



## Planning & Building Department

3675 Mt. Diablo Boulevard, Suite 210

Lafayette, CA 94549-1968

Tel. (925) 284-1976

<http://www.ci.lafayette.ca.us>

### TREE PROTECTION

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#### 6-1701 Purpose and Findings.

- A. Purpose The City of Lafayette consists of oak woodland and savannah covered hills, and valleys that originally contained many large and majestic trees, orchards and creeks lined with giant valley oak, madrone, buckeye and black walnut trees. Historically, in the course of development, especially for residential purposes, many of these original trees were destroyed. It is now recognized that the preservation of trees enhances the natural scenic beauty, increases property values, encourages quality development, aids in tempering the effect of extreme temperatures, helps to reduce air and noise pollution, furnishes habitat for wildlife and gives Lafayette an identity and quality that enhances the environment for all residents and the business community. As seen in the master and specific plans adopted by the City, trees are vital to the community. The Downtown Street Improvement Master Plan has a number of objectives to improve the appearance of the downtown and reinforce the visual character of the community which includes the widespread planting of trees in the downtown. The Downtown Specific Plan has goals and policies aimed to preserve the downtown's trees so that they continue to contribute to the character of the community's quality of life. The General Plan has goals and policies for the preservation of the community's biological resources, including its trees, and it is the purpose of this ordinance to implement these goals and policies.

B. Findings. The City Council finds that:

1. The policies of the City are to protect existing woodlands and their associated vegetation, protect native trees, preserve riparian habitat, encourage the planting of native species, and avoid the cutting of mature trees.
2. In order to implement these policies and to promote the public health, safety and welfare, it is necessary to protect existing trees and require the replacement of trees that have been destroyed or removed.
3. Protected trees are valuable assets to the City and the community, and the public shall be compensated when a protected tree is destroyed or removed in a manner that is not in compliance with this chapter.

(Ord. No. 593, § 1(Exh. A), 3-22-2010; Ord. No. 633, § 4(exh. A), 10-14-2014)

**6-1702 Definitions.**

In this chapter, unless the context otherwise requires:

A. "Arborist" is a person having one of the following qualifications:

1. Current listing as a certified arborist by the International Society of Arboriculture; or
2. Current American Society of Consulting Arborists registered consulting arborist.

B. "Arborist report" means a report of an arborist developed in a manner consistent with the guidelines for report writing by the American Society of Consulting Arborists on the following:

1. Description of the tree's location, genus, species, diameter and dripline;
2. Health and condition of the tree, including existing hazards to the tree;
3. Potential impact of development on the tree or existing tree condition;
4. Evaluation of preservation potential based on the tree's existing condition and in relation to any potential development; and
5. Recommendations for protection and preservation techniques and requirements, including restorative or other remedial actions that might be feasible to maintain and improve tree health or to assure survival.

C. "Commercial zoning district" means business and commercial districts as further defined in Chapter 6-9 of the Lafayette Municipal Code.

D. "Construction" means the act of placing, erecting, modifying or relocating a structure or the act of preparing property for such work, including clearing, stockpiling, trenching, grading, compaction, paving or change in ground elevation.

