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**ORDINANCE NO. 3646**

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE EDMONDS COMMUNITY DEVELOPMENT CODE, CHAPTER 18.45 LAND CLEARING AND TREE CUTTING CODE TO INCORPORATE THE TERMS “IMPROVED” AND “PARTIALLY IMPROVED” IN ORDER TO COMPLY WITH RECENT DECISIONS OF THE WASHINGTON SUPREME COURT, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

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WHEREAS, in a recent decision, the Washington State Supreme Court has held that the terms “developed” and “partially developed” to refer to the process of platting and development, and not to the process of construction; and

WHEREAS, this decision was rendered in the context of the tree clearing code of the City of Lacey; and

WHEREAS, the City of Edmonds utilizes such terms in its land clearing and tree cutting code; and

WHEREAS, the City of Edmonds defines such terms to clearly address the situations in which they are applicable, and

WHEREAS, however, the City Council deems it to be in the public interest to conform the language of the City Code and its definitions to generally accepted usage in the State; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO  
ORDAIN AS FOLLOWS:

Section 1. The Edmonds Community Development Code Chapter 18.45 Land

Clearing and Tree Cutting Code is hereby amended to read as follows:

**Chapter 18.45**  
**LAND CLEARING AND TREE CUTTING CODE**

**Sections:**

<b>18.45.000</b>	<b>Purposes.</b>
<b>18.45.010</b>	<b>Administering authority.</b>
<b>18.45.020</b>	<b>Permits.</b>
<b>18.45.030</b>	<b>Exemptions.</b>
<b>18.45.035</b>	<b>Procedural exemption.</b>
<b>18.45.040</b>	<b>Definitions.</b>
<b>18.45.045</b>	<b>Application requirements.</b>
<b>18.45.050</b>	<b>Performance standards for land development permits.</b>
<b>18.45.055</b>	<b>Notice.</b>
<b>18.45.060</b>	<b>Appeals.</b>
<b>18.45.065</b>	<b>Bonding.</b>
<b>18.45.070</b>	<b>Violations and penalties.</b>
<b>18.45.075</b>	<b>Public and private redress.</b>
<b>18.45.080</b>	<b>Additional remedies authorized.</b>

**18.45.000 Purposes.**

This chapter provides regulations for the clearing of and the protection and preservation of trees and associated significant vegetation for the following purposes:

- A. To promote the public health, safety, and general welfare of the citizens of Edmonds by preserving the physical and aesthetic character of the city through the prevention of indiscriminate removal or destruction of trees and ground cover on improved or partially improved property;
- B. To implement the policies of the State Environmental Policy Act of 1971 as revised in 1984;
- C. To implement and further the goals and policies of the city's comprehensive plan in regard to the environment, open space, wildlife habitat, vegetation, resources, surface drainage, watershed, and economics;

D. To ensure prompt development, restoration and replanting and effective erosion control of property during and after land clearing;

E. To promote land development practices that result in a minimal adverse disturbance to existing vegetation and soils within the city;

F. To minimize surface water and ground water runoff and diversion;

G. To aid in the stabilization of soil, and to minimize erosion and sedimentation;

H. To minimize the need for additional storm drainage facilities caused by the destabilization of soils;

I. To retain clusters of trees for the abatement of noise and for wind protection;

J. To acknowledge that trees and ground cover reduce air pollution by producing pure oxygen from carbon dioxide;

K. To preserve and enhance wildlife and habitat including streams, riparian corridors, wetlands and groves of trees;

L. To promote building and site planning practices that are consistent with the city's natural topographic and vegetation features while recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvement, interference with utility services, and the realization of a reasonable enjoyment of property may require the removal of certain trees and ground cover;

M. To promote the reasonable improvement and development of land in the city of Edmonds.

**18.45.010 Administering authority.**

The city's planning division manager or his/her duly authorized representative is hereby authorized and directed to enforce all the provisions of this chapter.

**18.45.020 Permits.**

No person shall engage in or cause any land to be cleared without first obtaining a land clearing permit from the planning division manager or his/her designee.

