

## **COMMUNITY DEVELOPMENT STANDARDS**

### **CHAPTER 68**

#### **PRESERVATION OF TREES AND VEGETATION**

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**68.010. TITLE AND PURPOSE.** The purpose of this chapter is to provide for the protection of heritage trees, significant trees, trees in riparian corridors and native vegetation in riparian corridors, as natural resources for the City, and to increase tree canopy over time by requiring tree retention and planting of trees in residential areas of the City. (Ord. No.13-2000; Ord. No. 36-05)

**68.020. DEFINITIONS.** As used in this chapter, except where the context otherwise clearly requires: (a) Arborist means a person who has met the criteria for certification from the International Society of Arboriculture, American Society of Consulting Arborists, or similar professional organization, and maintains accreditation.

(b) Caliper means the diameter of a tree trunk measured at six inches above ground level for trunks up to and including four inch caliper size and at twelve inches above ground level for larger sizes, when measuring nursery stock.

(c) dbh means diameter at breast height. Diameter at breast height is a tree's diameter measured in inches at a height of four and one-half feet above grade. When a fork in the trunk occurs at or above four and one-half feet, the dbh is the smallest diameter at four and one-half feet or below. When the fork occurs below four and one-half feet, or the tree splits into multiple stems at ground level, each stem is considered a separate tree trunk and is measured accordingly.

(d) Development proposal means any land division, mobile home park permit, conditional use, variance, greenway permit or planned unit development.

(e) Grove means a group of trees providing at least one-half acre of canopy.

(f) Hazardous tree means a tree that is cracked, split, leaning, has a dead top or a large dead limb high in the crown, or is otherwise physically damaged, to the degree that it is likely to fall and injure persons or property. Hazardous trees include diseased trees, meaning those trees with a disease of a nature that, without reasonable treatment or pruning, is likely to spread to adjacent trees and cause such adjacent trees to become diseased or hazardous trees.

(g) Heritage tree means a tree designated as a heritage tree pursuant to SRC 86.010.

(h) Invasive non-native vegetation means plant species that are not indigenous to Oregon and which, due to aggressive growth patterns and lack of natural enemies spread rapidly into native plant communities, and which are designated as invasive, non-native vegetation in the tree and vegetation technical manual.

(i) Native vegetation means plant species which are indigenous to Oregon and appropriate to local site conditions such as hydrology, soils, light availability, and slope aspect.

(j) Nuisance vegetation means native and non-native species with a tendency to dominate plant communities or which are considered harmful to humans, and which are designated as nuisance vegetation in the tree and vegetation technical manual.

(k) Percent slope means the ratio of vertical distance to horizontal distance; e.g., a twenty-five percent slope is a vertical rise of twenty-five feet over a horizontal distance of one hundred feet.

(l) Person means an individual, corporation, local or state government, association, firm, partnership, organization, limited liability company, joint stock company, or other entity in law or fact.

(m) Planning administrator means the Urban Planning Administrator of the Department of Community Development or the Planning Administrator's designee.

(n) Preserved means that the tree appears to be healthy and shows no signs of significant damage due to construction.

(o) Restoration means the return of a stream, wetland, or riparian corridor to a state consistent with habitat that is needed to support a healthy eco-system.

(p) Riparian corridor means the area adjacent to a waterway, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem. The riparian corridor boundary is measured fifty feet horizontally from the top of bank on each side of a waterway with less than one thousand cubic feet per second average annual stream flow, and seventy five feet horizontally from the top of bank on each side of a waterway with one thousand or more cubic feet per second average annual stream flow (Willamette River).

(q) Significant tree means rare, threatened or endangered trees of any size as defined or designated under state or federal law and included in the tree and vegetation technical manual and Oregon white oaks (*Quercus garryana*) with a dbh of twenty-four inches or greater.

(r) Suitable for preservation means the health of the tree is such that it is likely to survive the process of development and construction in good condition and health.

(s) Top of bank means the elevation at which water overflows the natural banks and begins to inundate the upland.

