



Item No. 1 Town of Atherton

CITY COUNCIL / PLANNING COMMISSION STAFF REPORT – JOINT STUDY SESSION

TO: HONORABLE MAYOR, CITY COUNCIL, AND PLANNING COMMISSION

THROUGH: GEORGE RODERICKS, CITY MANAGER

**FROM: STEPHANIE B. DAVIS, AICP SENIOR PLANNER
SALLY BENTZ-DALTON, TOWN ARBORIST**

DATE: OCTOBER 10, 2018

SUBJECT: DISCUSSION AND DIRECTION ON AMENDMENTS TO ATHERTON MUNICIPAL CODE CHAPTER 8.10 “REMOVAL OF AND DAMAGE TO HERITAGE TREES”, INCLUDING AMENDING THE TREE PRESERVATION GUIDELINES, STANDARDS AND SPECIFICATIONS

RECOMMENDATION

It is recommended that the City Council and Planning Commission receive a report from staff on amendments to the Town’s Municipal Code Chapter 8.10 “Removal of and Damage to Heritage Trees”, including amendments to the Town’s *Tree Preservation Guidelines, Standards, and Specifications* (“*Guidelines*”), have discussion on each of the proposed amendment topics, and provide direction to staff. Following, Staff would incorporate the direction received into a draft, revised Ordinance and draft, revised *Guidelines* to present to the City Council for adoption at a future public meeting.

BACKGROUND

In March 2016 staff received a request from the resident volunteer Tree Committee to evaluate the existing heritage tree regulations both within the Municipal Code and the *Tree Preservation Guidelines Standards and Specifications* (“*Guidelines*”), which is implemented through the Municipal Code, as it was found that the amount of heritage trees within Town that are dying has greatly increased due to construction impacts and the drought. An Ad-Hoc Committee was created with appointment of two members of the Planning Commission and two members of the Tree Committee which met over a series of meetings from September 2016 to February 2017 with their final recommendations presented to the Planning Commission.

The Planning Commission conducted three study sessions in April, July and December 2017 and conducted a public hearing in February 2018, adopting a Resolution recommending City Council approval of a series of amendments related to heritage trees.

In May and July 2018, the Council received the Planning Commission recommendation and reports from staff on amendments to the Town’s Municipal Code Chapter 8.10 “Removal of and Damage to Heritage Trees”, including the *Guidelines*, and provided specific feedback to staff.

The recommended amendments are summarized in the ANALYSIS section below. Where specific Council direction on a proposed amendment was given at either the May or July 2018 meeting, it is further noted. Attachments 1 and 2 are copies of the existing Heritage Tree Ordinance and *Guidelines* – these copies do not include any revisions as directed by the Planning Commission or City Council.

At the July 18, 2018 meeting, the City Council directed staff to schedule a joint meeting with the Planning Commission to discuss the proposed revisions to Municipal Code Chapter 8.10 “Removal of and Damage to Heritage Trees”, and amendments to the Town’s *Tree Preservation Guidelines, Standards, and Specifications* (“*Guidelines*”).

ANALYSIS

For each of the proposed amendment topics, a brief summary as to the basis of the proposed amendment is provided. If Council direction was given on any of the topics which differed from the original amendments proposed by the Planning Commission, this direction is specified, and further staff evaluation is included.

1. Incorporation of American National Standards Institute (ANZI) standards and Best Management Practices (BMPs).

- Basis of amendment:
 - Neither the current Ordinance nor *Guidelines* speaks to common types of activities to heritage trees. By providing language that is consistent with industry standards, greater clarity and assurances are provided both to the community and staff. Further, specificity in regulation language may provide for greater clarity in implementation and enforcement both by a project applicant and staff.
- Council direction:
 - No additional comments.

2. Revise the current definition of a heritage tree and add redwood trees 15.2” in diameter or greater as an additional protected tree in the buildable area.

- Basis of Amendment:
 - The current heritage tree definition does not address multi-trunk trees, thus can lead to confusion on the applicable protection and other regulations pertaining to these types of trees. Measuring a tree at a proposed 4.5 above grade, versus 4 feet as the existing Ordinance requires, is most consistent with industry standards and other jurisdictions. Examples of split trunk and multi-stemmed trees are provided below.

