



TOWN OF LOS GATOS
PLANNING COMMISSION STAFF REPORT
Meeting Date: March 25, 2015

ITEM NO: 1

PREPARED BY: Robert Kass, Special Projects Manager
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APPLICATION NO: Town Code Amendment A-14-002

LOCATION: Town-wide

APPLICANT: Town of Los Gatos

CONTACT: Robert Kass, Special Projects Manager

APPLICATION SUMMARY: Public Hearing to consider amendments to Chapter 26 (Trees and Shrubs) and Chapter 29 (Zoning Regulations – Tree Protection) of the Town Code

RECOMMENDATION: Forward a recommendation to the Town Council for approval of the attached Ordinance amendments to Chapter 26 and Chapter 29 of the Town Code.

CEQA: It has been determined that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act [Section 15061 (b)(3)].

FINDINGS:

- Find that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act [Section 15061 (b)(3)] (Exhibit 1).
- The Planning Commission must make a finding that the Town Code amendments are consistent with the General Plan if the recommendation is for adoption.

ACTION: Recommendation to Town Council.

EXHIBITS: Previously received with February 11, 2015 Staff Report

1. Required Findings
2. Proposed Amendments – Chapter 26 Trees and Shrubs
3. Proposed Amendments – Chapter 29 Tree Protection
4. Excerpt from October 6, 2014 Parks Commission Minutes
5. Background information regarding recent tree removal appeals
6. Resolution 2009-082 Approving the Revised Master Tree List

Previously received with February 11, 2015 Desk Item

7. Public Comments—February 11, 2015 Commission Meeting

Previously received with March 4, 2015 Workshop Report

8. Revised Redline Version Chapter 26
9. Revised Redline Version Chapter 29
10. Comments from Planning Commissioners
11. Public Comments—March 4, 2015 Workshop

Received with this Staff Report

12. Final Draft—Proposed Amendments to Chapter 26
13. Final Draft—Proposed Amendments to Chapter 29
14. Public Comments—March 25, 2015 Commission Meeting

BACKGROUND:

On February 11, 2015, the Planning Commission held a Public Hearing to consider adoption of amendments to Chapter 26 (Trees and Shrubs) and Chapter 29 (Zoning Regulations – Tree Protection) of the Town Code. At the Public Hearing, the Commission received a presentation from staff on the proposed amendments and heard comments from two members of the public.

Following discussion of the proposed amendments, the Commission continued the public hearing to the Planning Commission meeting of March 25, 2015 and scheduled a workshop for March 4, 2015 to allow for a more in-depth discussion of various provisions of the proposed Code amendments.

At the March 4, 2015 workshop, staff received direction from the Commission to modify the proposed Code amendments in several areas, including direction to work with Dr. David Weissman, a member of the public, to add provisions to the Code that would more specifically address hillside issues.

In response to the Commission's direction received at the March 4, 2015 Planning Commission workshop and staff's follow-up meeting with Dr. Weismann, staff is recommending changes to the Town Code Chapters 26 and 29 as shown in Exhibits 12 and 13. All additions to the existing Code are shown as underlined and deletions are shown with ~~striketrough~~, with the most recent round of revisions shown as highlighted additions or deletions. These most recent revisions to the proposed Code amendment are discussed below.

Dr. Weissman has provided written comments identifying additional considerations for the Commission to discuss as part of its recommendation to Council (see Exhibit 14).

ANALYSIS:

Definitions

New definitions have been added for the following terms: Heritage tree, Hillside, Large protected tree, Multi-trunk tree, Native, Tree Risk Rating, Trunk, and Trunk Flare. The definition of Dangerous has been eliminated. More discussion is provided below for those terms where additional Code provisions have also been added relating to the newly defined term.

Scope of Protected Trees

The threshold for protected trees in the Hillsides has been reduced to 8 inches on developed residential property from the current threshold of 12 inches which currently applies Town-wide to developed residential property.

Exceptions

The list of trees exempted from permits for removal or severe pruning has been expanded to include *all* species of Eucalyptus trees in the Hillsides with diameters of less than 24 inches.

Heritage Tree

The proposed Code amendment has been revised to include a definition of Heritage Tree that is limited to a tree or grouping of trees that has been specifically designated as a Heritage Tree by action of the Town Council upon the recommendation of the Historic Preservation Committee. Any tree designated as a Heritage Tree would be subject to the same public noticing and pruning permit requirements that are being recommended for large protected trees (see discussion below).

Because the Town of Los Gatos does not currently have a process for designating a Heritage Tree, the inclusion of this definition in the Code should be viewed as a reservation of the designation, pending the establishment by the Council of a Heritage Tree selection process and evaluation criteria.

Large Protected Tree

At the March 4, 2015 workshop, staff proposed categorizing protected trees as either Tier I or Tier II protected trees, with the Tier II trees subject to the proposed public noticing and pruning permit requirements.

Replacing the term "Tier II" with "noticed tree" was suggested at the Commission meeting and was considered by staff. However, in an effort to simplify the Code revisions and more clearly define which trees are subject to special additional requirements, staff is recommending the term "large protected tree" for trees that require pruning permits and are subject to public noticing.

Large protected trees would include all trees greater than 48 inches in diameter, along with oak, California buckeye, and Pacific madrone with a diameter of 24 inches or larger.

Hillsides

A new definition of Hillsides and a new Code section titled *Special Provisions—Hillsides* have been added linking the Tree Protection Ordinance to the Town's Hillside Development Standards and Guidelines (HDS&G). The Special Hillside Provisions reduces the diameter threshold for protected trees in the Hillsides from 12 inches on developed residential property to 8 inches, equivalent to the lower diameter threshold for slow-growing natives. Staff believes this more restrictive criterion will address concerns about tree identification in the dormant season as well as strengthen the Town's goals of preserving native oak woodland habitat in the Hillsides.

The Special Hillside Provisions also include tree replacement requirements that are also intended to promote native habitat protection and restoration by requiring that any tree removed beyond 30 feet of the primary residence be replaced with natives. Additionally, natives removed from within the 30-foot landscape buffer zone of the primary residence would also be required to be replaced with natives. (Native trees are as listed in the Town's Hillside Development Standards and Guidelines.)

Tree Risk Rating and Emergency Action

Staff has incorporated a number of changes in the revised Code amendments that clarify the definition of risk as related to standards of review and required findings. The amendments also refine the criteria and procedures that allow for emergency removal of protected trees. The proposal now specifically cites the International Society of Arboriculture (ISA) *Tree Risk Assessment Best Management Practices* Tree Risk Rating Matrix as the standard for assessing tree risk, and limits emergency actions to only those situations where a tree is rated as an Extreme or High risk.

