City of Langley

PLANNING ADVISORY BOARD
AGENDA
MARCH 5, 2014 – 3-5pm
LANGLEY CITY HALL - 112 2nd Street, Langley WA

1) Call to Order and Roll Call
2) Approval of the Minutes – February 5, 2014
3) Code Amendments
   a) Landscaping and Tree Retention
4) Design Review Overview Presentation
5) Adjourn

Next Regular Meeting: April 2, 2014
MINUTES
CITY OF LANGLEY
PLANNING ADVISORY BOARD
February 5, 2014

The meeting was called to order at 3:00 PM.

ATENDANCE: Roger Gage, Gail Fleming, Sue Walsh, Dominique Emerson, Paul Goldfinger, Aaron Simpson
Staff: Jeff Arango, Cheryl Knighton

Motion by Roger to approve the January 7th minutes with changes, second – Gail, approved.

Code Amendments

Land Use Table
Jeff made minor changes as discussed at last meeting, which included a legend at the end. Everyone agreed that it looked good.

Zoning District Standards

Height Modification
Jeff did a slide show of scenarios showing different building heights and building types for the downtown business district. Discussion on the impact they could have on the residential homes, views and Seawall Park. Sue pointed out that the City is not really prepared at this time to give builders other options, and that this would be a beginning point when the City is approached by builders to construct multi story buildings on the water front. Roger asked about the possible hazards of fire danger with three story buildings and is the fire department prepared to handle such. Jeff said he thought they could because Freeland has multi story buildings. Paul likes the idea because it gives everyone more options. Aaron asked if height restrictions could be mitigated. Yes, but there are tradeoffs. Who’s view and why. What is the impact?

The concession of the group was to wait until a developer approached the city before making a decision.

Landscaping and Tree Retention

City Forester, Tree Removal, and Heritage trees were all discussed. Discussion on clarification on single family homes verses large wooded parcels and what does “clear” mean. Does single family residence need more definition? Some discussion on language in the “intent” section. It seems that there a conflict with the wording between the entire section and 9D. Paul mentioned that there are several residents that are not happy with the ordinance.

Barbara Seitle of 410 Edgecliff spoke in favor of limiting restrictions on SFR. Significant trees should be regulated. Thinks the ordinance should read if a significant tree is removed it needs to be replaced.
Aaron thinks that the Planning Official can make the decision after hearing and examining the application and hearing the reason for the removal. He would be also hearing advice from the “Forester” or the Arborist”.

Marianne Edain spoke on Mitigation ratio. She suggested to have Jeff correct the “flow” of the ordinance and bring it back to the board.

The group needs to give Jeff some direction on how they want single family home and duplexes be defined. What is the definition of a significant tree?

Dominique asked if the “City Forester” would be advertised to the public. Jeff explained it would and that he/she would be appointed by the Mayor and approved by the council.

Marianne had some language corrections she would like Jeff to fix. She will email them to him. She thinks this ordinance is a good start and possibly an advisory board would be good to have.

Some discussion on clarifying landscaping verses tree removal in general.

Motion: To Direct the Planning Official to clarify the significant tree regulation and to apply it to the single family/multi family residence. Aaron. All in favor. Approved.

It was decided that this item should be revisited after Jeff cleans up the language and brought back to the board before approving.

Things to talk about at next meeting will be enforcement and cost.

**Design Review Board Overview Presentation**
Tabled at this time. Will revisit at next meeting.

Meeting adjourned at 4:45PM
Staff Report

To: Planning Advisory Board
From: Jeff Arango, AICP – Director of Community Planning
Date: February 28, 2014

Landscaping and Tree Retention Standards

Staff has made the following revisions to the landscaping and tree retention standards:

1. **Applicability.** Clarified that only the tree retention standards apply to single and two family properties. The other requirements proposed in LMC 18.22.020.

