



TO: Elizabeth A. Pauli, City Manager
FROM: Michael P. Slevin III, P.E., Director, Environmental Services
James G. Parvey, P.E., LEED AP, OEPS Division Manager, Environmental Services
COPY: Infrastructure, Planning, and Sustainability Committee
PRESENTER: Michael Carey, Urban Forester, Office of Environmental Policy and Sustainability;
Jana Magoon, Land Use Division Manager, Development Services
SUBJECT: TMC 9.18, 9.19, 9.20 – Public Trees Code Update
DATE: September 13, 2023

DS
MPS

PRESENTATION TYPE:

[Informational Briefing](#)

SUMMARY:

Title 9 “Public Ways” of Tacoma Municipal Code (TMC) contains three Chapters regarding the management of public trees, specifically, trees in the right-of-way (ROW) and trees on City-owned property. TMC Chapters 9.18, 9.19, and 9.20 cover tree removal and pruning, tree planting, and tree removal or pruning for the purpose of view enhancement, respectively. These chapters have many inconsistencies with current City-adopted policies and industry best management practices, and staff have been Directed by the Infrastructure Planning and Sustainability (IPS) Committee to propose updates to these TMC chapters.

This informational briefing is the fifth in a progressive series of meetings with the IPS Committee, with the intent to:

- 1) present the framework for the new proposed “TMC 9.20 – Urban Forestry”;
- 2) provide a high-level overview of the requirements contained in the new proposed TMC Chapter 9.20 Urban Forestry;
- 3) provide the draft TMC language that is being proposed for adoption with a request for feedback from the IPS Committee; and,
- 4) request a recommendation from the IPS Committee to move this revised TMC to full Council for consideration.

BACKGROUND:

City Council has adopted numerous policies directly supporting improved urban forestry outcomes through better tree protections, increased tree planting, fixing operational workflows, removing contradictions within TMC, and increasing local food access. Relevant adopted policies include: **(2010) Urban Forest Policy Element (ORD27892)**, **(2016) Environmental Action Plan (RES39427)**, **(2019) Urban Forest Management Plan (RES40492)**, **(2019) Climate Emergency Resolution (RES40509)** and the **(2021) Climate Action Plan (RES40878)**.

Related to the implementation of these policies, staff have been directed by IPS to pursue the following broad categories of updates to TMC related to trees in the right-of-way issues:

1. remove the prohibition on food producing trees in the ROW;
2. clarify protections and update language to industry standards for ROW trees, to reduce illegal removal and damage leading to poor tree health and potential public hazard;
3. update the antiquated penalties/fines structure (adopted in 1927) to recover costs of enforcement and replacement of illegally damaged trees in the right-of-way; and,
4. establish a heritage tree program.

The initial scope of the TMC update regarding public trees was determined during the development of the Urban Forest Management Plan (UFMP), adopted by Council (*RES40492*) on December 3, 2019. Since the adoption of the “Urban Forestry Code and Policy Pre Prospectus” in the UFMP, Staff have presented to IPS on:

1. Nov. 21, 2021, to confirm TMC update intent and scope;
2. Sept. 14, 2022, to further refine TMC update scope;
3. Jan. 25, 2023, to gain direction on outstanding policy questions; and,
4. Feb. 22, 2023, to present the new structure of proposed TMC, and ask remaining policy questions to incorporate into the draft TMC update.

ISSUE:

Due to the overlap between the administrative portions of the existing TMC 9.18, 9.19, and 9.20, staff have consolidated the existing TMC chapters into one new proposed Chapter 9.20 Urban Forestry, in addition to adding a new section on a Heritage Tree program. The internal staff stakeholder committee has produced this draft to reflect the implementation of adopted policies, as well as the integration of the IPS Committee’s direction in the previous IPS presentations. The attached EXHIBIT 1 provides an overview of the structure and requirements in the current TMC 9.18, 9.19, and 9.20 regarding public trees, in contrast to the new proposed TMC 9.20 Urban Forestry. The full draft Proposed TMC 9.20 Urban Forestry Code Revisions is attached as EXHIBIT 2.

ALTERNATIVES:

This is an informational briefing and discussion. Continuing to move forward with no changes to the TMC Titles 9.18, 9.19, and 9.20 as they exist today will result in a continued poor level of service to our community regarding tree management, inconsistent expectations between the City and the community on how to comply with the Code, and poorer outcomes for the urban forest.

FISCAL IMPACT:

The adoption of the proposed TMC update will not have a direct fiscal impact, however, the effective implementation of this code, if adopted, would necessitate the addition of an FTE to conduct customer support, plan review, inspections, and code enforcement. Fiscal impact for the FTE is estimated at \$140,000.00/year.

RECOMMENDATION:

Staff will facilitate a discussion with IPS to walk through the proposed changes to the TMC. Staff recommend the IPS Committee either:

- 1) approve the draft TMC language to move forward to full Council for consideration;
- 2) approve the draft TMC language to move forward to full Council with minor edits, as directed by IPS, for consideration; or,
- 3) provide staff with direction to modify the draft TMC language to be reviewed and discussed again with the IPS Committee at a future meeting, prior to moving forward to full Council for consideration.

EXHIBIT 1

Comparison of Current TMC 9.18, 9.19, & 9.20 and new proposed TMC 9.20 regarding public trees

This document is intended to provide an overview of the structure and requirements in the current Tacoma Municipal Code (TMC) regarding public trees, specifically TMC 9.18, 9.19, and 9.20 regarding right-of-way tree trimming and removals, planting, and pruning or removal for the purpose of view enhancement on City property, respectively. The current TMC summary is on the lefthand column of the following tables. Also provided in this document is the overview of the structure and requirements of the new proposed TMC 9.20 Urban Forestry code section, in contrast to the existing TMC. The new proposed TMC summary can be found on the righthand column(s) of the following tables. The last table in this document includes information on the new TMC section on Heritage Trees. Note: this document is intended to provide a high-level analysis, and may exclude specific requirements of both the current and proposed TMC. For the full details of the proposed TMC update, please review *Appendix 2, Proposed TMC 9.20 Urban Forestry code revisions*.

Definitions:

1. "Street tree(s)" shall mean and refer to a tree(s) whose trunk is wholly or partially located within the public right-of-way. Street trees may be owned by the City or by an abutting property owner.

<u>EXISTING TMC 9.18 – Trimming & Removal (C. 1927)</u>	<u>NEW PROPOSED TMC 9.20.210 – Pruning</u>	<u>NEW PROPOSED TMC 9.20.220 – Removal</u>
<u>Authority:</u> Director of Public Works	<u>Authority:</u> Director of Public Works, or delegate	<u>Authority:</u> Director of Public Works, or delegate
<u>Applicability:</u> Permit required to remove, destroy, or cut any tree or shrub planted within the limits of any street or alley	<u>Applicability:</u> Permit required to prune any street tree	<u>Applicability:</u> Permit required to remove any street tree
<u>Application requirements:</u> Does not specify	<u>Application requirements:</u> Contact information for applicant, authorized agent (if applicable), and person performing work; description of ROW; description of street tree(s); photograph of street tree(s); pruning plan meeting BMPs	<u>Application requirements:</u> Contact information for applicant, authorized agent (if applicable), and person performing work; description of ROW; description of street tree(s); photograph of street tree(s); removal plan; demonstration that the removal meets one of the following:

		hazard tree, conflict tree, prohibited tree, nuisance tree, significantly damaged tree, or fruit tree
Who can apply: Any person, firm or corporation	Who can apply: Abutting owner and authorized agents; the City and authorized agents; utilities and public transportation agencies and their authorized agents	Who can apply: Abutting owner and authorized agents; the City and authorized agents; utilities and public transportation agencies and their authorized agents; persons required under a project permit to make off-site improvements
Exemptions: N/A	Exemptions: permits are not required for: pruning small trees (under 15 feet), pruning fruit trees, Public Works or WSDOT abating public nuisance or public safety threat, Public Works pruning for construction clearance or tree health, pruning for restoration of utilities, power utility pruning for clearance; pruning of street trees to respond to an emergency is allowed, provided that an after the fact permit is obtained within 30 days.	Exemptions from permits: permits are not required for: Public Works or WSDOT removing trees to abate public nuisance or public safety threat; removal of street trees to respond to an emergency is allowed, provided that an after the fact permit is obtained within 30 days.
Permit Fee: N/A	Permit Fee: N/A	Permit Fee: N/A for all qualifying removals except for conflict trees. Conflict trees require an administration fee, plus a fee for tree removal as specified in fee schedule for permits.
Issuance of permit: Requires inspection; permit denied if removal, destruction, or cutting of any tree or shrub will destroy the symmetry of the tree or shrub, unless tree is dead, unsightly or a menace to the public or to public utilities.	Issuance of permit: Must meet ANSI pruning objectives and BMPs; must have a pruning plan; must not negatively impact continued health of tree.	Issuance of permit: Must be a hazard tree, conflict tree, prohibited tree, nuisance tree, fruit tree, or significantly damaged tree; must have a removal plan; must replace removed tree(s) with a permitted tree(s).
Protection during construction: Any construction, alteration or repair of any building requires guards around street trees	Protection during construction: Any person conducting construction in the ROW shall comply with the Design Manual requirements for tree protection; any excavation, filling,	Protection during construction: Any person conducting construction in the ROW shall comply with the Design Manual requirements for tree protection; any

<p>and shrubs to protect trees and shrubs from damage or injury</p>	<p>tunneling, trenching, compacting, demolition, utility work in Critical Root Zone or Drip Line of any street tree, must submit a Tree Protection Plan in accordance with UFM. *note: <i>this is already required in TMC 13.06.090.B</i></p>	<p>excavation, filling, tunneling, trenching, compacting, demolition, utility work in Critical Root Zone or Drip Line of any street tree, must submit a Tree Protection Plan in accordance with UFM. *note: <i>this is already required in TMC 13.06.090.B</i></p>
<p>Obstruction: Trees, plants, shrubs, or vegetation overhanging any sidewalk or street, obstructing or impairing the sidewalk or street, including pedestrians vision or persons operating vehicles, interference with poles, wires, pipes, fixtures, or any part of any public utility, or fire hazards, or a menace to public health, safety, or welfare, requires removal by the owner of the property.</p>	<p>Obstruction: Vegetation impairing use of sidewalk or roadway, impairing pedestrian or vehicular view of oncoming traffic, interfering with utilities, or creating a fire hazard or public health threat, must be abated by responsible person.</p>	<p>Obstruction: Vegetation impairing use of sidewalk or roadway, impairing pedestrian or vehicular view of oncoming traffic, interfering with utilities, or creating a fire hazard or public health threat, must be abated by responsible person.</p>
<p>Notice: notice shall be served to the owner [regarding requirement to mitigate obstruction] or posted on a conspicuous place on the premises.</p>	<p>Notice: tree protection notice required to be posted on street trees 14 days prior to and during construction.</p>	<p>Notice: tree protection notice required to be posted on street trees 14 days prior to and during construction; if authorized, notice of street tree removal required to be posted on street trees 14 days prior to removal.</p>
<p>Other requirements:</p>	<p>Other requirements: Topping of trees prohibited</p>	<p>Other requirements: Each permitted removal must be replaced</p>
<p>Penalty for violation: \$100 fine; imprisonment in County Jail for 30 days.</p>	<p>Penalty for Violation: The fine is up to the value of the tree as determined by the Guide for Plant Appraisal published by the International Society of Arboriculture or \$500 dollars, whichever amount is greater. Tree topping is considered tree removal.</p>	<p>Penalty for Violation: Fine is the value of the tree as determined by the Guide for Plant Appraisal published by the International Society of Arboriculture or \$500 dollars, whichever amount is greater. If the DBH cannot be measured, the monetary penalty may be assessed per the diameter of the remaining stump. If the stump has been removed, a monetary penalty up to \$10,000 may be assessed, unless the violator can demonstrate the DBH of the illegally removed tree.</p>

