ORDINANCE NO.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 29 OF THE LOS GATOS TOWN CODE REGULATING TREE PROTECTION.

WHEREAS, Tree protection preservation is necessary for the health and welfare of the citizens of the Town of Los Gatos in order to provide cooling shade and beauty, increase property values, minimize spread of disease to healthy trees, conserve scenic beauty, prevent erosion of topsoil, protect against flood hazards, counteract pollutants in the air, and generally maintain the climatic and ecological balance of the area; and

WHEREAS, on June 2, 2015, the Town Council adopted Ordinance 2240, the Tree Protection Ordinance, to preserve and enhance the existing healthy tree canopies on individual residential properties as well as the overall neighborhood, in order to maintain the neighborhood character, while allowing flexibility for removal of existing trees that may be inappropriate for an area or causing damage; and

WHEREAS, in implementing the tree ordinance and processing tree removal permit applications, staff proposes minor revisions to the ordinance to provide clarity within the chapter related primarily to fines and penalties; and

WHEREAS, the The Town of Los Gatos Planning Commission held a public hearing on March 23, 2022 and recommended that the Tree Protection Ordinance be amended by the Town Council; and

WHEREAS, the Town Council held a public hearing on April 19, 2022 to consider the recommendation of the Planning Commission; and

WHREAS, the Town Council finds it is in the public interest to reenact the Ordinance for the purpose of promoting the health, safety, and general welfare of the residents of Los Gatos, insofar as trees provide a wide variety of functions, values and benefits.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 29, Article I, Division 2 consisting of Sections 29.10.0950 through 29.10.1045, entitled Tree Protection is hereby amended to read as follows:

DIVISION 2. TREE PROTECTION

Sec. 29.10.0950. Intent.

This division is adopted because the Town of Los Gatos is forested by many native and non-native trees and contains individual trees of great beauty. The community of the Town benefit from preserving the scenic beauty of the Town, preventing erosion of topsoil, providing protection against flood hazards and risk of landslides, counteracting pollutants in the air, maintaining climatic balance, and decreasing wind velocities. It is the intent of this division to regulate the removal of trees within the Town in order to retain as many trees as possible consistent with the purpose of this section and the reasonable use of private property. While trees provide multiple benefits, it is also the intent of this division to acknowledge that a portion of the Town is located in a Very High Fire Hazard Severity Zone, as defined by the California Department of Forestry and Fire Protection (CAL FIRE) and the associated wildfire threat that exists for the community. It is the intent of this division to preserve as many protected trees as possible throughout the Town through staff review and the development review process. Special provisions regarding hillsides are included in section 29.10.0987 of this division in recognition of the unique biological and environmental differences between the hillside and non-hillside areas of the Town. This section does not supersede the provisions of Chapter 26 of this Code.

Sec. 29.10.0955. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section:

Building envelope means the area of a parcel (1) upon which, under applicable zoning regulations, a structure may be built outside of required setbacks without a variance; or (2) that is necessary for the construction of primary access to structures located on the parcel, where there exists no feasible means of access which would avoid protected trees. On single-family residential parcels, the portion of the parcel deemed to be the building envelope access shall not exceed ten (10) feet in width.

Certified or consulting arborist means an individual in the profession of arboriculture who, through experience, education, and related training, possesses the competence to provide a tree report, tree survey or supervise the care and maintenance of trees; and who is certified by the International Society of Arboriculture, a member of the American Society of Consulting Arborists or approved by the director.

Damage means any action undertaken intentionally or negligently which causes short-term or long-term injury, death, or disfigurement to a tree. This includes but is not limited to mechanical injury, cutting of roots or limbs, poisoning, over-watering, relocation or transplanting a tree, or trenching, grading, compaction, excavating, paving, or installing impervious surface within the root zone of a protected tree.

Dead tree means a tree that cannot be restored to good health and has at least one of the following characteristics:

(1) Is completely devoid of life;

(2) Has no leaves at a time when it should;

(3) Exhibits no buds if dormant;

(4) Is incapable of translocating food and water between leaves and roots; or

(5) Has a high likelihood of imminent death in the opinion of the Town Arborist.

Destroy means to cause the premature decline of tree health or life as evaluated and determined by the Town Arborist.

Defensible Space means an area around the perimeter of a structure in which vegetation, debris, and other types of combustible fuels are treated, cleared, or reduced to slow the rate and intensity of potentially approaching wildfire or fire escaping from structures.

Development means any work upon any property in the Town which requires a subdivision, rezoning, planning permit, variance, use permit, building permit, demolition permit, grading permit or other Town approval or which involves survey work, story pole placement, excavation, landscaping, construction, etc., or clearing and grubbing within the dripline or any area that would affect a protected tree.

Diameter means measurement of the trunk diameter for the purpose of applying this section shall be made four and one-half (4.5) feet (fifty-four (54) inches) above natural grade. Measurement of multi-trunked trees shall be determined by the sum of all trunk diameters measured at four and one-half (4.5) feet (fifty-four (54) inches) above natural grade.

Director means the Director of Community Development or the Director's designated representative.

Dripline area means the area around the trunk of the tree extending out a distance ten (10) times the diameter of the trunk, or the perimeter of the tree canopy, whichever is greater.

Heritage tree means a tree or grouping of trees specifically designated by action of the Town Council, upon the recommendation of the Historic Preservation Commission, that possess exceptional aesthetic, biological, cultural, or historic value and is expected to have a continuing contribution to the community,

Hillside means all properties located within the area defined by the hillside area map as contained in the Town of Los Gatos Hillside Development Standards and Guidelines.

Large protected tree means any oak (Quercus), California buckeye (Aesculus californica), or Pacific madrone (Arbutus menziesii) which has a 24-inch or greater diameter (75-inch circumference); or any other species of tree with a 48-inch or greater diameter (150-inch circumference).

Mechanical injury means injury done to a tree either intentionally or negligently that leads to deviation from normal growth or ~~a~~ physical damage or death to the tree. Common causes of mechanical injury are landscape maintenance equipment, staking damage, vehicles, or vandalism.

Multi-trunk tree means a tree that has more than one (1) major supporting stem or trunk growing from a single root mass located at ground level or just above the trunk flare.

Native means any tree that is found in the immediate natural habitat. For instance, redwood trees are native to the Santa Cruz Mountains but they are not native to the oak woodlands and chaparral areas of Los Gatos.

Pollarding means a pruning technique where the ends of the branches of a tree are terminated with a heading cut to a predetermined length, and then resultant epicormic shoots that emerge from just below the heading cut are cut back on an annual basis, forming an enlarging "knob" or knuckle" at the end of the remaining branches over time. Pollarding should be done on small branches no more than two (2) inches in diameter and is only allowed without a permit on fruitless mulberry trees (Morus alba) or other species approved by the Town Arborist.

