

Council Business Meeting

September 4th, 2018

Agenda Item	Second Reading of an Ordinance Amending Title 18 Land Use and Title 9 Health and Sanitation of the Ashland Municipal Code Relating to the Wildfire Lands Map, Wildfire Development Standards, Fencing Requirements, Tree Removal Permit Requirements, and declaring Prohibited Flammable Plants as a Nuisance.	
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SUMMARY

The proposed ordinances would amend the Wildfire Overlay Map to expand the boundary of Ashland’s designated Wildfire Lands to incorporate the entire City, and amend the Ashland Municipal Code to implement new standards for fire prevention and control plans and fuels reduction associated with development.

A separate resolution is proposed to identify the specific plant species to be included on the proposed General Fuel Modification Area Prohibited Flammable Plant List for application in Ashland’s designated Wildfire Lands. Additionally, this Prohibited Flammable Plant List distinguishes between plants that are not allowed within 30 feet of structures, and specific flammable plant varieties that can be sparingly planted outside of five feet from structures when following spacing guidelines for General Fuel Modification Areas outlined in Chapter 18.3.10.100.

The proposed ordinance amendments include modifications to Ashland Land Use Ordinance Chapter 18.3.10.100 Development Standards for Wildfire Lands; 18.3.10.020 Physical Constraints Review Permit, 18.3.10.040 Physical Constraints Review Application Submission Requirements, 18.3.10.090 Development Standards for Hillside Lands; 18.4.3.080 Vehicle Area Design; 18.4.4 Landscaping, Lighting, and Screening; 18.5.1 General Procedures; 18.5.3.060 Additional Preliminary Flag Lot Partition Plat Criteria; 18.5.5 Variances; 18.5.7 Tree Removal Permits; 18.6 Definitions; and 9.04 Weeds and Noxious Vegetation.

POLICIES, PLANS & GOALS SUPPORTED

The project addresses a variety of City Council goals and strategies, adopted City plans and State requirements.

The 2015-2017 Council Goals and Objectives also identified a goal to “Complete the expansion of the city’s wildfire hazard zone to accurately reflect risk (8.4)” and an objective to “Update the Wildfire Hazard Zone ordinance to allow for Citywide application and schedule for Council consideration.”

Statewide Planning Goal 7 requires cities to protect people and property from natural hazards. The amendments to the Ashland Land Use Ordinance regarding mitigating wildfire hazards through reduction of fuels in immediate proximity of new structures addresses this goal. Additionally, the establishment of a General Fuel Modification Area Prohibited Plant List as proposed, will ensure that highly flammable species are not newly introduced within areas that pose the greatest risk of spreading wildfire to structures within the City.

The Ashland Comprehensive Plan includes a goal to “*Protect life, property and environmental resources in Ashland’s suburban/wildland interface area from the devastating effects of wildfire. Lessen the possibility of wildfire spreading to the Ashland watershed from the urban/wildland interface area*” (4.25 Wildfire Hazards).

The 2018 Draft Multi-Jurisdictional Natural Hazard Mitigation Plan [Ashland Addendum] includes a goal to “*Reduce the threat of loss of life and property from natural hazards by incorporating information on known hazards and providing incentives to make hazard mitigation planning a priority in land use policies and decisions, including plan implementation*”

The City of Ashland’s 2017 Climate Energy Action Plan includes a goal to “*Prepare the city’s communities, systems, and resources to be more resilient to climate change impacts*” and includes the specific strategy to “*Support more climate-ready development and land use. Regulate new development in the Wildfire Lands Overlay part of the urban growth boundary (Strategy ULT-4.)*”.

The City of Ashland’s 2014 Wildfire Hazard Zone Evaluation demonstrated that the Wildfire Lands overlay boundary established in 1997 does not incorporate all areas within the City that meet the criteria to be considered a Wildfire Hazard Zone as set forth by OAR Chapter 629, Division 044, and found that expansion of the Wildfire Lands boundary to include all properties in the City was warranted.

The 2004 Ashland Community Wildfire Protection Plan includes a goal to “*Write and adopt a fire safe landscaping ordinance to regulate plantings around new structures.*”

PREVIOUS COUNCIL ACTION

The City Council passed first reading of the ordinances amending Chapter 18 and Chapter 9 at the August 21, 2018 meeting. The ordinances are scheduled for second reading at the September 4, 2018 meeting. If the Council approves second reading, the ordinance amendments will become effective 30 days after the ordinance is signed.

The Planning Division Staff Report dated June 26, 2018 provides a general summary of each of the ordinance amendments being presented for consideration.

BACKGROUND AND ADDITIONAL INFORMATION

There are no changes to the Chapter 18 and Chapter 9 ordinance amendments approved by the City Council at First Reading on August 21, 2018.

The Resolution establishing a Prohibited Flammable Plant List has been amended to address input received from landscape professionals provided at meetings held on August 15th and August 27th. The Resolution newly distinguishes dwarf and low-growing varieties of flammable plants that may be located beyond 5 feet from a structure provided they are not mass planted and maintain minimum separation between plantings. The Resolution has been further amended to instruct the Wildfire Mitigation Commission to submit a yearly review of the Prohibited Flammable Plant List, for which a subcommittee has already been established at the August 15th commission meeting. The plant list can then be amended by a Resolution of the City Council based on the commission findings.

The Planning Commission recommended approval of the attached ordinance amendments, and resolution, and their report is attached. The Planning Commission held a public hearing on June 26, 2018. Prior to the public hearing, the Planning Commission held study sessions to discuss Wildfire Lands ordinance amendments on [June 24, 2014](#), [February 24, 2015](#), [November 24, 2015](#), [February 23, 2016](#), and [February 27, 2018](#).

The Wildfire Mitigation Commission ([3/21/2018 meeting](#)) and Tree Commission ([3/08/2018 meeting](#)) have each recommended the Council approve the proposed ordinances as described in the [Planning Division Staff Report dated 6/26/2018](#).

FISCAL IMPACTS

There is no direct cost to the City relating to expanding the Wildfire Lands boundary, adoption of amendments to the Development Standards for Wildfire Lands, or the adoption of a general fuel modification area prohibited plant list.

Citywide administration of the proposed code amendments will require additional staff time to address inquiries and review development proposals for conformance with the proposed standards. The increases in staff time needed to review building permits, and to evaluate Fire Prevention and Control Plans submitted with planning action requests, will be covered with existing Community Development Department staff resources. Site inspections to verify completion of General Fuel Modification Area requirements relating to new construction, and responses to code violation cases relating to newly planting prohibited flammable plants, can continue to be covered with existing Ashland Fire & Rescue staff resources.

Over time, we anticipate that the reduction of fire danger will have a fiscal benefit to city government and citizens through reduced impacts to critical infrastructure, fire responses, and loss of personal property.

STAFF RECOMMENDATION

Staff recommends approval of second reading of the ordinance amendments and resolution as presented.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

Two Ordinances are presented to the City Council for second reading, and one Resolution is presented for Council approval. Additionally, the Findings of Fact relating to these legislative amendments are included as an attachment to this Council Communication for Council review and approval.

Four separate potential motions are provided to address each of the legislative actions:

I move to approve second reading of an ordinance titled, “An ordinance amending Chapters 18.3.10, 18.4.3.080, 18.4.4, 18.5.1, 18.5.3.060, 18.5.5.020, 18.5.7 and 18.6.1 of the Ashland Land Use Ordinance to amend development standards for wildfire lands. this ordinance also amends the official Physical and Environmental Constraints Map to expand the boundary of Ashland’s designated Wildfire Lands to include all properties within the city limits.”.

I move to approve second reading of an ordinance titled, “An ordinance amending Chapter 9.04 of the Ashland Municipal Code to declare prohibited flammable plants a nuisance”.

I move to approve a resolution titled, “A Resolution adopting the City of Ashland General Fuel Modification Area Prohibited Flammable plant list for application in Ashland’s designated Wildfire Lands”.

I move to approve the Findings of Fact and Conclusions of Law in the matter of amendments to Title 18 Land Use, and Title 9 Health and Sanitation, of the Ashland Municipal Code .

REFERENCES & ATTACHMENTS

- Ordinance to Amend AMC Title 18 Land Use relating to Development Standards for Wildfire Lands, Tree Removal Permits, and Fencing Requirements.
- Ordinance to Amend AMC Title 9 Ordinance relating to declaring Prohibited Flammable Plants a nuisance.
- Resolution relating to the establishment of a Prohibited Flammable Plant List
- Findings of Fact and Conclusions of Law, September 4, 2018
- Physical and Environmental Constraints Map - Wildfire Lands overlay
- Planning Division Staff Report: PA-L-2018-0003 dated 6/26/2018
- Planning Commission Report dated 7/10/2018

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTERS 18.3.10, 18.4.3.080, 18.4.4, 18.5.1, 18.5.3.060, 18.5.5.020, 18.5.7 AND 18.6.1 OF THE ASHLAND LAND USE ORDINANCE TO AMEND DEVELOPMENT STANDARDS FOR WILDFIRE LANDS. THIS ORDINANCE ALSO AMENDS THE OFFICIAL PHYSICAL AND ENVIRONMENTAL CONSTRAINTS MAP TO EXPAND THE BOUNDARY OF ASHLAND'S DESIGNATED WILDFIRE LANDS OVERLAY TO INCLUDE ALL PROPERTIES WITHIN THE CITY LIMITS.

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~bold lined through~~** and additions are **bold underlined**.

WHEREAS, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

WHEREAS, the City Council finds that the Ashland 2014 Wildfire Hazard Zone Evaluation demonstrated that the Wildfire Lands overlay boundary established in 1992 does not incorporate all areas within the City that meet the criteria to be considered a Wildfire Hazard Zone as set forth by OAR Chapter 629, Division 044, and

WHEREAS, the City Council has determined that the expansion of the Wildfire Lands overlay boundary to include all properties within the City Limits will enhance several elements of the fire safety strategy of the city and will assist in mitigating the threat of wildfire to the community which is a legitimate and beneficial goal; and

WHEREAS, the City of Ashland has determined that the application of development standards for wildfire lands, and regulation of landscape profiles for new construction, supports the following City Comprehensive Plan Environmental Resources Goal: "Protect Life, property and environmental resources in Ashland's suburban/wildland interface area from the devastating effects of wildfire. Lessen the possibility of wildfire spreading to the Ashland watershed from the urban/wildland interface area", and

WHEREAS, the City of Ashland has determined that implementation of this ordinance will assist in preparing the City to be more resilient to climate change impacts, including wildfire, as expressed in the 2017 Climate Energy Action Plan, and

WHEREAS, the Planning Commission of the City of Ashland conducted on June 26, 2018 a duly advertised public hearing on amendments to the Ashland Municipal Code and Land Use Ordinances concerning the establishment of standards to reduce or minimize the potential impacts of wildfire on properties, the occupants of properties and the occupants of adjacent properties; and

WHEREAS, the City Council of the City of Ashland, following the close of the public hearing and record, deliberated and conducted first and second readings approving adoption of the Ordinance in accordance with Article 10 of the Ashland City Charter; and

WHEREAS, the City Council of the City of Ashland has determined that in order to protect and benefit the health, safety and welfare of existing and future residents of the City, it is necessary to amend the Ashland Municipal Code and Land Use Ordinance in the manner proposed, that an adequate factual base exists for the amendments, the amendments are consistent with the comprehensive plan and that such amendments are fully supported by the record of this proceeding.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. Chapter 18.3.10.100 [Development Standards for Wildfire Lands] of the Ashland Land Use Ordinance is hereby repealed in its entirety and replaced as follows:

18.3.10.100 Development Standards for Wildfire Lands

It is the purpose of the Development Standards for Wildfire Lands to provide supplementary development regulations to underlying zones to reduce or minimize the potential impacts of wildfire on properties, the occupants of properties and the occupants of adjacent properties. These standards function to balance the need to preserve natural habitat, prevent erosion, provide for aesthetic and functional landscaping, and to facilitate access to manmade structures by firefighters in the event of a wildfire.

