

WHEREAS, on January 23, 2023, the City Council considered and certified an environmental impact report (“EIR”) for the Housing Element (SCH# 2021080038) (“Housing Element EIR”) and on August 28, 2023, considered and adopted an Addendum to the Housing Element EIR with regard to the Safety Element (“Safety Element Addendum”); and

WHEREAS, pursuant to the California Environmental Quality Act (“CEQA”), staff evaluated the previously certified Housing Element EIR and the Safety Element Addendum to the EIR and determined that there are no substantial changes to the Housing Element, Safety Element, and/or circumstances that would result in new significant environmental impacts or a substantial increase in severity of significant impacts already identified in the previously certified EIR; and

WHEREAS, on October 21, 2024, the Planning Commission conducted a duly noticed public hearing pursuant to Government Code section 65854, at which time all persons wishing to testify in connection with the TPO were heard and the TPO was fully studied; and

WHEREAS, on November 12, 2024, the City Council conducted a duly noticed public hearing pursuant to Government Code section 65854, at which time all persons wishing to testify in connection with the TPO were heard and the TPO was fully studied, and Councils suggestions were give to staff; and

WHEREAS, on November 25, 2024, the City Council conducted a duly noticed public hearing pursuant to Government Code section 65854, at which time all persons wishing to testify in connection with the TPO were heard and the TPO was fully studied; and

WHEREAS, the City Council finds the ordinance update process evaluated issues with the existing ordinance and explored options for changes based on evidence and best practices in other communities and subject matter experts, as well as input from residents and community members;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are incorporated by reference and adopted as findings by the City Council.

Section 2. CEQA. This Ordinance, amending Chapter 6-17 titled “Tree Protection” of Title 6 of the Lafayette Municipal Code (“Project”), was assessed in accordance with the authority and criteria contained in CEQA, the State CEQA Guidelines, and the environmental regulations of the City. The City Council has reviewed and considered the Housing Element EIR, Safety Element Addendum, and any oral or written comments received, and the administrative record prior to making any decision on the Project. The City Council finds that the EIR and Addendum contain a complete and accurate reporting of all of the environmental impacts associated with the Project.

Section 3. Findings on the Necessity for a Subsequent or Supplemental Environmental Impact Report. Based on the substantial evidence set forth in the record, including but not limited to, the EIR and Addendum, and all related information presented to the City Council, the Council finds, pursuant to CEQA Guidelines section 15162, that the preparation of a subsequent or supplemental MND or EIR is not required for the Project because the Project:

- A. Will not result in substantial changes that would require major revisions of the EIR and Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
- B. Will not result in substantial changes with respect to the circumstances under which the Proposed Project is developed that would require major revisions of the EIR and Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and
- C. Does not present new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIR and Addendum documents were certified showing any of the following:

- (i) The Project would have one or more significant effects not discussed in the EIR and Addendum;
- (ii) That significant effects previously examined would be substantially more severe than shown in the EIR and Addendum;
- (iii) That mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the lead agency declined to adopt such measures; and
- (iv) That mitigation measures or alternatives considerably different from those analyzed would substantially reduce one or more significant effects on the environment, but which the lead agency declined to adopt.

Section 4. Findings on Environmental Impacts. Having considered the administrative record, the EIR and Addendum, and all written and oral evidence presented to the City Council, the Council finds that all environmental impacts of the Proposed Project have been addressed within the EIR and Addendum. The City Council finds that no new or additional mitigation measures or alternatives are required. The City Council further finds that there is no substantial evidence in the administrative record supporting a fair argument that the Proposed Project may result in any significant environmental impacts beyond those analyzed in the EIR and Addendum.

Section 5. Amendment. Chapter 6-17, "Tree Protection," of Title 6 of the Lafayette Municipal Code is hereby amended to read as set forth in the attached "Exhibit A," incorporated herein by this reference.