Additional Required Finding

Staff has added an additional finding mirroring the finding proposed to be added to Chapter 26 that would authorize tree removal where replacement with a more appropriate tree species would enhance the urban forest. Requests for removal and replacement based on this finding would still need to be evaluated comprehensively using the standards of review, taking into account the existing tree's size, location, and species, as well as the proposed replacement species, before a removal would be authorized.

Replacement Tree List

At the workshop, the Commission discussed the possibility of developing a master tree list for replacement trees similar to what has been adopted by Council resolution for street trees. The suggestion was that this list would, be included by reference in the code, similar to what is now recommended for Hillside tree replacements.

Under the existing Code, the Director or Director's designee (typically the Town Arborist) approves replacement tree selection when a permit is approved for a tree removal. The Town Arborist considers the location of remaining trees, with the underlying objective to replace the canopy of the tree removed. This process has generally worked well, with the Town Arborist referring property owners to a number of resources on tree selection, including the Town's Master Street Tree list.

Staff has not included reference to a replacement tree list in the proposed Code amendment, except for the aforementioned Hillside replacement provisions. Should the Commission wish to explore development of a replacement tree list that would define those species that would qualify as replacement trees, the Commission could forward a recommendation to the Town Council that a specific tree replacement list be developed for future consideration by both the Commission and Council.

CEQA DETERMINATION:

It has been determined that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act [Section 15061 (b) (3)].

CONCLUSION AND RECOMMENDATION:

A. Conclusion

The attached amendments to Town Code Chapters 26 and 29 are recommended to strengthen the Town's commitment to preservation and enhancement of its urban forest and to clarify and update provisions of the Town Code. The amendments would also meet a 2014/2016 Town Council Strategic Goal.

B. Recommendation

For the reasons mentioned in this report, staff recommends that the Planning Commission forward the draft Ordinance amendments to the Town Council with a recommendation for adoption. The Commission should also include any comments or recommended changes to the draft Ordinance in taking the following actions:

1. Find that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act [Section 15061 (b)(3)] (Exhibit 1); and
2. Make the required finding that the Ordinance amendments (Exhibit 12 and 13) are consistent with the General Plan (Exhibit 1); and
3. Forward a recommendation to the Town Council for adoption of the Ordinance amendments to the Town Code (Exhibit 12 and 13).

Alternatively, the Planning Commission may:

1. Forward a recommendation to the Town Council for adoption of the Town Code amendments A-14-002 with modifications; or
2. Continue the matter to a date certain with specific direction.



Prepared by:
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Approved by:
Laurel R. Prevetti
Assistant Town Manager/Director of Community
Development

TOWN CODE
Chapter 26 — PUBLIC TREES ~~AND SHRUBS~~

ARTICLE I. IN GENERAL

Sec. 26.10.010. Definitions.

Sec. 26.10.015. Purpose of chapter.

Sec. 26.10.020. Applicability of chapter.

Sec. 26.10.025. Enforcement of chapter.

Sec. 26.10.030. Master street tree list.

Sec. 26.10.035. Planting of trees limited to those on master street tree list.

Sec. 26.10.040. Planting procedure—Generally.

~~Sec. 26.10.045. Same—Large scale planting.~~

Sec. 26.10.050. Abuse, mutilation, etc., of trees prohibited.

Sec. 26.10.055. Certain trees, etc., declared a public nuisance.

Sec. 26.10.060. Maintenance and removal of trees.

Sec. 26.10.065. Obstructions at corners of intersecting streets.

Sec. 26.10.070. Appeals.

Sec. 26.10.010. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Director means the Director of Parks, ~~Forestry and Maintenance Services and Public Works or the Director's designated representative.~~

Owner of the property means the person who is the owner of the fee simple title of the property on which a street tree is planted.

Parkway strip means that public area between the curb and the sidewalk, or between the sidewalk and the property line on a public street.

~~*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, ~~and the center and side-plots thereof.~~

Street trees means those trees in a public place, or along or within a public street or within a parkway strip.

(Code 1968, § 31-1)

Sec. 26.10.015. Purpose of chapter.

It is for the best interests of the Town that a comprehensive plan for the planting, maintenance and removal of trees in, or which may overhang, public streets within the Town should be developed and established; and this chapter is adopted for the purpose of developing and providing for such a plan and program, and for the purpose of establishing rules and regulations relating to the planting, maintaining and removal of such trees.

(Code 1968, § 31-2)

Sec. 26.10.020. Applicability of chapter.

This chapter is intended to give, and does hereby give, full and complete authority to the Director, or the Director's authorized agent, over all trees planted and growing, or to be planted and grown, upon or overhanging any streets, public areas and parkways in the ~~Town which are now, or in the future will become, a part of a comprehensive plan for planting and maintenance of trees in such area as adopted by resolution of the Town Council.~~ The provisions of this chapter are not superseded by ~~e~~Chapter 29 of this Code.

(Code 1968, § 31-3)

Sec. 26.10.025. Enforcement of chapter.

The Director shall have jurisdiction and control over the planting, setting out, location, selection and placement of all trees in the public streets of the Town, and shall likewise have supervision, direction and control of the care, trimming, removal, relocation and replacement thereof.

(Code 1968, § 31-4)

Sec. 26.10.030. Master ~~Street t~~Tree ~~l~~List.

- (a) ~~A Master Street Tree List shall be established by resolution of the Town Council. There is hereby established a master street tree list consisting of the following trees:~~

~~Purple Leaf Plum (Prunus Blirana); Maiden Hair Tree (Ginkgo Biloba, male only, including selected forms); Sweet Gum (Liquidamber Styraciflua, selected forms only); Holly Oak (Quercus Ilex); Chinese Pistachio (Pistacia Chinensis); Australian Willow (Beijera Parviflora); Melaleuca (Melaleuca Linarifolia); Goldenrain Tree (Kodolrouteria Paniculata); Carob (Ceratonia Siliqua, selected forms only); Camphor Tree (Connamomum Camphora); Sawleaf Zelkova (Zelkova Serrate); Japanese Privet (Ligustrum Lucidum, selected forms only); Southern Magnolia (Magnolia Grandiflora, including selected forms); Deodar (Cedrus Deodar); Italian Stone Pine (Pinus Pinea); Canary Island Pine (Pinus Canariensis); European Hackberry (Celtis Australis); Tulip Tree (Liriodendron Tulipifera); Italian Buckthorn (Rhammus Alternus John Edwards); Weeping Bottlebrush (Callistemon Viminalis); Carrotwood Tree (Cupania Anacardioides); Purple Hop-Bush (Dononea Viscosa Atropurpureaa); Victoria Box (Pittosporum Undulatum); and European White Birch (Betula Alba).~~

- (b) A copy of ~~the Master Street Tree List such list~~ shall be kept on file in the office of the Director. Revisions, additions or changes in the ~~m~~Master ~~Street t~~Tree ~~l~~List may be made from time to time by resolution of the Town Council. Additional tree varieties may be used at the discretion of the Director in conjunction with new tree introductions recommended by urban forestry and horticultural organizations, research foundations and educational institutions, the Saratoga Horticultural Foundation, the University of California and other research agencies.