### **18.45.030 Exemptions.**

The following shall be exempt from the provisions of this chapter:

A. Clearing on an improved single-family lot or clearing on a partially improved single-family lot, which is capable of being divided into one additional lot, except for:

1. That portion of the lot that is located in a designated environmentally sensitive area;
2. That portion of the lot that is located within 25 feet of any stream or wetland;
3. That portion of the lot that has slopes exceeding 25 percent;

B. Unimproved lots which are not capable of being further subdivided, except for:

1. That portion of the lot that is located in a designated environmentally sensitive area;
2. That portion of the lot that is located within 25 feet of any stream or wetland;
3. That portion of the lot that has slopes exceeding 25 percent;

C. Routine landscape maintenance and gardening;

D. Removal of trees and/or ground cover by the public works department, parks department, fire department and/or public or private utility in situations involving danger to life or property, substantial fire hazards, or interruption of services provided by a utility;

E. Installation and maintenance of public utilities, after approval of the route by the planning division manager or his or her designee, except in parks or environmentally sensitive areas;

F. Emergency situations on private property involving danger to life or property or substantial fire hazards. [Ord. 3507 § 1, 2004].

### **18.45.035 Procedural exemption.**

Projects requiring the approval of the Edmonds architectural design board (“ADB”) under the provisions of Chapter 20.10

ECDC shall be exempt from the application and procedural requirements of this chapter; provided, however, that:

A. Clearing on such projects shall take place only after ADB approval and shall be in accordance with such approval. Violations shall be subject to the remedies prescribed by this chapter. See ECDC 18.45.070.

B. ADB review of clearing proposals shall be consistent with and apply to the standards established by this chapter. [Ord. 3507 § 2, 2004].

**18.45.040 Definitions.**

A. “Caliper” shall mean the diameter of any tree trunk as measured at a height of four feet above the ground on the upslope side of the tree.

B. “Creek” means those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. The channel or bed need not contain water year around. This definition is not meant to include storm water runoff devices or other entirely artificial watercourses unless they are used to store and/or convey pass-through stream flows naturally occurring prior to construction.

C. “Clearing” means the act of cutting and/or removing vegetation. This definition shall include grubbing vegetation.

D. “Clearing permit” means the written approval of the city of Edmonds planning division manager or his or her designee to proceed with the act of clearing property within the city limits of Edmonds.

E. “Improved lot” shall mean a lot or parcel of land upon which a structure(s) is located, which cannot be more intensively developed or improved pursuant to the city zoning code, and which cannot be further subdivided pursuant to city subdivision regulations.

F. “Drip line” of a tree shall be described by a line projected to the ground delineating the outermost extent of foliage in all directions.

G. “Grubbing” means the act of removing vegetation by the roots.

H. “Ground cover” shall mean a dense covering of small plants such as salal, ivy, ferns, mosses, grasses, or other types of vegetation which normally cover the ground.

I. “Land development permit” means a preliminary or final plat for a single-family residential development; a building permit; site plan; preliminary or final planned unit development plan.

J. “Lakes” are natural or artificial bodies of water of two or more acres and/or where the deepest part of the basin at low water exceeds two meters (6.6 feet). Artificial bodies of water with a recirculation system approved by the public works department are not included in this definition.

K. “Mechanical equipment” shall include all motorized equipment used for earth moving, trenching, excavation, gardening, landscaping, and general property maintenance exceeding 12 horsepower in size.

L. “Native growth protection easement” is a restrictive area where all native, predevelopment vegetation shall not be disturbed or removed except for removal pursuant to an enhancement program approved pursuant to this chapter or to remove dead or diseased vegetation. The purpose of an easement is to protect steep slopes, slopes with erosion potential, landslide and seismic hazards, creeks, wetlands and/or riparian corridors, wildlife, and areas shown on the environmentally sensitive areas map. This easement shall be defined during the development review process and shown on the recorded plat or short plat or approved site plan.