A. Requirements for Subdivisions, Performance Standards Developments, Site Design Review or Partitions.

1. Applicability. A Fire Prevention and Control Plan shall be required with the submission of any application for an outline plan approval of a Performance Standards Development, preliminary plat of a subdivision, land partition, Commercial Site Design Review increasing a building's footprint by 200 square feet or greater, or Residential Site Design Review for developments of three units or greater.
2. Plan Submission Requirements. The Fire Prevention and Control Plan, prepared at the same scale as the development plans, shall address the General Fuel Modification Area Requirements outlined in 18.3.10.100.B and include the submission materials listed below. The Staff Advisor may waive a plan submittal

requirement if the Staff Advisor determines it is not reasonably necessary in order to make a decision on the application.

- a. The location and dimensions of all existing and proposed structures, parking areas and driveways on the property.
- b. The location, dimension, and grade of fire apparatus access roads and driveways serving all structures on the property.
- c. The location and dimensions of all structures upon adjoining properties located within 30 feet of a shared property line.
- d. The location of all existing and proposed fire hydrants.
- e. Site contours showing two foot intervals detailing elevation and slope.
- f. A tree and vegetation management plan showing:
 - i. Areas where shrubs and bushes will be removed including a description of the species and size,
 - ii. Areas where trees will be removed to reduce interlocking tree canopies including a description of the species and diameter at breast height (DBH),
 - iii. New trees, shrubs and bushes to be planted including the species, location and size at maturity,
 - iv. Significant trees to be retained.
- g. The location of and information addressing required General Fuel Modification Area setback areas as described in subsection 18.3.10.100.B.
- h. A schedule and timetable for vegetation removal and thinning shall be included in the Fire Prevention and Control Plan. An exception to the implementation schedule may be granted by the Fire Code Official.

3. Approval Criteria. The hearing authority, in consultation with the Fire Code Official, shall approve the Fire Prevention and Control Plan upon demonstration of compliance with the standards required by this chapter.

- a. In order to meet the purpose and standards of this chapter the hearing authority, in consultation with the Fire Code Official, may require the following through the imposition of conditions attached to the approval.
 - i. Delineation of areas of heavy vegetation to be thinned and a formal plan for such thinning.
 - ii. Clearing of sufficient vegetation to reduce fuel load.
 - iii. Removal of all dead and dying trees.
 - iv. Relocation of proposed structures and roads to reduce the risks of wildfire and improve the chances of successful fire suppression.
 - v. Preservation or planting a sufficient number of trees and plants for erosion prevention and enhancement of water resources,

4. Fire Prevention and Control Plan Maintenance. The property owner of a lot, or Home Owners Association for areas held in common, shall be responsible for maintaining the property in accord with the requirements of the Fire Prevention and Control Plan approved by the hearing authority.

- a. Provisions for the maintenance of a required Fire Prevention and Control Plan shall be included in the covenants, conditions and restrictions for the

development, or otherwise recorded in the Jackson County real property records, and the City shall be named as a beneficiary of such covenants, restrictions, and conditions.

B. Requirements for Construction of all Buildings and Decks.

1. Applicability. A fuel modification area is defined as an area either natural or manmade, where material capable of allowing a fire to spread unchecked has been treated, cleared or modified to slow the rate and intensity of an advancing wildfire and to create an area for fire suppression operations. Establishment of a fuel modification area does not involve stripping the ground of all native vegetation. A fuel modification area shall be required for the following construction:
 - a. All new buildings located on a vacant lot, that increase lot coverage by 200 square feet or greater, shall have a General Fuel Modification Area covering the full extent of the property.
 - b. Decks, additions to existing buildings, and detached accessory structures which increase lot coverage by 200 square feet or greater, shall have a General Fuel Modification Area extending 30 feet from the furthest extent of the addition, deck, or accessory structure, or to the property line, whichever is less.

2. General Fuel Modification Area Standards. To reduce fire spread both from and to structures on the property, and to adjoining properties, the establishment and maintenance of a fuel modification area requires the following:
 - a. All standing dead and dying vegetation shall be removed from the property, except when considered ecologically beneficial.
 - b. Newly planted vegetation within 30 feet of any building or deck shall not include species listed on the City's Prohibited Flammable Plant List. This setback distance shall be increased by ten feet for each ten percent increase in the average slope of the property over ten percent.
 - c. Within five feet of a new building, addition, or deck, existing vegetation listed on the City's Prohibited Flammable Plant List shall be removed, with the exceptions of significant trees as defined in part 18.6.
 - d. Within five feet of a new building, addition, or deck, combustible man-made and natural materials are prohibited, including but not limited to bark mulch, stored wood, and accumulation of dry leaves and needles, except when permitted as follows:
 - i. Combustible materials may be permitted within five feet of a structure when approved by the Staff Advisor in consultation with the Fire Code Official, has determined the portion of the structure adjoining the combustible material is constructed with ignition resistant building materials sufficient to reduce the spread of fire from the combustible materials.
 - e. Existing trees, which are identified on the City's Prohibited Flammable Plant List shall be maintained to provide a clearance from new structures, and additions, as follows:

- i. Ten (10) feet horizontal clearance from a chimney outlet. At no time shall tree crowns or limbs extend into the vertical plane of a chimney outlet.
 - ii. Ten (10) feet above the roof of a new building, or addition.
 - iii. Ten (10) feet from the furthest extension of a new building, or addition or deck.
 - iv. In circumstances where pruning a tree to meet the clearance from structures requirements of 18.3.10.100.B.2.d. i-iii, would compromise the health and survival of existing trees, the Staff Advisor may modify those requirements, but at a minimum the trees shall be pruned to maintain a ground clearance consistent with 18.3.10.100.B.2.i.
- f. Canopy spacing of the outermost limbs of trees on the City's Prohibited Flammable Plant List shall be separated by at least ten (10) feet at mature size.
 - i. Groups of trees in immediate proximity to each other may be considered as one tree canopy when approved by the Staff Advisor in consultation with the Fire Code Official.
 - ii. Canopy spacing requirements do not apply to significant trees, as defined in part 18.6, or trees that are not listed on the City's Prohibited Flammable Plant List.
- g. Fire resistant trees, those not listed on the City's Prohibited Flammable Plant List, shall be maintained to provide clearance from structures as follows:
 - i. 10 feet horizontal clearance from a chimney outlet. At no time shall tree crowns or limbs extend into the vertical plane of a chimney outlet.
 - ii. Tree limbs shall be pruned to ensure they do not touch any part of a structure including but not limited to roofs, eaves, and decks.
- h. Existing trees which are identified on the City's Prohibited Flammable Plant List shall be pruned to provide a ground clearance of a minimum eight feet above the ground, or 1/3 of the tree height, whichever is less.
- i. Existing shrubs which are identified on the City's Prohibited Flammable Plant list shall be maintained to provide a clearance from new structures and other flammable vegetation as follows:
 - i. Five (5) feet clearance from the furthest extension of a new building, addition or deck.
 - ii. Separation from other listed flammable shrubs within the General Fuel Modification Area shall be a minimum of two times the shrub's height at maturity.
- j. Newly planted shrubs which are identified on the City's Prohibited Flammable Plant list, shall be:
 - i. A minimum of 30 feet from the furthest extension of any building, addition or deck,
 - ii. Separated from other listed flammable shrubs by a minimum of two times the shrub's height at maturity.
 - iii. Located outside of the drip line of a tree which is listed on the City's Prohibited Flammable Plant list.

- k. The vertical clearance between the top of understory vegetation within the drip line of a tree, and the lowest tree limbs shall be at least three times the height of vegetation where either the tree or vegetation is listed on the City's Prohibited Flammable Plant list.
 - l. Where necessary for erosion control, slope stability, riparian and wetland preservation and enhancement, performing functions considered beneficial in water resource protection, or aesthetic purposes, existing vegetation may be allowed to be retained consistent with an approved Fire Prevention and Control Plan, or upon written approval of the Staff Advisor in consultation with the Fire Code Official.
 - m. Fuel Modification in areas which are also classified as Hillside Lands or Water Resource Protection Zones, shall be included in the erosion control measures outlined in section 18.3.10.090 Development Standards for Hillside Lands and Management Plan for Water Resource Protection Zones in 18.3.11.110.
 - n. The General Fuel Modification Area standards outlined in 18.3.10.100.B.2 may be reduced or waived when approved by the Staff Advisor in consultation with the Fire Code Official, provided it is demonstrated that the fire risk has been reasonably reduced such as in cases where ignition resistant materials and construction methods, or vegetation type and separation, function to enhance the structure's protection from exterior wildfire exposure
3. Roofing. Where 50% or more of a structure's roof area is replaced within a five year period, the roof covering shall be constructed or re-roofed with a Class B or better roof covering.
4. Fencing. Where fencing is attached to a building or deck, the fencing shall be made of non-combustible materials within five feet of the connection to the structure in compliance with the requirements in 18.4.4.060.

C. Implementation.

- 1. For lands required to comply with subsection 18.3.10.100.A. that have been partitioned, subdivided or received site design review, all requirements of the Fire Prevention and Control Plan shall be complied with prior to bringing combustible materials onto the property.
- 2. The Fire Prevention and Control Plan must be implemented during installation of public or private utilities and site improvements required of a subdivision, partition, Site Design Review or Performance Standards Development, and shall be considered part of the applicant's obligations for land development.
 - a. The plan shall be implemented prior to final plat approval for lots created by partitions and for subdivisions or Performance Standards developments not requiring public improvements. The Fire Code Official, or designee, shall

- inspect and approve the implementation of the Fire Prevention and Control Plan and provide written notice to the Staff Advisor that the plan was completed as approved by the hearing authority, or as amended in accordance with subsection 18.3.110 D.
- b. Final inspection of requisite fuel modification areas will be conducted prior to bringing combustible materials onto the property to verify compliance with the fuel reduction standards set forth in subsection 18.3.10.100 B.
3. For construction of buildings and decks requiring a General Fuel Modification Area, the establishment the fuel modification area provided for in section 18.3.10.100 B shall be completed before bringing combustible materials onto the property. Upon completion of the construction, all General Fuel Modification Area tree and shrub clearance standards shall be verified. The property owner, or subsequent property owners, shall be responsible for maintaining the property in accord with the General Fuel Modification Area standards as defined in 18.3.10.100.B.2.

D. Minor Amendments.

Changes to a previously approved Fire Prevention and Control Plan are subject to ministerial approval by the Staff Advisor, with written concurrence from the Fire Code Official, when it is demonstrated that the proposed amendments do not constitute an increased risk to the spread of wildfire.

1. Minor amendments to an approved Fire Prevention and Control Plan include the following:
 - a. A change in the implementation schedule provided within an approved Fire Prevention and Control Plan.
 - b. A delay in the implementation of required fuels reduction in consideration of weather conditions, and fire hazard potential, during the period of construction.
 - c. The retention of existing non-fire resistant trees or shrubs, or planting of new non-fire resistant trees or shrubs, within thirty (30) feet of a structure.
 - d. A reduction of the requisite fuel modification area to address observed field conditions including preservation of riparian, wetland, and slope stabilizing vegetation.
 - e. A reduction of the requisite fuel modification area in recognition of the use of fire resistant materials and construction methods that function to provide the structure with reduced exterior wildfire exposure.
 - f. A change in the Fire Prevention and Control Plan that results in a tree canopy separation of less than ten (10) feet between the outermost limbs of trees which are identified on the City's Prohibited Flammable Plant List.
 - f. The temporary storage of combustible materials on a property prior to completion of a Fire Prevention and Control Plan or establishment of a required fuel modification area.

- g. A reduction of the spacing between the top of the understory vegetation and the lowest tree limbs not meeting the requirements of section 18.3.10.100.B.2.

E. Exceptions to a Fire Prevention and Control Plan and General Fuel Modification Area Standards.

The approval authority may approve exceptions to the Development Standards for Wildfire Lands to meet the purpose of this chapter subject to approval through a Type I procedure for the following:

1. An action prescribed by 18.3.10.100 that includes the removal of trees designated to be retained as part of an approved Planning Action.
2. A change that includes the removal of native vegetation within a Water Resources Protection Zone.
3. A change in the Fire Prevention and Control Plan not specifically listed as a minor amendment under 18.3.10.100 D.1
4. Tree removal on C-1, C-1-D, E-1, CM, M-1, HC, R-2, R-3, and NN-2, zoned properties subject to Tree Removal Permit requirements set forth in chapter 18.5.7.