(Code 1968, § 31-5)

Sec. 26.10.035. Planting of trees limited to those on ~~M~~master ~~S~~Street ~~T~~Tree ~~L~~list.

Only those trees which are designated on the ~~m~~Master ~~s~~Street ~~t~~Tree list and which are approved by the Director shall be planted along the public streets of the Town.

(Code 1968, § 31-8)

Sec. 26.10.040. Planting procedure—Generally.

No person shall plant or set out any tree in or along a public street without first filing an application and procuring a written permit to do so from the Director. In such an event, the Director may require that the person to whom such permit is granted either deposit per tree an amount established by the Council from time to time by resolution with the Director, who shall then plant approved trees, or plant approved trees subject to the control of the Director, as provided in section 26.10.025. No person shall place or maintain shrubs or plants in a parkway strip in such a manner that they restrict the growth of, or potentially harm, a street tree more than thirty-six (36) inches in height, nor closer than twenty-four (24) inches from any street tree.

(Code 1968, § 31-9)

~~Sec. 26.10.045. Same—Large scale planting.~~

- ~~(a) The Director shall require the planting of street trees within the parkway of any new subdivision in conformity with this section.~~
- ~~(b) The Director shall plant and maintain such trees at such times and places as the development of the subdivision, its occupancy and other conditions make feasible.~~
- ~~(c) The applicant shall be required to pay to the Town a fee in accordance with the Town's fee resolution for the purchase, planting and maintenance of the specified number of street trees as determined by using criteria set up in this section.~~
- ~~(d) An applicant shall be required to submit to the Director, upon the tentative subdivision map, a tentative planting plan, in duplicate, which shall accurately show the following:
 - ~~(1) The proposed street, together with its subdivision of pavement, curb, gutter, parking strip and sidewalk areas to a definite indicated scale.~~
 - ~~(2) The variety of each tree, as specified by the Director, to be planted, and of those already existing within the proposed street lines, either indicated on the plans or referenced with a number to a key list.~~
 - ~~(3) The proposed location of each and every proposed tree, together with the location of each existing tree within the proposed street line, and the location of all existing trees with a trunk diameter of six (6) inches or more within the balance of the subdivision, in scaled relation to the other features of the plan.~~
 - ~~(4) The distance between trees shall allow for a minimum of one (1) tree per interior lot with a frontage of seventy-five (75) feet or less. A minimum of two (2) trees shall be provided for a corner lot. Selection of a small tree variety may require more trees per lot than the minimum stated above, and this number shall be determined at the discretion of the Director. Street tree plantings in areas other than residential shall be as specified by the Director, but minimum distances between trees shall be forty (40) to fifty (50) feet.~~
 - ~~(5) The location of all existing and proposed surface or subsoil drainage systems shall be shown.~~
 - ~~(6) Prior to submission of a tentative planting plan, the applicant shall confer with the Director to determine species and spacing of each street tree.~~~~

~~(Code 1968, § 31-10; Ord. No. 1817, § I, 3-19-90)~~

Sec. 26.10.050. Abuse, mutilation, etc., of trees prohibited.

No person shall do any of the following:

- (1) Damage, cut, carve or injure the bark of any street tree;
- (2) Attach any sign, wire or injurious material to any street tree;
- (3) Cause or permit any wire charged with electricity to come in contact with any street tree;
- (4) Allow any gaseous, liquid or solid substance harmful to trees to come in contact with the roots, leaves, bark or any part of any street tree;
- (5) Construct concrete, asphalt or brick paving, or otherwise fill up the ground area, within four (4) feet of any tree, so as to shut off air, light or water from its roots, without written permission from the Director.

(Code 1968, § 31-11)

Sec. 26.10.055. Certain trees, etc., declared a public nuisance.

(a) ~~Any trees, shrubs, plants or parts thereof growing in, or overhanging, a public street or right-of-way, or upon private property,~~ interfering with the use of any public street or public place in the Town, or trees which, in the opinion of the Director, endanger 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.

(b) Any Sweet Gum (*Liquidambar styraciflua*) planted in a parkway strip that has created, or will imminently create, persistent and uncontrollable damage to the sidewalk, curb and gutter, pavement, or adjacent private property that cannot be reasonably remedied through root pruning or other accepted arboricultural means is hereby declared to be a public nuisance.

(Code 1968, § 31-12)

Sec. 26.10.060. Maintenance and removal of trees.

- (a) The ~~department of parks, forestry and maintenance~~Department of Parks and Public Works services is responsible for inspection, maintenance, removal and replacement of all trees in public ~~areas~~places and parkways. No person shall trim or prune any tree in the public right-of-way without written authorization from the Director. When a tree in a parkway does not constitute an immediate danger to persons or property, the Director shall not remove it without giving at least ten (10) days' written notice to the owner of the property, or if the tree is located on a parkway owned in fee by the Town, to the owner of the nearest abutting property, and posting notice of removal on or near the tree.
- (b) Maintenance of trees, as authorized in subsection (a) of this section includes, but is not limited to, root pruning to prevent damage to sidewalks and curbs or to permit repair of such damage, and pruning of limbs to compensate for root removal.
- (c) The Director may remove limbs from any tree regardless of the location of the tree upon a finding that the removal is necessary in the interest of public safety. If such tree is on private property and does not come within the provisions of section 26.30.010, the Director shall not remove any such limbs without giving at least ten (10) days' written notice to the owner of the property, and posting notice of removal on or near the tree.

