



**CITY OF WASHOUGAL
CITY COUNCIL WORKSHOP AGENDA
Monday, May 8, 2023
5:00 PM**

MEETING INFORMATION

Please click the link below to join the webinar:
<https://us02web.zoom.us/j/82763461767>

I. CALL TO ORDER

II. ROLL CALL

III. PUBLIC COMMENTS

IV. NEW BUSINESS

- A. Community Development - Clark Public Utilities Critical Areas Ordinance Memorandum Of Agreement**

V. PUBLIC COMMENTS

VI. REPORTS AND COMMUNICATIONS

- A. CITY MANAGER**
- B. MAYOR**
- C. CITY COUNCIL**

VII. ADJOURNMENT

UPCOMING MEETINGS: Monday, May 22, 2023 - Workshop at 5:00 pm and Council at 7:00 pm

AGENDA BILL #
BUSINESS OF THE CITY COUNCIL
City of Washougal, Washington

FOR AGENDA OF:

5/8/2023

SUBJECT:

Community Development - Clark Public Utilities (CPU) Critical Areas Ordinance (CAO)
Memorandum of Agreement (MOA)

DEPT. OF ORIGIN:

Community Development

REVIEWED AT:

TO BE RETURNED TO COUNCIL:

Yes

ATTACHMENTS:

📎 **DRAFT - CPU-Washougal CAO MOA**

EXPENDITURE REQUIRED:

\$0

BUDGETED:

\$0

APPROPRIATION REQUIRED:

\$0

SUMMARY STATEMENT

Chapter 16.04 (Critical Areas) of the Washougal Municipal Code provides utility service providers and public agencies with an opportunity to submit a Memorandum of Agreement to address emergency and routine repair and maintenance activities within critical areas. It also grants the Community Development Director the authority to negotiate memorandum of agreements that must be authorized by City Council after a public hearing on the terms and merits of the agreement.

Clark Public Utilities (CPU) and the City of Washougal have had such an agreement since 2006. These agreements are typically valid for 5-years and the current Memorandum of Agreement was renewed in 2018; therefore, it is time for this agreement to be renewed.

CPU frequently must repair and/or upgrade existing infrastructure and facilities, replace electric lines, and complete other maintenance and operational activities per WMC 16.04.040. The current agreement, which includes public and private properties and

easements and right-of-way areas within the City, allows CPU to conduct these types of activities within critical areas without an individual permit. So that CPU can continue to repair, maintain, and operate within the City, CPU, through their consultant WSP, is requesting that the City renew the Memorandum of Agreement for an additional 5-years.

RECOMMENDED ACTION

Set a public hearing for the Clark Public Utilities Critical Areas Ordinance Memorandum of Agreement for May 22, 2023 at 7:00pm through approval of tonight's consent agenda.

CLARK PUBLIC UTILITIES AND THE CITY OF WASHOUGAL CRITICAL AREAS MEMORANDUM OF AGREEMENT

CHAPTER 16.04, WASHOUGAL MUNICIPAL CODE

May 15, 2006

Updated and Renewed

PURPOSE

It is the overall intent of this Memorandum of Agreement (Agreement) to provide Clark Public Utilities with a means for the efficient, reliable and effective continuance of current and future activities associated with repair, maintenance and operations while complying with the City of Washougal Critical Areas Ordinance (WMC 16.04). Clark Public Utilities performs many repairs, upgrades existing facilities, reconductoring of electric lines, and other maintenance and operational activities of its infrastructure and facilities on a regular basis. Many of these activities involve routine maintenance and repair activities such as tree pruning, vegetation management, chemical usage, mobile refueling and pole replacement. Some of these activities are associated with emergencies such as power outages, service interruptions, and general public safety.

The intent of this memorandum of agreement is to identify mitigation measures that will be utilized in conjunction with the activities identified in this agreement that are conducted within designated critical areas and buffers to satisfy the requirements of a Critical Areas Permit and an Exemption Request in conformance with Chapter 16.04 of the Washougal Municipal Code (WMC) to achieve the stated purposes of this agreement.

