

#### **12.45.030 Significant trees.**

A. A Significant Tree means any tree or grove of trees located within the City nominated by the Commission with the consent of the property owner upon whose land the tree is located and designated by the City Council. The following criteria shall be used in designating Significant Trees:

1. Historic significance associated with a person, place or event;
2. Unique or rare horticultural specimens;
3. Uniqueness of size or age;
4. Aesthetic value due to symmetry, form, color or other qualities;
5. Visibility or prominence to public view;
6. Significance for habitat protection;
7. Native to Napa Valley.

B. Council's resolution designating significant tree(s) shall be recorded by the City Clerk with the county of Napa recorder.

(Ord. 92-004 § 4; Ord. O2003 4)

#### **12.45.040 Identification and inventory of significant trees.**

The Director is authorized to maintain a list of known Significant Trees within the City.

(Ord. 92-004 § 4; Ord. O2003 4)

#### **12.45.050 Protection of significant trees during construction activity.**

During any construction activity within thirty feet of the drip line of a Significant Tree, no person shall, without written permission from the Director, do the following:

A. Change the amount of irrigation provided to any Significant Tree from that which was provided prior to the commencement of construction activity.

B. Trench, grade or pave into the drip line area of a Significant Tree.

C. Change, by more than two feet, grade elevations within an area from the drip line of a Significant Tree outward to thirty feet in distance.

- D. Park or operate any motor vehicle within the drip line area of any Significant Tree.
- E. Place or store any equipment or construction materials within the drip line area of any Significant Tree.
- F. Attach any signs, ropes, cables or any other items to any Significant Trees.
- G. Cut or trim any branch of a Significant Tree for temporary construction purposes.
- H. Place or allow to flow into or over the drip line area of any Significant Tree any oil, fuel, concrete mix or other deleterious substance.

Where written permission of the Director is sought under this section, the Director may grant such permission with such reasonable conditions as may be necessary to effectuate the intent and purpose of this Chapter.

(Ord. 92-004 § 4; Ord. O2003 4)

#### **12.45.060 Permits for activities affecting significant trees.**

A. The removal of any Significant Tree shall be prohibited unless a permit therefore is first applied for by the property owner or person authorized by the property owner and granted by the Commission.

1. A permit shall be granted by the Commission if it finds:
  - a. That the Significant Tree must be removed in order for the applicant to use the property for any use permitted as of right or by entitlement, i.e., final architectural review, parcel map or a valid use permit under the City zoning ordinance for the zoning district in which the property is located, and that such use could not be made of the property unless the tree is removed, or
  - b. That the condition of the tree with respect to disease, danger of falling, or interference with utility services is such that the public health, safety and welfare require its removal, or
  - c. That the tree or tree roots are causing, or threatening to cause, serious or unmitigatable damage to any main structure on the owner's property, or
  - d. That the tree no longer meets the criteria for a Significant Tree set forth in this Chapter;
2. The Commission shall not act on such an application until a public meeting is held thereon. Notice of the time and place of the meeting shall be posted in a conspicuous place near the Significant Tree and shall be mailed to the applicant and to all owners of real property located within a three-hundred-foot radius of the real property upon which the Significant Tree is located. Notices shall be posted and mailed at least ten days in advance of the meeting. As used in this section, "owner" means the person to whom the property was assessed in the latest equalized assessment roll of the county of Napa;

3. Any affected party may appeal a permit decision of the Commission to the City Council within ten days of the Commission's action.

B. None of the following activities shall be performed unless a permit therefore is first applied for by the property owner or person authorized by the property owner and granted by the Director:

1. Pruning of any branch, limb, or segment of a Significant Tree greater than four inches in diameter; the topping of any Significant Tree is prohibited as a normal practice. Topping is defined as the cutting of the branches and/or trunk of a tree in a manner which will substantially reduce the overall size of the tree area so as to destroy the existing symmetrical appearance or natural shape of the tree. Trees severely damaged by storms or other causes, or certain trees under utility lines or other obstructions where other pruning practices are impractical may be exempted at the discretion of the Director;
2. Injuring a Significant Tree.

