

ARTICLE 15

TREE PRESERVATION

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ARTICLE 15

TREE PRESERVATION

SEC. 10-15.10 PURPOSE AND INTENT. The City of Hayward contains many species of native and non-native trees of significant size and quality that contribute in a positive way to its environment. Trees that are properly maintained increase property values, maintain the natural ecology, temper the effects of extreme temperatures, reduce runoff, prevent erosion of topsoil, and help create and maintain the identity and visual character of the City. Trees can help to provide protection from flooding and risks of landslides. They also increase oxygen output, which helps to combat air pollution. This Ordinance is intended to protect and preserve significant trees and control the re-shaping, removal or relocation of those trees that provide benefits for the neighborhood or the entire community while recognizing that there are rights to develop private property.

The City Council hereby finds that the wanton and wholesale destruction of trees could impair the scenic beauty of the area, cause erosion of top soil, create flood hazard and risk of landslides, reduce property values, and increase the cost of construction and maintenance of drainage systems through the increased flow and diversion of surface waters.

For these reasons the City Council finds it in the public interest, convenience and necessity to enact regulations as may be reasonably consistent with the economic enjoyment of private property which will control the cutting or trimming, relocation, or removal of trees within the City in order to ensure that such tree work is in conformance with the International Society of Arboriculture (ISA) standards.

SEC. 10-15.11 APPLICATION OF ORDINANCE. The Tree Preservation Ordinance is applicable to all types of existing Industrial, Commercial, and Multi-family development, and to new development, under-developed properties, or undeveloped properties. Maintenance and removal of street trees is governed by the City's Street Tree Ordinance. On developed single family properties, only those trees that were required to be planted as part of the Zoning Ordinance or were required to be planted or protected in place as a condition of approval for development are Protected Trees that require a permit for trimming or cutting, relocation or removal. Trees required to be planted on a single family lot as part of the Zoning Ordinance include Street Trees or trees required to be planted in the front yard as 'street trees'. Side yard trees on a corner lot outside of the fence are also Protected Trees under this Ordinance. Trees within the rear yard area of single-family properties are exempt unless they were required to be planted or protected in place as part of the conditions of approval or discretionary action. Examples of non-exempt trees in rear yards may include trees planted adjacent to BART or railroad right-of-way or a Specimen Tree that was in place prior to the homes being developed. Trees planted by a single-family homeowner for purposes other than as a Condition of Approval are exempt from all portions of this Ordinance.

SEC. 10-15.12 DEFINITIONS. For the purposes herein, certain words and phrases are defined, and certain provisions shall be construed, as herein set out, unless it shall be apparent from their context a different meaning is intended.

Certified Arborist. A "Certified Arborist" shall be as defined by the International Society of Arboriculture. It shall include a "Consulting Arborist" who satisfied the requirements of

the American Society of Consulting Arborists (ASCA) and who is determined by ASCA to meet the standards of Certified or Consulting Arborist as defined above.

Cutting. “Cutting” shall mean the detaching or separating from a protected tree any live limb or branch over one inch in diameter, any pruning which changes the shape or natural character of the tree or any branch removal that removes more of the tree canopy than recommended under ISA Standards.

Damage. “Damage” shall mean any action that causes permanent injury, death or disfigurement to a tree. This may include, but is not limited to, cutting, poisoning, over watering, withholding water, unauthorized relocating or transplanting of a protected tree, trenching, excavating, or paving within the protected zone of a tree.

Disfigurement. “Disfigurement” or “disfigure” shall mean the unsightly and injurious trimming of a protected tree. This shall include tree-trimming practices that are not in conformance with the International Society of Arboriculture standards. It shall include pruning practices such as stubbing, heading, heading back, stubbing off, pollarding, tipping, hat racking, topping off, de-horning, lopping, or rounding over any Protected trees. These practices are not permitted with or without a permit from the City of Hayward. Existing pollarded trees shall be examined on a case-by-case basis as permits for trimming Protected trees are requested.

Deadwood. “Deadwood” shall mean the limbs, branches, or portion of a tree that contains no green leaves or live wood during a period of the year when green leaves should be present.