SECTION 2. Chapter 18.3.10.020.A.3 [Physical Constraints Review Permit, Applicability] of the Ashland Land Use Ordinance is hereby amended as follows:

18.3.10.020.A. Physical Constraints Review Permit

1. *[18.3.10.020.A.1 is unchanged]*
2. *[18.3.10.020.A.2 is unchanged]*

3. Tree Removal.

- a. *Flood Plain Corridor Land.* The following tree removal activities in areas identified as Flood Plain Corridor Land. See also, subsection 18.3.11.050.A.1 for tree pruning and removal standards in water resource protection zones.
 - i. The removal of three or more living trees of over six inches DBH, or the removal of five percent of the total number of living or dead trees over six inches DBH, whichever is greater, on any lot within five year period, or any form of commercial logging.
 - ii. The removal of one or more living conifers having **a trunk 18 caliper inches or larger in diameter at breast height (DBH), and broadleaf trees having a trunk 12 caliper inches or larger at breast height**

~~(DBH). greater than two feet DBH, or living broadleaf trees greater than one foot DBH.~~

- b. *Hillside Land and Severe Constraints Land.* Tree removal, in areas identified as Hillside Land and Severe Constraint Land, except that a permit need not be obtained for tree removal that is not associated with development, and done for the purposes of wildfire management ~~and carried out in accord with a Fire Prevention and Control Plan, approve by the Fire Chief.~~ **provided one or more of the following conditions is met:**
- i. **The tree removal is carried out in accord with an approved Fire Prevention and Control Plan.**
 - ii. **The tree is a conifer with a trunk of less than 18 caliper inches in diameter at breast height (DBH), or a broadleaf tree having a trunk of less than 12 caliper inches at breast height (DBH), and the removal is recommended by the Fire Code Official, and approved by the Staff Advisor, as part of a comprehensive fuels reduction strategy to implement a General Fuel Modification Area standards consistent with 18.3.10.100.**
- c. *Commercial Logging.* Commercial logging in areas identified as Flood Plain Corridor Land, Hillside Land, or Severe Constraints Land.

SECTION 3. Chapter 18.3.10.040. [Physical Constraints Review Permit, Application Submission Requirements] of the Ashland Land Use Ordinance is hereby amended as follows:

18.3.10.040 Application Submission Requirements

The following information is required for a Physical Constraints Review Permit application; **except where the Staff Advisor determines a submission requirement is not reasonably necessary in order to make a decision on the application.**

[The remainder of 18.3.10.040 is unchanged]

SECTION 4. Chapter 18.3.10.090.D [Physical Constraints Review Permit, Development Standards for Hillside Lands] of the Ashland Land Use Ordinance is hereby amended as follows:

18.3.10.090 Development Standards for Hillside Lands

D. Tree Conservation, Protection and Removal. All development on Hillside Lands shall conform to the following requirements.

1. *[18.3.10.090.D.1 is unchanged]*

2. *[18.3.10.090.D.2 is unchanged]*

3. Tree Conservation in Project Design. Significant **conifer trees having a trunk 18 caliper inches or larger in diameter at breast height (DBH) (two feet DBH or greater conifers and one foot DBH or greater broadleaf), and broadleaf trees having a trunk 12 caliper inches or larger in diameter at breast height**

(DBH), shall be protected and incorporated into the project design whenever possible.

- a. Streets, driveways, buildings, utilities, parking areas, and other site disturbances shall be located such that the maximum number of existing trees on the site are preserved, while recognizing and following the standards for fuel reduction if the development is located in
- b. Building envelopes shall be located and sized to preserve the maximum number of trees on site while recognizing and following the General Fuel Modification Area standards per 18.3.10.100 if the development is located in Wildfire Lands.
- c. Layout of the project site utility and grading plan shall avoid disturbance of tree protection areas.

4. *[18.3.10.090.D.4 is unchanged]*

5. Tree Removal. Development shall be designed to preserve the maximum number of trees on a site. The development shall follow the standards for fuel reduction if the development is located in Wildfire Lands. When justified by findings of fact, the hearing authority may approve the removal of trees for one or more of the following conditions.

- a. The tree is located within the building envelope.
- b. The tree is located within a proposed street, driveway, or parking area.
- c. The tree is located within a water, sewer, or other public utility easement.
- d. The tree is determined by a landscape professional to be dead or diseased, or it constitutes an unacceptable hazard to life or property when evaluated by the standards in 18.3.10.090.D.2.
- e. The tree is located within or adjacent to areas of cuts or fills that are deemed threatening to the life of the tree, as determined by a landscape professional.

f. The tree is identified for removal as part of an approved fire prevention and control plan per section 18.3.10.100.A, or with the exception of significant trees the tree removal is recommended by the Fire Code Official, and approved by the Staff Advisor, as part of a comprehensive fuels reduction strategy to implement a General Fuel Modification Area consistent with 18.3.10.100 B.

6. Tree Replacement. Trees approved for removal, with the exception of trees removed because they were determined to be diseased, dead, ~~or~~ a hazard, **or to comply with General Fuel Modification Area requirements,** shall be replaced in compliance with the following standards.

- a. Replacement trees shall be indicated on a tree replanting plan. The replanting plan shall include all locations for replacement trees, and shall also indicate tree planting details.
- b. Replacement trees shall be planted such that the trees will in time result in canopy equal to or greater than the tree canopy present prior to development of the property. See Figure 18.3.10.090.D.6.b. The canopy shall be designed to mitigate of the impact of paved and developed areas, reduce surface

erosion, and increase slope stability. Replacement tree locations shall consider impact on the wildfire prevention and control plan. The hearing authority shall have the discretion to adjust the proposed replacement tree canopy based upon site-specific evidence and testimony.

- c. Maintenance of replacement trees shall be the responsibility of the property owner. Required replacement trees shall be continuously maintained in a healthy manner. Trees that die within the first five years after initial planting must be replaced in kind, after which a new five-year replacement period shall begin. Replanting must occur within 30 days of notification unless otherwise noted.

7. *[18.3.10.090.D.7 is unchanged]*

SECTION 5. Chapter 18.4.3.080.E [Parking and Circulation, Vehicle Area Design] of the Ashland Land Use Ordinance is hereby amended as follows:

18.4.3.080 Vehicle Area Design

E. Parking and Access Construction. The development and maintenance as provided below, shall apply in all cases, except single-family dwellings.

1. *[18.4.3.080.E.1 is unchanged]*

2. *[18.4.3.080.E.2 is unchanged]*

3. *[18.4.3.080.E.3 is unchanged]*

4. *[18.4.3.080.E.4 is unchanged]*

5. *[18.4.3.080.E.5 is unchanged]*

6. Walls and Hedges

a. Where a parking facility is adjacent to a street, a decorative masonry wall or **fire resistant broadleaf** evergreen **site-obscuring** hedge screen between 30 and 42 inches in height and a minimum of 12 inches in width shall be established parallel to and not nearer than two feet from the right-of-way line, pursuant to the following requirements.

- i. The area between the wall or hedge and street line shall be landscaped.
- ii. Screen planting shall be of such size and number to provide the required screening within 12 months of installation.
- iii. All vegetation shall be adequately maintained by a permanent irrigation system, and said wall or hedge shall be maintained in good condition.
- iv. Notwithstanding the above standards, the required wall or screening shall be designed to allow access to the site and sidewalk by pedestrians, and shall meet the vision clearance area requirements in section 18.2.4.040, **and shall not obstruct fire apparatus access, fire hydrants, or other fire appliances.**

- b. In all zones, except single-family zones, where a parking facility or driveway is adjacent to a residential or agricultural zone, school yard, or like institution, a sight-obscuring fence, wall, or **fire resistant broadleaf** evergreen **site-obscuring** hedge shall be provided, pursuant to the following requirements.
 - i. The fence, wall or hedge shall be placed on the property line and shall be between five feet and six feet in height as measured from the high grade side of the property line, except that the height shall be reduced to 30 inches within a required setback area and within ten feet of a street property line.
 - ii. Screen plantings shall be of such size and number to provide the required screening within 12 months of installation.
 - iii. Adequate provisions shall be made to protect walls, fences, or plant materials from being damaged by vehicles using said parking area.
 - iv. Notwithstanding the above standards, the required wall or screening shall be designed to meet the vision clearance area requirements in section 18.2.4.040.
 - v. The fence, wall, or hedge shall be maintained in good condition.

7. *[18.4.3.080.E.7 is unchanged]*

8. *[18.4.3.080.E.8 is unchanged]*

SECTION 6. Chapter 18.4.4.030. [Landscaping, Lighting and Screening, Landscaping and Screening] of the Ashland Land Use Ordinance is hereby amended as follows:

18.4.4.030 Landscaping and Screening

A. *[18.4.4.030.A is unchanged]*

B. *[18.4.4.030.B is unchanged]*

C. Landscape Design and Plant Selection. The landscape design and selection of plants shall be based on all of the following standards.

1. *[18.4.4.030.C.1 is unchanged]*

2. *[18.4.4.030.C.2 is unchanged]*

3. *[18.4.4.030.C.3 is unchanged]*

4. *[18.4.4.030.C.4 is unchanged]*

5. Screening

- a. Evergreen shrubs shall be used where a sight-obscuring landscape screen is required.
- b. Where a hedge is used as a screen, **fire-resistant and drought tolerant**

evergreen shrubs shall be planted so that not less than 50 percent of the desired screening is achieved within two years and 100 percent is achieved within four years. Living groundcover in the screen strip shall be planted such that 100 percent coverage is achieved within two years.

D. [18.4.4.030.D is unchanged]

E. [18.4.4.030.E is unchanged]

F. [18.4.4.030.F is unchanged]

G. [18.4.4.030.G is unchanged]

H. [18.4.4.030.H is unchanged]

I. Water Conserving Landscaping. [Section description and narrative is unchanged]

1. Landscaping Design Standards

- a. *Landscaping Coverage.* Water conserving designs shall have plant coverage of not less than 90 percent with five years of planting, but are not required to meet the standard of 50 percent coverage within one year.
- b. *Plant Selection.* At least 90 percent of plants in the non-turf areas shall be listed as drought tolerant and fire-resistant in the City's Water-Wise Landscaping website, or be similarly well-suited for this climate of region as determined by the Staff Advisor. Up to ten percent of the plants may be of a non-drought tolerant variety or species as long as they are grouped together and are located in a separate irrigation zone.
- c. *Screening.* Plant screening hedges to attain 50 percent coverage after two years.
- d. *Mulch.* Add a minimum of two inches of mulch in non-turf areas to the soil surface after planting, **with the exception of within five (5) feet of a building or deck where bark mulch and other combustible materials are not permitted per the General Fuel Modification Area standards in 18.3.10.100.** Neither large nuggets nor fine bark may be used for mulch. Non-porous material shall not be placed under the mulch.
- e. *Turf and Water Areas.* Limit combined turf or water areas (i.e., pools, ponds, and fountains) to 20 percent of the landscaped areas. Turf limitations do not apply to public parks, private common open space, required outdoor recreation areas, golf courses, cemeteries, and school recreation areas.
- f. *Fountains.* Design all fountains to recycle their water.

- g. *Turf Location.* Turf is restricted to slopes less than ten percent grade.
- h. *Berms and Raised Beds.*
 - i. No more than five percent of landscaped area of any lot or project may be berms or raised beds higher than one foot unless there is demonstrated need for sound or safety barrier. If allowed, berms must be no taller than 1/6 of their width.
 - ii. All plantings on berms one foot or greater in height must be drought tolerant.
 - iii. Only drip irrigation is allowed on berms more than one foot in height.
- i. *Soil Quality.* When new vegetation is planted, soils shall be amended for plant health and water absorption. Add mature compost at a rate of three cubic yards of compost per 1,000 square feet of area to be landscaped, and work soil and amendment(s) to a depth of four to six inches. This requirement may be waived for one or more of the following circumstances.
 - a. The area to be landscaped is fenced off to fully protect native soil from disturbance and compaction during construction.
 - b. Soil tests document an organic content of a least three percent based on a representative core sample taken at a rate of one test per 20,000 square feet, based on a minimum of three core sample per test. Samples shall be taken at least 40 feet apart to a depth of six inches following attainment of rough grade.
 - c. The area to be landscaped will be used to capture and treat storm water runoff, and is subject to separate design standards.

