

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. [Abstract]

AN ORDINANCE relating to clearing and grading; amending Chapter 23.76 BCC to adopt new defined terms relating to trees, modify permitting requirements for tree or vegetation removal, clarifying the vesting and expiration of clearing and grading permits, and providing for retention or replanting of trees; amending Chapter 1.18 BCC to modify civil penalties associated with illegal tree removal and to clarify the enforcement procedure for violations of the Land Use Code and the Bellevue City Code relating to the removal of trees or vegetation; providing for severability; and establishing an effective date.

WHEREAS, in December 2020, the City Council adopted the Bellevue Environmental Stewardship Plan (ESP), including a strategy to increase tree canopy Citywide; and

WHEREAS, ESP Action N.1.1 recommends a comprehensive review of City Codes and requirements related to tree preservation, retention, replacement, and protection during construction, including considerations for significant or exceptional trees; and

WHEREAS, ahead of and during the pendency of the City's review of any potential amendments to the Bellevue City Code (BCC) or Land Use Code (LUC), and consistent with ESP Action N.1.1, the City Council has expressed an interest in implementing permit requirements for the removal of any Landmark Tree, as interim regulations, while allowing adequate time to develop and process permanent and comprehensive code amendments; and

WHEREAS, on June 21, 2022, the City Council adopted Ordinance No. 6665 to implement interim Landmark Tree permit requirements, with an expiration date of December 31, 2023 or on the effective date of an ordinance establishing permanent amendments to the City of Bellevue's tree regulations, whichever is earlier; and

WHEREAS, the City Council directed staff to initiate work on potential amendments to the BCC and LUC, consistent with ESP Action N.1.1, on November 21, 2022; and

WHEREAS, on December 4, 2023, the City Council adopted Ordinance No. 6767, which extended the duration of interim Landmark Tree permit requirements by an additional year, expiring December 31, 2024 or on the effective date of an ordinance establishing permanent amendments to the City of Bellevue's tree regulations, whichever is earlier; and

WHEREAS, through updating LUC 20.20.900, Tree retention and replacement, the City has identified necessary amendments to Chapter 23.76 BCC, Clearing and Grading Code, to establish a new permit requirement for all significant trees for better data tracking and tree canopy outcomes and improve the administration of this Chapter; and

WHEREAS, the City Council reviewed the proposed amendments to Chapter 23.76 BCC, Clearing and Grading Code, at a study session on June 18, 2024; and

WHEREAS, the City Council desires to amend Chapter 23.76 BCC, Clearing and Grading Code, to establish a new permit requirement and to improve its function and usability; and

WHEREAS, through updating Land Use Code 20.20.900, Tree retention and replacement, and Chapter 23.76 BCC, Clearing and Grading, the City has identified necessary amendments to Chapter 1.18 BCC, Civil Violations, to enhance enforcement provisions and improve the administration of this Chapter; and

WHEREAS, the City Council reviewed the proposed amendments to Chapter 1.18 BCC, Civil Violations, at a study session on June 18, 2024; and

WHEREAS, the City Council desires to amend Chapter 1.18 BCC to enhance enforcement provisions and improve its function and usability; and

WHEREAS, the City of Bellevue has complied with the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, and the City's Environmental Procedures Code, Chapter 22.02 BCC; and

WHEREAS, the City Council desires to amend Chapter 1.18 BCC and Chapter 23.76 BCC; Now, therefore:

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Both Ordinance No. 6665 and Ordinance No. 6767 are hereby repealed in their entirety.

Section 2. Section 1.18.020 of the Bellevue City Code is hereby amended to read as follows, with all other provisions of Section 1.18.020 that are omitted below, as indicated by an ellipsis, remaining unchanged:

1.18.020 Definitions

...

H. "Landmark Tree" shall have the meaning set forth in Chapter 20.50 LUC.

- I. "Omission" means a failure to act.
- J. "Person" means any individual, firm, association, partnership, corporation or any entity, public or private.
- K. "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 which 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 owner(s), lessor(s), tenant(s), or other person(s) entitled to control, use and/or occupy property where a civil violation occurs. For violations of the sign code, this definition includes, but is not limited to, sign installers/posters, sign owners, and all other persons who cause or participate in the placement of a sign in a manner that constitutes a civil violation.
- L. "Regulation" means and includes the following, as now or hereafter amended:
 - 1. Chapters 9.09 BCC (Junk Cars), 9.10 BCC (Nuisances), 9.11 BCC (Anti-Litter Code), 9.18 BCC (Noise Control), 9.19 BCC (Group Home for Children Community Involvement Process), 9.20 BCC (Fair Housing Practices), 14.30 BCC (Right-of-Way Use Code);
 - 2. BCC Title 20 (Land Use Code); BCC Title 22 (Development Code); BCC Title 23 (Construction Codes) and BCC Title 24 (Utilities Codes);
 - 3. City of Bellevue, Department of Public Works Department Standards, as adopted by Resolution No. 5084, as now or hereafter amended;
 - 4. RCW 69.51A.260 (regulations for growing, processing, or possession of marijuana plants or medical marijuana products), as now or hereafter amended;
 - 5. All standards, regulations and procedures adopted pursuant to the above; and
 - 6. The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city.
- M. "Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two years or a notice of civil violation has been issued within two years.
- N. "Significant Tree" shall have the meaning set forth in Chapter 20.50 LUC.