(t) Tree means any living, woody plant, that grows to fifteen feet or more in height, typically with one main stem called a trunk, which is ten inches or more dbh, and possesses an upright arrangement of branches and leaves. Tree also means any tree planted under SRC 68.100, regardless of dbh. For the purposes of this chapter, in a riparian corridor, the definition of tree also includes a dead or dying tree that does not qualify as a hazardous tree.

(u) Tree and vegetation technical manual means that document adopted by the City Council which contains administrative regulations to implement the provisions of this chapter, including, but not limited to, lists of invasive non-native vegetation and nuisance vegetation, native vegetation which may be planted to fulfill the requirements of this Chapter, identification of waterways, and planting techniques.

(v) Tree removal means to cut down a tree or remove thirty percent or more of the crown, trunk, or root system of a tree; or to damage a tree so as to cause the tree to decline or die. "Removal" includes but is not limited to topping, damage inflicted upon a root system by application of toxic substances, operation of equipment and vehicles, storage of materials, change of natural grade due to unapproved excavation or filling, or unapproved alteration of natural physical conditions. "Removal" does not include normal trimming or pruning of trees.

(w) Waterway means any river, perennial stream, or creek within the city as designated by the Director of Public Works or the Director's designee.

(x) Water-dependent activity means an activity which can be carried out only on, in, or adjacent to a waterway because the activity requires access to the waterway for water-borne transportation, recreation, energy production, or source of water. (Ord. No. 13-2000; Ord No. 30-2000; Ord. No. 36-05)

**68.025.** [Repealed by Ord. No. 36-05]

**68.030. RELATIONSHIP TO OTHER REGULATIONS.** Where the provisions of this chapter are in conflict with other provisions of the Salem Revised Code, or state or federal

regulations or law, the provisions which are the more restrictive shall govern. (Ord. No. 13-2000; Ord. No. 36-05)

**68.040. HERITAGE TREES.** No person shall remove a heritage tree unless the tree has been determined to be a hazardous tree by a certified arborist and the City Council has rescinded the heritage tree designation. (Ord. No. 36-05)

**68.050. SIGNIFICANT TREES.** No person shall remove a significant tree, unless the removal is excepted under SRC 68.080, undertaken pursuant to permit issued under SRC 68.090, undertaken pursuant to a tree conservation plan approved under SRC 68.100, or permitted under the terms of by a variance granted under SRC 68.130. (Ord. 13-2000; Ord. 33-2001; Ord. No. 36-05)

**68.060. TREES AND VEGETATION IN RIPARIAN CORRIDORS.** No person shall remove a tree in a riparian corridor or native vegetation in a riparian corridor, unless the removal is excepted under SRC 68.080, undertaken pursuant to a permit issued under SRC 68.090, undertaken pursuant to a tree conservation plan approved under SRC 68.100, or permitted by a variance granted under SRC 68.130. Roots, trunks and branches of trees removed in riparian corridors shall remain within the riparian corridor, unless determined to be a potential hazard or impediment to stream flow by the Public Works Director or the Public Works Director's designee. (Ord. No. 13-2000; Ord. No. 33-2001; Ord. No. 36-05)

**68.065.** [Repealed by Ord. No. 36-05]

**68.070. TREES ON LOTS OR PARCELS 20,000 SQUARE FEET OR GREATER.** Unless undertaken pursuant to a permit issued under SRC 68.090, no person shall, prior to development and within a single calendar year, remove more than five trees, or more than fifteen percent of the trees, whichever is greater, on a lot or parcel that is twenty thousand square feet or greater, or on contiguous lots or parcels under the same ownership that are twenty thousand square feet or greater, and no more than fifty percent of the trees on such lot or parcel or contiguous lots or parcels may be removed prior to development within any five consecutive calendar years. This section shall not be construed to authorize the removal of heritage trees or significant trees; provided, however, that such trees may be included in the minimum number of trees which must be retained as part of a tree conservation plan, and shall not be construed to require the retention of trees, other than heritage trees, significant trees, and trees and vegetation in riparian corridors, beyond the date a building permit is issued if the proposed development is other than single family residential or duplex residential. (Ord. 13-2000; Ord. No. 36-05)