- (d) Nothing in this chapter shall be deemed to impose any liability upon any member of the Town Council, or the Town or any of its officers or employees, or to relieve the owner and the occupant of any private property from the duty to keep the property, and the sidewalks and parkway in front of the property in a safe condition, and not hazardous for public travel.
- (e) Whenever a property owner wishes to have a tree removed from a parkway planted thereon by the Town, the owner shall apply to the Director for a permit for removal. The Director shall determine whether to issue the permit and whether the work of removal is to be done by the Town. If the tree is found to be in good condition and the permit is granted solely-primarily for the convenience of the applicant, then the full cost and responsibility of such removal shall be borne by the applicant and paid in advance including replanting of a new street tree. Where replanting is impractical or infeasible, the adjacent property owner may pay an in-lieu fee in an amount approved by resolution of the Town Council.
- (f) Removal of street trees shall be subject to the Standards of Review set forth in Sec. 26.10.062 and the Required Findings set forth in Section 26.10.063 of this Chapter of the Town Code.
- (g) All street trees removed pursuant to this Chapter shall be replanted with a tree selected from the approved Master Street Tree List suitable and complimentary to the location, except where replanting is not feasible due to modifications to the public improvements or infrastructure associated with an approved project.
- (hf) Notices as required by this section may be given in the manner provided in section 26.30.015.
(Code 1968, § 31-13)

Sec. 26.10.062. 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 provide the basis upon which the Director will subsequently determine whether or not one or more of the required findings listed in Section 26.10.063 can be made.

- (1) The condition of the tree or trees with respect to disease, imminent danger of falling or structural failure, proximity to existing or proposed structures, structural damage to a building or 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 removal request 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 street frontage or adjacent parcel can adequately support according to good urban forestry practices, or whether the tree proposed for removal is a detriment to or crowding other trees, including Heritage Trees or other protected trees as defined in Chapter 20 of the Town Code.
- (5) Whether the removal of the tree and replanting with a different species will help promote a more unified street tree canopy.
- (6) The species, size (diameter, canopy, height), estimated age and location of the tree.
- (7) The impact of the tree on the adjacent property and the adjacent public improvements, including sidewalks, curb, gutter, pavement, drainage, lighting, or traffic control devices.

(Ord. No. 2114, §§ I, II, 8-4-03)

Sec 26.10.063. Required Findings

The Director, Director's designee, or deciding body shall approve a street tree removal permit only after making at least one 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 or some of its major component parts present a clear safety hazard that cannot be controlled or remedied through preventative procedures or pruning within ISA guidelines.
- (3) The tree is crowding other trees to the extent that removal 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 adjacent property or creates an unusual hardship for the adjacent 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 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) The removal of the tree is necessary to repair a geologic hazard.
- (8) The removal of the tree has been approved by the Town Council as part of an approved Capital Improvement Project.
- (9) The removal of the tree has been approved by the Town Council, Planning Commission, or DRC as part of an approved development project.
- (10) The tree is interfering with the use and function of public sidewalks, curb and gutter, pavements, or other public improvements and cannot be retained through root pruning or reasonable modifications of the affected public improvements.
- (11) The tree is of a species, size or character such that removal and replacement with a more appropriate tree species will enhance the Town's urban forest.

Sec. 26.10.065. Obstructions at corners of intersecting streets.

The owner or occupant of any corner lot or premises in the Town shall keep trees, hedges and growth at the corners of intersecting streets, whether between the curb line and the private lot line, or within the private lot or premises, so trimmed that the height of the same shall not exceed three (3) feet above the curb level for a distance of thirty (30) feet measured horizontally in any direction from the point of intersection of the property lines at street corners; provided, that trees whose main trunks are exposed to a height of seven and one-half (7½) feet above the curb need not be so trimmed or cut.

(Code 1968, § 31-15)

Sec. 26.10.070. Appeals.

- (a) Decisions of the Director under the provisions of sections 26.10.055, 26.20.010, 26.20.015, and 26.10.060(a) and (c) (in instances involving trees located on private property only), and 26.10.060(e), and 26.30.010 concerning notices to cut down, trim or remove a tree, only, are appealable to the

Parks Commission. Appeals shall be commenced by filing a written notice of appeal with the Secretary of the Parks Commission within ten (10) days after the property owner or possessor of land is notified of the decision. The notice of appeal shall state the name and address of the appellant, the location of the tree, including the street address of the property most likely to assist in locating the tree if there is such address, a description sufficient to identify the tree, describe the specific action of the Director which is the subject of the appeal, and state the grounds for the appeal.

- (b) Determinations of the Parks Commission under the provisions of this chapter, including determinations on appeal from decisions of the Director, are appealable to the Town Council. Appeals shall be commenced by filing a written notice of appeal with the Town Clerk within ten (10) days after the property owner or possessor of land is notified of the decision. The notice of appeal shall state the name and address of the appellant, shall describe the determination or decision appealed from, and shall state the grounds for appeal.
- (c) Any interested person may appeal.
- (d) All appeals under the provisions of this chapter shall be determined after hearing by the appellate body of all of the evidence concerning the determination from which the appeal is taken.

(Code 1968, § 31-16; Ord. No. 2018, § III, 8-5-96)

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TOWN CODE
Chapter 29 - ZONING REGULATIONS
ARTICLE I. - IN GENERAL

DIVISION 2. TREE PROTECTION

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Sec. 29.10.0955. Definitions.

Sec. 29.10.0960. Scope of protected trees.

Sec. 29.10.0965. Prohibitions.

Sec. 29.10.0970. Exceptions.

Sec. 29.10.0975. Emergency action.

Sec. 29.10.0980. Applications for a tree removal permit.

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

Sec. 29.10.0985. Determination and conditions of permit.

Sec. 29.10.0987. Special Provisions—Hillsides

Sec. 29.10.0990. Standards of review.

Sec 29.10.0992. Required Findings.

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

Sec. 29.10.0995. Disclosure of information regarding existing trees.

Sec. 29.10.1000. New property development.

Sec. 29.10.1005. Protection of trees during construction.

Sec. 29.10.1010. Pruning and maintenance.

Sec. 29.10.1015. No limitation of authority.

Sec. 29.10.1020. Responsibility for enforcement.

Sec. 29.10.1025. Enforcement—Remedies for violation.

Sec. 29.10.1030. Fees.

Sec. 29.10.1035. Severability.

Sec. 29.10.1040. Notices.

Sec. 29.10.1045. Appeals.

Sec. 29.10.0950. Intent.

This division is adopted because the Town of Los Gatos is forested by many native and non-native trees Oak, Bay, Eucalyptus, Sycamore, Redwood, Pine and other trees, and contains individual trees of great beauty. The health and welfare of the citizens of the Town require that these trees be saved in order to preserve the scenic beauty of the Town, prevent erosion of topsoil, provide protection against flood hazards and risk of landslides, counteract pollutants in the air, maintain climatic balance and decrease wind velocities. Trees contribute significantly to the value of land in the Town. 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. It is the intent of

EXHIBIT 1 3

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 division Chapter 26 of this Code.

(Ord. No. 2114, §§ I, II, 8-4-03)

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 ~~that~~ (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.