2. **Enforcement** – Staff has added language that the city may require replacement at a ratio of up to 4:1 for any significant tree removed in violation of the code. The standard enforcement procedures in LMC 1.14 also apply (LMC 1.14 is attached for informational purposes)

3. **Tree Retention** – Clarified the review standards of LMC 18.22.020.9 as they pertain to allowances for significant tree removal for view preservation, solar access and removal of trees in critical areas. Also added explicit language that significant trees may be approved for removal as part of a site development permit.

4. **City Forester.** Clarified the city forester is appointed by the Mayor and approved by the City Council. Also added language that a certified arborist is desired, but not required to fulfill the duties of the city forester.

Landmark and Heritage Tree Citizen Proposal

At the February 5, 2014 PAB meeting the board asked to see any alternative definitions for ‘significant tree’ included in the earlier citizen committee tree preservation proposal. Staff has included the landmark and heritage tree proposal in the packet. The proposal has definitions for landmark and heritage trees, but not for significant tree. The landmark tree definition is the closest to the definition of existing definition of significant tree in the LMC as it is based solely on the size of the tree.
Amendments to Title 18: Landscaping and Tree Retention Standards

Existing: 18.22.020 Landscaping.

All lots shall be generously landscaped, and consistent with the natural environment of Langley and appropriate to the planned use. Retention of natural landscaping is encouraged. (Ord. 527, 1989)

Existing: 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. No person shall clear- remove more than 20 percent of any significant trees from a parcel of land that is more than 15,000 square feet in area without first obtaining approval of a land clearing permit for an approved timber harvest or other specified use requiring the land clearing, unless the clearing is part of a development action or permit as set forth in Section 15.01.020, or consistent with an approved plat.

C. Tree Protection Encouraged. For projects on land that falls 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. (Amended during 2013 reformat; Ord. 966 § 1, 2012; Ord. 743, 1997)

AMENDED – 18.01.040 Definitions

“City Forester” means a volunteer position designated by the city’s Director of Community Planning appointed by the Mayor and confirmed by the City Council to perform the duties required to implement and administer the provisions of this chapter. The City Forester shall have demonstrated education and/or professional experience necessary to fulfill the duties as assigned. A certified arborist is preferred, but not required to fill the City Forester position.

“Hazard tree” means any street tree, or part thereof, that the City Forester determines is subject to a high probability of failure, due to structural defect or disease, and which poses a potential threat to people or property in the event of failure. The determination of “hazard” does not require the judgment that a tree is in danger of imminent failure.
“DBH” means the diameter of the tree at breast height.

“Significant Tree” – means any living woody perennial plant characterized by a main stem or trunk having many branches and having a diameter of 12 inches or more measured at breast height. For bifurcated or multi-trunked trees, the diameters of the individual stems are added together to determine if a tree meets the 12’ minimum diameter to qualify as a significant tree.

already have a definition in title 18. “Native Plant” means plants and trees that occurs naturally in a particular region, ecosystem, or habitat without direct or indirect human intervention.

NEW – 18.22.020 Landscape Design and Tree Retention

1. Purpose. The City of Langley's identity is defined by its beautiful natural setting and human scaled downtown characterized by extensive landscaped gardens both on private properties and within the public realm of streets, parks and open spaces. Langley is surrounded by mature coniferous forest that delineates the urban city from the rural county while strengthening the city’s sense of place within the surrounding landscape. The preservation and enhancement of these features are important to the future of the city to achieve environmental, social and economic sustainability. Other objectives are to:

   a. Retain existing vegetation, tree stands and significant trees by incorporating them into the site design.
   b. Incorporate native vegetation and drought resistant plant material into new landscape developments as appropriate.
   c. Provide vegetated screening between different land uses and intensities
   d. Minimize the visual and physical impact of parking areas with vegetative screening and shade
   e. Provide vegetated screening between residential and nonresidential areas.
   f. Beautify the commercial districts with extensive gardens and landscape installations
   g. Create pedestrian oriented spaces in the downtown with a blend of hardscape and landscape features
   h. Balance the desire to preserve trees and vegetation with the desire for openness of space and sun exposure.
   i. Maintain and increase bluff stability by intercepting runoff and groundwater via landscaping.
   j. Amerliorate weather and climate impacts by retaining and planting trees to block and filter wind, provide shade where desired and store carbon.

