

Chapter 8.10 TREE PRESERVATION AND MANAGEMENT REGULATIONS*

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* Editor's Note: Prior Ordinance History: Section 2 of Ord. 4362 was previously codified herein, and was not specifically repealed by adoption of Ord. 4568.

8.10.010 Purpose.

The purpose of this chapter is to promote the health, safety, welfare, and quality of life of the residents of the city through the protection of specified trees located on private property within the city, and the establishment of standards for removal, maintenance, and planting of trees. In establishing these procedures and standards, it is the city's intent to encourage the preservation of trees.

(Ord. 4568 § 1 (part), 1999)

8.10.020 Definitions.

For the purposes of this chapter, the following definitions shall apply:

- (a) "Basal flare" means that portion of a tree where there is a rapid increase in diameter at the confluence of the trunk and rootcrown.
- (b) "Building area" means that area of a parcel:
 - (1) Upon which, under applicable zoning regulations, a structure may be built without a variance, design enhancement exception, or home improvement exception; or
 - (2) Necessary for construction of primary access to structures located on or to be constructed on the parcel, where there exists no feasible means of access which would avoid

protected trees. On single-family residential parcels, the portion of the parcel deemed to be the building area under this paragraph (b)(2) shall not exceed ten feet in width.

(c) "Building footprint" means the two-dimensional configuration of an existing building's perimeter boundaries as measured on a horizontal plane at ground level.

(d) "Hazardous" means an imminent hazard or threat to the safety of persons or property.

(e) "Development" means any work upon any property in the city which requires a subdivision, planned community zone, variance, use permit, building permit, demolition permit, or other city approval or which involves excavation, landscaping or construction within the dripline area of a protected tree.

(f) "Director" means the director of planning and community environment or his or her designee.

(g) "Discretionary development approval" means planned community zone, subdivision, use permit, variance, home improvement exception, design enhancement exception, or architectural review board approval.

(h) "Dripline area" means the area within X distance from the perimeter of the trunk of the tree at four and one-half feet (fifty-four inches) above natural grade where X equals a distance ten times the diameter of the trunk as measured four and one-half feet (fifty-four inches) above natural grade.

(i) "Excessive pruning means removal of more than one-fourth of the functioning leaf and stem area of a tree in any twelve-month period, or removal of foliage so as to cause the unbalancing of a tree.

(j) "Protected tree means:

(1) Any tree of the species *Quercus agrifolia* (Coast Live Oak) or *Quercus lobata* (Valley Oak) which is eleven and one-half inches in diameter (thirty-six inches in circumference) or more when measured four and one-half feet (fifty-four inches) above natural grade; and

(2) Any Redwood tree (species *Sequoia sempervirens*) that is eighteen inches in diameter (fifty-seven inches in circumference) or more when measured four and one-half feet (fifty-four inches) above natural grade.

(3) A heritage tree designated by the city council in accordance with the provisions of this chapter.

(k) "Remove" means any of the following:

(1) Complete removal, such as cutting to the ground or extraction, of a tree.

(2) Taking any action foreseeably leading to the death of a tree or permanent damage to its health; including but not limited to excessive pruning, cutting, girdling, poisoning, overwatering, unauthorized relocation or transportation of a tree, or trenching, excavating, altering the grade, or paving within the dripline area of a tree.

(l) "Tree" means any woody plant which has a trunk four inches or more in diameter at four and one-half feet above natural grade level.

(m) "Tree report" means a report prepared by an arborist certified by the International Society of Arboriculture or another nationally recognized tree research, care, and preservation organization.

(n) "*Tree Technical Manual*" means the regulations issued by the city manager to implement this chapter.

(Ord. 4680 § 2, 2001; Ord. 4568 § 1 (part), 1999)

8.10.030 Tree Technical Manual.

The city manager, through the departments of public works and planning and community environment, shall issue regulations necessary for implementation of this chapter, which shall be known as the Tree Technical Manual. The Tree Technical Manual will be made readily available to the public and shall include, but need not be limited to, standards and specifications regarding:

- (a) Protection of trees during construction;
- (b) Replacement of trees allowed to be removed pursuant to this chapter;
- (c) Maintenance of protected trees (including but not limited to pruning, irrigation, and protection from disease);
- (d) The format and content of tree reports required to be submitted to the city pursuant to this chapter;
- (e) The criteria for determining whether a tree is dangerous within the meaning of this chapter.

(Ord. 4568 § 1 (part), 1999)

8.10.040 Disclosure of information regarding existing trees.

(a) Any application for discretionary development approval, or for a building or demolition permit where no discretionary development approval is required, shall be accompanied by a statement by the property owner or authorized agent which discloses whether any protected trees exist on the property which is the subject of the application, and describing each such tree, its species, size, dripline area, and location. This requirement shall be met by including the information on plans submitted in connection with the application.