2. *[18.4.4.030.1.2 is unchanged]*

3. *[18.4.4.030.1.3 is unchanged]*

SECTION 7. Chapter 18.4.4.060.B [Landscaping, Lighting and Screening, Fences and Walls] of the Ashland Land Use Ordinance is hereby amended as follows:

18.4.4.060.B Design Standards.

Fences, walls, hedges, and screen planting shall meet the following standards, where height is measured pursuant to subsection 18.4.4.060.B.2, below. See Figure 18.4.4.060.B.1 for illustration of maximum fence heights.

1. *[18.4.4.060.B.1 is unchanged]*

2. [18.4.4.060.B.2 is unchanged]
3. [18.4.4.060.B.3 is unchanged]
4. [18.4.4.060.B.4 is unchanged]
5. [18.4.4.060.B.5 is unchanged]
6. [18.4.4.060.B.6 is unchanged]
7. [18.4.4.060.B.7 is unchanged]

8. Wildfire Lands Overlay. Fencing attached to a building or deck within the Wildfire Lands Overlay shall be made of non-combustible materials within five (5) feet of the connection to the structure.

- a. A fence with wood framing and steel mesh or other non-combustible infill panels shall be considered to comply with this section.**
- b. A metal gate, a minimum of three feet in width, that is installed within a wood framed fence immediately adjacent to a building or deck shall be considered to comply with this section.**
- c. Existing wood fences that are to be retrofitted to attach to a new building, addition, or deck, subject to the General Fuel Modification Area standards per 18.3.10.100.B, shall be retrofitted so the fence ends with a noncombustible material like masonry or metal to keep fire from spreading to the building or deck.**
- d. Combustible fencing materials may be permitted within five feet of a building or deck when the Staff Advisor, in consultation with the Fire Code Official, has determined the portion of the structure adjoining the combustible material is constructed with ignition resistant building materials sufficient to reduce the spread of fire from the combustible fencing materials.**

SECTION 8. Chapter 18.5.1.010.B [General Review Procedures, Purpose and Applicability], Table 18.5.1.010, of the Ashland Land Use Ordinance is hereby amended as follows:

Table 18.5.1.010 – Summary of Approvals by Type of Review Procedure		
Planning Actions	Review Procedures	Applicable Regulations
Access to a Street/Driveway Approach	Ministerial	Chapter 18.4.3
Annexation	Type III	Chapter 18.5.8; See Oregon Revised Statute 222.
Ordinance Interpretation	Type I or II	Chapter 18.1.5
Ordinance Text Amendment	Type III	Chapter 18.5.9

Table 18.5.1.010 – Summary of Approvals by Type of Review Procedure

Planning Actions	Review Procedures	Applicable Regulations
Comprehensive Plan Amendment	Type III	Chapter 18.5.9
Conditional Use Permit	Type I or II	Chapter 18.5.4
Conversion of Multifamily Dwelling Units into For-Purchase Housing	Ministerial	Section 18.2.3.200
<u>Exception to Fire Prevention and Control Plan and General Fuel Modification Area Standards</u>	<u>Type I</u>	<u>Subsection 18.3.10.100.E</u>
Exception to Site Development and Design Standards	Type I	Subsection 18.5.2.050.E
Exception to Street Standards	Type I	Subsection 18.4.6.020.B.1
Extension of Time Limit for Approved Planning Action	Ministerial	Section 18.1.6.040
Fence	Ministerial	Section 18.4.4.060
Hillside Standards Exception	Type I	Subsection 18.3.10.090.H
Home Occupation Permit	Ministerial	Section 18.2.3.150
Land Use Control Maps Change	Type II or III	Chapter 18.5.9
Legal Lot Determination	Ministerial	Chapter 18.1.3
Modification to Approval Minor Modification Major Modification	Ministerial Per original review	Chapter 18.5.6
Non-Conforming Use or Structure, Expansion of	Ministerial or Type I	Chapter 18.1.4
Partition or Re-plat of 2-3 lots Preliminary Plat Final Plat Minor Amendment	Type I Ministerial Ministerial	Chapter 18.5.3 Chapter 18.5.3 Subsection 18.5.3.020.G
Performance Standards Option Outline Plan Final Plan Minor Amendment	Type II Type I Ministerial	Chapter 18.3.9 Chapter 18.3.9 Subsection 18.5.3.020.G
Physical and Environmental Constraints Permit	Type I	Chapter 18.3.10
Property Line Adjustments, including Lot Consolidations	Ministerial	Chapter 18.5.3
Sign Permit	Ministerial	Chapter 18.4.7
Site Design Review	Type I or II	Chapter 18.5.2
Solar Setback Exception	Type I	Chapter 18.4.8

Table 18.5.1.010 – Summary of Approvals by Type of Review Procedure		
Planning Actions	Review Procedures	Applicable Regulations
Subdivision or Replat of >3 lots Preliminary Plat Final Plat Minor Amendment	Type II Ministerial Ministerial	Chapter 18.5.3 Chapter 18.5.3 Subsection 18.5.3.020.G
Tree Removal Permit	Type I	Chapter 18.5.7
Variance	Type I or II	Chapter 18.5.5
Water Resources Protection Zone – Limited Activities and Uses	Type I	Section 18.3.11.060
Water Resources Protection Zone Reduction	Type I or II	Section 18.3.11.070
Water Resources Protection Zone – Hardship Exception	Type II	Section 18.3.11.080
Zoning District Map Change	Type II or III	Chapter 18.5.9

[With the exception of the amendment to Table 18.5.1.010 above, the remainder of Chapter 18.5.1 is unchanged]

SECTION 9. Chapter 18.5.3.060.N [Land Divisions and Property Line Adjustments, Additional Preliminary Flag Lot Partition Criteria] of the Ashland Land Use Ordinance is hereby amended as follows:

18.5.3.060 Additional Preliminary Flag Lot Partition Plat Criteria

[18.5.3.060.A-M and O-P are unchanged]

N. Both sides of the flag drive have been screened with a site-obscuring fence, wall or ~~evergreen~~ **fire resistant broadleaf evergreen site-obscuring** hedge to a height of from four to six feet, except in the front yard setback area where, starting five feet from the property line, the height shall be from 30 to 42 inches in the remaining setback area. Such fence or landscaping shall be placed **to ensure fire apparatus access is not obstructed by the encroachment of mature landscaping.** ~~at the extreme outside of the flag drive in order to ensure adequate fire access.~~

SECTION 10. Chapter 18.5.5.020 [Variances, Applicability] of the Ashland Land Use Ordinance is hereby amended as follows:

18.5.5.020 Applicability

This chapter may not be used to allow a use that is not in conformity with the uses specified by this ordinance for the district in which the land is located. Chapter 18.5.5 does not apply where this ordinance specifically provides for exceptions to development standards (e.g., exceptions to the site development and design standards, solar setback, street standards, hillside lands development standards, **wildfire lands development standards**, water resource protection zone standards).

SECTION 11. Chapter 18.5.7.020 [Tree Removal Permits, Applicability and Review Procedure] of the Ashland Land Use Ordinance is hereby amended as follows:

A. [18.5.7.020.A is unchanged]

B. [18.5.7.020.B is unchanged]

- C. Exempt From Tree Removal Permit.** The following activities are exempt from the requirement for a tree removal permit in 18.5.7.020.A, subsections A. and B, above.
1. Those activities associated with the establishment or alteration of any public park under the Ashland Parks and Recreation Commission. However, the Parks and Recreation Department shall provide an annual plan in January to the Tree Commission outlining proposed tree removal and topping activities, and reporting on tree removal and topping activities that were carried out in the previous year.
 2. Removal of trees in single family residential zones on lots occupied only by a single family detached dwelling and associated accessory structures where the property is **less than twice the minimum lot size or otherwise ineligible to be partitioned or subdivided**, except as otherwise regulated by chapters 18.3.10 Physical and Environmental Constraints and 18.3.11 Water Resource Protection Zones.
 3. Removal of trees in multi-family residential **and health care** zones on lots occupied only by a single family detached dwelling and associated accessory structures where the property **cannot be further developed with additional dwelling units other than an accessory residential unit**, except as otherwise regulated by chapters 18.3.10 Physical and Environmental Constraints and 18.3.11 Water Resource Protection Zones.
 4. Removal of trees less than six-inches DBH in any zone, excluding those trees located within the public right of way or required as conditions of approval with landscape improvements for planning actions.
 5. Removal of trees less than 18 **caliper inches in diameter at breast height (DBH) inches DBH** on any public school lands, Southern Oregon University, and other public land, excluding Heritage trees.
 6. Removal of trees within the Wildfire Lands area of the City, as defined on adopted maps, for the purposes of wildfire fuel management **consistent with the fuel modification area standards in 18.3.10.100**, and in accord with the requirements of chapters 18.3.10 Physical and Environmental Constraints and 18.3.11 Water Resource Protection Zones.
 7. Removal of dead trees.
 8. Those activities associated with tree trimming for safety reasons, as mandated by the Oregon Public Utilities Commission, by the City's Electric and Telecommunication Utility. However, the Utility shall provide an annual plan to the Tree Commission outlining tree trimming activities and reporting on tree trimming activities that were carried out in the previous year. Tree trimming shall be done, at a minimum, by a Journeyman Tree Trimmer, as defined by the Utility, and will be done in conformance and to comply with OPUC regulations.

9. Removal of street trees within the public right-of-way subject to street tree removal permits in AMC 13.16.

D. *[18.5.7.020.D is unchanged]*

SECTION 12. Chapter 18.6 [Definitions] of the Ashland Land Use Ordinance is hereby amended to include the following definitions, and amend existing definitions as follows:

Fire Code Official: The Fire Chief or other designated authority charged with the administration and enforcement of the fire code, or a duly authorized representative.

Fire and Ignition resistant materials: Materials or assemblies that will not ignite and burn when subjected to fire including but not limited to masonry, concrete, stone, metal, and fire-retardant-treated wood identified for exterior use.

Fire Resistant Exterior: Exterior building materials or assemblies that restrict or retard the spread of fire through the use of fire and ignition resistant materials.

Fire Resistant Plants: Plants that are not listed on the Prohibited Flammable Plant List. Fire Resistant Plants do not readily ignite from a flame or other ignition source, and are maintained to be free of dead material. Fire-resistant plant have the ability to store water in leaves or stems, have low levels of volatile oils or resins, and contain high levels of salt or other non-resinous compounds within the plant tissues that can contribute to fire resistance.

Fire-retardant-treated wood. Wood products that, when impregnated with chemicals by a pressure process or other means during manufacture, exhibit reduced surface-burning characteristics and resist propagation of fire.

Highly Flammable Plants: A plant species that has characteristics which make it more volatile by encouraging easy ignition and the spread of fire through its foliage due to low moisture content, dense dry leaves, needles, grass-like leaves, or volatile resins and oils. Highly flammable plants are specifically those species listed on the adopted Prohibited Flammable Plant List.

Prohibited Flammable Plant List: A listing of specific highly flammable plants which are considered nuisances per Chapter 9.04 of the Ashland Municipal Code and are prohibited from being planted within a General Fuel Modification area.

Significant Tree: A conifer tree having a trunk 18 caliper inches or larger in diameter at breast height (DBH), or a deciduous tree having a trunk 12 caliper inches in diameter at breast height.

SECTION 13. Savings. Notwithstanding this amendment, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinances(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 14. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 15. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 13-15) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the ___th day of _____, 2018, and duly PASSED and ADOPTED this ___th day of _____, 2018,

Melissa Huhtala, City Recorder

SIGNED and APPROVED this ___ day of _____, 2018,.

John Stromberg, Mayor

Reviewed as to form:

David H. Lohman, City Attorney

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 9.04 OF THE ASHLAND MUNICIPAL CODE TO DECLARE PROHIBITED FLAMMABLE PLANTS A NUISANCE.

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~lined through~~** and additions are **underlined**.