~~*Dangerous* means a tree, which is an imminent hazard or threat to the safety of persons or property as determined by a certified arborist or the deciding body Director.~~

Development means any work upon any property in the Town which requires a subdivision, rezoning, planning permit, community zone, variance, use permit, building permit, demolition permit, grading permit or other Town approval or which involves excavation, landscaping, construction 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 ~~three~~ 4.5 feet (~~36~~ 54 inches) above natural grade. Measurement of multi-trunked trees shall be determined by the sum of all trunk diameters measured ~~above the trunk union at 4.5 feet (54 inches)~~ above natural grade.

Director means the Director of Community ~~Development, Director of Parks and Public Works Development~~ or the ~~d~~Director's designated representative.

Dripline area means the area around the trunk of the tree extending out a distance ten times within X distance from the perimeter of the trunk of the tree at three feet (36 inches) above natural grade, where X equals a distance ten times the diameter of the trunk, as measured at three feet (thirty-six inches) 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).

Multi-trunk tree means a tree that has more than one 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 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 woody perennial plant, usually with one (1) main stem or trunk, and many branches. It may appear to have several stems or trunks and is usually over ten (10) feet high at maturity. A tree in the protected tree category 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 such as to: safety and risk reduction; clearance; health maintenance; ~~control~~ 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)), ~~produced by the International Society of Arboriculture (ISA).~~

~~Public nuisance, as described in Section 26.10.055, means any trees, shrubs, plants or parts thereof growing in, or overhanging, a public street or right-of-way, or upon private property, interfering with the use of any public street or public place in the Town, or trees which, in the opinion of the Director, endanger 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; (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 transportation 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. either the removal of more than one-fourth of the functioning leaf and stem area of a tree in any twelve-month period, topping or removal of foliage so as to cause the unbalancing or unnatural shape of a tree.~~

~~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 on a property 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 ~~these a~~ trees 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. ~~heading back of the crown and/or creating large stubs without regard to form.~~

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 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 during 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.

~~Undeveloped lot means any lot that is significantly under developed or utilized against current zoning. Parcels that feature roads, walls, landscaping or other such improvements are considered undeveloped (See also, vacant lot).~~

~~Vacant lot means any lot featuring existing development that is no longer occupied or otherwise used in accordance with existing zoning. (See also, undeveloped lot)~~

(Ord. No. 2114, §§ I, II, 8-4-03)

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 (12") or greater diameter (thirty-seven and one-half-inch circumference) of any trunk, or in the case of multi-trunk trees, a total of twelve-eighteen inches (12-18") inches or greater diameter ~~or more of the sum diameter (thirty-seven and one-half-inch~~

~~circumference 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 kelloggii*)
- 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 (26) 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.

~~(6) All trees which have a four-inch or greater diameter (twelve and one-half inch circumference) of any trunk and are located on a vacant lot or undeveloped property.~~

(7) All trees, which have a four-inch or greater diameter (twelve and one half-inch circumference) of any trunk and are located on developed commercial, office, or industrial 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 ~~may shall~~ also include be 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

~~Measurement of trunk diameter (circumference) for the purpose of applying this section shall be made three (3) feet above natural grade. Measurement of multi-trunked trees shall be determined by the sum of all trunks measured above the trunk union.~~

(Ord. No. 2114, §§ I, II, 8-4-03)

Sec. 29.10.0965. Prohibitions.

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

- (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 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 4 inches in diameter (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 Sec. 29.10.0955 without first obtaining a permit pursuant to this chapter.
- (52) 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 ~~remove a protected tree without first obtaining~~ a permit under this division. ~~This~~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.

(Ord. No. 2114, §§ I, II, 8-4-03)

Sec. 29.10.0970. Exceptions.

The following trees ~~removals and conditions~~ 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) ~~Emergencies. If the condition of a tree presents an immediate hazard to life or property, it may be removed without a permit on order of the Director Town Manager, the Town Engineer, the Planning Director, the Parks and Public Works Director or a member of the police, fire, or emergency personnel.~~
- (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 24 inches in diameter (75 inches in circumference):

Black Acacia (*Acacia melanoxylon*)
Tulip Tree (*Liriodendron tulipifera*)
Tree of Heaven (*Ailanthus altissima*)
Blue Gum Eucalyptus (*E. globulus*)
Red Gum Eucalyptus (*E. camaldulensis*)
Other Eucalyptus species—Hillsides only
Palm (except *Phoenix canariensis*)
Privet (*Ligustrum lucidum*)

(Ord. No. 2114, §§ I, II, 8-4-03)

Sec. 29.10.0975. Emergency action.

A person may remove or severely prune a protected tree without a permit if there is an emergency caused by the protected tree being in a hazardous or dangerous condition requiring immediate corrective action to abate the condition. In such event, the property owner or representative shall be responsible for the following notification:

- (1) Notify the Town Parks and Public Works Department during business hours Police Department after business hours prior to removal in order to confirm the emergency situation. If the Town

~~confirms the emergency situation photo documentation and written verification by the or tree service removing the tree will be required.~~

- (2) ~~After the abatement, no later than two days from the date the tree was removed or severely pruned because of the emergency, the property owner shall apply for a tree removal permit, and submit to the Director the documentation required above and in section 29.10.0980.~~

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 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 ~~e~~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.

(Ord. No. 2114, §§ I, II, 8-4-03)

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 ~~Community Development Department~~Town as indicated on the application. Application submittals for the removal of trees on public property (street trees) are provided for in ~~Chapter-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 ~~or agent~~.
- (2) A written explanation of why each tree(s) should be removed or pruned and how it meets the Town's ~~standard for allowable removal~~Standards of Review.
- (3) Photograph(s) of the tree(s).
- (4) If required by the ~~D~~irector, 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 ~~on company letterhead~~signed by the arborist and include tree size (diameter, height, crown spread); location on the site; numbered on a site plan or arborist's tree survey (if there is more than one tree); condition of health; condition of structure; and if ~~hazard tree risk~~ findings apply, a an ISA Hazard Rating Form 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.

- (5) Payment of Permit fee, as established by Town resolution.

(Ord. No. 2114, §§ I, II, 8-4-03)

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 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 of Community Development~~Director shall determine whether to grant ~~the~~ 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 impose, except when removal is permitted if the tree is dead or a Tree Risk Rating of Extreme or High is present, condition exists, as a condition on which a protected tree removal permit is granted that two or more replacement trees of a species and a size designated by ~~the the Director of Parks and Public Works Department~~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 of Parks and Public Works Department~~Director, shall be planted on the subject private property. Table 3-1 The 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 the value of the removed tree(s) shall be paid to the Town ~~Forestry Fund~~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- Replacement value of a tree shall be determined using the most recent edition of the Guide for Plant Appraisal, as prepared by the Council of Tree and Landscape Appraisers.

