CITY COUNCIL
STAFF REPORT

MEETING DATE: June 14, 2021

ITEM TITLE: Consideration of Adopting an Urgency Ordinance Imposing Interim Regulations for Protected Trees, Chapter 18.18 - Landscaping, and Temporarily Replacing Section 18.18.070 - Trees, of Title 18 for a Period of 45 Days from Adoption.

RECOMMENDATION:

It is recommended that the City Council adopt an interim Urgency Ordinance to temporarily replace the City's existing Protected Tree Ordinance.

FISCAL IMPLICATIONS:

There are no direct fiscal impacts associated with City Council adopting an Urgency Ordinance. If Council elects to move forward and directs staff to work on a Comprehensive Protected Tree Ordinance update, staff anticipates needing to retain an arborist firm for assistance. The existing professional services budget will be used to pay for the costs incurred by the arborist consultants. Staff will return to Council if additional funding is required.

BACKGROUND:

In spring of 2021, the City Council asked staff to research surrounding jurisdictions and their penalty fees for illegal tree removals and to ascertain their replanting policies. In addition to collecting this information, staff also surveyed various jurisdictions regarding their protected/heritage tree removal policies. On May 10, 2021, the City Council held a Study Session to review the above information. At that time there was general consensus from the Council to move forward with a comprehensive update of the existing Protected Tree Ordinance. Council also expressed interest in moving forward with an Urgency Ordinance to restrict protected tree removals/ pruning while staff works on a permanent ordinance.

Over the last several months, San Carlos residents and members of the Council expressed concern about the number of protected tree removals occurring within San Carlos, including concerns about specific tree removals that residents have reported on lots surrounding their own properties. In addition, residents have questioned the need for removal of protected trees to allow for new development and the possible solutions to protect trees during construction projects.

The City of San Carlos' guiding policy document, the *General Plan*, advocates for the City to "Enhance the urban forest" (GOAL EM-3) within the Environmental Management Element. The

General Plan also notes important actions, including 1) “Maintain and expand the urban canopy with special emphasis on protection of heritage trees” (EM-3.1); and 2) “Review and amend the Zoning Ordinance as needed to identify barriers to the effective enhancement of the urban forest and the protection of heritage trees.” (EM-3.2).

The intent of this Urgency Ordinance is to introduce a more restrictive interim Protected Tree Ordinance to temporarily replace the existing Protected Tree Ordinance. This interim measure would allow the staff time to research and propose a more comprehensive Protected Tree Ordinance that better complies with the Environmental Management Element of the *General Plan* for Council to consider for permanent adoption.

ANALYSIS:

To prepare the proposed Urgency Ordinance, staff reviewed best practices from neighboring cities. Staff selected various aspects of the Heritage Tree Ordinance from the City of Menlo Park in the interim Urgency Ordinance, as Menlo Park’s ordinance is more restrictive (and recently updated in 2020) than the current San Carlos Protected Tree Ordinance. For Menlo Park Heritage Tree Ordinance details, see Attachment 3. The proposed Urgency Ordinance contains language from both San Carlos’ and Menlo Park’s existing ordinances. The highlights and proposed changes within the Urgency Ordinance are outlined below, along with some details from other nearby cities for comparison:

1) *Protected Tree Species and Sizes*

   For the Urgency Ordinance, the protected tree species and size thresholds have not changed from the City’s existing ordinance. One San Carlos resident indicated there should be a lower minimum size to legally remove a redwood tree (Sequoia sempervirens). The City’s ordinance requires a permit for removal when the tree is 72” in circumference. However, staff is not recommending this change. The redwood tree removal requirements are the same as 72-inch circumference tree (22-inch diameter) measured at 48-inches from ground level, which is relatively small for redwood trees. Due to the rate at which redwoods grow, under ideal conditions a tree could reach this size in about 24-30 years.

   In Menlo Park, a redwood tree is considered a heritage tree and requires a permit for removal if it has a trunk with a circumference of 47.1 inches (diameter of 15 inches) or more, measured at 54 inches above natural grade.

   In Belmont, a redwood tree is considered a protected tree and requires a permit for removal if the tree has a single main stem or trunk of 10 inches or more diameter (approximately 31” circumference) at 54-inches above grade height/diameter-at-breast height (“DBH”), or up to three of the largest secondary stems totaling 10 inches or more DBH.

   In San Mateo, a redwood tree having a trunk diameter of 10-inches or more (approximately 31” circumference), measured at 48 inches above ground level is considered a protected tree and requires a permit for removal.

   For both Belmont and Menlo Park, the point at which the circumference is measured is higher on the trunk than where it is measured in San Carlos, and therefore a smaller circumference would exist lower on the trunk.

2) *Protection of Existing Trees During Construction*

The proposed Urgency Ordinance adds a Tree Protection Zone ("TPZ") of 10 times the diameter of a protected tree. This TPZ shall be identified on design review plans, and a formal tree protection plan must be prepared by an arborist and submitted prior to the issuance of any building permit.

3) *Reasons for Protected Tree Removal*

This area of the Urgency Ordinance offers the greatest departure from the City's current Protected Tree Ordinance. While the current ordinance has approximately 11 reasons a tree removal could be approved, the Urgency Ordinance has six. The proposed reasons for removal include: death; high tree risk (based on a specific assessment); poor tree health (based on a specific rating); poor species; development; and request by utility companies and/or governmental agencies.

Of these six reasons, removal based on development is one of the most controversial reasons as seen at public hearings or mentioned by residents in the community. While the current ordinance allows for removal because removal would "allow reasonable economic or other enjoyment of the property", the proposed Urgency Ordinance goes further.

If a permit applicant wants to remove a protected tree because it interferes with development of a habitable building only (no landscaping, fire pits, etc.), it would be allowed only if the applicant could demonstrate that it is not financially feasible and there is no reasonable design alternative that would permit preservation of the protected tree. In this case, the applicant would be required to submit documentation prepared by a certified arborist, demonstrating that alternatives to the removal and pruning are infeasible.

4) *Noticing Requirements*

Currently, when a tree removal permit is issued, an applicant/property owner is required to post an approved tree permit near the tree to be removed for 10 days. The updated ordinance would add a requirement that applicants conduct a 150' radius notice to neighbors in cases where a protected tree is proposed for removal for either development or utility interference reasons.

In addition, staff plans to post a weekly list of issued permits on the City's website for members of the public to see the location and type of trees approved for removal.

5) *Replacement of Trees*

The proposed Urgency Ordinance incorporates additional guidance for the replacement of trees, if and when a protected tree is removed with a permit. Specifically, the replacement tree should be either a heritage tree species, or an in-kind replacement unless the replacement tree is an invasive species or the species is unsuitable for a given location (as determined by a certified arborist).

6) *Tree Violation Penalties*

If a tree is removed without permits, the violation fee is proposed to be $5,000, or the appraised value of the tree, **whichever is greater.** The current Municipal Code requirement is $2,500, or the appraised value of the tree, **whichever is less.**

The City of San Carlos *General Plan* recognizes the importance of the urban forest and its unique contribution to the character of the San Carlos community. The removal of a protected tree should not be done prior to careful consideration as to its risk and/or value to the community. This is perhaps more important because once a protected tree is removed, it cannot be replaced to the same size and degree previously. The proposed Urgency Ordinance provides several paths towards removal; however, each one requires careful consideration of the reasoning, and specific attributes of the trees.

Without an interim Urgency Ordinance, the City does not have the authority to stop or slow down tree removals while a new, more effective ordinance is being prepared. Staff recommends the City Council adopt an interim Urgency Ordinance to temporarily replace the existing Protected Tree Ordinance. See Attachment 1.

ENVIRONMENTAL IMPACTS:

This project is consistent with the programs and policies of the San Carlos 2030 General Plan, is within the scope of the activities and impacts identified in San Carlos 2030 General Plan Program Environmental Impact Report (EIR) and no new environmental effects have been found and no new mitigation is necessary. Therefore, no additional environmental review is required pursuant to Public Resources Code Section 21166 and California Environmental Quality Act ("CEQA") Guidelines Section 15162 and 15168. This project is also exempt from CEQA Section 15308, actions by regulatory agencies for protection of the environment.

CONCLUSION:

There is an immediate threat to the unique character of the City's various residential and commercial neighborhoods if protected trees are allowed to be removed under the current reasons provided in the City's Municipal Code. There is no current guidance or means of assessing the level of risk or health of a tree, which is necessary to making an informed decision about tree removal while acknowledging the important goal of maintaining an urban forest.

