

20.22.050 Emergency Tree Removal Requirements.

- A. Any hazardous tree may be removed prior to the issuance of a tree removal permit.
- B. Within seven (7) days of the emergency tree removal, the property owner shall submit a tree removal permit consistent with YPMC Section 20.22.030 and YPMC 20.22.060 and include evidence justifying the removal of the significant tree.
- C. Trees planted for mitigation of a hazardous tree are exempt from the bonding requirements under YPMC 20.22.100(H).

20.22.060 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 trees greater or equal to 6" DSH on the subject property.
 3. For applications associated with a building or site development, the site plan shall also label and identify all trees within 20 feet of the proposed project footprint.
 4. A mitigation plan, if required per YPMC 20.22.100 (Mitigation), indicating the location and species for all trees to be planted and/or identifying existing trees to be designated as mitigation trees.
 5. The current permit fee, as established by the town council.
 6. Compliance with all applicable local, state, and federal regulations. including eagle regulations, 50 CFR 22.80, as currently enacted or hereafter amended. Copies of such permits or documentation shall be provided to the Town upon request.
 7. Additional documents that may be required include but are not limited to:
 - a. An erosion control plan.
 - b. A report prepared by a qualified professional that evaluates the significant and/or heritage trees on site, as well as all trees in the adjacent areas impacted by the proposed construction.
 - c. A survey plan prepared by a state licensed surveyor if the location of significant or heritage trees relative to a property line cannot be determined.
 - d. A tree protection plan per YPMC 20.22.090 (Construction site tree protection) for applications associated with construction or site development.

B. Concurrent with submittal of the tree removal permit application, the applicant shall identify every significant tree proposed for removal by placing a yellow tape around the circumference of the tree at the DSH.

C. 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.

20.22.070 Tree removal permit – Review.

A. Review Procedures.

1. Completeness. An application for a tree removal permit is not complete until the applicant has submitted all the applicable items required by YPMC 20.22.060 and YPMC 20.22.100(H), when applicable.
2. Decision. The Town shall issue a decision on the tree removal permit application. The Town may grant the tree removal permit, grant the permit with conditions pursuant to this chapter and the YPMC, or deny the permit.
 - a. Any condition reasonably required to enable the tree removal to meet the standards of this chapter or the applicable provisions of the YPMC may be imposed.
 - b. If no reasonable condition(s) can be imposed that ensure the tree removal meets such requirements, the application shall be denied.
 - c. The Town's decision on the application is final.

B. Guidelines for measuring DSH. Guidelines for measuring DSH shall be as established in the Yarrow Point DSH Measurement Guidelines" document kept on file with the Town.

20.22.080 Tree removal permit – Notification.

A. Prior to removing any significant trees, the applicant shall post a copy of their issued tree removal permit on site, and on the mailbox pagoda associate with the subject project. The town shall also publish the tree removal permit on the town's website. The posted and published permit copies shall include the submitted site plan.

B. Upon issuance of a permit for an emergency tree removal, the town shall publish a copy of the permit on the town's website. The permit copy shall include the submitted site plan.

20.22.090 Tree removal permit – Expiration.

A tree removal permit shall expire six months from the date of issue.

20.22.100 Tree mitigation.

A. Mitigation shall be required as follows, unless otherwise specified in this chapter:

1. When the tree density requirement is not met.
2. When a heritage tree is removed.

B. When mitigation is required, the applicant shall provide a tree mitigation plan identifying all mitigation trees, their, sizes, and species.

C. Trees planted for mitigation shall have a full and well developed crown, and be a minimum of 10 feet tall for evergreens or have a minimum three-inch caliper for deciduous trees.

D. Town staff shall determine if a proposed mitigation tree location is suitable based on its proximity to other trees, property lines, the shoreline, critical areas, utilities, right of way, or structures and their appurtenances.

E. Tree mitigation requirements shall be met within six months of removing any significant tree. In the case of construction, mitigation requirements shall be met prior to final inspection.

F. Trees planted as mitigation trees shall be maintained with adequate water and care to survive a minimum ten (10) year warranty period.

G. An existing tree on the property which is not a significant tree may be designated as a mitigation tree if it is deemed to be healthy and well positioned for growth into a significant tree as proposed by the applicant and then reviewed by Town Staff

H. Unless otherwise stated herein, the applicant shall post a warranty bond in a form acceptable to the Town before the issuance of the tree removal permit. The bond amount shall be \$2,500.00 per mitigation tree. The total bond amount shall not exceed \$10,000.00, per permit on lots 20,000 SF in area or less, or \$25,000.00 per permit on lots over 20,000 SF in area.

I. Mitigation trees that fail to survive the ten-year warranty period shall be replaced by the property owner with trees in accordance with this chapter's standards. If the property owner fails to replace the tree in accordance with this chapter the Town may call the bond and replace the tree in accordance with this chapter.

