

Subject: Ordinance No. 1570 – Regarding street trees and adding a new chapter 14.11 to the Ruston Municipal Code to establish regulations and permitting procedures under which residents may be permitted to alter, maintain, or remove street trees.

Proposed Council Action:

This is on for First Reading. Discuss Ordinance and give direction to staff. Unless directed otherwise, this will return to Council for Second Reading and Action on September 19, 2023.

Dept. Origin: Mayor’s Office
Prepared by: Jennifer Robertson
 City Attorney’s Office
For Agenda of: September 5, 2023
Exhibits: Ordinance No. 1570

	Initial & Date
Concurred by Mayor:	_____
Approved/form by City Atty:	<u>JSR/8-7-23</u>
Approved by _____ Director:	_____
Approved by Department Head:	_____

INFORMATION / BACKGROUND

The City of Ruston has a number of trees along its roads and rights-of-way, some of which adjoin private property of Ruston residents. From time to time, residents have expressed a wish to alter, maintain, or remove trees in City rights-of-way which adjoin residential property for the purpose of improving views or reducing the trees’ impact on their property. Instead of having informal requests, the City may create a permit process which will allow private individuals to maintain aesthetic appeal and standards of street trees within the City of Ruston under specific conditions if such action is consistent with the public interest. The attached Ordinance creates a new code, Chapter 14.11, to regulate the alteration, maintenance, and removal of street trees, requiring residents to apply for and receive a permit if they wish to alter, maintain, or remove a street tree. If granted, this will allow residents to bear the costs of alteration, maintenance, removal, and replacement of street trees, resulting in cost savings to the City.

The key components of this ordinance include the following:

1. Issuance of a permit is solely in the City’s discretion as it involves alteration of the City’s property;
2. Only Ruston residents are eligible to apply for this permit;
3. If a tree is altered or replaced, it must be done or overseen by a certified arborist;
4. The tree plan must be prepared by a certified arborist;
5. Any trimming, alteration or replacement must be performed on all street trees on the block to maintain a uniform appearance; and
6. The applicant must have insurance, bonding, and indemnify the city, including replacing any replacement trees that die within 24 months.

FISCAL IMPACTS

The City will need to add this permit to its Master Fee Resolution to ensure full cost recovery for the City. In addition, to the extent this results in private individuals performing maintenance work on City trees, it may save the City these maintenance costs.

RECOMMENDATION / MOTION

This is on for First Reading. Discuss Ordinance and give direction to staff. Unless directed otherwise, this will return to Council for Second Reading and Action on September 19, 2023.

ORDINANCE NO. 1570

AN ORDINANCE OF THE CITY OF RUSTON, WASHINGTON, REGARDING STREET TREES; ADDING A NEW CHAPTER 14.11 TO THE RUSTON MUNICIPAL CODE TO ESTABLISH REGULATIONS AND PERMITTING PROCEDURES UNDER WHICH RESIDENTS MAY BE PERMITTED TO ALTER, MAINTAIN, OR REMOVE STREET TREES SUBJECT TO CERTAIN CONDITIONS; PROVIDING FOR SEVERABILITY AND CORRECTIONS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City has a number of trees which are located within City rights-of-way or on City owned property; and

WHEREAS, these trees contribute to the aesthetic appeal of the City of Ruston; and

WHEREAS, Ruston is a view-community whereby from many locations both on public and private property within the City a person can enjoy views of Commencement Bay, Mount Rainier, and territorial views; and

WHEREAS, the existence of these views result in greater beauty, make Ruston a desirable place to live, and increase property values which results in higher revenues to fund City services; and

WHEREAS, there are times when the City's trees may interfere with a property owner's view or create other issues for the nearby property owner; and

WHEREAS, property owners sometimes desire to alter or maintain trees located adjacent to their property which are on City rights of way but may not do so without the City's permission; and

WHEREAS, the City has standards for street trees and desires to maintain the aesthetic appeal of the City and its streets; and

WHEREAS, there are times when it is in the City’s interest to allow private citizens who are Ruston residents to lawfully alter or maintain trees located on public rights of way as this may result in improved health of the tree, improved management of the tree, and results in cost savings to the City; and

WHEREAS, on September 5, 2023, the City Council held the first reading of this Ordinance; and

WHEREAS, on September 19, 2023, the City Council adopted this Ordinance at Second Reading during its regular meeting; **NOW, THEREFORE**,