The proposed Urgency Ordinance will also provide sufficient time to study additional options and requirements for protected tree removal to adhere to the City's *General Plan* to the benefit of the City, its residents, and businesses. If adopted, permanent zoning changes will be brought forward to the Planning Commission and City Council for consideration.

Staff recommends that the City Council adopt the interim Urgency Ordinance. A 4/5 vote of the City Council is required to enact this Urgency Ordinance, which will be in effect for a period of 45-days. It is possible for the City Council to extend the Urgency Ordinance for 10 months and 15 days after a duly noticed public hearing.

ALTERNATIVES:

The alternatives available to the City Council include:

1. Adopt an Urgency Ordinance imposing interim regulations for protected trees, Chapter 18.18 – Landscaping, and temporarily replacing Section 18.18.070 – Trees, of Title 18 for a period of 45 days from adoption; or

2. Do not adopt the Urgency Ordinance; or

3. Provide staff with alternate direction.

Respectfully submitted by:

Al Savay, AICP
Community Development Director

Greg Rubens, City Attorney

Approved for submission by:

Jeff Maltbie, City Manager

ATTACHMENT(S):

1. Urgency Ordinance with Exhibit A
2. Urgency Ordinance Notice and Proof of Publication
3. Menlo Park Heritage Tree Ordinance

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CARLOS PURSUANT TO GOVERNMENT CODE SECTION 65858(b) IMPOSING INTERIM REGULATIONS FOR PROTECTED TREES, CHAPTER 18.18 – LANDSCAPING, AND TEMPORARILY REPLACING SECTION 18.18.070 – TREES, OF TITLE 18 FOR A PERIOD OF 45 DAYS FROM ADOPTION.

SECTION 1: The City Council of the City of San Carlos does hereby ordain as follows:

WHEREAS, on May 10 2021, the City Council conducted a study session on protected tree removals and/or pruning and expressed interest in moving forward with an Interim Urgency Ordinance to restrict protected tree removals and/or pruning and allow staff time to analyze the existing ordinance and propose changes, while only allowing for protected tree removal and/or pruning for trees that meet limited, specific findings; and

WHEREAS, the City Council finds that the desired outcome of the Ordinance update is to ensure a significant and thriving population of large healthy trees in San Carlos for public enjoyment and environmental sustainability while balancing property rights and implementation efficiency is achieved; and

WHEREAS, the City Council finds the Ordinance update process will evaluate current issues and successes with the existing ordinance and explore options for changes based on evidence and best practices in other communities and industry experts; and

WHEREAS, the City Council finds that the preferred options where identified based on increasing clarity, increasing and maintaining canopy, and increasing effectiveness of ordinance implementation, and adopts the following interim amendments to the Protected Tree Ordinance (18.18.070).

SECTION 2: The City Council finds that there is a current and immediate threat to the public peace, health, welfare, and safety, specifically including possible permanent damage to the City's aesthetic, safety concerns that can result from removing established trees, economic interests arising from a proliferation of protected tree removals and/or pruning, as well as impacts to the surrounding environment. The City Council finds that it is necessary to adopt this Interim Urgency Ordinance and impose an Interim Urgency Ordinance pursuant to Government Code Section 65858(b) to protect the public health, welfare, and safety for the following reasons:

A. City staff needs time to analyze the current zoning Ordinance with respect to protected tree removal and/or pruning and recommend changes providing for orderly development throughout the city while maintain larger, and well-established trees, with appropriate public input; and

B. The citizens of San Carlos will be well-served if the City more fully addresses the potential impacts of protected tree removal and/or pruning on aesthetics, safety, and environmental protection; and

Attachment: Urgency Ordinance with Exhibit A (Protected Trees Urgency Ordinance)

C. The most appropriate way to ensure public review and consideration of protected tree removal and/or pruning is to enact an Interim Urgency Ordinance requiring protected tree removal and pruning requestors to obtain a Tree Removal Permit, which also requires noticing within a 150' radius of the subject property and posting of any approvals of permits to be posted on-site for a minimum of 10 days to allow for any interested parties to appeal; and

D. Staff views the potential for excess removal and/or pruning of protected trees as potentially hazardous to the aesthetics of the city as well as the environment; and

E. There is an immediate need to prevent excess removal and/or pruning of protected trees.

SECTION 3: The City Council does hereby, pursuant to Government Code Section 65858(b), impose the Interim Urgency Ordinance for forty-five (45) days.

SECTION 4: Temporary Replacement of Code. For purposes of this Interim Urgency Ordinance, Chapter 18.18 – Landscaping, and Section 18.18.070 – Trees, of Title 18 – Zoning is hereby temporarily replaced with the language in Exhibit A.

SECTION 5: Pending Applications. As to applications for protected tree removal and/or pruning permits, which have been accepted, processing and review of such applications may continue, but shall be subject to the regulations and requirements listed in Exhibit A.

SECTION 6: This is an Urgency Ordinance, which requires 4/5 vote of approval of all of the members of the City Council and goes into effect immediately upon its adoption.

SECTION 7: California Environmental Quality Act Determination. The City Council hereby finds that this Interim Urgency Ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") under Sections 15378 and 15061(b)(3) of the of the CEQA Guidelines. The Interim Urgency Ordinance is intended to continue the level of tree canopy protection existing in the current Ordinance while providing more clarity and better enforcement, and has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 8: Severability. If any section, subsection, sentence, clause, phrase, or portion of this Interim Urgency Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Interim Urgency Ordinance. The City Council of the City of San Carlos hereby declares that it would have adopted this Interim Urgency Ordinance and such section, subsection, clause, phrase, or portion may be declared invalid or unconstitutional.

SECTION 9: Effective Date and Publishing. This Interim Urgency Ordinance shall take effect June 14, 2021. The City Clerk shall cause publication of the Interim Urgency Ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, by posting in at least three public places in the city. Within 15 days after the adoption of the Interim Urgency Ordinance amendment, a summary of the amendment shall be published with the names of the City Council members voting for and against the amendment.

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Attachment: Urgency Ordinance with Exhibit A (Protected Trees Urgency Ordinance)

I, City Clerk Crystal Mui, hereby certify that the foregoing Interim Urgency Ordinance was introduced and adopted by the required 4/5th vote, effective immediately, at a regular meeting of the City Council of the City of San Carlos held on the 14th day of June, 2021 by the following vote:

AYES, COUNCILMEMBERS: COLLINS, DUGAN, MCDOWELL, RAK, PARMER-LOHAN

NOES, COUNCILMEMBERS: NONE

ABSENT, COUNCILMEMBERS: NONE

_____

CITY CLERK of the City of San Carlos

APPROVED:

_____

MAYOR of the City of San Carlos

Exhibit A: Proposed Changes to Chapter 18.18

Attachment: Urgency Ordinance with Exhibit A (Protected Trees Urgency Ordinance)

EXHIBIT A: CHAPTER 18.18 (PROPOSED TEXT)

Chapter 18.18
LANDSCAPING

Section 18.18.070 Trees.

A. Intent and Purpose

This chapter is adopted with the intent and purpose of promoting the preservation and development of a healthy, diverse tree canopy in San Carlos, which is highly valued by the community and is vital to the character and health of the city.

Protected trees are valued for their many contributions to the environment, public health and quality of life of the San Carlos community. Examples of those benefits include:

1. Provide shade;
2. Enhance resilience to climate change;
3. Improve air quality;
4. Provide shelter from wind;
5. Prevent erosion and landslides;
6. Protect against flood hazards;
7. Add to the city's scenic beauty and character;
8. Recognize historical significance to our city;
9. Create natural gathering places;
10. Reduce noise pollution;
11. Enhance privacy;
12. Enhance neighborhood property values;
13. Provide habitat for wildlife.

B. Definitions

1. "Applicant" is the person seeking a permit to remove or perform pruning on a protected tree under this chapter.

2. "Pruning" means the removal of more than one-third of the crown or existing foliage of the tree or more than one-third of the root system.

3. "Director" shall mean the Community and Economic Development Director or their designee, including but not limited to the City arborist.

4. "Protected tree" means any significant or heritage tree. The following trees shall not be classified as protected trees regardless of size:

    i. Bailey, Green or Black Acacia: A. baileyana, A. dedurrens or A. melanoxylon;
    ii. Tree of Heaven: Ailianthus altissima

Attachment: Urgency Ordinance with Exhibit A (Protected Trees Urgency Ordinance)

iii. Fruit trees of any kind;
iv. Monterey Pine: Pinus radiata;
v. Eucalyptus.