Protected tree means a tree regulated by the Town of Los Gatos as set forth in Section. 29.10.0960, Scope of protected trees.

Pruning means the selective removal of plant parts to meet specific goals and objectives, including but not limited to: safety and risk reduction; clearance; health maintenance; aesthetic improvement; growth control; and to enhance performance or function by developing and preserving tree structure and health. All pruning shall be in accordance with the current version of the International Society of Arboriculture Best Management Practices-Tree Pruning and ANSI A300-Part 1 Tree, Shrub and Other Woody Plant Management-Standard Practices, (Pruning).

Public nuisance, means any tree, shrub, plant or part thereof growing in, or overhanging, a public street or right-of-way, interfering with the use of any public street or public place in the Town, or tree which, in the opinion of the Director, endangers the life, health, safety, comfort or property of any persons using such public street, or in such public place, because of the tree's or shrub's location, condition of its limbs, roots or trunk, or because of its diseased condition, is hereby declared to be a public nuisance.

Public place means any road or street, or public school, or place of public assemblage, or real property, building, or other space or area which is open to public access, and which is under public control, or maintained at public expense, or which the Town or the County of Santa Clara, or the State of California, or the United States, as the case may be, owns some or all interest or which it leases.

Public street means all or any portion of territory within the Town set apart and designated for the use of the public as a thoroughfare for travel, including the sidewalks, curb and gutter.

Remove means any of the following: (1) Complete removal, such as cutting to the ground or extraction, of a protected tree or one of its multi-trunks; (2) Taking any action foreseeably leading to the death of a tree or permanent damage to its health; including but not limited to severe pruning, cutting, girdling, poisoning, overwatering, unauthorized relocation or transplanting of a tree, or trenching, excavating, altering the grade, or paving within the dripline area of a tree.

Severe pruning means topping or removal of foliage or significant scaffold limbs or large diameter branches so as to cause permanent damage and/or disfigurement of a tree, and/or which does not meet specific pruning goals and objectives as set forth in the current version of the International Society of Arboriculture Best Management Practices-Tree Pruning and ANSI A300-Part 1 Tree, Shrub and Other Woody Plant Management-Standard Practices, (Pruning). Severe Pruning shall also include pruning as described in section 29.10.1010(3) of this chapter.

Shrub means a bushy, woody plant, usually with several permanent stems, and usually not over fifteen (15) feet high at maturity.

Significant impact on a property from a tree means an unreasonable interference with the normal and intended use of the property. In determining whether there is a significant impact, the typical longevity of the subject tree species, the size of the tree relative to the property, and whether the condition can be corrected shall be considered. Normal maintenance, including but not limited to pruning not requiring a permit under this division, and leaf removal and minor damage to paving or fences shall not be considered when making a determination of significant impact.

Street tree means a tree in a public place, or along or within a public street or right-of-way.

Topping means the practice of cutting back large diameter branches of a tree, including but not limited to cutting of a central leader, to some predetermined lower height to reduce the overall height of the tree, where the remaining buds, stubs or lateral branches are not large enough to assume a terminal role.

Tree means a woody perennial plant characterized by having a main stem or trunk, or a multi stemmed trunk system with a more or less definitely formed crown, and is usually over ten (10) feet high at maturity.

Tree canopy replacement standard means a replacement tree formula to mitigate removal of a protected tree. The standard is based on measuring the widest distance across the canopy of a tree for the purpose of determining the mitigating size and number of replacement trees.

Tree protection zone (TPZ) means the area of a temporary fenced tree enclosure under the tree's dripline or as specified in a report prepared by a certified or consulting arborist. The TPZ is a restricted activity zone before and after construction where no soil disturbance is permitted unless approved and supervised by the certified or consulting arborist.

Tree Risk Rating means a categorization of risk based on an assessment of the likelihood of failure and impact and the consequences such failure and impact would have on life, property, utilities, or essential transportation systems. For purposes of this division, Tree Risk Rating shall be the rating of tree risk as provided for in the International Society of Arboriculture (ISA) Tree Risk Assessment Best Management Practices Tree Risk Rating Matrix, which categorizes risk as Extreme, High, Moderate or Low.

Tree value standard means the method of appraising a tree's value to a property using the Trunk Formula Method or Replacement Cost Method as described in the most recent edition of the Guide for Plant Appraisal published by the Council of Tree and Landscape Appraisers (CTLA)

and the Species Classification and Group Assignment by the Western Chapter of the International Society of Arboriculture (ISA).

Trunk means the primary structural woody part of the tree beginning at and including the trunk flare and extending up into the crown from which scaffold branches grow.

Trunk flare means the area at the base of the plant's trunk where it broadens to form roots and is the transition area between the root system and the trunk.

Sec. 29.10.0960. Scope of protected trees.

This division shall apply to every property owner and to every person, corporation, partnership, sole proprietorship or other entity responsible for removing, maintaining or protecting a tree. The trees protected by this division are:

(1) All trees which have a twelve-inch or greater diameter (thirty-seven and one-half-inch circumference) of any trunk or in the case of multi-trunk trees, a total of eighteen inches or greater diameter (fifty-six and one-half-inch circumference) of the sum of all trunks, where such trees are located on developed residential property.

(2) All trees which have an eight-inch or greater diameter (twenty-five-inch circumference) of any trunk or in the case of multi-trunk trees, a total of eight inches or greater diameter (twenty-five-inch circumference) of the sum of all trunks, where such trees are located on developed Hillside residential property.

(3) All trees of the following species which have an eight-inch or greater diameter (twenty-five-inch circumference) located on developed residential property:

   a. Blue Oak (Quercus douglasii);

   b. Black Oak (Quercus kellogii);

   c. California Buckeye (Aesculus californica);

   d. Pacific Madrone (Arbutus menziesii).

(4) All trees which have a four-inch or greater diameter (twelve and one half-inch circumference) of any trunk, when removal relates to any review for which zoning approval or subdivision approval is required.

(5) Any tree that existed at the time of a zoning approval or subdivision approval and was a specific subject of such approval or otherwise covered by subsection (6) of this section (e.g., landscape or site plans).

(6) Any tree that was required by the Town to be planted or retained by the terms and conditions of a development application, building permit or subdivision approval in all zoning districts, tree removal permit or code enforcement action.

(7) All trees, which have a four-inch or greater diameter (twelve and one half-inch circumference) of any trunk and are located on property other than developed residential property.