THE CITY COUNCIL OF THE CITY OF RUSTON HEREBY ORDAINS AS FOLLOWS:

Section 1. A new Chapter 14.11 is hereby added to the Ruston Municipal Code to read as follows:

CHAPTER 14.11 RUSTON STREET TREE MODIFICATION

- 14.11.010 Purpose; limitation.**
- 14.11.020 Definitions**
- 14.11.030 Permit – Required**
- 14.11.040 Permit - Application**
- 14.11.050 Application Standards**
- 14.11.060 Permit – Criteria for approval**
- 14.11.070 Permit – Conditions for approval**
- 14.11.080 Expiration of permit; renewal**
- 14.11.090 Appeal**
- 14.11.100 Emergency**
- 14.11.110 Liability of City**
- 14.11.120 Enforcement; Penalty**

14.11.010 Purpose; limitation.

The purpose of this chapter is to establish the standards and process under which the City will allow for street tree alteration, maintenance, removal, and replacement by property owners in the City of Ruston. There is nothing in this chapter that requires the City to issue permits for the alteration, maintenance, removal, and replacement of trees located on City property. The issuance of any

permits under this chapter shall be solely within the City's discretion based on the public interest of the City and the health and aesthetics of the tree(s) at issue.

14.11.020 Definitions

For purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein:

“Alteration” means changing the size, shape, and appearance of a street tree through trimming or other means.

“Applicant” means any person making a written application to the Mayor or their designee for a tree alteration, maintenance, or removal permit hereunder. The term “applicant” also applies to a person who has received a permit from the City in accordance with this chapter. Only property owners within Ruston may be applicants under this chapter.

“City property” means any property owned by the City of Ruston, including right of way property, utilities property, parks property, or other real property.

“Emergency” means a situation that places life or property at risk of imminent harm.

“Maintenance” means trimming a street tree to preserve a consistent size, shape, and appearance.

“Removal” means destruction of a street tree.

“Replacement” means planting a new street tree in the general location where another tree was removed.

“Right-of-way” means the area of land dedicated to the City, by whatever means, for transportation purposes whether or not improved.

“Street” means the improved portion of the right-of-way including, but not limited to, motor vehicle travel lanes, sidewalks, bike lanes, gutter, storm drainage facilities, traffic control facilities, turnouts or structures in, upon, over or under such street for exclusive or nonexclusive use as permitted by the City, including landscaping, visual and sound buffers between such street and adjacent properties.

“Street tree” means a tree within a right-of-way or immediately adjacent to a street.

14.11.030 Permit – Required

It is unlawful for any person to alter, maintain, or remove a street tree, unless such person shall first have obtained a tree alteration, maintenance, or removal permit from the mayor or designee. Any such alteration, maintenance, or removal of a street tree shall be only to extent authorized by such permit.

14.11.040 Permit - Application

A complete application for a tree alteration, maintenance, or removal permit shall consist of the following:

- (a) Application fee.
- (b) A complete tree alteration, maintenance, or removal permit application form.
- (c) Name and address of the applicant.
- (d) Nature, location, and purpose of the alteration, maintenance, or removal.
- (e) Date of commencement of the alteration, maintenance, or removal.
- (f) Plans prepared by a certified arborist identifying the trees sought for alteration, maintenance, or removal, the exact location of such trees, identifying all other City trees on that block by type, size, and location, and extent of the proposed alteration, maintenance, or removal, except that plans shall not be required when alterations, maintenance, and removal are made by the City. If removal is sought, the plans shall include the proposed replacement trees or vegetation by type, size, and location.
- (g) If the proposed alteration, maintenance, or removal require or could require the applicant to use or access any private property, the applicant shall provide written authorization from the owner of the property to demonstrate that they have the authority to enter onto or use such property.
- (h) All application plans and other materials shall be consistent with the “Application Standards” contained in RMC 14.11.050 below and with the applicable standards contained in Chapter 12.09 RMC.
- (i) Such other information as may be required by the mayor or designee.