<u>EXISTING TMC 9.19 – Planting (C. 1960)</u>	<u>NEW PROPOSED TMC 9.20.230 - Planting</u>
Authority: City Manager; Beautification Committee for ** Public Street Beautification Permit	Authority: Director of Public Works, or delegate authority
Applicability: Permit required to plant in ROW; **Public Street Beautification Permit required for planting in industrial and commercial areas	Applicability: Permit required to plant in ROW
Application requirements: Plans showing location, size, height above the roadway/sidewalk, proposed plants; names and addresses of all participants; extent of the district being improved.	Application requirements: Contact information for applicant, authorized agent (if applicable), and person performing work; aerial image (site plan); tree planting plan with species and locations.
Who can apply **: An association, trade bureau, person, or group of persons; shall be sponsored by a group or association; no owner can only improve their own ROW frontage (must act in concert with others).	Who can apply: abutting owner and authorized agents; the City and authorized agents; utilities and public transportation agencies and their authorized agents; persons required under a project permit to make off-site improvements.
Exemptions: N/A	Exemptions: N/A
Permit Fee: N/A	Permit Fee: N/A
Issuance of Permit *: Specific clearance required from COT Traffic Engineering and the Tacoma Police Department; no advertising allowed for the area, group, or businesses; beautification shall be sponsored by a group	Issuance of Permit: Tree must meet requirements of a “permitted tree” for species and clearance requirements; in compliance with the Design Manual and Urban Forest Manual; if tree is going to replace existing tree, a tree removal permit must also be applied for.
Prohibited trees: Poplar, Willow, Cottonwood, Fruit Trees (except ornamental types), Nut Trees, Mountain Ash, Oregon or Big Leaf Maple.	Prohibited trees: Per Urban Forest Manual (UFM) Prohibited Tree List
Permitted trees: Per UFM permitted tree list	Permitted trees: Per UFM permitted tree list; trees not on permitted tree list may be approved with supplemental information.
Notice: N/A	Notice: If the permittee is not abutting owner and is required under a project permit to make off-site improvements, the permittee shall provide written notice by mail to the abutting property for a street tree proposed to be planted
Other requirements: insurance policy required with limits of not less than \$100,000.00/ \$300,000.00 for injuries to persons and \$50,000.00 for injuries to property; applicant required to maintain in perpetuity, or City can remove or maintain and charge the applicant for reimbursement.	Other requirements: tree species and location shall be selected to maximize visibility and safety; planting offsets from infrastructure shall meet the Design Manual.
Penalty for violation: misdemeanor; \$300 fine; imprisonment in County Jail for 90 days.	Penalty for Violation: N/A; remediation may be required.

<u>EXISTING TMC 9.20 – View Blockage (C. 1990)</u>	<u>NEW PROPOSED TMC 9.20.250 – Tree Pruning on Public Real Property – Scenic View Enhancement</u>
<u>Authority:</u> City Engineer; permission from the owner of the abutting property (for ROW), if other than the individual requesting the work.	<u>Authority:</u> Director of Public Works, or delegate authority
<u>Applicability:</u> Requests to prune or remove vegetation impairing a view on all City-owned property, both General Government and Department of Public Utilities, including: rights-of-way, open space, and property used for facilities.	<u>Applicability:</u> Requests to prune trees located on unimproved public real property to enhance scenic views.
<u>Application requirements:</u> Vegetation location; photographs; statement of problem; proposed solution; written permission from adjacent owner (if in ROW); name of individual performing work.	<u>Application Request requirements:</u> Contact information for person submitting request; description of public real property; description of tree(s); photographs of tree(s); description of scenic view; statement of why pruning is necessary.
<u>Who can apply:</u> Any individual who desires pruning or removal of vegetation from public property	<u>Who can apply:</u> Any person who desires pruning of vegetation on public real property to enhance scenic views.
<u>Exemptions:</u> Pruning vegetation less than 15 feet in height this is located on developed or undeveloped right-of-way abutting the property of the individual requesting the pruning.	<u>Exemptions:</u> N/A
<u>Permit Fee:</u> base fee of \$250 plus all costs associated with performing the investigation and issuance of determination; the cost of all work approved (pruning or removal); half of the value of the vegetation removed; fees are to be placed into fund for planting and replacement of trees on City property.	<u>Permit Fee Costs:</u> Person making the request is responsible for administrative costs to review the request and to manage, administer and inspect the work, together with the costs of preparing a tree pruning plan, applying for and obtaining required permits, and planning for and performing the tree pruning work.
<u>Issuance of permit:</u> application review by a committee with members of the public, and representatives from the Planning and Development Services Department, Public Works Department, Public Utilities Department, and Metropolitan Park District, with knowledge, background, or training in arboriculture, forestry, horticulture, landscape architecture; review must consider 17 criteria for evaluation.	<u>Issuance of permit determination:</u> Request review by Director or designee in consult with the department responsible for the property and the City Arborist or Forester, for consistency with: use of real property; public health, safety and welfare; Comprehensive Plan; BMPs; vegetation management plan (if applicable); compliance with applicable laws (e.g. Critical Areas Ordinance).
<u>Protection:</u> Unlawful to remove, destroy, or prune any vegetation on City-owned property	<u>Protection:</u> Unlawful to prune, remove, or top any tree or other vegetation located on public

<p>for the purpose of view preservation without having first obtained approval from the City Engineer.</p>	<p>property or to engage in any act which causes a tree on public property to die, including inflicting damage to root system.</p>
<p>Performance of work: Work must be performed by established tree-service company with a City business license; National Arborist Association’s Pruning Standards; liability insurance and/or a performance bond (discretion of City Engineer).</p>	<p>Performance of work: Some, or all, of the work may be performed by consultants and contractors retained by the City.</p>
<p>Notice: Notice of application and notice of determination must be mailed to owners within 400 feet from the property, and to qualified neighborhood or community organizations and the Beautification Committee.</p>	<p>Notice: N/A</p>
<p>Other requirements: Decision can be appealed by Hearings Examiner</p>	<p>Other requirements:</p>
<p>Penalty for violation: Civil violation; penalty includes the value of vegetation removed plus \$1,000.</p>	<p>Penalty for Violation: For each tree removal violation, the fine is the value of the tree as determined by the Guide for Plant Appraisal published by the International Society of Arboriculture or \$500 dollars, whichever amount is greater. If the DBH cannot be measured, the monetary penalty may be assessed per the diameter of the remaining stump. If the stump has been removed, a monetary penalty in the amount of \$10,000 may be assessed, unless the violator can demonstrate the DBH of the illegally removed tree. A person found to be in violation of natural resources damages shall be responsible for the costs of abatement, remediation and mitigation of natural resource damages, together with any emergency response costs. Willful violation may include a gross misdemeanor (if convicted), a fine of up to \$5,000, or by imprisonment in jail for up to three hundred sixty-five (365) days, or both.</p>

NEW PROPOSED TMC 9.20 IV – Heritage Trees

Authority: Urban Forestry Program section of the Environmental Services Department

Applicability: Applies to the nomination, designation and management of trees located within the corporate boundaries of the City that qualify for nomination for heritage tree designation.

Application requirements: Narrative statement demonstrating that the tree has exemplary size, age, cultural or historical significance, ecological value, or rarity; description of physical condition and health of tree; species; size (DBH); photos of the tree including aerial map; documentation of ownership; documentation of owner’s consent (if applicable).

Who can apply: Property owner; any resident, City official, City employee, member of a City of Tacoma committee, board or commission, with the signed written consent of the owner of property were the tree is located.

Qualifications: The tree must be: in a healthy condition; located in the City of Tacoma; considered irreplaceable because of exemplary size, age, cultural or historical significance, ecological value, or rarity; have a minimum DBH of the lessor of 30 inches or 65% of the largest documented diameter for a tree of that species.

Fee: N/A

Issuance of Heritage Tree Designation: Nominations shall be reviewed by the Urban Forestry Program to ensure tree(s) meet requirements; nominations for public trees, require consent by the Director of the Department responsible for the management of the public property upon which the tree is located, or by the City Manager; in the case of trees located on property owned or controlled by a public entity, other than the City, consented is required by that public entity.

Notice: The Urban Forestry Program shall maintain the list of designated heritage trees, which shall be made publicly available; in the case of public property, the Urban Forestry Section may place a plaque, or other such identification, on or near heritage tree.

Penalty for Violation: N/A; designation of a Heritage Tree on private property does not require preservation; designation of a Heritage Tree on public property is subject to the tree protection provisions of this TMC chapter.

EXHIBIT 2
(TMC 9.20 Urban Forestry)

SECTIONS:

I. ADMINISTRATION

- 9.20.100 Administration – general authority
- 9.20.110 Liability – duty
- 9.20.120 Compliance with other laws; conflict of laws
- 9.20.130 References in Tacoma Municipal Code
- 9.20.140 Definitions

II. PERMIT REQUIREMENTS

- 9.20.200 General purpose and intent
- 9.20.210 Street tree permit - pruning
- 9.20.220 Street tree permit - removal
- 9.20.230 Street tree permit - planting
- 9.20.240 Exemptions and modifications from street tree permit requirements – pruning and removal.
- 9.20.250 Tree pruning on public real property – scenic view enhancement
- 9.20.260 Permit Display - violation

III. GENERALLY APPLICABLE REQUIREMENTS

- 9.20.300 Removal of trees and tree parts
- 9.20.310 Topping
- 9.20.320 Types of trees prohibited
- 9.20.330 Protection of street trees – development
- 9.20.340 Right-of-way obstruction – trees
- 9.20.350 No interference
- 9.20.360 Damage to trees on public property
- 9.20.370 Gleaning of fruit
- 9.20.380 Appeal of denial of permit

IV. HERITAGE TREES

- 9.20.400 Intent
- 9.20.410 Applicability
- 9.20.420 Qualifications
- 9.20.430 Nomination
- 9.20.440 Application

- 9.20.450 Designation
- 9.20.460 Maintenance, care and protection

V. ENFORCEMENT AND REMEDIES

- 9.20.500 Enforcement - delegation
- 9.20.510 Violations
- 9.20.520 Monetary penalties
- 9.20.530 Natural resource damage assessment
- 9.20.540 Suspension or revocation of permit
- 9.20.550 Presumption -removal and pruning on public property
- 9.20.560 Written instruments
- 9.20.570 Criminal violation
- 9.20.580 Remedies not exclusive

VI. MISCELLANEOUS PROVISIONS

- 9.20.600 Chapter cumulative
- 9.20.610 Severability

I. ADMINISTRATION

9.20.100 Administration – general authority.

The Director is authorized to administer, implement, and enforce the provisions of this chapter and delegate authority to enforce the provisions of this chapter to such person(s) as the Director may designate from time to time. The Director is authorized to promulgate, implement, amend, supplement and enforce such policies, procedures, requirements, and manuals, and to issue such guidance, as are reasonable and necessary to implement and ensure compliance with this chapter. Any such policy, procedure, guidance, requirement, or manual promulgated by the Director, and any amendments or supplements made thereto, shall be made available to the public.