~~1.~~5. "Heritage tree" means any:

i. Indigenous tree whose size, as measured at forty-eight inches above natural grade (unless otherwise indicated), is defined below:

- Aesculus californica (buckeye) with a single stem or multiple stems touching each other at forty-eight inches above natural grade and measuring thirty inches in circumference
- Arbutus meniesii (madrone) with a single stem or multiple stems touching each other at forty-eight inches above natural grade and measuring thirty inches in circumference
- Quercus agrifolia (coast live oak) of more than thirty inches in circumference
- Quercus lobata (valley oak) of more than thirty inches in circumference
- Quercus douglassii (blue oak) of more than twenty-four inches in circumference
- Quercus wislizneii (interior live oak) of more than twenty-four inches in circumference
- Sequoia sempervirens (redwood) of more than seventy-two inches in circumference
- Umbrellularia californica (California bay laurel) with a single stem or multiple stems touching each other at forty-eight inches above natural grade and measuring thirty inches in circumference;

ii. Community of trees;

~~i.~~iii. Tree so designated by the City Council, based upon findings that the particular tree is unique and of importance to the public due to its unusual age, appearance, location or other factors.

~~2.~~6. "Significant tree" means any tree that is thirty-six inches in circumference (or more) (which is approximately eleven and one-half inches in diameter), outside of bark, measured at forty-eight inches above natural grade. The following trees shall not be classified as significant or heritage trees regardless of size:

i. Bailey, Green or Black Acacia: A. baileyana, A. dedurrens or A. melanoxylon;

Attachment: Urgency Ordinance with Exhibit A (Protected Trees Urgency Ordinance)

ii. Tree of Heaven: Ailianthus altissima;
iii. Fruit trees of any kind;
iv. Monterey Pine: Pinus radiata;
v. Eucalyptus.

~~3.~~7. "In-kind Replacement" means replanting the same species as the removed tree.

~~A.~~C. Trees. Trees shall be provided as follows:

1. RS districts: one tree for every one thousand square feet of lot coverage for residential development; one tree for every two thousand square feet of lot coverage for nonresidential development.

2. RM and mixed-use districts: one tree for every two thousand square feet of lot coverage.

3. Commercial districts: one tree for every two thousand square feet of lot coverage.

4. Industrial districts: one tree for every five thousand square feet of lot coverage.

5. If the lot size or other site conditions make planting of the required trees impractical to comply with, the applicant may request that the trees be planted off site at twice the ratio. Documentation that such trees have been planted shall be submitted to the Planning Division.

6. If the required number and size of trees already exist on the site, the applicant shall not be required to plant new trees on site. Instead, the existing trees shall be shown on the site and landscape plans submitted to the Planning Division, and those trees shall be maintained in compliance with the standards of this chapter.

7. Street oriented trees are preferable to meet the requirements for a minimum of one of the required trees.

~~B.~~D. Maintenance and Preservation of Protected Trees. The following requirements apply to protected trees, as defined in this chapter and Section 18.41.020:

1. No protected tree shall be removed, pruned, or otherwise materially altered without a permit except as provided in this section. Trimming of a protected tree is allowed without such a permit.

Attachment: Urgency Ordinance with Exhibit A (Protected Trees Urgency Ordinance)

2. Chemicals or other construction materials shall not be stored within the drip line of protected trees.

3. Drains shall be provided as required by the Director whenever soil fill is placed around protected trees.

4. Signs, wires or similar devices shall not be attached to protected trees.

~~4.~~5. Any work performed within an area ten (10) times the diameter of a protected tree (i.e., the dripline or the tree protection zone) shall require submittal and implementation of a tree protection plan for review and approval by the Director prior to issuance of any permit for grading or construction. The tree protection plan shall be prepared by a certified arborist and shall address issues related to protective fencing and protective techniques to minimize impacts associated with grading, excavation, demolition and construction. The Director may impose conditions on any City permit to assure compliance with this section. These trees and protection zones shall be identified on plans submitted to the Planning Division for Design Review.

~~5.~~6. If the proposed development, including any site work for the development, will encroach upon the drip line/tree protection zone of a protected tree, special measures shall be utilized, as approved by the review authority, to allow the roots to obtain oxygen, water, and nutrients as needed. Any excavation, cutting, filling, or compaction of the existing ground surface within the protected perimeter, if authorized at all by the review authority, shall be minimized and subject to such conditions as may be imposed by the review authority. No significant change in existing ground level shall be made within the drip line/tree protection zone of a protected tree. No burning or use of equipment with an open flame shall occur near or within the protected perimeter.

~~6.~~7. Underground trenching for utilities shall avoid major support and absorbing tree roots of protected trees. If avoidance is impractical, tunnels shall be made below the roots. Trenches shall be consolidated to service as many units as possible. Trenching within the drip line/tree protection zone of protected trees shall be avoided to the greatest extent possible and shall only be done under the at-site directions of a certified arborist.

~~7.~~8. No concrete or asphalt paving shall be placed over the root zones of oaks.

~~8.~~9. No compaction of the soil within the root zone of protected trees shall occur.

Attachment: Urgency Ordinance with Exhibit A (Protected Trees Urgency Ordinance)

E. Removal and/or pruning of protected trees prohibited.

It is unlawful for any person to remove, or cause to be removed, any protected tree from any parcel of property in the city, or perform pruning on a protected tree, without obtaining a permit; provided, that in case of emergency, when a protected tree is imminently hazardous or dangerous to life or property, it may be removed by order of the Director. Any person who vandalizes, grievously mutilates, destroys or unbalances a protected tree without a permit or beyond the scope of an approved permit shall be in violation of this chapter.

~~C.~~F. Protected Tree Removal Permit and Decision-making Criteria.

1. Application. Application and fees for protected tree removal permits and/or pruning of a protected tree shall be submitted in accordance with the provisions set forth in Chapter 18.27, Common Procedures. The application shall state, among other things, the number and location of the tree(s) to be removed or pruned by type and the reason for removal or pruning of each. The application shall also include a photograph with correct botanical identification of the subject tree(s). When removal and/or pruning of a protected tree is proposed as part of or in conjunction with new development the application shall also include:

   a. A site plan showing the location of buildings, structures and proposed site disturbances;

   b. The location of all protected trees on the site; and

   c. The protected trees on the site that would be removed or pruned.

2. Decision-making Criteria. The Director may only issue a permit for the removal and/or pruning of a protected tree if he or she determines there is good cause for such action. In determining whether there is good cause, the Director shall give consideration to the following:

   a. Death. The protected tree is dead.

   b. Tree Risk Rating. The condition of the protected tree poses a high or extreme risk rating under the International Society of Arboriculture Best Management Practices: Tree Risk Assessment; and the risk cannot be reasonably abated to a low risk rating with sound arboricultural treatments.

   c. Tree Health Rating. The protected tree is (A) dying or has a severe disease, pest infestation, intolerance to adverse site conditions, or other condition and/or pruning

Attachment: Urgency Ordinance with Exhibit A (Protected Trees Urgency Ordinance)

or other reasonable treatments based on current arboricultural standards will not restore the protected tree to a fair, good or excellent health rating as defined in the Guide for Plant Appraisal, 10th Edition, or its successor manual or (B) likely to die within a year.

d. Species. The protected tree is a member of a species that has been designated as invasive or low species desirability by the Director or his/her/their designee.

e. Development. The protected tree interferes with proposed development, repair, alteration or improvement of a site or the protected tree is causing/contributing to structural damage to a habitable building (excluding amenities, such as walkways, patios, pools and fire pits); and there is no financially feasible and reasonable design alternative that would permit preservation of the protected tree while achieving the applicant's reasonable development objectives or reasonable economic enjoyment of the property. Necessary documentation shall be submitted to the Director demonstrating alternatives to the removal and/or pruning as infeasible.

~~a.~~f. Utility Interference. The removal and/or pruning is requested by a utility, public transportation agency, or other governmental agency due to a health or safety risk resulting from the protected tree's interference with existing or planned public infrastructure and there is no financially feasible and reasonable design alternative that would permit preservation of the protected tree.

~~2.~~3. Review. In reviewing applications for removal and/or pruning of protected trees, the Director shall give priority to those based on hazard or danger of disease. The Director may refer any application to another department, committee, board or commission of the City for a report and recommendation, and may require the applicant to provide an arborist's report.

~~3.~~4. Noticing Requirements.

Notice before Issuance. Before a protected tree is removed, notice of removal shall be posted by the applicant on the property containing the protected tree. When a permit is sought under subsection (e) (Development) or (f) (Utility Interference) of this section, property owners within one hundred and fifty (150) feet of the exterior boundary of the property containing the protected tree shall be noticed by mail of the

Attachment: Urgency Ordinance with Exhibit A (Protected Trees Urgency Ordinance)

pending application. Failure to receive copies of such notice shall not invalidate any action taken by the City.