- O. "Violation" means an act or omission contrary to a city development 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.

Section 3. Subsection 1.18.040.A.2 of the Bellevue City Code is hereby amended to read as follows:

2. The applicable department director may issue a notice of civil violation without having attempted to secure voluntary correction as provided in BCC 1.18.030 under the following circumstances:

- a. When an emergency exists;
- b. When a repeat violation occurs;
- c. When the violation creates a situation or condition which cannot be corrected;
- d. When the violation is of the sign code (Chapter 22B.10 BCC);
- e. When the violation constitutes a noise disturbance as set forth in BCC 9.18.040.A.4 or A.5;
- f. When the person knows or reasonably should have known that the action is in violation of a city regulation; or
- g. When the violation is of LUC 20.20.900, BCC 23.76.035.A.6, BCC 23.76.035.A.7, BCC 23.76.060.A, or BCC 23.76.060.G.

Section 4. Section 1.18.045 of the Bellevue City Code is hereby amended to read as follows:

1.18.045 Monetary penalty – Illegal clearing, cutting, damaging, or removal of trees or vegetation.

A. Trees and Vegetation on City Property.

1. BCC 1.18.040.E shall have no application to a violation of BCC 3.43.335. Instead, the monetary penalty shall be the greater of:
 - a. The current value of the in-lieu fee provided in LUC 20.20.900.E.6.h.iv for each tree cleared, cut, damaged, or removed, or for each act of clearing, cutting, damaging, or removing vegetation; or

- b. Triple the value of each tree cleared, cut, damaged, or removed, or of the vegetation cleared, cut, damaged, or removed, the value to be the replacement value as determined using the *Guide for Plant Appraisal*, published by the Council of Tree and Landscape Appraisers, as now or as hereafter amended. If the *Guide for Plant Appraisal* provides for multiple methodologies for determining the replacement value, then the Director of the Department of Parks and Community Services is authorized to select the methodology from the *Guide for Plant Appraisals* to use to establish the replacement value. In accordance with BCC 3.43.030, rules may be adopted as needed to clarify, interpret, or apply any methodology found in the *Guide for Plant Appraisal* for the calculation of replacement value for the purposes of this subsection.
2. When the monetary penalty is calculated under subsection A.1.b of this section, the Director of the Department of Parks and Community Services may, in addition to the monetary penalty, assess on the person responsible for the violation the costs incurred by the City to investigate the violation and to calculate the monetary penalty under subsection A.1.b. In determining whether to assess such costs, the Director of the Department of Parks and Community Services shall consider the factors set forth in BCC 1.18.050.D.3.a.ii.

B. *Significant Trees and Landmark Trees on Private Property.*

1. BCC 1.18.040.E shall have no application to a violation of LUC 20.20.900, BCC 23.76.035.A.6, BCC 23.76.035.A.7, BCC 23.76.060.A, or BCC 23.76.060.G. Instead, the monetary penalty shall be the greater of:
 - a. The current value of the in-lieu fee provided in LUC 20.20.900.E.6.h.iv for each significant tree or landmark tree cleared, cut, damaged, or removed; or
 - b. The value of each significant tree or landmark tree cleared, cut, damaged, or removed, the replacement value as determined using the *Guide for Plant Appraisal*, published by the Council of Tree and Landscape Appraisers, as now or as hereafter amended. If the *Guide for Plant Appraisal* provides for multiple methodologies for determining the replacement value, then the Director of the Development Services Department is authorized to select which methodology to use to establish the replacement value. In accordance with LUC 20.40.100, rules may be adopted as needed to clarify, interpret, or apply any methodology found in the *Guide for Plant Appraisal* for the calculation of replacement value for the purposes of this subsection

