

# APPENDIX A

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## Chapter 11.08 TREE PROTECTION REGULATIONS

### **11.08.010 Purpose and Intent.**

The purpose of this chapter is to protect and promote the growth of a healthy and sustainable tree canopy in Los Altos. Trees in Los Altos are highly valued by the community and provide several benefits, including shade and climate resilience, habitat for wildlife, carbon sequestration and improved air quality, protection against wind and flood hazards, and aesthetic quality.

This chapter establishes standards for proper tree removal and replacement, preservation, and protection during construction.

### **11.08.0120 Definitions.**

The following words and phrases when used in this article shall have the meaning set forth herein, except where the context clearly indicates a different meaning:

"Damage" means any intentional action or negligence which causes injury, death or disfigurement of a tree. Actions include, but are not limited to, cutting, girdling, poisoning, overwatering, unauthorized relocation or transportation of a tree or trenching, excavating, altering the grade or paving within the dripline of a tree.

"Certified Arborist" – means a person having expertise in the care and maintenance of trees, who is certified by the International Society of Arboriculture (ISA) or the American Society of Consulting Arborists (ASCA).

"Development review application" means application for land alteration or development, including but not limited to tentative subdivision map, design review, variance, use permit, rezoning, planned unit development and tree removal.

"Dripline" means the outermost line of the tree's canopy projected straight down to the ground surface. As depicted in a plan view, the dripline generally appears as an irregularly shaped circle.

"Heritage tree" means any tree so designated by the historical commission, based on the finding that the tree has character, interest, or value as part of the development of, and/or exemplification of, the cultural, educational, economic, agricultural, social, indigenous, or historical heritage of the city.

"Native Species" – as defined by list on file with the Development Services Department.

Protected Tree (See Section 11.08.040).

"Significant Pruning" means the cutting or taking away of more than thirty-three percent of the living foliage material (including branches) of a tree in any twelve (12) month period such that it damages a tree as determined by a certified arborist or as otherwise determined by the Development Services Director ~~planning director~~. (See the definition for tree removal in this section.)

~~"RI" means any single family residential zoning district, for example, Ri-b, RI-20, Ri-H, R1-40.~~

"Remove" (See the definition for tree removal in this section).

"Tree" means a woody perennial plant characterized by having a main stem or trunk or a multi-stemmed trunk system with a more or less definitely formed crown and is usually over ten (10) feet high at maturity.

"Tree removal" means the removal of a tree, including significant pruning. (See the definition for significant pruning in this section).

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“Undesirable/Invasive Species” - as defined by list on file with the Development Services Department.

(Prior code § 10-2.26501)

### **11.08.0230 Application of chapter.**

This chapter shall apply to every owner of real property within the city and to every person responsible for removing a tree regardless of whether such person is engaged in a tree removal business.

(Prior code § 10-2.26502)

### **11.08.0340 Actions prohibited.**

- A. It is unlawful to damage or kill any protected tree;~~and~~
- B. It is unlawful to remove any protected tree from private or public property in any zoning district without first obtaining a tree removal permit.

(See Section 11.08.160 for violation/penalties).

(Prior code § 10-2.26503)

### **11.08.0450 Protected trees.**

A protected tree is any of the following:

- A. Any tree that is ~~forty-eight (48)~~ thirty-eight (38) inches in circumference (12 inches in diameter) measured at forty-eight (48) inches (4-feet) above grade;
- B. Any tree of a native species that is ten (10) inches in diameter or greater measured at forty-eight (48) inches above grade;
- CB. Any tree designated by the historical commission as a heritage tree or any tree under official consideration by the historical commission for heritage tree designation;
- C. Any tree which was required by the city to be either saved or planted in conjunction with a development review application.