(8) All publicly owned trees growing on Town lands, public places or in a public right-of-way easement, which have a four-inch or greater diameter (twelve and one-half-inch circumference) of any trunk.

(9) A protected tree shall also include a stand of trees, the nature of which makes each dependent upon the other for the survival of the stand.

(10) The following trees shall also be considered protected trees and shall be subject to the pruning permit requirements set forth in section 29.10.0982 and the public noticing procedures set forth in section 20.10.0994:

a. Heritage trees;

b. Large protected trees.

Sec. 29.10.0965. Prohibitions.

Except as provided in section 29.10.0970, it shall be unlawful:

(1) To remove or cause to be removed any protected tree in the Town without first obtaining a permit pursuant to this chapter.

(2) To prune, trim, cut off, or perform any work, on a single occasion or cumulatively, over a three-year period, affecting twenty-five (25) percent or more of any protected tree without first obtaining a permit pursuant to this chapter.

(3) To prune, trim, or cut any branch or root greater than four (4) inches in diameter (twelve and one-half (12.5) inches in circumference) of a Heritage tree or large protected tree without first obtaining a permit pursuant to this chapter.

(4) To conduct severe pruning as defined in section 29.10.0955 without first obtaining a permit pursuant to this chapter.

(5) For any person or business entity engaged in the business of removing trees or tree care to perform work requiring a permit under this division without first obtaining a permit under this division. The permit shall be posted on-site at all times during the removal or permitted pruning of a tree and must be made available upon request from the Chief of Police, Code Compliance Officer, Director of Parks and Public Works Department, or their designee. After a second violation, the Los Gatos business license of the violating person or entity shall be suspended for a period of one (1) year.

Sec. 29.10.0970. Exceptions.

The following trees are excepted from the provisions of this division and may be removed or severely pruned without Town approval or issuance of a tree removal permit:

(1) A fruit or nut tree that is less than eighteen (18) inches in diameter (fifty-seven-inch circumference).

(2) Any of the following trees that are less than twenty-four (24) inches in diameter (seventy-five (75) inches in circumference):

a. Black Acacia (Acacia melanoxylon)

b. Tulip Tree (Liriodendron tulipifera)

c. Tree of Heaven (Ailanthus altissima)

d. Blue Gum Eucalyptus (E. globulus)

e. Red Gum Eucalyptus (E. camaldulensis)

f Other Eucalyptus (E. spp.)-Hillsides only

g. Palm (except Phoenix canariensis)

h. Privet (Ligustrum lucidum)

(3) Any removal or maintenance of a tree to conform with the implementation and maintenance of Defensible Space per Chapter 9 - Fire Prevention and Protection with the exception of any tree listed in subcategories (3) and (10) of Section 29.10.0960 - Scope of Protected Trees.

Sec. 29.10.0975. Emergency action.

A protected tree may be removed or severely pruned without a permit where it presents an imminent danger to life, property, utilities or essential transportation systems and a Tree Risk Rating of Extreme or High is present. In such event, the property owner or representative shall be responsible for the following:

(1) Notify the Town Parks and Public Works Department during business hours or the Police Department after business hours and request authorization of the proposed emergency action, including removal or severe pruning.

(2) Emergency action may be authorized by the Director, Town Manager, Parks and Public Works Director, Town Arborist or their designees, or a member of the police or fire department or other emergency personnel when the situation and conditions warrant immediate action to protect life or property and other Town officials are unavailable.

(3) No later than seventy-two (72) hours after the emergency action has been taken the property owner shall submit photo documentation and written verification to the Town confirming the emergency condition and describing the action taken.

If the Director determines that the condition was not reasonably determined to have been an emergency requiring immediate action, the person responsible for removing or damaging the protected tree shall be subject to fines and penalties as set forth in section 29.10.1025.

Sec. 29.10.0980. Applications for a tree removal or severe pruning permit.

Applications for a protected tree removal or severe pruning permit for trees on private property shall be available from and filed with the Town as indicated on the application. Application submittals for the removal of trees on public property (street trees) are provided for in section 26.10.060 of the Town Code. Applications for tree removal or severe pruning on private property may be granted, denied or granted with conditions. Application submittals for removal or severe pruning of trees on private property shall include the following minimum information for staff review:

(1) A completed tree removal application form, signed by the property owner.

(2) A written explanation of why each tree(s) should be removed or pruned and how it meets the Town's Standards of Review.

(3) Photograph(s) of the tree(s).

(4) If required by the Director, a certified or consulting arborist's written assessment of the tree's disposition shall be provided for review by the Town. The report shall be signed by the arborist and include tree size (diameter, height, crown spread); location on the site; numbered on a site plan or arborists tree survey (if there is more than one (1) tree); condition of health; condition of structure; and if tree risk findings apply, a Tree Risk Assessment and Rating must be completed using the most recent version of the Tree Risk Assessment Best Management Practices or any successor document published by the International Society of Arboriculture. Other information, images, etc. may be included in the report.

(5) If structural damage to a building, major landscape feature, or appurtenance, including utilities is the basis for the request, a report from a licensed architect or engineer may also be required in addition to an arborist report. This additional report shall describe what modifications to buildings, structures, improvements or utilities would be required to mitigate the damage(s) directly caused by the tree.

(6) Payment of permit fee, as established by Town resolution.

Sec. 29.10.0982. Applications for heritage and large protected tree pruning permit.

A pruning permit is required where pruning of branches or roots greater than four (4) inches in diameter is proposed for any Heritage tree or large protected tree. Applications shall be available from and filed with the Town. Applications for pruning may be granted, denied or granted with conditions. Application submittals under this section shall include the following minimum information for staff review:

(1) A completed pruning permit application, signed by the property owner.

(2) A written description of the proposed pruning including the pruning objectives and pruning methods to be used consistent with International Society of Arboriculture Best Management Practices-Tree Pruning and ANSI A300-Part 1 Tree, Shrub and Other Woody Plant Management-Standard Practices, (Pruning).

(3) Photographs of the tree indicating as best possible where pruning is to occur.

(4) If required by the Director, a certified or consulting arborist's written report describing the proposed pruning.

(5) If structural damage to a building, major landscape feature, or appurtenance, including utilities is the basis for the request, a report from a licensed architect or engineer may be required in addition to an arborist report. This additional report shall describe what modifications to buildings, structures, improvements or utilities would be required to mitigate the damages directly caused by the tree.

(6) Payment of permit fee, as established by Town resolution.

Sec. 29.10.0985. Determination and conditions of permit.