2. Each significant tree or landmark tree cleared, cut, damaged, or removed in violation of the requirements of LUC 20.20.900, BCC 23.76.035.A.6, BCC 23.76.035.A.7, BCC 23.76.060.A, or BCC 23.76.060.G is a separate violation, subject to separate penalties.
3. The hearing examiner may double the monetary penalty if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations, the hearing examiner shall consider the factors set forth in BCC 1.18.050.D.3.a.ii.
4. When the monetary penalty is calculated under subsection B.1.b, the Director of the Development Services Department may, in addition to the monetary penalty, assess on the person responsible for the violation the costs incurred by the City to investigate the violation and to calculate the monetary penalty under subsection B.1.b. In determining whether to assess such costs, the Director of the Development Services Department shall consider the factors set forth in BCC 1.18.050.D.3.a.ii.

Section 5. Subsection 23.76.030.H of the Bellevue City Code is hereby amended to read as follows:

H. H Definitions.

“Hard surface” means an impervious surface, a permeable pavement, or a vegetated roof.

“Hazardous Tree” shall have the meaning set forth in LUC 20.20.900, now or as hereafter amended.

“Heavy rain” means rainfall at a rate greater than or equal to 0.03 inches per six minutes or 0.30 inches per hour.

Section 6. Subsection 23.76.030.L of the Bellevue City Code is hereby amended to read as follows, with all other provisions of Subsection 23.76.030.L that are omitted below, as indicated by an ellipsis, remaining unchanged:

L. L Definitions.

“Land disturbing activity” means any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Maintenance of existing landscape, as described in LUC 20.25H.055(C), is not considered a land disturbing activity.

“Landmark Tree” shall have the meaning set forth in Chapter 20.50 LUC, now or as hereafter amended.

“Landscaping” or “landscaped areas” means land that has been modified by altering soil levels and/or vegetation for aesthetic or practical purposes.

...

Section 7. Subsection 23.76.030.Q of the Bellevue City Code is hereby amended to read as follows:

Q. Q Definitions

“Qualified Tree Professional” shall have the meaning set forth in Chapter 20.50 LUC, now or as hereafter amended.

Section 8. Subsection 23.76.035.A of the Bellevue City Code is hereby amended to read as follows, with all other provisions of Subsection 23.76.035.A that are omitted below, as indicated by an ellipsis, remaining unchanged:

A. A clearing and grading permit is required for a project that involves any of the following described in subsections A.1 through A.8 of this section, except as provided for in subsection B of this section. In applying this section, the total proposal shall be considered. Any project that requires a permit shall also comply with applicable provisions of Chapter 24.06 BCC, BCC Title 20, and all other applicable city codes.

...

6. Removal of any significant tree or of any landmark tree;
7. Removal of more than 25 percent of the live crown of any significant tree or of any landmark tree that is required to be preserved by the Bellevue City Code, the Land Use Code, a plat condition, or another legal requirement. The live crown is the crown of the tree containing live foliage or any branch or stem with functioning cambium. Pruning allowed by this subsection must be performed in accordance with applicable provisions of the Land Use Code; and
8. Any regrading or repaving of a parking lot used for stormwater detention.

Section 9. Section 23.76.045 of the Bellevue City Code is hereby amended to read as follows, with all other provisions of Section 23.76.045 that are omitted below, as indicated by an ellipsis, remaining unchanged:

23.76.045 Vesting and expiration of permits and applications.

A. Projects Requiring Only Clearing and Grading Permits.¹

...

2. Expiration of Permit Application.

- a. Before Issuance. An application for clearing and grading permits shall expire as follows:

...

- iv. In no event may the director extend the application for a period of more than 180 days following the conclusion of the applicable condition described in this subsection.

3. Expiration of Permit.

- a. The clearing and grading permit shall expire as follows:

- i. The permit shall expire if the authorized work is not begun within one year from the date of permit issuance, or if work is abandoned for over 180 days.
- ii. If the authorized work is continually performed, the permit shall expire one year from the date of issuance unless a different time frame is specified on the permit or an extension is granted. Two one-year extensions may be granted by the director; provided, that conditions which were relevant to issuance of the permit have not changed substantially and no material detriment to the public welfare will result from the extension.

4. Expiration of Vested Status.

- a. If the clearing and grading permit application expires pursuant to subsection A.2 of this section or is otherwise canceled, the vested status of the clearing and grading permit application shall expire on the date of expiration or cancellation.

- b. If the clearing and grading permit is revoked pursuant to BCC 23.76.175, now or as hereafter amended; expires pursuant to subsection A.3 of this section; or is otherwise canceled, the vested status of the clearing and grading permit shall expire on the date of revocation, expiration, or cancellation.