2. Applicability. The standards herein apply to any multi-family development of three or more units, all subdivisions (plats), and all non-residential development including site plans, binding site plans and planned unit developments. Single and two-family lots are exempt from the requirements of this section with the exception of the standards addressing the preservation of significant trees (LMC 18.22.020.9) or if vegetation is unless they contain significant trees or vegetation required to be preserved as part of a plat approval/subdivision approval.

3. Professional Designer. All landscape plans shall be prepared by a registered landscape architect or landscape designer qualified to provide landscape design services as exhibited by experience with past projects, education or a combination thereof.
4. Submittal Requirements. All landscape plans shall include the following:
   a. A detailed site plan of all existing and proposed natural and landscaping improvements, trees and vegetation at a minimum scale of 1”=30’ identifying all existing and proposed landscaping.
   b. A detailed plant and tree list showing the type of species and size at installation and whether the plants are native of non-native. Non-native species may be allowed with evidence of their suitability for the proposed application.
   c. A narrative identifying the overall design concept for the proposed landscaping plan and demonstrating compliance with the requirements of this section.

5. Standards for Parking Lots and Walkways
   a. A minimum of one tree for every eight parking spaces is required along the interior of parking lots and one treespace for every four spaces along the exterior of parking lots and along the right-of-way.
   b. A minimum of 10’ between the edge of the right-of-way and the parking lot shall include extensive landscaping consisting of trees, shrubs and plants to soften the visual impact of the parking lot consisting of trees, shrubs and plants. The intent is not to create a completely vegetative screen, but to soften the visual impact of the parking areas.
   c. All trees shall be a minimum 2” caliper when planted.
   d. Dedicated walkways through parking areas shall include a minimum of 5’ of landscaping along both sides of the walkway.
   e. Walkways along building frontages shall have a minimum 10’ of landscaped area between the walkway and the building.

6. Street Trees
   a. A street tree shall be planted for every 40’ of frontage along the street and shall be located either within the right-of-way or along the frontage of the property within 10’ of the right-of-way.
   b. The street tree species must be demonstrated to be appropriate for the given location, that it will not damage infrastructure in the area (sidewalks, roadway, utility lines, etc.), unnecessarily block views from public or private property. The property owner shall demonstrate the ability to properly maintain the tree.
   c. When selecting a street tree applicants shall consult with the Seattle Department of Transportation Street Tree list as a guide.

7. Site Design Techniques. Sites shall be designed to include, but not limited to, the following features:
   a. Landscape open areas created by building modulation.
   b. Retain natural vegetation and undisturbed open space.
   c. Use plants that require low amounts of water, including native drought-resistant species.
d. Locate trees on storefront street frontages at appropriate spacing so that at maturity building signage and entrance are clearly visible from the street and sidewalk.

e. Plant a mix of evergreen and deciduous plants to maintain year-round color and interest.

f. Incorporate on-site natural objects such as rocks, boulders and tree stumps into landscape design where possible.

g. Shrubs, grasses and other non-tree vegetation shall be included in the plan as appropriate to the site on a case-by-case basis.

h. Consider incorporating seating areas and public art into the landscape design

i. Consider planters, hanging baskets, window boxes or other landscape features along the street for sites that do not have landscape areas on-site

8. Planting Requirements

a. Intent. The intent of this section is to encourage the use of native species and recommend planting conditions non-native species that have adapted to the climate of Whidbey Island.