Figure 80-6
Measuring Split Trunk Tree

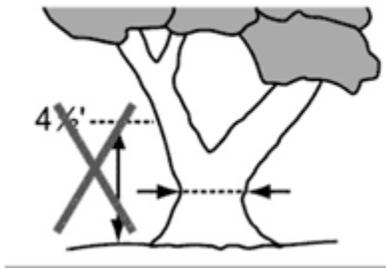
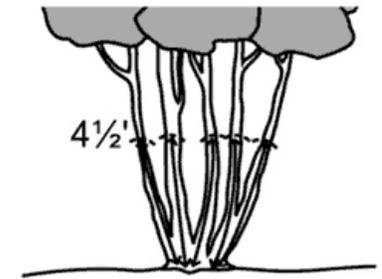


Figure 80-7
Measuring Multi-stemmed Trees



When the trunk branches or splits less than 4.5 feet from the ground, it would be measured at the smallest circumference below the lowest branch (see Figure 80-6). If the tree has a branch or a bump at 4.5 feet, it is better to measure the diameter slightly below or above the branch/bump.

For multi-stemmed trees, the size is determined by measuring all the trunks, and then adding the total diameter of the largest trunk to one-half the diameter of each additional trunk (see Figure 80-7). A multi-stemmed tree has trunks that are connected above the ground and does not include individual trees growing close together or from a common root stock that do not have trunks connected above the ground.

Redwood trees are a native species to California and area found extensively throughout the Town. They are large, visually prominent trees which aesthetically contribute to the Town's existing fabric and physical composition. Redwoods provide a large percentage of the tree cover in Atherton. By adding redwood trees as an additional protected tree within the buildable area, any redwood tree determined to not be dead or dangerous requesting removal to accommodate a main residence, would be subject to approval by the Planning Commission (as do oak trees within the building area).

- Council direction:
 - That redwood trees should not be added as a protected tree within the buildable area.

It was noted that Redwood trees are not a native species to Atherton and that their health may not be thriving throughout Town. By not including redwood trees as a protected tree within the buildable area, the potential for development may not further reduced.

3. Reduce the Tree Protection Zone (TPZ) for heritage trees from the current standard.

- Basis of Amendment:
 - The proposed amendment would reduce the TPZ (or "buffer area" around every heritage tree to protect the tree and roots from any disturbance) from 12 times (12x) the diameter

of the tree, to 10 times (10x), with the exception that the TPZ buffer be reduced to 8 times (8x) the diameter of tree for the construction of new driveways, fences and/or walls.

A TPZ must be free from any development or development activities (such as grading, etc.). The proposed amendments were found to be most consistent with ANSI standards and neighboring jurisdictions and further found to maintain a reasonable buildable area to the greatest extent feasible.

The majority of feedback received from the development community was that a TPZ of 10x the diameter of the tree for all tree species is overly restrictive for development. Staff prepared extensive evaluation of example site cases (included in Attachment 3). Results from the evaluations concluded that in most of the cases the 10x TPZ would allow for sufficient room to build a main residence and an accessory building/structure. At 12x, it was found to be more difficult to include buildings as well as utilities, detention system, irrigation, swale(s), storm drains, etc. Further, a TPZ of 10x was found to not only be consistent with industry standards and other neighboring jurisdictions, but also appropriate for the Town based on the predominant tree species found within Town, and their age and species tolerance, and health. Many of the trees in Town are mature or over-mature and are stressed due to previous construction on sites and the drought of the last 5 years.

- Council direction:
 - That the proposed TPZ standards may be too restrictive and that further analysis should be conducted for impacts on smaller lots.
 - That any amendments should carefully consider regulations that are consistent and fair and not overly restrictive making people unable to build and/or deprive substantial use of property.

Per ANZI standards, arborists should specify a TPZ distance of 6 to 18 times the trunk diameter at breast height (DBH) depending on the species tolerance to root loss, tree age and health. Further evaluation was conducted on a lesser TPZ for smaller lots in the R1-B Zoning District and/or lots in the R1-A Zoning District of smaller size (see Attachment 3), with a staff recommendation that a TPZ of 6x be considered for these parcels. This would further reduces the TPZ standard specific for smaller sized lots, while still being within the acceptable range of the ANZI standards.

Staff further evaluated specific types of development (beyond the construction of a main building or accessory building/structure), that due to the methods of construction type and nature of the development, may potentially allow for a further reduced TPZ, while still be able to adequately protect a heritage tree and its root system. Specifically, the construction of concrete masonry (CMU) walls, driveways, and other hardscape which compacts the ground surface. Staff found that driveways are required to get into each property and so to protect the trees and allow for property owners driveway access, it is recommend a TPZ of 6x for the construction of new CMU walls or driveways, with any request for a further reduction require submittal of a staff level exception (see Item #5 below).