Discretionary authority granted pursuant to the provisions of this chapter shall be exercised in a reasonable manner and consistent with applicable law, the purpose, scope, and intent of this chapter, and applicable policies and standards adopted by the City, including the City of Tacoma Comprehensive Plan, the Urban Forest Manual, the Design Manual, the Urban Forest Management Plan, and the Climate Action Plan.

9.20.110 Liability – duty.

While this chapter authorizes the City of Tacoma and its officials, officers, employees and agents to administer this chapter, such authorization shall not be construed as placing responsibility for compliance, or as creating any duty, on the part of the City or any City official, officer, employee or agent to any particular case or to any particular person or class of persons. This chapter shall be enforced for the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons. Nothing contained in this chapter is intended, nor shall be construed, to create or form the basis of any liability on the part of the City, its officials, officers,

employees or agents, for any injury or damage resulting from any act or omission on the part of the City, its officials, officers, employees or agents.

9.20.120 Compliance with other laws; conflict of laws.

A. Compliance with laws. In addition to the requirements of this chapter, the removal, pruning and planting of street trees and the removal, pruning and planting of trees and other vegetation on public real property must comply with all applicable federal, state and local laws, rules and regulations as now or may hereafter be amended or adopted including, without limitation, the critical areas preservation code (TMC Ch. 13.11), the shoreline master program (TMC Title 19), the land use permits and procedures code (TMC Ch. 13.05), the right-of-way development code (TMC Ch. 2.22), and the right of way code (TMC Ch. 10.22). A permit authorized under this chapter may be incorporated into and as part of a permit issued pursuant to TMC Ch. 2.22, TMC Ch. 10.22, TMC Ch. 13.05 and TMC Ch. 13.11.

B. Conflict of laws. A permit, or permit condition, issued under authority of this chapter that conflicts with an applicable provision of a federal, state or local law, rule or regulation shall have no force or effect to the extent of the conflict; provided that the permit, or permit condition may be more restrictive. For example, TMC Ch. 13.11 may prohibit complete removal of trees within critical areas.

9.20.130 References in Tacoma Municipal Code.

Any reference in the Tacoma Municipal Code to TMC Chapter 9.18, 9.19 or 9.20, or any subsection thereof, shall as applicable, mean and refer to this chapter or the applicable subsection or subsections of this chapter.

9.20.140 Definitions.

For purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein unless a different meaning is otherwise plainly required. Words not defined herein shall have the meaning given in Chapter 1.82 TMC. Words not defined herein or in Chapter 1.82 TMC shall have the meaning given in the Urban Forest Manual. Words not defined in this chapter, Chapter 1.82 TMC or the Urban Forest Manual shall have the meaning given in ANSI A300. Words not defined in this chapter, Chapter 1.82 TMC, the Urban Forest Manual or ANSI A300 shall have their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The words “shall” and “will” are always mandatory and not merely directory and the word “may” is permissive. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority.

“AASHTO Green Book” shall mean and refer to the most recent edition of the American Association of State Highway and Transportation Officials’ policy on geometric design of highways and streets more commonly referred to as the “green book”.

“Abutting.” Shall mean having boundary lines in common.

“Abutting owner” shall mean and refer to the owner of the property abutting that portion of the planting strip where fifty percent (50%) or more of the trunk of a street tree is located or proposed to be located.

“ANSI A300” shall mean and refer to the most current version of the tree, shrub and other woody plant maintenance and standard practices standard A300 as accredited by the American National Standards Institute (ANSI) or its successor organization.

“Applicant” shall mean and refer to the person applying for a permit or heritage tree designation or submitting a request to prune trees on public property.

“Arborist” or “Certified Arborist” shall mean and refer to an individual engaged in the profession of arboriculture who, through experience, education and related training, possesses the competence to provide for or supervise the management of trees and other woody plants, and shall have the credential of Certified Arborist as granted by the International Society of Arboriculture (ISA). Certified Arborists must maintain their certification and be in good standing with the International Society of Arboriculture.

“Authorized agent” shall as applicable mean and refer to a person retained and authorized by the City or an applicant to prune, remove or plant a street tree, or to prune, remove or plant a tree on City property.

“Best management practices” or “BMPs” shall mean and refer to the standard practices for tree pruning and removal approved or recommended under ANSI A300.

“City” is the City of Tacoma.

“City property” shall mean and refer to all real property and real property interests owned or controlled by the City, with the exception of public rights-of-way.

“Conflict tree” shall have the meaning as that term is given at TMC 9.20.220.

“DBH”, “DSH”, or “caliper inches” shall mean diameter at breast height, or diameter at standard height, which refers to the tree trunk diameter measured at four feet six inches (4’-6”) above the ground of a standing tree, measured in inches and tenths of an inch. If the tree is measured at less than four inches (4”) of DBH or DSH, as is typical for newly planted trees, caliper inches shall be used, and is measured at six inches (6”) above the soil level.

“Design manual” shall mean and refer to the manual applicable to construction of all street and right-of-way improvements as adopted by the City Director of Public Works, and effective on or about January 7, 2016, and any amendments, updates, or revisions made thereto, and on file with the Public Works Department.

“Development” means the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or structure; any use or change in use of any building or land; any extension of any use of land, or any land alteration.

“Director” shall mean and refer to the Director of the City of Tacoma Public Works Department, or successor department or division, and any designee of the Director with respect to the authority delegated to the designee by the Director.

“Drip line” shall mean and refer to the area on the ground below the tree in which the boundary is designated by the edge of the tree’s crown.

"Electric facilities" shall have the same meaning as that term is given pursuant to RCW 64.12.035, as now or hereafter amended.

"Electric utility" shall have the same meaning as that term is given pursuant to RCW 64.12.035, as now or hereafter amended.

"Emergency" shall mean and refer to an urgent, sudden, and serious event or an unforeseen change in circumstances or discovered condition that necessitates immediate action to remedy harm or avert imminent danger to life, health, or property.

"Emergency response costs" shall mean and refer to those costs incurred by the City in response to an emergency.

"Fruit Tree" shall mean and refer to a tree that is grown for its edible fruit, consumed by humans. Ornamental varieties of fruiting trees, such as ornamental pear or cherry trees, are exempt from the definition of a fruit tree.

"Hazardous tree" and "hazard tree" shall mean and refer to a tree(s) that is found to be likely to fail and has an extreme or high risk to cause property damage, personal injury or fatality in the event of a failure. Trees designated as hazards shall be designated as such by a Certified Arborist who has achieved a Tree Risk Assessment Qualification.

"Heritage tree(s)" shall mean and refer to a tree, or collection of trees, located in the City limits of Tacoma that, because of exemplary size, age, cultural/historical significance, ecological value, or rarity, is considered irreplaceable.

"Improved right-of-way" shall mean and refer to the public rights-of-way within the City that are paved, graded, or otherwise altered in any way for the purpose of vehicle, pedestrian, or bicycle travel.

"Invasive tree" is a species that was introduced by humans to locations outside of the tree's native range that spread and persist over large areas. Invasive species negatively impact natural ecosystems by displacing native species, reducing biological diversity, and interfering with natural succession.

"Land alteration" shall mean and refer to activities pertaining to the clearing or moving of land and earthwork, including compaction, excavation, grading, filling, stockpiling, striping and/or scarification of a site.

"Mailing" or "service by mail" shall mean sending the document by regular, first-class mail, postage prepaid and properly addressed, to the last known address of the person subject to the document. The last known address shall be an address provided to the City by the person to whom the document is directed; if an address has not been provided to the City, the last known address shall be any of the following as they appear at the time the document is mailed: the address of the property where the violation is occurring, or the taxpayer address appearing for the property on the official property tax information website for Pierce County; the address used for the payment of utilities for the property at which the violations are occurring; or the address appearing on the project permit application. Where service of notice is by mail, service shall be deemed complete upon the third day following the day upon which the notice is placed in the mail, unless the third day falls on a Saturday, Sunday, or federal legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday, or legal holiday following the third day.

"Natural resource damage" and "damaged natural resources" shall mean and refer to any and all injury, damage or degradation of or to, trees, ground cover and other vegetation, animal habitat,

wetlands, natural drainage courses, slope stability, soils condition, wind protection, ground water retention, and other natural resources located on public property.

“Nuisance tree” shall have the meaning as that term is given at TMC 9.20.220.

“Permit” and “street tree permit” shall, unless the context plainly means otherwise, mean and refer to a permit issued in accordance with the provisions of this chapter, and shall, for purposes of the design manual, mean and refer to a “Tree Work in the ROW Permit”.

“Prohibited tree” shall have the meaning as that term is given at TMC 9.20.220.

“Project permit” shall have the meaning as that term is given at RCW 36.70B.020.

“Permitted street tree” shall mean and refer to a tree that meets the requirements of TMC 9.20.230 (F).

“Person” shall mean and refer to any individual, partnership, co-partnership, firm, company, association, joint stock company, trust, estate, society, corporation, group, government, governmental agency or other legal entity, and their legal representatives, agents, or assigns. The definition includes all federal, state, and local government entities.

“Planting strip” shall mean and refer to that portion of an Improved Right-Of-Way between the street curb or edge of the traveled portion of roadway and the property line of the abutting property available and used for the purpose of planting and maintaining street trees and other vegetation.

“Private property” shall mean and refer to real property, other than public property and real property owned, managed or controlled by a governmental entity.

“Prune” or “pruning” shall mean and refer to the removal of plant parts, dead or alive. In no circumstance does tree topping qualify as appropriate tree pruning.

“Public property” shall mean and refer to public rights-of-way and public real property.

“Public real property” shall mean and refer to unimproved real property, and interests in real property (easements), within the City of Tacoma limits, owned or controlled by the City; this term shall exclude public right-of-way, and real property, and interests in real property, managed and operated as public parks.

“Public right-of-way” or “public rights-of-way” shall mean and refer to the public streets, roadways, courts, alleys and any other public passages, whether developed or undeveloped, over which the City has a possessory interest or right of use either by easement, license, permit or other such authority, or by fee simple ownership. For purposes of this definition public rights-of-way may contain items such as pavement, parking or loading areas, retaining walls or other structures, landscape or planting strips, sidewalks, curbs, vehicle, bicycle or pedestrian traffic lanes, traffic circles and other such development. This definition is intended to be construed so as to be consistent with other definitions of the term right-of-way or rights-of-way as may be found in Tacoma Municipal Code or Washington State statutory and case law.

“Public Transportation Agency” shall mean and refer to the Pierce County Public Transportation Benefit Area Corporation d/b/a Pierce Transit and the Central Puget Sound Regional Transit Authority d/b/a Sound Transit.

“Remove” or “removal” shall mean the act of cutting down or removing any tree by digging up or cutting down.

“Responsible person.” Shall have the meaning as set forth in TMC 1.82.010, the Uniform Enforcement Code.

