

Chapter 15.70

TREE PROTECTION

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15.70.010 Purpose. The City of Clayton contains many species of trees that are of great significance. It is recognized that the preservation of these trees enhances natural scenic beauty, sustains potential increases in property values, encourages high-quality development, maintains the natural ecology, tempers extremes in climate, prevents erosion of top soil, aids in reducing air pollution, provides habitat for wildlife, and preserves the identity, character, and rural tradition of the City. For these reasons, the City Council finds that regulating the removal of trees will promote the health, safety, and general welfare of the residents and property owners within the City consistent with the right of an individual to develop private property in a manner which will not be prejudicial to the public interest. It is not the intent of this ordinance to prevent the removal of undesirable trees or to restrict the reasonable rights of property owners, but only to encourage the planting and retention of desirable trees to protect the beauty and ecological balance of the natural surroundings.

15.70.015 Definitions.

- A. “Development Application” means any proposed project that involves subdivision, alteration, development, or use of a property that requires one or more of the following permits: use permit, site plan permit, demolition permit, building permit, grading permit, encroachment permit, or moving building permit.
- B. “Director” means the Community Development Director, including his or her designated representative.
- C. “Protected Tree” means any tree that is of the following varieties: Ash (*Fraxinus Dipetala*); Bay (*Umbellularia Californica*); Box Elder (*Acer Negundo*); Buckeye (*Aesculus Californica*); Cherry (*Prunus Emarginata*, *Prunus Illicifolia*, *Prunus Subcordata*); Cottonwood (*Populus Fremontii*); Elderberry (*Sambucus Mexicana*); Hop Tree (*Ptelea Crenulata*); Madrone (*Arbutus Menziesii*); Maple (*Acer Macrophyllum*); Oak (*Quercus Agrofolia*, *Quercus Chrysolepis*, *Quercus Douglasii*, *Quercus Kelloggii*,

Quercus Lobata, Quercus Wislizeni); Sycamore (Platanus Racemosa); or Walnut (Juglans Hindsii).

- D. "Tree" means a live woody plant having a single perennial stem or a multi-stemmed perennial plant which is over fifteen (15) feet in height at maturity.
- E. "Trunk Diameter" means the diameter of a tree trunk as measured four (4) feet, six (6) inches above natural grade.

15.70.020 Permit Required. A tree removal permit shall be obtained prior to the removal of:

- A. A tree with a single trunk or multiple trunks with a cumulative trunk diameter of six (6) inches or greater, located on private or public property; or
- B. A tree of any size specifically required to be planted as part of a development application, landscape plan, or tree replacement plan approved by the City after April 1, 2005.

15.70.025 Application. A permit application shall be completed and filed with the Community Development Department and shall include:

- A. The application form established by the Community Development Department in order to have the information needed to demonstrate compliance with the standards set forth in Section 15.70.035.
- B. A fee or deposit as established by resolution of the City Council.
- C. A site plan indicating the quantity, location, size, species, and dripline of the tree(s) proposed for removal as well as the tree(s) to be retained.
- D. An arborist report and/or soils report, if required by the Director. The arborist report shall be prepared by a certified arborist. The Director may require the certified arborist to be independent of the tree removal company. The arborist report shall address relevant issues including: health of the tree, soil conditions, irrigation conditions, grade levels of adjacent terrain, structural integrity, and options for removal of the tree.
- E. A tree replacement plan indicating the quantity, location, size, and species of the proposed replacement tree(s), if required by the Director, in accordance with Section 15.70.040.
- F. Any additional items that may be required by the Director to demonstrate compliance with the standards set forth in Sections 15.70.030.A or 15.70.035, as applicable.

15.70.030 Process. Based upon the application the Director shall, in the Director's sole discretion, determine which of the following review procedures is appropriate for review and action upon the application.

- A. Administrative Decision without Notice. The Director may approve or conditionally approve a tree removal permit if the application substantially conforms with one or more of the standards listed below. The Director may deny a tree removal permit if the application does not substantially conform with any of the following standards or the Director may review and act upon the application in accordance with Section 15.70.030.B.