WHEREAS, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

WHEREAS, the City of Ashland has determined that it is in the best interest of its residents, business and visitors to encourage fire resistant vegetation when it comes to landscape design; and

WHEREAS, the City of Ashland has determined that the prohibition of highly flammable plants from being newly planted within General Fuel Modification Areas within the City of Ashland, supports the following City Comprehensive Plan Environmental Resources Goal: “Protect Life, property and environmental resources in Ashland’s suburban/wildland interface area from the devastating effects of wildfire. Lessen the possibility of wildfire spreading to the Ashland watershed from the urban/wildland interface area”, and

WHEREAS, the City of Ashland has determined that implementation of this ordinance will assist in preparing the City to be more resilient to climate change impacts, including wildfire, as expressed in the 2017 Climate Energy Action Plan, and

WHEREAS, the City Council of the City of Ashland, following the close of the public hearing and record, deliberated and conducted first and second readings approving adoption of the Ordinance in accordance with Article 10 of the Ashland City Charter; and

WHEREAS, the City Council of the City of Ashland has determined that in order to protect and benefit the health, safety and welfare of existing and future residents of the City, it is necessary to amend the Ashland Municipal Code Health and Sanitation ordinance in the manner proposed, that an adequate factual base exists for the amendments, the amendments are consistent with the comprehensive plan and that such amendments are fully supported by the record of this proceeding.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. Chapter 9.04 [Weeds and Noxious Vegetation] of the Ashland Municipal Code is hereby amended as follows:

9.04.002 Purpose

The purpose of this chapter is to reduce the risk of damage to property and persons by fire due to weeds, and to reduce hazards to public health, agriculture, recreation, and wildlife by controlling the growth of weeds and noxious vegetation. Ashland Fire and Rescue and the City's Code Compliance Officers intend to prioritize enforcement and abatement under this chapter based upon the degree of fire risk or other hazard caused by the violation and the availability of resources. (Ord. 3009, added, 04/20/2010)

9.04.005 Definitions

- A. Code Compliance Officer: all individuals designated as such pursuant to AMC 1.08.005, including specifically the Fire Chief.
- B. Fire Chief: the City of Ashland Fire Chief or his/her authorized designee.
- C. Fire hazard: a written determination from the Fire Chief that the quality, condition, and/or location of vegetation creates a risk of fire.
- D. Noxious vegetation: all vegetation listed on the noxious weed list promulgated by the Oregon Department of Agriculture's Plant Division.
- E. Owner: owner of real property, agent of the owner, and/or occupant of any lot or parcel of land. In the case of property subject to foreclosure as a result of bankruptcy or default of the legal owner, the City may deem the "Owner" to be the person, other than the legal owner, who has a primary lien, security, or mortgage interest in possession or control of the property or who is the deed of trust beneficiary of the property.

F. Prohibited Flammable Plants: all vegetation listed on the Prohibited Flammable Plan List as approved by Resolution of the City Council.

~~F.~~ **G.** Summer season: between May 15 and September 30 of any year, or the end of fire season as declared by the Oregon Department of Forestry, whichever is later.

~~G.~~ **H.** Weed:

- 1. Vegetation, grass, shrubbery, and round wood that is less than 1/4 inch in diameter and more than four inches (4") high, and
- 2. Vegetation that is a:
 - a. Health hazard, such as providing harborage for vermin;
 - b. Fire hazard due to the quantity and/or location; or
 - c. Traffic hazard because it impairs the view of a public thoroughfare or otherwise makes use of the thoroughfare hazardous

9.04.010 Weeds Declared Nuisance

The growth or maintenance of weeds upon lots and parcels of land, and abutting rights-of-way in the City during the summer season, or at any other time of year when deemed a fire, health or traffic hazard, is declared to be a nuisance.

9.04.011 Prohibited Flammable Plants Declared Nuisance

The planting of species identified on the Prohibited Flammable Plant List within a General Fuel Modification Area in the City is declared to be a nuisance.

9.04.012 Noxious Vegetation Declared Nuisance

The growth or maintenance of noxious vegetation upon lots and parcels of land, and abutting rights-of-way in the City at any time is declared to be a nuisance.

9.04.015 Exemptions to Nuisance

- A. The term “weed” does not include vegetation that constitutes an agricultural crop or decorative residential landscaping, unless that vegetation is a fire, health, or traffic hazard.
- B. It shall not be a violation of this chapter for property owners to maintain wetland or upland native vegetation in its natural state either on their property or in common areas when required to do so pursuant to the requirements of state law, city ordinance or land use approval. Nothing herein prohibits a property owner from preserving native vegetation in its natural state in excess of the requirements of state law or city ordinance, provided the owner prepares and implements a management plan for maintenance of the natural area and said plan is approved and on file with the community development department.
- C. It shall not be a violation of this chapter for property owners to maintain Prohibited Flammable Plants which were established prior to the effective date of this ordinance on their property or in common areas, unless the plants are subject to removal through implementation of an approved Fuel Prevention and Control Plan or General Fuel Modification Area on file with the community development department.**

9.04.020 Responsibility of Owner - Removal of Weeds

The owner of any lot or parcel of land within the limits of the City of Ashland shall cut and/or remove weeds growing thereon, and on adjacent and abutting rights-of-way, between May 15th and June 15th of each year. It shall be the duty of an owner to continue to cut and remove the weeds throughout the summer season, or any other time of year when deemed a fire, health, or traffic hazard.

9.04.022 Responsibility of Owner - Prohibited Flammable Plants

The owner of any lot or parcel of land within the limits of the City of Ashland shall not permit species identified on the Prohibited Flammable Plant List to be newly planted on their property within a General Fuel Modification Area as defined in Chapter 18.3.10.100.B. It shall be the duty of an owner to cut down and remove any new seedlings and volunteer plants of listed prohibited flammable plants as often as needed to prevent them from posing an increased fire hazard.

9.04.024 Responsibility of Owner - Removal of Noxious Vegetation

The owner of any lot or parcel of land within the limits of the City of Ashland shall not permit noxious vegetation to grow upon their property and on adjacent and abutting rights-of-way. It shall be the duty of an owner to cut down or to destroy and remove all noxious vegetation as often as needed to prevent it from becoming a fire, health or traffic hazard, from becoming unsightly, or maturing, spreading, and going to seed.

9.04.028 Abatement Process

The Uniform Abatement Process set forth in chapter AMC 2.31 shall apply to nuisances identified in this Chapter and may be used to abate continuing violations.

Notwithstanding any other AMC provisions, a code compliance officer may order the minimum abatement necessary to abate a fire, health or traffic hazard, (e.g. creation of an adequate fire break to protect adjacent property from fire exposure). Abatement of the nuisance shall not prohibit the City from seeking any other remedy or sanction provided by law.

9.04.030 Violation Penalty

Any person who violates any provision of this Chapter is subject to Section 1.08.020 of the Ashland Municipal Code. Any violation of this section is a Class I violation.

9.04.040 Notice to Abate – Contents

In case of failure or neglect of any such agent, owner or occupant to cut weeds and grass and shrubbery as herein provided, the City Recorder shall cause to be served on such agent, owner, and/or occupant a notice, describing the property with convenient certainty by its legal description or by the street number of the house, requiring such owner or agent and/or occupant to cut said weeds, grass, and shrubbery within ten (10) days from the service thereof, or that the City will require the same to be done, and the cost thereof charged as a lien against said property.

9.04.050 Notice to Abate – Service – Removal by City – Lien

Such notice shall be served upon such owner, agent, and/or occupant in person if found upon said premises or within the City, and in case said owner, agent, and/or occupant

cannot be found in person within the City after reasonable diligence and inquiry, such notice shall be posted in a conspicuous place upon said premises, and a copy thereof mailed to the last known post office address of such owner, agent, or occupant, if any such address is known, and return of service shall be filed with the Recorder; and if at the end of ten (10) days from the giving of such notice, such owner, agent, and/or occupant, has failed and neglected to cut and remove such vegetation, the Fire Chief shall cause the same to be done and shall file with the Council a verified itemized statement of the expenditure occasioned thereby, and the Recorder shall cause notice to be served upon the owner, agent, or occupant in the manner hereinbefore described, such statement will be considered and determined by the Council and a lien declared upon the property involved, the time of which meeting shall be specified in the notice, more than ten (10) days from the giving of the same, and the Council shall at such meeting hear any objections to such statement, and by ordinance determine the correctness of the same, and declare such corrected amount a lien upon the property benefitted and instruct the Recorder to enter the same upon the City docket of liens in the same manner and with the same effect that street improvement liens and sewer liens are entered, and said lien shall have the same force and effect as such street improvement and sewer liens, and shall be certified to the county assessor in the same manner.

SECTION 2. A Prohibited Flammable Plant List shall be maintained by the City of Ashland and approved by Resolution of the City Council.

SECTION 3. Savings. Notwithstanding this amendment, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinances(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 4. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 5. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 3-5) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X,
Section 2(C) of the City Charter on the ___th day of _____, 2018,
and duly PASSED and ADOPTED this ___th day of _____, 2018,

Melissa Huhtala, City Recorder

SIGNED and APPROVED this ___ day of _____, 2018,.

John Stromberg, Mayor

Reviewed as to form:

David H. Lohman, City Attorney

RESOLUTION NO. 2018-_____

A RESOLUTION ADOPTING THE CITY OF ASHLAND GENERAL FUEL MODIFICATION AREA PROHIBITED FLAMMABLE PLANT LIST FOR APPLICATION IN ASHLAND'S DESIGNATED WILDFIRE LANDS

RECITALS:

- A. The Ashland City Council on _____, 2018 adopted Ordinance No. _____, amending development standards within the City of Ashland Wildfire Lands, which shall be codified as Chapter 18.3.10.100 of the Ashland Municipal Code.
- B. The Ashland City Council on _____, 2018 adopted Ordinance No. _____, amending chapter 9.04 of the Ashland Municipal Code to declare prohibited flammable plants within a General Fuel Modification Area a nuisance.
- C. The City of Ashland recognizes the threat that wildfire poses to people, property and infrastructure within our community;
- D. The City of Ashland recognizes establishment of fuel modification areas around structures is a vital wildfire mitigation action that will reduce the potential for harmful impacts of wildfire upon properties and the occupants of properties,
- E. The City of Ashland recognizes that specific highly flammable plants can accelerate the spread of wildfire, and may impede fire repression efforts in the event of a wildfire.
- F. The City of Ashland recognizes that the establishment of a General Fuel Modification Area Prohibited Flammable Plant List will promote landscapes that do not include highly flammable plants in the immediate proximity of structures, which will reduce the risk of the spread of wildfires.

THE CITY OF ASHLAND RESOLVES AS FOLLOWS:

SECTION 1. Pursuant to Section 9.04.011 and Section 18.3.10.100 of the Ashland Municipal Code, the City Council of the City of Ashland establishes a General Fuel Modification Area Prohibited Flammable Plant List as follows:

General Fuel Modification Area Prohibited Flammable Plant List

The use of the following landscape plants is restricted within the City of Ashland Wildfire Lands overlay area per the general fuel modification area standards set forth in Chapter 18.3.10.100 of the Ashland Land Use Ordinance. All landscaping plants can be flammable if not properly maintained and watered. This list will be reviewed yearly by the Wildfire Mitigation Commission, with changes brought to City Council for adoption in an amended Resolution as needed.

Prohibited Trees

- Arborvitae/Redcedar (Thuja sp.)
- *Cedar (Cedrus sp.)
- *Cedar/Cypress (Chamaecyparis sp.)
- *Cypress (Cupressus sp.)
- Douglas-fir (Pseudotsuga menziesii)
- Fir (Abies sp.)
- *Hemlock (Tsuga sp.)
- Incense Cedar (Calocedrus decurrens or Libocedrus decurrens)
- *Juniper (Juniperus sp.)
- *Pine (Pinus sp.)
- Giant Sequoia (Sequoiadendron sp.)
- Coast Redwood (Sequoia sp.)
- *Spruce (Picea sp.)
- *Yew (Taxus sp.)