The Director shall determine whether to grant a permit. The Director may consult with other Town departments or outside agencies at his/her discretion. When a development application for any zoning approval, or subdivision of land, including lot line adjustment, is under consideration by the Planning Commission, the determination on the tree removal permit shall be made concurrently by the Planning Commission with the related matter. The Director or the deciding body ~~shall~~ may ~~i~~mpose, except when removal is permitted if the tree is dead or a Tree Risk Rating of Extreme or High is present, as a condition on which a protected tree removal permit is granted that two (2) or more replacement trees of a species and a size designated by the Director or designee, shall be planted in the following order of preference:

(1) Two (2) or more replacement trees, of a species and size designated by the Director, shall be planted on the subject private property. Table 3-1, Tree Canopy-Replacement Standard shall be used as a basis for this requirement. The person requesting the permit shall pay the cost of purchasing and planting the replacement trees.

(2) If a tree or trees cannot be reasonably planted on the subject property, an in-lieu payment in an amount set forth by the Town Council by resolution shall be paid to the Town Tree Replacement Fund to:

a. Add or replace trees on public property in the vicinity of the subject property; or

b. Add or replace trees or landscaping on other Town property; or

c. Support the Town's urban forestry management program.

Table 3-1 — Tree Canopy — Replacement Standard

Canopy Size of Removed Tree[1]	Replacement Requirement[2, 4]	Single Family Residential Replacement Option[3, 4]
10 feet or less	Two 24-inch box trees	Two 15-gallon trees
More than 10 feet to 25 feet	Three 24-inch box trees	Three 15-gallon trees

More than 25 feet to 40 feet	Four 24-inch box trees; or Two 36-inch box trees	Four 15-gallon trees
More than 40 feet to 55 feet	Six 24-inch box trees; or Three 36-inch box trees	Not Available
Greater than 55 feet	Ten 24-inch box trees; or Five 36-inch box trees	Not Available

Notes

[1] To measure an asymmetrical canopy of a tree, the widest measurement shall be used to determine canopy size.

[2] Often, it is not possible to replace a single large, older tree with an equivalent tree(s). In this case, the tree may be replaced with a combination of both the Tree Canopy Replacement Standard and in-lieu payment in an amount set forth by Town Council resolution paid to the Town Tree Replacement Fund.

[3] Single Family Residential Replacement Option is available for developed single family residential lots under n thousand (10,000) square feet that are not subject to the Town's Hillside Development Standards and Guidelines. All fifteen-gallon trees must be planted on-site. Any in-lieu fees for single family residential shall be based on twenty-four-inch box tree rates as adopted by Town Council.

[4] Replacement Trees shall be approved by the Town Arborist and shall be of a species suited to the available planting location, proximity to structures, overhead clearances, soil type, compatibility with surrounding canopy and other relevant factors. Replacement with native species shall be strongly encouraged but is required for Hillside properties, as per Sec. 29.10.0987, Special Provisions Hillsides, with tree species per ~~Replacement requirements in the Hillsides shall comply with the~~ Hillside Development Standards and Guidelines Appendix A. ~~and section 29.10.0987 Special Provisions—Hillsides.~~

Sec. 29.10.0987. Special provisions-hillsides

The Town of Los Gatos recognizes its hillsides as an important natural resource and sensitive habitat which is also a key component of the Town's identity, character and charm. In order to maintain and encourage restoration of the hillside environment to its natural state, the Town has established the following special provisions for tree removal and replacement in the hillsides:

(1) All protected trees located thirty (30) or more feet from the primary residence that are removed shall be replaced with native trees listed in Appendix A Recommended Native Trees for Hillside Areas of the Town of Los Gatos Hillside Development Standards and Guidelines (HDS&G).

(2) All protected trees located within thirty (30) feet of the primary residence that are removed shall be replaced as follows:

(a) If the removed tree is a native tree listed in Appendix A of the HDS&G, it shall only be replaced with a native tree listed in Appendix A of the HDS&G.

(b) If the removed tree is not listed in Appendix A, it may be replaced with a tree listed in Appendix A, or replaced with another species of tree as approved by the Director.

(c) Replacement trees listed in Appendix A may be planted anywhere on the property.

(d) Replacement trees not listed in Appendix A may only be planted within thirty (30) feet of the primary residence.

(3) Replacement requirements shall comply with the requirements in Table 3-1, Tree Canopy—Replacement Standard of this Code.

(4) Property owners should be encouraged to retain dead or declining trees where they do not pose a safety or fire hazard, in order to foster wildlife habitat and the natural renewal of the hillside environment.

Sec. 29.10.0990. Standards of review.

The Director or deciding body shall review each application for a tree removal permit required by this division using the following standards of review. The standards of review are intended to serve as criteria for evaluating tree removal requests and the basis upon which the Director or the deciding body will subsequently determine whether or not one (1) or more of the Required Findings listed in section 29.10.0992 can be made.

(1) The condition of the tree or trees with respect to: (a) disease, (b) imminent danger of falling, (c) structural failure, (d) proximity to existing or proposed structures, (e) structural damage to a building, or (f) a public nuisance caused by a tree. The International Society of Arboriculture (ISA) Best Management Practices for Tree Risk Assessment shall be used where appropriate in determining a Tree Risk Rating.

(2) The condition of the tree giving rise to the permit application cannot be reduced to a less than significant level by the reasonable application of preservation, preventative measures or routine maintenance.

(3) The removal of the tree(s) will not result in a density of trees or tree cover that is inconsistent with the neighborhood.

(4) The number of trees the particular parcel can adequately support according to good urban forestry practices, or whether a protected tree is a detriment to or crowding another protected tree.

(5) In connection with a proposed subdivision of land into two (2) or more parcels, the removal of a protected tree is unavoidable due to restricted access to the property or deemed necessary to repair a geologic hazard (landslide, repairs, etc.).

(6) Except for properties located within the hillsides, the retention of a protected tree would result in reduction of the otherwise-permissible building envelope by more than twenty-five (25) percent.

(7) The Hillside Development Standards and Guidelines.

(8) Removal of the protected tree(s) will not result in a substantial adverse change in the site's aesthetic and biological significance; the topography of the land and the effect of the removal of the tree on erosion, soil retention, or diversion or increased flow of surface waters.

(9) Whether the Protected Tree has a significant impact on the property. Significant impact from a tree is defined in section 29.10.0955. Definitions.

(10) The species, size (diameter, canopy, height), estimated age and location on the property of the protected tree.

Sec. 29.10.0992. Required findings.

The Director, Director's designee, or deciding body shall approve a protected tree removal permit, severe pruning permit, or pruning permit for Heritage trees or large protected trees only after making at least one (1) of the following findings:

(1) The tree is dead, severely diseased, decayed or disfigured to such an extent that the tree is unable to recover or return to a healthy and structurally sound condition.