**68.080. EXCEPTIONS.** Significant trees, trees in riparian corridors, native vegetation in riparian corridors, and trees on lots or parcels twenty thousand square feet or greater or on contiguous lots or parcels under the same ownership that are twenty thousand square feet or greater, may be removed, if the removal is: (a) In a vision clearance area, as defined in SRC 130.280;

(b) Required by the city or a public utility for the installation or maintenance or repair of roads and other utilities, including water lines, sewer lines, gas lines, electric lines and telecommunications lines. This exception does not apply to new development or construction in a riparian corridor;

(c) Necessary for continued maintenance of existing landscaping. For the purposes of this exception, "existing landscaping" means an area within a riparian corridor which was adorned or improved through the planting of flowers and trees, contouring the land, and other similar activity prior to June 21, 2000;

(d) Necessary for the installation, maintenance or repair of public irrigation systems; stormwater detention areas; pumping stations; erosion control and soil stabilization features; and pollution reduction facilities. Maintenance includes the cleaning of existing drainage facilities and trash removal;

(e) Removal of invasive non-native or nuisance vegetation in riparian corridors;

(f) Necessary for public trail or public park development and maintenance;

(g) Necessary to conduct flood mitigation;

(h) Necessary to effect emergency actions which must be undertaken immediately or for which there is insufficient time for full compliance with this chapter when it is necessary to prevent an imminent threat to public health or safety, or prevent imminent danger to public or private property, or prevent an imminent threat of serious environmental degradation. Trees subject to emergency removal must present an immediate danger of collapse. For purposes of this subsection, "immediate danger of collapse" means that the tree is already leaning, with the surrounding soil heaving, and there is a significant likelihood that the tree will topple or otherwise fall and cause damage. The person undertaking emergency action shall notify the planning administrator within one working day following the commencement of the emergency activity. If the planning administrator determines that the action or part of the action taken is beyond the scope of allowed emergency action, enforcement action by the Department of Community Development may be taken;

(i) A commercial timber harvest conducted in accordance with the Oregon Forest Practices Act, ORS 527.610-527.992, on property enrolled in a forest property tax assessment program, and which is not being converted to a non-forestland use. Properties from which trees have been harvested under the Oregon Forest Practices Act may not be partitioned, subdivided, developed as a planned unit development, or developed for commercial uses for a period of five years following the completion of the timber harvest;

(j) Associated with mining operations conducted in accordance with an existing operating permit approved by the Oregon Department of Geology and Mineral Industries under Oregon Mining Claim law, ORS 517.750-517.955;

(k) Undertaken pursuant to a tree conservation plan approved under SRC 68.100; or

(l) Removal of Oregon white oaks (*Quercus garryana*) on undeveloped lots or parcels under twenty thousand square feet that are of record as of August 9, 2005. For the purposes of this section, undeveloped means that no single family dwelling unit or duplex dwelling unit has been constructed on the lot or parcel as of August 9, 2005.

(m) Removal of Oregon white oaks (*Quercus garryana*), where the removal is necessary in connection with construction of a commercial or industrial facility. (Ord No. 30-2000; Ord. No. 33-2001; Ord. No. 36-05)

#### **68.090. TREE AND VEGETATION REMOVAL PURSUANT TO PERMIT.**

(a) Permit Required. Trees and native vegetation protected under SRC 68.050, and SRC 68.060 may be removed after issuance of a tree removal permit by the planning administrator, if the tree is a hazardous tree, if the removal is part of an approved restoration activity, if the removal is necessary for the maintenance or replacement of structures existing on June 21, 2000, or if the

removal is necessary for a water-dependent activity. Trees protected under SRC 68.070 may be removed after the issuance of a tree removal permit, upon a showing that the removal does not exceed the preservation requirements under SRC 68.070.