1. The tree is weakened by incurable disease or infestation; age; storm; improper pruning; vandalism; or other injury.
2. The tree is causing damage or clearly posing a danger to an existing structure, improvement, or other tree; and the existing structure, improvement, or other tree cannot be reasonably relocated or modified to alleviate the damage or danger posed by the subject tree and thereby retain the subject tree.
3. The tree needs to be removed to allow construction of an improvement that is related to a development application; and the improvement cannot be reasonably relocated or modified to retain the subject tree.
4. The tree is obstructing or damaging utility service; the tree cannot be reasonably pruned to alleviate the obstruction or damage to the utility service; and the utility service cannot be reasonably relocated or modified to retain the subject tree.
5. The tree will be replaced by replacement tree(s) planted pursuant to a tree replacement plan prepared in accordance with the standards of Section 15.70.040 which fully mitigates the impacts created by the removal of the tree. The Director may waive the requirement for a tree replacement plan if the Director determines that removal of the tree will not cause a significant impact since the tree is minor in nature or existing trees on the property adequately compensate for removal of the tree.

B. **Administrative Decision with Notice.** A notice shall be mailed to the applicant as well as the residents and owners of real property, as shown on the latest assessment roll, located contiguous to or directly across any street abutting the property containing the subject tree. The notice shall provide a general explanation of the nature of request for a tree removal permit; a general description, in text or diagram, of the location of the property containing the subject tree; and a due date, not more than ten (10) days from the date of the notice, for submission of any written comments on the requested tree removal permit. At the conclusion of the comment period, the Director shall evaluate any comments received and take one of the following actions:

1. Approve or conditionally approve a tree removal permit if the application substantially conforms with one or more of the standards set forth in Section 15.70.035.
2. Deny a tree removal permit if the application does not substantially conform with one or more of the standards set forth in Section 15.70.035.
3. Refer the application to the Planning Commission for a decision in accordance with Section 15.70.030.C.

C. **Planning Commission Decision with Notice.** A notice shall be mailed to the applicant as well as the residents and owners of property, as shown on the latest assessment roll, located within three hundred (300) feet of the property containing the subject tree. The notice shall contain the information listed in subsection B above and provide the time, date, and place that the Planning Commission will consider the application. The Planning Commission shall consider the application and approve or conditionally approve the permit if the application substantially conforms with one or more of the

standards set forth in Section 15.70.035. The Planning Commission shall deny the permit if application does not substantially conform with one or more of the standards set forth in Section 15.70.035. Following action by the Planning Commission, a notice of decision shall be mailed to the applicant and any parties who provide testimony or written comments regarding the application.

- D. Permit Expiration. A tree removal permit is valid for ninety (90) days from the date of permit approval, unless otherwise specified.

15.70.035 Standards of Approval. A tree removal permit approved in accordance with Sections 15.70.030.B or C shall not cause or increase erosion in the vicinity of the tree and shall meet at least one of the standards listed below.

- A. The tree is weakened by incurable disease or infestation; age; storm; improper pruning; vandalism; or other injury. At the discretion of the Director or Planning Commission, this condition may require verification by a certified arborist at a cost paid for by the applicant. In situations involving a protected tree, the arborist may be required to be independent of the tree removal company.
- B. The tree is causing damage or posing a danger to an existing structure, improvement, or other tree.
- C. The tree needs to be removed to allow construction of an improvement that is related to a development application.
- D. The tree is obstructing or damaging utility service.
- E. The tree will be replaced by replacement tree(s) planted pursuant to a tree replacement plan prepared in accordance with the standards of Section 15.70.040 which fully mitigates the impacts created by the removal of the tree. The Director or Planning Commission may waive the requirement for a tree replacement plan if the Director or Planning Commission determines that removal of the tree is minor in nature and will not cause a significant impact.

15.70.040 Tree Replacement Plan. A tree replacement plan shall meet the following standards:

- A. At the time of planting, the replacement tree(s) shall meet one of the following criteria or a pro-rated combination of the criteria based upon the trunk diameters of the respective replacement trees:
 - 1. A cumulative trunk diameter that is equal to no less than fifty (50) percent of the trunk diameter of the removed tree.
 - 2. A cumulative trunk diameter that is equal to no less than thirty-three (33) percent of the trunk diameter of the removed tree if the replacement tree(s) are of a variety listed in Section 15.70.015.C as a protected tree. (Ord. 404, 2007)
- B. The replacement tree shall not impede the solar access rights of existing solar panels located on any other property.
- C. The replacement tree shall be irrigated on a regular basis until the tree is established.
- D. The property owner shall remain responsible for the health and survival of the replacement tree(s) for two (2) years after planting. If a replacement tree dies, is

damaged, or removed within the two (2) year period, the property owner shall replace the tree in accordance with the standards in this section and the originally-approved tree replacement plan. If the tree cannot be replaced for any reason, a tree removal permit for the replacement tree shall be obtained in accordance with Section 15.70.020.