M. “Partially improved lot” shall mean a lot or parcel of land upon which a structure (refer to ECDC 21.90.150) is located and which is of sufficient area so as to be capable of accommodating additional development or improvement pursuant to the Edmonds zoning code; or which may be subdivided in accordance with the city of Edmonds subdivision chapter.

N. “Person” shall mean any person, individual, public or private corporation, firm, association, joint venture, partnership, owner, lessee, tenant, or any other entity whatsoever or any combination of such, jointly or severally.

O. “Removal” is the actual destruction or causing the effective destruction through damaging, poisoning or other direct or indirect actions resulting in the death of a tree or ground cover.

P. “Routine landscape maintenance” shall mean tree trimming and ground cover management which is undertaken by a person in connection with the normal maintenance and repair of property.

Q. “Tree” shall mean any living woody plant characterized by one main stem or trunk and many branches and having a caliper of six inches or greater, or a multi-stemmed trunk system with a definitely formed crown.

R. “Unimproved lot” shall mean a platted lot or parcel of land upon which no structure (refer to ECDC 21.90.150) exists.

S. “Wetlands” are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar area.

**18.45.045 Application requirements.**

A. An application for a land clearing permit shall be submitted on a form provided by the city, together with a plot plan and other information as described hereafter:

1. Name, address and telephone number of the applicant;
2. Legal status of applicant with respect to the land;
3. Written consent of owner(s) of the land, if the applicant is not the sole owner;
4. Name of person preparing the map, drawing or diagram submitted with the application, along with credentials if applicable;
5. Location of the property, including street number and addresses, together with the names and addresses of all the adjacent property owners within 80 feet of the subject property as listed in the records of the Snohomish County assessor;
6. A plot plan, drawn to scale, of the property depicting the following items (scale 1" = 30' or as approved by the planning division manager):
  - a. Topographic information,
  - b. Location of all existing and/or proposed structures, driveways, and utilities,

- c. Areas proposed for clearing and the proposed use for such area,
  - d. Designation of all diseased or damaged trees,
  - e. Any proposed grade changes that might adversely affect or endanger trees on the property and specifications to maintain them.
  - f. Designation of trees to be removed and trees to be maintained,
  - g. Designation of all wetlands, streams and environmentally sensitive areas;
7. A statement outlining the purpose of the tree removal (e.g., building construction, street or roadway, driveway, recreation area, patio, or parking lot), together with a proposed timetable for when the work will occur;
8. The manner in which the cleared areas on the property will be reclaimed with vegetation and the timetable for replanting;
9. Any other information deemed necessary by the city to allow adequate review and implementation in conformance with the purposes of this chapter.

B. Upon receipt of the application for a clearing permit, the staff shall inspect the site and contiguous properties. If the staff determines that the plan is in compliance with the provisions of this section and will result in the removal of no more trees or vegetation than is necessary to achieve the proposed development or improvement, the permit shall be approved under the provisions of ECDC 20.95.050 (Staff Decision – Optional Hearing).

The city may require a modification of the clearing plan or the associated land development permit to ensure the retention of the maximum number of trees.

If the staff determines that the plan will result in the destruction of more trees and vegetation than is reasonably necessary to achieve the proposed development, the permit shall be denied.

C. Any permit granted under the provisions of this section shall expire one year from the date of issuance. No work may commence on the permit until the appeal time limit has expired. Upon receipt of a written request, a permit may be extended for six months.

D. Approved plans shall not be amended without written authorization from the city. The permit may be revoked or suspended by the city upon discovery that incorrect information was supplied or upon any violation of the provisions of this chapter.

E. Applications for land clearing shall be referred to other city departments or agencies for review and approval as deemed necessary by the planning division manager. Applications for clearing in parks shall always be referred to the Edmonds planning board for review and approval.

**18.45.050 Performance standards for land development permits.**

A. There shall be no clearing on a site for the sake of preparing that site for sale or future development. Trees may only be removed pursuant to a clearing permit which has been approved by the city.

