

ORDINANCE NO. 2022-0-__ -__

ORDINANCE AMENDING BRIGHTON CODE SECTION 19.72.110 TREE AND
VEGETATION PROTECTION

WHEREAS, the Town of Brighton (“Brighton”) Town Council ("Council) is authorized to enact ordinances for the health, safety, and well-being of its residents and visitors; and

WHEREAS, fire protection is a grave concern in Brighton;

WHEREAS, creating defensible space around a dwelling increases protection against wildfire;

WHEREAS, if significant trees must be removed due to construction activity, because of the already dense nature of the foliage, staff recommends replacing trees with bare-root seedlings and requiring them to be outside the defensible space;

NOW, THEREFORE, BE IT ORDAINED by the Brighton Town Council as follows:

SECTION 1. AMENDED. Section 19.72.110 is amended as redlined in Attachment A.

SECTION 2. Effective Date. This Ordinance shall go into effect upon publication.

PASSED AND APPROVED this ____ Day of _____, 2022.

TOWN OF BRIGHTON

By: _____
Dan Knopp, Mayor

ATTEST:

Kara John, Town Clerk

19.72.110 - Tree and vegetation protection.

- A. Purpose. Protection of existing tree and vegetation cover is intended to:
1. Preserve the visual and aesthetic qualities of the Brighton's foothills and canyons.
 2. Encourage site design techniques that preserve the natural environment and enhance the developed environment.
 3. Control erosion, slippage, and sediment run-off into streams and waterways.
 4. Increase slope stability.
 5. Protect wildlife habitat and migration corridors.
 6. Conserve energy, in proximity to structures, by reducing building heating and cooling costs.
- B. Applicability. These provisions apply to all development in the foothills and canyons overlay zone, with the following exceptions:
1. The removal of dead or naturally fallen trees or vegetation to protect public health, safety, and welfare.
 2. The selective and limited removal of trees or vegetation necessary to obtain clear visibility at driveways or intersections, to perform authorized field survey work, or to protect structures from fire consistent with the Utah Wildland-Urban Interface Code.
 3. The removal of trees or vegetation on land zoned or lawfully used for agricultural and forestry activities, including tree farms, or pursuant to approved forest management programs. In the event a site is substantially cleared of trees pursuant to such legitimate activities, no development or site plan applications for other types of development may be accepted by the town within thirty-six months from the date of the clearing.
 4. The director has discretion to administratively offer relief of the standards in this section by up to twenty-five percent if either of the following circumstances applies:
 - a. The modification is designed to yield:
 - i. More effective preservation of existing mature trees, vegetation, riparian areas, rock outcrops, or other significant natural features of the site;
 - ii. Less visual impact on the property or on the surrounding area; or
 - iii. Better protection of wildlife habitat; or,
 - b. Strict application of the standard(s) would render a site undevelopable.
- C. Tree/Vegetation Removal
1. Outside the Limits of Disturbance. No trees or vegetation may be removed outside the approved limits of disturbance unless specifically exempted by this section.
 2. Within the Limits of Disturbance. Significant trees removed from within the limits of disturbance shall be replaced as set forth in this section.
 3. Wildfire Hazards and Tree/Vegetation Removal. Defensible space is defined as the required space between a structure and wildland area that, under normal conditions, creates a sufficient buffer to slow or halt the spread of wildfire to a structure. Appropriate defensible space surrounding a structure is established in Utah Wildland-Urban Interface Code incorporated in UFA Wildland-Urban Interface Site Plan/Development Review Guide. [See subsection G below.](#) A copy of the approved fire protection plan shall be

submitted to the zoning administrator for incorporation into the final approval documents.

4. Tree/Vegetation Removal for Views Prohibited. No trees or vegetation may be removed solely for the purpose of providing open views to or from structures on a site.
- D. Replacement of Significant Trees.
1. When a significant tree is removed from inside the established ~~L~~imits of ~~D~~isturbance, which removal is not required by wildland-urban interface standards referenced in C.3. above, the applicant or developer shall replace such tree(s) on the lot, according to the following schedule and requirements:
 - a. A significant tree that is removed shall be replaced ~~by two trees with a minimum size of one inch caliper for deciduous trees and a minimum height of four feet for coniferous trees~~ with 10 bare-root seedlings native to the surrounding area and placed in locations on the lot that are appropriate, feasible, ~~and~~ practical for growth, outside the defensible space and that comply with fire requirements and standards, as determined by the ~~zoning administrator~~ planning director or their designee.
 - ~~b. Replacement trees shall be maintained through an establishment period of at least two years. The applicant shall post a bond in the amount of ten percent of the value of all replacement trees guaranteeing their health and survival during the first year of the establishment period.~~
 2. If the remainder of the lot outside the permitted limits of disturbance is heavily wooded, defined as areas of trees with canopies that cover eighty percent of the area, and is not suitable to the planting of replacement ~~trees~~ bare-root seedlings, the requirement to plant replacement ~~trees~~ requirement bare-root seedlings may be waived by the ~~zoning administrator~~ planning director or their designee.
 - ~~3. Planting replacement trees may be allowed by the zoning administrator on parcels within the subdivision or adjoining open space or forest service land upon the written consent of the property owner or representative of the property owner of the parcel(s) where the trees are being planted. In order to minimize disturbance of public land, saplings may be used in lieu of the larger trees listed in subsection 1.(a) above at the rate of ten saplings per required replacement tree, for trees planted on publicly owned land.~~
- E. Revegetation and Land Reclamation Plan.
1. On a parcel of land that has been or will be altered from its natural condition by man-made activities, a revegetation and land reclamation plan prepared and certified by a qualified professional may be required for review and approval by the director. The plan shall incorporate the elements of the fire protection plan, and shall indicate a timeframe for revegetation that is acceptable to Brighton and that takes into account optimal seasonal growing conditions.
 2. The revegetation and land reclamation plan shall depict the type, size, number, and location of any vegetation and trees to be planted and illustrate how the site will be recontoured with sufficient topsoil to ensure that vegetation is successful. All new trees shown on the plan shall:
 - a. Comply with the Vegetation Clearance Guidelines of the Wildland-Urban Interface Code;