b. Requirements. Landscape designs shall conform to the following provisions:
   i. Areas not devoted to landscape required by this chapter, parking, structures and other site improvements are encouraged to be planted or remain in existing vegetation preserved with native vegetation.
   ii. New plant materials shall include native species or nonnative species that have adapted to the climatic conditions of the coastal region of the Puget Sound Region. Species on any state noxious weed list are expressly prohibited.
   iii. New plant materials shall consist of drought resistant species, except where site conditions within the required landscape areas assure adequate moisture for growth.
   iv. New tree plantings shall be a minimum of two inches in caliper if deciduous or six feet in height if evergreen. Soil planting types and depth shall be sufficient for tree planting.
   v. Existing vegetation may be used to augment new plantings to meet the standards of this chapter.

9. Tree Retention and Protection

a. A plan of all existing significant trees shall be provided with applications for development subject to these standards.

b. Projects shall be designed to avoid the removal of significant trees where feasible without diminishing allowed uses, densities and intensities or the function of the proposed development. Safety, Solar access for active and passive solar design, local food production will also be considered as part of review of the tree retention plan.

c. Projects may be required to preserve significant trees with a native growth
protection area when the tree preservation is determined to be commensurate
with the project’s impact or voluntarily by the applicant.

d. No significant tree may be removed from any property without first obtaining
authorization from the city planning official following consultation with the city
forester. Any significant tree removed shall be replaced with an appropriate
species. Consultation with neighbors is encouraged to avoid conflicts with views
and infrastructure. A significant tree may be authorized for removal based on the
following criteria:
   i. The tree has been deemed hazardous by a certified arborist
   ii. The tree is dead or dying. Confirmation from a certified arborist may be
      required.
   iii. The property owner desires solar access for passive or active solar
        energy or for agricultural purposes upon a showing that removal fo the
        tree will significantly increase solar access.
   iv. View Preservation or retention – The city may authorize the removal of
       significant trees(s) for view preservation and retention upon determining
       that it is not feasible to retain the tree and preserve or retain the view
       through pruning. Any tree removed must be replaced with two additional
       trees in suitable locations that will not block views from the subject
       property in the future unless determined by the planning official to not be
       reasonable or feasible. Any tree removed for view preservation or
       retention shal
   v. Approved site development including structures, driveways, parking areas
      and walkways.

c.e. Trees within critical areas or buffers may not be authorized for removal unless
      the tree(s) are deemed to be dead, dying and hazardous as approved by the
      planning official. Trees removed from critical areas must be replaced with an
      appropriate native species.

10. Enforcement. In addition to the enforcement provisions of LMC 1.14 the City may
    require the replacement of any significant tree at a ratio of up to 4:1 if removed in
    violation of this section.

10.11. Modifications. The planning official may approve modifications to the standards
       contained in this section to achieve the overall purpose and intent of this section.
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      Taxus brevifolia
   cedar    42” dbh      Thuja plicata
   all other 36” dbh     
   [ such as douglas fir, western hemlock, western white pine, Sitka spruce ]

.. Native Broadleaved
   maple    30” dbh      Acer macrophyllum
   cottonwood 42” dbh    Populus balsamifera trichocarpa
   madrone   24” dbh      Arbutus menziesii

.. 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.


   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**

<table>
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<tr>
<th>Types of Landmark / Heritage Tree Ordinance Violations</th>
<th>Allowable Fines per Violation</th>
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| 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.
Chapter 1.14
CIVIL INFRACTIONS

Sections:

1.14.010 Applicability of chapter.
1.14.040 Voluntary compliance.
1.14.050 Notice of civil violation.
1.14.060 Abatement by the city.
1.14.070 Appeal process.
1.14.080 Additional enforcement procedures.
1.14.090 Conflicts.
1.14.100 Meaning of terms.