“Scenic view” and “scenic views” shall mean and refer to the view over public property of natural scenery such as mountains and mountain ranges, waterways and waterbodies, islands, hills, valleys, canyons, landscapes, urban forests, and other scenic vistas.

“Service provider” shall have the same meaning as that term is given pursuant to RCW 35.99.010, as now or hereafter amended.

“Significantly damaged tree” shall have the meaning as that term is given at TMC 9.20.220.

“Street tree(s)” shall mean and refer to a tree(s) whose trunk is wholly or partially located within the public right-of-way. Street trees may be owned by the City or by an abutting property owner.

“TMC” shall mean and refer to the Tacoma Municipal Code.

“Topping” or “Tree Topping” shall mean and refer to an unacceptable pruning practice, injuring trees through the reduction of a tree's size by pruning live branches and leaders to stubs, without regard to long-term tree health or structural integrity. Topping can lead to unacceptable risk, tree stress, and decay.

“Traffic control device” means a sign, signal, marking or other device placed or erected for the purpose of regulating, warning, guiding or otherwise controlling traffic or regulating the parking of vehicles.

“Tree” shall, in addition to its common and ordinary meaning, mean any self-supporting woody plant which reaches a typical mature height of fifteen (15) feet or more at maturity, generally has a minimum mature canopy width of ten feet and greater, and is capable of being pruned to develop a branch-free trunk to at least eight feet in height at maturity.

“Unimproved right-of-way” shall mean and refer to public rights-of-way that are not paved, graded, or otherwise altered for the purpose of vehicle, pedestrian, or bicycle travel.

“Urban forest manual” (UFM) or “City of Tacoma urban forest manual” shall mean and refer to the manual adopted by the Director under authority of this chapter that provides best management practices for plant selection, design, installation, care, and other specifications for street trees.

“Utility” shall mean and refer to an electric utility, a service provider, and an operator of a natural gas, water, or sewer system located in the public right-of-way.

“Vegetation management plan” shall mean and refer to a plan for the pruning, removal, maintenance, or management of trees and other vegetation or the management or prevention of vegetative growth that has been adopted, authorized, or applied by the City, including any department or division of the City, to manage vegetation on public property.

II. PERMIT REQUIREMENTS

9.20.200 General purpose and intent.

It is the intent of this section of Chapter 9.20 to establish regulations and procedures to designate street trees as essential infrastructure and to preserve them in a healthy and safe manner, to ensure that the City's built and natural environments function in complementary ways and are resilient to climate change and natural hazards, so that all persons who live, work or pass through the City have access to clean air and water, can experience nature in their daily lives, and benefit from public right-of-way amenities that are designed to lessen the impacts of natural hazards and environmental degradation, now and in the future. Trees are a living organism, and pruning and proactive management of street trees is essential to manage potentially hazardous conditions and improve public safety. A balance between preservation of trees and managing public safety can be partially accomplished by controlling how and when pruning or tree removal can occur and, in specific instances, by allowing individuals to provide for the pruning or removal of trees in accordance with the conditions of this Chapter.

Unless an exemption under this chapter applies, requests to prune street trees shall be governed by TMC 9.20.210; requests to remove street trees shall be governed by TMC 9.20.220; requests to plant street trees shall be governed by TMC 9.20.230; and, requests to prune trees located on public real property for the purpose of scenic view enhancement shall be governed by TMC 9.20.250.

9.20.210 Street tree permit – pruning.

A. Applicability - pruning. Unless an exemption under this chapter applies, TMC 9.20.210 shall govern requests to prune street trees.

B. Prohibition – street tree permit required - pruning.

1. Permit required. Unless an exemption under this chapter applies, it shall be unlawful for any person to, in any manner, prune any street tree without having first obtained a street tree permit from the Director as provided in this chapter; provided that, an authorized agent may prune a street tree in conformance with a valid street tree permit issued to the abutting owner, a utility, a public transportation agency or the City.

2. Compliance. Unless an exemption under this chapter applies, it shall be unlawful for any person, or authorized agent on behalf of a person, issued a street tree permit to, in any manner, prune any street tree except in conformance with the terms and conditions of such street tree permit and this chapter.

C. Street tree permit application – pruning. The abutting owner, and any authorized agent of the abutting owner, the City and its authorized agents, and with respect to above-ground facilities, utilities and public transportation agencies, and their authorized agents, may apply for a street tree permit to prune a street tree if the pruning is intended to meet one or more pruning objectives set forth in ANSI A300, e.g., manage risk, manage health, develop structure, provide clearance, manage size or shape, improve aesthetics, and manage wildlife habitat. A permit may authorize pruning of one or more street trees. Before any street tree permit may be issued, the applicant shall file a complete application with the Director containing the information and declaration as set forth at TMC 9.20.210 (D) below, together with such other information as may

be requested by the Director that is reasonably related to the application and approval requirements.

D. Contents of application – pruning. Each application submitted pursuant to TMC 9.20.210 (C) for a street tree permit for pruning of a street tree shall include the following:

1. Name, address and telephone number of the applicant where applicant agrees to receive communications from the City;
2. If applicant is an authorized agent for the abutting owner, the name, address and telephone number of the abutting owner. If applicant is an authorized agent of a utility, a public transportation agency, or the City, the name, address and contact information for the electric utility, service provider, public transportation agency, or applicable department or division of the City;
3. Description of the public right-of-way within which each street tree that is the subject of the application is located;
4. Description of each street tree to be pruned with sufficient detail to accurately identify each street tree that is the subject of the application;
5. A photograph or digital image clearly delineating each street tree proposed to be pruned;
6. A street tree pruning plan that sets forth in detail the proposed plan and purpose for pruning each street tree that is the subject of the proposed permit, certified by applicant or a certified arborist on behalf of the applicant, that the plan meets ANSI A300 Standards, and demonstrating that implementing the pruning described in the proposed pruning plan will not result in a significant negative impact to each street tree's continued health. Such street tree pruning plan shall also be certified by the applicant to meet requirements of all necessary traffic control measures of the City of Tacoma Traffic Control Handbook, as applicable;
7. If applicant is the abutting owner, or an authorized agent of the owner, a declaration of the applicant meeting the requirements of Ch. 5.50 RCW that the applicant is the owner of the abutting property, or that the authorized agent is authorized to file the application on behalf of the owner of the abutting property;
8. Name, address and telephone number of the person to perform the street tree pruning work;
9. Such other information as may be requested by the Director that is reasonably related to the application and approval requirements; and,
10. Payment of a permit application fee if a fee is required by resolution or ordinance of the City Council.

E. Review of application – pruning.

1. Process for review. An application meeting the requirements of TMC 9.20.210 (D) for a street tree permit will be reviewed by the Director within a reasonable period-of-time for compliance with the requirements in subsection 2 below. The Director may utilize the services of a consulting arborist or forester as needed. The Director may consider any information provided in the application and any relevant information provided by City staff and the consulting arborist or forester.

2. Requirements for approval. The Director shall review the application and issue a permit if the applicant has demonstrated to the reasonable satisfaction of the Director that the following requirements are met:

- a. The proposed pruning plan set forth in the application meets one or more of the pruning objectives set forth in ANSI A300;
- b. The pruning plan sets forth in adequate detail the proposed plan for pruning each street tree that is the subject of the proposed permit together with any other relevant information;
- c. The proposed pruning plan meets BMPs;
- d. The proposed pruning plan is consistent with the purpose and intent of this chapter and standards adopted by the City;
- e. That implementing the pruning described in the proposed pruning plan will not result in a significant negative impact to each street tree's continued health; and,

F. Permit fee – expiration – multiple street trees - pruning. The application for a Permit is subject to the fees adopted by the City Council. If applicable, the street tree permit fee shall be paid at the time of submittal of the application. The Permit may apply to one or more street trees and shall specify the date upon which the street tree permit shall expire; provided that, no permit to prune a street tree shall be effective for longer than 180 days unless an extension is granted by the Director.

9.20.220 Street tree permit – removal.

A. Applicability - removal. Unless an exemption is demonstrated to apply, TMC 9.20.220 shall govern requests to remove street trees.

B. Prohibition – street tree permit required - removal.

1. Permit required. Unless an exemption under this chapter applies, it shall be unlawful for any person to, in any manner, remove any street tree without having first obtained a street tree permit from the Director as provided in this chapter; provided that, an authorized agent may remove a street tree in conformance with a street tree permit issued to the abutting owner, a utility, a public transportation agency, or the City.

2. Compliance. Unless an exemption under this chapter applies, it shall be unlawful for any person issued a street tree permit for tree removal, or an authorized agent of a person issued a street tree permit, to in any manner remove any street tree except in conformance with the terms and conditions of such street tree permit and this chapter.

C. Street tree permit application –removal. The abutting owner and any authorized agent of the abutting owner, the City and any authorized agent of the City, a public transportation agency, and with respect to conflict trees, a utility and its authorized agent, and a property owner who is not an abutting owner and is required under a project permit to make off-site improvements, may apply for a street tree permit to remove a street tree if the proposed removal meets one or more of the requirements set forth below in subsection TMC 9.20.220 (E) below. A permit may authorize removal of one or more street trees. Before any street tree permit may be issued, the applicant shall submit a complete application to the Director containing the information and

declaration set forth in TMC 9.20.220 (D) below, together with such other information as may be requested by the Director that is reasonably related to the application and approval requirements.

D. Contents of application –removal. Each application submitted pursuant to TMC 9.20.220 (C) for a street tree permit for removal of a street tree shall include the following:

1. Name, address and telephone number of the applicant where applicant agrees to receive communications from the City;
2. If the applicant is the abutting owner or authorized agent, a declaration of the applicant meeting the requirements of Ch. 5.50 RCW that the applicant is the owner of the abutting property, or an authorized agent, and has authority to submit the application;
3. If applicant is an authorized agent for the abutting owner, the name, address and telephone number of the abutting owner. If applicant is an authorized agent of a utility, a public transportation agency, or the City, the name, address and contact information for the utility, public transportation agency, or applicable department or division of the City;
4. If applicant is not an abutting owner and is required under a project permit to make off-site improvements adjacent to property in which they do not own, a description of the attempt to communicate with the property owner as set forth in TMC 9.20.220 (H);
5. Description of the public right-of-way within which each street tree that is the subject of the application is located;
6. Description of each street tree to be removed with sufficient detail to accurately identify each street tree that is the subject of the application;
7. A photograph or digital image clearly delineating each street tree proposed to be removed;
8. A detailed statement demonstrating that each street tree proposed to be removed meets one or more of the categories set forth in TMC 9.20.220 (E) below and why each street tree should be removed, together with any other relevant information;
9. A street tree removal plan that sets forth in detail the proposed plan for removing each street tree that is proposed to be removed, certified by the applicant or authorized agent to meet requirements of the Design Manual, and all necessary traffic control measures of the City of Tacoma Traffic Control Handbook, as applicable;
10. The application shall include an application complying with the street tree planting permit requirements of TMC 9.20.230 for planting of a street tree;
11. Name, address and telephone number of the person to perform the street tree removal work;
12. Such other information as may be requested by the Director that is reasonably related to the application and approval requirements; and
13. Payment of applicable permit application fee.