(b) Application and Review. Applications for tree removal pursuant to this section shall be made on forms prescribed by the planning administrator, along with such application fees as the council shall establish by resolution. The application shall contain the following information:

(1) The address or legal description of the property; and

(2) A site plan of the subject property drawn to scale and showing the following: a north arrow, property lines, contour lines at two foot intervals, any structures on the property, sketches indicating trees and vegetation to be protected or removed, and locations and descriptions of staking or other protective devices, if any, to be installed. The site plan may contain a grid or clear delineation of phases that depict separate areas in which work is to be performed.

(c) Applications for Removal of Significant Trees, Trees in Riparian Corridors and Native Vegetation in Riparian Corridors. In addition to the information required by subsection (b) of this section, applications for removal of trees protected by SRC 68.050 and SRC 68.060 shall contain a statement establishing at least one of the following:

(1) Hazardous Trees. The applicant for removal of a hazardous tree must show that the condition or location of the tree presents a hazard or danger to persons or property; and that such hazard or danger cannot reasonably be alleviated by treatment or pruning, or the tree has a disease of a nature that even with reasonable treatment or pruning is likely to spread to adjacent trees and cause such trees to become hazardous trees.

(2) Maintenance or Replacement of Existing Structures. The applicant for tree removal necessary for repair, alteration or replacement of structures existing as of June 21, 2000 must demonstrate that the removal is reasonably necessary to effect the otherwise lawful repair, alteration or replacement of such structures; that the structure footprint is not enlarged; and that no additional riparian corridor area is disturbed beyond that essential to the undertaking.

(3) Water-dependent activities. The applicant for tree removal necessary for the development of a water-dependent activity shall demonstrate that the proposed activity is water-dependent, and that no additional riparian corridor area is disturbed beyond that essential to the development.

(4) Restoration. The applicant for tree removal connected with restoration activities must demonstrate that the proposed restoration is designed to improve the habitat, hydrology, or water quality function of the riparian corridor without reducing any of these functions; that short-term impacts of the activity will be minimized and effective erosion control measures will be implemented; and all necessary permits have been applied for or obtained.

(d) Applications for Restoration Activity in Riparian Corridors.

(1) In addition to the information required by subsection (b) of this section, applications for tree removal connected with restoration activity in a riparian corridor shall contain the following:

(A) Boundaries of the riparian corridor included on the site plan;

(B) A conceptual tree and vegetation planting or replanting plan;

(C) A statement that no trees or native vegetation will be removed unless the removal is justified for the long term benefit of the environment and is in keeping with acceptable riparian restoration guidance;

(D) A statement that replacement of all trees and native vegetation shall be made at an area replacement ratio of one-to-one, and that all replacement trees shall have a caliper of at least one and one-half inches, or of sizes and species authorized in the tree and vegetation technical manual;

- (E) A completed wetland delineation or determination if applicable;
- (F) A grading plan if grading is anticipated;
- (G) A verification from the Department of Public Works that erosion control measures will be initiated, if required; and
- (H) A monitoring and maintenance plan, if required by Oregon Division of State Lands or the United States Corps of Engineers.

(2) Waiver of Application. An applicant undertaking a restoration project in a riparian corridor affecting less than one-quarter acre (10,890 square feet) and that does not require an Oregon Division of State Lands or United States Corps of Engineers permit may request a waiver of the requirement to submit all or parts of information required by subsection (d)(1) of this section.

(3) Tree Removal in Riparian Corridors Subject to Map Error. An applicant claiming a map error shall show that, based upon the information available when the map showing the riparian corridor was adopted, a cartographic error or clear interpretational mistake caused the erroneous inclusion of the property in the corridor.

(4) Equivalent Permit. A permit issued by the Oregon Division of State Lands and/or the United States Corps of Engineers that contains all requirements set forth in subsection (d)(1) of this section shall be deemed an equivalent permit and accepted in lieu of any permit required under this section; provided, however, that the permittee provide a copy of all required monitoring reports to the city. (Ord No. 30-2000; Ord. No. 33-2001; Ord. No. 36-05)

**68.100. TREE CONSERVATION PLANS.** (a) Tree conservation plans shall be required in conjunction with any development proposal for the creation of lots or parcels to be used for the construction of single family dwelling units or duplex dwelling units if the development proposal will result in the removal of trees.