(2) The tree has a tree risk rating of Extreme or High on the ISA Tree Risk Rating Matrix as set forth in the ISA Tree Risk Assessment Best Management Practices, or successor publication.

(3) The tree is crowding other protected trees to the extent that removal or severe pruning is necessary to ensure the long-term viability of adjacent and more significant trees.

(4) The retention of the tree restricts the economic enjoyment of the property or creates an unusual hardship for the property owner by severely limiting the use of the property in a manner not typically experienced by owners of similarly situated properties, and the applicant has demonstrated to the satisfaction of the Director or deciding body that there are no reasonable alternatives to preserve the tree.

(5) The tree has, or will imminently, interfere with utility services where such interference cannot be controlled or remedied through reasonable modification, relocation or repair of the utility service or the pruning of the root or branch structure of the tree; or where removal or pruning is required by a public utility to comply with California Public Utility Commission (CPUC) or Federal Energy Regulatory Commission (FERC) rules or regulations.

(6) The tree has caused or may imminently cause significant damage to an existing structure that cannot be controlled or remedied through reasonable modification of the root or branch structure of the tree.

(7) Except for properties within the hillsides, the retention of the protected tree would result in reduction of the otherwise-permissible building envelope by more than twenty-five (25) percent.

(8) The removal of the tree is unavoidable due to restricted access to the property.

(9) The removal of the tree is necessary to repair a geologic hazard.

(10) The removal of the tree and replacement with a more appropriate tree species will enhance the Town's urban forest.

(11) The removal of the tree is necessary to conform with the implementation and maintenance of Defensible Space per Chapter 9 - Fire Prevention and Protection per direction by the Fire Chief or his/her designee.

Sec. 29.10.0994. Additional procedures for heritage and large protected tree removal or pruning permits.

(1) These procedures are established for the review of Heritage tree and large protected tree removal or pruning permit applications where a permit is requested for a tree that is not dead, severely disfigured, profoundly diseased, or an Extreme or High Risk on the ISA Tree Risk Rating Matrix, and where findings (1) or (2) above cannot be made.

(2) In addition to the fee and application materials required by section 29.10.0980 or section 29.10.0982, the applicant will be required to submit one (1) set of stamped, addressed envelopes for neighboring residents and property owners. The Planning Department will assist the applicant in determining the properties to be notified (all properties abutting the applicant's parcel, properties directly across the street and the two (2) parcels on each side of it).

(3) The Director shall review the application using the Standards of Review set forth in section 29.10.0990 and the Required Findings set forth in section 29.10.0992.

(4) If the Director intends to approve the application, a "Notice of Pending Issuance of Tree Removal or Pruning Permit" will be mailed to neighboring residents and property owners including any applicable conditions, and required tree replacement requirements. The notice will describe the proposed tree removal or pruning, and that the permit will be issued unless there is an objection. Any interested party shall have ten (10) days from the date of the "Notice of Pending Issuance of Tree Removal or Pruning Permit" to notify the Director in writing of any concerns or problems.

(5) If a written objection is not filed within the ten-day period, the permit will be issued. If a written objection is filed and a resolution is found that meets all parties' concerns then the permit will also be issued.

(6) If an objection is filed in a timely manner and a mutually acceptable resolution cannot be agreed upon with the Director within ten (10) days, the objecting party shall be so advised and shall be provided an additional five (5) days to file a formal appeal of the tree removal or pruning permit with the Town, which shall be scheduled for consideration by the

Planning Commission. All property owners and residents notified under section 29.10.0994(4) shall be notified of the Planning Commission meeting.

(7) Trees removed illegally or damaged shall require the issuance of a retroactive tree removal permit. Once this retroactive permit is issued, and all conditions fulfilled, along with any assessed monetary penalties paid and replacement requirements completed , then any Stop Work Order shall be removed.

Sec. 29.10.0995. Disclosure of information regarding existing trees.

(a) Any application for a discretionary development approval, or for a building, grading or demolition permit where no discretionary development approval is required, shall be accompanied by a signed tree disclosure statement by the property owner or authorized agent which discloses whether any protected trees exist on the property which is the subject of the application, and describing each such tree, its species, size (diameter, canopy dripline area, height) and location. This requirement shall be met by including the following information on plans submitted in connection with the development application.

(b) The location of all trees on the site and in the adjacent public right-of-way which are within thirty (30) feet of the area proposed for development, and trees located on adjacent property with canopies overhanging the project site, shall be shown on the plans, identified by species, size (diameter, canopy, dripline area, height), and location.

(c) Within the dripline area or area that would affect a protected tree, the location of shrubs and other vegetation subject to development shall be shown on the plans.

(d) The director may require submittal of such other information as is necessary to further the purposes of this division including but not limited to photographs.

(e) Disclosure of information pursuant to this section shall not be required when the development for which the approval or permit is sought does not involve any change in building footprint nor any grading, trenching or paving.

(f) Knowingly or negligently providing false or misleading information in response to this disclosure requirement shall constitute a violation of this division.

Sec. 29.10.1000. New property development.

(a) A tree survey shall be conducted prior to submittal of any development application proposing the removal of or impact to one (1) or more protected trees. The development application shall include a Tree Survey Plan and Tree Preservation Report based on this survey. The tree survey inventory numbers shall correspond to a numbered metal tag placed on each tree on site during the tree survey. Tree survey inventory number tags in place from previous tree surveys, if easily visible, shall be retained and used in any new tree survey report. The tree survey plan shall be prepared by a certified or consulting arborist, and shall include the following information:

(1) Location of all existing trees on the property as described in section 29.10.0995;

(2) Identify all trees that could potentially be affected by the project (directly or indirectly-immediately or in long term), such as upslope grading or compaction outside of the dripline;

(3) Notation of all trees classified as protected trees;

(4) In addition, for trees four (4) inches in diameter or larger, the plan shall specify the precise location of the trunk and crown spread, and the species, size (diameter, height, crown spread) and condition of the tree.