Prohibited Shrubs

- Bitterbrush (Purshia tridentata)
- Broom (Cytisus sp.)
- *Ceanothus (Ceanothus sp.)
- Himalayan Blackberry (Rubus armeniacus)
- Juniper (Juniperus sp.)
- *Lavender (Lavandula sp.)
- *Manzanita (Arctostaphylos sp.)
- *Oregon grape (Mahonia aquifolium)
- *Rosemary (Rosmarinus sp.)
- Sagebrush (Artemisia tridentata or californica sp.)

Prohibited Grasses

- Pampas grass (Cortaderia seloana)

*Exceptions may be granted for dwarf or prostrate varieties of these species planted beyond 5 feet from any structure, and that follow tree or shrub spacing guidelines as defined in the General Fuel Modification Area Standards in Chapter 18.3.10.100.

This resolution was duly PASSED and ADOPTED this _____ day of _____, 2018, and takes effect upon signing by the Mayor.

Melissa Huhtala, City Recorder

SIGNED and APPROVED this _____ day of _____, 2018.

John Stromberg, Mayor

Reviewed as to form:

David H. Lohman, City Attorney

**BEFORE THE CITY COUNCIL
CITY OF ASHLAND, JACKSON COUNTY, OREGON**

September 4, 2018

In the Matter of Amendments to Title 18 Land Use and) FINIDNGS OF
Title 9 Health and Sanitation of the Ashland Municipal) FACTAND
Code Relating to the Wildfire Lands Map, Wildfire) CONCLUSIONS OF
Development Standards, Fencing Requirements, Tree) LAW
Removal Permit Requirements, and declaring Prohibited)
Flammable Plants as a Nuisance.)
)

PURPOSE:

In an effort to address the risk that wildfire poses to persons and property throughout the community it is found to be reasonably necessary that the wildfire lands overlay boundary, and the development standards for wildfire lands be modified to mitigate the frequency, spread, acceleration, intensity, and size of fire involving buildings in the community. Additionally modifications to screening, fencing, and tree removal permit requirements are included in the ordinance amendments. The purpose of the ordinance amendments are to 1) Expand the boundary of Ashland’s designated Wildfire Lands Overlay to incorporate the entire City; 2) Implement new standards for Fire Prevention and Control Plans and fuels reduction associated with new development; 3) Amend the tree removal permit requirements to address parcels with further development potential, 4) Limit the introduction of highly flammable plants in proximity of existing or proposed structures. These purposes are addressed through the adoption of two ordinances and one resolution.

The first ordinance amendments include modifications to Ashland Land Use Ordinance Chapter 18.3.10.100 Development Standards for Wildfire Lands; 18.3.10.020 Physical Constraints Review Permit, 18.3.10.040 Physical Constraints Review Application Submission Requirements, 18.3.10.090 Development Standards for Hillside Lands; 18.4.3.080 Vehicle Area Design; 18.4.4 Landscaping, Lighting, and Screening; 18.5.1 General Procedures; 18.5.3.060 Additional Preliminary Flag Lot Partition Plat Criteria; 18.5.5 Variances; 18.5.7 Tree Removal Permits; 18.6 Definitions; and amends the official Physical and Environmental Constraints Map to expand the boundary of Ashland’s designated Wildfire Lands Overlay to include all properties within the city limits and urban growth boundary.

The second ordinance amends the Ashland Municipal Code Health and Sanitation Chapter section 9.04 [Weeds and Noxious Vegetation] to declare prohibited flammable plants as a nuisance within designated General Fuel Modification Areas. A corresponding resolution establishes a list of prohibited flammable plants to be regulated within General

Fuel Modification Areas.

PUBLIC HEARINGS:

An extensive public involvement process was undertaken to understand existing conditions, to develop and refine the ordinances amending Chapter 18 and Chapter 9 of the Ashland Municipal Code to address wildfire mitigation strategies. In total there have been 15 public meetings and two public open houses over the course of four years where the viewpoints of a variety of participants including the general public, property owners, developers, and landscape professionals have informed the development of the ordinances.

A Public Hearing was held at the Planning Commission on June 26th, 2018. The City Council held public hearings on July 17, 2018 and August 21, 2018, and held a public forum and study session on August 6th, 2018.

Newspaper notices were published in accordance with AMC 18.5.1.070.D.3 in the Ashland Daily Tidings on June 4, 2018 prior to the June 26th Planning Commission public hearing and the July 17th City Council public hearing, and an additional notice was published on August 7, 2018 prior to the August 21st City Council public hearing and first reading of the ordinances. Notice was also sent to the Oregon Department of Land Conservation and Development on May 11, 2018.

REVIEW CRITERIA

The decision of the City Council together with the recommendation by the Planning Commission was based on consideration and findings of consistency with the following factors.

- A. Consistency with City of Ashland Requirements for Legislative Amendments in AMC 18.5.9.020.B
- B. Consistency with City of Ashland Comprehensive Plan and other applicable City of Ashland Goals and Policies
- C. Consistency with Oregon land use laws, regulations including Oregon Senate Bill 1051 and the Regional Plan

EVALUATION AND COUNCIL FINDINGS:

This legislative action includes proposed amendments to the Physical and Environmental Constraints Map to expand the boundary of Ashland’s designated Wildfire Lands to incorporate the entire City; amendments to the Ashland Land Use Ordinance to implement new standards for fire prevention and control plans and fuels reduction associated with development; amendments to the Tree Removal permit requirements; and a Resolution to establish a Prohibited Flammable Plant list and a municipal Code amendment to declaration that such plants as a fire hazard.

The Council finds that wildfire poses a risk to persons and property throughout the entire community and therefore determined that the designated wildfire lands boundary, and the development standards for wildfire lands, should be applied city wide to mitigate for the potential adverse effects of wildfire.

A. *Consistency with City of Ashland Requirements for Legislative Amendments in AMC 18.5.9.020.B.*

B. Type III. It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.

1. Zone changes or amendments to the Zoning Map or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.
2. Comprehensive Plan changes, including text and map changes or changes to other official maps.
3. Land Use Ordinance amendments.
4. Urban Growth Boundary amendments.

AMC 18.5.9.020.B permits legislative amendments to meet changes in circumstances and conditions. The City Council finds it is necessary to amend the Physical and Environmental Constraints Map Wildfire Lands Overlay boundary that was established in 1992 as it presently does not incorporate all areas within the City that meet the criteria to be considered a Wildfire Hazard Zone.

The City Council finds and determines that amendments to development standards for wildfire lands, and regulation of landscape profiles for new construction, is necessary to protect life, property and environmental resources in Ashland's suburban/wildland interface area from the devastating effects of wildfire, and to lessen the possibility of wildfire spreading to the Ashland watershed from the urban/wildland interface area. Further the City Council finds that the implementation of this ordinance will assist in preparing the City to be more resilient to climate change impacts, including wildfire.

The City Council finds and determines that all substantive issues raised regarding the Wildfire Lands Overlay Map changes, Land Use Ordinance amendments (Chapter 18), and amendments to the Weeds and Noxious Vegetation section of the Health and Sanitation chapter of the Municipal Code (Chapter 9) were adequately addressed by City staff in the numerous staff reports and staff responses, and other materials in the record,

whether such responses were made orally at the public hearings or provided in written form as set forth in the record. All staff reports, staff materials, and other staff responses are hereby accepted by the City Council and are incorporated herein by this reference.

The Council finds and determines that the proposed Wildfire Lands Overlay Map amendments, and amendments to the Ashland Land Use Ordinance and Municipal Code are consistent with the requirements for Legislative Amendments in AMC 18.5.9.020.B.

B. Consistency with the Ashland Comprehensive Plan and other applicable City of Ashland Goals and Policies

The ordinance amendments are consistent with the goals and policies in the *Ashland Comprehensive Plan*. The *Ashland Comprehensive Plan* includes a goal to:

“Protect life, property and environmental resources in Ashland’s suburban/wildland interface area from the devastating effects of wildfire. Lessen the possibility of wildfire spreading to the Ashland watershed from the urban/wildland interface area” (4.25 Wildfire Hazards).

The *2015-2017 Council Goals and Objectives* also identified a goal to:

“Complete the expansion of the city’s wildfire hazard zone to accurately reflect risk (8.4)” and an objective to *“Update the Wildfire Hazard Zone ordinance to allow for Citywide application and schedule for Council consideration.”*

The *2018 Draft Multi-Jurisdictional Natural Hazard Mitigation Plan [Ashland Addendum]* includes a goal to:

“Reduce the threat of loss of life and property from natural hazards by incorporating information on known hazards and providing incentives to make hazard mitigation planning a priority in land use policies and decisions, including plan implementation”

The City of Ashland’s *2017 Climate Energy Action Plan* includes a goal and strategies to:

“Prepare the city’s communities, systems, and resources to be more resilient to climate change impacts”

“Support more climate-ready development and land use.

“Regulate new development in the Wildfire Lands Overlay part of the urban growth boundary (Strategy ULT-4.)”.

The *2004 Ashland Community Wildfire Protection Plan* includes a goal to:

“Write and adopt a fire safe landscaping ordinance to regulate plantings around new structures.”

The City of Ashland’s *2014 Wildfire Hazard Zone Evaluation* demonstrated that the Wildfire Lands overlay boundary established in 1997 does not incorporate all areas within the City that meet the criteria to be considered a Wildfire Hazard Zone as set forth by OAR Chapter 629, Division 044, and found that expansion of the Wildfire Lands

boundary to include all properties in the existing City Limits, and the Urban Growth Boundary in anticipation of future annexations, was warranted.

C. *Consistency with Oregon land use laws and regulations including specifically Oregon Statewide Planning Goal 7*

Statewide Planning Goal 7 requires cities to protect people and property from natural hazards. The amendments to the Ashland Land Use Ordinance regarding mitigating wildfire hazards through reduction of fuels in immediate proximity of new structures addresses this goal. Additionally the establishment of a General Fuel Modification Area Prohibited Plant List as proposed, will ensure that highly flammable species are not newly introduced within areas that pose the greatest risk of spreading wildfire to structures within the City. The Council finds and determines that the proposed ordinances amending Chapter 18 and Chapter 9 of the Ashland Municipal Code will further the objectives of Statewide Planning Goal 7.

Based on the information contained within this report and facts and findings in support of the proposed map and ordinance amendments the City has conducted the planning process in compliance with Ashland's adopted review procedures (Ashland Land Use Ordinance Chapter 18.5.9) and in compliance with statewide planning goal 1.

OVERALL COUNCIL CONCLUSIONS

The City Council finds and determines the approval criteria for this decision have been fully met, based on the detailed findings set forth herein and the detailed findings and analysis of the Planning Commission, together with all staff reports, addenda and supporting materials in the whole record. Specifically, the Council finds that the ordinance amendments are consistent with City of Ashland requirements for Legislative Amendments in AMC 18.5.9.020.B. The Council finds that the amendments are consistent with and implement applicable *Ashland Comprehensive Plan Goals and Policies* and other City of Ashland Goals and Policies. The Council finds and determines that the amendments are consistent Oregon land use laws and regulations..

Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the City Council hereby APPROVES the ADOPTION of the following amendments to the AMC Title 18 Land Use as reflected in an ordinance amending chapters 18.3.10, 18.4.3.080, 18.4.4, 18.5.1, 18.5.3.060, 18.5.5.020, 18.5.7 and 18.6.1 of the Ashland Land Use Ordinance relating to wildfire development standards; physical constraints review permits; parking and circulation vehicle area design; landscaping, lighting and screening; land divisions and property line adjustments; and tree removal permits.

Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the City Council hereby APPROVES the ADOPTION of the amendments to the AMC Title 9.04 to declare Prohibited Flammable Plants a Nuisance.

Ashland City Council Approval

John Stromberg, Mayor

Date

Signature authorized and approved by the full Council this 4th day of September, 2018.