(b) Submittal Requirements. Tree conservation plans shall be filed with the planning administrator and shall be accompanied by such fee as the City Council adopts by resolution. The submittal shall include a site plan of the subject property showing the following: a north arrow, property lines, contour lines at two foot intervals, identification of any structures on the property, identification of slopes greater than twenty-five percent, identification of the type, size and location of all existing trees on the property and identification of those trees proposed for reservation and those designated for removal, utilities and other improvements, required yards, and locations and descriptions of protective devices to be used during construction, if any are to be installed. The site plan may contain a grid or clear delineation of phases that depict separate areas in which work is to be performed and identification of those trees proposed for preservation and those designated for removal.

(c) Submittal Requirements - Riparian Corridor. In addition to the requirements of subsection (b) of this section, where the property is the site of a riparian corridor, the following additional items shall be submitted with the application:

(1) A site plan addition indicating boundaries of the riparian corridor, along with a description of the vegetation within the riparian corridor.

(2) In addition to plantings required under SRC 68.120, a tree and vegetation planting or replanting plan indicating a replacement ratio of one-to-one and minimum tree caliper size of one and one-half inches. If the project does not have adequate space at or near the removal site, the applicant may plant the required material elsewhere within the riparian corridor on the project site.

(d) Approval Criteria. (1) Tree conservation plans shall designate for retention all heritage trees, all tree protected by SRC 68.050 and SRC 68.060 and at least twenty-five percent of all other existing trees on the property. Trees in riparian corridors, including hazardous trees, shall count towards the twenty-five percent threshold, provided that the hazardous trees are topped so that they no longer pose a hazard, appropriate measures are taken to insure that the tree does not become hazardous again, and parts cut out of hazardous trees are left on the site, unless the hazardous tree has a disease that is of a type that would be reasonably likely to spread to adjacent trees if left on site, in which case the parts shall be removed.

(2) When less than twenty-five percent of the trees on a property are proposed for retention, only those trees reasonably necessary to accommodate the development proposal shall be designated for removal. Heritage trees shall not be designated for removal, and significant trees and trees in riparian corridors shall not be designated for removal unless there are no reasonable design alternatives that would enable reservation of such trees.

(e) Approval, Appeal. (1) Approval of tree conservation plans pursuant to subsection (d)(1) of this section are deemed ministerial decisions.

(2) The planning administrator shall adopt written findings and conclusions supporting approval or denial of a tree conservation plan under subsection (d)(2) of this section, and shall serve by regular mail a copy of the decision on the applicant. The applicant may appeal the denial of a tree conservation plan by filing a written notice of appeal with the planning administrator, no later than thirty days after the date of the written decision. The notice of appeal shall include the name and mailing address of the appellant, and a reference by number or title to the decision which is being appealed. The appeal shall be heard by the Hearings Officer, whose decision shall be final.

(f) Effect of Approval. No tree designated for removal shall be removed until the tree conservation plan is approved.

(g) Tree Protection Measures During Construction. All trees designated for retention under the tree conservation plan shall be marked and protected during construction. Any heritage tree or significant tree shall require that at least seventy percent of a circular area beneath the tree measuring one foot in radius for every one inch of dbh be protected by an above ground silt fence or its equivalent, which protection measures shall continue until the issuance of a Notice of Final Completion for the single family dwelling unit or duplex dwelling unit. (Ord No. 13-2000; Ord No. 30-2000; Ord. No. 36-05)

**68.110. TREE CONSERVATION PLAN ADJUSTMENTS.** (a) The planning administrator may grant adjustments to a tree conservation plan to allow the removal of a tree designated for retention upon a showing by the owner or developer that there are special conditions that could not have been anticipated at the time the plan was submitted that create unreasonable hardships or practical difficulties which can be most effectively relieved by an adjustment to the plan.

(b) The planning administrator may attach any condition to the adjustment deemed necessary to fulfill the intent of the original tree conservation plan, including additional plantings, on or off site.