Section 6. Findings. Based on the entire record before the City Council and all written and oral evidence received at the public hearing on this matter, the City Council hereby finds that the proposed ordinance amendments are consistent with the General Plan and each of its elements and all elements therein because:

- A. The General Plan includes a stated goal to "[e]nsure that development respects the natural environment of Lafayette. Preserve the scenic quality of ridgelines, hills, creeks, and trees" (Goal LU-2); and
- B. The General Plan includes as a stated goal to "[p]reserve and enhance the open space scenic viewsheds, and semi-rural qualities around the residential entryways to Lafayette" (Goal LU-5); and
- C. The General Plan includes as a stated goal to "[m]aintain the semi-rural character and beauty of the City by preserving its open and uncluttered natural topographic features" (Policy OS-3); and
- D. The General Plan includes as a stated policy to "[p]reserve existing woodlands and associated vegetation" (Policy OS-4.3); and
- E. The General Plan includes as a stated policy to "[p]rotect important groves of trees and significant existing vegetation...and avoid the cutting of mature trees" (Policy OS-4.4); and
- F. The General Plan includes as a stated program to "[r]equire that site planning, construction and maintenance of new development preserve existing healthy trees and native vegetation to the maximum extent feasible" (Program OS-4.4.1); and
- G. The General Plan includes a stated program to "[e]stablish defensible space for new and existing buildings in Very High Fire Hazard Severity Zones" (Program S-4.4.2); and
- H. The General Plan includes a program to "[e]volve the Tree Protection Ordinance to address fire risks created by dead, dying, or non-native trees" (Program S-4.4.3); and

I. The General Plan includes a program to “[e]valuate, and revise as needed, City requirements for vegetative landscaping and tree planting to provide increased shade for sidewalks, parking lots, plazas, and other open space” (Program S-6.5.1); and

The City Council further finds that the proposed ordinance amendments are consistent with adopted City plans, including the Downtown Street Improvement Master Plan, the Downtown Specific Plan, and the Downtown Creeks Preservation, Restoration, and Development Plan.

Section 7. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivisions, paragraph, sentence, clause or phrase of this ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this ordinance are declared to be severable.

Section 8. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption, including the names of the City Council members who voted for and against its passage.

Section 9. Public Records. The location and custodian of the documents and any other material which constitute the record of proceedings upon which the City Council based its decision is as follows: City Clerk, City of Lafayette, 3675 Mt. Diablo Blvd #210, Lafayette, CA 94549.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Lafayette held on November 25, 2024 and was adopted at a meeting of the City Council held on December 9, 2024 by the following vote:

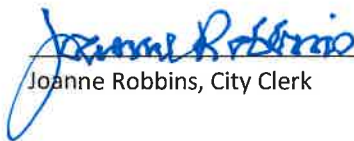
AYES: **Dawson, Kwok, Anduri, Candell and McCormick**

NOES: **None**

ABSTAIN: **None**

ABSENT: **None**

ATTEST:


Joanne Robbins, City Clerk



APPROVED:


Gina M. Dawson, Mayor

Attachments

- A. Exhibit A: Chapter 6-17, Tree Protection

Exhibit A: Chapter 6-17 TREE PROTECTION

6-1701 Findings and Purpose.

(a) Findings. The City Council finds that:

- (1) Preservation of trees enhances natural scenic beauty, increases property values, encourages quality development, aids in tempering the effects 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.
- (2) In order 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, removed, or extensively pruned.
- (3) Protected trees are valuable assets to the city and the community, and the public shall be compensated whenever a protected tree is destroyed, removed, or extensively pruned in a manner that is not in compliance with this chapter.

(b) Purpose. The purposes of this chapter are to:

- (1) Implement policies of the City of Lafayette General Plan, Downtown Street Improvement Master Plan, Downtown Specific Plan, and Downtown Creeks Preservation, Restoration and Development Plan.
- (2) Provide clear standards for the protection, removal, and replacement of trees on private property and in public rights-of-way.
- (3) Protect existing woodlands and associated vegetation, protect native trees, preserve riparian habitat, encourage the planting of appropriate species, and avoid the unnecessary cutting of mature trees.
- (4) Prevent unnecessary loss and minimize damage from improper tree pruning.
- (5) Establish vegetation management practices that reduce the risk of wildfire ignition and spread. Establish defensible space for new and existing buildings.
- (6) Encourage the planting of replacement trees that are well-adapted to the climate and conditions in Lafayette, well-suited to their specific location, and spaced to promote healthy tree growth and to be consistent with defensible space guidelines.
- (7) Effectively enforce tree protection regulations and avoid unpermitted removal, destruction, or extensive pruning of protected trees.