MEMORANDUM OF AGREEMENT PARAMETERS

The following provisions are agreed to in association with this Memorandum of Agreement:

- This Memorandum of Agreement is applicable to all existing and future permitted facilities and activities identified within this Agreement that are located within areas meeting the definition of a designated critical area within WMC Section 16.04.015, including Critical Aquifer Recharge Areas, Fish & Wildlife Habitat Conservation Areas, Frequently Flooded Areas, Geologically Hazardous Areas, and Wetlands; and all exempt activities as identified in WMC Section 16.04.040;
- The approval of this Memorandum of Agreement meets the requirements associated with a Critical Areas Permit and Exemption Request (WMC Section 16.04.040(2)), and

as such the activities mitigated in compliance with this Agreement do not require the submission and approval of separate Critical Areas Permits or Exemption Requests for the duration of this Memorandum of Agreement;

- This Memorandum of Agreement applies within the city limits of Washougal and all areas annexed by the city during the duration of this Agreement;
- For all activities identified within this Memorandum of Agreement, no mitigation will be required beyond the mitigation identified within this Agreement;
- No annual reports will be required in conjunction with this Agreement;
- Approval of this Agreement does not authorize the alteration or relocation of existing infrastructure owned or operated by Clark Public Utilities;
- The provisions contained within this Agreement only applies to Clark Public Utilities employees, its contractors, and vendors working under the direction of Clark Public Utilities;
- Contractors working on Clark Public Utilities' facilities under joint use or joint ownership agreements shall not covered under this Agreement;
- This Agreement will be in effect until [REDACTED], 2028, unless the mitigation measures agreed to herein are found to pose a significant public health, safety, or reliability issue, then either and/or both party(ies) may open the agreement.

EXEMPTION REQUEST

All Clark Public Utilities employees, contractors, and vendors will use reasonable methods to avoid potential adverse impacts to critical areas and will receive training in the approved procedures and standards identified for critical areas permit and exempt activities. All exempted activities shall use reasonable methods to avoid potential adverse impacts to critical areas. This agreement does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced.

The following development, activities, and associated uses shall be exempt from the provisions of Chapter 16.04, Critical Areas, provided that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements and the provisions identified herein:

Section 16.04.040(1)(b) – Repair. Repair or replacement of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, including operation and maintenance of existing facilities, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed maintenance or repair.

Section 16.04.040(1)(h) – Activities within the improved public right-of-way or recorded easement. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or recorded

easement, or, a City authorized private roadway except those private activities that alter a wetland or watercourse, such as culverts or bridges, or results in the transport of sediment or increased stormwater.

Section 16.04.040(1)(i) Chemical applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, provided that their use shall be restricted in accordance with the Department of Fish and Wildlife Recommendations, the City of Portland's Pest Management Program and the regulations of the Department of Agriculture and the U.S. Environmental Protection Agency.

- Application will be performed in accordance with Washington State's applicator license law;
- Application will be in compliance with the City of Portland's Pest Management Program, pages 46--55 (See Attachment A).

Section 16.04.040(1)(l) - Construction and modifications to existing structures that does not increase the footprint of the structure.

Section 16.04.040(1)(m) - The removal of the following vegetation with hand labor and light equipment, and vegetation removal that is a hazard to electrical power lines with hand held and walk beside equipment such as mowers and weed eaters in compliance with the provisions contained in ANSI A300 (Part 1) guidelines, unless other equipment is approved by the community development director based on BAS as evidenced by a biologist, including, but not limited to:

- (i) Invasive non-native weeds;
- (ii) English Ivy (*Hedera helix*)
- (iii) Himalayan blackberry (*Rubus armeniacus*); and
- (iv) Evergreen blackberry (*Rubus laciniatus*)

Section 16.04.040(1)(n) – Emergency or hazard tree removal conducted so that habitat impacts are minimized.

Section 16.04.040(1)(o) – Public improvement projects located within existing impervious surface areas.

Section 16.04.040(1)(p) - Public agency and utility exemption.

ACTIVITIES ALLOWED WITH A MEMORANDUM OF AGREEMENT

All activities identified within this Memorandum of Agreement shall be performed to minimize and mitigate impacts to designated critical areas and their buffers by first trying to avoid impacts that degrade the functions and values of critical areas; second, minimize impacts to critical areas; third, provide mitigation for unavoidable impacts to critical areas, fourth, provide for no net loss to critical areas functions and values; fifth, ensure that activities do not pose a significant threat to the public health, safety, or welfare; and sixth, that these activities will meet the specific development standards contained in Chapter 16.04.

The following activities are allowed within areas defined in WMC 16.04.015 as Critical Aquifer Recharge Areas, Fish and Wildlife Habitat Conservation Areas, Frequently Flooded Areas, Geologically Hazardous Areas, and Wetlands in compliance with the provisions contained within WMC 16.04 and the mitigation measures identified within this Memorandum of Agreement. The activities and mitigation measures identified within this Agreement will be allowed within the City of Washougal on private and public property, including all easement and right-of-way areas. All compensatory mitigation shall be on-site, whenever feasible, and sufficient to maintain critical areas functions.