(c) The administrator shall issue a written decision granting or denying an adjustment, which shall be mailed or delivered to the applicant within three days of issuance.

(d) The applicant may appeal the denial of a tree conservation plan adjustment by filing a written notice of appeal with the planning administrator, no later than thirty days after the date of the written decision. The notice of appeal shall include the name and mailing address of the appellant, and a reference by number or title to the decision which is being appealed. The appeal shall be heard by the Director of Community Development, whose decision shall be final. (Ord. No. 36-05)

**68.120. TREE PLANTING REQUIREMENTS.** (a) In addition to any street trees required under SRC 132.210, all lots or parcels to be used for the construction of single family dwelling units or duplex dwelling units in development proposals for subdivisions, partitions and replats shall contain the number of trees indicated in Table 68-1 as a condition of the issuance of a Notice of Final Completion.

(b) In the event there are insufficient existing trees on a lot or parcel to meet the conditions set forth in Table 68-1, the deficiency must be made up by planting trees of at least one and one-half inch caliper. (Ord. No. 36-05)

Table 68-1

Lot Size	Required Trees
Up to and including 6,000 square feet	2
6,001 to 7,000 square feet	3
7,001 to 8,000 square feet	4
8,001 to 9,000 square feet	5
Above 9,000 square feet	6

(Ord. No. 36-05)

**68.130. VARIANCES.** Variances from the requirements of this chapter which are reasonably necessary to permit otherwise lawful development or activity may be granted by the planning administrator. Variance applications shall be made upon forms prescribed by the planning administrator and accompanied by such fee as the council by resolution shall provide.

(a) **Hardship Variance.** The applicant for a hardship variance must demonstrate that there are special conditions that apply to the property which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance and that the proposed variance is the minimum necessary to allow the otherwise lawful proposed development or activity. In granting a variance, the planning administrator may impose such conditions as are necessary to limit any adverse impacts that may result from granting relief. In addition, a variance to the requirements of SRC 68.060 shall be subject to the following conditions: those altered riparian corridor areas that can be reasonably restored, shall be restored, and in no case shall alterations either: (1) occupy more than fifty percent of the width of the riparian area measured from the upland edge of the corridor, or (2) result in less than fifteen feet of vegetated corridor on each side of the waterway.

(b) **Economical Use Variance.** The applicant for an economical use variance shall demonstrate that without the variance, the applicant would suffer a reduction in the fair market value of the applicant's property, or otherwise suffer an unconstitutional taking of the applicant's property;; that the proposed variance is the minimum necessary to prevent a reduction in the fair

market value of the applicant's property or otherwise avoid a taking of property; and that the proposed variance is consistent with all other applicable local, state and federal laws.

(c) The planning administrator shall adopt written findings and conclusions supporting the administrator's action, and shall serve by regular mail a copy of the decision on the applicant and each property owner in the notification area defined in SRC 111.150. Unless the council initiates review pursuant to SRC 114.210, or an appeal to the Hearings Officer is filed within fifteen calendar days from the date the decision is mailed, the planning administrator's decision shall be final. (Ord. No.13-2000; Ord No. 30-2000; Ord. No. 36-05)

**68.140. VIOLATIONS AND ENFORCEMENT.** (a) Stop Work Orders and Permit Revocation. (1) If the applicant's site plan contains a grid or phases that designate areas in which work is to be performed, only that grid area or phase in which any violation occurred shall be affected by any stop work order.

(2) The planning administrator may suspend work or revoke a permit upon a finding that:

- (A) The work is not authorized by a valid permit;
- (B) Inaccurate information was used to obtain the permit;
- (C) The permittee is not complying with the terms of the permit or approved plans; or
- (D) The work is a hazard to property or public safety; is adversely affecting or about to adversely affect adjacent property or rights-of-way, a drainage way, waterway, riparian corridors, significant wetlands or storm water facility; or is otherwise adversely affecting the public health, safety, or welfare.

(3) The planning administrator shall issue a written notice to the permittee specifying the nature of the violation or problem which must be remedied prior to resuming other work on the project.