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

Table 3-1 - Tree Canopy - Replacement Standard

COLUMN 1	COLUMN 2	COLUMN 3
Canopy of the removed tree¹ (Maximum distance across the canopy)	Replacement trees	Alternative tree
4 feet—9 feet	Two 24 inch box size (Minimum)	One 36 inch box size
10 feet—27 feet	Three 24 inch box size	Two 36 inch box size
28 feet—40 feet	Four 24 inch box size	Two 48 inch box size
40 feet—56 feet	Six 24 inch box size	Two 36 inch box size Two 48 inch box size
56 feet—60 feet	Two 24 inch box and two 36 inch box plus two 48 inch box size	²below
60 feet +	²below	²below

Using Table 3-1

~~Table 3-1, is a matrix formula used to determine how many trees will be required for planting to approximate the lost canopy of the removed tree over the course of ten (10) years with moderate care.~~

- ~~(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 shall be replaced with a combination of both the Tree Canopy and Tree Value Standards as determined by the director.~~

(Ord. No. 2114, §§ I, II, 8-4-03)

Table 3-1 - Tree Canopy - Replacement Standard

<u>Canopy Size of Removed Tree¹</u>	<u>Replacement Requirement^{2,4}</u>	<u>Single Family Residential Replacement Option^{3,4}</u>
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<u>10 feet or less</u>	<u>Two 24 inch box trees</u>	<u>Two 15 gallon trees</u>
<u>More than 10 feet to 25 feet</u>	<u>Three 24 inch box trees</u>	<u>Three 15 gallon trees</u>
<u>More than 25 feet to 40 feet</u>	<u>Four 24 inch box trees; or Two 36 inch box trees</u>	<u>Four 15 gallon trees</u>
<u>More than 40 feet to 55 feet</u>	<u>Six 24 inch box trees; or Three 36 inch box trees</u>	<u>Not Available</u>
<u>Greater than 55 feet</u>	<u>Ten 24 inch box trees; or Five 36 inch box trees</u>	<u>Not Available</u>

Notes

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

²Often, 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 the Town Council by resolution paid to the Town Tree Replacement Fund.

³Single Family Residential Replacement Option is available for developed single family residential lots under 10,000 square feet that are not subject to the Town's Hillside Area Development Standards and Guidelines. All 15-gallon trees must be planted on-site. Any In-lieu fees for single family residential shall be based on 24" box tree rates as adopted by Town Council.

⁴Replacement 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. Replacement requirements in the Hillside 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 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 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 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 ~~shall be reviewed using the following criteria 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 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, or (c) structural failure, (d) proximity to existing or proposed structures based on a report from a certified arborist, (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. The danger of falling or failure shall be rated using the ISA Tree Hazard Rating Form or an approved equivalent.
- (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 no protected tree shall be removed unless removal is unavoidable due to restricted access to the property or deemed necessary to repair a geologic hazard (landslide, repairs, etc.). The tree removed shall be replaced in accordance with the standards in section 29.10.0985 of this Code. Tree preservation and protection measures for any lot that is created by a proposed subdivision of land shall comply with the regulations of this Code.
- (6) The retention of a protected tree would result in reduction of the otherwise-permissible building envelope by more than twenty-five (25) percent. In such a case, the removal shall be conditioned upon replacement in accordance with the standards in section 29.10.0985 of this Code.
- (7) The Hillside Development Standards and Guidelines, current version.
- (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 Sec. 29.10.0955. Definitions.

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

(Ord. No. 2114, §§ I, II, 8-4-03)

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 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) 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.

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) and (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 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 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 days from the date of the "Notice of Pending Issuance of Tree Removal 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 10 days, the objecting party shall be so advised and shall be provided an additional 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.

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) ~~In addition, t~~The location of all ~~other~~ 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.

(Ord. No. 2114, §§ I, II, 8-4-03)

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 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. 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 ~~forwarded to the director~~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 Sstandards 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) ~~Tree preservation report~~—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 ~~Ttree Ppreservation Rreport~~ 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 ~~Ttree Ppreservation Rreport~~ 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 ~~preserve~~protect all trees recommended for preservation by the ~~director~~Town's consulting arborist. The Town reviewing body may determine ~~that if~~ any of the trees recommended for preservation should be removed, if based upon the evidence submitted the reviewing body determines there is evidence submitted, 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 ~~replacement~~ 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 under the auspices of the International Society of Arboriculture. The appraisal shall be performed at the applicant's expense, and the appraisal shall be subject to the ~~d~~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 ~~d~~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 will then be responsible for the loss of any tree not previously approved for removal. ~~For trees that are not protected trees, which were removed, the developer shall pay a fine in the amount equal to the appraised value of the subject tree.~~ For protected trees, which were removed, the developer shall pay a fine-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 one (1) year following acceptance of the public improvements of the development.
- (e) ~~Protective fencing inspection.~~ Prior to issuance of any demolition, grading or building permit, the applicant or contractor shall submit to the ~~B~~building ~~D~~epartment a written statement and photographs verifying that the required tree protection fence is installed around ~~street trees and protected trees in accordance with the Ttree Ppreservation Rreport.~~
- (f) If required by the ~~d~~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.

(Ord. No. 2114, §§ I, II, 8-4-03)

Sec. 29.10.1005. Protection of trees during construction.

- (a) Protective tree fencing shall specify the following:

- (1) Size and materials: ~~A five (5) or s~~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 10-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 2-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 begins-permits are issued and remain in place until final-landscaping is required

the same are 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 8.5 x 11-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 inside the fence 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 dDirector.
- (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 the 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 certified or consulting arborist 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. 2114, §§ I, II, 8-4-03)

Sec. 29.10.1010. Pruning and maintenance.

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) All pruning of protected trees shall be consistent with the current edition of Best Management Practices—Tree Pruning, established by the International Society of Arboriculture (ISA), and any special conditions as determined by the dDirector. 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 fertilizing 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 permission from the dDirector 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 (12.5" in circumference) without first obtaining a permit pursuant to this division.

(Ord. No. 2114, §§ I, II, 8-4-03)

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 (Trees and Shrubs) 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~~ The more protective requirements shall prevail.

(Ord. No. 2114, §§ I, II, 8-4-03)

Sec. 29.10.1020. Responsibility for enforcement.

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, who shall enforce this division. Issuance of citations may be delegated to the following: Director of Parks and Public Works, Code Compliance Officer, Town Arborist and Town Peace Officers.

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.

