

xx.010 Landmark / Heritage trees .. Purpose and Qualification

A. Purpose

The Landmark and Heritage tree designations are each intended to recognize the significance of certain particular trees to the citizens of Langley. While “landmark” status is dependent upon a tree’s size, the “heritage” designation may be established through satisfying any of several criteria. The specific requirements and protections applied to a Heritage tree must be established through individual agreements between the City and the tree’s owner. Protection of landmark trees shall be accomplished through penalties for their unauthorized removal, and by requiring tree protection plans as part of any development proposal for properties holding landmark trees that may be affected by development.

Whether on private or public property, these Landmark and Heritage trees may be protected throughout their useful lives because of their contribution to the environment and to City character.

B. Landmark Trees ... Qualification

Landmark trees are considered to be of unusual importance to the character of their immediate site, to the surrounding landscape, and to the Langley community as a whole because of their size. It is this characteristic, measured by the tree’s diameter at breast height, that qualifies trees for protection under this classification. No other qualification, process of nomination, procedure or characteristic other than size is required before a tree becomes a “landmark tree” subject to the provisions of this ordinance.

Qualification standards for landmark trees are established according to the tree’s species, as follows:

.. Native Conifers

| | | |
|-----------|---------|-------------------------|
| yew | 10” dbh | <i>Taxus brevifolia</i> |
| cedar | 42” dbh | <i>Thuja plicata</i> |
| all other | 36” dbh | |

[such as douglas fir, western hemlock, western white pine, Sitka spruce]

.. Native Broadleaved

| | | |
|------------|---------|---|
| maple | 30” dbh | <i>Acer macrophyllum</i> |
| cottonwood | 42” dbh | <i>Populus balsammifera trichocarpa</i> |
| madrone | 24” dbh | <i>Arbutus menziesii</i> |

.. all others 30” dbh

[whether native or exotic, conifer or broadleaved;
such as maples, pines, sequoia, oaks]

C. Heritage Trees ... Qualification

The nomination of a Heritage tree will require the consent of the tree's property owner, or owners. Forms for nominating a tree as a Heritage tree will be maintained by the City's public works department.

1. Nominations for Heritage tree designation shall be reviewed by the Parks and Open Space Committee. To qualify as a Heritage tree, one or more of the following criteria must be met:

- a. The tree has significance associated with a historical person, place or event;
- b. The tree has attained significant size in height, diameter, or canopy spread for its species;
- c. The tree has unique or uncommon aesthetic qualities for its species;
- d. The tree is prominently visible to the public, along a major road or near a public place;
- e. The tree possesses rare horticulture value.

2. In addition to the above criteria, to qualify as a Heritage tree the tree must not constitute a hazard or obstruction.

3. The Parks and Open Space Committee shall consider all nominations for Heritage tree designation at an open public meeting.

4. Designation of Heritage Trees.

a. A property owner may propose to the city that a tree located on his or her private property be designated as a Heritage tree. Any city resident may propose to the city that a tree located on public property be designated as a Heritage tree. No tree may be designated without the approval of the owner(s) of the property on which the tree, or any portion of the tree's branches or canopy, is located.

b. Upon receipt of a proposed designation and the approval of the property owner, the Parks and Open Space Committee at an open public meeting shall consider whether the tree satisfies the criteria for being a Heritage tree. The Committee shall make a final decision on the proposal within 30 calendar days of the meeting at which the nomination was considered.

c. If the Committee approves the proposed designation, it shall be memorialized in a covenant signed by the City and the property owner(s) in a form acceptable to the city attorney. The covenant shall require that the tree be maintained by the property owner(s) in a manner that is consistent with the provisions of this chapter. The covenant shall also describe the City's role in providing reasonable technical advice in caring for the tree per subsection (4)(d) of this section. The covenant shall be recorded by the county auditor. The city shall pay recording fees. The covenant and designation shall be effective from the date of recording until such time as approval by the City has been granted for the cutting of the tree.

d. Upon request of a property owner, the City shall provide reasonable advice and consultation on maintenance of any Heritage tree without charge to the property owner.

xx.020 Pruning or removal of Heritage trees.

A. Heritage Tree Pruning or Removal

1. Any pruning of a Heritage tree shall be done according to current ANSI [American National Standards Institute] A300 Pruning Standards. No permit will be required for property owners to conduct minor pruning of designated Heritage trees, in which no more than 20% of the tree's crown is removed within a three year period

2. Criteria for Extensive Pruning or Removal of a Heritage Tree

The applicant must demonstrate that extensive tree pruning or removal is necessary for one of the following reasons:

- a. The tree, or a portion of the tree proposed for removal, meets the definition of a hazard tree;
- b. The tree, or a portion of the tree proposed for removal, is dead or dying;
- c. That the retention of the tree will have a material, adverse and unavoidable impact on the reasonable use of the property.