E. Categories of street trees subject to removal. Unless an exemption applies as provided in this chapter, an application for a street tree permit for removal of one or more street trees must

demonstrate that each street tree proposed to be removed meets one or more of the following categories:

1. Hazard trees. A tree shall be designated as a hazard tree by an International Society of Arboriculture (ISA) Certified Arborist who has obtained an ISA Tree Risk Assessor Course and Exam certification or Tree Risk Assessment Qualification.

2. Conflict trees. A conflict tree is a tree that by its presence in the public right-of-way directly conflicts or interferes with (a) construction or installation of a utility or public right-of-way improvement; (b) activities performed in the public right-of-way to repair or maintain a utility or public right-of-way improvement; (c) development of real property nearest to and directly abutting that portion of the public right-of-way upon which the street tree is located; or that, (d) damages existing improvements within the right-of-way or abutting property. A tree conflicts or interferes when it is demonstrated that there are no reasonable alternatives available to removal of the conflict tree.

3. Prohibited trees. A species of tree that is unlawful to plant in the public right-of-way pursuant to the adopted Prohibited Tree List of the Urban Forest Manual.

4. Nuisance trees. A tree that constitutes a public nuisance pursuant to Chapter 8.30 TMC.

5. Significantly damaged trees. A tree that has been previously topped or significantly damaged to an extent that, if left unmanaged through extensive pruning and maintenance, could become a future Hazard Tree.

7. Fruit trees. A fruit tree that the abutting owner desires to remove.

F. Review of application –removal. An application meeting the requirements of TMC 9.20.220 (D) for a street tree permit for removal of a street tree will be reviewed by the Director within a reasonable period of time for compliance with the requirements in subsection G below. The Director may utilize the services of a consulting arborist or forester as needed. The Director may consider any information provided in the application and any relevant information provided by City staff, including the Light Division, and the consulting arborist or forester.

G. Approval requirements - removal. The Director shall review the application and issue a permit if the applicant has demonstrated to the reasonable satisfaction of the Director that the following requirements are met:

1. Each street tree proposed to be removed meets one or more of the following categories: hazard tree, conflict tree, prohibited tree, nuisance tree, significantly damaged tree, or fruit tree.

2. The street tree removal plan sets forth in detail the proposed plan for removing each street tree and meets the requirements of the Design Manual, and all necessary traffic control measures of the City of Tacoma Traffic Control Handbook, as applicable;

3. The proposed street tree removal is consistent with the purpose and intent of this chapter and standards adopted by the City; and

4. Each street tree proposed to be removed will be replaced with a permitted tree in accordance with a permit issued pursuant to TMC 9.20.230, and applicable provisions of the landscaping standards of the zoning code TMC 13.06.

H. Posting of public notice – removal.

1. Posting required. Upon issuance of a permit under this section, unless an exemption for posting of public notice is approved by the Director, a notice of street tree removal shall be posted by the applicant, or authorized agent, in a conspicuous location on or next to each street tree proposed to be removed for a minimum of 14 consecutive days prior to the commencement of work. The size of the font on the notice shall be large enough and the notice oriented in such a way as to be legible by pedestrians passing the street trees proposed to be removed and shall include the following:

- a. The proposed action (removal of street tree) and permit number;
- b. The date of posting of the notice and the date the proposed action is anticipated to commence;
- c. The purpose or objective to be accomplished by the proposed action, e.g. tree is hazard tree, conflict tree, etc.; and,
- d. Contact information for the both the applicant or authorized agent as well as the City of Tacoma Permit Center.

2. Written notice. If the permittee is a property owner who is not an abutting owner and is required under a project permit to make off-site improvements, the following additional notice requirements shall apply when a street tree is proposed to be removed as a required off-site improvement: permittee shall provide written notice by mail to the last known address of record of the owner of the abutting property for a street tree proposed to be removed indicating the intent to remove the street tree. Such notice shall include a brief statement of the need and nature of the work intended and the location of the street tree proposed to be removed, a good faith estimate of the time frame in which such work will occur, and how the Permittee can be contacted regarding the street tree removal work.

3. Compliance. Unless an exemption is approved by the Director, it shall be unlawful, and a violation of this chapter, for any person issued a permit, or an authorized agent, to remove a street tree less than 14 days prior to the date of posting of the notice required pursuant to TMC 9.20.220 (H)(1) and, when applicable, mailing of notice required pursuant to TMC 9.20.220(H)(2).

I. Permit fee – expiration – multiple street trees - removal. All applications for removal of conflict trees shall include payment of a fee established by resolution or ordinance of the City Council for each street tree requested to be removed to recover administrative costs of processing the application, together with payment for the valuation of each tree removed. Permit fees and tree valuation fees are not required for applications for a permit to remove qualifying hazard trees, prohibited trees, nuisance trees, fruit trees, and significantly damaged trees. A street tree permit may apply to one or more street trees and shall specify the date upon which the street tree

permit shall expire; provided that, no permit shall be effective for longer than 180 days unless an extension is granted by the Director.

1. Conflict tree - canopy loss fee. Removal of conflict trees shall include a tree valuation fee known as a canopy loss fee, which is determined to recoup a portion of the value the street tree had to the community, prior to its removal. The canopy loss fee shall be placed in the Urban Forest Fund, established for planting, maintenance, and replacement of trees on public property or the right-of-way. The canopy loss fee is determined by a cost per inch of DBH removed. The total DBH in inches of a removed tree is subtracted by the total caliper inches of replacement street trees in the associated tree planting permit, to calculate the total inches to be mitigated by a canopy loss fee. The total inches required to be mitigated is multiplied by the fee per caliper inch as established by ordinance or resolution of the City Council. The canopy loss fee formula shall be as follows: [DBH in inches of removed trees - caliper inches of planted trees] X [cost per caliper inch] = Total canopy loss fee. By way of example, if one twelve-inch (12”) DBH conflict tree will be removed, and three two-inch (2”) caliper trees will be planted back, the applicant would get six inches of credit towards the canopy loss fee (3x2”). The canopy loss fee that would be assessed would be for the remaining six inches of canopy loss: 12” tree removed – 6” planting credit = 6” canopy loss, to be paid by the fee per caliper inch as established by ordinance or resolution of the City Council.

9.20.230 Street tree permit – Planting.

A. Intent. It is the intent of this section to regulate and allow the planting of street trees in a way that maximizes the benefits of street trees while minimizing potential future impacts to infrastructure and private property. Additionally, effective street tree planting regulations will help to achieve the greatest possible gain in environmental health city-wide, improve street tree species diversity and age diversity, and increase awareness and use of urban forest best practices, including proper street tree selection, planting practices and maintenance, invasive species avoidance, protection from adverse pests and diseases, and appropriate use of native and/or climate adapted species.

B. Applicability. TMC 9.20.230 shall govern requests to plant street trees in in the public right-of-way.

C. Prohibition - permit required - planting.

1. Permit required. Unless an exemption under this chapter applies, it shall be unlawful for any person to, in any manner, plant any street tree without having first obtained a street tree permit from the Director as provided in this chapter.

2. Compliance. Unless an exemption under this chapter applies, it shall be unlawful for any person issued a street tree permit for the purpose of planting a street tree, or an authorized agent on behalf of a person issued such a street tree permit, to in any manner plant any street tree except in conformance with the terms and conditions of such street tree permit and this chapter.

D. Street tree permit application –planting. The abutting owner, and any authorized agent of the abutting owner, a utility, a public transportation agency, a property owner who is not an abutting

owner and required under a project permit to make off-site improvements, and the City, or their authorized agents, may apply for a street tree permit to plant a permitted street tree. A street tree permit may authorize planting of one or more permitted street trees. Before any street tree permit may be issued, the applicant shall submit an application containing the information and declaration set forth in TMC 9.20.230 (E) below, together with such other information as may be requested by the Director that is reasonably related to the application and approval requirements.

E. Contents of application – planting. Each application submitted pursuant to TMC 9.20.230 (D) for a street tree permit for planting of a permitted street tree shall include the following:

1. Name, address and telephone number of the applicant where applicant agrees to receive communications from the City;
2. If applicant is an authorized agent for the abutting owner, the name, address and telephone number of the abutting owner. If applicant is an authorized agent of a utility, a public transportation agency, or the City, the name, address and contact information for the utility, public transportation agency, or applicable department or division of the City;
3. If applicant is not an abutting owner and is required under a project permit to make off-site improvements adjacent to property in which they do not own, a description of the attempt to communicate with the property owner as set forth in TMC 9.20.230 (I);
4. Aerial image (site plan) of the public right-of-way within which each street tree is proposed to be planted showing existing site features including the location(s) of adjacent buildings, streets, sidewalks and/or other paved surfaces, and dimensions of available planting space, such as the width of the tree pit or planting strip;
5. Tree planting plan describing the quantity of streets trees proposed to be planted, planting location(s), species including the common and scientific name(s), and the method and manner of planting each proposed street tree;
6. If the applicant is an authorized agent of the abutting owner, an original declaration of the abutting owner meeting the requirements of Ch. 5.50 RCW, providing the name, address and telephone number of the authorized agent, declaring that the authorized agent is authorized by the abutting owner to plant permitted street trees within that portion of the public right-of-way abutting the declarant’s real property and that the declarant, and declarant’s successor’s and assigns in and to the abutting real property, shall own and be responsible for each such street tree, and that the declarant is the legal owner of the abutting property;
7. If the proposed street tree(s) species is not selected from the preapproved street tree lists established in the Urban Forest Manual, a detailed statement demonstrating why the selected street tree species meets the criteria set forth in TMC 9.20.230 (F) (2) below, including objective authoritative sources, or from the nursery providing the tree growth information, often called “cut sheets”, describing the proposed street tree’s mature height, crown spread and growth rate supporting the tree or alternatives as approved through the permit review process. Objective information must come from published sources; and

8. Such other information as may be requested by the Director that is reasonably related to the application and approval requirements.

9. Payment of a permit application fee if a fee is required by resolution or ordinance of the City Council.

F. Permitted street trees – type - planting.

1. Pre-approved tree species. Tree species approved for planting in the public right-of-way pursuant to the Urban Forest Manual, or a pre-approved tree list established by the Director, are pre-approved and permitted trees.

2. Approval of other tree species. Tree species that are not pre-approved and that are not prohibited pursuant to this chapter or the Urban Forest Manual, may be permitted trees if they are demonstrated to the reasonable satisfaction of the Director to meet all of the following conditions:

a. Climate adapted to the Pacific Northwest region. The use of natives and climate adapted species is encouraged, and all tree species should be adapted to live in the region and specific conditions of the planting location.

b. Visibility and safety. Except in cases where required landscaping is intended to provide dense visual buffers or to enhance natural conditions, trees shall be selected to maximize visibility at eye level for safety. To meet this requirement, trees shall be selected to maximize views below 7 feet in height at maturity, such that the lower branches should be able to be pruned/removed to allow for views under the tree's crown.

c. Species selection. Species shall be selected to avoid or minimize potential conflicts with infrastructure and utilities. Street tree species under power lines shall have a maximum mature height (at 25 years of age) not greater than 25 feet.

G. Distance requirements - planting. The trunk of new street tree plantings from pavement, structures, utilities, and other infrastructure shall conform to the Design Manual. Distances may be reduced, with approval of the Director, upon a demonstration that the species selected will not cause infrastructure conflicts and conforms to the guidance in the Urban Forest Manual and Design Manual.