1.14.010 Applicability of chapter.

The provisions of this chapter shall apply to enforcement of the Langley Municipal Code, Titles 5, 6, 9, 12, 13, 15, 16, 17, and 18. (Ord. 832, 2003)


The purpose of this chapter is to establish an effective and efficient system to enforce the regulations of the city of Langley, to provide an opportunity to correct alleged violations of such regulations, to establish monetary penalties for violations as authorized by RCW 35A.11.020, to provide for an appeal hearing on an alleged violation, and to establish a standard procedure to be used by the city to abate unsafe or unlawful conditions. (Ord. 832, 2003)


As used in this chapter, unless a different meaning is plainly required:

"Abate" means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a civil violation by such means, in such a manner and to such an extent as the applicable official determines is necessary in the interest of the general health, safety and welfare of the community.

"Act" means doing or performing something.

"Applicable official" means the mayor or department head or any designated alternate empowered by ordinance or by the mayor to enforce a city of Langley ordinance or regulation.

"Civil violation" means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs is a separate violation.

"Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts authorized by a city of Langley regulation.

"Emergency" means a situation where the applicable official determines that immediate action is required to prevent or eliminate threat to the health or safety of persons or property.
“Omission” means the failure to act.

“Person” means any individual, firm, association, partnership, corporation or any entity, public or private.

“Person responsible for the violation” means any person who is required by the applicable regulation to comply therewith, or who commits any act or omission that is a civil violation, or causes or permits a civil violation to occur or remain upon property in the city, and includes but is not limited to the owner(s), lessor(s), tenant(s), contractor performing work on behalf of the owner(s), or other person(s) entitled to control, use and/or occupancy of the property where a civil violation may occur.

“Regulation” means and includes the following as now or hereafter amended:

1. Langley Municipal Code Title 5 (Taxes, Licenses and Regulations), Title 6 (Animals), Title 8 (Health and Safety), Title 12 (Streets, Sidewalks and Public Places), Title 13 (Public Services), Title 15 (Buildings and Construction), Title 16 (Environmental Policy), Title 17 (Subdivisions), and Title 18 (Zoning);

2. All standards, regulations and procedures adopted pursuant to the above;

3. The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city.

“Repeat violation” means a violation of the same regulation in any location by the same person within two years.

“Violation” means an act or omission contrary to a city of Langley regulation, including an act or omission at the same or different location by the same person, and including a condition resulting from such act or omission. (Ord. 832, 2003)

1.14.040 Voluntary compliance.

A. Applicability. This section applies whenever the applicable official determines that a violation of a regulation has occurred or is occurring.

B. General. The applicable official shall pursue a reasonable attempt to secure voluntary correction by contacting the person responsible for the violation where possible, explaining the violation and requesting correction.

C. Issuance of Voluntary Compliance Agreement. A voluntary compliance agreement may be entered into between the person responsible for the violation and the city, acting through the applicable official.

1. Content. The voluntary compliance agreement is a contract between the city and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary compliance agreement shall include the following:

   a. The name and address of the person responsible for the violation;

   b. The street address or a description sufficient for identification of the building, structure, premises, or land upon which or within which the violation has occurred or is occurring;
c. A description of the violation and a reference to the provision(s) of the city of Langley ordinance or regulation that has been violated;

d. The necessary corrective action to be taken, and a date and time by which the corrective action must be completed; and

e. An agreement by the person responsible for the violation that the city of Langley may abate the violation and recover its costs and expenses and a monetary penalty pursuant to this chapter from the person responsible for the violation if all terms of the voluntary compliance agreement are not met.

2. Extension/Modification. An extension of the time limit for correction or a modification of the required corrective action may be granted by the applicable official if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation but unforeseen circumstances render correction under the original conditions unattainable.

3. Abatement by the City. The city may abate the violation in accordance with Section 1.14.060 if the terms of the voluntary compliance agreement are not met.