- E. The Director or Planning Commission, as applicable, may require a tree replacement plan or a tree mitigation plan to be recorded with the Contra Costa County Recorder, with all recordation costs incurred by the applicant.
- F. If a replacement tree cannot be planted due to limitations of the site, the Director or Planning Commission, as applicable, may require the applicant to pay an in-lieu fee, as established by resolution of the City Council, to the City for the cost of purchasing and installing any tree(s) of equivalent value in public parks, open space areas, or landscape medians. Values established by the International Society of Arboriculture or a comparable arborist organization shall be used for calculating the value of any tree(s) removed.
- G. The replacement tree(s) shall be planted within sixty (60) days of the removal of the tree as otherwise specified by the Director or Planning Commission. (Ord. 404, 2007)

15.70.045 Tree Protection During Construction

- A. Tree Protection Plan Required. A tree protection plan shall be submitted for review and approval as part of a development application if a tree subject to Section 15.70.020 is located within fifty (50) feet of construction (including grading and installation of underground utility lines) associated with the respective development application.
- B. Preparation of Plan. At the discretion of the Director, the tree protection plan shall either be prepared by the applicant or a certified arborist. The applicant shall be responsible for any costs associated with preparation of the plan.
- C. Waiver of Plan. The Director or Planning Commission may waive the requirement for a tree protection plan if the Director or Planning Commission determines that the development activity is minor in nature and will not significantly modify the ground area within or immediately surrounding the dripline of the tree.
- D. Plan Requirements. The tree protection plan shall include, but not be limited to, the following attributes:
 - 1. Identify the location of the tree trunk and dripline of all on- and off-site trees subject to Section 15.70.020.
 - 2. A protective fence shall be installed around all trees subject to the tree protection plan. The protective fence shall be installed prior to commencement of any construction activity and shall remain in place for the duration of construction.

3. Grading, excavation, deposition of fill, erosion, compaction, and other construction-related activities shall not be permitted within the dripline or at locations which may damage the root system of trees subject to the tree protection plan, unless such activities are specifically allowed by the tree protection plan. Tree wells may be used if specifically allowed by the tree protection plan.
4. Oil, gas, chemicals, vehicles, construction equipment, machinery, and other construction materials shall not be allowed within the dripline of trees subject to the tree protection plan.
5. Additional measures may be required, as determined by the Planning Commission or Director.

15.70.050 Emergency Tree Removal. A tree may be removed on an emergency basis under any of the circumstances listed below. The property owner shall retro-actively submit an application to the Community Development Department within seventy-two (72) hours of the tree removal. The application shall be subject to the requirements of Sections 15.70.025 through 15.70.035.

- A. The tree is in a dangerously substandard condition which poses an immediate threat to the safety of persons or structures.
- B. The tree is obstructing the containment of a fire.
- C. The tree is obstructing flood waters in creek beds or waterways, as determined by the City Engineer.

15.70.055 Violation and Penalty.

Any person who destroys or removes a tree in violation of this Chapter shall:

- A. Plant one (1) replacement tree in a twenty-four (24) inch box container for each two (2) inches of the trunk diameter of the destroyed or removed tree. The replacement tree species and locations shall be subject to the review and approval of the Director; or
- B. Pay restitution to the City in accordance with Section 15.70.040.F.
- C. In addition to the foregoing, any violation of this Chapter may be, at the discretion of the City Manager, charged and prosecuted as an infraction or misdemeanor, pursuant to Chapter 1.20.

15.70.060 Appeal. Any decision of the Director, made in accordance with Sections 15.70.030.A and 15.70.030.B, regarding a tree removal permit may be appealed to the Planning Commission within ten (10) days of the decision. Any decision of the Planning Commission regarding the tree removal permit may be appealed to the City Council within ten (10) days of the decision. The person filing the appeal shall file an appeal form stating the grounds of the appeal and pay the appeal fee established by resolution of the City Council. Any decision made by the City Council shall be final.”

(Ord 381, 2005)