(b) The tree survey plan shall be reviewed by the Town's consulting arborist who shall, after making a field visit to the property, indicate in writing or as shown on approved plans, which trees are recommended for preservation (based on a retention rating of high/moderate/low) using, as a minimum, the Standards of Review set forth in section 29.10.0990. This plan shall be made part of the staff report to the Town reviewing body upon its consideration of the application for new property development;

(c) When development impacts are within the dripline of or will affect any protected tree, the applicant shall provide a tree preservation report prepared by a certified or consulting arborist. The report, based on the findings of the tree survey plan and other relevant information, shall be used to determine the health and structure of existing trees, the effects of the proposed development and vegetation removal upon the trees, recommendations for specific precautions necessary for their preservation during all phases of development (demolition, grading, during construction, landscaping); and shall also indicate which trees are proposed for removal. The tree preservation report shall stipulate a required tree protection zone (TPZ) for trees to be retained, including street trees, protected trees and trees whose canopies are hanging over the project site from adjacent properties. The TPZ shall be fenced as specified in section 29.10.1005:

(1) The final approved tree preservation report shall be included in the building permit set of development plans and printed on a sheet titled: Tree Preservation Instructions (Sheet T-1). Sheet T-1 shall be referenced on all relevant sheets (civil, demolition, utility, landscape, irrigation) where tree impacts from improvements may be shown to occur;

(2) The Town reviewing body through its site and design plan review shall endeavor to protect all trees recommended for preservation by the Town's consulting arborist. The Town reviewing body may determine if any of the trees recommended for preservation should be removed, if based upon the evidence submitted the reviewing body determines that due to special site grading or other unusual characteristics associated with the property, the preservation of the tree(s) would significantly preclude feasible development of the property as described in section 29.10.0990;

(3) Approval of final site or landscape plans by the appropriate Town reviewing body shall comply with the following requirements and conditions of approval:

a. The applicant shall, within ninety (90) days of final approval or prior to issuance of a grading or building permit, whichever occurs first, secure an appraisal of the

condition and value of all trees included in the tree report affected by the development that are required to remain within the development using the Tree Value Standard methodology as set forth in this Chapter. The appraisal of each tree shall recognize the location of the tree in the proposed development. The appraisal shall be performed in accordance with the current edition of the Guide for Plant Appraisal published by the Council of Tree and Landscape Appraisers (CTLA) and the Species and Group Classification Guide published by the Western Chapter of the International Society of Arboriculture. The appraisal shall be performed at the applicant's expense, and the appraisal shall be subject to the Director's approval.

b. The site or landscape plans shall indicate which trees are to be removed. However, the plans do not constitute approval to remove a tree until a separate permit is granted. The property owner or applicant shall obtain a protected tree removal permit, as outlined in section 29.10.0980, for each tree to be removed to satisfy the purpose of this division.

(d) Prior to acceptance of proposed development or subdivision improvements, the developer shall submit to the Director a final tree preservation report prepared by a certified or consulting arborist. This report shall consider all trees that were to remain within the development. The report shall note the trees' health in relation to the initially reported condition of the trees and shall note any changes in the trees' numbers or physical conditions. The applicant, or their successors, will then be responsible for the removal or loss of any tree at any time during development that was not previously approved for removal. For protected trees which were removed, the developer shall pay a penalty in the amount of the appraised value of such tree in addition to replacement requirements contained in section 29.10.0985 of this Code. The applicant shall remain responsible for the health and survival of all trees within the development for a period of five (5) years following acceptance of the public improvements of the development or certificate of occupancy.

(e) Prior to issuance of any demolition, grading or building permit, the applicant or contractor shall submit to the Building Department a written statement and photographs verifying that the required tree protection fence is installed around street trees and protected trees in accordance with the tree preservation report.

(f) If required by the Director and conditioned as part of a discretionary approval, a security guarantee shall be provided to the Town. Prior to the issuance of any permit allowing construction to begin, the applicant shall post cash, bond or other security satisfactory to the Director, in the penal sum of five thousand dollars ($5,000.00) for each tree required to be preserved, or twenty-five thousand dollars ($25,000.00), whichever is less. The cash, bond or other security shall be retained for a period of one (1) year following acceptance of the public improvements for the development and shall be forfeited in an amount equal to five thousand dollars ($5,000.00) per tree as a civil penalty in the event that a tree or trees required to be preserved are removed, destroyed or severely damaged.

(g) An applicant with a proposed development which requires underground utilities shall avoid the installation of said utilities within the dripline of existing trees whenever possible. In the event that this is unavoidable, all trenching shall be done using directional boring, air-spade excavation or by hand, taking extreme caution to avoid damage to the root structure. Work within the dripline of existing trees shall be supervised at all times by a certified or consulting arborist.

(h) It shall be a violation of this division for any property owner or agent of the owner to fail to comply with any development approval condition concerning preservation, protection, and maintenance of any protected tree.

Sec. 29.10.1005. Protection of trees during construction.

(a) Protective tree fencing shall specify the following:

(1) Size and materials. Six (6) foot high chain link fencing, mounted on two-inch diameter galvanized iron posts, shall be driven into the ground to a depth of at least two (2) feet at no more than ten-foot spacing. For paving area that will not be demolished and when stipulated in a tree preservation plan, posts may be supported by a concrete base.

(2) Area type to be fenced. Type I: Enclosure with chain link fencing of either the entire dripline area or at the tree protection zone (TPZ), when specified by a certified or consulting arborist. Type II: Enclosure for street trees located in a planter strip: chain link fence around the entire planter strip to the outer branches. Type III: Protection for a tree located in a small planter cutout only (such as downtown): orange plastic fencing shall be wrapped around the trunk from the ground to the first branch with two-inch wooden boards bound securely on the outside. Caution shall be used to avoid damaging any bark or branches.

(3) Duration of Type I, II, III fencing. Fencing shall be erected before demolition, grading or construction permits are issued and remain in place until the work is completed. Contractor shall first obtain the approval of the project arborist on record prior to removing a tree protection fence.

(4) Warning sign. Each tree fence shall have prominently displayed an eight and one-half-inch by eleven-inch sign stating: "Warning—Tree Protection Zone—This fence shall not be removed and is subject to penalty according to Town Code 29.10.1025."

(b) All persons, shall comply with the following precautions:

(1) Prior to the commencement of construction, install the fence at the dripline, or tree protection zone (TPZ) when specified in an approved arborist report, around any tree and/or vegetation to be retained which could be affected by the construction and prohibit any storage of construction materials or other materials, equipment cleaning, or parking of vehicles within the TPZ. The dripline shall not be altered in any way so as to increase the encroachment of the construction.

(2) Prohibit all construction activities within the TPZ, including but not limited to: excavation, grading, drainage and leveling within the dripline of the tree unless approved by the Director.

(3) Prohibit disposal or depositing of oil, gasoline, chemicals or other harmful materials within the dripline of or in drainage channels, swales or areas that may lead to the dripline of a protected tree.

(4) Prohibit the attachment of wires, signs or ropes to any protected tree.

(5) Design utility services and irrigation lines to be located outside of the dripline when feasible.