(b) In addition, the location of all other trees on the site and in the adjacent public right of way which are within thirty feet of the area proposed for development, and trees located on adjacent property with canopies overhanging the project site, shall be shown on the plans, identified by species.

(c) The director may require submittal of such other information as is necessary to further the purposes of this chapter including but not limited to photographs.

(d) Disclosure of information pursuant to this section shall not be required when the development for which the approval or permit is sought does not involve any change in building footprint nor any grading or paving.

(e) Knowingly or negligently providing false or misleading information in response to this disclosure requirement shall constitute a violation of this chapter.

(Ord. 4568 § 1 (part), 1999)

8.10.050 Prohibited acts.

It shall be a violation of this chapter for anyone to remove or cause to be removed a protected tree, except as allowed in this section:

(a) In the absence of development, protected trees shall not be removed unless determined by the director of planning and community environment, on the basis of a tree report prepared by a certified arborist for the applicant and other relevant information, that the tree should be removed because it is dead, is hazardous, is a detriment to or crowding an adjacent

protected tree, or constitutes a nuisance under Section 8.04.050(2) of this code.

(b) In the case of development on a single-family residential lot, other than in connection with a subdivision:

(1) Protected trees shall not be removed unless the trunk or basal flare of the protected tree is touching or within the building footprint, or the director of planning and community environment has determined, on the basis of a tree report prepared by a certified arborist for the applicant and other relevant information, that the tree should be removed because it is dead, is hazardous, is a detriment to or crowding an adjacent protected tree, or constitutes a nuisance under Section 8.04.050(2) of this code.

(2) If no building footprint exists, protected trees shall not be removed unless the trunk of the tree is located in the building area, or the director of planning and community environment has determined, on the basis of a tree report prepared by a certified arborist for the applicant and other relevant information, that the tree should be removed because it is dead, is hazardous, is a detriment to or crowding an adjacent protected tree, or constitutes a nuisance under Section 8.04.050(2) of this code.

(3) If removal is allowed because the tree trunk is located in the building footprint, or the trunk or basal flare is in the building area, or because the director of planning and community environment has determined that the tree is so close to the building area that construction would result in the death of the tree, the tree removed shall be replaced in accordance with the standards in the *Tree Technical Manual*.

(c) In connection with a proposed subdivision of land into two or more parcels, no protected tree shall be removed unless removal is unavoidable due to restricted access to the property or deemed necessary to repair a geologic hazard (landslide, repairs, etc.). The tree removed shall be replaced in accordance with the standards in the *Tree Technical Manual*. Tree preservation and protection measures for any lot that is created by a proposed subdivision of land shall comply with the regulations of this chapter.

(d) In all circumstances other than those described in paragraphs (a), (b) and (c) of this section, protected trees shall not be removed unless one of the following applies:

(1) The director of planning and community environment has determined, on the basis of a tree report prepared by a certified arborist for the applicant and other relevant information, that the tree should be removed because it is dead, dangerous or constitutes a nuisance under Section 8.04.050(2). In such cases, the dripline area of the removed tree, or an equivalent area on the site, shall be preserved from development of any structure unless removal would have been permitted under paragraph (2), and tree replacement in accordance with the standards in the *Tree Technical Manual* shall be required.

(2) Removal is permitted as part of project approval under Chapter 18.76 (Permits and Approvals) of this code, because retention of the tree would result in reduction of the otherwise-permissible building area by more than twenty-five percent. In such a case, the approval shall be conditioned upon replacement in accordance with the standards in the *Tree Technical Manual*.

(Ord. 4826 § 4, 2004; Ord. 4680 § 3, 2001; Ord. 4568 § 1 (part), 1999)

8.10.060 No limitation of authority under Titles 16 and 18.

Nothing in this chapter limits or modifies the existing authority of the city under Title 18

(Zoning Ordinance) to require trees and other plants not covered by this chapter to be identified, retained, protected, and/or planted as conditions of the approval of development. In the event of conflict between provisions of this chapter and conditions of any permit or other approval granted pursuant to Title 16 or Title 18, the more protective requirements shall prevail.
(Ord. 4826 § 5, 2004; Ord. 4568 § 1 (part), 1999)

8.10.070 Care of protected trees.

(a) All owners of property containing protected trees shall follow the maintenance standards in the Tree Technical Manual.

(b) The standards for protection of trees during construction contained in the Tree Technical Manual shall be followed during any development on property containing protected trees.