Notice of Issuance. Upon receipt of tree removal permit, the property owner shall post a notice of issuance of any permit for a tree removal at the subject property for a period of ten calendar days. The City will furnish the owner with a copy of the notice of issuance.

4.5. ~~Required Findings. The determination of the Director in granting or denying the permit shall be based upon making one or more of the findings under both subsections (C)(4)(a) and (C)(4)(b) of this section. If a permit is denied or conditions attached, the Director shall provide the applicant with a written statement of the reasons for such denial or conditions based upon the findings listed below.~~

~~a. The tree:~~

~~i. Is diseased;~~

~~ii. Could adversely affect the general health and safety;~~

~~iii. Could cause substantial damage;~~

~~iv. Is a public or private nuisance;~~

~~v. Is in danger of falling;~~

~~vi. Substantially detracts from the value of the property;~~

~~vii. Interferes with utility services;~~

~~viii. Acts as a host for a plant which is parasitic to another species of tree which is in danger of being infested or exterminated by the parasite; or~~

~~ix. Is a substantial fire hazard.~~

~~b. The required action is necessary to:~~

~~i. Utilize the property in a manner which is of greater public value than any environmental degradation caused by the action; or~~

~~ii. Allow reasonable economic or other enjoyment of the property.~~

Attachment: Urgency Ordinance with Exhibit A (Protected Trees Urgency Ordinance)

6. Conditions. In granting a tree removal permit, the Director may attach reasonable conditions to ensure compliance with the content and purpose of this chapter, such as, but not limited to, the following:

a. Replacement tree(s) shall be a 1:1 ratio of a minimum size twenty-four-inch box specimen tree of an in-kind or a heritage tree species unless:

i. The species is invasive as specified by a licensed arborist, or

ii. The species is proven to be unsuitable to a given location per a licensed arborist,

b. Special construction to allow irrigation and aeration of roots and preservation of the protected tree.

c. Tree wells or other tree protection techniques.

d. Protected tree maintenance requirements to help the tree grow and thrive

e. Other reasonable requirements per the Director

~~a. Replacement of trees removed with plantings acceptable to the Director. The replacement tree shall be a minimum size twenty-four-inch box specimen tree of a species, size and location approved by the Director.~~

~~b. Special construction to allow irrigation and aeration of roots and preservation of the protected tree.~~

~~c. Tree wells or other tree protection techniques.~~

~~5.~~7. Emergencies. If an emergency develops regarding a protected tree removal and/or pruning which requires immediate response for the safety of life or property, action may be taken by obtaining oral permission of the director, notwithstanding other provisions contained in this chapter. Such emergencies shall be exempt from protected tree permit application procedures; however, replacement shall occur as provided in this chapter.

~~6.~~8. Expiration. If no action on an approved tree removal permit is taken within a period of one year from the date of approval, the permit shall be considered void.

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~~7.~~9. Appeals. Tree removal permit decisions are subject to the appeal provisions of Section 18.27.150, Appeals.

~~D.~~G. Violation. In addition to the provisions of Chapter 18.39, Enforcement and Abatement Procedures, and Chapter 1.20, Penalties, any person who removes or causes to be removed any protected tree, the following shall apply:

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 as determined by the City.

2. Any person violating this chapter shall be subject to a civil fine or penalty in the amount established by this ordinance. If a person commits, or maintains a violation of any part of Municipal Code Section 18.18, he/she/they will be fined in an amount not to exceed $5,000 per violation; and if the violation resulted in the removal or demise of a protected tree, the fine will not exceed $5,000 per tree or the appraised value of each such tree, as determined by a licensed arborist, whichever amount is higher. The arborist shall use the then-current issue of “A Guide to Plant Appraisal” published by the International Society of Arboriculture. Civil fines or penalties collected under this chapter shall be deposited into the City’s tree planting fund.

3. The code enforcement officer, director and building official or designee are authorized to issue stop work orders, notices of violation, administrative penalties and citations under this chapter.

4. Any citation or penalty received under this chapter may be appealed to the Zoning Administrator or designee whose determination shall be final. Such appeal must be filed within ten (10) days of receipt of the citation or penalty.

5. Whenever the amount of any administrative fine or penalty or administrative cost incurred by the City in connection with a violation of this chapter has not been satisfied in full within ninety (90) days and/or has not been successfully challenged by a timely writ of mandate, this obligation may constitute a lien or, in the alternative, a special assessment against the real property on which the violation occurred.

Attachment: Urgency Ordinance with Exhibit A (Protected Trees Urgency Ordinance)

6. The City Attorney may bring a civil action against the violator to abate, enjoin, or otherwise compel the cessation of violation of any provision in this chapter. In a civil action brought pursuant to this chapter in which the City prevails, the court may 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.

7. The remedies provided in this section may be enforced against both the contractor or other person performing work in violation of this chapter as well as the owner of the real property on which the heritage tree is located.

8. All remedies provided in this section shall be cumulative and are not exclusive.

~~1. Apply for and obtain a tree removal permit and pay a double application fee.~~

~~2. Be responsible for property restoration which shall include:~~

~~a. Replacing the tree or trees removed with a tree or trees of reasonably equivalent value and largest size feasible to the tree(s) removed;~~

~~b. The number, size and location of replacement trees shall be determined by the Director after receipt of a report and recommendation by a licensed arborist;~~

~~c. Paying the fees of the licensed arborist, including any fees for the valuation under subsection (D)(3) of this section.~~

~~3. Pay a civil penalty to the City, with the funds placed in the City's tree planting fund, in the amount of two thousand five hundred dollars or the actual monetary value of the tree(s), as determined by a licensed arborist, whichever is less. The arborist shall use the then-current issue of "A Guide to Plant Appraisal" published by the International Society of Arboriculture. (Ord. 1480 (Exh. C (part)), 2015; Ord. 1438 § 4 (Exh. A (part)), 2011)~~

Attachment: Urgency Ordinance with Exhibit A (Protected Trees Urgency Ordinance)

CITY OF SAN CARLOS
CITY CLERK

600 ELM STREET
SAN CARLOS, CA 94070
(650) 802-4219
CITYOFSANCARLOS.ORG

CITY OF SAN CARLOS
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the San Carlos City Council will hold a public hearing on **Monday, June 14, 2021 at 7:00 p.m.**, pursuant to San Carlos Municipal Code Chapter 18.35 for the purpose of hearing and considering all comments of all persons interested in or concerned with the City Council's consideration of an Urgency Ordinance updating the regulations of the Protected Tree Ordinance (San Carlos Municipal Code Section 18.18.070). The interim ordinance would replace the current protected tree ordinance for the period of 45 days from the date of adoption pursuant to Govt. Code Section 65858(b). The proposed significant changes within the Interim Protected Tree Ordinance include:

- Limiting allowable reasons for protected tree removal
- Establishing increased fines for illegal protected tree removal
- Establishing in-kind tree replacement standards
- Additional noticing requirement for protected tree removal

This project is consistent with the programs and policies of the San Carlos 2030 General Plan, is within the scope of the activities and impacts identified in San Carlos 2030 General Plan Program Environmental Impact Report (EIR) and no new environmental effects have been found and no new mitigation is necessary. Therefore, no additional environmental review is required pursuant to Public Resources Code Section 21166 and California Environmental Quality Act (CEQA) Guidelines Section 15162 and 15168. This project is also exempt from CEQA Section 15308, actions by regulatory agencies for protection of the environment.

The agenda and relevant materials for this item will be available for viewing on the City's website at http://sancarlosca.iqm2.com on June 10, 2021. A hardcopy may be obtained upon request to the City Clerk. Please note that this June 14, 2021 City Council meeting will be held via teleconference and there will not be a physical location for which the public can attend. However, the public will have access to observe the meeting and telephonically address the Council – details and directions will be available on the agenda.

Questions regarding the project may be directed to Project Manager Rucha Dande at rdande@cityofsancarlos.org. Comments may be sent via email to the City Clerk - CityClerk@cityofsancarlos.org and the City Council – CityCouncil@cityofsancarlos.org; or mailed to the City Clerk at 600 Elm Street, San Carlos, CA 94070.

All persons interested in the above are hereby invited to participate remotely in this Public Hearing and be heard. If you challenge this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Clerk prior to the public hearing.