- E. "Defensible space" means the area within the perimeter of a parcel providing a key point of defense from an approaching wildland or escaping structure fire, as defined by Section 316.2 of the California Fire Code. Defensible space rarely requires the complete removal of a tree. Trees may be maintained provided they are well spaced, well pruned, and do not create a 'fire ladder' that would promote the spread of fire to a structure. When defensible space warrants complete removal of a tree, the tree is typically of a non-native species, is completely dead, or contains substantial amounts of dead branches or leaves/needles that would readily burn.
- F. "Destroy" means an action that kills or endangers the health or vigor of a tree, and includes removal, relocation, excessive or improper pruning, topping, grading, irrigation, application of chemicals, trenching within the drip line or protected perimeter, soil compaction within the protected perimeter, or damage caused to the trunk or primary limbs during construction.
- G. "Developed property" means an existing lot of record that has an existing legal dwelling unit as defined in Section 6-320.
- H. "Development application" means an application to subdivide, alter, develop or use a property that, if approved, will require the issuance of a development permit, including a building or grading permit that may potentially result in the removal or destruction of a protected tree.
- I. "Diameter" means the distance across the tree from outside bark to outside bark with the distance being determined by the circumference of the tree measured at 4.5 feet above the natural grade of the tree (also known as diameter at standard height) and divided by  $\pi$  (3.1416). The diameter of a multi-trunk tree is the sum of the diameters of its component trunks multiplied by  $\frac{2}{3}$  (.66).
- J. "Director" means the Planning and Building Department Director or the Director's designee.
- K. "Dripline area" means the area surrounding tree trunk whose outer perimeter is defined by the length of the outermost branch tips.
- L. "Major tree removal project" means a request for a tree permit by a public or private entity, utility company, or individual that may potentially result in the removal or destruction of more than twenty-five protected trees on public and/or private property from one or more associated projects either in one occurrence or multiple occurrences over the span of five years.
- M. "Native riparian species" means a tree or plant indigenous to a riparian habitat along a perennial or intermittent creek, stream or other watercourse and that is within thirty-feet of the top of a creek bank or that is beyond thirty-feet but in such proximity to a creek bank that it requires or tolerates soil moisture levels in excess of that available in adjacent uplands.
- N. "Native species" means a tree or plant indigenous to a Lafayette oak woodland, chaparral, grassland or riparian habitat.
- O. "Planting program" means the planting of native species on public or private property, including but not limited to trails, parks, and creeks, for the purposes of restoration, re-vegetation, and/or landscaping for the benefit of the public.

- P. "Protected area" means the delineated area encompassing the rooting zone of a tree to be protected from encroachment by construction activities. The area is determined by projecting from the base of the trunk two feet for every one inch of trunk diameter.
- Q. "Protected tree" means a tree on public or private property meeting one or more of the following standards:
1. Developed property. Located on a developed property, that has a trunk diameter of twelve-inches or more, and that is one of the following species:
 

<ul style="list-style-type: none"> <li>▪ coast live oak (<i>Quercus agrifolia</i>)</li> <li>▪ canyon oak (<i>Quercus chrysolepis</i>)</li> <li>▪ blue oak (<i>Quercus douglasii</i>)</li> <li>▪ white oak (<i>Quercus garryana</i>)</li> <li>▪ black oak (<i>Quercus kelloggii</i>)</li> </ul>	<ul style="list-style-type: none"> <li>▪ valley oak (<i>Quercus lobata</i>)</li> <li>▪ interior live oak (<i>Quercus wislizenii</i>)</li> <li>▪ California bay (<i>Umbellularia californica</i>)</li> <li>▪ California buckeye (<i>Aesculus californica</i>)</li> <li>▪ madrone (<i>Arbutus menziesii</i>)</li> </ul>
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  2. Approved development application. Of any size or species and designated to be protected and preserved as part of an approved development application;
  3. Riparian tree. Is a native riparian tree with a trunk diameter of six-inches or more or one component trunk of a multi-trunked tree with a diameter of four-inches or more and that is one of the following species:
 