B. Heritage Tree Pruning or Removal – Procedure

1. Extensive pruning or removal of Heritage trees, in which more than 20% of the tree's crown is removed, requires approval by the City. A request to conduct extensive pruning or tree removal shall first be referred to the Parks and Open Space Committee for a recommendation. The committee shall forward a recommendation to the City.

2. The City shall review the recommendation of the Committee and may also seek the advice of a qualified professional (certified arborist or other qualified tree professional) in reaching its decision.

xx.030 Protection and Removal of Landmark trees.

A. Landmark trees development review

1. When development is proposed for property which contains a landmark tree, and the planning official determines that the proposed development may affect a landmark tree, the property owner must have a tree preservation plan prepared by a qualified professional demonstrating how the landmark tree will be protected and preserved. All landmark trees shall be preserved unless the Planning Director determines that the tree may be removed based on the criteria for Landmark tree removal found in Subsection (B) below.

2. A tree preservation plan shall be composed at minimum of the following:

- a. A site plan indicating the location of landmark trees;
- b. The methods to be used to preserve the landmark trees;

c. If a landmark tree is proposed for removal, a narrative statement outlining the reasons why the landmark tree should be removed from the inventory;

d. Whenever removals are proposed, a mitigation plan indicating the replacement trees or additional new trees to be placed on the site. The mitigation plan should demonstrate, to the extent possible, that the character of the site will not substantially change as the result of development.

3. Site design adjustments may be allowed in some cases, as follows:

a. The planning official may grant a variance to front, side, and/or rear yard setback standards by up to 20% to retain a landmark tree(s). The adjustment shall be the minimum necessary to accomplish preservation of trees on site and shall not conflict with the City Adopted Building Code or other adopted ordinances or conditions placed on the property.

b. The planning official may grant a 10% variance to the lot size and/or a 10% variance to the lot width and/or lot depth standards in approving a short plat or other land division if necessary to retain landmark trees. The planning official may accept a preliminary plat application and recommend approval to the hearing body of a plat that provides for similar variance to lot size, width and depth standards if necessary to retain landmark trees.

B. Obligation to Maintain and Preserve Landmark Trees

Any person who owns, controls, has custody or possession of any real property within the City shall use reasonable efforts and care to maintain and preserve all that property's Landmark trees in a state of good health. Additionally, any person who conducts any grading, excavation, demolition or construction activity within the City shall do so in such a manner as to not threaten the health, viability, or cause the removal of any landmark tree. Failure to do so shall constitute a violation of this chapter

C. Obligation to Maintain and Preserve Heritage Trees

In addition to any specific obligations and penalties which may be included in the covenants between the City and the owner of a Heritage Tree, the penalties and remedies within this chapter will apply to any removal or negligent damage to a Heritage Tree, unless the tree's owner has previously concluded an agreement with the City relieving them of this chapter's obligations.

D. Removal of a landmark tree

Except for the provisions in Section xxx LMC concerning emergency actions, no person may cut or remove a landmark tree without obtaining approval from the Planning Director. The tree removal permit shall be approved if one of the below criteria is satisfied:

1. Retention of the tree would make reasonable use of the property allowed under the current zoning impossible.
2. The tree is hazardous, diseased or storm damaged and poses a threat to the health, safety or welfare of the public.

3. The tree needs to be removed to accomplish a public purpose and no practical alternative exists.

xx.040 Enforcement and Penalties

A. Authority

It shall be the duty of the Planning Official to administer the provisions of this chapter. The Planning Official shall have authority to issue permits, impose conditions, enforce the provisions and requirements of this chapter and permits issued thereunder, establish administrative procedures and guidelines, conduct inspections, and prepare the forms necessary to carry out the purposes of this Chapter.

B. Enforcement--Remedies for Violation

In addition to all other remedies and penalties set forth in this code or otherwise provided by law, the following remedies shall be available to the City for violation of this chapter:

1. If a violation occurs during development, the City may issue a stop work order suspending and prohibiting further activity on the property until a mitigation plan has been filed with and approved by the Planning Official, agreed to in writing by the property owner(s), and either implemented or guaranteed by the posting of adequate security. The mitigation plan shall include measures for protection of any remaining trees on the property, and shall provide for replacement of each tree removed or heavily damaged, on either the property or at locations approved by the Planning Official and, if replacement is to occur on public property, by the Director of Public Works. The replacement ratio shall be 200% of that required where tree removal is permitted pursuant to the provisions of this chapter.