14.11.050 Application standards.

(1) In applying to alter or maintain trees, the applicant must show that tree alteration or maintenance:

- (a) Will be done by an arborist at the applicant's expense;
 - (b) The alteration or maintenance will be within the best practices in maintaining the shape and beauty of the tree and confirm that no trees will be topped; and
 - (c) Will ensure all trees on both sides of the one-block area in which the alteration or maintenance is conducted will be altered or maintained in the same manner to ensure consistency of street trees on that block.
- (2) In order to remove a tree, the applicant must show:
- (a) The tree to be removed is the wrong species for maintaining the size and beauty of street trees in the area, and the applicant must have applied to replace the street trees on both sides of the block with a different species of the appropriate size for consistency. Information about the proposed replacement trees shall be provided.
 - (b) Replacement of existing street trees will comply with the City's public works standards for street trees and shall be a species and size approved by the City.
- (3) Whether altering, maintaining, or removing a street tree, the applicant must show proof of insurance meeting the City's requirements, post a bond or bonds, and indemnify the City for any damages occurring during or as a result of the project.
- (4) Applicants shall replace, at the applicant's sole expense, any tree which dies in the 24 months following their alteration or maintenance activities, or which die during the 24 months subsequent to the removal and replacement.

14.11.060 Permit – Criteria for approval.

Tree alteration, maintenance, or removal permits are a permit for the use of a public facility and as such are not subject to the project permit processing requirements in RMC Title 19. The mayor or their designee's decision granting, denying, or conditioning a tree alteration, maintenance, or removal permit shall be in the sole discretion of the mayor or designee and based upon the following considerations:

- (a) The financial and technical ability of the applicant, including the ability to comply with City laws, rules, and standards regarding tree alteration, maintenance, or removal.

- (b) The damage or disruption, if any, of public or private facilities, improvement, service, travel, or landscaping if the tree alteration, maintenance, or removal permit is granted.
- (c) The public interest in minimizing the cost of the disruption of tree alteration, maintenance, or removal within the right-of-way.
- (d) The effect, if any, on public health, safety, welfare, and aesthetics if the tree alteration, maintenance, or removal permit is granted.
- (e) Whether the work proposed complies with the standards in Chapter 12.09 RMC and any other applicable codes or requirements.
- (f) Such other factors as may demonstrate that the grant of the tree alteration, maintenance, or removal permit will serve the public interest.

14.11.070 Permit – Conditions for approval

Any tree alteration, maintenance, or removal permit issued by the mayor or designee shall contain at least the following conditions to which the applicant shall comply:

- (a) The applicant shall be required to indemnify and hold the City harmless from any and all claims for bodily injury or property damage that may arise out of or in connection with the applicant's permitted use. The applicant shall be required to sign an indemnification agreement prepared by the City Attorney as a condition of receiving the permit.
- (b) Prior to beginning any work, the applicant shall provide the City with proof of insurance that will remain in effect during all periods of use for the tree alteration, maintenance, or removal permit. Such insurance will provide for public liability and property damage and shall be in a form and type that is acceptable to the City. The limits of said insurance shall be established by the mayor or designee. A certificate evidencing the existence of said insurance or, upon written request of the mayor or designee, a duplicate copy of the policy shall be provided to the City as evidence of the existence of the insurance protection prior to the applicant beginning any work. Said insurance shall not be cancelable or reduced without prior written notice to the City, not less than 30 days in advance of the cancellation or alteration. Said insurance shall name the City as a named or additional insured and shall be primary as to any other insurance available to the City.
- (c) The applicant shall provide the City with a performance bond before commencing work which shall be in amount equal to 150-percent of the City engineer's estimate to cover the full costs of the project completion.

- (d) If the permit is specifically for tree removal, the applicant shall provide to the City a maintenance bond sufficient to replace the tree with another tree of a species which complies with City street tree standards within 24 months. Such bond shall be provided in a form acceptable to the City Attorney. The amount of the bond shall be established by the mayor or designee.
- (e) The applicant shall take appropriate measures to assure that during the performance of the tree alteration, maintenance, or removal work normal traffic flow conditions shall be maintained at all times so as to cause as little inconvenience as possible to the general public.
- (f) Any closing of streets shall only occur consistent with the provisions of Chapter 47.48 RCW, or as hereafter amended. The costs for such notice and closure shall be entirely borne by the applicant.
- (g) The applicant will comply with the underground utility damage prevention act contained in Chapter 19.122 RCW, or as hereafter amended, and shall take all reasonable and necessary precautions to avoid interfering with or damaging underground facilities.
- (h) The applicant shall take reasonable precautions to place and maintain near to the tree alteration, maintenance, or removal site any barriers, flags, or warning lights or any other equipment as may be prescribed by the mayor or designee. When dictated by field conditions, warning signs shall be placed far enough in advance of the construction operation to alert traffic properly within a street.
- (i) The tree alteration, maintenance, or removal work shall be performed and conducted in such manner as to not interfere with access to fire hydrants, fire stations, and fire escapes, and all other vital equipment as designated by the mayor or designee.
- (j) All work must be performed or overseen by a certified arborist and be done to ANSI A300 standards (or similar standards). The certified arborist must remain on site during the work.
- (k) For any full tree removals, the removal shall include complete stump removal by stump grinding with no portion of the tree remaining closer than 18 inches below the grade of the right of way or public property.
- (l) All material removed from trees shall be disposed at the end of each work day during the tree alteration, maintenance, or removal process.
- (m) As a condition of issuance, the applicant shall consent that in the event the City is required to take enforcement actions to enforce the terms and conditions of the permit, that the City shall be entitled to recover its costs, disbursements, and expenses including its attorney's fees, which sums may be filed as a lien against applicant's property and enforceable in the manner provided for the enforcement of mortgages on real property.

