



CITY OF LAKE FOREST PARK TREE BOARD MEETING

Wednesday, October 02, 2024 at 7:00 PM

Meeting Location: In Person and Virtual / Zoom

17425 Ballinger Way NE Lake Forest Park, WA 98155

INSTRUCTIONS FOR ATTENDING THIS MEETING VIRTUALLY:

Join Zoom Webinar: <https://us06web.zoom.us/j/85662201530>

Call into Webinar: 253-215-8782 | Webinar ID: 856 6220 1530

The Tree Board is providing opportunities for public comment by attending in person to provide oral public comment.

HOW TO PARTICIPATE WITH ORAL COMMENTS:

If you are attending in person, there is a sign-in sheet located near the entrance to the room. Fill out the form and the presiding officer will call your name at the appropriate time. Oral comments are limited to 3:00 minutes per speaker. Oral comments are not being accepted via Zoom.

The meeting is being recorded.

For up-to-date information on agendas, please visit the City's website at www.cityofflp.gov.

AGENDA

1. CALL TO ORDER: 7:00 PM
2. SHORT REFLECTION
3. INTRODUCTIONS
4. ADOPTION OF AGENDA
5. APPROVE MINUTES
 - A. September Minutes
6. PUBLIC COMMENTS

The Board is not accepting online public comments. This portion of the agenda is set aside for the public to address the Tree Board on agenda items. Comments are limited to a three (3) minute time limit.

7. REPORTS AND ANNOUNCEMENTS

8. OLD BUSINESS

9. NEW BUSINESS

A. Climate Action Committee report presentation

B. City Attorney memo

C. Exceptional Tree Diameters

D. Sound Transit BRT update

10. AGENDA FOR NEXT MEETING

11. ADJOURN

Any person requiring a disability accommodation should contact city hall at 206-368-5440 by 4:00 p.m. on the day of the meeting for more information.

1 City of Lake Forest Park – Tree Board Meeting
2 Special Meeting Minutes: September 11, 2024; 7:00-9:00pm
3 Hybrid Meeting Held in the Forest Room at City Hall and Virtually via Zoom
4

5 **Tree Board Members present:** Doug Sprugel, Richard Olmstead, Stacey Spain, Victoria Kutasz,
6 and Mark Phillips
7

8 **Staff and others present:** Larry Goldman, LFP City Council; Drue Morris, Urban Forest Planner;
9 Mark Hofman, Community Development Director (via Zoom)
10

11 **Members of the Public present:** Jeff Snedden, CORE
12

13 **Tree Board Members absent:** none
14

15 **Call to order:** 7:00 PM
16

17 **Short Reflection:** No short reflection.
18

19 **Introductions:** No introductions as there were no members of the public.
20

21 **Approval of Meeting Agenda:** No new amendments were proposed. Board member Olmstead
22 motioned to approve. Board member Spain seconded. Approved unanimously.
23

24 **Approval of Minutes:** No edits were suggested for the minutes. Board member Olmstead
25 motioned to approve the minutes. Board member Spain seconded. The minutes were approved
26 unanimously.
27

28 **Public Comment:** No public comments.
29

30 **Next meeting:** The next special meeting occurs on Wednesday, October 2, 2024.
31

32 **Reports and Announcements:**
33

34 Tree Board Update

35 The Board discussed a recap of the Picnic of the Park even on September 7th. Board member Kutasz
36 discussed how families stopped by the booth for the coloring station at the Tree Board booth.
37 Board member Kutasz and Phillips were able to talk to residents about the tree board and how to
38 become members.
39

40 Councilmember Goldman Update

41 Councilmember Goldman gave an update on the biannual budget and Comprehensive Plan. The
42 City Council is also working with the boards and departments to work on the budget plans.
43

44 City Staff Update

45 No City Staff Update.
46
47
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1
2 **Old Business:**

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4 **New Business:**

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6 CORE Presentation

7 Mr. Snedden from the Citizens Organized to Rethink Expansion (CORE) discussed the concerns of
8 CORE over the HWY 522 transit expansion. The concerns over the expansion being the cost, loss
9 of trees, increase in impervious surfaces, loss of parking for small businesses, impacts on private
10 homes, and the potential impact on a fish-bearing stream.

11
12 The members of CORE have conducted traffic research on traffic between 153rd and 165th streets.
13 Mr. Snedden presented the research conducted by CORE and how the organization opposes the
14 project.

15
16 Tree List

17 Chair Sprugel presented the updated Tree List, that was worked on by a committee and the Urban
18 Forrest Planner, Drue Epping. The Tree Board discussed potential edits, trees that were added, and
19 tree species.

20
21 The Tree Board decided to approve the tree list with pending edits.

22
23 KCD/McAler Creek restoration

24 Mr. Hofman discussed the project along McAler Creek. There has been a critical area permit that
25 was approved along Perkins Way. The project has funding and is ready to enter the construction
26 phase.

27
28 Sound Transit BRT update

29 Tabled for next meeting.

30
31 Exceptional Tree Diameters

32 Tabled for next meeting.

33
34 **Agenda for Next Meeting:** The Board will be discussing the Sound Transit BRT update and
35 Exceptional Tree Diameters at the next meeting.

36
37 **Adjournment:** Board member Olmstead motioned to end the meeting. Board member Spain
38 seconded.