B. Trees shall be retained to the maximum extent feasible.

1. Clearing should not occur outside of the areas designated on the clearing plan.

2. No tree(s) or ground cover shall be removed from a native growth protection easement or environmentally sensitive site unless that plot plan and other submitted materials can demonstrate that the removal will enhance the easement area. An exception for the installation of roads and utilities may be approved if it can be demonstrated that alternative access is not practical or would be more damaging and is developed pursuant to an approved development plan.

Enhancement may include non-mechanical removal of noxious or intrusive species or dead or diseased plants and replanting of appropriate native species.

C. The city may restrict the timing of the land clearing and tree cutting activities to specific dates, times, and/or seasons when such restrictions are necessary for the public health, safety and welfare, or for the protection of the environment.

D. Native growth protection easements may be established through the subdivision process in the following areas:

1. A 25-foot buffer area from the annual high water mark of creeks, streams, lakes and other shoreline areas or from top of the bank of same, whichever provides good resource protection;
2. Areas in which the average slope is greater than 25 percent;
3. Wetlands;
4. Any other area which is determined through the environmental review process to include significant vegetation, wildlife or other similar resources which should be protected.

E. No ground cover or trees which are within 25 feet of the annual high water mark of creeks, streams, lakes, and other shoreline areas or within 15 feet of the top of the bank of same should be removed, nor should any mechanical equipment operate in such areas except for the development of public parks and trail systems; provided that conditions deemed by the city to constitute a public nuisance shall be removed, and provided that a property owner shall not be prohibited from making landscaping improvements where such improvements are consistent with the aims of this chapter.

F. The city may require and/or allow the applicant to relocate or replace trees, provide interim erosion control, hydroseed exposed slopes, or use other similar methods which would comply with the intent of the chapter.

G. No land clearing and tree cutting shall be conducted in a wetland, except for the installation of roads and utilities where no feasible alternative exists and the work is done pursuant to an approved development plan.

H. When tree cutting or land clearing will occur pursuant to a building, permit protection measures should apply for all trees which are to be retained in areas immediately subject to construction. The requirements listed may be modified individually or severally by the city if the developer demonstrates them to be inapplicable to the specific on-site conditions or if the intent of the regulations will be implemented by another means with the same result.

Where the drip line of a tree overlaps a construction line, this shall be indicated on the survey and the following tree protection measures shall be employed:

1. The applicant may not fill, excavate, stack or store any equipment, or compact the earth in any way within the area defined by the drip line of any tree to be retained.
2. The applicant shall erect and maintain rope barriers on the drip line or place bales of hay to protect roots. In addition, the applicant shall provide supervision whenever equipment or trucks are moving near trees.
3. If the grade level adjoining a retaining tree is to be raised or lowered, the applicant shall construct a dry rock wall or rock well around the tree. The diameter of this wall or well must be equal to the tree's drip line.
4. The applicant may not install ground level impervious surface material within the area defined by the drip line of any tree to be retained.
5. The grade level around any tree to be retained may not be lowered within the greater of the following areas: (1) the area defined by the drip line of the tree, or (2) an area around the tree equal to one foot in diameter for each one-inch of tree caliper.
6. The applicant may prune branches and roots, fertilize and water as horticulturally appropriate for any trees and ground cover which are to be retained.

The planning division manager or his/her designee may approve the use of alternative tree protection techniques if those techniques provide an equal or greater degree of protection than the techniques listed above.

**18.45.055 Notice.**

The city shall mail a notice to the surrounding property owners, pursuant to ECDC 20.90.010, informing them of the application for a clearing permit.

**18.45.060 Appeals.**

Any person aggrieved by the decision of the staff regarding a clearing permit may appeal such decision of the hearing examiner within 10 working days of the date of the decision. The appeal shall comply with the provisions of Chapter 20.105 ECDC.

**18.45.065 Bonding.**

The applicant shall post a performance bond in the amount covering the installation of temporary erosion control measures and the clearing work to be done on the property and the cost of any proposed revegetation.

**18.45.070 Violations and penalties.**

A. A violation of any of the provisions of this chapter shall constitute a misdemeanor. It shall be a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed.