(Ord. 07-314 § 2 (part); prior code § 10-2.26504)

### **11.08.0560 Heritage tree designations.**

- A. Applications. Applications for designation of a heritage tree may be filed by the owner of the property on which the tree is located. The city council or planning commission or zoning administrator may also, by resolution or motion, refer a proposed designation to the historical commission, or the historical commission may also consider a proposed designation upon its own initiative. Applications by property owners shall be prepared in accordance with instructions provided by the ~~planning director~~ Development Services Director.
- B. Study. The historical commission shall conduct a study of the proposed heritage tree, based upon such information or documentation as it may require from the applicant, the commission staff, or from other available sources.
- C. Property owner notification. The historical commission shall notify the owner of the property on which the tree is located of the meeting at which the commission will consider the tree for designation. The notice shall

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(Supp. No. 37)

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be mailed to the recorded owner(s) as shown on the last equalized assessment roll and shall be mailed at least thirty (30) days prior to the meeting unless the property owner(s) agree in writing to a lesser notification period. Failure to receive notice shall not invalidate any proceedings under this chapter.

- D. Action on designation. The historical commission may either ~~recommend~~ denial or approval of designation based on the criteria outlined in Section 12.44.030 of this code.

(Prior code § 10-2.26505)

### **11.08.0670 Tree removal permits required.**

In order to remove any protected tree, a tree removal permit must be obtained. All applications for a tree removal permit shall be prepared in accordance with instructions provided by the Development Services Director ~~planning director, and when the application is filed independent of any other development review application, it shall be accompanied by a fee which shall be established by city council resolution.~~

(Prior code § 10-2.26506)

### **11.08.0780 Approval authority.**

Notwithstanding the provisions of Section 11.08.100 of this chapter, the approval authority for tree removal requests shall be as follows:

- A. For heritage trees: the approval authority shall be the historical commission.
- B. For all other protected trees:
  - 1. The approval authority for tree removal ~~requests filed independent of any other development review application~~ shall be the ~~planning director~~ Development Services Director.
  - 2. ~~The approval authority for tree removal requests filed in conjunction with another development review application shall be the same approval authority as established by this code for the accompanying development review application.~~

(Prior code § 10-2.26507)

### **11.08.0890 Notification.**

~~When a tree removal application involves a tree(s) which was designated for preservation at the request of a neighboring property owner(s) in conjunction with a development review application, the current owner(s) of said neighboring property(s) shall be notified of the meeting at which the approval authority will consider the tree removal. The notice shall be mailed to the recorded owner(s) as shown on the last equalized assessment roll and shall be mailed at least ten (10) days prior to the meeting. Failure to receive notice shall not invalidate any proceedings under this chapter. Once the City issues a Tree Removal Permit, city staff or, at their discretion, the applicant, shall post notice of the decision on the application for such permit on the subject property and shall be legible from the public right-of-way. Such notice shall state the decision on the application and shall provide information on the appeal process pursuant to this Chapter.~~

(Prior code § 10-2.26508)

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### 11.08.09100 Determination on permit.

A. Criteria. Each application for a tree removal permit shall be reviewed and determined ~~on the basis of~~ based on the following tree removal criteria:

1. The tree is dead, in poor health (as defined in the most recent edition of the Guide for Plant Appraisal), or has a risk rating of moderate, high, or extreme which cannot be mitigated through sound arboricultural practices to a low-risk rating.

2. The tree species is identified as an invasive or undesirable species (as defined by list on file with the Development Services Department).

3. The tree is interfering or will interfere with a utility, public transportation, waterway, or other public infrastructure system.

4. The tree is causing damage to an enclosed structure which cannot be mitigated in another way.

5. Preservation of the tree will impede the use of real property and no reasonable or feasible alternative (as determined by the Development Services Director) exists to preserve the tree in the current location.

- ~~1. The condition of the tree with respect to disease, imminent danger of falling, proximity to existing or proposed structures and interference with utility services;~~
- ~~2. The necessity to remove the tree for economic or other enjoyment of the property;~~
- ~~3. The topography of the land and the effect of the tree removal upon erosion, soil retention and the diversion or increased flow of surface waters;~~
- ~~4. The number, species, size and location of existing trees in the area and the effect the removal would have upon shade, privacy impact, scenic beauty, property values and any established standards of the area;~~
- ~~5. The number of healthy trees the property is able to support according to good forestry practices;~~
- ~~6. The approximate age of the tree compared with average life span for that species;~~
- ~~7. Whether there are any reasonable and feasible alternatives that would allow for the preservation of the tree.~~

B. Additional recommendations. The approval authority may refer the application to another department, commission or person for a report and recommendation. The approval authority may also require the applicant to furnish a written report from an independent tree expert certified arborist acceptable to the approval authority; such report shall ~~to~~ be obtained at the expense of the applicant.