For the replacement of existing driveways and/or compacted hardscape that is less than 6x, in substantially the same location of an existing driveway and/or compacted hardscape, staff would recommend the replacement in its existing location would be appropriate because the roots have already been disturbed and compacted. In any instances, it is important to note that 3x is the critical root zone, and no development at all, including driveway replacements, should be permitted in the critical root zone.

Tree protection fencing is typically installed at a distance less than the TPZ to facilitate access around the site and approved construction activities. For heritage trees that remain on site, tree protection fencing is required to be shown all on tree protection plans at 6x the tree's dbh. Six times (6x) fencing is required to be shown on all tree protection plans. This protection fencing is to remain installed and not to be moved until completion of construction, where fines can be issued for non-compliance. For demolition activities that are less than 10 feet away from a heritage tree, then hay waddle or 2'x4's with orange plastic fencing should be used. After demolition activities have been completed, the protection fencing at 6x shall be installed.

Based on past practice, the existing Heritage Tree Ordinance has not been found to prevent a property owner from using their buildable area as a result of protected trees. The Town can require development to be slightly adjusted to accommodate existing important trees, but it is not possible for trees to completely prevent development within the buildable area as this could be considered a "taking" requiring compensation. Thus, any future amendments must assure this type of result could ever happen. While each parcel in Town has its own set of specific, unique needs, a way to assure such result could never happen is to include a failsafe within the Ordinance through standards, process and/or a combination of both, such that a property is not deprived of substantial use of property.

Following tonight's meeting and any new direction received, staff would refine the amendments to the Heritage Tree Ordinance and *Guidelines*, while working closely with Town Counsel that any proposed amendments are legally sound.

4. Provide greater specification of what kind of work is prohibited and permitted within the TPZ.

- Basis of Amendment:
 - Providing more specificity of the exact type of activities that are permitted (and prohibited) within the TPZ furthers the purpose and intent of the Ordinance to protect and preserve heritage trees, as well as provide more clarity to both the development community as well as staff in implementation of the Ordinance. Having specificity as regulation at the beginning of the design and plan check process will clearly illustrate the Town's desire for protection of trees. A clear standard can contribute to less compliance issues in the field and the Town's heritage trees should receive less damage

and have a better survival rate. It will also include less time spent for the Town Arborist and Code Enforcement to address “problem” sites. Examples of activities permitted and prohibited within the TPZ, include, but are not limited, to:

- Permitted – mulching, root buffer, other practices that would be beneficial to the tree.
- Prohibited – buildings, structures, storage and parking of vehicles or building materials, trenching, irrigation, solid disturbance, grading, any other activity that would cause disturbance and/or damage to trees.
- Council direction:
 - Address the issue of new driveways or other hardscape which compacts ground surface in proximity to heritage trees.

The list of all prohibited activities are those that require compaction or loss of roots; both of which will damage heritage trees. Additional consideration should also be given to demolition activities that occur in the TPZ – staff evaluated this issue and recommends that if demolition is to occur less than 10 feet away from any protected heritage tree, specific protection measures shall be implemented. As it pertains to driveways or other hardscaped areas that compact the ground surface, staff has proposed refined TPZ distances– as noted in the Analysis section of Item #3 above.

Staff would further recommend that new landscape screening to be planted also be considered, as this type of activity can result in the digging of trenches for irrigation lines which may damage heritage trees and/or their root systems and it should be prohibited from damaging or disturbing heritage trees. Specifically, staff recommends that any landscape screening, including associated irrigation, be planted outside the critical root zone (3x dbh).

The issue of fence construction was discussed, as construction of a “good neighbor” fence between two private properties does not typically require a building permit to be issued. However, to address these instances, staff would recommend adding language within the Ordinance that prohibits the construction of a fence from damaging or disturbing a heritage tree. This would be enforced through the monthly arborist report required to be submitted, including describing any work near any heritage trees on the adjacent lot.

5. Exception request to the TPZ standards and/or to move a heritage tree would require a public hearing review by the Planning Commission.

