

CITY OF LANGLEY

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LANGLEY, WASHINGTON, RELATING TO THE CITY BUILDING AND CONSTRUCTION CODE CONTAINED IN TITLE 15 OF THE LANGLEY MUNICIPAL CODE; AMENDING SECTION 15.01.725 - LAND CLEARING AND REPEALING SECTION 15.01.730 - REQUIREMENTS AND REPLACING IT WITH NEW SECTION 15.01.730 - TREE PROTECTION DURING CONSTRUCTION OF LMC CHAPTER 15.01 CONSTRUCTION STANDARDS.

WHEREAS, the City of Langley adopted a Growth Management Comprehensive Plan in December 19, 2007, which was developed and approved consistent with the Washington State Growth Management Act (RCW Chapter 36.70A); and

WHEREAS, pursuant to RCW 36.70A.130 each local comprehensive land use plan and development regulation is subject to continuing review and evaluation by the City; and

WHEREAS, proper site planning, building, and development practices are necessary to avoid the inadvertent destruction of or injury to retained trees and retained groves of trees to prevent unnecessary disturbance to the City's natural vegetation; and

WHEREAS, in accordance with RCW Chapter 36.70A, a request for expedited review was received by the State of Washington Department of Commerce on September 12, 2011, and was granted expedited review on September 28, 2011; and

WHEREAS, the City of Langley Planning Advisory Board (PAB) met in open public meetings on October 10 and 24, 2011 to discuss the proposal that is subject of this Ordinance prior to scheduling the matter for a public hearing; and

WHEREAS, the City's SEPA Responsible Official reviewed this Ordinance and related environmental checklist and has issued a Determination of Non Significance (DNS) threshold determination under the State Environmental Policy Act (SEPA); and

WHEREAS, after due and proper notice the PAB held a public hearing on November 14, 2011, on the proposal; and

WHEREAS, the PAB considered the staff report and public comment received and recommended that, with amendments responsive to the public testimony and suggestions of PAB members, this Ordinance be adopted; and

WHEREAS, on November 21, 2011, the PAB issued written Findings of Fact, Conclusions of Law and Recommendation (Recommendation) attached hereto as Exhibit A, in which the PAB recommended that the City Council adopt the proposed amendments; and

WHEREAS, on _____, 2011, the City Council in open public meeting reviewed the Recommendation of the PAB and supports the Recommendation;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY LANGLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Adoption

Section 1. Section 15.01.725 of LMC Chapter 15.01 is hereby amended to read as follows:

Section 15.01.725 Land clearing – Intent.

A. Intent. It is the desire of the City to preserve and enhance the physical and aesthetic character of the community, to promote land development practices that minimize disturbance to vegetation and soils, minimize surface water and ground water runoff and diversion, prevent erosion, and reduce risk of slides.

B. Requirements. ~~Commencing with the effective date of this code section, no~~ No person shall clear more than twenty (20) percent of a parcel of land that is more than 15,000 square feet in area without first obtaining approval of a land clearing permit, unless the clearing is part of a development action or permit as set forth in 15.28.030, or consistent with an approved plat.

C. Tree Protection Encouraged. For projects on land that fall below the size threshold of this section, developers are strongly encouraged to retain as many native trees and as much undergrowth as feasible in support of the City’s policy of promoting native landscape retention.

Section 2. Section 15.01.730 of LMC Chapter 15.01 is hereby repealed in its entirety and replaced with the following language:

Section 15.01.730 Tree Protection During Construction.

A. Intent. It is the desire of the City to protect trees designated for preservation during construction projects.

B. Applicable Projects. The standards in this section shall apply for any construction project where one or more trees or a group of trees have been designated for preservation, including such trees located within the public right of way adjacent to the project site.

C. Tree Protection Plan. For all applicable projects, the applicant is required to prepare a tree protection plan that maps all trees or groups of trees designated for preservation, the drip line for individual trees and/or groups of trees, the building footprint for all proposed structures, all proposed impervious surfaces and existing and proposed overhead and underground utilities (including irrigation systems).

D. Tree Valuation and Bond Requirement. Each tree designated for preservation shall be assigned a monetary valuation based upon standards available from national arborist associations, such as the ISA Council of Tree and Landscape Appraisers (CTLA). Project proponents are required to submit a bond or other form of surety acceptable to the City equal to the total valuation of the trees designated for preservation.

E. Protective Fencing. To protect trees during construction, the developer must install and maintain throughout the life of the development a temporary chain link or durable plastic net fence over an area 1.5 times the radius of the average drip line of the individual or group of trees to be protected. No filling, excavation, clearing, vehicle or equipment use or storage of construction materials shall be permitted within the areas defined by protective fencing. All requests to vary from this standard based on specific site circumstances must be proposed as part of the Tree Protection Plan and approved by the Planning Official. Depending on species,

permanent retaining walls at the drip line may be used to maintain grade level around individual or stands of protected trees.

F. Signage on Fence. No fewer than two signs shall be affixed to the protective fence citing this ordinance and penalties for violation. Exact language shall be provided by the Planning Official.

G. Alternative Methods. Alternative methods of tree protection that provide equal or greater protection than the standards in this section that have been approved by a certified arborist may be used subject to approval by the Planning Official.

H. Inspection and Enforcement. The City Planning Official or his/her designee is authorized to enforce the provisions of this section. Regular inspections of the project site will be performed by the Planning Official to confirm that the requirements and conditions of the Tree Management Plan are being followed.

I. Violations and Penalties. Violations shall be investigated by the Planning Official or designee and penalties assessed according to the following:

1. Actions removing or severely damaging trees designated for protection. Violations that result in the removal of or severe damage to a tree or trees designated for protection shall result in the forfeiture of that portion of the bond corresponding to the valuation of the trees so removed or severely damaged. Severely damaged shall be defined as the severing of three or more major roots or the tap root, the greater than incidental stripping of bark from a tree, the greater than incidental application of herbicides within the drip line, topping the tree, or removal of more than one-third of the live crown. The determination that a tree has been severely damaged shall be made by an ISA-certified arborist hired by the City and the costs of the determination shall be paid for by the developer. Monies collected by the City as a result of bond forfeiture shall be used solely to plant new trees or maintain existing trees.

2. Actions causing damage to trees designated for protection. Damage to trees that is not covered in subsection (1) above shall be subject to a fine of \$500. In addition, the Planning Official may require that the developer retain an ISA certified arborist to prepare and implement mitigation measures to repair the damage.

J. Enforcement Action and Appeal.

1. Any enforcement action for violation of this section shall follow the procedures set forth in LMC Chapter 1.14; provided, however, that any fine that is imposed as part of an enforcement action shall be in accordance with subsection I of this section, and any appeal of an enforcement action shall be to the Hearing Examiner in a manner consistent with LMC 15.01.720.

Section 4. Amendment of Prior Ordinances. City of Langley Ordinance No. 743 is hereby amended as necessary by this Ordinance to reflect the amendments contained in this Ordinance.

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. **Effective Date.** This Ordinance will be in full force and effect five days after publication of an approved summary thereof consisting of the title.

PASSED by the City Council and **APPROVED** by the Mayor on _____, day of _____, 2011.

ATTEST

MAYOR

Debbie Mahler, Clerk-Treasurer

Paul Samuelson, Mayor

APPROVED AS TO FORM:

Grant K. Weed, City Attorney

Published: _____