Crystal Mui,
City Clerk

Publication Date: June 3, 2021

Attachment: Urgency Ordinance Notice and Proof of Publication (Protected Trees Urgency Ordinance)

CALIFORNIA NEWSPAPER SERVICE BUREAU

DAILY JOURNAL CORPORATION

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CRYSTAL MUI
CITY OF SAN CARLOS/CITY CLERK
600 ELM ST
SAN CARLOS, CA 94070

COPY OF NOTICE

Notice Type: HRG NOTICE OF HEARING

Ad Description
Urgency Ordinance Protected Tree

To the right is a copy of the notice you sent to us for publication in the ENQUIRER-BULLETIN. Please read this notice carefully and call us with any corrections. The Proof of Publication will be filed with the County Clerk, if required, and mailed to you after the last date below. Publication date(s) for this notice is (are):

06/03/2021

The charge(s) for this order is as follows. An invoice will be sent after the last date of publication. If you prepaid this order in full, you will not receive an invoice.

Publication	$102.30
Total	$102.30

SPEN# 3477651

CITY OF SAN CARLOS NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that the San Carlos City Council will hold a public hearing on Monday, June 14, 2021 at 7:00 p.m. , pursuant to San Carlos Municipal Code Chapter 18.35 for the purpose of hearing and considering all comments of all persons interested in or concerned with the City Council's consideration of an Urgency Ordinance updating the regulations of the Protected Tree Ordinance (San Carlos Municipal Code Section 18.18.070). The interim ordinance would replace the current protected tree ordinance for the period of 45 days from the date of adoption pursuant to Govt. Code Section 65858(b). The proposed significant changes within the Interim Protected Tree Ordinance include: Limiting allowable reasons for protected tree removal Establishing increased fines for illegal protected tree removal Establishing in-kind tree replacement standards Additional noticing requirement for protected tree removal This project is consistent with the programs and policies of the San Carlos 2030 General Plan, is within the scope of the activities and impacts identified in San Carlos 2030 General Plan Program Environmental Impact Report (EIR) and no new environmental effects have been found and no new mitigation is necessary. Therefore, no additional environmental review is required pursuant to Public Resources Code Section 21166 and California Environmental Quality Act (CEQA) Guidelines Section 15162 and 15168. This project is also exempt from CEQA Section 15308, actions by regulatory agencies for protection of the environment. The agenda and relevant materials for this item will be available for viewing on the City's website at http://sancarlosca.iqm2.com on June 10, 2021. A hardcopy may be obtained upon request to the City Clerk. Please note that this June 14, 2021 City Council meeting will be held via teleconference and there will not be a physical location for which the public can attend. However, the public will have access to observe the meeting and telephonically address the Council – details and directions will be available on the agenda. Questions regarding the project may be directed to Project Manager Rucha Dande at rdande@cityofsancarlos.org. Comments may be sent via email to the City Clerk - City-Clerk@cityofsancarlos.org and the City Council – CityCoun-cil@cityofsancarlos.org; or mailed to the City Clerk at 600 Elm Street, San Carlos, CA 94070. All persons interested in the above are hereby invited to participate remotely in this Public Hearing and be heard. If you challenge this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Clerk prior to the public hearing. Crystal Mui, City Clerk Publication Date: 6/3/21
SPEN-3477651#
EXAMINER - ENQUIRER-BULLETIN

* A 0 0 0 0 0 5 7 3 4 3 2 0 *

Attachment: Urgency Ordinance Notice and Proof of Publication (Protected Trees Urgency Ordinance)

Attachment 3: Menlo Park Heritage Tree Ordinance

Chapter 13.24
HERITAGE TREES

Sections:

13.24.010 Intent and purpose.
13.24.020 Definitions.
13.24.030 Maintenance and preservation of heritage trees.
13.24.040 Removal and major pruning of heritage trees prohibited.
13.24.050 Permits and decision-making criteria for tree removal.
13.24.060 Appeals.
13.24.070 Establishment of heritage tree fund.
13.24.080 Administrative guidelines.
13.24.090 Heritage tree replacements.
13.24.100 Enforcement and violations.
13.24.110 Urban forest data collection and reporting.

13.24.010 Intent and purpose.

This chapter is adopted with the intent and purpose of promoting the preservation and development of a healthy, diverse tree canopy in Menlo Park, which is highly valued by the community and is vital to the character and health of the city.

Heritage trees are valued for their many contributions to the environment, public health and quality of life of the Menlo Park community. Examples of those benefits include:

(1) Provide shade;

(2) Enhance resilience to climate change;

(3) Improve air quality;

(4) Provide shelter from wind;

(5) Prevent erosion and landslides;

(6) Protect against flood hazards;

(7) Add to the city's scenic beauty and character;

(8) Recognize historical significance to our city;

(9) Create natural gathering places;

(10) Reduce noise pollution;

Attachment: Menlo Park Heritage Tree Ordinance (Protected Trees Urgency Ordinance)

(11) Enhance privacy;

(12) Enhance neighborhood property values;

(13) Provide habitat for wildlife.

This chapter establishes regulations for the removal and replacement of heritage trees, promotion of additional heritage tree planting and public education about the planting, maintenance and preservation of healthy heritage trees following industry best management practices and, consistent with the purposes of this chapter, the reasonable enjoyment of public and private property, and protection of property rights, all in alignment with the general plan. (Ord. 1060 § 2 (part), 2019).

13.24.020 Definitions.

For purposes of this chapter, the terms below shall have the following meanings:

(1) “Administrative guidelines” means staff-promulgated regulations implementing and interpreting this chapter.

(2) “Applicant” is the person seeking a permit to remove or perform major pruning on a heritage tree under this chapter.

(3) “Major pruning” is the significant removal of roots or foliage that has the potential to negatively impact the health or structural stability of a heritage tree. Major pruning includes the removal of more than one-fourth of the live branches or roots within a twelve (12) month period.

(4) “Public works director” shall mean the public works director or their designee, including but not limited to the city arborist.

(5) “Heritage tree” shall mean:

(A) All trees other than oaks which have a trunk with a circumference of 47.1 inches (diameter of fifteen (15) inches) or more, measured fifty-four (54) inches above natural grade.

(B) An oak tree (Quercus) which is native to California and has a trunk with a circumference of 31.4 inches (diameter of ten (10) inches) or more, measured at fifty-four (54) inches above natural grade.

(C) A tree or group of trees of historical significance, special character or community benefit, specifically designated by resolution of the city council.

For purposes of subsections (5)(A) and (B) of this section, trees with more than one (1) trunk shall be measured at the diameter below the main union of all multi-trunk trees unless the union occurs below grade, in which case each stem shall be measured as a stand-alone tree. A multi-trunk tree under twelve (12) feet in height shall not be considered a heritage tree. (Ord. 1060 § 2 (part), 2019).

Attachment: Menlo Park Heritage Tree Ordinance (Protected Trees Urgency Ordinance)

13.24.030 Maintenance and preservation of heritage trees.

(a) Any person who owns, controls, or has custody or possession of any real property within the city shall use reasonable efforts to maintain and preserve all heritage trees located thereon in a state of good health pursuant to the provisions of this chapter. Failure to do so shall constitute a violation of this chapter.

(b) Any person who conducts any grading, excavation, demolition or construction activity on property shall do so in such a manner as to not threaten the health or viability or cause the removal of any heritage tree.

(c) Any work performed within an area ten (10) times the diameter of a heritage tree (i.e., the tree protection zone) shall require submittal and implementation of a tree protection plan for review and approval by the public works director prior to issuance of any permit for grading or construction. The tree protection plan shall be prepared by a city-approved certified arborist and shall address issues related to protective fencing and protective techniques to minimize impacts associated with grading, excavation, demolition and construction. The public works director may impose conditions on any city permit to assure compliance with this section. (Ord. 1060 § 2 (part), 2019).

13.24.040 Removal and major pruning of heritage trees prohibited.

It is unlawful for any person to remove, or cause to be removed, any heritage tree from any parcel of property in the city, or perform major pruning on a heritage tree, without obtaining a permit; provided, that in case of emergency, when a heritage tree is imminently hazardous or dangerous to life or property, it may be removed by order of the police chief, fire chief, the public works director or their respective designees. Any person who vandalizes, grievously mutilates, destroys or unbalances a heritage tree without a permit or beyond the scope of an approved permit shall be in violation of this chapter. (Ord. 1060 § 2 (part), 2019).

13.24.050 Permits and decision-making criteria for tree removal.

(a) Permit Requirement and Removal Criteria. Any person desiring to remove one (1) or more heritage trees or perform major pruning as described in Section 13.24.020 shall apply for a permit pursuant to procedures established by the public works director and shall pay a fee established by the city council. It is the joint responsibility of the property owner and party removing the heritage tree or trees, or portions thereof, to obtain the permit. The public works director may only issue a permit for the removal or major pruning of a heritage tree if he or she determines there is good cause for such action. In determining whether there is good cause, the public works director shall give consideration to the following:

(1) Death. The heritage tree is dead.