<ul style="list-style-type: none"> <li>▪ bigleaf maple (<i>Acer macrophyllum</i>)</li> <li>▪ boxelder (<i>Acer negundo</i>)</li> <li>▪ white alder (<i>Alnus rhombifolia</i>)</li> <li>▪ black walnut (<i>Juglans hindsii</i>)</li> <li>▪ cottonwood (<i>Populus fremontii</i>)</li> <li>▪ red willow (<i>Salix laevigata</i>)</li> <li>▪ arroyo willow (<i>Salix lasiolepis</i>)</li> <li>▪ coast live oak (<i>Quercus agrifolia</i>)</li> </ul>	<ul style="list-style-type: none"> <li>▪ valley oak (<i>Quercus lobata</i>)</li> <li>▪ California bay (<i>Umbellularia californica</i>)</li> <li>▪ California buckeye (<i>Aesculus californica</i>)</li> <li>▪ blue Elderberry (<i>Sambucus Mexicana, aerulea, or glauca</i>)</li> </ul>
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  4. Undeveloped property. Of any species with a diameter of six-inches or more and located on an undeveloped property;
  5. Replacement tree. Is a replacement tree planted as restitution for a violation of this chapter;
  6. Restricted ridgeline area. Is a native tree of any size or species within a restricted ridgeline area;
  7. Street tree. Is a tree of any size or species and is located within a public right-of-way or a private access easement; or
  8. Downtown tree. Is a tree of any size or species within a commercial zoning district.
- R. "Pruning" means the removal of tree parts. Proper pruning is performed in a manner intended to achieve a specific goal while minimizing the negative effects on the tree. Excessive or improper pruning is that which employs techniques that result in negative physiological or structural impacts on the tree. Improper pruning includes topping. Excessive or improper pruning includes removing one-fourth (25-percent) or more, of the functioning leaf, stem or root area.

- S. "Relocate" means to move a tree from one location to another, either on-site or off-site.
- T. "Remove" means to cut down completely or extract a tree.
- U. "Restricted ridgeline area" means a class III ridgeline or an area within 400-feet of a class I ridge or 250-feet of a class II ridge, as designated on the Lafayette Area Ridge Map pursuant to subsection 6-2004(A.1.)
- V. "Topping" means a pruning cut that removes the main stem or stems between nodes, buds or laterals or a to lateral branch or limb not large enough to assume the terminal role that would result in serious decay and/or permanent alteration of the tree's structure.
- W. "Tree" means a large woody perennial plant with one or more trunks that generally reaches a minimum height of ten-feet at maturity. It does not include shrubs shaped to tree forms.
- X. "Tree education program" means the preparation of materials, holding of workshops, and other methods to disperse information to provide public knowledge and outreach about the maintenance, preservation, and benefits of native species.
- Y. "Undeveloped property" means a vacant parcel without an existing legal dwelling unit as defined in Section 6-320.

(Ord. No. 593, § 1(Exh. A), 3-22-2010; Ord. No. 633, § 4(exh. A), 10-14-2014)

**6-1703 Destruction of a protected tree.**

It is a violation of this chapter for any person to remove or destroy a protected tree without a category I or category II permit under sections 6-1706 or 6-1707, or without the approval of an exception under section 6-1705.

(Ord. No. 593, § 1(Exh. A), 3-22-2010; Ord. No. 633, § 4(exh. A), 10-14-2014)

**6-1704 Permit required to remove a protected tree.**

A category I or category II permit under sections 6-1706 or 6-1707 is required to remove or destroy a protected tree.

(Ord. No. 593, § 1(Exh. A), 3-22-2010; Ord. No. 633, § 4(exh. A), 10-14-2014)

**6-1705 Exceptions.**

- A. A person seeking an exception to the requirements of this chapter shall file a written request with the Director, together with the necessary information that sets forth the basis upon which the applicant believes an exception warranted. The Director shall review the information submitted and may request additional documentation. The Director will evaluate the request as it relates to the five (5) circumstances outlined Part B of this Section and shall either approve, conditionally approve, or deny

the exception. The applicant shall be required to pay all costs of the City's processing of the request including verification of the information submitted.

- B. An exception to the requirements of this chapter may be granted:
1. When a hazardous or dangerous condition requires immediate action to protect life or property as determined by the Director or when the imminent threat is certified by an arborist and an emergency tree removal permit is granted by the Director. The Director may impose reasonable conditions, such as planting trees pursuant to subsection 6-1707(G);
  2. Under emergency conditions when ordered by the Director, an official of the Contra Costa County Fire Protection District, or an official of the Contra Costa County Building Department;
  3. To maintain defensible space on land covered by flammable material, as required by Public Resources Code §4291 and evaluated and approved by the Director with consultation with the Contra Costa County Fire Protection District;
  4. To maintain an unobstructed flow of water for flood control safety in a creek or other waterways as determined by the City Engineer or the Public Works Director; or
  5. When the City must remove a protected tree to protect the health, safety and general welfare of the community.