(6) Retain the services of a certified or consulting arborist who shall serve as the project arborist for periodic monitoring of the project site and the health of those trees to be preserved. The project arborist shall be present whenever activities occur which may pose a potential threat to the health of the trees to be preserved and shall document all site visits.

(7) The Director and project arborist shall be notified of any damage that occurs to a protected tree during construction so that proper treatment may be administered.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.1010. Pruning and maintenance.

Tree pruning must not be done in a manner that is detrimental to the tree. Any action undertaken which intentionally or recklessly causes or tends to cause injury, death, or disfigurement to a tree is considered to be detrimental. Examples of actions which are detrimental to trees may include excessive cutting, poisoning, burning, over-watering, relocating, or transplanting a tree.

All tree pruning shall be in accordance with the current version of the International Society of Arboriculture Best Management Practices-Tree Pruning and ANSI A300-Part 1 Tree, Shrub and Other Woody Plant Management-Standard Practices, (Pruning) and any special conditions as determined by the Director. For developments, which require a tree preservation report, a certified or consulting arborist shall be in reasonable charge of all activities involving protected trees, including pruning, cabling and any other work if specified.

(1) Any public utility installing or maintaining any overhead wires or underground pipes or conduits in the vicinity of a protected tree shall obtain written permission from the Director before performing any work, including pruning, which may cause injury to a protected tree (e.g. cable TV/fiber optic trenching, gas, water, sewer trench, etc.).

(2) Pruning for clearance of utility lines and energized conductors shall be performed in compliance with the current version of the American National Standards Institute (ANSI) A300 (Part 1)-Pruning, Section 5.9 Utility Pruning. Using spikes or gaffs when pruning, except where no other alternative is available, is prohibited.

(3) No person shall prune, trim, cut off, or perform any work, on a single occasion or cumulatively, over a three-year period, affecting twenty-five percent or more of the crown of any protected tree without first obtaining a permit pursuant to this division except for pollarding of fruitless mulberry trees (Morus alba) or other species approved by the Town Arborist. Applications for a pruning permit shall include photographs indicating where pruning is proposed.

(4) No person shall remove any Heritage tree or large protected tree branch or root through pruning or other method greater than four (4) inches in diameter (twelve and one-half (12.5) inches in circumference) without first obtaining a permit pursuant to this division.

Sec. 29.10.1015. No limitation of authority.

Nothing in this division limits or modifies the existing authority of the Town under Division 29 of Title 29 (Zoning Regulations), Title 26 (Public Trees) or the Hillside Development Standards and Guidelines to require trees and other plants to be identified, retained, protected, and/or planted as conditions of the approval of development. In the event of conflict between provisions of this division and conditions of any permit or other approval granted pursuant to Chapter 29 or Chapter 26 of the Town Code or the Hillside Development Standards and Guidelines. The more protective requirements shall prevail.

Sec. 29.10.1020. Responsibility for enforcement.

The Town shall vigorously enforce the provisions of this Chapter. All officers and employees of the Town shall report violations of this division to the Director of Community Development. Whenever an Enforcement Officer as defined in section 1.30.015 of the Town Code determines that a violation of this Code has occurred, the Enforcement Officer shall have the authority to issue an administrative citation pursuant to the provisions of section 1.30.020 of the Town Code.

Whenever an Enforcement Officer charged with the enforcement of this Code determines that a violation of that provision has occurred, the Enforcement Officer shall have the authority to issue an administrative citation to any person responsible for the violation.

Sec. 29.10.1025. Enforcement—Remedies for violation.

In addition to all other remedies set forth in this code or otherwise provided by law, the following remedies shall be available to the Town for violation of this division. While these remedies can be levied against any person, property owner, firm or corporation who intentionally or negligently violates any of the provisions of this chapter or any permit issued pursuant to it, or who fails to comply with any condition of any discretionary permit which relates to protected tree preservation, it is not the Town's intention to pursue such remedies against homeowners who unintentionally have minor violations of this chapter. These remedies are reserved for those entities who should have knowledge of such regulations from previous

interactions or activity with the Town, such as information given during a previous or current application, and have nevertheless intentionally violated this chapter:

(1) Tree removals in absence of or in anticipation of development.

a. If a violation occurs in the absence of or prior to proposed development, then discretionary applications and/or building permit applications will not be accepted or processed by the Town until the violation has been remedied to the reasonable satisfaction of the Director. Mitigation measures as determined by the Director may be imposed as a condition of any subsequent application approval or permit for development on the subject property. A mitigation plan shall include specific measures for the protection of any remaining trees on the property, and shall provide for the replacement of each hillside tree that was removed or damaged illegally with a new tree(s) in the same location(s) as those illegally removed or damaged tree(s). In-lieu fees shall not be an option for this violation. The replacement ratio shall be at a greater ratio than that required in accordance with the standards set forth in section 29.10.0985 of this division. If the court or the Director directs a replacement tree or trees to be planted as part of the remedy for the violation, the trees shall be permanently maintained in a good and healthy condition. The property owner shall execute a five-year written maintenance agreement with the Town. For those trees on public property, replacement is to be determined by the Director of Community Development or by the Director of Parks and Public Works.

b. The second violation of any provisions in this division during the conduct by any person or business of a tree removal, landscaping, construction, or other business in the Town shall constitute grounds for a one (1) year suspension of any business license issued to such entity. The Town shall require the property owner to disclose the name and address of the violating business as a necessary condition for removal of any Stop Work Order issued by the Town.

(2) Pending development applications.

a. Incomplete applications will not be processed further until the violation has been remedied. If an application has been deemed complete, it may be denied by the Director or forwarded to the Planning Commission with a recommendation for denial at the Director's discretion. Mitigation measures as determined by the director may be imposed as a condition of approval. A mitigation plan shall include specific measures for the protection of any remaining trees on the property, and shall provide for the replacement of each hillside tree that was removed or damaged illegally with a new tree(s) in the same location(s) as those illegally removed tree(s). In-lieu fees shall not be an option for this violation. The replacement ratio shall be at a greater ratio than that required in accordance with the standards set forth in section 29.10.0985 of this division. If the court or the Director directs a replacement tree or trees to be planted as part of the remedy for the violation, the trees shall be permanently maintained in a good and healthy condition. The property owner shall

execute a five-year written maintenance agreement with the Town. For those trees on public property, replacement is to be determined by the Director of Community Development or by the Director of Parks and Public Works.

b. The second violation of any provisions in this division during the conduct by any person or company of a tree removal, landscaping, construction, or other business in the Town shall constitute grounds for a one (1) year suspension of any business license issued to such entity. The Town shall require the property owner to disclose the name and address of the violating business as a necessary condition for removal of any Stop Work Order issued by the Town.