Dripline. The “Dripline” shall mean all of the area of ground underneath the tree to the outermost edge of any portion of the tree’s canopy. When depicted in plan view, the dripline will appear as an irregularly shaped circle that follows the outline of the tree's canopy as seen from above.

Encroachment. “Encroachment” shall mean any intrusion of human activity into the protected zone of a Specimen or Protected tree. This includes, but is not limited to, pruning, grading, excavating, trenching, installation of fencing, parking vehicles, driving, storing materials or equipment, or construction of structures or other improvements.

Memorial Tree. “Memorial Tree” shall mean any tree planted in memory of or in commemoration of an individual or individuals or a specific event by an entity recognized by the City of Hayward. This in general will not include Christmas trees planted by a family or other similar type plantings.

Person. “Person” shall mean any natural person, partnership, firm, corporation, governmental agency, or other legal entity.

Pollard. To drastically trim a tree removing the majority of the branching structure so that all that remains are stubs of the main branches, which then are forced to put out new branches. The new branches are weakly attached to the main structure of the tree. Because of the cuts, the tree is usually susceptible to any air borne diseases and invasive insects.

Protected Tree. “Protected Tree” shall mean a tree of a specific species or size that may not be reshaped, altered, damaged, relocated or removed without first obtaining a Tree Removal and Cutting Permit from the City of Hayward. Protected trees shall not include trees planted and

growing in a licensed nursery for sale or planted and grown as a part of an active commercial orchard.

Protected Zone. The “Protected Zone” shall mean the area located under the undisturbed canopy of the tree as described in “Dripline” and extending for an additional one (1) foot from the center point of the tree to beyond the farthest point of the dripline of the tree.

Pruning. “Pruning” shall mean the removal of water sprouts, crossed limbs, or other unhealthy branching structure as designated by the ISA. Such removal shall not change the natural form of the tree, shall not consist of stubbing or heading back branches, and shall in no case consist of removing more of the total tree canopy than recommended under ISA standards.

Relocation. “Relocation” shall mean the transplanting of a tree from its original location to another suitable location.

Removal. “Removal” shall mean the physical removal of a tree or causing the death or untimely decline of a tree through actions including but not limited to damage, destruction, unnecessary disfigurement, withholding water, poisoning, or other deliberate or willful action or inaction.

Routine Maintenance. “Routine Maintenance” shall mean actions needed for the continued health of a tree including but not limited to, the removal of deadwood or storm damaged branches, light pruning to remove sucker growth or improve scaffolding when such pruning does not alter the natural form of the tree, removal of branches less than 1 inch in diameter.

Specimen Tree. A “Specimen Tree” shall mean a tree that is representative of a particular species in form and size. It is a tree that may also represent the character of an area or neighborhood such as a live or valley oak in the foothill areas, redwoods along the northern California coast or a specific tree that is common in a particular neighborhood.

Street Tree. A “Street Tree” is a tree that is planted in the right-of-way of a street and is also maintained by the City. It is usually located in the planter strip between the curb and the sidewalk or in a median island.

Tree. A “Tree” shall mean any woody perennial plant characterized by having a single trunk or multi-trunk structure at least ten feet high and having a major trunk with a caliper of at least four inches measured 54 inches above the ground level. It shall also include those species of plants generally designated as trees and any required tree shown on City approved landscape plans.

Trimming. See ‘Cutting’.

SEC. 10-15.13 PROTECTED TREES. The following trees, when located on properties to which this Ordinance applies as set forth in Section 10-15.11 above, shall be Protected Trees:

- (1) Trees having a minimum trunk diameter of eight inches measured 54” above the ground. When measuring a multi-trunk tree, the diameters of the largest three trunks shall be added together.
- (2) Street trees or other required trees such as those required as a condition of approval, Use Permit, or other Zoning requirement, regardless of size.

- (3) All memorial trees dedicated by an entity recognized by the City, and all specimen trees that define a neighborhood or community.
- (4) Trees of the following species that have reached a minimum of four inches diameter trunk size:
 - a. Big Leaf Maple *Acer macrophyllum*
 - b. California Buckeye *Aesculus californica*
 - c. Madrone *Arbutus menziesii*
 - d. Western Dogwood *Cornus nuttallii*
 - e. California Sycamore *Platanus racemosa*
 - f. Coast Live Oak *Quercus agrifolia*
 - g. Canyon Live Oak *Quercus chrysolepis*
 - h. Blue Oak *Quercus douglassii*
 - i. Oregon White Oak *Quercus garryana*
 - j. California Black Oak *Quercus kelloggi*
 - k. Valley Oak *Quercus lobata*
 - l. Interior Live Oak *Quercus wislizenii*
 - m. California Bay *Umbellularia californica*
- (5) A tree or trees of any size planted as a replacement for a Protected Tree.