4. Collection of Costs. If the terms of the voluntary compliance agreement are not met, the person responsible for the violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter in accordance with Section 1.14.050(E) plus any costs and expenses of abatement, as set forth in Section 1.14.060(C). (Ord. 832, 2003)

1.14.050 Notice of civil violation.

A. Issuance.

1. When the applicable official determines that a violation has occurred or is occurring, and is unable to secure voluntary compliance/correction pursuant to Section 1.14.040, the applicable official may issue a notice of civil violation to the person responsible for the violation.

2. The applicable official may issue a notice of civil violation without having attempted to secure voluntary correction as provided in Section 1.14.040 under the following circumstances:

   a. When an emergency exists; or
   
   b. When a repeat violation occurs; or
   
   c. When the violation creates a situation or condition which cannot be corrected; or
   
   d. When the person knows or reasonably should have known that the action is in violation of a city of Langley regulation.

B. Content. The notice of civil violation shall include the following information:

1. The name and address of the person responsible for the violation; and

2. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

3. A description of the violation and a reference to the provision(s) of the city of Langley regulation
that has been violated; and

4. The required corrective action and a date and time by which the correction must be completed after which the city may abate the unlawful condition in accordance with Section 1.14.060; and

5. The opportunity to appeal to the Langley municipal court within 10 days from the date the notice of civil violation is issued; and

6. A statement that the costs and expenses of abatement incurred by the city pursuant to Section 1.14.060(D) and a monetary penalty in an amount per day for each violation as specified in subsection (E) of this section may be assessed against the person to whom the notice of civil violation is directed.

C. Service of Notice. The applicable official shall serve a copy of the notice of civil violation upon the person to whom it is directed, either personally or by mailing, by both regular mail and certified mail, at their last known address. If the person to whom it is directed cannot, after due diligence, be personally served within Island County and if an address for mailed service cannot, after due diligence, be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting, the facts showing that due diligence was used in attempting to serve the person personally or by mail.

D. Extension. No extension of the time specified in the notice of civil violation for correction of the violation may be granted, except by order of the issuing official.

E. Monetary Penalty. The maximum monetary penalty for each separate violation per day or portion thereof shall be as follows:

1. First day of each violation (the first day is the date of service): $100.00;

2. Second day of each violation: $200.00;

3. Third day of each violation: $300.00;

4. Fourth day of each violation: $400.00;

5. Each additional day of each violation beyond four days: $500.00 per day.

F. Continued Duty to Correct. Payment of the monetary penalty does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

G. Collection of Monetary Penalty.

1. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the city of Langley within 10 calendar days from the date of receipt of the notice of civil violation.

2. The clerk-treasurer or his/her designee is authorized to take appropriate action to collect the monetary penalty, including but not limited to sending the bill to a collection agency.
3. In addition to the remedies provided above, the monetary penalty shall constitute a lien upon the real property on which the violation has occurred or is occurring. This lien may be foreclosed as provided by law for lien for labor and materials (Chapter 60.04 RCW). (Ord. 832, 2003)

1.14.060 Abatement by the city.

A. The city may abate the condition that continues to be a civil violation when:

1. The terms of voluntary compliance agreement pursuant to Section 1.14.040 have not been met; or

2. A notice of civil violation has been issued pursuant to Section 1.14.050 and the required correction has not been completed by the date specified; or

3. The condition is subject to summary abatement as provided for in subsection (B) of this section.

B. Summary Abatement. Whenever any violation of a regulation causes a condition the continued existence of which constitutes an immediate and emergent threat to the public health, safety or welfare or to the environment, the city may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

C. Authorized Action by the City. Using any lawful means, the city may enter upon the subject property and may remove or correct the condition that is subject to abatement. The city may seek such judicial process as it deems necessary to effect the removal or correction of such condition.

D. Recovery of Costs and Expenses. The cost, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or occupancy of the property and shall become due and payable to the city of Langley within 10 calendar days of the bill being issued. The term “incidental expense” shall include, but not be limited to, personnel costs, both direct and indirect, attorney's fees; costs incurred in documenting the violation, hauling, storage and disposal expenses; and actual expenses and costs of the city in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work, and the costs of any required printing and mailing.