(Ord. 4568 § 1 (part), 1999)

8.10.080 Development conditions.

(a) Discretionary development approvals for property containing protected trees will include appropriate conditions providing for the protection of such trees during construction and for maintenance of the trees thereafter.

(b) It shall be a violation of this chapter for any property owner or agent of the owner to fail to comply with any development approval condition concerning preservation, protection, and maintenance of any tree, including but not limited to protected trees.

(Ord. 4568 § 1 (part), 1999)

8.10.090 Designation of heritage trees.

(a) Upon nomination by any person and with the written consent of the property owner(s), the city council may designate a tree or trees as a heritage tree.

(b) A tree may be designated as a heritage tree upon a finding that it is unique and of importance to the community due to any of the following factors:

- (1) It is an outstanding specimen of a desirable species;
- (2) It is one of the largest or oldest trees in Palo Alto;
- (3) It possesses distinctive form, size, age, location, and/or historical significance.

(c) After council approval of a heritage tree designation, the city clerk shall notify the property owner(s) in writing. A listing of trees so designated, including the specific locations thereof, shall be kept by the departments of public works and planning and community environment.

(d) Once designated, a heritage tree shall be subject to the provisions of this chapter unless removed from the list of heritage trees by action of the city council. The city council may remove a tree from the list upon its own motion or upon written request by the property owner. Request for such action must originate in the same manner as nomination for heritage tree designation.

(Ord. 4568 § 1 (part), 1999)

8.10.100 Responsibility for enforcement.

The following designated employee positions may enforce the provisions of this chapter by the issuance of citations: chief building official, assistant building official, code enforcement officer, planning arborist.
(Ord. 4568 § 1 (part), 1999)

8.10.110 Enforcement - Remedies for Violation.

In addition to all other remedies set forth in this code or otherwise provided by law, the following remedies shall be available to the city for violation of this chapter:

(a) Stop Work - Temporary Moratorium.

(1) If a violation occurs during development, the city may issue a stop work order suspending and prohibiting further activity on the property pursuant to the grading, demolition, and/or building permit(s) (including construction, inspection, and issuance of certificates of occupancy) until a mitigation plan has been filed with and approved by the director, agreed to in writing by the property owner(s), and either implemented or guaranteed by the posting of adequate security. The mitigation plan shall include measures for protection of any remaining trees on the property, and shall provide for replacement of each tree removed on the property or at locations approved by the director of planning and community and by the director of public works, if replacement is to occur on public property. The replacement ratio shall be in accordance with the standards set forth in the Tree Technical Manual, and shall be at a greater ratio than that required where tree removal is permitted pursuant to the provisions of this chapter.

(2) If a violation occurs in the absence of development, or while an application for a building permit or discretionary development approval for the lot upon which the tree is located is pending, the director may issue a temporary moratorium on development of the subject property, not to exceed eighteen months from the date the violation occurred. The purpose of the moratorium is to provide the city an opportunity to study and determine appropriate mitigation measures for the tree removal, and to ensure measures are incorporated into any future development approvals for the property. Mitigation measures as determined by the director shall be imposed as a condition of any subsequent permits for development on the subject property.

(b) Civil Penalties.

(1) As part of a civil action brought by the city, a court may assess against any person who commits, allows, or maintains a violation of any provision of this chapter a civil penalty in an amount not to exceed five thousand dollars per violation.

(2) Where the violation has resulted in removal of a tree, the civil penalty shall be in an amount not to exceed five thousand dollars per tree unlawfully removed, or the replacement value of each such tree, whichever amount is higher. Such amount shall be payable to the city. Replacement value for the purposes of this section shall be determined utilizing the most recent edition of the *Guide for Plant Appraisal*, published by the Council of Tree and Landscape Appraisers.

(c) Injunctive Relief. A civil action may be commenced to abate, enjoin, or otherwise compel the cessation of such violation.

(d) Costs. In any civil action brought pursuant to this chapter in which the city prevails, the court shall award to the city all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action, and reasonable attorney fees.

(Ord. 4568 § 1 (part), 1999)

8.10.120 Fees.

Tree reports required to be submitted to the city for review and evaluation pursuant to this chapter shall be accompanied by the fee prescribed therefor in the municipal fee schedule.

(Ord. 4568 § 1 (part), 1999)

8.10.130 Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

(Ord. 4568 § 1 (part), 1999)

8.10.140 Appeals.

Any person seeking the director's approval to remove a protected tree pursuant to the ordinance codified in this chapter who is aggrieved by a decision of the director may appeal such decision in accordance with the procedures set forth in Chapter 18.78 (Appeals).

(Ord. 4826 § 6, 2004; Ord. 4568 § 1 (part), 1999)