6-1702 Definitions.

In this chapter, unless the context otherwise requires, the following terms shall have the following meanings:

(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 by an arborist developed in a manner consistent with the guidelines for report writing established by the American Society of Consulting Arborists and including, at a minimum, the following information:
- (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) "City Landscape Consultant" means a person employed or retained by the City to advise the City on forestry and landscape matters.
- (d) "Commercial zoning district" means business and commercial districts, as further described in Chapter 6-9 of the Lafayette Municipal Code (LMC).
- (e) "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.
- (f) "Creek" shall mean a creek shown on the City geographic information system (GIS) map.
- (g) "Dead tree" means a tree that is no longer alive or is in an advanced state of decline in which an insufficient amount of live tissue, green leaves, limbs or branches exists to sustain life.
- (h) "Defensible space" means the area adjacent to a structure or dwelling where wildfire prevention or protection practices are implemented to provide defense from an approaching wildfire or to minimize the spread of a structure fire to wildlands or surrounding areas, as defined in California Government Code § 51177. "Defensible space" also means a buffer between buildings or structures and plants, brush, trees, or other combustible material that could ignite in the event of a fire. The creation of defensible space involves the selection, location, spacing, and maintenance of vegetation and other combustible material in zones around a building or structure. Defensible space zones include:
- (1) Zone Zero. The horizontal area within the first five feet around a building and any attached decks or stairs, as well as the area under attached decks and stair landings.

- (2) Zone One. The horizontal area extending from five to 30 feet from the perimeter of a building and any attached decks or stairs.
- (3) Zone Two. The horizontal area extending from 30 to 100 feet from the perimeter of a building and any attached decks or stairs.
- (i) "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.
- (j) "Developed property" means an existing lot of record that has an existing building, as defined in Section 6-312, Definitions, built with a legally issued building permit.
- (k) "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.
- (l) "Diameter" or "diameter at standard height (DSH)" means the distance across a tree from outside bark to outside bark, measured at 4.5 feet above the natural grade. . For multi-trunk trees, the diameter is determined by measuring all the trunks, then adding the diameter of the largest trunk to one-half the diameter of each additional trunk.
- (m) "Director" means the Planning and Building Department Director or the Director's designee.
- (n) "Dripline area" means the area surrounding a tree trunk whose outer perimeter is defined by the length of the outermost branch tips, and which extends vertically to below the ground.
- (o) "Excluded species" means a tree species that is invasive, fire-prone, or otherwise undesirable to protect and retain. Excluded tree species are the following:
 - (1) Acacia (Acacia spp.)
 - (2) Arborvitae (Thuja spp.)
 - (3) Bald cypress (Taxodium distichum)
 - (4) Cypress (Cupressus spp.)
 - (5) Dawn redwood (Metasequoia glyptostroboides)
 - (6) Douglas fir (Pseudotsuga menziesii)
 - (7) Eucalyptus (Eucalyptus spp.)
 - (8) False cypress (Chamaecyparis spp.), except dwarf
 - (9) Hemlock (Tsuga spp.)
 - (10) Japanese Cedar (Cryptomeria japonica)