(3) Projects under construction.

a. If a violation occurs during construction, the Town may issue a stop work order suspending and prohibiting further activity on the property pursuant to the grading, demolition, and/or building permit(s) (including construction, inspection, and issuance of certificates of occupancy) until a mitigation plan has been filed with and approved by the Director, agreed to in writing by the property owner(s) or the applicant(s) or both, and either implemented or guaranteed by the posting of adequate security in the discretion of the Director. A mitigation plan shall include specific measures for the protection of any remaining trees on the property, and shall provide for the replacement of each hillside tree that was removed illegally with a new tree(s) in the same location(s) as those illegally removed tree(s). In-lieu fees shall not be an option for this violation. The replacement ratio shall be at a greater ratio than that required in accordance with the standards set forth in section 29.10.0985 of this division. If the court or the Director directs a replacement tree or trees to be planted as part of the remedy for the violation, the trees shall be permanently maintained in a good and healthy condition. The property owner shall execute a five-year written maintenance agreement with the Town. For those trees on public property, replacement is to be determined by the Director of Community Development or by the Director of Parks and Public Works.

b. The second violation of any provisions in this division during the conduct by any person or company of a tree removal, landscaping, construction, or other business in the Town shall constitute grounds for a one (1) year suspension of any business license issued to such entity. The Town shall require the property owner to disclose the name and address of the violating business as a necessary condition for removal of any Stop Work Order issued by the Town

(4) Criminal penalties. Notwithstanding section 29.20.950 relating to criminal penalty, any person who violates any provision of this chapter and is convicted of a misdemeanor shall be punished by a fine of not more than $1,000.00 or by imprisonment of not more than 6 months or by both such fine and imprisonment. Each person convicted may be deemed guilty of a separate offense for every day and for every violation, as defined in Sec. 29.10.1031, during any portion of which any violation is committed.

(5) Civil penalties. Notwithstanding section 29.20.950 and Section (4) above, relating to criminal penalty, any person, property owner, firm, or corporation who intentionally or negligently violates any of the provisions of this chapter or any permit issued pursuant to it, or who fails to comply with any condition of any discretionary permit which relates to protected tree preservation, shall be liable to pay the Town a civil penalty as prescribed in subsections a. through d.

a. As part of any administrative and/or civil action brought by the Town, a hearing officer and/or court may assess against any person who commits, allows, or maintains a violation of any provision of this division an administrative and/or civil penalty in an amount not to exceed five thousand dollars per violation. For damaged trees, in addition to civil penalties, the property owner will be required to obtain the services of an ISA certified arborist to determine the future viability of the tree and if salvageable, create a maintenance plan to restore the tree.

b. Where the violation has resulted in removal of a protected tree, the civil penalty shall be in an amount not to exceed five thousand dollars ($5,000.00) per tree unlawfully removed, or the replacement value of each such tree, whichever amount is higher. If the tree removal is related to any development or subdivision then the civil penalties shall be the value of the tree times four, plus all related staff costs. Such amount shall be payable to the Town and deposited into the Tree Replacement Fund. Replacement value for the purposes of this section shall be determined utilizing the most recent edition of the Guide for Plant Appraisal, as prepared by the Council of Tree and Landscape Appraisers and the Species and Group Classification Guide published by the Western Chapter of the International Society of Arboriculture.

c. If the court or the Director directs a replacement tree or trees to be planted as part of the remedy for the violation, the trees shall be permanently maintained in a good and healthy condition. The property owner shall execute a five-year written maintenance agreement with the Town.

d. The cost of enforcing this division, which shall include all costs, staff time, and attorneys' fees.

(6) Injunctive relief. A civil action may be commenced to abate, enjoin, or otherwise compel the cessation of such violation.

(7) Costs. In any civil action brought pursuant to this division in which the Town prevails, the court shall award to the Town all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action, and reasonable attorney fees.

(8) Remedies not exclusive. To the maximum extent permitted by law, administrative remedies specified in this chapter are in addition to and do not supersede or limit any and all other provided for herein shall be cumulative and not exclusive.

Sec. 29.10.1030. Fees.

The fee, as adopted by Town Resolution, prescribed therefore in the municipal fee schedule shall accompany the removal or pruning permit application submitted to the Town for review and evaluation pursuant to this division.

Sec. 29.10.1031. Fees schedule for remediation of Tree Protection Ordinance violations.

These monetary fines are in addition to any remediations described elsewhere in this section. Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating any of the provisions of this chapter is guilty of a violation of the Town Code. Such person, firm or corporation shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this chapter is committed, continued, or permitted by such person and shall be punishable as herein provided. To expand, violating any portion of this chapter for any tree will count as one (1) violation. For instance, if a tree is excessively trimmed using illegal spikes, then two (2) violations are committed. If two (2) such violations were committed to two (2) trees, then that totals to four (4) separate violations. Violations would also include those remediations required by a Town's Consulting Arborist, to be accrued at the rate of one (1) violation/day for each and every requirement.

Each violation is subject to a fine of $500. For continuing violations, the fee schedule is $500 for the first day and $1,000 for each subsequent day.

Sec. 29.10.1035. Severability.

If any provision of this division or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this division which can be given effect without the invalid provision or application, and to this end the provisions of this division are declared to be severable.

Sec. 29.10.1040. Notices.

All notices required under this division shall conform to noticing provisions of the applicable Town Code.

Sec. 29.10.1045. Appeals.

Any interested person, as defined in section 29.10.020 of the Town Code, may appeal a decision of the director, including the 1 year suspension of a business license, pursuant to this division in accordance with the procedures set forth in section 29.20.260 of the Town Code. All appeals shall comply with the public noticing provisions of section 29.20.450 of the Town Code.

Sec 29.10.1050 No liability upon the Town.

Nothing in this chapter shall be deemed to impose any liability upon the Town or upon any of its officers or employees, nor to relieve the owner or occupant of any private property from the duty to keep in safe condition any trees and shrubs upon that private property or upon sidewalks and planting areas in front of that property.

SECTION II. CEQA FINDINGS. This Ordinance is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential to result in physical change in the environment, directly or indirectly. This Ordinance is also exempt under CEQA Guideline 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

SECTION III. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person or circumstance is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons and circumstances. The Town Council of the Town of Los Gatos declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof despite the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

SECTION IV. EFFECTIVE DATE AND PUBLICATION. This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 5th day of April 2022 and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 19th day of April 2022. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the _____ day of _____ 2022, by the following vote:

COUNCIL MEMBERS:
AYES

DRAFT

NAYS:
ABSENT:
ABSTAINING:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATED:_____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

DRAFT