(2) Tree Risk Rating. The condition of the heritage tree poses a high or extreme risk rating under the International Society of Arboriculture Best Management Practices: Tree Risk Assessment and/or administrative guidelines; and the risk cannot be reasonably abated to a low risk rating with sound arboricultural treatments.

(3) Tree Health Rating. The heritage tree is (A) dying or has a severe disease, pest infestation, intolerance to adverse site conditions, or other condition and pruning or other

Attachment: Menlo Park Heritage Tree Ordinance (Protected Trees Urgency Ordinance)

reasonable treatments based on current arboricultural standards will not restore the heritage tree to a fair, good or excellent health rating as defined in the Guide for Plant Appraisal, 10th Edition, or its successor manual or the administrative guidelines or (B) likely to die within a year.

(4) Species. The heritage tree is a member of a species that has been designated as invasive or low species desirability by the public works director in the administrative guidelines.

(5) Development. The heritage tree interferes with proposed development, repair, alteration or improvement of a site or the heritage tree is causing/contributing to structural damage to a habitable building (excluding amenities, such as walkways, patios, pools and fire pits); and there is no financially feasible and reasonable design alternative that would permit preservation of the heritage tree while achieving the applicant's reasonable development objectives or reasonable economic enjoyment of the property using the methodology established in the administrative guidelines.

(6) Utility Interference. The removal is requested by a utility, public transportation agency, or other governmental agency due to a health or safety risk resulting from the heritage tree's interference with existing or planned public infrastructure and there is no financially feasible and reasonable design alternative that would permit preservation of the heritage tree.

(b) Notice Requirements.

(1) The city will use its best efforts to maintain a publicly accessible data base of permit applications.

(2) Before a heritage tree is removed, notice of removal shall be posted by the applicant on the property containing the heritage tree. When a permit is sought under subsection (5) (Development) or (6) (Utility Interference) of this section, property owners within three hundred (300) feet of the exterior boundary of the property containing the heritage tree shall be noticed by email or mail of the pending application. Failure to receive copies of such notice shall not invalidate any action taken by the city. (Ord. 1060 § 2 (part), 2019).

13.24.060 Appeals.

(a) Authority to Appeal. Removals based on criteria in Sections 13.24.050(a)(1) through (4) may only be appealed by the permit applicant as set forth in subsection (b) of this section. Removals based on criteria in Sections 13.24.050(a)(5) and (6) may be appealed by the permit applicant or Menlo Park resident. Appeals must be filed on a city approved form and are subject to appeal fees. A permit shall not be issued until all appeals are completed and/or the time for filing an appeal has expired.

(b) Criteria 1 through 4 Appeals. Permit decisions based on criteria in Sections 13.24.050(a)(1) through (4) may only be appealed by the permit applicant. Such appeal must be filed within fifteen (15) days of the public works director's written decision and must be in writing. The appeal shall be heard by the city manager or designee, whose decision shall be final.

(c) Criteria 5 and 6 Appeals. Notice of the public works director's decision shall be mailed to all property owners within three hundred (300) feet of the exterior boundary of the property where the heritage tree is located. In addition, the applicant shall post a notice on a form supplied by the city on the property in a location visible to the public.

(1) Filing Appeal. Within fifteen (15) days of posting, the applicant or any Menlo Park resident may appeal the public works director's decision to the environmental quality commission.

(2) Review Period for Decision-Making Criteria of Sections 13.24.050(a)(5) and (6). If the permit is timely appealed, the appellant shall have an additional fifteen (15) days to review the project file and to submit written evidence to the city clerk relating to the appeal. The appellant may submit one (1) to five (5) reasonable and feasible alternatives for the permit applicant to explore. If either party would like the appeal body to review third-party expert evidence, such party shall submit the evidence to the city within the review period. No additional removal alternatives/concepts or third-party expert testimony will be accepted for review by the environmental quality commission or city council after the end of the review period.

(3) Decision by Environmental Quality Commission. The environmental quality commission shall consider the appeal. The environmental quality commission may only consider removal alternatives/concepts and third-party expert evidence submitted to the city during the review period. Within fifteen (15) days following the environmental quality commission's decision, the applicant or any other party to the appeal may appeal the environmental quality commission's decision to the city council.

(4) Planning Commission Development-Related Tree Removals. When a removal permit is sought in conjunction with a project requiring planning commission review, the appeal to the environmental quality commission, if any, should be completed before the planning commission takes final action on the development project.

(A) If the environmental quality commission approves the heritage tree removal, such approval shall be conditioned upon final approval of the project by the planning commission or city council, as applicable. Following the environmental quality commission's approval of the development-related heritage tree removal, any appeal to the city council is suspended until the planning commission acts. Once the planning commission makes a final decision on the overall development project that includes the heritage tree removal, any party to the environmental quality commission appeal may appeal the heritage tree removal decision to the city council. Such appeal shall be filed with the city clerk within fifteen (15) days of the planning commission's decision.

(B) If the environmental quality commission denies the removal permit, the permit applicant may appeal the decision to the city council before the planning commission reviews the related development project. If the applicant does not appeal the permit decision within fifteen (15) days of the environmental quality commission's decision, no appeal may be taken on the removal permit, and the development project shall be redesigned to include plans for retaining the heritage tree.

(5) Decision by City Council. The city council shall consider the appeal. The city council may only consider removal alternatives/concepts and third-party expert evidence submitted to the city during the review period.

(d) Alternate Appeal Body. From time to time, the city council may by resolution appoint a separate appellate body to hear permit appeals in lieu of the environmental quality commission.

Attachment: Menlo Park Heritage Tree Ordinance (Protected Trees Urgency Ordinance)

(e) Resubmittal. If an applicant fails to exhaust the appeals set forth in this chapter, or the city council denies the permit, the applicant may not apply for another permit applicable to that heritage tree for a period of six (6) months from the denial decision. (Ord. 1060 § 2 (part), 2019).

13.24.070 Establishment of heritage tree fund.

There is hereby established a heritage tree fund. This fund may be used to plant additional trees, to assist with implementation of this chapter and any other purpose established by the administrative guidelines. (Ord. 1060 § 2 (part), 2019).

13.24.080 Administrative guidelines.

The public works director shall have the authority to adopt and modify administrative guidelines to implement this chapter. (Ord. 1060 § 2 (part), 2019).

13.24.090 Heritage tree replacements.

(a) If a permit for removal of a heritage tree is granted under Section 13.24.050, the applicant shall replace the heritage tree with a tree from a list of species approved by the city arborist or pay a heritage tree in-lieu fee in accordance with this section.

(b) For development-related removals, the applicant shall provide replacement heritage trees on site in an amount equivalent to the appraised value of the removed heritage tree. The city arborist shall approve the location, size, species and number of replacement heritage trees. If the appraised value of the removed heritage tree exceeds the value of the replacement heritage trees that can be accommodated on the property, the applicant shall pay the difference in value to the heritage tree fund.

(c) For nondevelopment-related removals, the applicant shall provide replacement heritage trees on site, with a tree from a list of species approved by the city arborist, in an amount based on a replacement matrix based on trunk diameter as set forth in the administrative guidelines. If the property cannot accommodate all replacement trees on site, the applicant may pay an in-lieu fee equivalent to the value of the replacement trees not planted on site. The in-lieu fee shall be deposited into the heritage tree fund. (Ord. 1060 § 2 (part), 2019).

13.24.100 Enforcement and violations.

SHARE

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:

(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 public works director and city attorney, agreed to in writing by the property owner(s), and either implemented or guaranteed by the posting of adequate security as determined by the city attorney.

(2) Any person violating this chapter shall be subject to a civil fine or penalty in the amount established by the city council by resolution. Civil fines or penalties collected under this chapter shall be deposited into the heritage tree fund.

(3) The code enforcement officer, public works director and building official or designee are authorized to issue stop work orders, notices of violation, administrative penalties and citations under this chapter and/or pursuant to the administrative guidelines adopted by the public works director.

(4) Any citation or penalty received under this chapter may be appealed to the city manager or designee whose determination shall be final. Such appeal must be filed within fifteen (15) days of receipt of the citation or penalty.

(5) Whenever the amount of any administrative fine or penalty or administrative cost incurred by the city in connection with a violation of this chapter has not been satisfied in full within ninety (90) days and/or has not been successfully challenged by a timely writ of mandate, this obligation may constitute a lien or, in the alternative, a special assessment against the real property on which the violation occurred.

(6) The city attorney may bring a civil action against the violator to abate, enjoin, or otherwise compel the cessation of violation of any provision in this chapter. In a civil action brought pursuant to this chapter in which the city prevails, the court may 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.