H. Requirements for approval - planting. The Director shall review the application and issue a permit if the applicant has demonstrated to the reasonable satisfaction of the Director that the following requirements are met:

1. The species of each proposed tree is pre-approved, and if not pre-approved, meets the conditions set forth in TMC 9.20.230 (F) (2) (a-c) above;

2. The planting of each proposed tree meets the purpose and intent of this chapter and the requirements set forth in the Design Manual and the Urban Forest Manual; and

3. If an existing street tree is proposed to be removed and replaced with a new street tree, that a street tree permit has been issued for removal of such existing street tree.

I. Notice Requirements.

1. If the permittee is a property owner who is not an abutting owner and is required under a project permit to make off-site improvements, the following additional notice requirements shall apply when a street tree is proposed to be planted as a required off-site improvement: permittee shall provide written notice by mail to the last known address of record of the owner of the abutting property for a street tree proposed to be planted indicating the intent to plant the street tree. Such notice shall include a brief statement of the need and nature of the work intended, the proposed location and species of the street tree to be planted, a good faith estimate of the time frame in which such work will occur, and how the permittee can be contacted regarding the street tree planting work.

2. Compliance. Unless an exemption is approved by the Director, it shall be unlawful, and a violation of this chapter, for any person required to provide notice pursuant to TMC 9.20.230 (I) (1) above, to plant a street tree less than 14 days prior to the date of mailing of notice required pursuant to TMC 9.20.230 (I) (1).

9.20.240. Exemptions and modifications from street tree permit requirements – pruning and removal.

A. Exemptions. The following street tree pruning and street tree removal activities are exempt from the requirements of this chapter to obtain a street tree permit; provided that, pruning shall utilize BMPs to protect the health of the tree, and in no instances is tree topping permissible:

1. Small trees. Pruning by an abutting owner, or authorized agent, of street trees which are less than 15 feet in height, provided that the pruning shall be performed in compliance with BMPs .

2. Fruit trees. Harvesting of fruit and pruning of fruit bearing street trees.

3. Protection of public travel. Pruning or removal of street trees by the City of Tacoma Department of Public Works, or its successor agency, or the Washington State Department of Transportation, or its successor agency, to abate a condition that poses a threat to public health, safety or welfare or to abate a public nuisance.

4. Public Work Department. Pruning of street trees by the City Public Works Department for the purpose of providing adequate clearances for construction equipment, to improve the health and structure of the tree, to abate a hazard, or to perform general maintenance to support the continued growth, health, and longevity of the tree.

5. Restoration of utility services and emergency communications. Pruning of street trees to the extent reasonably necessary to allow for restoration of an unplanned interruption of utility services or emergency communications.

6. Power Utility Service Providers. Pruning of street trees by a power utility service provider to the clearance standards under the National Electric Safety Code.

B. Modifications for Emergency. Street tree pruning or removal activities necessary to manage an immediate threat to public health, safety, or welfare that require remedial or preventative

action in a timeframe too short to allow for normal processing is allowed without first obtaining a street tree permit; provided that, the person performing the work to prune or remove the street tree(s) shall, as soon as practical but no later than 30 days following completion of the emergency pruning or street tree removal work, apply for a street tree permit, and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions taken in response to the emergency. Prior to pruning or removal of street trees in response to an emergency, the person performing the work shall document, including photographs, the conditions of the street tree and note why the situation constitutes an emergency. Documentation shall be provided with the application of the street tree permit. Emergency actions shall use best management practices to address the emergency and, in addition, the action must have the least possible impact to the street tree. The Director may waive or modify permit application requirements of this chapter made impractical as a result of the emergency.

9.20.250 Tree pruning on public real property – scenic view enhancement.

A. Intent –view enhancement. The City of Tacoma is located on a steep-cliffed peninsula with spectacular scenic views. There are many trees on public real property which add to the natural beauty of the area, and there are many scenic views throughout the City. The City recognizes that trees located on public real property as defined herein can restrict scenic views from public and private property and that scenic views can be enhanced through proper pruning managed by the City consistent with BMPs.

It is the purpose of TMC 9.20.250 to establish a process for any person to request the City to prune trees on public real property as defined herein to enhance scenic views and to ensure that pruning is compatible with the purpose, use, and function of the public real property and the trees and vegetation located thereon and that pruning is consistent with BMPs. This purpose can be accomplished by pruning trees on public real property in response to a request only when the Director is satisfied that the proposed pruning can be done in a manner that will, (1) minimize potential liability and risk of harm to persons or property; (2) preserve and protect trees and vegetation on public real property, and in particular native remnant forests; (3) protect the investment in public real property; (4) not negatively impact wildlife habitat, soils conditions, and slope stability, (5) and will have de-minimis impact on noise and air pollution reduction, water quality, stormwater management, and climate control functions of the trees and other vegetation proposed to be pruned.

At the Director’s discretion, the City may or may not issue an approval. It is not the purpose of TMC 9.20.250 to create a vested right or property interest in a particular outcome or decision by the Director in response to a request filed under this section. The City retains sole discretion and authority over the decision to undertake or not undertake tree pruning on public real property in response to a request.

B. Applicability – scenic view enhancement. TMC 9.20.250 applies to requests to prune trees located on public real property as defined herein to enhance scenic views. Requests to prune street trees shall be governed by the requirements of TMC 9.20.210.

C. Request – scenic view enhancement. Any person may submit a request to the Director for the City to prune one or more trees located on public real property as defined herein for purposes of

scenic view enhancement. The request should be in writing and contain the information set forth below in TMC 9.20.250 (E), together with such other information as may be requested by the Director that is reasonably related to the request. Under no circumstances will tree topping be permitted. All pruning shall be consistent with industry BMPs.

D. Allocation of Costs. It is the intent of TMC 9.20.250 to place the burden of the cost associated with the Director's review of a request and, if approved, the associated costs of the pruning work upon the person making the request. These costs include the City's administrative costs to review the request and to manage, administer and inspect the work, together with the costs of preparing a tree pruning plan, applying for and obtaining required permits, and planning for and performing the tree pruning work. Some, or all, of the work may be performed by consultants and contractors retained by the City for this purpose, the costs of which shall be borne by the person requesting the pruning through a work order and deposit process. The Director may require a work order and deposit from the applicant which the City may draw upon to pay for the foregoing costs as incurred by the City. If the balance of funds on deposit with the City falls below \$100.00, applicant shall, within ten (10) days of receipt of written request from the City, deposit such additional funds as the Director determines are reasonably necessary for the continuing reimbursement of the City's costs expended in response to the request. In the event that Applicant fails to timely deposit additional funds as requested by the Director, the Director may cease all work and close the applicant's request. Applicant shall be entitled to a refund of any unencumbered amounts remaining on deposit at the conclusion of the work or upon closure of the request. The submittal of a work order deposit does not entitle the applicant to a particular outcome and is intended solely to reimburse the City for its costs.

E. Contents of request – scenic view enhancement. Each request submitted pursuant to TMC 9.20.250 (C) for scenic view enhancement should include the following:

1. Name, address and telephone number of the applicant where person submitting request agrees to receive communications from the City;
2. Description of the public real property within which the person submitting request has requested the pruning of one or more trees;
3. A description of each tree the person submitting request proposes to be pruned with sufficient detail to accurately identify each such tree;
4. A photograph or digital image clearly delineating each tree proposed to be pruned;
5. A description of the scenic view that is proposed to be enhanced by the pruning;
6. A statement demonstrating why and how the pruning is necessary to enhance scenic views; and
7. Such other information as may be requested by the Director.

F. Director's Decision – view enhancement. The Director retains sole discretion to grant or deny the applicant's request. The Director, at a minimum shall consider the following:

1. Consistency and compatibility with, and will not be adverse to or unreasonably interfere with, the purpose, function and use of the public real property and the trees and vegetation located thereon;

2. Public health, safety and welfare;

3. Consistency with the City of Tacoma Comprehensive Plan;

5. Consistency with BMPs;

6. Consistency with a vegetation management plan, if any, applicable to the public real property where the pruning or removal is proposed; and,

7. Compliance with this chapter and applicable laws, rules and regulations, including by way of example and not limitation, the critical areas preservation code (TMC Ch. 13.11), the shoreline master program (TMC Title 19), the land use permits and procedures code (TMC Ch. 13.05), the right of way code (TMC Ch. 10.22), the Endangered Species Act, and the Bald Eagle Protection Act and the Migratory Bird Treaty Act.

G. Consultation – scenic view enhancement. As part of the process for review of the request, the Director shall:

1. Consult with other departments. Shall consult with the director, or designee, of the department of the City responsible for management of the public real property that is the subject of the request and shall give deference to the recommendation of such directors, or designees, with respect to the applicant's request.

2. Consult with arborist or forester. Shall consult with and utilize the services of the City Arborist or City Forester, or a consulting arborist or forester as needed.

I. Director's Decision – scenic view enhancement. The Director shall upon completion of review of the request, notify the applicant of the Director's determination and, if the Director determines that the pruning work should be undertaken, the additional deposit required from the applicant to complete the pruning work.

9.20.260 Permit display – violation.

It shall be unlawful for any person issued a street tree permit, or any authorized agent, to fail to display at all times at the location where tree pruning, tree removal or tree planting activities are actively being conducted that require a permit under this chapter, a current and valid street tree permit, or complete copy or digital image thereof, authorizing the street tree pruning, removal or planting. It shall further be unlawful for any such persons, or authorized agent, to fail to make the street tree permit available for display to any City public official for inspection upon request.

III. GENERALLY APPLICABLE REQUIREMENTS

9.20.300 Removal of trees and tree parts.

Any remaining roots or stumps of street trees removed pursuant to a permit issued under this chapter shall be cut out at least eight inches below the surface of the ground, unless the removal of such will have a negative impact on erosion, slope stability, or natural areas on which they are located or the permit provides otherwise. All large woody material from removed or pruned

street trees including the trunk, stump, branches, and large roots, shall be removed from improved right-of-way sites so as to not cause impairments to safe passage.

9.20.310 Topping.

Topping of trees on public property is unlawful.

9.20.320. Types of trees prohibited.

It shall be unlawful to plant in any part of the public right-of-way, including the planting strip, a tree species that is not a permitted street tree.

9.20.330 Protection of street trees - development.

A. Protection of street trees. Any person engaged in development activities in the public right-of-way not governed by a permit issued pursuant to TMC 13.06 shall, prior to the commencement of such activities, comply with the Design Manual and the tree protection requirements of the UFM applicable to any development that may impact a street tree or street trees. This development may occur on site or in the right-of-way.

Any person conducting construction activities such as excavation, filling, tunneling, trenching, compacting, demolition, utility work or other land disturbing activity in the Critical Root Zone or Drip Line of any street tree, must submit a Tree Protection Plan to be approved by the City prior to commencement of work. Tree Protection Plans shall be in accordance with the UFM.

Non-compliance with the requirements of this section is unlawful and a violation of this chapter.