C. Action. Based on the criteria outlined in subsection A of this section, the approval authority shall either approve, conditionally approve, or deny the application. Conditions of approval may require any of the following:

1. One or more replacement trees be planted as outlined in section 11.08.120 Tree Replacement Criteria;
2. Payment of an in-lieu fee in compliance with section 11.08.120;
3. A combination of replacement trees and in-lieu fees that in total provide for the number of replacement trees as outline in section 11.08.110, of a species and size and at locations as designated by the approval authority. When deciding upon replacement tree(s), the approval authority will take into consideration: (1) the cost of replacement trees; and (2) the wishes of the property owner

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~~relative to the species of tree to be planted. Any such replacement trees shall be obtained and planted at the expense of the applicant.~~

(Prior code § 10-2.26509)

### **11.08.10110 Emergency ~~w~~Waivers and exemptions.**

- A. ~~In case of emergency caused by h~~Hazardous or dangerous condition of a tree requiring immediate action for the safety of life or property, a tree may be removed upon the order of the ~~planning director~~ Development Services Director, the ~~director of public works~~ Public Works Director or any member of the police or fire department without the necessity of applying for a tree removal permit.
  - 1. In the event that a protected tree is thought to be dead or diseased and warrants the removal, a property owner can submit photographs of the subject tree to the Development Service Department for review and consideration of an exemption from the requirement of a Tree Removal Permit.
    - a. Trees removed pursuant to the provisions of section 11.08.110(A)(1) are subject to field verification and onsite inspection by the Development Services Department.
- B. Employees of the city may take such action with regard to trees on city-owned property as may be necessary to maintain the safety of city operations and/or the safe conditions on city property, without the necessity of applying for a tree removal permit.~~;~~and
- C. Public utilities subject to the jurisdiction of the public utilities commission of the state of California may also take such action as may be necessary to comply with the safety regulations of said commission and as may be necessary to maintain a safe operation of their facilities without the necessity of applying for a tree removal permit.

Prior code § 10-2.26510)

### **11.08.120 Tree Replacement.**

- A. Trees approved for removal (including dead trees) shall be replaced based on the number and size of trees approved for removal as follows:
  - 1. Replace the tree 1:1 with a tree of a similar size canopy at maturity.
  - 2. Where 1:1 replacement in kind is not feasible, replace the tree with two (2) or more trees, such that the replacement trees (combined) provide a similar size canopy at maturity.
  - 3. Replacement tree shall be a minimum of 24-inch box size container unless a smaller container is recommended by the Certified Arborist based on tree species or planting location.
- B. The Development Services Director shall have the authority to approve an increase in the number of the on-site replacement trees and reduce the required size of the trees, when appropriate.
- C. Replacement Plan. A tree replacement plan prepared by a Certified Arborist shall be made a requirement of the Tree Removal Permit and be provided with the Tree Removal Application. It shall include and adhere to the following:
  - 1. The number, species and site plan of the proposed location of replacement trees;
  - 2. Replacement trees shall be planted within thirty (30) days from removal of the tree when the site is ready for planting and area is suitable for new planting, unless accepted arboricultural practices dictate a preferential planting period based on the species chosen as the replacement tree and seasonal factors;

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(Supp. No. 37)

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3. Any person who is required to plant replacement trees as a condition of a tree removal permit shall maintain such trees in a healthy condition to ensure their long-term survival;
  4. Replacement trees shall be obtained and planted at the expense of the applicant.
- D. No replacement tree shall be required when it is determined that the existing tree is or has caused direct damage to an existing structure or property.
1. When a replacement tree is not required pursuant to section 11.08.120(D) a field inspection shall be completed by the Development Services Department to verify any damage onsite.
- E. Where replacement is not possible on site as determined by the Certified Arborist, the applicant shall pay an in-lieu fee in an amount set forth by the City Council and shall be paid to the Street Tree Fund.