Trees located on a developed single-family residential lot that cannot be further subdivided are exempt unless they have been required or protected as a condition of approval.

SEC. 10-15.14 PRESERVATION OF PROTECTED TREES. Any person who owns, controls, or has custody of any real property within the City shall maintain all Protected Trees located thereon in a state of good health. This includes parcels designated as permanent open space or for recreational purposes. Failure to maintain said trees in a state of good health will constitute a violation of this section.

SEC. 10-15.15 NON-LIABILITY OF CITY. Nothing in this Chapter shall be deemed to impose any liability for damages or a duty of care and maintenance upon the City or upon any of its officers or employees. The person in possession of any public property or the owner of any private property shall have a duty to keep Protected Trees upon the property and under their control in a safe and healthy condition.

SEC. 10-15.20 PERMITS REQUIRED. No person shall remove, destroy, perform cutting of branches over one inch in diameter, or disfigure or cause to be removed or destroyed or disfigured any Protected Tree without having first obtained a permit to do so. Street Trees are protected under the Street Tree Ordinance. All Protected Trees shall require a permit for removal, relocation, cutting or reshaping. All removed or disfigured trees shall also require replacement with like-size, like-kind trees or an equal value tree or trees as determined by the City's Landscape Architect. If a replacement tree is unavailable in like size or kind, the value of the original Protected Tree shall be determined using the latest edition of "Guide for Plant Appraisal" by the International Society of Arboriculture. The valuation shall be used to determine the number and size of replacement trees required.

The replacement trees shall be located on site wherever possible. Where there is not sufficient room on site for the replacement trees in the judgment of the City Landscape Architect or

his or her designated representative, another site may be designated that is mutually agreeable. These replacement trees shall not be counted as part of the required trees to meet zoning standards for the original site.

Routine maintenance of Protected Trees shall not require a permit. However, no Protected Tree shall be severely pruned, topped, pollarded or otherwise pruned in a way that disfigures the natural form of the tree. This maintenance shall include only tree pruning practices that are approved by the International Society of Arboriculture or practices authorized in the City of Hayward Tree Maintenance Handout. Except in emergency situations where a branch is causing immediate danger to the public in the opinion of a Certified Arborist, major pruning or trimming of a Protected Tree, cutting of live branches over one inch in diameter, pollarding, removing of large branches obscuring a sign, or other large scale limb removal will require a permit prior to any work being performed.

A one-year pruning permit that is not site-specific may be issued under the following circumstances: (1) the applicant has a Certified Arborist on staff who is listed on the City's list of Certified Arborists; (2) the applicant has agreed in writing to perform work in accordance with City-approved International Society of Arboriculture standards; and (3) the applicant has submitted a written protocol describing the proposed activity. Utilities or their sub-contractor, whose work is performed or supervised by a Certified Arborist included on the most recently approved list of Certified Arborists maintained by the City, may receive a yearly permit for all Protected Trees to be trimmed but shall demonstrate to the City's satisfaction the use of International Society of Arboriculture best practices for all work. All other permits shall be site-specific. Tenants of any property shall have the express written consent of the owner prior to removing or cutting any Protected Trees on that property and prior to obtaining any required permits.

SEC. 10-15.21 APPLICATION FOR PERMIT. An application for a Protected Tree Removal or Cutting permit shall be filed for all Protected Trees along with the inspection fee as established in the City's Master Fee Schedule. The application shall be filed and approved prior to any tree removals, relocations, or cutting. Where Protected Tree removal, relocation, or encroachment into the Protected Zone of a tree is requested as part of the development of a lot or parcel, the application must be processed prior to the issuance of any grading, trenching, encroachment, demolition, or building permit for development. On receipt of a completed application, the City Landscape Architect or his or her designated representative shall inspect the premises and determine which Protected Trees may be removed or what reshaping or cutting may occur.