- (11) Palms (entire palm family)
 - (12) Pepper tree (*Schinus* spp.)
 - (13) Pines (*Pinus* spp), except dwarf mugo (*Pinus mugo*)
 - (14) Red shanks (*Adenostama sparsifolium*)
 - (15) Spruces (*Picea* spp.)
 - (16) Tree of heaven (*Ailanthus altissima*)
 - (17) Yew (*Taxus* spp.), except dwarf
- (p) "Extensively prune" means to remove more than 25 percent of the functioning leaf, stem or root area of a tree within a two-year period. "Extensively prune" also includes improper pruning, which employs techniques that result in negative physiological or structural impacts on the tree, such as topping.
- (q) "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, destruction, or extensive pruning of more than 25 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.
- (r) "Native riparian species" or "riparian species" means a tree that is indigenous to a riparian habitat along a perennial or intermittent creek, stream or other watercourse and that is within 30 feet of the top of a creek bank. For the purposes of this chapter, "native riparian species" of trees shall include:
- (1) Arroyo willow (*Salix lasiolepis*);
 - (2) Bigleaf maple (*Acer macrophyllum*);
 - (3) Black walnut (*Juglans hindsii*);
 - (4) Blue elderberry (*Sambucus Mexicana, aerulea, or glauca*).
 - (5) Boxelder (*Acer negundo*);
 - (6) California bay (*Umbellularia californica*);
 - (7) California buckeye (*Aesculus californica*);
 - (8) Coast live oak (*Quercus agrifolia*);
 - (9) Cottonwood (*Populus fremontii*);
 - (10) Red willow (*Salix laevigata*);
 - (11) Valley oak (*Quercus lobata*);
 - (12) White alder (*Alnus rhombifolia*);
- (s) "Native species" means a tree indigenous to a Lafayette oak woodland, chaparral, grassland or riparian habitat. For the purposes of this chapter, "native species" shall include:

- (1) Black oak (*Quercus kelloggii*);
 - (2) Blue oak (*Quercus douglasii*);
 - (3) California bay (*Umbellularia californica*);
 - (4) California buckeye (*Aesculus californica*);
 - (5) Canyon oak (*Quercus chrysolepis*);
 - (6) Coast live oak (*Quercus agrifolia*);
 - (7) Cork oak (*Quercus suber*);
 - (8) Interior live oak (*Quercus wislizenii*);
 - (9) Madrone (*Arbutus menziesii*).
 - (10) Oregon white oak (*Quercus garryana*);
 - (11) Valley oak (*Quercus lobata*);
- (t) "Protected tree" means a tree that is protected by Section 6-1704(b) of this chapter.
- (w) "Prune" means the removal of tree parts. See also "extensively prune."
- (x) "Recommended species" means a native or nonnative tree species that is well suited to the climate and conditions in Lafayette. Recommended tree species include the following, with riparian species marked with an "(R)":
- (1) Large (canopy-level)
 - A. Bigleaf maple (*Acer macrophyllum*) (R)
 - B. Black oak (*Quercus kelloggii*)
 - C. Blue oak (*Quercus douglasii*)
 - D. Box elder (*Acer negundo*) (R)
 - E. Coast live oak (*Quercus agrifolia*)
 - F. Engelmann oak (*Quercus engelmannii*)
 - G. Fremont cottonwood (*Populus fremontii*) (R)
 - H. Island oak (*Quercus tomentella*)
 - I. Oregon white oak (*Quercus garryana*)
 - J. Pacific madrone (*Arbutus menziesii*) (R)
 - K. "Roberts" western sycamore (*Platanus racemosa*) (R)
 - L. Shreve oak (*Quercus parvula* var. *shrevei*)
 - M. Valley oak (*Quercus lobata*)
 - N. Western sycamore (*Platanus racemosa*) (R)
 - O. White Oak (*Quercus alba*)

(2) Medium (midstory)

- A. Bitter cherry (*Prunus emarginata*)
- B. Canyon live oak (*Quercus chrysolepis*)
- C. Catalina cherry (*Prunus ilicifolia* ssp. *lyonii*)
- D. Chokecherry (*Prunus virginiana*)
- E. Hollyleaf cherry (*Prunus ilicifolia*)
- F. Interior live oak (*Quercus wislizeni*)
- G. Santa Cruz Island ironwood (*Lyonothamnus floribundus* ssp. *aspleniifolius*)

