

CITY OF WHITE SALMON

ORDINANCE NO. 2023-11-1153

**AN ORDINANCE OF THE CITY OF WHITE SALMON, WASHINGTON, CREATING
CHAPTER 18.40 SPECIAL PROVISIONS HERITAGE TREES, INCLUDING SEVERABILITY
AND AN EFFECTIVE DATE**

WHEREAS, the City of White Salmon (“City”) acknowledges the need to update its critical areas ordinance (CAO, WSMC 18.10) to better reflect Best Available Science, the needs of staff for more appropriate administration and generally update regulations in accordance with RCW 36.70A; and

WHEREAS, the City recognizes the benefits of conserving natural habitat, improving water quality, and continuing to avoid, minimize and mitigate for impacts toward frequently flooded areas, streams, wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas and their buffers; and

WHEREAS, the City last updated its CAO in 2012 and must do so to remain in compliance with State requirements to continue to receive state grants; and

WHEREAS, the City locally approved similar changes to its Shoreline Master Program (yet to be approved by Department of Ecology), so this update matches many of the same code requirements for critical areas within shoreline jurisdiction; and

WHEREAS, the City recognizes a separate effort is needed to make substantive edits to the City’s Heritage Tree Ordinance at a later date; and

WHEREAS, the City will copy much of the existing Heritage Tree Ordinance regulations from WSMC 18.10.317 to WSMC 18.40 – Heritage Trees as a placeholder, administering these regulations until a future ordinance has gone through the public process; and

WHEREAS, the Planning Commission heard a brief introduction regarding the CAO update on its August 23, 2023 meeting; and

WHEREAS, in accordance with Chapter 43.21C RCW and WAC 197-11, a Determination of Non-Significance (“DNS”) was issued with a comment period which expired on September 13th, 2023, and an appeal period which expired on September 13th, 2023. No appeals were filed; and

WHEREAS, between August 30th, 2023, and September 29th, 2023, the City provided a public comment period; and

WHEREAS, on September 13th, 2023, a public hearing with the Planning Commission occurred to hear public testimony; and

WHEREAS, the 60-day adoption notice was sent on October 6th, 2023, to the Washington State Department of Commerce informing the proposed change in development regulations; and

WHEREAS, on October 25th, 2023, this Critical Areas Ordinance received Planning Commission recommendation; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITE SALMON DOES ORDAIN AS FOLLOWS:

That the following amendments be made to White Salmon Municipal Code Title 18, creating chapters 18.40:

SECTION 1. Amendment to Title 18, Creating Chapter 18.40, The City hereby repeals WSMC 18.40 and adopts the following to be codified as WSMC 18.40 Special Provisions – Heritage Trees:

Key: **Bold Underlined** = added language
~~**Bold Strikethrough**~~ = deleted language

18.40 Special provisions—Heritage trees.

- A. All heritage trees qualifying for protection provide valuable local habitat and shall be protected as critical areas. The tree protection area shall be equal to ten times the trunk diameter of the tree or the average diameter of the area enclosed within the outer edge of the drip line of the canopy, whichever is greater.**
- B. Heritage trees include:**
- 1. Oregon White Oaks with a trunk diameter larger than fourteen inches,**
 - 2. All other tree species with a trunk diameter greater than eighteen inches, and**
 - 3. Any tree designated as a heritage tree by the city council in accordance with the nomination process detailed below.**
- C. To be considered a heritage tree the tree must be nominated by the landowner of the ground sustaining the tree and be accepted by the city onto the inventory list of heritage trees compiled and maintained by the city.**
- D. Heritage trees must be designated in accordance with the following nomination and designation process:**
- 1. Trees with smaller trunk diameters may also be nominated for heritage status by the property owner, by submitting a map, a photograph, and a narrative description including the location, species, approximate age, and the specific characteristics and reasoning on which the nomination is based. To receive such a designation, a tree must be an outstanding specimen, especially old or large, or of distinctive form, location, or of ecological, cultural or historical significance.**
 - 2. The city shall inspect the tree, consider public comments, consult with a certified arborist if relevant, and decide whether or not the tree is to be designated a heritage tree. Notice of the city's decision shall be mailed to the land owner and any other parties participating in the evaluation process.**
 - 3. The council may be asked to reverse its designation of a heritage tree.**
- E. Tree inventory is required.**
- 1. The city shall maintain a list of heritage trees designated within the city limits in response to the voluntary nomination process. The inventory may include a map identifying the location of the trees and a brief narrative description of each heritage tree.**