SEC. 10-15.22 CRITERIA FOR EVALUATING APPLICATIONS. The following criteria will be used when evaluating Protected Tree Removal or cutting requests:

- a. The condition of the existing Protected Tree with respect to disease, danger of falling, or deadwood.
- b. Danger to the public or to other Protected Trees in its present condition or location.
- c. Interference with existing utilities (e.g., sewer lines, power lines) or with a neighboring property's view; provided that the view interference was not pre-existing or the tree is estimated not to have existed prior to the neighboring house being built.
- d. Whether the Protected Tree is a Specimen Tree, Street Tree or Memorial Tree.

- e. Whether the Protected Tree is lifting the sidewalks and the sidewalk cannot be re-poured with a root barrier or relocated to preserve the tree.
- f. Whether removal, relocation, re-shaping, or encroaching into the Protected Zone of the tree is necessary in order to allow reasonable use of the property.
- g. Whether the Protected Tree is anchoring a slope or the removal or disturbance of the Protected Zone of the tree would cause erosion, loss of soil, increase the flow of surface runoff, or cause a diversion of water that would affect downstream properties.
- h. The total number of overall or Protected Trees on the property in comparison to surrounding properties and the effect the tree removal would have on surrounding property values.
- i. Whether an effort has been made to preserve the character of the area and the more valuable specimens have been preserved or relocated on site.
- j. Whether the property will support the number of existing trees, taking into consideration any proposed development and zoning for the property, in a healthy growing condition and whether a different layout might allow for the preservation of the tree(s) in place.
- k. Whether the Protected Tree is encroaching on or damaging the existing primary residence or development and if it is, whether it could be trimmed or reshaped in a natural looking form or the roots pruned and redirected with root barriers to protect the existing development.

SEC. 10-15.23 CONDITIONS OF APPROVAL. No person shall cut, move, or remove any Protected Tree in violation of the terms or conditions of any permit granted hereunder. Tree Removal or Cutting Permits shall include such conditions of approval as are appropriate to affect the purpose of this Ordinance. Such conditions may include, but are not limited to, the following:

- a. Replacement of Protected Trees removed or destroyed with a tree or trees equal in size and species or value as provided in Section 10-15.20.
- b. The retention of Certified Arborist to supervise all pruning both of branches and roots, re-shaping, trimming or relocation of Protected Trees.
- c. The branch and root structure of all Protected Trees to remain in place or Protected Trees that have been relocated on site shall be protected by the use of a substantial construction fence, such as a non movable chain link fence, placed around the Protected Zone of each Protected Tree. Such protection shall be in place prior to any construction equipment or materials being on site. Fencing shall remain in place until construction equipment, materials, and debris have been removed from the site and approval from the City Landscape Architect has been given for removal. No mechanical equipment, material, debris, paint or paint products, pallets, chemicals, contaminated water or other foreign material shall be allowed to be placed, poured, piled, pushed, or stored within the Protected Zone of any tree.
- d. Each Protected tree or any tree designated to remain in place on the construction site

shall receive Routine Maintenance during the entire construction process.

SEC. 10-15.24 EXCEPTIONS. If personal injury or property damage is determined by the City Landscape Architect, the City Landscape Manager or their designated representatives to be imminent due to the hazardous or dangerous condition of a Protected Tree, or if the Protected Tree is an immediate impediment to the work of any public safety officers, a Protected Tree may be cut or removed without a permit. A Protected Tree that is removed under these conditions shall be replaced by a 24” box tree since the removal of a Protected Tree under Emergency Circumstances does not negate the Conditions of Approval or zoning requirements for a site.

SEC. 10-15.25 PERMIT APPEALS. Any affected party may appeal a permit decision made by the Landscape Architect, or his or her designated representative, to the Planning Director, in writing within 10 days of the permit decision. Any affected party may appeal the decision of the Planning Director to the Planning Commission in accordance with the appeals process detailed in Section 10-1.2845 of the Hayward Municipal Code. The Planning Commission may approve, conditionally approve or disapprove the application based on the criteria listed in Section 10-15.22.