- Basis of Amendment:

- The current *Guidelines* allow all requests for deviations from the TPZ standards to be assessed by the Town Arborist on a case by case basis. By allowing every project the ability to request an exception may undermine the purpose of the regulation itself and not provide the community assurance in regulation implementation. This proposed process would be most consistent with other codified exception processes from development standards in the Zoning Title, such as Special Structures Permits and Variances. Neither the current Ordinance nor *Guidelines* speaks to requests to move a heritage tree. Moving a tree significantly increases the chances for a tree to be damaged or fail, thus staff recommends a process which allows assurances in future mitigation through some type of conditional approval document should that occur.
- Council direction:
 - Staff level exception process for projects not meeting the TPZ standards in certain scenarios based on specific criteria should be evaluated.

If an applicant is unable to meet the standard TPZ zone requirements then an application, fee and an arborist report can be submitted stating why the exception is needed, what the impact to all heritage trees are and any mitigation. Exceptions at the staff level could be considered for:

- A TPZ exception from 10x the diameter, down to a minimum of 8x the diameter, for all development types unless otherwise specified.
- A TPZ exception from 8x the diameter, down to a minimum of 6x the diameter, for driveways, fences, or walls.
- A TPZ exception from 6x the diameter, down to a minimum of 5x the diameter, for lots in the R1-B, or smaller lots in the R1-A.

Any exception request would require an application, application fee, meeting with Town Arborist and project team, submittal of a certified arborist report stating impact to tree(s) and mitigation, building methods as to harm trees to the least possible and any additional items requested by the Town Arborist. The Town Arborist would peer review the request and project arborist report for demonstrated ability to meet the established standards of the Matheny and Clark Guidelines for Optimal Tree Preservation Zones, an arboricultural industry standard resource document. After review Town Arborist would render a decision – any denial could be appealed to the Planning Commission. This process is consistent with current practice of Town Arborist denials for tree removals.

6. Require a tree inventory with photos and appraisal prior to site demolition permit issuance.

- Basis of Amendment:
 - At times, trees have been harmed or damaged on a site, well after permitted construction has already begun. In these instances, it is difficult to ascertain the condition of the tree prior to construction given the time lapse and varying amounts of damage incurred. By documenting the exact condition of the trees prior to any construction, a more accurate

assessment on (any) damage that may be related to future construction is possible. It also illustrates to the project applicant and contractor how financially significant a particular tree may be which may help incentivize compliance with tree protection measures.

- Council direction:
 - Provide greater attention to heritage trees on neighboring properties in proximity to proposed development.

Requiring a written inventory with photographs, may assist (any) future code enforcement if an appraisal value documented prior to (any) damage to the tree occurring. The requirements of this inventory can be expanded to include all trees on neighboring properties within 50 feet of the shared property line. Should plan submittal not include such detail, issuance of a citation could be considered – this would be a new process to be written into a revised Ordinance.

7. Other textual additions.

- Basis of Amendment:
 - All other textual amendments relate to assuring internal consistency between the Municipal Code and Tree Standards language. Other definitions are enhanced with industry standard language to provide more clarity in implementation. No tree species were added or removed from the existing list of non-classified heritage trees (limited to Acacia trees, Mimosa trees and the Tree of Heaven) to allow future requests for removal to attempt to preserve the existing aesthetic character of the Town, as these trees, although perhaps not the most desirable in species, still may provide an aesthetic and screening mechanism in a neighborhood. By requiring a permit to be issued for their removal, allows the Town to require replanted tree(s) which would mitigate any aesthetic loss.
- Council direction:
 - That Eucalyptus trees should be added to the non-heritage list given their high fire dangers.
 - That stronger penalties for heritage tree violations should be considered.
 - Further revise the Ordinance to more clearly articulate decision standards for tree removals.

Currently if a tree is illegally removed, the fine is the appraised amount of the tree pre-removal and that fine is doubled. If the damage incurred isn't enough to kill the tree or deemed for removal, the fine can be up to \$5,000. Stronger penalties could be considered with monetary amounts more closely in line with the appraised value of the tree, as would be documented though Item #6 above.

Under the existing Ordinance, the Town Arborist can approve an application for removal of a heritage tree that is determined to be either “dead” or “dangerous”, which requires

submittal of an application and project arborist report and subsequent site inspection of the tree by the Town Arborist. Staff recommends that this applications be enhanced from current practices to also include the required submittal a Tree Hazard Evaluation form from the International Society of Arboriculture to be kept in Town files for 5 years.