E. Interference. No person shall obstruct, impede, or interfere with the city or its agents, or with any person who owns or holds any interest or estate in any property, in performing any acts necessary to correct the violation. (Ord. 832, 2003)

1.14.070 Appeal process.

A. Commencing an Appeal. A person to whom a notice of civil violation is issued may appeal to the Langley municipal court by filing a notice of appeal and a request for a hearing with the court clerk within 10 calendar days after the notice is issued.

B. The Hearing. The Langley municipal court shall conduct a hearing on the civil violation pursuant to the rules of procedure set forth in the Rules for Courts of Limited Jurisdiction (ARLJ). The applicable official and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The city shall have the burden of proof to demonstrate
by a preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable. The determination of the applicable official as to the need for the required corrective action shall be accorded substantial weight in determining the reasonableness of the required corrective action.

C. Decision.

1. The Langley municipal court shall determine whether the city has established by a preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable and shall affirm, vacate, or modify the city’s decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

2. The court shall issue an order to the person responsible for the violation that contains the following information:

   a. The decision regarding the alleged violation including findings of fact and conclusions assessed thereon in support of the decision;

   b. The required corrective action;

   c. The date and time by which the correction must be completed;

   d. The monetary penalties assessed based on the criteria in Section 1.14.050; and

   e. The date and time after which the city may proceed with abatement of the unlawful condition if the required correction is not completed.

3. The court shall assess monetary penalties in accordance with the monetary penalty schedule in Section 1.14.050.

   a. The court may:

      (1) Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or

      (2) Assess monetary penalties beginning on the correction date set by the applicable official or an alternate correction date set by the court and thereafter; or

      (3) Assess no monetary penalty; or

      (4) Assess less than the maximum monetary penalty.

   b. When determining the monetary penalty assessment, the court shall consider the following factors:

      (1) Whether the person responded to staff attempts to contact the person and cooperate with efforts to correct the violation;

      (2) Whether the person failed to appear at the hearing;

      (3) Whether the violation was a repeat violation;
(4) Whether the person showed due diligence and/or substantial progress in correcting the violation;

(5) Whether a genuine code interpretation issue exists; and

(6) Any other relevant factors.

c. The court may double the monetary penalty schedule if the violation is a repeat violation. In determining the amount of the monetary penalty for repeat violations, the court shall consider the factors set forth above.

4. Notice of Decision. The court shall issue the order at the hearing or mail, by first class and certified mail, a copy of the decision to the appellant and the applicable official within 10 working days of the hearing.

D. Failure to Appear. If the person to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the court shall enter an order finding that the violation occurred and assess the appropriate monetary penalty. The city will carry out the court’s order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.

E. Appeal to Superior Court. An appeal of the municipal court’s decision must be filed with the Island County superior court within 20 calendar days from the date of the court’s delivery of the decision to the person to whom the notice of civil violation was directed, or is thereafter barred. (Ord. 832, 2003)

1.14.080 Additional enforcement procedures.

The provisions of this chapter are not exclusive, and may be used in addition to other enforcement provisions authorized by the Langley Municipal Code, except as precluded by law. (Ord. 832, 2003)

1.14.090 Conflicts.

In the event of a conflict between this chapter and any other provision of the Langley Municipal Code or city ordinances providing for a civil penalty, this chapter shall control. The provisions of the Penal Code, Title 10 and Title 10A, do not apply to this title. (Ord. 832, 2003)

1.14.100 Meaning of terms.

For the purposes of this code, whenever the terms “civil infraction” and “civil penalty” are used in any code, ordinance or regulation of the city, those terms shall be deemed to have the same meaning as the terms “civil violation” and “monetary penalty,” respectively, as used herein. (Ord. 832, 2003)