B. *Projects Requiring Prior Discretionary Land Use Permit or Approval.*

...

- b. *Conceptual Details Provided.* For applicants that choose not to provide submittal requirements for site development engineering, the vesting date to this chapter, Chapter 24.06 BCC, and the corresponding development and engineering standards is the date that a complete building permit application is submitted consistent with the requirements of BCC 23.05.090.E, now or as hereafter amended.

2. *Expiration of Permit Application.*

- a. An application for a clearing and grading permit shall expire pursuant to subsection A.2 of this section.

3. *Expiration of Permit.*

- a. The clearing and grading permit shall expire pursuant to subsection A.3 of this section.
- b. For project requiring building permits, the life of the clearing and grading permit shall be automatically extended for the life of the building permit.

4. *Expiration of Vested Status.*

- a. *Clearing and Grading Permit Vested with a Discretionary Permit or Approval.* The vested status of a clearing and grading permit with a vesting date established pursuant to subsection B.1.a of this section shall run with the vested status of the underlying land use permit or approval and expire pursuant to the terms of LUC 20.40.500, now or as hereafter amended.
- b. *Clearing and Grading Permit Vested with a Complete Building Permit Application.* The vested status of a clearing and grading permit with a vesting date established pursuant to subsection B.1.b of this section shall expire as follows:

- i. Before Building Permit Issuance. The vested status of the clearing and grading permit shall run with the vested status of the building permit application and expire pursuant to the terms of BCC 23.05.090.H, now or as hereafter amended.
 - ii. After Building Permit Issuance. The vested status of the clearing and grading permit shall run with the vested status of the issued building permit and expire pursuant to the terms of BCC 23.05.100.E, now or as hereafter amended. The vested status of the clearing and grading permit shall be automatically extended for the life of the building permit. If the building permit expires, or is revoked or canceled pursuant to BCC 23.05.100, now or as hereafter amended, or otherwise, then the vested status of a clearing and grading permit shall also expire, or be revoked or canceled.
- C. Projects Requiring Building Permits and No Prior Discretionary Land Use Permit or Approval.
 1. *Vesting Date.* A clearing and grading permit for a project that requires building permits and no prior discretionary land use permit or approval shall vest to this chapter, Chapter 24.06 BCC, and the corresponding development and engineering standards on the date that a complete building permit application is submitted consistent with the requirements of BCC 23.05.090.E, now or as hereafter amended.
 2. *Expiration of Permit Application.*
 - a. An application for clearing and grading permit shall expire pursuant to subsection A.2 of this section.
 3. *Expiration of Permit.*
 - a. The clearing and grading permit shall expire pursuant to subsection A.3 of this section.
 - b. The life of the clearing and grading permit shall be automatically extended for the life of the building permit.
 4. *Expiration of Vested Status.*
 - a. *Before Building Permit Issuance.* The vested status of the clearing and grading permit shall run with the vested status of the building permit application and expire pursuant to the terms of BCC 23.05.090.H, now or as hereafter amended.

- b. *Post Building Permit Issuance.* The vested status of the clearing and grading permit shall run with the vested status of the issued building permit and expire pursuant to the terms of BCC 23.05.100.E, now or as hereafter amended. The vested status of the clearing and grading permit shall be automatically extended for the life of the building permit. If the building permit expires, or is revoked or canceled pursuant to BCC 23.05.100, now or as hereafter amended, or otherwise, then the vested status of a clearing and grading permit shall also expire, or be revoked or canceled.

Section 10. Section 23.76.060 of the Bellevue City Code is hereby amended to read as follows:

23.76.060 Clearing – Vegetation preservation and replacement.

The applicant/permittee shall:

- A. Meet applicable Land Use Code requirements for tree retention and vegetation preservation, disturbance limitation, and new landscaping (including but not limited to LUC 20.20.520, Landscape development; LUC 20.20.900, Tree retention and replacement; Part 20.25H LUC, Critical Areas Overlay District; and Part 20.25E LUC, Shoreline Overlay District, now or as hereafter amended).
 - 1. Trees previously required to be retained or planted pursuant to any provision of the Bellevue City Code or Land Use Code other than Part 20.25H LUC or Part 20.25E LUC shall be retained unless it constitutes a hazardous tree.
 - 2. Trees previously required to be retained or planted pursuant to Part 20.25H LUC or Part 20.25E LUC shall be retained as specified in Part 20.25H LUC or Part 20.25E LUC, as applicable.
- B. Preserve natural vegetation for erosion and sedimentation control and water quality and quantity control as detailed in the clearing and grading development standards.
- C. Follow the methodology in the clearing and grading development standards (or equivalent methodology approved by the director) for preserving/replacing vegetation.
- D. Mark clearing limits in the field prior to clearing. Markings shall be retained until final inspection, unless otherwise allowed by the inspector.