Under the existing Ordinance if the Town Arborist has denied such request for a heritage tree removal, an appeal application can be submitted to the Planning Commission. These applications are considered for approval by the Planning Commission based on the following criteria as listed in the current Ordinance:

- 1. The probability of failure which is a function of tree and site conditions such as, but not limited to, structural defects, presence of disease, species history, age or remaining life span, and varying weather conditions. The probability of personal injury or significant property damage as a function of proximity to existing structures and objects of value and interference with utility services;*
- 2. The number, species, size and location of existing trees in the area and the effect of the requested removal upon shade, noise buffers, protection from wind damage, air pollution, historic value, scenic beauty, health, safety and general welfare of the area and town as a whole;*
- 3. Good forestry practices such as, but not limited to, the number of healthy trees a given parcel of land will support.*

These criteria could be enhanced by more clearly articulating standards by which a decision shall be made in order to provide guidance to prospective applicants as well as to the decision makers and help ensure that decisions made are consistent and fair. Beyond just a project arborist report, and as is recommended for staff level applications above, a Tree Hazard Evaluation form from the International Society of Arboriculture could also be required. Such standards to be developed would be drafted in accordance with the overall policy direction received as it relates to the balance of tree protection and development. These decision standards could also be elaborated to adequately address other policy considerations for removal such as posing safety and/or hazard risks, replanting plans that may provide an increased long-term benefit, and protection of trees as a financial value to the both the property owner and larger community, or other direction as received.

Conference with the Menlo Park Fire District (MPFD) includes the following comments:

- Biggest concern is related to request for Town to consider a Class A roof requirement / requirement for non-combustible exterior materials.
- Would like proper maintenance of trees in proximity to structures or power lines.
- Add Eucalyptus trees to the list of trees not requiring permit for removal.
- Reference to the Wildland Urban Interface (WUI) requirements as may appropriate.
- Overall goal is for Ordinance to assist in making properties more fire resistive.

POLICY FOCUS

Any proposed amendments should consider the balance between protecting heritage trees in Town and protecting the rights of private property owners. Any future amendments should not overly restrictive and prevent too much use of private property. The adopted Heritage Tree Ordinance begins by stating that the Town is endowed and forested by oaks, bays and other trees, and that the preservation of these trees is essential to the health, welfare and quality of life of the citizens of the Town to meet a series of objectives. Similarly, the Land Use and Open Space and Conservation Elements of the General Plan contain policies pertaining specifically to heritage trees and proposed development:

- Open Space Policy 4.310: Trees shall be preserved to the maximum extent feasible.
- Land Use Goal 1.210: To preserve the Town’s character as a scenic, rural, thickly wooded residential area with abundant open space.
- Land Use Goal 1.223: To retain the high quality of maintenance and living environment existing in the Town’s residential neighborhoods.

FISCAL IMPACT

The cost associated with the preparation of the draft ordinance amendment is included within the annual Planning Department budget. The cost to implement the ordinance will be paid for by the applicants for development projects. Additional support services for the Town Arborist in the enforcement and implementation of the ordinance amendments may result; the cost of which would be evaluated by staff and would be paid for the applicants for each applicable development project.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town’s electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials. Additionally, interested parties that were notified of prior Planning Commission and City Council meetings were also notified via email of tonight’s meeting.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item X has or has not been before a Town Committee or Commission.

 Audit/Finance Committee (meets every other month)

 Bicycle/Pedestrian Committee (meets as needed)

 Civic Center Advisory Committee (meets as needed)

 Environmental Programs Committee (meets every other month)

 Park and Recreation Committee (meets each month)

 X Planning Commission (meets each month) – 4/2017, 7/2017, 12/2017, 2/2018

 Rail Committee (meets every other month)

 Transportation Committee (meets every other month)

____ Tree Committee (meets each month)

ATTACHMENTS

1. Existing CH. 8.10 Removal of And Damage to Heritage Trees
2. Existing Tree Preservation Guidelines Standards and Specifications

Chapter 8.10 REMOVAL OF AND DAMAGE TO HERITAGE TREES

Sections:

- [8.10.010](#) Statement of findings.
- [8.10.020](#) Definitions.
- [8.10.030](#) Prohibitions and protections.
- [8.10.040](#) Permit process.
- [8.10.050](#) State tree care license.
- [8.10.060](#) Violation—Penalties and remedies.