(3) Small (understory or arborescent shrub)

- A. Arroyo willow (*Salix lasiolepis*) (R)
- B. Black elderberry (*Sambucus nigra* ssp. *caerulea*) (R)
- C. Blueblossom ceanothus (*Ceanothus thyrsiflorus*)
- D. Brown dogwood (*Cornus glabrata*) (R)
- E. California coffeeberry (*Frangula californica*)
- F. Coast silktassel (*Garrya elliptica*)
- G. Davis Gold toyon (*Heteromeles arbutifolia* 'Davis Gold')
- H. Island ceanothus (*Ceanothus arboreus*)
- I. Leather oak (*Quercus durata*)
- J. Mountain mahogany (*Cercocarpus betuloides*)
- K. Pacific wax myrtle (*Morella californica*) (*Myrica californica*)
- L. Pacific willow (*Salix lasiandra*) (R)
- M. Quailbush (*Atriplex lentiformis*)
- N. Ray Hartman ceanothus (*Ceanothus* 'Ray Hartman')
- O. Redtwig dogwood (*Cornus sericea*) (R)
- P. Scrub oak (*Quercus berberidifolia*)
- Q. St. Helena manzanita (*Arctostaphylos manzanita* 'St. Helena')
- R. Toyon (*Heteromeles arbutifolia*)
- S. Western redbud (*Cercis occidentalis*)

(y) "Relocate" means to move a tree from one location to another location on the same site or a different site.

(z) "Remove" means to cut down or extract a tree.

- (aa) "Restricted ridgeline area" means an area within 400 feet of a class I ridge or within 250 feet of a class II or class III ridge, as designated on the Lafayette Area Ridge Map pursuant to subsection 6-2004(a)(1).
- (bb) "Riparian area" means land located within 30 feet of the top-of-bank of a creek, as defined in Chapter 6-18, Flood Damage Prevention.
- (cc) "Topping" means cutting the top off a tree. It is a pruning cut that removes the main stem or stems between nodes, buds or laterals, or a lateral branch or limb not large enough to assume the terminal role that generally results in serious decay and/or permanent alteration of the tree's structure.
- (dd) "Tree" means a large woody perennial plant with one or more trunks that generally reaches a minimum height of 10 feet at maturity. It does not include shrubs shaped to tree forms.
- (ee) "Tree Permit" means a Category I or Category II tree removal permit.
- (ff) "Tree protection zone" means the delineated area encompassing the rooting zone of a tree to be protected from encroachment by construction activities by temporary fencing. The area is determined by projecting from the base of the trunk two feet for every one inch of trunk diameter.
- (gg) "Undeveloped property" means a vacant parcel without an existing building, as defined in Section 6-312, that was built with a legally issued building permit.
- (hh) "Zone Zero." See "defensible space."

6-1703 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, consistent with LMC Section 8-123, Property Owner Responsibility to Repair and Maintain Sidewalk Area. It shall also be the property owner's responsibility to maintain any trees on private property to avoid encroaching into or otherwise negatively affecting any public property, including, but not limited to, dead, decayed, diseased, or hazardous trees that pose a fire or other hazard to the public right-of-way and/or to public property adjoining that of the property owner's, as determined by the Director, in consultation with the City Landscape Consultant, as needed. Nothing in this Chapter 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.

6-1704 Permit required.

- (a) Actions Requiring Permit. A Tree Permit is required to remove, destroy, or extensively prune a protected tree. It is a violation of this chapter for any person to remove, destroy, or extensively prune a protected tree without a Category I or Category II permit under Section 6-1706 or 6-1707, or without qualifying for or receiving an approval for an exception, as applicable, under Section 6-1705.