(Ord. 92-004 § 4; Ord. O2003 4)

#### **12.45.070 Significant Trees; Replacement program; unlawful tree removal; protection and maintenance of replacement trees.**

A. Replacement Program. All persons responsible for development projects shall be required to replace Significant Trees approved for removal. Each Significant Tree removed or damaged shall be replaced according to one or a combination of the following options as determined by the Commission:

1. For each six inches or fraction thereof of the protected tree's diameter, two trees of the same species as the protected tree (or any other species with approval) and a minimum fifteen gallon container or larger size as determined by the Commission shall be planted on the project site;
2. For each protected tree removed or damaged, three replacement trees of the same species as the protected tree removed and a minimum fifteen gallon container or larger size shall be planted on the project site;
3. If the project site is inadequate in size to accommodate the replacement trees, the trees shall be planted on public property with the recommendation of the Director and the approval of the Commission. At the discretion of the Commission, the Department may accept an in-lieu fee of three hundred dollars per fifteen gallon replacement tree with the moneys to be used for tree-related educational projects and/or planting programs;
4. Each significant tree approved for removal shall be replaced within sixty-days or at a reasonable time approved by the Commission.

B. Security and Maintenance of Replacement Trees. The Director may require security in an amount sufficient to secure the maintenance and protection of any replacement tree by any person removing trees as per subsection A of this section for a period of three years. Said

security shall be returned at the end of the three year period if, in the Director's judgment, the replacement trees are healthy and free of any defects. Any replacement tree that is not healthy or free of defects at the end of the three year period shall be replaced, and security shall be held for another three year period or until, in the Director's judgment, the tree has been well established.

(Ord. 92-004 § 4; Ord. O2003 4)

#### **12.45.080 Safeguarding protected native trees.**

A. No person shall, without first securing a permit from the Director, do any of the following which would have the potential for injuring a tree:

1. Prune any branch or limb of a protected native tree greater than four inches in diameter or remove more than 10 percent of any live foliage in any one year period.
2. Cut any root over two (2) inches in diameter within the drip line area of a protected native tree.
3. Change, by more than two feet, grade elevations within the drip line area of a protected native tree.
4. Place or allow to flow into or over the drip line area of any protected native tree any oil, fuel, concrete mix or other substance that could injure the tree.

B. The removal of any protected native tree shall be prohibited unless a permit therefore is first applied for by the property owner or person authorized by the property owner and granted under Section 12.45.090.

C. A permit, under subsections A or B above or other applicable sections of this Chapter, shall not be required to prune or remove a protected native tree under the following circumstances:

1. Trees damaged by windstorms, floods, earthquakes, fires or other natural disasters or causes and, to the extent possible with the information provided, determined to be dangerous by the City Manager or his or her designee acting in their official capacity. The Director shall be promptly notified of the nature of the emergency and action taken.
2. When removal is determined necessary by Fire Department personnel actively engaged in fighting a fire.
3. Trees otherwise determined to be a hazard by the Director. Director shall require evidence of the hazardous condition.

D. Where a permit from the Director is sought under subsection A above, the following shall apply:

1. Any person who desires a permit shall apply to the Director on the designated form.

2. The Director shall not issue a permit under this section unless he/she finds that the activity proposed will not significantly harm or reduce the health of the tree, and any decision by the Director shall be based upon the following standards:

- a. The size and species of tree and nature of the proposed activity.
- b. The age and condition of the tree with respect to its general health.
- c. The necessity of the requested activity.
- d. Any other information pertinent to the decision including a tree protection plan submitted by the applicant from a qualified consulting arborist.

3. The Director may impose such reasonable conditions as he or she determines may be necessary to effectuate the intent and purpose of this Chapter including, without limitations, adherence to the City's Standard Specifications for Tree Preservation and the most current American National Standard (ANSI) For Tree Care Operations.

4. Any applicant dissatisfied with the decision of the Director may appeal such decision to the Commission. Such appeal shall be in writing, stating the reasons therefore, and shall be filed with the Department not later than ten (10) days after the date of the Director's letter approving or denying the permit. Any appeal not timely filed shall be barred, and the Director's decision shall become final. The Commission shall consider all appeals at the Commission's next regularly scheduled meeting providing said appeal is received at least fourteen (14) days prior to the date of the meeting. Appeals received within fourteen (14) days of the Commission's meeting shall be scheduled on the following regularly scheduled meeting. The Commission shall base its decision upon the standards set forth in Subsection D.2., above.