Attest:

Melissa Huhtala, City Recorder



Approved as to form:

David Lohman, Ashland City Attorney

Date

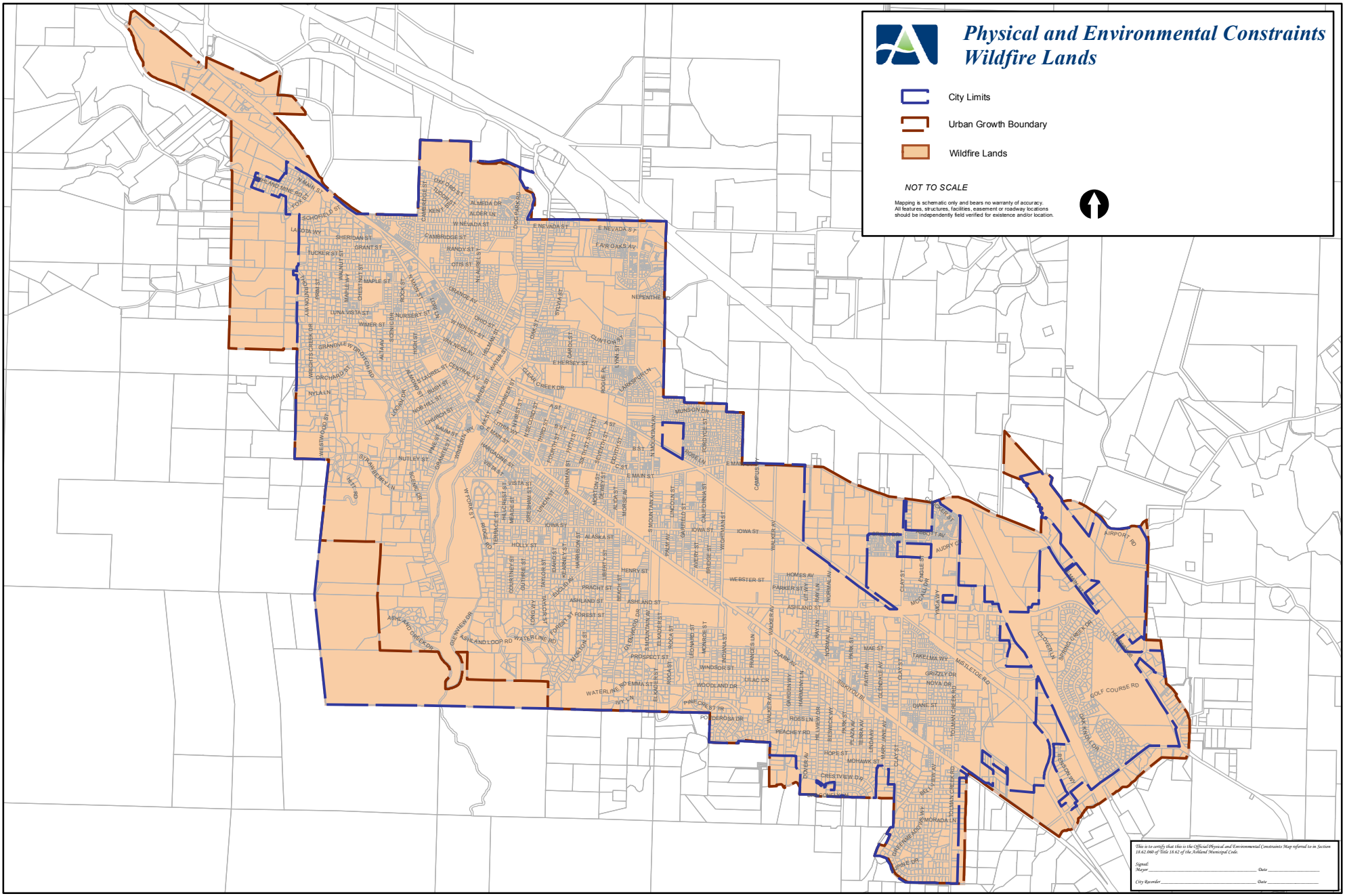


Physical and Environmental Constraints Wildfire Lands

-  City Limits
-  Urban Growth Boundary
-  Wildfire Lands

NOT TO SCALE

Mapping is schematic only and bears no warranty of accuracy. All features, structures, facilities, easement or roadway locations should be independently field verified for existence and/or location.



This is to verify that this is the Official Physical and Environmental Constraints Map referred to in Section 14.62.040 of Title 14.62 of the Aurora Municipal Code.

Signer: _____ Date: _____
 City Recorder: _____ Date: _____

ASHLAND PLANNING DIVISION STAFF REPORT

July 26, 2018

PLANNING ACTION: PA-L-2018-00003

APPLICANT: City of Ashland

ORDINANCE REFERENCES: AMC 18.3.10 Physical and Environmental Constraints
AMC 18.4.3 Parking, Access, and Circulation
AMC 18.4.4 Landscaping, Lighting, and Screening
AMC 18.5.1 General Review Procedures
AMC 18.5.3 Land Divisions and Property Line Adjustments
AMC 18.5.5 Variances
AMC 18.5.7 Tree Removal Permits
AMC 18.6.1 Definitions
AMC 9.04 Weeds and Noxious Vegetation

REQUEST: Amend the Physical and Environmental Constraints Map to expand the boundary of Ashland's designated Wildfire Lands to incorporate the entire City, and amend the Ashland Land Use Ordinance to implement new standards for fire prevention and control plans and fuels reduction associated with development. The proposed ordinance amendments include modifications to Ashland Land Use Ordinance Chapter 18.3.10.100 Development Standards for Wildfire Lands; 18.3.10.020 Physical Constraints Review Permit, 18.3.10.040 Physical Constraints Review Application Submission Requirements, 18.3.10.090 Development Standards for Hillside Lands; 18.4.3.080 Vehicle Area Design; 18.4.4 Landscaping, Lighting, and Screening; 18.5.1 General Procedures; 18.5.3.060 Additional Preliminary Flag Lot Partition Plat Criteria; 18.5.5 Variances; 18.5.7 Tree Removal Permits; 18.6 Definitions; and 9.04 Weeds and Noxious Vegetation.

I. Relevant Facts

A. Background

On April 15th, 2014 the City Council directed Staff prepare a modification of the Physical and Environmental Constraints Map to expand the boundary of Ashland's designated Wildfire Lands to incorporate the entire City.

The Planning Commission discussed the expansion of the Wildfire Lands boundary and amendments to the Development Standards for Wildfire Lands at study sessions on June 24, 2014, February 24, 2015, November 24, 2015, February 23, 2016, and February 27, 2018.

The Tree Commission discussed the amendments during regular meetings on April 9, 2015, December 10, 2015, and March 8, 2018.

The Wildfire Mitigation Commission discussed the amendments during regular meetings on, November 18, 2015, and March 21, 2018.

Mayor Stromberg convened an ad-hoc wildfire hazard committee (comprised of City staff, representatives from the Tree, Planning, and Wildfire Mitigation Commissions) that met numerous times through 2017 and 2018 to discuss a comprehensive approach toward mitigating the risk of wildfire within the City of Ashland. The discussion included evaluation of potential amendments to the development standards for wildfire lands.

Ashland Fire and Rescue, the ad-hoc wildfire hazard committee, and the Wildfire Mitigation Commission also worked with an organization called Community Planning Assistance for Wildfire (CPAW) to evaluate our community's risks and to provide an evaluation of the City's existing and proposed wildfire development standards. CPAW's land use, forestry, and hazard mitigation professionals visited Ashland to inform their recommendations intended to ensure wildfire is considered alongside other community planning priorities. The CPAW draft ordinance review and report titled "Best Practices Compilation for Ashland, Oregon", informed the drafting of the attached ordinance.

The City defined the current Wildfire Lands overlay boundary in 1992. This boundary included hillside properties in close proximity to the forested area south of Ashland. Areas within a Wildfire Lands overlay fall under Section 18.3.10.100 of the Ashland Municipal Code, Section 304.1.2 of the Oregon Fire Code, Sections 603 and 604 of the Wildland Urban Interface Code, and Section 324 of the Oregon Residential Specialty Code. These codes regulate landscaping, roof construction, defensible space and fuel modification areas.

B. Ordinance Amendments

In summary, the amended development standards for wildfire lands would require that applications to partition or subdivide properties, and site review applications for commercial and multi-family developments, provide a Fire Prevention and Control Plan with the planning application. A Fire Prevention and Control Plan would not be required for the construction of a single family dwelling or additions. A General Fuel Modification Area, where highly flammable plants are thinned or removed in proximity to a new structure, would be required to be established on properties obtaining building permits for new construction, and additions to existing buildings, that increase lot coverage by 200 square feet or greater..

The General Fuel Modification Area requirements as proposed include the following requirements:

- Removal of all dead or dying vegetation.
- No new planting of highly flammable plants within 30 feet of a structure (see prohibited plant list attached).
- Removal of existing highly flammable plants is required within 5 feet of a new building or addition.
- Combustible materials, including wood mulch, shall not be located within 5 feet of a structure.
- Fences are to be constructed with non-flammable material where the fence attaches to a new building, addition, or deck.

- Existing highly flammable trees (e.g. evergreen trees such as Cypress, Pine and Fir) shall be pruned to provide a minimum 10 foot clearance from a new building or addition, unless pruning the tree to this extent will compromise its health.
- Existing fire resistant trees (e.g. deciduous trees such as Oak and Maple) shall be pruned as to not touch a structure and provide a minimum 10 foot clearance from a chimney.
- Understory growth, vegetation below trees, shall be removed or maintained to reduce the risk of the spread of wildfire
- Roof Material (new or 50% re-roof) to be fire resistant (Class B).
- Allowances to preserve vegetation for erosion control, riparian and wetland preservation.

The proposed standards for both Fire Prevention Control Plans and General Fuel Modification Areas newly include flexibility to allow the Staff Advisor and Fire Code Official to review and approve requested deviations from the requirements when it can be demonstrated that due to specific site conditions, or the nature of the development, that there is no increased risk to the spread of wildfire.

The proposed amendments to the Tree Permit Review section (18.5.7) and Hillside Development standards (18.3.10.090) of the municipal clarify that a significant conifer tree is one that as having a diameter at breast height (DBH) of at least 18 inches, or is a deciduous tree with a DBH of 12 inches or greater. This amendment provides internal code consistency with the definition for “significant tree”. With the exception of significant trees, the attached ordinance would allow trees greater than 6” in diameter at breast height on hillside lands to be removed without a permit as part of an approved Fire Prevention and Control Plan, or as approved to implement a comprehensive general fuel modification area. The proposed amendment newly requires that when a property is large enough to be partitioned, subdivided or be further developed with multifamily units then a tree removal permit would require to remove trees greater than 6”DBH. Currently lots occupied only by only a single family home, regardless of lot size, are exempt from obtaining a tree removal permit to remove trees. Given this exemption, in recent years the City has seen properties remove numerous significant trees immediately in advance of submitting applications for partitioning or subdividing the property.

The proposal includes the creation of a Prohibited Flammable Plant list. Chapter 9.04 - Weeds and Noxious Vegetation, of the municipal code is to be amended declare such plants as a fire hazard.

- The ordinance adopting the prohibited flammable plant list would preclude newly planting the listed plants within 30 feet of any structure unless it were demonstrated that they would not pose additional fire risk.
- Highly flammable plants on this list that were in place prior to the adoption of the proposed ordinance would not have to be removed unless they are within five feet of a new structure or addition, or as proposed for removal as part of an approved Fire Prevention and Control Plan.

Change in Circumstances or Conditions

AMC 18.5.9.020.B permits legislative amendments to meet changes in circumstances and conditions. The Planning Commission makes a recommendation to the City Council and the City Council makes the final decision.

In review of the existing development standards for Wildfire Lands, Ashland Fire and Rescue identified a number of potential changes to the existing code to be considered as part of the legislative amendment process underway. Proposed code revisions would serve to both clarify the submittal requirements for a Fire Prevention and Control Plan, as well as establish new requirements for the implementation of required fuel modification areas not presently codified within the currently adopted Land Use Ordinance

The 2017 Climate and Energy Action Plan identified that regulation of new development within the Wildfire Fire Overlay is necessary to be more resilient to climate change impacts.

The City completed a Wildfire Hazard Zone Evaluation in 2014 which demonstrated that the existing Wildfire Lands overlay boundary does not incorporate all areas within the City that meet the criteria to be considered a Wildfire Hazard Zone as set forth by OAR Chapter 629, Division 044.