The decision of the Planning Commission may be appealed to the City Council in accordance with the appeals process detailed in Section 10-1.2845. The City Council may approve, conditionally approve, or disapprove the application based on the criteria listed in Section 10-15.22. In the event significant new evidence, which may include substantial changes in the application, is presented in conjunction with the appeal, the matter shall be returned to the Planning Commission for further consideration and action. In the absence of significant new evidence, the action of the City Council shall be final and conclusive.

SEC. 10-15.26 PENALTIES. Should a Protected Tree be substantially re-shaped, topped, removed, damaged or destroyed without a permit, a fine equal to the value of the Protected Tree shall be charged in addition to the replacement of the Protected Tree with a like-kind, like-size tree. The value of the original Protected Tree shall be determined using the latest Edition of “Guide for Plant Appraisal” by the International Society of Arboriculture. If the size of the Protected Tree cannot be determined due to the unauthorized removal of a Protected Tree, the size shall be determined by measuring the stump that remains or may be determined by anecdotal evidence or interpolated from photographs or adjacent trees. A missing Protected Tree shall be assumed to have been in perfect health, unless the property owner can prove otherwise by photo or other verifiable evidence.

The Landscape Architect shall notify the property owner and alleged violator (if different than the property owner) of the violation and fine in writing. The notice shall include a description of the alleged violation and provide the owner ten business days to request an administrative hearing before the City’s Planning Director. The notice shall also indicate that the decision of the Landscape Architect is final unless appealed to the Planning Director. The Planning Director shall consider all relevant evidence. All decisions of the Planning Director are final subject to provisions of Section 10-15.29.

SEC. 10-15.27 COLLECTION OF PENALTIES. Fines for violation of this Chapter are payable at the City’s Finance office. Fines must be paid within thirty business days. The City’s Finance Department is authorized to collect all unpaid civil fines.

SEC. 10-15.28 MISDEMEANOR; INJUNCTIVE RELIEF. Violation of any provisions of this Chapter shall be chargeable as a misdemeanor as provided in Article 3 of the

Hayward Municipal Code. In addition to the foregoing criminal penalty, violation of any provisions of this Chapter shall be the basis for injunctive relief.

SEC. 10-15.29 IMPOSITION OF LIEN. Any unpaid costs or penalties imposed pursuant to this Chapter shall constitute a special assessment against the real property upon which a violation of this Chapter has occurred. All costs and/or fines shall be itemized in a written report of assessment. The Planning Director shall cause a copy of the report and assessment to be served on the owner of the property not less than five days prior to the time fixed for confirmation of the assessment. Service may be made by enclosing a copy of the report of assessment in a sealed envelope, postage prepaid, addressed to the owner at his or her last known address as the same appears on the last equalized assessment rolls of the County of Alameda and depositing the same in the United States mail. Service shall be deemed complete at the time of mailing.

A copy of the report of assessment shall be posted in the Office of the City Clerk on the bulletin board designated for the posting of agendas, not less than three days prior to the time when the report shall be submitted to the City Council. The City Council shall hear the report, together with any objections by the property owner. After the assessment is made and confirmed by the City Council, it shall be a lien on said property.

SEC. 10-15.30 DURATION OF PERMIT. Any permit issued shall be valid for a period of one year from issuance, or, if an appeal is taken, one year from the final decision.

SEC. 10-15.31 REVOCATION OF PERMIT. A permit shall be subject to revocation if the conditions of the permit or the regulations set forth herein or incorporated herein are violated. Before taking any action to revoke the permit, the Landscape Architect shall give notice to the permittee in writing of the proposed revocation, the reasons therefore, and the time and place the permittee will be given an opportunity to show cause to the Landscape Architect why the permit should not be revoked. The written notice may be personally served upon the permittee or mailed to the permittee at the address shown on the application at least ten days prior to the hearing. Upon conclusion of the hearing, the Landscape Architect may revoke the permit upon a finding of noncompliance with the conditions of the permit or the regulations herein.

The Landscape Architect's decision to revoke the permit may be appealed as set forth in Section 10-15.25 above.

Any permittee who has had an annual, non-site specific permit revoked shall not be eligible for a new annual, non-site specific permit for a period of six months from the date of the final decision revoking the permit. During the six-month period, the permittee may apply for only individual, site-specific permits and must meet the requirements of Section 10-15.21.