5. Any applicant dissatisfied with the decision of the Commission may appeal such decision to the City Council. Such appeal shall be in writing, stating the reasons therefore, and shall be filed with the City Clerk not later than ten (10) days after the date of the Commission's decision. Any appeal not timely filed shall be barred, and the Commission's decision shall become final. In appeals heard by the City Council, the decision of the City Council shall be final. The Council shall base its decision upon the standards set forth in Subsection D.2., above.

(Ord. O2003 4; Ord. O2004 13)

#### **12.45.090 Permits for removal of protected native trees.**

A. Where there is no pending discretionary development application, the removal of any protected native tree shall be prohibited unless a permit therefore is first obtained by the property owner or person authorized by the property owner from the Tree Commission in accordance with the following:

1. An application for a permit shall be made on the form provided by the Director and shall include a plan describing each protected native tree on the property, its species, size, drip line area, and location. The location of all other trees on the site and in the adjacent public right-of-way and trees located on adjacent property with drip lines over the property shall be shown on the plan and identified by species. The applicant shall include such other information as the Director may

determine is necessary to further the purposes of this Chapter including, but not limited to, photographs and arborist reports.

2. A permit may be granted by the Tree Advisory Commission if it finds any of the following:

- a. That the protected native tree must be removed in order for the applicant to use the property for any use permitted by the City for property where the tree is located, and that such use could not be reasonably made of the property unless the tree is removed. In this context, it shall be the burden of the person seeking the permit to demonstrate to the satisfaction of the Commission that there are no reasonable alternatives to the proposed design and use of the property; or
- b. That the condition of the tree with respect to disease, danger of falling, or interference with utility services is such that the public health, safety and welfare requires its removal; or
- c. That the tree or tree roots are causing or threatening to cause, serious or unmitigatable damage to any building.

3. The Tree Advisory Commission shall not act on such an application until a public hearing is held thereon. Notice of the time and place of the hearing shall be posted in a conspicuous place near the native tree and shall be mailed to the applicant and to all owners of real property located within a three hundred (300) foot radius of the real property upon which the significant tree is located. Notices shall be posted and mailed at least ten (10) days in advance of the hearing. As used in this section, "owner" means the person to whom the property was assessed in the latest equalized assessment roll of the County of Napa.

4. Any person dissatisfied with the decision of the Tree Advisory Commission may appeal such decision to the City Council. Such appeal shall be in writing, stating the reasons therefore, and shall be filed with the city clerk not later than ten (10) days after the date of the Tree Advisory Commission's decision. Any appeal not timely filed shall be barred, and the Tree Advisory Commission's decision shall become final. The city clerk shall set the appeal for hearing within forty-five (45) days after the appeal is filed. Notice of time and place of the hearing shall be given to the appellant, those who spoke at the hearing and those persons requesting notification of the hearing at least ten (10) days in advance thereof by mail, postage prepaid. The decision of the City Council shall be final. The City Council shall base its decision upon the standards set forth in Subsection A.2., above.

B. Where there is a pending discretionary development application, the removal of any protected native tree shall be prohibited unless the following procedure is followed:

1. The property owner or authorized agent shall provide the following information to the Planning Director with the application for discretionary development approval pursuant to the filing requirements established by such Director.

- a. A statement which discloses whether any protected native tree exists on the property which is the subject of the application, and describing each such tree, its species, size, drip line area, and location. This requirement shall be met by including the information on plans submitted in connection with the application.
- b. The location of all other trees on the site and in the adjacent public right-of-way that are within thirty (30) feet of the area proposed for development, and trees located on adjacent property with drip lines over the project site, shall be shown on the plans, identified by species.