J. If an applicant demonstrates that they own multiple properties in Yarrow Point, they may propose planting the mitigation tree(s) on a different property from the property where the tree was removed. In this instance the two site plans will be required to show where the mitigation tree(s) will be planted.

K. The Town may authorize payment of a fee-in-lieu of bonding for mitigation trees in accordance with YPM 20.22.110.

L. The Town may authorize planting of additional trees beyond the density requirement in lieu of bonding. An applicant subject to bonding requirements for planting mitigation trees may chose instead to plant additional trees. In that case, the bond for each required tree is waived for each additional tree planted beyond the required number to meet the density requirement.

M. Preferred mitigation tree species are listed in the Town's "Preferred Mitigation Tree List".

20.22.110 Fee-in-lieu of bonding for mitigation trees.

A. Applicants may choose to pay a fee-in-lieu of bonding for mitigation trees. If the fee-in-lieu option is chosen, the applicant shall pay into the Town's Urban Forestry Grant Program the amount of the bond required.

B. The in-lieu fees established in this section shall be collected by the Town and solely used for an Urban Forestry Grant Program to be administered by the Town.

20.22.120 Tree Protection – Construction Site.

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. Construction site tree protections shall be installed on the subject property where the work is being conducted and along access routes which are utilized for the project as agreed upon by relevant parties. Such protections shall be installed by the property owner or their designee in accordance with this chapter.

B. The following tree protection requirements are required for all construction sites and shall be identified on site permit documents:

1. Tree protection fencing, or other barriers shall be installed along all clearing limits just outside of a tree's root protection zone (RPZ). Tree protection fencing shall be the installation of a rigid cyclone fence, six feet in height located just outside the root protection zone. In the case of trees along a driveway, public right-of-way, or high-traffic areas, plywood fencing no less than six feet in height may be used in lieu of a rigid cyclone fence. A moveable panel or gate should be part of the fencing or barrier to allow access to the RPZ.
2. All tree protection fencing shall be installed, and its location approved by town staff prior to the commencement of work on site.
3. A two- to four-inch-deep layer of arborist woodchip mulch shall be placed over the soil in the RPZ. Hog fuel is acceptable.
4. No debris or construction materials may be stored, nor grade changes occur, within the RPZ. No parking, dumping, or burning is allowed.
5. Work required for removal of unwanted vegetation within the RPZ areas will be hand work only; no heavy equipment.
6. When removing trees outside of the RPZ determined to be unacceptable for retention, use methods such as directional felling to avoid damage to trees and other valuable vegetation that is being retained. Small trees and other native vegetation in these areas should be carefully preserved.
7. Where construction or utility trenches are required in the rights-of-way, side property setbacks, and RPZs; it is required to tunnel under or around roots by drilling, auger boring, pipe jacking or hand digging.
8. Tree stumps that are within a RPZ or immediately adjacent to the RPZ of a preserved tree or other vegetation shall be removed by grinding.
9. Where it has been determined that roots of a significant or heritage tree may be encountered during excavation or grading, a qualified professional shall be on site to supervise any root pruning and to assess the potential impact of such pruning. Any root greater than one-and-one-half-inch diameter that is encountered shall be carefully cut with a sharp tool. Roots cut shall be immediately covered with soil or mulch and kept moist.
10. Where access for machinery or any vehicle is required within the RPZ of any significant or heritage tree, the soil should be protected from compaction. Acceptable methods may include 18 inches of wood chips or hog fuel, plywood, or steel sheets. Town staff should be contacted a minimum of 48 hours before entering into the RPZ.
11. Tree protection fencing shall not be moved without authorization from town staff. All fencing is to be left in place until the completion of the project.
12. Landscaping specified within the RPZ areas shall be designed to limit disturbance of surface soils and preserved vegetation. No root pruning is permitted. New plants added in these areas should be of the smallest size possible to minimize disturbance.
13. Any trees adjacent to high-traffic areas or building envelopes shall be pruned by qualified professional for pruning to remove dead wood, provide clearance, and cabling or bracing.
14. Supplemental irrigation for all protected trees is required during the summer months or prolonged periods of dry weather as determined by a qualified professional.

20.22.130 Tree Permit Appeals.

Any 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 hearing examiner, setting forth the reasons for such appeal and the relief requested. The hearing examiner shall hear and determine the matter and may affirm, modify, or disaffirm the administrative decision within 60 days of timely appeal.

20.22.140 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 (DSH) for each significant tree 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 20.22.100.

C. Fines levied under this chapter shall be deposited into a tree mitigation fund and shall be used by the town for acquiring, maintaining, preserving wooded areas, and for the planting and maintenance of trees within the town's public places and rights-of-way.