B. Notice. A notice of tree protection shall be posted by the person engaged in development activities subject to the requirements of TMC 9.20.330 (A) above, in a conspicuous place on the tree protection fencing, or on the tree in such a manner as to not damage the tree, or adjacent to each street tree for a 14-day period prior to and throughout the performance of work that is subject to the requirements of TMC 9.20.330 (A). The notice shall be large enough and oriented in such a way as to be legible by pedestrians and vehicles passing each such street tree, and shall include the following:

1. The text “This tree is to be retained and protected from development impacts”;
2. The date(s) the proposed development activities will occur; and,
3. Contact information for the applicant, on-site construction contact, and or project manager as well as the City of Tacoma Permit Center.

Non-compliance with the notice requirements of this section is unlawful.

9.20.340 Right-of-way obstruction – trees.

A. Public Nuisance -vegetation on private property and within the public right-of-way. All vegetation, including trees, shrubs, grass, other plants, or any parts thereof, located on real

property abutting the public right-of-way and located within the right of way that meet any one or more of the following conditions, shall constitute a public nuisance:

1. Vegetation overhanging any sidewalk at less than eight (8) feet above grade or street at less than fourteen (14) feet above grade, or that is otherwise situated, in such manner as to, limit, obstruct or impair the free and full use of the sidewalk or street;
2. Vegetation that is situated in such a manner as to limit, obstruct, impair or obscure the clear view of a pedestrian or a driver of a motor vehicle of oncoming traffic while approaching an intersection, or any traffic control device while approaching such traffic control device;
3. Vegetation that is situated in such a manner as to interfere with, or create a hazardous condition with respect to, electric facilities, utility lines and infrastructure, underground utility lines, or fixtures situate in the public right of way; and
4. Vegetation that is situated in such a manner as to create or contribute to a fire hazard or a threat of harm to public health, safety, or welfare.

B. Abatement of nuisance. It shall be unlawful for any responsible person to cause, allow, suffer or permit such a public nuisance to exist, and any such nuisance shall be abated by the responsible person in a manner that conforms with this chapter, the City of Tacoma Right-of-Way Design Manual and Chapter 8.30 TMC (Public Nuisances).

9.20.350 No Interference.

It shall be unlawful for any person without lawful authority to interfere with or cause or permit any person to interfere with employees or agents of the City who are engaged in the planting, pruning, maintaining, treating or removing of any tree or other vegetation on public property. Violation of this section is unlawful.

9.20.360 Damage to trees on public property.

Except to the extent authorized or required under this chapter, it shall be unlawful for any person to:

- A. In any manner, prune, remove, or top any tree or other vegetation located on public property.
- B. Abuse, destroy, damage or mutilate any tree, or part of a tree, located on public property;
- C. Attach or place any rope or wire (other than one used to support the tree), sign, poster, handbill, or other thing to, or on any tree, or part of a tree, located on public property, cause or permit any wire charged with electricity, with the exception of decorative lights in a manner that does not impact the health of the tree, to come into contact with any tree located on public property;
- D. Allow any chemical, gaseous liquid, or solid substance which is harmful to trees located on public property to come into contact with the trees including their roots or leaves; or
- E. Engage in any act which causes a tree on public property to die, including, but not limited to:

1. damage inflicted on the root system by machinery, storage of materials, or soil compacting, or changing the ground level in the area of the tree root system;
2. damage inflicted on the tree permitting infections or infestation;
3. excessive pruning or topping; and,
4. any other action which is deemed harmful to the tree.

9.20.370 Gleaning of fruit.

It is the responsibility of the abutting owner to glean fruit and nuts from street trees to prevent fallen fruit and nuts from interfering with safe passage upon the public right-of-way.

9.20.380 Appeal of denial of Permit.

Any applicant denied a street tree permit may, pursuant to TMC Chapter 1.23, file a written notice of appeal of the denial with the Office of the Hearing Examiner within 21 days of issuance of the denial.

IV. HERITAGE TREES

9.20.400 Intent.

It is the intent of this chapter to establish a Heritage Tree Program to provide protection, recognition, foster appreciation, and inspire awareness for the contribution that Tacoma's mature trees make to the community. Heritage tree designation helps the City achieve a greater overall tree canopy to preserve the scenic beauty and natural environment of Tacoma, prevent erosion and sedimentation in waterways, encourage quality development, provide shade and wildlife habitat, counteract pollutants in the air, reduce heat island effects, and decrease wind velocities and noise. Designation of heritage trees connects the past to the present by preserving historic trees for the enjoyment of future generations.

9.20.410 Applicability.

This chapter shall apply to the nomination, designation and management of trees located within the corporate boundaries of the City that qualify for nomination for heritage tree designation.

9.20.420 Qualifications.

A. Minimum qualifications. To qualify for nomination for heritage tree designation, the tree(s) must:

1. Healthy condition. Be in apparently healthy growing condition;
2. Minimum trunk diameter. Meet the minimum threshold trunk diameter;
3. Location. Be located within the corporate boundaries of the City; and
4. Irreplaceable status. Be a tree, or collection of trees, that, because of exemplary size, age, cultural or historical significance, ecological value, or rarity, is considered irreplaceable.

B. Minimum trunk diameter. To qualify as a heritage tree, the minimum trunk diameter (DBH) must be a minimum of the lesser of 30 inches or 65% of the largest documented diameter for a tree of that species in Washington as established in the most recent edition of the publication “Champion Trees of Washington State” by author Robert Van Pelt, published by University of Washington Press.

9.20.430 Nomination.

A. Who may nominate a heritage tree.

1. Property owner. Any owner of property upon which a tree or collection of trees subject to nomination is located may apply for nomination of such tree(s) for heritage tree designation.

2. Consent of property owner. Any resident of the City of Tacoma, any City official (elected or appointed), any City employee, any member of a City of Tacoma committee, board or commission, with the signed written consent of the owner of property upon which the nominated tree, or collection of trees, is located, may apply for nomination of such tree(s) for heritage tree designation.

B. City Consent. A nomination for heritage tree designation for a tree, or collection of trees, located on public property must be consented to in writing by the Director of the Department responsible for the management of the public property upon which the Tree is located, or by the City Manager.

C. Consent of other public entity. A nomination for heritage tree designation located on property owned or controlled by a public entity, other than the City, must be consented to in writing by a public official with authority to grant such consent on behalf of such public entity.

9.20.440 Application.

A. Application. Any person seeking to nominate a tree, or collection of trees, for heritage tree designation shall file a written application with the City’s Urban Forestry Program Section of the Environmental Services Department, utilizing the nomination forms approved by the Urban Forestry Program.

B. Contents of application. At a minimum, the nomination application form shall contain the following:

1. A narrative statement demonstrating that the nominated tree, or collection of trees, because of exemplary size, age, cultural or historical significance, ecological value, or rarity, is considered irreplaceable;
2. A narrative statement describing the physical condition and health of the nominated tree, or collection of trees;
3. A narrative statement, including the species and size (diameter of the tree's trunk in inches, tree crown spread in feet, and tree height in feet), demonstrating that the nominated tree, or each tree in a nominated collection of trees, meets the minimum threshold diameter;
4. Photos of the tree, or collection of trees, including at least one aerial photo demarcating the location with enough description so that the tree, or collection of trees, can be positively identified;
5. Documentation, records or other information demonstrating ownership of the property upon which the tree is located;
6. If the applicant is the owner of the property upon which the nominated tree, or collection of trees, is located, a signed written statement attesting to the applicant's ownership of the property; and
7. If the applicant is not the owner of the property upon which the tree, or collection of trees, is located, a signed written statement of the owner of the property upon which the nominated tree, or collection of trees, is located consenting to the application for nomination for heritage tree designation and describing the tree, collection of trees, that is subject to the nomination.

9.20.450 Designation.

A. Review of application. All heritage tree nomination applications shall be reviewed by the City's Urban Forestry Program Section of the Environmental Services Department to determine if the nominated tree, or collection of trees, meets the minimum qualifications set forth at TMC 9.20.420 for heritage tree designation. All applications for trees located on public property must be reviewed and approved or denied by the City's Urban Forestry Program; provided that, if the nominated tree or collection of trees is located on public property, the nomination must also be approved by the Department Director or his/her designee who has management authority over the property, or by a public official with authority to grant such consent on behalf of such public entity, where the tree, or collection of trees, is located.

B. Additional information; site inspection. The City's Urban Forestry Program Section of the Environmental Services Department may request the applicant to provide any additional information reasonable necessary to determine if a nominated tree, or collection of trees, meets the minimum qualifications for designation as a heritage tree, and may condition approval upon receipt of such information and upon consent to a physical inspection of the nominated tree or collection of trees.

C. Approval. If it is determined that the nominated tree, or collection of trees, meets the minimum qualifications and is approved for heritage tree designation, such heritage tree

designation shall remain in place until removal as provided in TMC 9.20.460. Such approval shall be made in writing.

D. List and Plaques. The City of Tacoma Urban Forestry Section of the Environmental Services Department shall maintain the list of designated heritage trees, which shall be made publicly available. In the case of public property, the Urban Forestry Section may place a plaque, or other such identification, on or near heritage trees.

9.20.460 Maintenance, care and protection.

A. Maintenance and protection. The City is responsible for the maintenance of designated heritage trees located on public real property owned by the City. For all other designated heritage trees, the owner of the property, including the abutting property in the case of heritage street trees, upon which the tree is located shall be responsible for maintenance of the designated heritage tree. All heritage trees located within the public right-of-way shall be protected during development as provided in TMC 9.20.330.

B. Heritage tree retention - public property.

1. Removal. A designated heritage tree on public property shall be retained and protected, and shall not be removed unless the designated heritage tree constitutes a hazard tree or nuisance tree and, when applicable, a permit for removal is authorized pursuant to TMC 9.20.220.

2. Emergency. A designated heritage tree located on public property may also be removed pursuant to the emergency exemption provisions of TMC 9.20.240.

C. Heritage tree retention – private property. Ownership and responsibility for a designated heritage tree, or collection of trees, located on private property or on property owned or controlled by a public entity other than the City, shall remain with the property owner and does not become the property or responsibility of the City. A heritage tree designation does not prohibit a property owner from developing the property or removing a designated heritage tree or trees subject to compliance with the City of Tacoma’s land use regulations applicable to the development of the owner’s property. The property owner is encouraged to notify the City of Tacoma Urban Forestry Section of the Environmental Services Department prior to or upon removal of a designated heritage tree, so that the heritage tree registry can be updated.

V. ENFORCEMENT AND REMEDIES

9.20.500 Enforcement - delegation.

A. Enforcement. The provisions of this chapter and all terms and conditions of any permit, directive, corrective action notice, or compliance order issued under authority of this chapter, are subject to enforcement pursuant to and under authority of TMC Chapter 1.82, the Uniform Enforcement Code. The Director is authorized to exercise all powers and authority granted pursuant to TMC Chapter 1.82, including by way of example and not limitation, the power to issue compliance orders, corrective action notices, and notices of violation, assess monetary penalties, approve voluntary correction agreements, and develop, promulgate, revise, and implement policies and procedures governing enforcement actions under TMC Chapter 1.82; provided that, the maximum monetary penalties set forth at TMC 1.82.050.F that may be

assessed pursuant to a notice of civil violation are replaced and superseded with the provisions of TMC 9.20.520.

B. Delegation of authority. The Director is empowered to delegate enforcement authority under this chapter and TMC 1.82 to such other departments, divisions, or persons as may be determined by the Director.