- c. Such other information as the Planning Director may determine is necessary to further the purposes of this Chapter including, but not limited to, photographs and arborist reports.
2. Removal of a protected native tree in connection with a discretionary development approval may be authorized by the City if the decision-making body finds any of the following:
  - a. that the protected native tree must be removed in order to allow construction of improvements and that no reasonable use of the property can be made of the property unless the tree is removed. In this context, it shall be the burden of the person seeking the permit to demonstrate to the satisfaction of the decision making body that there are no reasonable alternatives to the proposed design and use of the property; or
  - b. that the condition of the tree with respect to disease, danger of falling or interference with utility services is such that the public health, safety, and welfare requires its removal, or
  - c. that the tree or tree roots are causing, or threatening to cause, serious or unmitigatable damage to any significant building or structure on the owner's property, or
  - d. that the project has minimized tree loss to the extent possible when balanced with General Plan land uses and policies and applicable design guidelines.
3. Every discretionary approval for property containing protected native trees shall include appropriate mitigation measures and/or conditions providing for the protection of such retained trees and for maintenance of the trees thereafter.

(Ord. O2003 4)

#### **12.45.100 Protected native tree; replacement program; unlawful tree removal; protection and maintenance of replacement trees.**

Any person who has received permission to remove a protected native tree shall be required to replace the protected native tree approved for removal. Each protected native tree removed or damaged shall be replaced as follows:

- A. For each six inches or fraction thereof of the protected native tree, two trees of the same species as the protected tree (or any other species with approval) and a minimum fifteen-gallon container or larger size as determined by the Director shall be planted on the project site;
- B. If the project site is inadequate in size to accommodate the replacement trees, with the recommendation of the Director, the trees shall be planted on public property. The Director may accept an in-lieu fee, per fifteen gallon replacement tree with the moneys to be used for tree-related educational projects and/or planting programs. In lieu fees shall be set by City Council resolution and adjusted on an annual basis as necessary and include the cost of planting.
- C. Each protected native tree approved for removal shall be replaced within sixty-days or at a reasonable time approved by the Director or according to the conditions of any discretionary permit allowing removal of a protected native tree.

D. The Director shall ensure that security is posted in an amount sufficient to secure the maintenance and protection of any replacement tree not planted on public property for a period of three years. Said security shall be returned at the end of the three-year period if, in the Director's judgment, the replacement trees are healthy and free of any defects. Any replacement tree that is not healthy or free of defects at the end of the three year period shall be replaced, and security shall be held for another three year period or

until, in the Director's judgment, the tree has been well established.

(Ord. O2003 4)

#### **12.45.110 Violations.**

A. It shall be a violation of this Chapter for any property owner or agent of the owner to fail to comply with the requirements of this Chapter or any development approval, mitigation measure or condition concerning preservation, protection, maintenance of any tree, including, but not limited to, protected native trees.

B. It shall be a violation of this Chapter for any person to provide false or misleading information in response to the disclosure requirements.

(Ord. O2003 4)

#### **12.45.120 Hazardous trees; abatement.**

A. Notice to Property Owner(s). Upon finding by the Director that a tree, shrub, or plant on private property is "hazardous" as defined in Section 12.44.010, the Director shall mail a written notice to the property owner(s) which describes the condition creating the hazard and sets forth the actions required to be taken to abate the hazard and the date by which compliance must be completed. Required action may include pruning or replacement and removal of the tree, shrub, or plant. In cases of extreme danger, as determined by the Director, the Director may require immediate compliance. Except in the case of extreme danger, no "hazardous" tree, shrub or plant standing on private property shall be completely cut down or removed unless ten calendar days notice of such intention is given by the Director to the property owner(s).

B. Appeal from Notice. If the property owner(s) of the hazardous tree, shrub, or plant shall, within seven calendar days after the giving of such notice, file with the Director a written objection, the Director shall give said property owner(s) a reasonable opportunity to be heard. Thereafter, pruning or removal of the tree shall be authorized only if the Director finds a hazardous condition exists.

C. Performance of Work by Department — Costs Billed to Property Owner. If the responsible property owner(s) does not take action required by the Director to abate the

hazardous tree, shrub or plant within ten days, the Department may perform the necessary work, and the cost of this service (including labor, equipment and materials, inspection services, and administrative overhead) shall be billed to the property owner(s). Payment shall be due within sixty days of the mailing date of the notice of payment due.