- (b) Protected Trees. Protected trees are trees that meet any of the following criteria.
- (1) On Developed Property. A tree that is located on a developed property, is of a native species, and has a trunk diameter of 12 inches or more.
 - (2) On Undeveloped Property. A tree that is located on an undeveloped property and that:
 - (A) Is of a native or native riparian species and has a diameter of six inches or more; or
 - (B) Is of any other species and has a diameter of 12 inches or more.
 - (3) Riparian Tree. A tree that is of a native riparian species, is located in a riparian area, on either developed or undeveloped property, and has a trunk diameter of six inches or more, or one component trunk of a multi-trunked tree, in which the component trunk has a diameter of four inches or more.
 - (4) Approved Development Application.
 - (A) A tree of any size or species that was shown on an approved development application prior to adoption of this ordinance on November 25, 2024, and serves an important purpose such as privacy screening between neighbors or visual screening for a building.
 - (B) A tree of any size or species that is specifically designated for protection in the conditions of approval for an approved development application on or after November 25, 2024.
 - (5) Replacement Trees. A replacement tree planted to meet the requirements of section 6-1708, Tree Replacement and Mitigation.
 - (6) Restricted Ridgeline Area. A native species tree of any size located within a restricted ridgeline area.
 - (7) Street Tree. A tree of any size or species located within a public right-of-way or private access easement.
 - (8) Downtown Tree. A tree of any size or species located within a commercial zoning district.

6-1705 Exceptions to Permit Requirements.

In the circumstances described in this section, no Tree Permit is required to remove, destroy, or extensively prune trees, or a permit is required but the permit application fee is waived, as specified.

- (a) Permit Exception with No Required Documentation. The following trees may be removed without a Tree Permit. No documentation is required to be provided to the City prior to their removal, no replacement trees are required, and no fee is charged.
 - (1) Any excluded species, as defined, unless the tree(s) in question meet the description at Section 6-1704(b)(4)(A).

- (2) Any tree with a trunk located within five feet of an existing building or attached structure (e.g., deck), measured from the closest point of the trunk at standard height (4.5 feet above natural grade) to the closest point of the building or attached structure.
 - (3) Notwithstanding the provisions of Section 6-1704(a), Actions Requiring Permit, trees may be extensively pruned to maintain a distance of 10 feet in all directions from an existing building, including 10 feet above the roof of the building and 10 feet from any outlet of a chimney or stovepipe. Such pruning may result in removal of more than 25 percent of the functioning leaf, stem or root area.
- (b) Permit with Waived Fee. In some circumstances, additional documentation is required to be submitted to and verified by the Director, as described below. A Tree Permit is required but the application fee is waived in each of the following circumstances:
- (1) City-maintained Trees. A department of the City proposes to remove a protected tree located in the right-of-way or on property owned or maintained by the City.
 - (2) Dead and Dying Trees. A dead or dying tree in very poor condition may be removed if an arborist report, submitted to the Director, attests that the tree is dead or dying and describes the cause of death. Trees whose dying or deaths is caused by the property owner, applicant, or other party do not qualify for this exception.
 - (3) Privately Maintained Street Trees. A tree may be removed if a department of the City issues a notice or citation to a property owner requiring the owner to repair damage to public infrastructure, and the property owner provides an arborist report stating that the repairs to the infrastructure cannot be made without causing an adjacent tree to die within two years.
 - (4) Fire District Notices. A tree may be removed or extensively pruned to maintain defensible space, or to create or maintain a fuel break, in order to comply with a notice issued to the property owner by the Contra Costa County Fire Protection District (CCC FPD) that identifies the specific trees that must be removed or pruned. Fuel breaks shall be shaded if possible, in consultation with CCC FPD.
- (c) Determination by the Director. The permit requirement may be waived with a determination by the Director in certain circumstances. A request shall be filed with the Director, together with the necessary information that sets forth the basis upon which the applicant believes an exception is warranted. The Director shall review the information submitted and may request additional documentation. The Director will evaluate the request as it relates to the circumstances outlined below 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. The Director may grant an exception in any of the following circumstances:

- (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;
- (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 California Government Code § 51182 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 waterway as determined by the City Engineer or the Public Works Director.