9.20.510 Violations.

Except as otherwise provided herein, any act or omission by a responsible person that is made unlawful under this chapter or that is in noncompliance with any duty, requirement, or obligation set forth in this chapter, or in a term or condition of any permit, directive, or compliance order issued under authority of this chapter, shall constitute a violation of this chapter and is subject to enforcement by the Director.

9.20.520 Monetary penalties.

A. Maximum monetary penalty. The maximum monetary penalty that may be assessed pursuant to a notice of civil violation for each violation of this chapter shall not exceed \$10,000 per day or portion thereof, and each continuing day or portion thereof.

B. Minimum monetary penalty – removed tree. The minimum monetary penalty assessed for each tree removed in violation of this chapter and for each tree that dies within a three year period as a result of the damage to the tree in violation of this chapter, shall be the monetary value of the tree as determined by the most recent edition of the Guide for Plant Appraisal published by the International Society of Arboriculture or \$500 dollars, whichever amount is greater. If the DBH cannot be measured, the monetary penalty may be assessed per inch based on the diameter of the remaining tree stump. If the stump has been removed, a monetary penalty in the amount of \$10,000 may be assessed, unless the violator can demonstrate through competent evidence the DBH of the illegally removed tree.

C. Monetary penalty - damaged tree. Each tree that is topped or severely pruned in violation of this chapter will be considered a removed tree and shall be subject to the penalties defined in TMC 9.20.520.B herein.

D. Duty to abate, correct or remedy. Payment of a monetary penalty pursuant to this chapter does not relieve the person(s) responsible for the violation(s) of the duty to abate, correct or remedy the violation or preclude the city from taking action to assess the costs for preparation of a natural damages assessment and the costs of abatement.

E. Urban forest fund. Any monetary penalty assessed and collected under this chapter shall be placed in the Urban Forest Fund for planting, maintenance, and replacement of trees on public property or the right-of-way, or as determined by the Department Director under whose authority the public property is managed.

F. Separate violations. Each tree that is removed, pruned, topped or otherwise damaged in violation of this chapter shall constitute a separate violation.

G. Choice of action. The choice of enforcement action to be taken under this chapter and the severity of any monetary penalty to be imposed for each violation of this chapter should be guided by the factors set forth at TMC 1.82.020 (E), and shall additionally be guided by consideration of the following:

1. the scope of each violation;
2. the quality of trees and other vegetation damaged or removed;
3. the impact to the health of the trees and other vegetation that was damaged and the potential for long-term damage or death of the tree and other vegetation;
4. the extent to which the removal or damage benefitted scenic views;
5. the scope and extent of natural resource damage;
6. whether heritage trees were damaged or removed;
7. whether the trees and other vegetation damaged or removed were native or invasive species;
8. the health of the trees and other vegetation removed (it shall be presumed that any tree removed or damaged was in good health and condition, unless it can be proven otherwise);
9. the age, aesthetic value, and cultural or historic significance of the trees removed or damaged;
10. the scope and extent of any impact to a vegetation management plan in place for the public property where the violation occurred;
11. whether damaged natural resources can practicably be restored to an equivalent condition prior to the violation occurring;
12. the monetary value of the tree damaged or removed based upon the plant valuation methodology published in the most current edition of the International Society of Arboriculture, Guide for Plant Appraisal;
13. any other factors related to the harm caused; and
14. any mitigating factors, including by way of example, good faith efforts to timely report and correct the violation, errors made in good faith with respect to the true property boundaries, good faith errors in implementing the tree removal or pruning plan, and the relative fault of agents acting on behalf of the responsible person.

9.20.530 Natural resource damage assessment.

A. Responsibility for natural resource damages. A person found to be in violation of this chapter or a permit issued hereunder shall be responsible for the costs of abatement, remediation and mitigation of natural resource damages arising from activities conducted in violation of this chapter.

B. Requirement for natural resource damage assessment. If the Director determines that activities in violation of this chapter have resulted in natural resource damages, the Director may require preparation of a natural resource damage assessment that includes a plan for abatement, remediation and mitigation. The Director may issue a compliance order requiring the natural resource damage assessment to be prepared by the person responsible for the violation(s) resulting in natural resource damages or assessing the costs of preparation of the natural resource damage assessment to the person responsible for the violation(s) resulting in natural resource damages. The natural resource damage assessment shall be prepared in accordance with this

section and shall be subject to approval by the Director for completeness and compliance with this chapter. In the event that a violation of this chapter also constitutes a violation of Chapter 13.11 TMC (Critical Areas Preservation), the Director may require the person responsible for the violation to prepare the natural resource damage assessment in compliance with Chapter 13.11 TMC.

C. Preparation of natural resource damage assessment. A natural resource damage assessment that may be required under this chapter, shall be prepared by persons qualified by training and experience to determine the extent to which activities upon public property have caused unauthorized natural resource damages in violation of this chapter. Qualified persons may include certified arborists, wetland scientists, soils scientists, hydrogeologists and other professionals.

The natural resource damages assessment shall include a comprehensive abatement, remediation and mitigation plan with a proposed schedule, and an estimate of the costs of abatement, remediation, and mitigation of the damaged natural resources, to the greatest extent practical, to restore their condition and function as existed prior to the violation, together with a determination of the monetary value of the trees damaged or removed. The assessment shall include, by way of example and not limitation, a cost estimate and comprehensive plan for the repair or replacement of any trees removed or damaged, an assessment of the biological and habitat values to be replaced, an analysis of the impact to slope stability and soil erosion and plan for restoration, a cost estimate and plan for the installation and maintenance of interim and emergency erosion control measures until such time as the restored groundcover and vegetation reach sufficient maturation to function in compliance with the performance standards adopted by the City, and the estimated costs for obtaining permits necessary to implement the plan of abatement, remediation and mitigation.

Studies by the qualified persons may be required to determine the conditions which were likely to exist on the public property prior to the unlawful activities that resulted in the natural resource damage.

The natural resource damage assessment shall include analysis of the best-case growing capability of the site, taking into consideration the soil conditions, the health of surrounding tree stands and the type of species believed to have been removed or damaged, or whatever resources are available to determine natural resource damage.

D. Valuation of damaged or removed trees. The Director may order that the natural damage assessment include an assessment of the monetary value of the trees removed or damaged in violation of this chapter. The monetary value of the trees shall be determined based upon the plant valuation methodology published in the most current edition of the International Society of Arboriculture, Guide for Plant Appraisal. This valuation will be a factor considered by the Director in assessing monetary penalties and may be included on a one-for-one basis. It shall be presumed that any tree that was removed or damaged was in good health and condition prior to removal or damage.

E. Costs of abatement. Upon completion of the natural resource damage assessment and approval by the Director, the Director may issue a compliance order to the person responsible for

the violation(s) resulting in natural resource damages, assessing the costs of the natural resource damage assessment and the City's emergency response costs, if not already paid at the expense of the responsible person, together with the estimated cost of abatement. If more than one person is responsible for the natural resource damages and emergency response costs, each person shall be jointly and severally liable for the costs of preparation of the natural resources damage assessment and the costs of abatement.

F. Implementation of plan of abatement, remediation and mitigation. The City shall be responsible for implementing the comprehensive plan of abatement, remediation and mitigation. If the costs of implementing the plan of abatement, remediation and mitigation exceed the cost estimate prepared as part of the natural resource damage assessment, the Director may issue a compliance order requiring the person(s) responsible for the violation(s) to pay the additional costs. If more than one person is responsible for natural resource damages, each person shall be jointly and severally liable for the costs of abatement, remediation and mitigation.

9.20.540 Suspension or revocation of permit.

The Director may suspend work or revoke a permit, as appropriate, if the Director has reasonable cause to believe:

- A. Inaccurate information was used to obtain a permit;
- B. The permittee is not complying with any terms of the permit or approved plans;
- C. The work being performed may create an imminent danger to property or public safety;
- D. The work is adversely affecting or may adversely affect adjacent public property, utility infrastructure, a drainage way, watercourse, critical area, wetland or stormwater facility;
- E. The work is otherwise adversely affecting public health, safety, or welfare;
- F. That due to adverse weather, the work poses a danger to public property or to neighboring properties;
- G. That any work is being performed prior to issuance of required permits or in violation of applicable laws or regulations; or
- H. A required project surety (e.g., bond, cash deposit, letter of credit) has been expended to the point that the surety no longer provides assurance of the completion of the project in compliance with the terms of the permit.

9.20.550 Presumption –removal and pruning on public property.

There is a rebuttable presumption that the owners, occupants and persons in control of real property abutting any portion of public property upon which a tree(s) or other vegetation has been pruned, removed, topped or otherwise damaged in violation of this chapter, are the persons whose acts or omissions caused or aided in causing the violation, when the pruning, removal, topping or damage of such tree(s) or other vegetation has enhanced the scenic view from such abutting property. This presumption may be rebutted by clear evidence that,

- A. Such person's acts or omissions did not cause, and did not aid in causing, the violation;
- B. Such person made reasonable efforts to prevent such violation from occurring;
- C. Such person had no knowledge of the acts or omissions causing or aiding in the violation;
- D. The violation did not enhance the scenic view from such abutting property;

E. The violation resulted only in incidental enhancement of the scenic view from such abutting property when compared to the enhancement of the scenic views from other abutting private properties; or

F. The location where the violation occurred is so distant in proximity to such abutting property that it would afford no more than an incidental enhancement of the scenic view from such abutting property.

The presumption set forth in this section shall not presumptively establish the intent required for a criminal violation of this chapter.

9.20.560 Written instruments.

Any person who shall knowingly and falsely make, complete, or alter a written instrument required to be submitted to the Director pursuant to this chapter or pursuant to a term or condition of any permit, directive, or compliance order issued under authority of this chapter, shall be guilty of a gross misdemeanor and upon conviction shall be subject to a fine of not more than \$5,000 or by imprisonment in jail for up to three hundred sixty-five (365) days, or both, for each separate violation. Proof of intent to defraud or injure is not required.

9.20.570 Criminal violation.

Any person who willfully violates TMC 9.20.210 (B) (1), 9.20.220 (B) (1), 9.20.230 (C) (1) or 9.20.360 shall be guilty of a gross misdemeanor and upon conviction shall be subject to a fine of not more than \$5,000 or by imprisonment in jail for up to three hundred sixty-five (365) days, or both, for each such violation.

9.20.580 Remedies not exclusive.

The enforcement actions and authority authorized in this chapter are not exclusive and are supplemental to the enforcement actions and authority that may be available at law or in equity, including without limitation, TMC Ch. 8.30 (Public Nuisances), and TMC Ch. 13.11 (Critical Areas Preservation Code).

VI. MISCELLANEOUS PROVISIONS

9.20.600 Chapter cumulative.

The provisions of this chapter shall not be exclusive and are supplemental and additional to other ordinances covering the same or similar subject matter.

9.20.610 Severability.

If any portion of this chapter, as now or hereafter amended, or its application to any person or circumstances, is held invalid, unenforceable or unconstitutional, such adjudication shall not affect the validity of this chapter, as now or hereafter amended, or any section, provision or part hereof or thereof not adjudicated to be invalid, unenforceable or unconstitutional, and its application to other persons or circumstances shall not be affected.