14.11.080 Expiration of permit; renewal

- (a) Duration of Permit. Every permit issued under this chapter shall be valid only for a period of 90 days from the date of issuance, unless a longer period is otherwise permitted as a condition of the application. Every permit issued under this chapter shall become invalid unless the work authorized by such permit is commenced within 30 days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 30 days after the time the work is commenced. Having required inspections performed and approved within every 30 days is evidence that work has commenced and is continuing. Permits that do not receive an inspection within 30 days of permit issuance, or within 30 days since the previous approved inspection, shall automatically expire and become invalid.
- (b) Extension of Permit. The mayor or designee is authorized to grant, in writing, one or more extensions of time, for periods not more than 90 days each, based on good and satisfactory reasons. The extension shall be requested in writing prior to permit expiration and include the applicant's explanation of the need for the permit extension. The mayor or designee may only grant an extension if good cause is shown and such extension shall be conditioned upon the applicant's continuing compliance with the conditions of approval, including, but not limited to, insurance, indemnification and performance bond.

14.11.090 Appeal

Any decision of the mayor or designee, with respect to the issuance, conditions or denial of a tree alteration, maintenance, or removal permit, may be appealed to the City Council by filing an appeal such decision with the City Administrator/Clerk within ten days of the date of issuance of the decision being appealed. If an appeal from any such decision is taken, the appellant shall be required to pay a nonrefundable appeal fee in an amount set by the City Council. The appeal shall include a complete statement of the reason or reasons that form the basis of the appeal. The decision of the City Council shall be final, binding, and conclusive, the decision being solely within the discretion of the legislative body.

14.11.100 Emergency

In the case of an emergency, obtaining a permit prior to performance of work may be excused when the tree alteration or removal is necessary for the preservation of life and property; provided that the person making such alteration or removal shall apply for a permit for such work from the City on the next business day.

14.11.110 Liability of City

This chapter shall not be construed as imposing upon the City or any official or employee any liability or responsibility for damages to any person injured by the performance of any tree-related work for which a permit is issued hereunder, nor shall the City or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit, or the approval of any tree-related work.

14.11.120 Enforcement; Penalty

The terms of this chapter and any permit issued hereunder shall be enforced consistent with the enforcement procedures set forth in Chapter 12.40 RMC. Violations of the terms of this chapter shall subject the person(s) in violation to the penalties set forth in RMC 12.40.080. In addition, any damage, trimming, removal, alteration, or modification of a tree without a permit issued by the City is a violation of RCW 64.12.030 which entitles the City to treble damages. The City's enforcement of this chapter under Chapter 12.40 RMC does not waive the City's right to file an action under RCW 64.12.030.

Section 2. Severability. If any section, sentence, clause, or phrase of this Ordinance should be held to be 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 3. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 4. Corrections. Upon the approval of the city attorney, the city clerk, and/or the code publisher is authorized to make any necessary technical corrections to this ordinance, including but not limited to the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

Section 5. Implementation. The Mayor is authorized to implement this Ordinance.

Section 6. Effective Date. This Ordinance shall be effective five days after publication as provided by law.

ADOPTED by the City Council of the City of Ruston and attested by the City Clerk in authentication of such passage on this ___ day of September, 2023.

APPROVED by the Mayor this ___ day of September, 2023.

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

APPROVED AS TO FORM:

Jennifer S. Robertson, City Attorney

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

ORDINANCE NO: 1570