Statewide and Local Goals relating to Planning for Wildfires

Statewide Planning Goal 7 [Areas Subject to Natural Hazards] requires that local governments adopt inventories, policies and implementing measures to reduce risk to people and property from natural hazards including wildfire.

The Ashland Comprehensive Plan's Environmental Resources Chapter [4.25 Wildfire Hazards] includes the following goal:

Goal: Protect life, property and environmental resources in Ashland's suburban/wildland interface area from the devastating effects of wildfire. Lessen the possibility of wildfire spreading to the Ashland watershed from the urban/wildland interface area

The 2018 Multi-Jurisdictional Natural Hazard Mitigation Plan [Ashland Addendum] :

Goal: Reduce the threat of loss of life and property from natural hazards by incorporating information on known hazards and providing incentives to make hazard mitigation planning a priority in land use policies and decisions, including plan implementation.

The City Council set a strategic goal in 2015 that specifically related to the proposed wildfire lands ordinance update:

Goal: Complete the expansion of the city's wildfire hazard zone to accurately reflect risk. Update the Wildfire Hazard Zone ordinance to allow for Citywide application and schedule for Council consideration.

Ashland Community Wildfire Protection Plan (2004) Chapter 5 Action Items:

Goal: Write and adopt a fire safe landscaping ordinance to regulate plantings around new structures.

Climate and Energy Action Plan 2017

Goal: Prepare the city's communities, systems, and resources to be more resilient to climate change impacts.

Strategy ULT-4. Support more climate-ready development and land use.

Regulate new development in the Wildfire Lands Overlay part of the urban growth boundary.

The proposed amendments to the Development Standards for Wildfire Lands aim to reduce the potential impacts of wildfire on properties throughout the City of Ashland. The proposed standards balance the need to preserve natural habitat, prevent erosion, provide for aesthetic and functional landscaping, and to facilitate access to manmade structures by firefighters in the event of a wildfire.

II. Procedural

18.5.9.020 Applicability and Review Procedure

Applications for Plan Amendments and Zone Changes are as follows:

B. Type III. It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.

1. Zone changes or amendments to the Zoning Map or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.
2. Comprehensive Plan changes, including text and map changes or changes to other official maps.
3. Land Use Ordinance amendments.
4. Urban Growth Boundary amendments.

III. Conclusions and Recommendations

Local climatic, geographic, topographic and vegetation profile conditions impact fire prevention efforts, and the frequency, spread, acceleration, intensity, and size of fire involving buildings in this community. Wildfire poses a risk to persons and property throughout the community and therefore it is found to be reasonably necessary that the wildfire lands overlay boundary, and the development standards for wildfire lands be modified to mitigate the effects of the above conditions.

Wildfire Mitigation Commission

The Wildfire Mitigation Commission reviewed the draft ordinance on March 21st, 2018 and recommend approval of the ordinance and the expansion of the Wildfire Lands overlay to include the entire City.

Tree Commission

The Tree Commission reviewed the draft ordinance on March 8th, 2018 and recommend approval of the ordinance. The Tree Commission did request that the removal of significant trees for fuel removal require a review by the Tree Commission. In consideration of this comment the ordinance presented for adoption now requires a tree removal permit for significant trees. The Tree Commission also noted that there could be exemption included in the ordinance to preserve large native/conifer large trees while noting that large stature conifers can be fire resistant. The ordinance now includes allowances to exempt established conifer trees from the general fuel management requirements when it is demonstrated that pruning the tree to comply with the general fuel modification standards would compromise the health of the tree. Additionally the ordinance allows an applicant to request an exceptions to the prohibition on planting flammable plants when it is demonstrated that the proposed planting will not pose a fire risk. Lastly the Tree Commission recommended that the City should create a new full time Urban Forester position to assist with the implementation of the ordinance.

Planning Commission

The Planning Commission's formal recommendation to the Council regarding the attached map amendment and ordinance will be prepared by Staff and presented to the Commission on July 10th, 2018. Additionally a representative from the Planning Commission is invited to provide the Commissions recommendations to the City Council during the public hearing scheduled for July 17th, 2018.

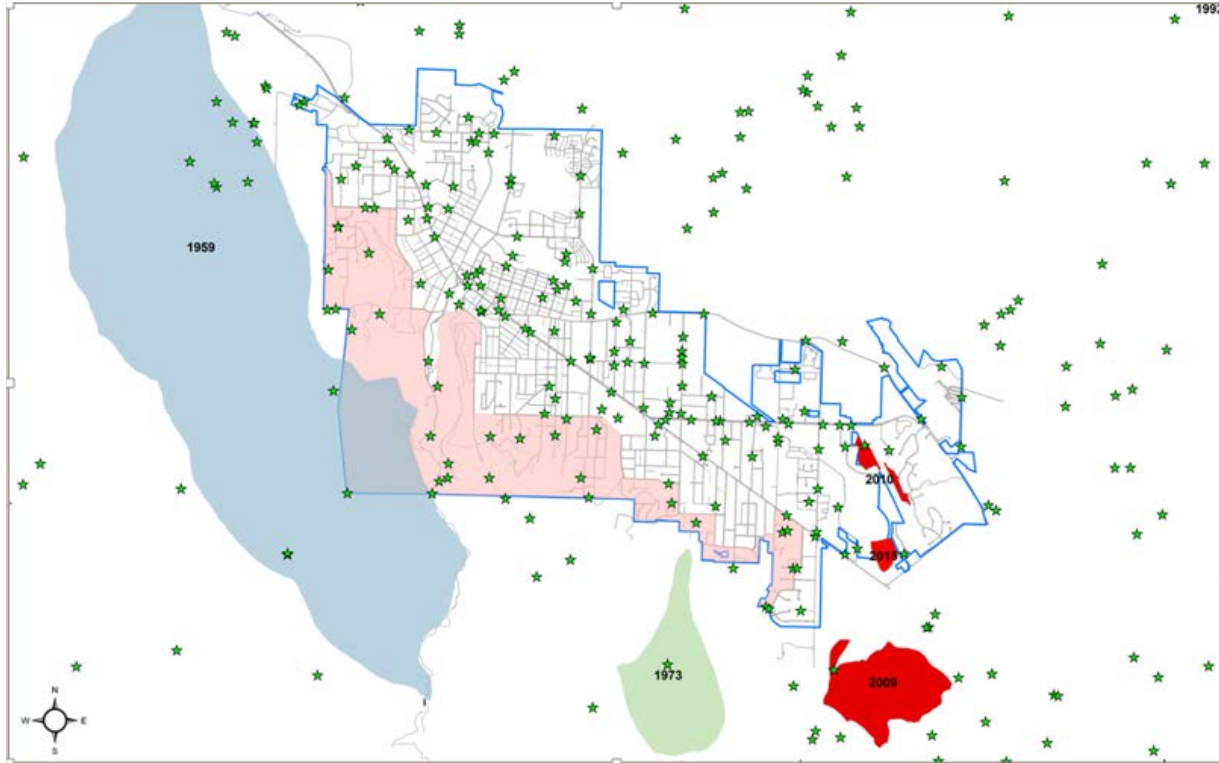
Planning Commission Report

DATE: July 10, 2018
TO: Ashland City Council
FROM: Ashland Planning Commission
RE: Planning Commission Recommendation
Ordinance Amendments for Wildfire Development Standards Ordinance
(PA-L-2018-00003)

Summary

The Planning Commission unanimously recommends approval of Planning Action PA-L-2018-00003. This legislative action includes proposed amendments to the Physical and Environmental Constraints Map to expand the boundary of Ashland's designated Wildfire Lands to incorporate the entire City; amendments to the Ashland Land Use Ordinance to implement new standards for fire prevention and control plans and fuels reduction associated with development; amendments to the Tree Removal permit requirements; and a Resolution to establish a Prohibited Flammable Plant list and a Municipal Code amendment to designate that such plants are a fire hazard.

The Commission found that wildfire poses a risk to persons and property throughout the entire community and therefore determined that the designated wildfire lands boundary, and the development standards for wildfire lands, should be applied city wide to mitigate for the potential adverse effects of wildfire. The commission found that the Wildfire Hazard Zone Evaluation in 2014 demonstrated that the existing Wildfire Lands overlay boundary does not incorporate all areas within the City that meet the criteria to be considered a Wildfire Hazard Zone as set forth by OAR Chapter 629, Division 044, and the frequency, spread, acceleration, intensity, and size of fires that have occurred outside the existing wildfire lands overlay demonstrates that the expansion of the wildfire lands overlay boundary is warranted. Ashland Fire and Rescue presented a map to the Commission that identified where individual fire ignition points and larger wildfires have occurred since 1959. This map showed that the risk of wildfire has not been isolated to the existing wildfire lands overlay area.



Ashland wildfires and ignitions:

Pink polygon = Existing wildfire lands designation

Green stars = ignitions

Blue, green, and red polygons = wildfires occurring in 1959, 1973, 2008, 2010

In review of the existing development standards for Wildfire Lands, the Planning Commission identified a number of potential changes to the existing code to be considered as part of the legislative amendment process. Draft code revisions were presented at numerous study sessions throughout 2017 and 2018, and were discussed by the Planning Commission, Tree Commission, Wildfire Mitigation Commission, and an ad-hoc wildfire hazard committee convened by the Mayor (comprised of City staff, representatives from the Tree, Planning, and Wildfire Mitigation Commissions). Through these study sessions the Commissions aimed to clarify the submittal requirements for a Fire Prevention and Control Plan, as well as revise or establish requirements for the implementation of required General Fuel Modification Areas not presently codified within the currently adopted Land Use Ordinance.

The Planning Commission found that if approved the proposed ordinance amendments, and expansion of the Wildfire Lands boundary, would address Statewide Planning Goal 7 as a local effort to “*implement measures to reduce risk to people and property from natural hazards including wildfire*”. Further the Commission found that the 2017 Climate and Energy Action Plan (CEAP) identified that regulation of new development within the Wildfire Fire Overlay was considered necessary to be more resilient to climate change impacts, and that adoption of the proposed ordinances would address this CEAP goal. The Commission further acknowledges that the City Council had an established an explicit goal to “*Complete the expansion of the city’s*



wildfire hazard zone to accurately reflect risk. Update the Wildfire Hazard Zone ordinance to allow for Citywide application and schedule for Council consideration". This Council goal is directly addressed through the ordinances and a resolution being forwarded for Council's consideration.

The Commission held a public hearing and deliberations on the proposed amendments on June 26th, 2018. Prior to the public hearing, the Planning Commission held study sessions to discuss Wildfire Lands ordinance amendments on [June 24, 2014](#), [February 24, 2015](#), [November 24, 2015](#), [February 23, 2016](#), and [February 27, 2018](#).

Recommendation

AMC 18.5.9.020.B permits legislative amendments to meet changes in circumstances and conditions. As discussed earlier, the Planning Commission finds the proposed amendments to the land use ordinance relating to wildfire development standards and the wildfire lands overlay map are necessary and are supported by the [Planning Staff Report dated June 26, 2017](#), the [2014 City of Ashland Wildfire Hazard Zone Evaluation](#), the [Community Planning Assistance for Wildfire \(CPAW\) Ashland Ordinance Review](#) (dated January 10, 2017), the [CPAW report titled Best Practices Compilation for Ashland](#) (dated April 2017), and the minutes from the prior study sessions as included in the record.

The Planning Commission reviewed the recommendations of the City of Ashland Tree and Wildfire Mitigation Commissions as included in the Planning Staff Report dated June 26, 2018, and considered the public testimony and written comments provided at the public hearing.

After careful thought and consideration, the Commission voted to recommend the City Council approve first reading of the ordinances and resolution as follows:

- Approval of the proposed map amendment to the Physical and Environmental Constraints Wildfire Lands Map to designate the entire Urban Growth Boundary and City Limits as Wildfire Lands.
- Approval of the proposed ordinance amending Chapter 18 of the Ashland Land Use Ordinance to amend the development standards for wildfire lands, and the applicability of tree removal permits.
- Approval of the proposed ordinance amending Chapter 9 of the Ashland Municipal Code to declare Prohibited Flammable Plants a nuisance.
- Approval of the resolution establishing the proposed General Fuel Modification Area Prohibited Flammable Plant List for application in Ashland's designated Wildfire Lands.