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

- (a) Permit Required. A Category I permit is required to remove, destroy, or extensively prune 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 at a minimum 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 30 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 60 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) Protected Tree Replacement. When the removal, destruction, or excessive pruning of a protected tree is permitted, the applicant shall comply with the requirements of Section 6-1708, Tree Replacement and Mitigation.
- (f) Permit Conditions. The permit may include reasonable conditions.
- (g) Expiration of Permit. The permit is valid for 60 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.

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, removal, or extensive pruning 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 at a minimum include the following information:
- (1) Depending on the type of development application, one of the following is required:
 - (A) A site plan showing the trunk location, diameter, species and dripline of each protected tree within 50 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 50 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 30 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), Determination, 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 whereby the applicant shall guarantee the health and vigor of each protected tree to be preserved during construction, as provided in subsection (f), Tree Protection During Construction, of this section and shall enter into a landscape maintenance agreement with the City to ensure the long-term maintenance of the protected trees.

- (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 tree protection zone, or other area identified in an arborist report, 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 tree protection zone 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 tree protection zone 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 vehicle, construction trailer, equipment, or materials is prohibited within the perimeter of the tree protection zone.
- (g) **Protected Tree Replacement.** When the removal, destruction, or extensive pruning of a protected tree is permitted, the applicant shall comply with the requirements of Section 6-1708, Tree Replacement and Mitigation.
- (h) **Timing of Associated Permit Issuance.** 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.
- (i) **Permit Expiration.** A Category II permit is valid for the same period of time as the approved development permit. If the work authorized by the development permit is not started before the expiration date, the Tree Permit will also expire.

6-1708 Tree Replacement and Mitigation.

- (a) **Number and Size.** For each protected tree that is removed, destroyed, or extensively pruned, the following replacement ratios shall be used, with all replacement trees of at least a 15-gallon container size:
- (1) For trees less than 24", one replacement tree shall be planted (1:1)
 - (2) For trees 24" or greater, but less 30", two replacement trees shall be planted (2:1)
 - (3) For trees 30" or greater, three replacement trees shall be planted (3:1)

- (b) Location. If the removed, destroyed, or extensively pruned tree was located on private property, the replacement tree shall be planted on the same property. Replacement trees shall not be planted within five feet of an existing or proposed building or attached structure (Zone Zero). If the removed, destroyed, or extensively pruned tree was located in a public right-of-way or private access easement, the replacement tree shall be planted along the same frontage. The replacement tree may be planted in another portion of the right-of-way, as close as is feasible to the original location, if the Director, in consultation with the Public Works Director, determines that one or more of the following conditions exists:
- (1) There is no feasible location to plant a replacement tree along the same frontage without interfering with existing infrastructure or creating a reasonably foreseeable conflict with infrastructure; or
 - (2) Placement along the same frontage would not result in optimal street tree spacing or foster healthy tree growth.
- (c) Species.
- (1) If the removed, destroyed, or extensively pruned tree is of a native riparian species, as defined, the replacement tree shall be of a native riparian species.
 - (2) If the removed, destroyed, or extensively pruned tree is not of a native riparian species, the replacement tree shall be of a recommended species, as defined. The replacement tree shall be of the same size group (canopy-level, midstory, or understory) as the removed tree. A replacement tree may be selected from a different size group than the removed tree only if an arborist report recommends a differently sized tree based on planting area or other site conditions.
- (d) Timing.
- (1) When a Category I permit is approved, replacement trees shall be planted within the months of October to April, and either within 60 days or within the calendar year, whichever time period is longer. Proof of the planting of replacement trees shall be provided to the Director within 30 days of planting.
 - (2) When a Category II permit is approved, planting shall occur as part of installation of the approved landscape plan associated with the development project and before the project receives its final building inspection.
 - (3) Failure to plant required replacement trees within these time periods shall be considered a violation of this chapter.
- (e) Exceptions. No replacement tree planting shall be required if:
- (1) The removal of a tree is exempt from the requirement for a permit, pursuant to Section 6-1705(a), Exceptions to Permit Requirements; or
 - (2) An arborist report recommends that planting additional trees on the property would adversely affect the healthy growth of existing or new trees; or

- (3) An arborist report states that the planting of additional trees on the property would result in spacing closer than recommended by the most recent defensible space guidelines published by the State Board of Forestry and Fire Protection; or
- (4) An arborist report states that, due to building and property line locations, or other conditions, the only available locations for tree planting would lie within Zone Zero (within five feet of an existing building or attached structure).