F. Maintenance and preservation of heritage trees is required.

- 1. Any owner or applicant shall use reasonable efforts to maintain and preserve all heritage trees located thereon in a state of good health pursuant to the provisions of this chapter. Failure to do so shall constitute a violation of this chapter. Reasonable efforts to protect heritage trees include:**
 - a. Avoidance of grading, excavation, demolition or construction activity within the heritage tree protection area where possible. The city shall consider special variances to allow location of structures outside the building setback line of a heritage tree whenever it is reasonable to approve such variance to yard requirements or other set back requirements.**
 - b. Grading, excavation, demolition or construction activity within the heritage tree protection area shall require submittal of a tree protection plan, prepared in accordance with applicable guidelines.**
 - c. Consideration of the habitat or other value of mature trees in the request for a variance or other modification of land use standards may require listing of the tree as a heritage tree. Once listed for protection, the approval of variances or modification of standards are considered reasonable actions and not the result of a self created hardship.**
- 2. The arborist report for purpose of this section shall include a heritage tree protection plan and shall be prepared by a certified arborist. The plan shall address issues related to protective fencing and protective techniques to minimize impacts associated with grading, excavation, demolition and construction. The city may impose conditions on any permit to assure compliance with this section.**
- 3. Review and approval of the critical areas report and tree protection plan by the city is required prior to issuance of any permit for grading or construction within the heritage tree protection area.**
- 4. A heritage tree protection easement (HTPE) shall be required. A HTPE is an easement granted to the city for the protection of a heritage tree protection area. HTPEs shall be required as specified in these rules and shall be recorded on final development permits and all documents of title and with the county recorder at the applicant's expense. The required language is as follows:**

"Dedication of a Heritage Tree Protection Easement (HTPE) conveys to the public a beneficial interest in the land within the easement. This interest includes the preservation of existing heritage tree for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, visual and aural buffering, and protection of plant and animal habitat. The HTPE imposes upon all present and future owners and occupiers of land subject to the easement the obligation, enforceable on behalf of the public of the city of White Salmon, to leave undisturbed all heritage trees within the easement. The heritage tree protection area may not be impacted by grading, excavation, demolition or construction without express permission from the city of White Salmon, which permission must be obtained in writing."

- G. Heritage tree removal and major pruning are prohibited. It is unlawful for any person to remove, or cause to be removed any heritage tree from any parcel of property in the city, or prune more than one-fourth of the branches or roots within a 12-month period, without obtaining a permit; provided, that in case of emergency, when a tree is imminently hazardous or dangerous to life or property, it may be removed by order of the police chief, fire chief, the director of public works or their respective designees. Any person who vandalizes, grievously**

mutilates, destroys or unbalances a heritage tree without a permit or beyond the scope of an approved permit shall be in violation of this chapter.

H. Exceptions to the provisions in this section include:

- 1. A heritage tree can be removed if it is dead, dangerous, or a nuisance, as attested by an arborist's report, submitted to the city and paid for by the tree owner or by order of the police chief, fire chief, the director of public works or their respective designees.**
- 2. A heritage tree in or very close to the "building area" of an approved building design can be replaced by another tree. A heritage tree can be removed if its presence reduces the building area of the lot by more than fifty percent after all potential alternatives including possible setbacks to minimum yard depth and width requirements have been considered.**
- 3. Any person desiring to remove one or more heritage trees or perform major pruning (per subsection 18.40(G), above) shall apply for an exception pursuant to procedures established by this section rather than elsewhere in this chapter.**
- 4. It is the joint responsibility of the property owner and party removing the heritage tree or trees, or portions thereof to obtain exception. The city may only issue a permit for the removal or major pruning of a heritage tree if it is determined that there is good cause for such action. In determining whether there is good cause, the city shall consult with a certified arborist, paid for by the applicant, as appropriate. The city shall also give consideration to the following:**
 - a. The condition of the tree or trees with respect to disease, danger of falling, proximity to existing or proposed structures and interference with utility services;**
 - b. The necessity to remove the tree or trees in order to construct proposed improvements to the property;**
 - c. The topography of the land and the effect of the removal of the tree on erosion, soil retention and diversion or increased flow of surface waters;**
 - d. The long-term value of the species under consideration, particularly lifespan and growth rate;**
 - e. The ecological value of the tree or group of trees, such as food, nesting, habitat, protection and shade for wildlife or other plant species;**
 - f. The number, size, species, age distribution and location of existing trees in the area and the effect the removal would have upon shade, privacy impact and scenic beauty;**
 - g. The number of trees the particular parcel can adequately support according to good arboricultural practices; and**
 - h. The availability of reasonable and feasible alternatives that would allow for the preservation of the tree(s).**

I. City enforcement of heritage tree protection regulations may include:

- 1. Stop work on any construction project which threatens a heritage tree until it is shown that appropriate measures have been taken to protect the tree or an exception is granted for its removal; and/or**


2. As part of a civil action brought by the city, a court may assess against any person who commits, allows, or maintains a violation of any provision of this chapter a civil penalty in an amount not to exceed five thousand dollars per violation. Where the violation has resulted in removal of a tree, the civil penalty shall be in an amount not to exceed five thousand dollars 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.

SECTION 2. Severability / Validity. The provisions of this ordinance are declared separate and severable. If any section, paragraph, subsection, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance.


SECTION 3. Effective Date. This ordinance shall take effect and be in force five (5) days after its approval, passage and publication as required by law.

SECTION 4. Transmittal to the State. Pursuant to RCW 36.70A.106, a complete and accurate copy of this ordinance shall be transmitted to the Department of Commerce within ten (10) days of adoption.

Passed by the council and approved by the Mayor on this 20th day of December, 2023.

DocuSigned by:

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Marla Keethler, Mayor

ATTEST:

DocuSigned by:

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Stephanie Porter, Clerk Treasurer

APPROVED AS TO FORM:

DocuSigned by:

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Shawn MacPherson, City Attorney