8.10.010 Statement of findings.

The town finds and declares as follows:

- A. The town is endowed and forested by oaks, bay and other trees.
- B. The preservation of these trees is essential to the health, welfare and quality of life of the citizens of the town to:
 - 1. Preserve the scenic beauty of the town and to ensure the privacy of its citizens;
 - 2. Maintain ecological balance;
 - 3. Prevent erosion of topsoil;
 - 4. Protect against the hazards of floods and the risk of landslides;
 - 5. Counteract air pollutants and oxygenate the air;
 - 6. Absorb noise;
 - 7. Maintain the climatic and microclimatic balance; and
 - 8. Decrease high wind velocities. (Ord. 462 § 1(A), 1991; Ord. 444 § 1, 1989)

8.10.020 Definitions.

As used in this chapter:

- A. "Heritage tree" means either:
 - 1. A tree, located in the tree preservation area, or a native oak tree (*Quercus lobata*, *Quercus agrifolia* or *Quercus douglasii*) located anywhere on a lot, which has a trunk circumference of forty-eight inches or more, when measured forty-eight inches above the natural grade;
 - 2. A tree so designated by the city council, based upon findings that the particular tree is unique and of importance to the public due to its unusual age, appearance, location or other factors;
 - 3. The trees listed below shall not be classified as heritage trees:
 - Acacia baileyana—Bailey Acacia
 - (Mimosa)
 - Acacia decurrens—Green Wattle

Acacia melanoxylon—Black Acacia

Ailanthus altissima—Tree of Heaven

B. “Tree preservation area” means the area outside the building area of the lot, as defined in Section [17.60.020](#) of this code.

C. “Damage to a heritage tree” means any action, in the judgment of the building official or town arborist, which will cause damage to its health including, by way of example, but not limited to, excess pruning, topping, cutting, girdling, poisoning, over-watering, unauthorized relocation or transportation of a tree, or trenching, excavating, altering the grade, compaction or paving near the tree. (Ord. 533 § 1, 2002; Ord. 462 § 1(B), 1991; Ord. 444 § 2, 1989)

8.10.030 Prohibitions and protections.

A. No person shall remove a heritage tree unless a permit has first been issued in accordance with Section [8.10.040](#).

B. All heritage trees must be shown and designated on every plot map that may be required by the town in connection with any application for subdivision, variance, use permit, or building permit. In addition, a heritage tree protection and preservation plan may be required with each application. The heritage tree protection and preservation plan shall be prepared by a certified arborist to assess impacts to trees, recommend mitigation to reduce impacts to a less than significant level and identify construction guidelines to be followed through all phases of a construction project. Detailed standards and specifications for the implementation of a heritage tree protection and preservation plan can be found in the town’s current tree preservation guidelines, standards and specifications.

C. It is unlawful for any person to damage or harm a heritage tree by any means whatever, including, without limitation, those actions defined in Section [8.10.020](#)(C).

D. The provisions of this chapter shall not be deemed to repeal or otherwise affect the provisions of Chapter [8.08](#) of this code, relating to dead or dangerous trees. (Ord. 547 § 1, 2004; Ord. 533 § 2, 2002; Ord. 522 § 1, 2001; Ord. 444 § 3, 1989)

8.10.040 Permit process.

A. The application for a heritage tree removal permit shall be filed with the building department on a prescribed form. The building department may require the applicant, at the applicant’s expense, to furnish a written report from a licensed tree expert acceptable to the building department.

B. If the tree which is the subject of the application meets the requirements as set forth in this section based upon a review of the permit application and the inspection report, then the building department may grant the permit, conditionally grant the permit specifying mitigation requirements, deny the permit, allow a portion of the proposed work in the permit application to be done, or refer the application to the planning commission. The building department may attach reasonable conditions to ensure compliance with the intent and purpose of this chapter such as, but not limited to, requiring replacement of the tree or trees removed with plantings acceptable to the building department. Denial of the application may be appealed to the planning commission. In making the determination of which action to approve, including whether or not to refer the application to the planning commission, an authorized representative of the building department shall inspect the tree and make a determination based on the following criteria:

1. The probability of failure which is a function of tree and site conditions such as, but not limited to, structural defects, presence of disease, species history, age or remaining life span, and varying weather

conditions. The probability of personal injury or significant property damage as a function of proximity to existing structures and objects of value and interference with utility services;

2. The number, species, size and location of existing trees in the area and the effect of the requested removal upon shade, noise buffers, protection from wind damage, air pollution, historic value, scenic beauty, health, safety and general welfare of the area and town as a whole;