2. If a violation occurs in the absence of development, or while an application for a building or development permit is pending, the Planning Official may issue a temporary moratorium on development of the property, not to exceed eighteen (18) months from the date the violation occurred. The purpose of the moratorium is to provide the City an opportunity to study and determine appropriate mitigation measures for the tree removal, and to ensure measures are incorporated into any future development approvals for the property. Mitigation measures as determined by the Planning Official shall be imposed as a condition of any subsequent permits for development on the property.

3. In addition to the costs directly associated with site restoration or direct mitigation, the City may assess against any person who commits, allows, or maintains a violation of any provision of this chapter a penalty in an amount not to exceed five thousand dollars (\$5,000.00) per violation. Where the violation has resulted in removal of a tree, the penalty shall be in an amount not to exceed five thousand dollars (\$5,000.00) per tree unlawfully removed, or the replacement value of each such tree, whichever amount is higher. Such amount shall be payable to the City. Replacement value for the purposes of this section shall be determined utilizing the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers.

C. Stop Work Orders / Permit Revocation

1. The Planning Official shall suspend work or revoke a permit, as appropriate, if the Planning Official finds that:
 - a. The work is not authorized by a valid permit;
 - b. Inaccurate information was used to obtain the permit; or
 - c. The permittee is not complying with the terms of the permit or approved plans.
2. The Planning Official shall issue the permittee/violator a written notice specifying the nature of the violation or problem which must be remedied prior to resuming other work on the project.

D. Restoration

1. Violators of this chapter or of a permit issued under its provisions shall be responsible for restoring unlawfully damaged areas in conformance with a plan, approved by the Planning Official, which provides for repair of any environmental and property damage, and restoration of the site; and which results in a site condition that, to the greatest extent practical, equals the site condition that would have existed in the absence of the violation(s).
2. Recognizing that full and immediate restoration is often not possible, in determining the financial responsibility of violators the City will first determine the financial value that has, as a result of the violation, been lost through the damage to trees, other plants and landscape features. In those cases where this amount is greater, due to the higher value of a mature landscape, than the cost of implementing a restoration plan, the amount of value lost above the restoration plan's cost shall be paid to the City's Urban Forestry account.
3. Determinations of value lost will be based on the City appraised value of trees and other plants improperly removed or damaged, using the latest edition of Guide for Plant Appraisal (International Society of Arboriculture, Council of Tree and Landscape Appraisers).
4. The City may utilize the services of a certified arborist or other resource management professional in determining the value lost through damage, whether a restoration plan has been properly designed or implemented, or when a plan may be considered to have been completed with no further need for City monitoring. The expense of these consultations or reviews will be born by the violator.

E. Prohibition of Further Approvals

The city shall not accept, process, or approve any application for a subdivision or any other development permit for property on which a violation of this chapter has occurred until the violation is cured by restoration or other means accepted by the Planning Official and by payment of any penalty imposed for the violation.

F. Civil Penalty

1. A person who fails to comply with the requirements of this chapter or the terms of a permit issued hereunder, who undertakes an activity regulated by this chapter without obtaining a permit, or fails to

comply with a stop work order issued under this chapter shall also be subject to a civil penalty as set forth in the table below. Each day that a permit violation continues shall constitute a separate violation. In addition, each unlawfully destroyed tree shall constitute a separate violation.

2. Any person who aids or abets in the violation shall be considered to have committed a violation for purposes of the civil penalty.

3. The amount of the penalty shall be assessed in accordance with Table XX.040-1.

**Table XX.040-1
Civil Penalties for Violations**

| Types of Landmark / Heritage Tree Ordinance Violations | Allowable Fines per Violation |
|---|--|
| Removal of tree(s) shown to be removed on preliminarily-approved plans, but prior to final tree plan approval or issuance of a city tree removal permit | Minimum \$50 per tree Maximum \$200 per tree |
| Removal of tree(s) shown to be retained on preliminarily-approved plans, but prior to final tree plan approval or issuance of a city tree removal permit or removal of tree(s) shown to be retained on final approved tree plan | Minimum \$250 per tree Maximum \$750 per tree |
| Continued illegal removal of tree(s) following stop work order or receipt of other information from city that the tree removal activity is not permitted | \$1,000 per day |
| Removal of tree(s) without applying for or obtaining a city permit or approval | Minimum \$500 per tree Maximum \$5,000 per tree |

4. Notice of a civil penalty shall be given by the delivery of a notice in writing, by certified mail with

return receipt requested, or by personal service. The notice shall describe the nature and date of the violation, and order the acts constituting the violation to cease and desist, and, when appropriate, require necessary corrective action within a specified time.