The following development, activities, and associated uses shall be allowed on critical areas and within buffer areas subject to the provisions of WMC Section 16.04.025, Allowed Uses:

Tree Pruning (Scheduled & Emergency)

Routine tree pruning activities within designated wetland and riparian areas and their associated buffers are not exempt from the provisions contained within the wetland and fish and wildlife habitat sections of the ordinance. Impacts to wetland and riparian areas associated with these activities include the removal of shading canopies which will impact water quality temperature, removal and disturbance of vegetation which may lead to erosion and loss of large woody debris utilized by riparian area species.

Mitigation measures for tree pruning, removal, and replacement within designated wetland and riparian areas and their associated buffers:

- Compliance with the provisions contained in ANSI A300 (Part1) and ANSI A300 (Part 1) Special Companion Publication – Utility Pruning of Trees as outlined in the stated purpose of utility/facility pruning as found on page 2(see Attachments B and C);
- Pruning and/or removal of small, immature trees such as cottonwoods, may be removed in cases where they may pose a future threat to utility infrastructure;
- Personnel will limit the use of heavy equipment within designated wetland and riparian areas and their associated buffers. Any areas damaged by the use of heavy equipment that may cause soil erosion control impacts will be restored and stabilized within 1 (one) month to address these impacts through measures such as reseeding using native grasses and other erosion control measures as necessary.

Mobile Refueling

Mobile refueling within designated wetland and riparian areas and associated buffers can cause impacts to streams and wetland areas if fuel accidentally enters these areas. Damage to water quality and vegetation may occur.

Mitigation measures for mobile refueling:

- Avoid refueling within designated critical areas if at all possible;
- Refuel in a contained area that does not drain into a wetland, water body, or stormwater system;
- Assure proper training for operators to include emergency spill avoidance training.

ACTIVITY AND MITIGATION TABLE

This table below summarizes the repair and maintenance activities within the WMC, their constraints, whether those activities are exempt or non-exempt, if mitigation measures are required, and their specific ordinance citation. Tree pruning and mobile refueling comply with ANSI 300 and have been adopted by the City of Washougal.

Ordinance Section	Activity	Description	Exempt Or Nonexempt	Mitigation Measures
16.04.040(1)(b)	Repair or replacement of existing structures, infrastructure, utilities, public or private roads, dikes, levees, or drainage systems, including operation and maintenance of existing facilities	Activities that do not require a construction permit, does not further alter or increase impact to or encroach within the critical area or buffer and no increased risk to life or property	Exempt	None Required
16.04.040(1)(h)	Activities within the improved public R-O-W or recorded easement. Replacement, modification, installation, or construction of utility facilities	Facilities must be located within improved portion of the roadway. Activities cannot alter a wetland or watercourse, or result in the transport of sediment or increased stormwater	Exempt	None Required
16.04.040(1)(i)	Chemical Applications	Using hand-held or non-motorized equipment	Exempt	Application to be performed in accordance with WA State applicator license law. Application will be in compliance with the City of Portland's Pest Management Program (pg. 46-55).
16.04.040(1)(l)	Construction and modifications to existing structures	Cannot increase the footprint of the structure	Exempt	None required

Ordinance Section	Activity	Description	Exempt Or Nonexempt	Mitigation Measures
16.04.040(1)(m)	Removal of vegetation Invasive non-native weeds, English Ivy, Himalayan blackberry, Evergreen blackberry	Removal by hand held equipment or walk beside equipment	Exempt	None required
16.04.040(1)(n)	Emergency or tree hazard removal	Habitat impacts must be minimized	Exempt	None Required
16.04.040(1)(o)	Public improvement projects	Must be located within existing impervious surface areas	Exempt	None Required
N/A	Tree Pruning	Scheduled and Emergency	Non-exempt	Compliance with ANSI A300 (Part 1) and ANSI A300 (Part 1) Special Companion Publication – Utility Pruning of Trees. Personnel will limit the use of heavy equipment within designated wetland and riparian areas. Restoration of disturbed areas as soils must be stabilized and restored within 1 month
N/A	Mobile Refueling	Within designated wetland and riparian areas	Non-exempt	Avoid refueling within designated critical areas if at all possible. Refuel in a contained area that does not drain into a wetland, water body, or stormwater system. Assure proper training for operators to include emergency spill avoidance training.

APPROVED BY

City of Washougal, Washington

Public Utility District No. 1 of Clark County

Signature

Signature

Name (Printed)

Name (Printed)

Title

Title

Date

Date

DRAFT