(4) Persons violating this chapter, or a permit issued hereunder, shall be responsible for restoring damaged areas in conformance with a plan approved by the planning administrator which provides for repair of any environmental or property damage and restoration of the site. The plan shall result in conditions upon the site which, to the greatest extent practical, equal the conditions that would have existed had the violation not occurred, as verified by a qualified professional. Costs of restoration shall be not less than those determined equal to the monetary value of the regulated trees and/or native vegetation removed in violation of this Chapter, or permit issued hereunder, as set forth in an appraisal acceptable to the planning administrator, based upon the latest edition of "Guide for Plant Appraisals" (International Society of Arboriculture, Council of Tree & Landscape Appraisers).

(b) Civil Penalty. Any 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 first obtaining a permit, or who fails to comply with a stop work order issued pursuant to this Chapter shall also be subject to a civil penalty, not to exceed \$2,000 per violation. Each day that a permit violation continues, and each regulated tree and/or native vegetation that is unlawfully removed, shall constitute a separate violation.

(c) Civil Penalties Against Agents. Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, may likewise be subject to a civil penalty.

(d) Prohibition of Further Approvals; Injunctive Relief.

(1) The City shall not issue a Notice of Final Completion for property on which a violation of this Chapter has occurred or is occurring, until the violation has been cured by restoration or other means acceptable to the planning administrator and any penalty imposed for the violation is paid.

(2) The City may seek injunctive relief against any person who has willfully engaged in a violation of SRC 68.100(f), SRC 68.100(g) or SRC 68.110, such relief to be in effect for a period not to exceed five years.

(e) Remedies not Exclusive. The remedies provided in this Chapter are cumulative and not mutually exclusive and are in addition to any other right, remedies and penalties available to the city under any other provision of law. (Ord. No. 13-2000; Ord. No. 36-05)

**68.145. ADMINISTRATIVE REVIEW.** (a) Any person aggrieved by any decision or action of the planning administrator made pursuant to SRC 68.140 may appeal such decision or action as provided in this section. The term appellant means a person filing an appeal under this section.

(b) The appeal must be filed with the planning administrator within 10 days after the date of the decision or action being appealed, must be in writing, and must state:

- (1) The name and address of the appellant,
- (2) The nature of the decision or action being appealed,
- (3) The reason the decision or action is incorrect, and
- (4) What the correct decision or action should be.

(c) An appellant who fails to file such a statement within the time permitted waives all objections, and the appeal shall not be considered.

(d) Unless the appellant and City agree to a longer period, an appeal shall be heard by the hearings officer within 30 days of the receipt of the notice of appeal. At least 10 days prior to the hearing, the City shall mail notice of the time and location of the hearing to the appellant.

(e) The hearings officer shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the hearings officer deems appropriate. At the hearing, the appellant may present testimony and oral arguments.

(f) The appellant may represent themselves at the hearing or may be represented by legal counsel. No other person or party may represent an appellant.

(g) The burden is on the planning administrator to prove that the decision or action was proper.

(h) The hearings officer shall issue a written decision within 10 days of the hearing date. The decision of the hearings officer is final. (Ord No. 48-06)

**68.150. TREE CANOPY PRESERVATION FUND.** Funds collected from any grants and donations for the planting, maintenance and preservation of trees shall go into a tree canopy preservation fund, ninety five percent which funds shall be designated for the acquisition, maintenance and preservation of groves of trees within the City or the Salem-Keizer Urban Growth Boundary. The remaining five percent shall be used to promote the planting of new trees as follows, at the discretion of the Director of Community Services: (a) In a public or private park, school yard, riparian corridor or nature area;

(b) In public rights-of-way, except in storm or sewer easements; or

(c) In the form of a donation to non-profit organizations for the purposes of planting trees within the City or the Salem-Keizer Urban Growth Boundary.

(d) The City shall conduct a tree canopy study every census year, using the most economically feasible method, for the purposes of measuring the effectiveness of this Chapter and other development-related ordinances in preserving and improving the amount of tree canopy area within the City or the Salem-Keizer Urban Growth Boundary. (Ord. No. 36-05)