(Ord. No. 2114, §§ I, II, 8-4-03)

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:

- (1) Tree removals in absence of or in anticipation of development. 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 ~~d~~Director may be imposed as a condition of any subsequent application approval or permit for development on the subject property.
- (2) Pending development applications. 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 ~~d~~Director or forwarded to the Planning Commission with a recommendation for denial at the ~~d~~Director's discretion. Mitigation measures as determined by the director may be imposed as a condition of approval.
- (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 ~~e~~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 ~~e~~Director.
 - b. The violation of any provisions in this division during the conduct by any person of a tree removal, landscaping, construction or other business in the Town shall constitute grounds for revocation of any business license issued to such person.
- (4) Mitigation plans. 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 tree that was removed in the same location as the removed tree or as determined by the Director of Community Development, or by the Director of Parks and Public Works, if replacement is to occur on public property. 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.
- (5) Civil penalties.
- Notwithstanding section 29.20.950 relating to criminal penalty, any person found to have violated section 29.10.0965 shall be liable to pay the Town a civil penalty as prescribed in subsections ~~(4a.)~~ through ~~(4)~~.
- a. As part of a civil action brought by the Town, a court may assess against any person who commits, allows, or maintains a violation of any provision of this division a civil penalty in an amount not to exceed five thousand dollars per violation.
 - 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 per tree unlawfully removed, or the replacement value of each such tree, whichever amount is higher. Such amount shall be payable to the Town and deposited into the ~~street tree deposit account~~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 e~~Director directs a replacement tree or trees to be planted as part of ~~the~~ remedy ~~to~~for the violation, the trees shall be permanently maintained in a good and healthy condition. The property owner shall execute a two-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.

(Ord. No. 2114, §§ I, II, 8-4-03)

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.

(Ord. No. 2114, §§ I, II, 8-4-03)

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.

(Ord. No. 2114, §§ I, II, 8-4-03)

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 may appeal a decision of the seeking the director's approval to remove a protected tree pursuant to this division ~~who is aggrieved by a decision of the director may appeal such decision~~ in accordance with the procedures set forth in section 29.20.260 255 of the Town Code. All appeals shall comply with the public noticing provisions of section 29.20.450 of the Town Code.

(Ord. No. 2114, §§ I, II, 8-4-03)

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To: Planning Commission, Meeting of March 25, 2015

From: Dave Weissman

Re: Revisions to Tree Protection Ordinance

As I will be out of town for the meeting, I write this summary, which was reviewed by staff.

As per the PC's directives, staff (Laurel P. and Joel P.) and I met and had a very productive session. We easily reached unanimous consensus on some 95% of items. The other 5% were not contentious but rather a discussion of how far the PC might be interested in going with this revision. By agreement amongst us, we decided that I should present these issues to the PC for direction. I suggest that each of the 12 items listed below be discussed separately on its merits. After your discussions, I suggest that either these items could be incorporated into the ordinance or returned to staff with directions for revision.

(1) "Sec. 29.10.0970 Exceptions". I want to encourage the removal of all non-native trees and vegetation from hillside properties when greater than 30 feet from the main structure (i.e. outside of the landscaped areas around the house). I believe that even partially developed hillside areas are, by their nature, disturbed. However, by encouraging (or even requiring during the permitting process?) the removal of non-native vegetation, one can help minimize the ecological disturbance and increase the sustainability of the area. For instance, *Eucalyptus* trees, all species of which are non-native, suppress the growth of native vegetation through their production of oils and other chemicals, provide unnatural vantage perches for predatory birds because of their height, are not fed on by any native insects or herbivores, and can kill hummingbirds because their produced oils and gums clog up their nostrils when they visit their flowers. Removing *Eucalyptus* may permit native vegetation to recolonize the space that was occupied by them, thus helping both the native flora and fauna. The Town Council at its June 16, 2003, meeting asked staff to study what to do with non-native hillside vegetation, for consideration of later amendments,

when they passed the current 2003 tree protection ordinance. This was apparently not done by staff, but the science is clear: removing non-natives is beneficial for both native plants and animals. As a means to encourage removal, perhaps non-native hillside trees less than 24" in diameter should not require a tree removal permit. I also suggest that no replacement trees be required as nature can usually do well if given the chance. These two actions could encourage removal by decreasing both time and expense for the landowner.

(2) "Sec. 29.10.0985 Determination and conditions of permit". This scenario does not appear to be addressed anywhere in the ordinance: What about the situation where there is no application for any zoning approval or subdivision of a vacant hillside lot and the property owner asks for a tree removal? Science says that even trees in poor condition, or dead trees on vacant lots, if not a health or safety hazard, serve a biological function. They can provide food, shelter, nesting sites, and places for woodpeckers to store acorns. They should not be removed except in the context of an application for development. Tree removal requests for a lot with a pending A&S are already addressed in the Ordinance. If trees are removed without an active A&S, the governing body could end up approving a house in a different hillside location than the applicant anticipated. Those trees removed before the application was filed might have been saved given the new location.

(3) "Sec. 29.10.0987 Special provisions – Hillsides". I assume that replacement trees will be covered by the homeowner maintenance warranty as described below [(6) Sec 29.10.1000]. If yes, then that requirement should also be restated here. I also know that oak woodlands are much more than just their trees. The understory, with its dead leaves, poison oak, fungi, and various animals, is vital to the integrity and health of the oaks. Grading, even if less than the 1000 square foot threshold of the Grading Ordinance, should be forbidden more than 30 feet from the main structure where there are oaks. I understand that the Town may undertake revision of the Town's grading ordinance later this year, but such protection for our forests should not have to wait until then.

(4) "Sec. 29.10.0990. Standards of Review (6) "The retention of a protected tree would result....." This sentence seems to imply that the applicant does not have to also consider changing the shape and size and location of the proposed house, in contradiction to the HDS&G.

(5) "Sec. 29.10.0992 (1)". Unless dead, it can be difficult for any arborist to predict which trees might or might not recover, if not presently healthy. I feel it should be Town policy that trees should be given the "benefit of the doubt," and perhaps a few years of TLC, feeding, watering, removal of dead or diseased branches or trunks, etc., to see if they can recover (assuming they are not a safety danger).

(6) "Sec. 29.10.1000 New property development (d) The applicant shall remain responsible for the health and survival of all trees in the development for a period of 1 year..." I am not sure where such a short time period originated. For instance, in 1994, a 5 year, new-tree maintenance agreement between the Town and the property owners of 77 Broadway, was recorded. I feel that 1 year is too short of a time period for the following reasons: mature trees, especially oaks in the hillsides, can be fairly tolerant of various insults and may take 3 to 5 years to die from overwatering, excessive pruning, compacting of soil, poisoning from spilled chemicals like motor oil, etc. This longer period will force the developer and subsequent residents to take better care of their trees during those early, most vulnerable years. This is especially true for any required replacement trees whose roots may require several years to adequately grow. And relocated trees are also notoriously difficult to keep alive once transplanted, unless given good care. I also feel that a required 5 year maintenance agreement might negate the need for a posted security bond as discussed in this same Sec. under (f) because such an extended maintenance time period probably provides more protection than a shorter time period bond. This revised setup would be a nice trade-off and could encourage compliance.