6-1709 Violations and Penalties.

When protected trees are removed, destroyed, or extensively pruned without a permit, replacement trees are not planted within the required time period, or other violations of this chapter occur, the following actions may be taken.

- (a) **Stop Work Order.** If a violation occurs during development, the City may issue a stop work order suspending and prohibiting further activity (including construction, inspection, and issuance of certificates of occupancy) on the property pursuant to the grading, demolition, and/or building permit(s) until a Tree Permit for the illegally removed, destroyed, or pruned tree(s) has been applied for and approved by the Director.
- (b) **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, removed, or extensively pruned 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 6-1708, Tree Replacement and Mitigation, and penalties are paid for the violation. The restriction on the issuance of a development permit applies to any 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.
- (c) **Replacement Trees.** A person who destroys, removes, or extensively prunes a protected tree in violation of this chapter shall apply for a Tree Permit according to Sections 6-1704, 6-1706, and 5-1707, and plant replacement trees according to the requirements of Section 6-1708, Tree Replacement and Mitigation.
- (d) **Penalties.** Any person who violates this chapter shall be subject to a civil fine or penalty. Violations shall be treated as a strict liability offense and may be prosecuted pursuant to Chapter 1-3, Penalty Provisions, or any other applicable statute or provision of law, whether criminal, civil, or administrative. The fine shall be based on the diameter of the protected tree that was removed, destroyed, or extensively pruned, according to the following provisions and table.
 - (1) **Diameter of Removed Trees is Cumulative.** If more than one protected tree on the same property is removed, destroyed, or extensively pruned in violation of this chapter, the fine for each tree shall be calculated, and then the fines for all trees shall be summed to determine the total fine.

- (2) Fines Double for Subsequent Violations. A second violation occurs if this chapter is violated on the same property under the same ownership. For any violations after the second, fines double with each subsequent offense. (For example, the fine for removing a 20" diameter tree would be \$2,500 as a first violation, \$5,000 as a second violation, \$10,000 as a third violation, and \$20,000 as a fourth violation.)

PENALTIES FOR VIOLATION		
Diameter of Removed Tree(s) (inches)	Penalty, First Violation	Penalty, Second Violation
<12"	\$1,000	\$2,000
12" – 23.99"	\$2,500	\$5,000
24" – 35.99"	\$5,000	\$10,000
36" – 47.99"	\$7,500	\$15,000
>48"	\$10,000	\$20,000

- (3) Failure to Plant Replacement Tree. The failure to plant a required replacement tree within the required time period, pursuant to Section 6-1708, Tree Replacement and Mitigation, is considered a violation of this chapter. The applicant shall be subject to a penalty based on the diameter of the removed tree, according to the table in this subsection.
- (e) Penalties—Major Tree Removal. A person who destroys, removes, or extensively prunes more than 25 protected trees in violation of this chapter shall pay a penalty equal to the appraised values of the trees removed. The appraised value shall be determined by the City based on the most current issue of "A Guide to Plant Appraisal" published by the International Society of Arboriculture.
- (f) If any violation of this chapter is deemed a nuisance pursuant to Chapter 8-21, Code Enforcement, it may be abated by the City. Any administrative costs incurred by the City for a violation of this chapter shall be recoverable in the same manner as described in chapter 8-21, Code Enforcement.
- (g) The remedies and penalties provided in this section are cumulative and not exclusive.

6-1710 Appeal.

An appeal of a decision made pursuant to this chapter is governed by Sections 6-225 through 6-238 or Section 8-2110 of the LMC.

6-1711 Nonliability of the City.

Nothing in this chapter imposes liability upon the City or its officers or employees.