D. Contents of Notice of Payment Due. The notice of payment due sent to the responsible property owner(s) shall contain the following information:

1. A statement of the date written notice was sent as required by subsection A of this section;
2. A statement of work performed by the Department, the date or dates on which such work was performed, and the costs incurred by the Department in performing the work;
3. A notice advising the responsible property owner(s) that he or she is liable for the costs in the amount listed in the notice and that payment to the City to reimburse these costs is due within sixty days of the mailing date of the notice;
4. A notice advising that a penalty of ten percent plus interest at the rate of one percent per month on the outstanding balance shall be added to the costs from the date that payment is due;
5. A notice advising the responsible property owner(s) that if payment of the costs is not received within ninety days from the due date, a lien may be imposed on the property pursuant to the provisions of this section.

E. Nonpayment of Costs—Additional Request. If full payment of the costs is not received within sixty days after notice of payment due was sent pursuant to subsection C of this section, an additional request for payment shall be sent to the responsible property owner(s). The notice shall state that the property owner(s) is liable for the payment of the costs indicated on the notice and if payment of such costs is not received within thirty days of the mailing date of this notice, a lien may be imposed on the property pursuant to

the provisions of this section.

F. Lien Proceedings. If payment is not received within thirty days following mailing of the additional request, the Director shall charge the cost of the removal as a lien against the property.

(Ord. 92-004 § 4; Ord. O2003 4)

#### **12.45.130 No limitation of authority.**

Nothing in this Chapter limits or modifies the existing authority of the City under Chapter 16 (Subdivision Ordinance) and Chapter 17 (Zoning Ordinance) of the Napa Municipal Code to require trees and other plants not covered by this Chapter to be identified, retained, protected, and or planted as conditions of the approval of development. In the event of conflict between provisions of this Chapter and conditions of any permit or other approval granted by City, the more protective requirements shall prevail.

(Ord. O2003 4)

**12.45.140 Civil penalties; penalties established; collection of civil penalties; appeals.**

A. In addition to the penalty set forth in Section 12.45.080, any person who violates this Chapter is subject to the following civil penalty:

1. For each Significant or protected native tree removed without prior authorization, the penalty shall be \$5,000 or the appraised value of the removed tree(s) as determined by the most current edition of the "Guide for Plant Appraisal" authored by the Council of Tree and Landscape Appraisers and published by the International Society of Arboriculture (ISA) whichever is greater.
2. For each willful or intentional action which violates Section 12.45.050, Section 12.45.060 B or Section 12.45.080 A, the penalty is \$5,000.00.

B. Collection of civil penalties. The following shall apply to the collection of civil penalties as provided in this section:

1. Civil fines are payable at the City collections office. Fines must be paid within ten (10) business days. If an appeal is filed, the bail for the fine must be paid within said ten (10) days;
2. The finance department is authorized to collect all unpaid civil fines;
3. Any and all fines paid or collected pursuant to this Chapter shall be deposited into a revolving fund to be used by the department for replacing and planting trees and/or tree-related education projects.

C. Hearings. The imposition of a civil penalty may be appealed to the City Council, which may, in its discretion, reduce or excuse the penalty based on findings concerning:

1. The nature, circumstances, extent and gravity of the violation;
2. The extent to which the violation was willful and/or intentional; and
3. Whether and to what extent the violation can be promptly corrected and/or abated, and all City costs and expenses incurred in abating the violation reimbursed.

(Ord. 92-004 § 4; Ord. O2003 4)

**12.45.150 Penalties for violation of Chapter.**

A. Violation of any of the provisions of this Chapter shall be chargeable as a misdemeanor.

B. In addition to the penalty set forth in subsection A of this section, violation of any section of this Chapter shall be the basis for injunctive relief.

(Ord. 92-004 § 4; Ord. O2003 4)

**12.45.160 Effect on liabilities.**

Nothing in this Chapter shall be deemed to impose any liability upon the City, its officers or employees, nor to relieve the owner of any private property from the duty to keep trees or other landscape material upon said private property, or under his/her control, together with sidewalks and parkways in front of such private property in a safe condition.

(Ord. 92-004 § 4, Ord. O2002 20; Ord. O2003 4)