(Ord. No. 593, § 1(Exh. A), 3-22-2010; Ord. No. 633, § 4(exh. A), 10-14-2014)

**6-1706 Permit category I: Protected tree on property not associated with a development application.**

- A. Permit required. A category I permit is required to remove or destroy a protected tree on property not currently associated with a development application or that will not be associated with a development application for a minimum of one-year from the date of the issuance of the permit.
- B. Application. An application for a category I permit shall be filed with the Director on a form approved by the City together with a fee fixed by resolution of the City Council. The application shall include the following information:
1. Identification of the location, species and diameter of each protected tree to be removed;
  2. Statement justifying the permit request; and
  3. Supplemental information as may be necessary for the Director to properly review the application, such as photographs or an arborist report concerning the health and quality of the tree and possible alternative actions.
- C. Application review. The Director shall review the application and inspect the subject tree. The Director may refer the application to the Downtown Street Improvement Master Plan Implementation Committee (DSIMPIC), Design Review Commission, Planning Commission, or City Council. The Director

may refer the application to an arborist or landscape consultant with arborist certification for additional review and report. The applicant shall pay the costs of this additional review and report.

- D. Determination. Within thirty-days of deeming an application complete, the Director shall approve, conditionally approve, or deny the application. If the application is referred to the DSIMPIC, Design Review Commission, Planning Commission, or City Council, then the application shall be approved, conditionally approved, or denied within sixty-days of the date the application is deemed complete. In acting on the application, the Director, Design Review Commission, Planning Commission, or City Council shall consider the following:
1. Health, condition and form of the tree;
  2. Number, size and location of other trees to remain in the area;
  3. Relationship of the property to riparian corridors, a scenic or biological resource area or a restricted ridgeline area;
  4. Role of the tree in a tree grove or woodland habitat;
  5. Value of the tree to the neighborhood in terms of visual effect, wind screening and privacy;
  6. Damage caused by the tree to utilities, streets, sidewalks or existing private structures or improvements;
  7. Role of the tree in mitigating drainage, erosion or geologic stability impacts; and
  8. Health and condition of the area within the protected perimeter.
- E. Permit conditions. The permit may include reasonable conditions, such as planting replacement trees pursuant to subsection 6-1707(G).
- F. Expiration of permit. The permit is valid for sixty-days from the date of issuance unless a longer period is stated in the permit. If the applicant does not begin the work authorized by the permit by the expiration date, the permit shall expire.

(Ord. No. 593, § 1(Exh. A), 3-22-2010; Ord. No. 633, § 4(exh. A), 10-14-2014)

**6-1707 Permit category II: Protected tree on developed or undeveloped property associated with development application.**

- A. Permit required. A category II permit is required if the proposed construction may result in the destruction or removal of a protected tree.
- B. Application. An application for a category II permit shall be filed with the Director concurrently with the development application. The category II application shall be on a form approved by the City together with a fee fixed by resolution by the City Council. The application shall include the following information:

1. Depending on the type of development application, one of the following is required:
    - a. Site plan showing the trunk location, diameter, species and dripline of each protected tree within fifty-feet of any proposed construction on the subject property and adjacent properties and indicating which protected tree is proposed to be pruned or removed; or
    - b. For those development applications that require a survey by a licensed surveyor or engineer, a field-verified topographical survey showing the trunk location, elevation at the base, diameter, species and accurate dripline of each protected tree within 100-feet of any proposed construction on the subject property and adjacent properties, and a table that identifies each protected tree, its diameter and species, and whether the tree is proposed to be pruned or removed; and
  2. Arborist report; and
  3. Statement justifying the removal of each protected tree; and
  4. Evidence of compliance with the requirements of responsible agencies for the removal of a protected tree if applicable; and
  5. Supplemental information required by the Director.
- C. Application review. The category II permit application shall be reviewed concurrently with the development application by the Director, DSIMPIC, Design Review Commission, Planning Commission or City Council as required by type of development application. The Director may refer the applicant's arborist report to an arborist for peer review. The applicant shall pay the cost of a peer review.
- D. Determination. Within thirty-days of deeming an application complete or within the time limit associated with the review of the discretionary development application, the Director, Design Review Commission, Planning Commission, or City Council shall approve, conditionally approve, or deny the application based on the factors in subsection 6-1706(D) and the following additional factors:
1. Necessity for the pruning or removal in order to construct a required improvement on public property or within a public right-of-way or to construct an improvement that allows reasonable economic enjoyment of private property;
  2. Extent to which a proposed improvement may be modified to preserve and maintain a protected tree; and
  3. Extent to which a proposed change in the existing grade within the protected perimeter may be modified to preserve and maintain a protected tree.
- The City shall not issue a building permit or a grading permit until after the Director, Design Review Commission, Planning Commission, or City Council makes a determination on the category II permit.
- E. Permit condition. An approved category II permit shall include a condition where the applicant shall guarantee the health and vigor of each protected tree to be preserved during construction as provided



in subsection (F) of this section and shall enter into a landscape maintenance agreement with the City assuring the long-term maintenance of the protected trees. The applicant shall replace a protected tree that is removed or destroyed without approval as provided in section 6-1710.

F. Tree protection during construction. The applicant shall comply with the following requirements:

1. Before the start of construction, the applicant shall install fencing per City specifications at the perimeter of the protected area, or other area identified in an arborist report, of each protected trees to be preserved as shown on the approved construction plans. The Director shall inspect and approve the fencing and its location before the issuance of a development permit.
2. No construction may occur within the perimeter of the protected area unless approved as a condition of the application. The Director may require an arborist to be present to observe the construction and prepare a report identifying further requirements for tree protection upon completion of construction.
3. No construction may occur within the perimeter of the protected area until pruning of the tree required for access of construction equipment is completed under the supervision of an arborist.
4. Under each circumstance where an arborist is required to supervise or observe construction, the arborist may require additional mitigation measures or halt construction if necessary to protect the subject trees. The applicant shall pay the costs of an arborist's supervision or observation.
5. The parking or storing of a vehicles, construction trailers, equipment and material shall not be allowed within the perimeter of the protected area of a tree to be preserved.

G. Protected tree replacement. When the removal or destruction of a protected tree is permitted, the applicant shall comply with the following requirements:

1. For each six-inches or its fraction of the diameter of the tree to be removed, two (2) 15-gallon trees shall be planted. If the tree that is removed is listed in subsections 6-1702(P)(1) and 6-1702(P)(3), each replacement tree shall be:
  - a. The same genus and species as the removed or destroyed tree; or
  - b. An alternative species approved by the Director.
2. The Director may require larger trees for the benefit of the project. In addition, the Director, Design Review Commission, Planning Commission or City Council may substitute a lesser number of larger trees or another species based on the finding from an arborist that such a substitution will be more beneficial to the health and vigor of other protected trees on the property. The following qualify as substitution ratios.
  - a. One (1) 24" box sized tree equals two (2) 15-gallon replacement trees;
  - b. One (1) 36" box sized tree equals four (4) 15-gallon replacement trees;
  - c. One (1) 48" box sized tree equals eight (8) 15-gallon replacement trees;

- d. One (1) 60" box sized tree equals sixteen (16) 15-gallon replacement trees; or
  - e. One (1) 72" box sized tree equals thirty-two (32) 15-gallon replacement trees
3. If the property associated with the development application cannot accommodate a replacement tree, as a condition of the permit, the applicant shall make an in-lieu payment of an amount set by resolution by the City Council for each 15-gallon replacement tree. The in-lieu payment shall be used by the City for a tree education and planting program. The Director may waive the in-lieu payment when the protected tree is not a native species.
  4. The Director, Design Review Commission, Planning Commission or City Council may reduce the amount of required replacement trees at its discretion due to the project's site conditions and if it finds that the reduction will be beneficial to the health and vigor of other protected trees on the property.
  5. If the City approves a tree removal request as part of a major tree removal project, the mitigation shall be the payment or planting, or combination thereof, equal to the full appraised value of the trees removed. The value of replacement trees shall be as set forth on the City's adopted fee schedule. The appraised value shall be determined by the City based on the *Council of Tree & Landscape Appraisers Guide for Plant Appraisal*.
- H. Permit expiration. A permit is valid for the same period of time as the approved development permit. If the work authorized by the permit is not started before the expiration date, the permit expires.