B. Any person found violating the provisions of this chapter may be fined by the planning division manager in an amount not to exceed \$1,000 per day and/or \$500.00 per tree. Any fine imposed by the planning division manager is appealable to the hearing examiner. This civil fine shall be in addition to any criminal, civil, or injunctive remedy available to the city.

C. The fines established in subsection (C) of this section shall be tripled to \$3,000 per day and/or \$1,500 per tree for clearing which occurs within any critical area or critical area buffer, in any earth subsidence or landslide hazard area, in any native growth protection easement or in any area which is designated for transfer or dedication to public use upon final approval of a subdivision, planned residential development or other development permit. [Ord. 3507 § 3, 2004].

**18.45.075 Public and private redress.**

A. Any person who violates any provision of this chapter or of a permit issued pursuant hereto shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to its original condition prior to such violation and the payment of any levied fine.

1. Restoration shall include the replacement of all ground cover with a species similar to those which were removed or other approved species such that the biological and habitat values will be substantially replaced; and

2. For each tree removed, replacement planting of up to three trees of the same species in the immediate vicinity of the tree(s) which was removed so long as adequate growing space is provided for such species. The replacement trees shall be of sufficient caliper to adequately replace the lost tree(s). Replacement trees

shall be a minimum of three inches in caliper and shall be replaced at the direction of the planning division manager.

B. In order that replanted species shall have an opportunity to adequately root and establish themselves prior to disturbance by any future development, no permit shall be issued nor final approval given to any project until such time as all planting required to mitigate illegal activity has been fully implemented in accordance with an approved landscaping plan, and an adequate rooting period has expired. The plan shall meet the performance standards established in ECDC 18.45.050. The phrase “adequate rooting period” is defined for the purposes of this section as a period of one calendar year from the date of planting; provided, however, that a developer or other impacted party may apply to the architectural design board for the establishment of a different rooting period. The architectural design board shall establish such period which may be longer or shorter than one calendar year based upon the species of the plants involved, the particular point in the growing cycle at which the application is reviewed, and the planting schedule. The architectural design board shall establish a rooting period based upon the best scientific and biological evidence available as necessary to reasonably insure the establishment of the plantings. In no event shall a rooting period be established as a penalty.

C. Restoration shall also include installation and maintenance of interim and emergency erosion control measures until such time as the restored ground cover and trees reach sufficient maturation to function in compliance via performance standards identified in ECDC 18.45.050. [Ord. 2804 § 1, 1990].

**18.45.080 Additional remedies authorized.**

Violation of ECDC 18.45.035(A) or of any condition of ADB approval regarding tree clearing, the protection of native growth or landscaping installation and maintenance shall, in addition to another remedy imposed by this code, be a violation of the provisions of this chapter and subject to the bonding, violation and penalty and public and private redress provisions of ECDC 18.45.065, et seq. [Ord. 3507 § 4, 2004].

Section 2. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect

five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

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MAYOR GARY HAAKENSEN

ATTEST/AUTHENTICATED:

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CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY 

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W. SCOTT SNYDER

FILED WITH THE CITY CLERK:	05/18/2007
PASSED BY THE CITY COUNCIL:	05/22/2007
PUBLISHED:	05/27/2007
EFFECTIVE DATE:	06/01/2007
ORDINANCE NO. <u>3646</u>	

**SUMMARY OF ORDINANCE NO. 3646**

of the City of Edmonds, Washington

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On the 22nd day of May, 2007, the City Council of the City of Edmonds, passed Ordinance No. 3646. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE EDMONDS COMMUNITY DEVELOPMENT CODE, CHAPTER 18.45 LAND CLEARING AND TREE CUTTING CODE TO INCORPORATE THE TERMS “IMPROVED” AND “PARTIALLY IMPROVED” IN ORDER TO COMPLY WITH RECENT DECISIONS OF THE WASHINGTON SUPREME COURT, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

The full text of this Ordinance will be mailed upon request.

DATED this 23rd day of May, 2007.

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CITY CLERK, SANDRA S. CHASE