(7) The remedies provided in this section may be enforced against both the contractor or other person performing work in violation of this chapter as well as the owner of the real property on which the heritage tree is located.

(8) All remedies provided in this section shall be cumulative and are not exclusive. (Ord. 1060 § 2 (part), 2019).

13.24.110 Urban forest data collection and reporting.

(a) The city shall use its best efforts to collect and make publicly available data to monitor the effectiveness of this chapter.

(b) City staff shall submit an annual report to the environmental quality commission on the effectiveness of this chapter. (Ord. 1060 § 2 (part), 2019).

Attachment: Menlo Park Heritage Tree Ordinance (Protected Trees Urgency Ordinance)

HERITAGE TREE ORDINANCE ADMINISTRATIVE GUIDELINES

Public Works
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6780

CITY OF MENLO PARK

Background

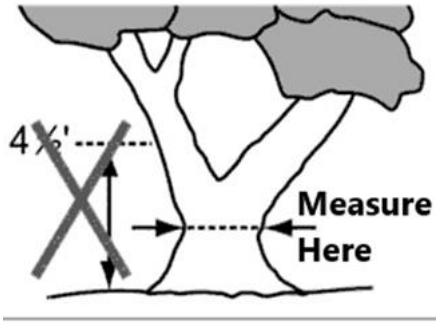
These administrative guidelines are supplemental procedures to further explain how to comply with the heritage tree ordinance and are to be read with it. This living document allows the public works director or designee the flexibility to strengthen and clarify the ordinance to reflect changes in industry standards and establish best practices. The public works director has designated the city arborist as responsible for maintaining and updating these administrative guidelines, unless otherwise specified in Menlo Park Municipal Code Section 13.24.080. The administrative guidelines are a companion document that refers to the heritage tree ordinance and is not intended to replace the ordinance.

13.24.020 Definitions

Section 13.24.080(4)(B) identifies special provisions for an oak tree which is native to California. The city arborist has determined the following species of oak trees are native to California:

- Coast live oak (Quercus agrifolia)
- Scrub oak (Quercus berberidifolia)
- Canyon live oak (Quercus chrysolepis)
- Blue oak (Quercus douglasii)
- Leather oak (Quercus dumosa)
- Englemann oak (Quercus englmannii)
- Oregon white oak (Quercus garryanna)
- Black oak (Quercus kellogii)
- Valley oak (Quercus lobata)
- Shreve oak (Quercus parvula var. shrevei)
- Oracle oak (Quercus x morehus)
- Island oak (Quercus tomentella)
- Interior live oak (Quercus wislizenii)

Multi-trunk trees, where the trunk splits at 4.5 feet above the ground or less, are measured below the main union. See figure below:



Multi-stemmed trees with a union occurring below the existing grade shall be considered individual trees and diameter measurements will be taken for each individual stem to determine trunk diameter – independent of the other stem diameters.

As of July 1, 2020, the City Council has not designated any trees under Menlo Park Municipal Code Section 13.24.020(4)(C).

13.24.050 Permits and decision making criteria for removal

Applicants who submitted a heritage tree permit application before March 16, 2020, have the option to have their applications be reviewed under (a) the current ordinance or (b) the updated ordinance. The review process includes, but not limited to be, the decision making criteria, replacement tree requirements and the appeal process. These applicants must make a determination through an email to Joanna Chen (jpchen@menlopark.org) by July 1, 2020, otherwise the application will be processed under the new ordinance.

Attachment: Menlo Park Heritage Tree Ordinance (Protected Trees Urgency Ordinance)

If an applicant submitted a non-development related application before July 1, 2020, and chose to be reviewed under the updated ordinance, he/she will be granted an exception to use an arborist who is not on the City-approved consulting arborist list.

The City is slowly transitioning from the use of paper applications to the use of an online permitting system. Permit applicants can submit electronic permit applications online at menlopark.org/onlinepermits. You will need to create an account (username and password).

The City will continue to allow paper submittals until October 1, 2020, with a few exceptions. For instance, those who do have not have internet access may contact staff at 650-330-6780 for assistance. Paper permit applications with the payment may be mailed to the Building Division (701 Laurel St., Menlo Park, CA 94025).

The determination in granting or denying a permit shall in most instances be based on the articulated criteria in Municipal Code Section 13.24.050(a):

1. Death:
   Permit applicants need to submit these documents to confirm the tree is dead:
   - Images to show the tree does not have living foliage. This does not apply to deciduous tree during winter months when these trees are typically dormant; or
   - An arborist report from city approved arborist stating the tree is dead.

2. Tree risk rating:
   Considerations:
   - Tree risk assessment is a systematic process used to identify, analyze and evaluate tree risk. Risk is assessed by categorizing or the likelihood (probability) of occurrence (failure), the likelihood of impacting a target, and the severity of consequences should failure occur to determine a risk rating.
   - Trees with moderate, high or extreme risk are required to have been evaluated by City-approved consulting arborists.

   The following documentation may be used to support Criteria 2:
   - Evidence that the tree risk rating cannot be mitigated to low residual risk rating (through pruning, cabling, bracing or other means), as reported by a City-approved consulting arborists. This may require an advanced level 3 assessment such as an aerial inspection, sounding with mallet, pull test, tomographic or resistograph (or equivalent) testing.

3. Tree health rating:
   Intolerance to adverse site conditions can include factors such as soil or water salinity, exposure to sun or wind, or increasingly high temperatures, or overcrowded growing conditions.

   Table 4.1 of the Guide for Plant Appraisal, 10th Edition, or its successor manual, defines tree health as the following:
   - Excellent rating – High vigor and nearly perfect health with little or no twig dieback, discoloration, or defoliation.
   - Good rating – Vigor is normal for the species. No significant damage due to diseases or pests. Any twig dieback, defoliation, or discoloration is minor.
   - Fair rating – Reduced vigor. Damage due to insects or diseases may be significant and associated with defoliation but is not likely to be fatal. Twig dieback, defoliation, discoloration, and/or dead branches may comprise up to 50% of crown.
   - Poor rating – Unhealthy and declining in appearance. Poor vigor. Low foliage density and poor foliage color are present. Potentially fatal pest infestation. Extensive twig and/or branch dieback.
   - Very poor rating – Poor vigor. Appears to be dying and in the last stages of life. Little live foliage.

4. Species:
   The trees listed below have been designated by the city arborist to be invasive or low desirability species. Note that heritage tree removal permits are still required for the removal of these trees in order to verify accurate species and document replacement tree planting conditions. The permit issuance may be expedited as no appeals are allowed.
   - Bailey acacia (Acacia baileyana)
   - Black locust (Robinia pseudoacacia)
   - Blackwood acacia (Acacia melanoxylon)
   - California fan palm ((Washingtonia filifera)

Attachment: Menlo Park Heritage Tree Ordinance (Protected Trees Urgency Ordinance)

- Glossy privet (Ligustrum lucidum)
- Mexican fan palm (Washingtonia robusta)
- Myoporum (Myoporum laetum)
- Purple leaf plum (Prunus cerasifera 'Atropurpurea')
- Red ironbark eucalyptus (Eucalyptus sideroxylon)
- Tree of heaven (Ailanthus altissima)

5. Development:
The following documentation may be required to support criterion 5:
- Schematic diagrams that demonstrate the feasibility/livability of alternative design(s) that preserve the tree, including utilizing zoning ordinance variances that would preserve the tree;
- Documentation on the additional incremental construction cost attributable to an alternative that preserves the tree (i.e. construction cost of alternative design minus cost of original design) in relation to the appraised value of tree(s) and based on the most recent addition to the Guide for Plant Appraisal.

The following guidance will be used to determine feasibility:
- If the incremental cost of the tree preservation alternative is more than 140% of the appraised value of the tree, the cost will be presumed to be financially infeasible.
- If the incremental cost of the tree preservation alternative is less than 110% of the appraised value of the tree, the cost will be presumed to be financially feasible.
- If the incremental cost of the tree preservation alternative is between 110% and 140% of the appraised value of the tree, public works director or their designee will consider a range of factors, including the value of the improvements, the value of the tree, the location of the tree, the viability of replacement mitigation and other site conditions.
- In calculating the incremental cost of the tree preservation alternative, only construction costs will be evaluated. No design fees or other soft costs will be considered.

Removal applications based on shading interference with proposed solar facilities shall employ the following screening criteria before applying the feasibility guidance above:
- Can the proposed array be ground mounted or positioned elsewhere to avoid shading by tree
- Can pruning resolve the conflict
- Is the proposed array sized appropriately
- Are there other energy efficiency measures that owner could employ to replace or reduce the need for the proposed solar array (energy efficiency analysis should be prepared by a certified energy auditor).