(Ord. No. 593, § 1(Exh. A), 3-22-2010; Ord. No. 633, § 4(exh. A), 10-14-2014)

**6-1708 Tree maintenance by private parties.**

Except for trees planted by the City, it shall be the property owner's responsibility to maintain trees within the public right-of-way directly adjacent to private property.

(Ord. No. 593, § 1(Exh. A), 3-22-2010; Ord. No. 633, § 4(exh. A), 10-14-2014)

**6-1709 Restriction on the issuance of a development permit.**

A development permit may not be issued for construction on a property upon which a protected tree was destroyed or removed without a permit for a period of five years from the date of violation as determined by the Director. The Director may waive this time limit if the tree is replaced as provided in section 6-1710. The restriction on the issuance of a development permit applies to a successor-in-interest in the subject property. Upon transfer of the property, the owner shall notify the successor-in-interest of the violation of this chapter. The Director may record a notice of violation on the property with the Contra Costa County Recorder.

(Ord. No. 593, § 1(Exh. A), 3-22-2010; Ord. No. 633, § 4(exh. A), 10-14-2014)

**6-1710 Restitution and replacement of protected trees.**

A person who destroys or removes a protected tree in violation of this chapter shall pay restitution to the City by replacing each six-inches or its fraction of the diameter of the protected tree with four (4) replacement 24" box trees of the same species. The replacement trees shall be planted on the property on which the protected tree was destroyed or removed. Based on a report by an arborist that includes an appraisal of the damage, where feasible, and recommendations for replacement, the Director may impose additional requirements to ensure the health of the replacement trees for a minimum of two years and /or may authorize the substitution of a greater number of smaller trees, lesser number of larger trees or on another property if it is found that a substitution is more beneficial to health and vigor of other protected trees on the property. The person responsible for the destruction or removal of a protected tree shall pay the cost of the arborist report.

If the Director determines the property cannot accommodate replacement trees, an in-lieu payment of an amount set by resolution by the City Council shall be required for each replacement tree. All in-lieu payments shall be used by the City for tree education programs or planting programs.

A person who destroys or removes more than twenty-five protected trees, a major tree removal project, in violation of this chapter shall pay restitution to the City by replacing each six-inches or its fraction of the diameter of the protected tree with four (4) replacement 24" box trees of the same species and pay the appraised values of the trees removed. The appraised value shall be determined by the City based on the *Council of Tree & Landscape Appraisers Guide for Plant Appraisal*.

(Ord. No. 593, § 1(Exh. A), 3-22-2010; Ord. No. 633, § 4(exh. A), 10-14-2014)

**6-1711 Enforcement.**

A person who violates this chapter is liable in a civil action in an amount set by resolution by the City council for each violation.

(Ord. No. 593, § 1(Exh. A), 3-22-2010; Ord. No. 633, § 4(exh. A), 10-14-2014)

**6-1712 Appeal.**

An appeal of a decision made pursuant to this chapter is governed by sections 6-217 through 6-238 or section 8-2110.

(Ord. No. 593, § 1(Exh. A), 3-22-2010; Ord. No. 633, § 4(exh. A), 10-14-2014)

**6-1713 Nonliability of the City.**

Nothing in this chapter imposes liability upon the City or its officers or employees, or relieves the owner or occupant of private property from the duty to keep in safe condition a tree or other vegetation upon private property or upon or within a public right-of-way or easement adjacent to the private property.

(Ord. No. 593, § 1(Exh. A), 3-22-2010; Ord. No. 633, § 4(exh. A), 10-14-2014)