39
40 Meeting adjourned at 9:00 PM

41
42 APPROVED:
43
44 _____
45 Doug Sprugel, Chair

MEMORANDUM

TO: Lake Forest Park Tree Board

CC: Mark Hofman, Community Development Director
Larry Goldman, City Council liaison to the Tree Board

FROM: Kim Adams Pratt, City Attorney

DATE: September 25, 2024

RE: Constitutional claims to consider when amending land use regulations

Dear Tree Board, this memorandum is sent to provide you with legal issues to consider as you review possible amendments to the Tree Canopy Preservation and Enhancement regulations in Chapter 16.14 of the Lake Forest Park Municipal Code (“LFPMC”). Generally, two constitutional claims are made against land use regulations adopted by cities:

1. The regulation deprived me of my property without **substantive due process**.

No person shall be deprived of life, liberty or property without due process of law. *Washington State Constitution Article I, § 3*

2. The regulation has **taken** my private property without compensation.

The City cannot take private property for a public purpose without justly compensating the owner. *Washington State Constitution Article I, §16*.

Substantive due process. The test to determine if a property owner has been deprived of their property rights without substantive due process is whether the regulation is **rationaly related to a legitimate city interest**. The regulation cannot be arbitrary or irrational. LFPMC 16.14.030 includes Table 1, Exceptional Tree Species and Their Threshold Diameters. If threshold diameters are amended, the City needs to articulate a rational relationship between a legitimate City interest and any amendment to the threshold diameter.

For example, the City’s legitimate interest may be that Exceptional trees are the foundation of LFP’s community forest, and that the current threshold diameters in

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MEMORANDUM

LFPMC protects too few trees in LFP, and that without amending the LFPMC the result will be too few exceptional trees in LFP. Any amendment must be rationally related to the City's interest. To avoid a claim of being arbitrary, the amendment should be supported with information such as expert data, expert opinion, and data from the City's tree survey.

Takings. Some "takings" of private property are more obvious than others. An obvious one is when a city takes private property to widen a road. A more nebulous taking is a regulatory taking, which happens when a city restricts what can be done on private property to such an extent that it becomes a taking. There is no formula to calculate when fairness requires that the economic injuries caused by a regulation be compensated by the government rather than remain uncompensated and remain disproportionately concentrated on a few property owners. Whether a particular regulation/restriction will be found invalid because the government did not pay for the loss caused by it depends largely on the particular circumstances of the case.

A three-part test is generally used to determine if a regulatory taking has occurred: 1) What is the regulation's economic impact on the property owner? 2) To what extent does the regulation interfere with distinct investment backed expectations of the owner? 3) What is the character of the government's action?

1. What is the regulation's **economic impact** on the property owner? If the regulations prevent **any reasonable economic use** of the owner's property that is usually a regulatory taking and LFPMC 16.14.100 provides a reasonable use exception that may be granted by the City's Hearing Examiner so the owner can use their property.

2. To what extent does the regulation **interfere with distinct investment backed expectations**? Until a project is vested to land use regulations, cities have the authority to adopt new and amend old regulations. A regulation that continues to allow the current use of the property is more likely to pass this part of the test. If the new regulation continues to allow a reasonable return on investment it is more likely to pass this part of the test.

3. What is the **character of the government's action**? Courts will ask "what is the **severity of the burden** imposed on private property rights? And is the burden disproportionately concentrated on a few property owners?" A regulation that is concentrated on a few owners for the greater good is more likely to be ruled a regulatory taking that must be compensated.

MEMORANDUM

Thank you for taking on this project of reviewing these code provisions. Please let me know if I can help by clarifying any of the above information or answering follow-up questions.

Draft changes to Table 1: Exceptional Tree Species and Their Threshold Diameters

Tree Species	Size	Percentage affected (internal)
Bigleaf MAPLE – <i>Acer macrophyllum</i>	30 42	3.2%
Douglas-FIR – <i>Pseudotsuga menziesii</i>	40 42	4.3%
Grand FIR – <i>Abies grandis</i> spp.	30 33	
MADRONA – <i>Arbutus menziesii</i>	12	
Western HEMLOCK – <i>Tsuga heterophylla</i>	30 36	
Western Red CEDAR – <i>Thuja plicata</i>	30 42	2.8%
Western White PINE – <i>Pinus monticola</i>	30 36	
Shore pine - <i>Pinus contorta</i>	16	
All Oaks (<i>Quercus</i> spp.)	30	
Everything else	40	

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Changes: lower threshold diameters for all species; add shore pine, oaks, and “everything else”

This formulation “protects” 1.9% of the trees in the city (compared with 0.75% for the current version), including 4.2% of the conifers, 0.6% of the broadleaved trees (angiosperms), 2.8% of the native trees, and 0.8% of introduced trees.

One possible alternative, slightly less protective, would be to make all these changes but leave the Douglas-fir limit at 42” as it is in the current Code. This would protect 1.6% of the trees in the city, including 3.2% of the conifers, 0.6% of the broadleaved trees, 2.3% of the native trees, and 0.8% of introduced trees.

A third alternative, more protective, would be to set the Douglas-fir limit at 36”. This would protect 2.6% of the trees in the city, including 5.9% of the conifers, 0.6% of the broadleaved trees, 4.2% of the native trees, and 0.8% of introduced trees.

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