- b. Be spaced no closer than twenty feet on center; and,
 - c. Be on the Utah Fire Resistive Species list in the Wildland-Urban Interface Code.
 3. Any slope exposed or created in new development shall be landscaped or revegetated with native or adapted trees and plant material. New vegetation shall be equivalent to or exceed the amount and erosion-control characteristics of the original vegetation cover in order to mitigate adverse environmental and visual effects.
 4. On man-made slopes of twenty-five percent or greater, plant materials with deep rooting characteristics shall be selected to minimize erosion and reduce surface runoff. The planting basin shall be kept level with a raised berm around the base of the plant to help retain moisture.
 5. Topsoil that is removed during construction may be conserved for later use on areas requiring revegetation or landscaping, such as cut-and-fill slopes.
 6. The land reclamation plan may not include landscaping or other elements that conflict with the approved fire protection plan.
- F. Tree/Vegetation Protection During Construction and Grading Activities.
 1. Limits of disturbance, as established in [Section 19.72.160](#), shall be shown on the final plans for development and shall be clearly delineated on site with fencing or other separation methods approved by the director prior to the commencement of excavation, grading, or construction activities on the site.
 2. Within the limits of disturbance, fencing, at a minimum, shall be placed around each significant tree that will not be removed and around stands of twelve or more smaller trees. Such fencing shall be placed at the edge of the individual or outermost tree's drip zone. No construction, grading, equipment or material storage, or any other activity is allowed within the drip zone, and the fencing must remain in place until all land alteration, construction, and development activities are completed.
 3. If it is necessary to fill over the root zone, compacted soils shall be avoided by sandwiching fabric, rocks, and more fabric under the area to be filled.
 4. If fill creates a tree well or depression around a tree or shrubs, such area shall be filled in or drained so that the vegetation is not drowned by the pooling of rainfall or irrigation.
 5. If a significant tree that will not be removed has roots that are cut, the branches shall be trimmed by an amount equal to the percent of roots that were lost. Cutting more than thirty percent is prohibited. Roots shall be pruned cleanly prior to digging and not ripped off by heavy equipment. If the tree whose roots have been cut dies within a two-year period, the replacement provision in section D above applies.
 6. Utility trenches near trees shall be avoided. If a line must be near a tree, tunneling, auguring, or other mitigation measures shall be used.

G. Maintenance of Defensible Space

1. Trees, undergrowth, and other plant material within 30 feet of a dwelling or to the property line, whichever is less, may be removed without permitting or approval. This applies to new and existing construction and the maintenance of the defensible space.
2. Trees located more than 30 feet, but no more than 100 feet from a dwelling may only be removed for fire safety reasons if approved by the planning department under the following conditions:
 - a. Location of trees:

1. A site plan drawn to scale is submitted to the planning department that identifies the size, species and location of any tree proposed to be removed; and
2. The crown of any tree proposed to be removed is located 10 feet or less from the crown of adjacent trees and structures, overhead electrical facilities or unmodified fuel; or
 - b. The tree is dead or dying.
3. Undergrowth and dead plant material may be removed from all areas on the lot at all times without a permit.

G.H. Tree Removal not Authorized by this Section.

1. If a significant tree(s) is removed contrary to any provision in this section, the person(s) responsible for the removal shall pay to Brighton the value of the tree(s).
 - a. The value of the tree(s) shall be determined by a tree appraiser who is an ISA (International Society of Arboriculture) certified arborist with at least five years of experience appraising trees using the appraisal methods outlined in the current edition of "The Guide for Plant Appraisal," authored by the Council of Tree and Landscape Appraisers (CTLA). The appraiser shall prepare an appraisal report using these methods, and adding to the value from these methods an analysis of the tree(s) contributory value, i.e., the value that the tree(s) contributed to the overall value of the property on which they were located.
 - b. The appraiser shall be chosen by the person(s) responsible for the removal and Brighton.
 - c. The person(s) responsible for the removal shall pay the cost of the appraisal.
2. If a significant tree(s) is removed contrary to this section, all development and Brighton permitting and processing of the land use application shall be put on hold for up to sixty days from the date of Brighton's discovery of removal. During that time, Brighton will inventory the significant tree(s) that were removed, and the process of valuing the tree(s) that were removed shall commence, pursuant to paragraph 1 above.
3. The person(s) responsible for removing the significant tree(s) shall pay for the cost of site restoration, including the removal of the stump(s). The stump(s) may not be removed until an appraisal is completed pursuant to paragraph 1. above.
4. The person(s) responsible for removing the significant tree(s) shall also replace the tree(s) in accordance with the provisions in this section. The bond referenced in subsection (D)(1)(b) of this section shall be a surety bond for those that unlawfully remove trees.
5. In addition to the civil penalties provided in paragraphs 1—4 of this subsection (G), the person(s) responsible for removing the significant tree(s) may also be subject to criminal prosecution as a Class B misdemeanor for each significant tree unlawfully removed.