(7) "Sec. 29.10.1005 (b) (4) Prohibit the attachment of wires, signs, or ropes....."

Do we want to make an exception for those ropes associated with the temporary installation of story pole ropes? As the ordinance now reads, such ropes would be prohibited. I suspect that because of their temporary nature, such ropes do little or no harm to a tree to which they are attached.

(8) "Sec. 29.10.1025 Enforcement" This section is unclear and I propose the following rewrites (shown below in underline)

(1) Tree removals in absence of or in anticipation of development. If a violation occurs in the absence of or prior to proposed development, then discretionary applications and/or building permit applications will not be processed by the Town until the violation has been remedied as described in (4) below.

Mitigation plans. The Director should not be involved in deciding on the mitigation measures since they are already spelled out in (4), where it says ".....and shall provide for the replacement of each tree that was removed" [illegally] with a new tree(s) in the same location(s) as those [illegally] removed tree(s)" This is an important enforcement tool because it would help deter the following: a property owner wants to submit an application for a house, most likely in the hillsides, but there is a tree, or trees, on a possible buildable site. Rather than risk getting pushback from the Town to relocate the house, they cut down the trees illegally. They may not get caught and then they can submit their plans. And even if they do get caught, and that is a big "if," then, for discussion sake, say they could be fined \$5,000, which is still probably not a good deterrent. But if they may have to replant in the exact same location as the illegally removed tree(s), and have to sign a 5 year tree maintenance agreement with the Town, they will hopefully think twice before acting.

(2) With the same reasoning, I would eliminate the last sentence in this paragraph since mitigation measures are also covered in (4).

(3) OK as is.

(4) Mitigation plans. 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). 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.

Plus, elsewhere [(2) Sec. 29.10.0985 above], I propose that legal tree removal on an undeveloped lot can only occur in the situation of an application.

(9) "Sec. 29.10.1025 (5) b. Where the violation" What constitutes a "violation?" Perhaps "violation" should be defined in the glossary. Is removing 2 trees on one lot, one or two violations? Is doing excessive trimming on one tree for 3 consecutive days, 1 or 3 violations?

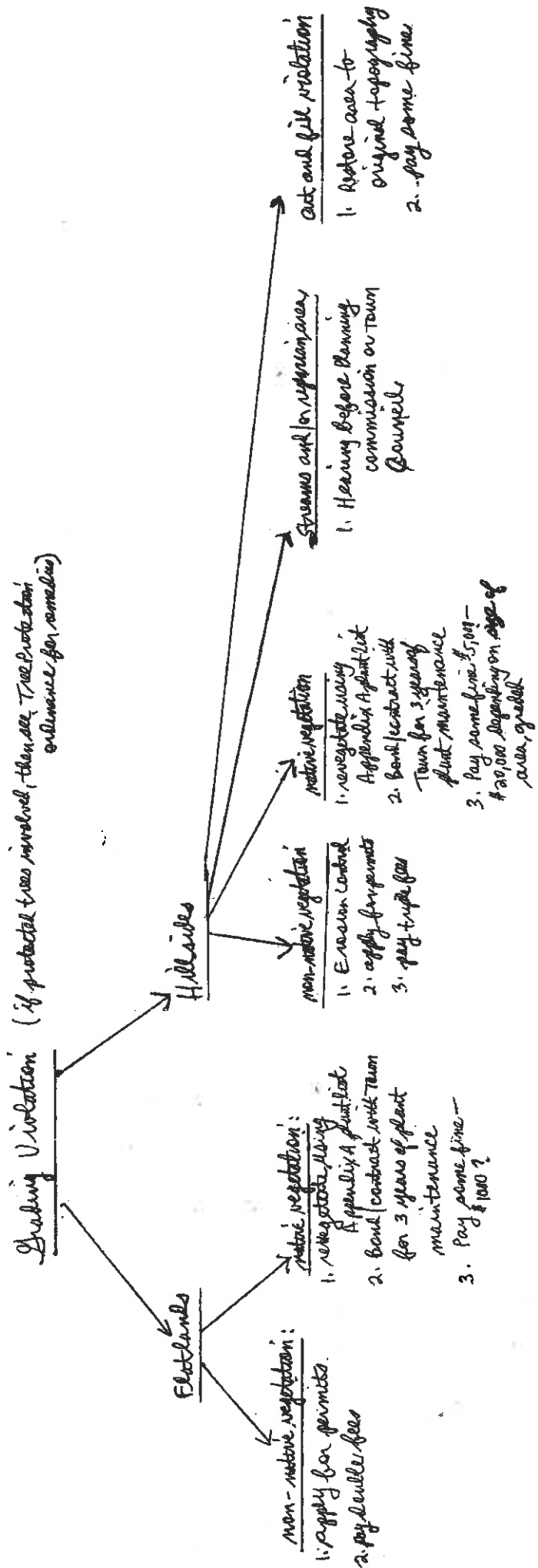
(10) "Sec. 29.10.1025 5 c. The property owner shall execute a 2 year written maintenance agreement with the Town." I think the standard throughout this document should be a 5 year maintenance agreement. And compliance could be monitored on a yearly or twice yearly basis by an outside, certified arborist paid for by the homeowner.

I have 2 general comments re the proposed Ordinance, as follows:

(11) Many hillside lots may not have sufficient space for the trees required to replace legally removed native trees. Also, the property owner may not know the best places to plant the new trees. I think it would be good Town policy to have the Town arborist, when issuing the tree removal permit, to suggest the best place(s) to locate the replacement tree(s).

(12) Lastly, there is wording throughout this document that pertains to the "Director," or their representative, who has the ability to make important decisions re enforcement, penalties, red tagging, etc. I think that such discretion may not be the best thing especially where it applies to enforcement and penalties. Directors

come and go and have different histories, opinions, experiences, knowledge and potential conflicts of interest. They also take vacations and leaves of absence. Enforcement is critical for compliance. I would like the PC to consider the attached flow chart (was also presented in Desk Item 3 at the PC meeting of Feb 11, 2015) whereby perceived arbitrary, drawn-out, capricious, and inconsistent decisions can be minimized, if not avoided completely. Increased transparency is a good thing. A potential violator should know beforehand that committing a violation of the tree (and grading) ordinance will probably have a certain outcome in penalties. Such an objective flow chart can also eliminate the appearance of favoritism, bias, and the "good old boy" system.



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