- E. Incorporate a tree protection plan into the clearing and grading drawings. The tree protection plan shall define spatial limits for tree protection and include detailed drawings of tree protection and mitigation. The plan must be prepared by a Qualified Tree Professional and shall become part of all construction documentation. Tree protection methods shall be installed prior to preinspection and retained until final inspection, unless otherwise allowed by the inspector. To ensure compliance with the tree protection plan during clearing or grading, the Director may require a report from the Qualified Tree Professional that prepared the tree protection plan confirming whether, during clearing or grading, tree protection methods were employed consistent with the tree protection plan.
- F. When clearing activity is interrupted or suspended for any reason, the permittee shall stabilize the site and maintain the erosion control BMPs consistent with BCC 23.76.090 and the clearing and grading development standards, now or as hereafter amended. If the city deems a site to be an abandoned construction site, the applicant or permittee shall install permanent erosion and sedimentation measures pursuant to BCC 23.76.090.F.
- G. This subsection applies when any significant tree or landmark tree that is not subject to the requirements of LUC 20.20.900, Part 20.25H LUC, or Part 20.25E LUC is proposed for removal:
 - 1. Annual Replanting Threshold for Residential Land Use Districts. The following standards apply only to sites located fully or partially within the R-1, R-1.8, R-2.5, R-3.5, R-4, R-5, R-7.5, R-10, R-15, R-20, and R-30 land use districts established under Chapter 20.10 LUC.
 - a. Table 23.76.060.G sets the number, based on site size, of significant trees or landmark trees that may be removed from a site during any continuous 12-month period without requiring any replacement planting under subsection G.2 below.
 - b. During any continuous 12-month period, any removal of a significant tree or landmark tree in excess of the annual replanting threshold specified in Table 23.76.060.G for the site shall require replacement planting pursuant to subsection G.2 below.
 - c. During any continuous 12-month period, any removal of significant trees or landmark trees that would not exceed the annual replanting threshold specified in Table 23.76.060.G for the site, but would result in the number of significant trees or landmark trees remaining on the site following removal to be less than or equal to the corresponding number specified on Table 23.76.060.G for the site, then replacement planting pursuant to subsection G.2 is required.
 - d. Removal of a hazardous tree does not count toward the annual replanting threshold for a specific site.

Table 23.76.060.G. Residential Tree Removal Allowances Without Replacement

Site Size	Annual Replanting Threshold	Significant or Landmark Trees Remaining on the Site
Up to 10,000 square feet	Removal of 1 landmark tree or 2 significant trees	2
10,001 to 20,000 square feet	Removal of 1 landmark tree or 3 significant trees	3
20,001 to 40,000 square feet	Removal of 1 landmark tree or 4 significant trees	4
40,001 square feet or greater	Removal of 1 landmark tree or 4 significant trees	8

2. Replanting Requirements. Except as otherwise provided in subsection G.1, any removal of a significant tree or a landmark tree shall require replanting in accordance with the following standards.
 - a. Replacement Tree Minimum Standards. Each replacement tree shall be single-stemmed and a minimum of two inches caliper (for deciduous trees) or single-stemmed and six feet in height (for conifer trees).
 - b. Replacement Tree Ratios. For each significant tree requiring replacement, the permittee shall plant one replacement tree on the site. For each landmark tree requiring replacement, the permittee shall plant either three replacement trees, or two large conifer species trees approved by the Director, on the site.
 - c. Hazardous Trees. Replacement requirements do not apply to any hazardous tree, as determined by a Qualified Tree Professional consistent with LUC 20.20.900.C.3, except when required to maintain any applicable landscaping standards, including but not limited to LUC 20.20.520.
 - d. Adequate Tree Density. The number of replacement trees required to be planted on the site may be reduced by the Director if the permittee demonstrates that the site will still meet the applicable minimum tree density provided in LUC 20.20.900.E and any other applicable landscaping standards, including but not limited to LUC 20.20.520.

Section 11. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this Ordinance.

Section 12. Effective Date. This Ordinance shall take effect and be in force thirty (30) days after adoption and legal publication.

Passed by the City Council this _____ day of _____, 2024 and signed in authentication of its passage this _____ day of _____, 2024.

(SEAL)

Lynne Robinson, Mayor

Approved as to form:
Trisna Tanus, Acting City Attorney

Robert Sepler, Assistant City Attorney

Attest:

Charmaine Arredondo, City Clerk

Published _____