6. Utility inference (Criterion 6):
The following documentation may be required to support criterion 6:
- Schematic diagrams that demonstrate the feasibility/livability of alternative design(s) that preserve the tree, including utilizing zoning ordinance variances that would preserve the tree;
- Documentation on the additional incremental construction cost attributable to an alternative that preserves the tree (i.e. construction cost of alternative design minus cost of original design) in relation to the appraised value of tree(s) and based on the most recent addition to the Guide for Plant Appraisal.

According to Section 13.24.050(b) noticing requirements:
- For decisions made under either Criterion 5 or 6, staff will email a city-issued notice to the applicant who is expected to post the notice.
- Notice posting instructions:
  1. Print out city-issued notice on an 11” by 17” yellow-colored paper or pick up a copy of the notice at the front building counter at City Hall. Pleases make sure to check the City webpage to determine if the front building counter is accepting walk in services.
  2. Complete the date, site, number, and type of trees, and the reason for removal (consistent with the stated City approved authorization for removal, e.g. severe pest and disease infection).
  3. Place the notice so it is visible to the public. If the tree is in front of the property, either staple the notice on the tree, tie it around the tree, or hang it on the tree. If the tree is not visible to the public, place the notice in the front of the property so it is visible from the public street.
  4. Send at least two (2) pictures of each tree to the City staff at jpchen@menlopark.org on Day 1, 5, 10, and 15 of notice issuance to ensure the notice is visible to the public during the appeal period until the permit issuance and tree removal.
     - Picture #1: Overview of the heritage tree with the notice visible in relation to the property address. Picture must include the main building in the background.

Attachment: Menlo Park Heritage Tree Ordinance (Protected Trees Urgency Ordinance)

- Picture #2: Close up image of tree trunk with the notice visible

13.24.060 Appeals

In addition to Section 13.24.060(1):

- The purpose of review period is to allow appeals to be processed in an appropriate, meaningful, and efficient manner to respect both permit applicant time and other city priorities. An appeal can only be based upon the decision making criteria used to make staff's recommendation.
- It is recommended for any party interested in appealing to first schedule a meeting with City staff to understand the decision making process.
- The City may offer meditation before or after an appeal process, which will be evaluated case by case basis.
- Appellants may submit an appeal form electronically on the City website and will receive an invoice to be paid within three (3) days of the invoice date. The online submission and invoice payment must be made within the appeal period of 15 days.
- A hardcopy appeal form is available until October 1, 2020. The appellant must fill in the appeal form and submit payment together to the City Clerk's Office (701 Laurel St, 2nd floor). The postmark date must be within the appeal period.

Under Section 13.24.060(2), the appeal fee is nonrefundable if the appellant withdraws his/her appeal after seven (7) days of payment.

Under Section 13.24.060(3)(B):

- If the appellant is the permit applicant, he/she may submit the same design alternatives as when the heritage tree removal permit application was submitted or propose new designs.
- If the appellant is a community member, the alternative designs must include site plans and drawings to support his/her claim.

Upon request by either party, the City may extend the review period (up to 60 days from the appeal file date) for the appellant to provide additional evidence and strategies on preserving the heritage tree(s). After the review period is over, new design plans will be not accepted.

13.24.070 Establishment of heritage tree fund

Funds authorized to be used for site modifications and underlying treatments (such as concrete excavation, installation of structural soils, pervious pavers, Silva Cells, and cantilever sidewalks) to facilitate tree planting, limit infrastructure conflicts, and promote healthy tree growth.

13.24.080 Administrative guidelines

Before amending these Guidelines, the public works director shall make all proposed amendments available for public review and comment for 30 days by posting the amendments on the City's website.

13.24.090 Heritage tree replacements

Under Section 13.24.090 (1), an approved replacement tree list is not provided as site conditions are unknown and will vary from each property. A specified list also limits species diversity. However, below are some examples of replacement tree species that meet the criteria listed above. It is recommended that assistance of a certified arborist be sought prior to selecting a tree and planting location. The replacement tree species are not limited to the following trees if the above criteria are met:

Deciduous tree (lose their leaves in winter)

- Accolade elm (Ulmus 'Morton')
- Black oak (Quercus kellogii)
- Black walnut (Juglans hindsii)
- Blue oak (Quercus douglasii
- California sycamore (Platanus racemose)
- Chinese flame (Koelreuteria bipinnata)
- Chinese pistache (Pistacia chinensis)
- Chinese tallow (Triadica sebiferum)
- Engelmann oak (Quercus engelmannii)
- Forest green oak/Hungarian oak (Quercus frainetto 'Forest Green')
- Frontier elm (Ulmus carpinfolia x parvifolia 'Frontier')
- Japanese pagoda (Styphnolobium japonicum)
- Kentucky coffee (Gymnocladus dioicus 'Espresso', 'Prairie Titan')

Attachment: Menlo Park Heritage Tree Ordinance (Protected Trees Urgency Ordinance)

- Pecan (Carya illinoinensis)
- Rotundiloba sweetgum (Liquidambar styraciflua 'Rotundiloba')
- Shademaster locust (Gleditsia triancanthos var. inermis ‘Shademaster’)
- Silver linden (Tilia tomentosa)
- Texas red oak (Quercus buckleyi)
- Valley oak (Quercus lobata)
- Western catalpa (Catalpa speciosa)

Evergreen trees (retain their leaves in the winter)
- African fern pine (Afrocarpus gracilior)
- Arizona cypress (Hesperocyparis arizonica)
- Atlas cedar (Cedrus atlantica)
- Avocado tree (Persea Americana)
- Brisbane box (Lophostemon confertus)
- Cajeput tree (Melaluca quinquenervia)
- California bay laurel (Umbellaria californica)
- Camphor tree (Cinnamomum camphora)
- Canary island pine (Pinus canariensis)
- Carob tree (Ceratonia siliqua)
- Catalina ironwood (Lyonothamnus floribundus)
- Coast live oak (Quercus agrifolia)
- Cork oak (Quercus suber)
- Deodar cedar (Cedrus deodara)
- Incense cedar (Calocedrus decurrens)
- Island oak (Quercus tomentella)
- Lemon-scented gum (Corymbia citriodora)
- Peruvian pepper (Schinus molle)
- Red flowering gum (Corymbia ficifolia)
- Saratoga laurel (Laurus nobilis 'Saratoga')
- Silk oak (Grevillea robusta)
- Silver leaf oak (Quercus hypoleucoides)
- Spotted gum (Corymbia maculata)
- Torrey pine (Pinus torreyana)

In reference to Section 13.24.090(2), applicants may use the following monetary value of the replacement trees to help design their landscape plans for development-related removals:
- One (1) #5 container – $100
- One (1) #15 container – $200
- One (1) 24-inch tree box – $400
- One (1) 36-inch tree box – $1,200
- One (1) 48-inch tree box – $5,000
- One (1) 60-inch tree box – $7,000

To be eligible for the in lieu fee, applicants must explain why the value of the replacement trees are not equal to the appraised value of the removed heritage trees.

In reference to Section 13.24.090 (3) for decisions made under Criteria 1, 2, 3, or 4, the monetary value of a replacement tree correlates with the size of the heritage tree trunk diameter (measured from 54 inches above grade). For every heritage tree proposed for removal, it must be replaced by the following replacement tree requirement:
- An oak heritage tree with a trunk diameter of 10 to 15 inches has a minimum replacement tree requirement of one (1) #5 container. The monetary value is $100.
- Any heritage tree with a trunk diameter of greater than 15 inches to 20 inches has a minimum replacement tree requirement of one (1) #15 container. The monetary value is $200.
- Any heritage tree with a trunk diameter of greater than 20 inches to 30 inches has a minimum replacement tree requirement of one (1) 24-inch tree box. The monetary value is $400.
- Any heritage tree with a trunk diameter of greater than 30 inches to 40 inches has a minimum replacement tree requirement of one (1) 36-inch tree box. The monetary value is $1,200.
- Any heritage tree with a trunk diameter of greater than 40 inches to 50 inches has a minimum replacement tree

Attachment: Menlo Park Heritage Tree Ordinance (Protected Trees Urgency Ordinance)

requirement of one (1) 48-inch tree box. The monetary value is $5,000.

- Any heritage tree with a trunk diameter of greater than 50 inches has a minimum replacement tree requirement of one (1) 60-inch tree box. The monetary value is $7,000.

Applicants shall submit written statements or landscape plans to describe how they will fulfil the replacement tree requirements. The submissions shall include: (a) the replacement tree species, (b) the container size, (c) the planting location, and (d) an in lieu fee payment, if applicable.