### **11.08.1130 Appeals.**

Any action of the approval authority may be appealed by the applicant or any interested party to the city council. Said appeal shall be in writing, shall state the reasons for the appeal, shall be accompanied by a fee which shall be set by city council resolution and shall be filed with the city clerk within ten (10) calendar days of the decision.

(Prior code § 10-2.26511)

### **11.08.1240 Tree protection during construction.**

Protected trees designated for preservation shall be protected during development of a property by compliance with the following, which may be modified by the ~~planning director~~ Development Services Director:

- A. Protective fencing shall be installed no closer to the trunk than the dripline, and far enough from the trunk to protect the integrity of the tree. The fence shall be a minimum of ~~five~~ four feet in height and shall be set securely in place. The fence shall be of a sturdy but open material (i.e., chainlink), to allow visibility to the trunk for inspections and safety. There shall be no storage of any kind within the protective fencing. The fence shall be in place until construction has been completed.
- B. The existing grade level around a tree shall normally be maintained out to the dripline of the tree. Alternate grade levels may be approved by the Development Services Director ~~planning director~~.
- C. Drain wells shall be installed whenever impervious surfaces will be placed over the root system of a tree (the root system generally extends to the outermost edges of the branches).
- D. Trees that have been damaged by construction shall be repaired in accordance with accepted arboriculture methods. If a tree is damaged beyond repair, damage shall be categorized as a violation in accordance with Section 11.08.160 and shall require replacement tree(s) in accordance with Section 11.08.120.
- E. No signs, wires, or any other object shall be attached to the tree.

(Ord. 07-314 § 2 (part); prior code § 10.2.26513)

### **11.08.1350 Delegation of functions.**

The ~~planning director and director of public works~~ Development Services Director may delegate any or all of the administrative duties authorized by this chapter to one or more staff members.

(Ord. 07-314 § 2 (part); prior code § 10-2.26514)

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### 11.08.1460 Violations—Penalties.

The violation of any provision contained in this chapter is hereby declared to be a misdemeanor and shall be punishable as prescribed in Chapter 1.20 of this code. Violations pursuant to this section of the code shall incur a penalty fine for each tree removed without proper authorization. In addition thereto, any person unlawfully removing or destroying any protected tree without a permit shall be penalized as follows:

- A. Replacing the unlawfully removed tree with one or more new trees which, in accordance with section 11.08.120 or in the opinion of the ~~planning director~~ Development Services Director, will provide equivalent aesthetic quality in terms of size, height, location, appearance and other characteristics of the unlawfully removed tree.
- B. Where replacement trees will not provide equivalent aesthetic quality because of the size, age or other characteristics of the unlawfully removed tree, the ~~planning director~~ Development Services Director shall calculate the value of the removed tree in accordance with the latest edition of the Guide for Establishing Values of Trees and Other Plants, as prepared by the council of tree and landscape appraisers. Upon the determination of such value, the Development Services Director ~~planning director~~ may require either a cash payment to the city to be added to the Street Tree Fund ~~street tree fund~~, or the planting of replacement trees as designated by the ~~planning director~~ Development Services Director, or any combination thereof, in accordance with the following:
  1. To the extent that a cash payment is required for any portion or all of the value of the removed tree, such payment shall be doubled to reflect the estimated installation costs that would be incurred if replacement trees are planted; and
  2. To the extent that the planting of replacement trees is required, the retail cost of such trees, as shown by documentary evidence satisfactory to the ~~planning director~~ Development Services Director, shall be given for transportation, installation, maintenance and other costs incidental to the planting and care of the replacement trees.
- C. Any person who is required to plant replacement trees pursuant to subsection A or B of this section shall maintain such trees in a good and healthy condition, as determined by the Development Services Director ~~planning director~~. The ~~planning director~~ Development Services Director may require a maintenance bond or other security deposit approved by the city finance department which shall be provided to the city by the person required to plant replacement trees. The bond shall be in an amount of money and for a period of time determined by the ~~planning director~~ Development Services Director.

(Ord. 07-314 § 2 (part); prior code § 10-2.26515)