3. Good forestry practices such as, but not limited to, the number of healthy trees a given parcel of land will support.

C. If referred by staff, or a decision by staff is appealed by the applicant, the application shall be heard and considered at a public meeting of the planning commission. Each application for a heritage tree removal permit shall be accompanied by a fee in an amount as set by resolution of the city council sufficient to cover all costs of processing the permit. The application for a planning commission review shall contain the following:

1. A legal description and accurate map showing the location of the property for which the permit is sought and the location of the tree for which the permit is sought and all other heritage trees on the subject parcel;

2. The names and addresses of the applicant and record owner of the subject property, and of the record owners of each parcel contiguous to the subject property, and of each parcel across any street from the subject property any part of which is encompassed within the projected side lines of the subject parcel. The applicant shall furnish to the town a stamped plain No. 10 envelope addressed to each such owner;

3. A photograph of the subject tree or trees;

4. A statement of the reason for requested removal, the species of the subject tree, and the circumference at forty-eight inches above natural grade of the subject tree;

5. Such additional information as the building department may deem necessary.

D. The application shall be heard and considered at a public meeting of the planning commission. Notice of the meeting shall be mailed by the town at least ten days before the meeting to the owners of each property described in subsection (C)(2) of this section.

E. At the public meeting, the planning commission shall hear all evidence presented, and shall grant the heritage tree removal permit unless it finds that the removal of the subject tree would be contrary to the purpose and intent of the general plan of the town.

F. At the discretion of the planning commission, for each heritage tree permitted to be removed the permittee may be required to plant three trees of fifteen-gallon container size, or two trees of twenty-four-inch box container size, or one tree of fifteen-gallon container size and one tree of thirty-six-inch container size. Where native heritage oak trees are allowed to be removed from within the buildable area, they shall each be replaced with one or more trees of forty-eight-inch container size of native oak species at a location approved by the planning commission. The planning commission may also attach other reasonable conditions to ensure compliance with the intent and purpose of this chapter.

G. The decision of the planning commission on any application for a heritage tree removal permit may be appealed to the city council in accordance with the procedures contained in Chapter [17.06](#) of this code.

H. It is strongly recommended that the trees listed below not be planted in the town of Atherton:

Acacia baileyana—Bailey Acacia

Acacia decurrens—Green Wattle

Acacia melanoxylon—Black Acacia

Ailanthus altissima—Tree of Heaven

Eucalyptus globulus—Blue Gum Eucalyptus

Pinus radiata—Monterey Pine

(Ord. 533 § 3, 2002; Ord. 522 § 2, 2001; Ord. 484 § 1(A)—(C), 1994; Ord. 462 § 1(C)—(J), 1991; Ord. 444 § 4, 1989)

8.10.050 State tree care license.

Except for the property owner, no person shall perform any removal of any heritage tree for hire within the town of Atherton without a valid state tree care license as required by the state of California. (Ord. 484 § 1(E), 1994)

8.10.060 Violation—Penalties and remedies.

A. Any person causing a heritage tree to be removed or damaged in violation of this chapter shall submit a fee as determined by city council resolution to be deposited into a fund for the planting and maintenance of community trees, as a civil penalty in addition to the penalties as outlined in Chapter [1.20](#).

B. As part of a civil action brought by the town, a court may assess against any person who commits, allows, or maintains violation of any provision of this chapter a civil penalty in an amount not to exceed five thousand dollars per violation. Where the violation has resulted in removal of a 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 as described in subsection A of this section.

Replacement value for the purposes of this section shall be determined utilizing the most recent edition of the Guide for Plant Appraisal. A civil action may be commenced to abate, enjoin, or otherwise compel the cessation of violation of any provision in this chapter. In a civil action brought pursuant to this chapter in which the town prevails, the court may 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.

C. Upon any guilty plea or judgment or conviction, in any criminal proceeding brought for the violation of this chapter, the defendant is entitled by law to probation, then the court may require the payment to the town of the costs and expenses as described above and the code provision incorporated by reference as one of the conditions of such probation.

D. The violation of any provision contained in this chapter shall be subject to the penalties or remedies as described herein and any other remedies authorized by the town of Atherton Municipal Code, including, but not limited to, the following:

1. Requiring that the violator obtain a tree removal permit for the previously conducted unlawful activity, including one or more of the following conditions as appropriate:

- a. The violator shall replace each unlawfully removed tree with one or more new trees which can be accommodated on the site of the violation according to the town arborist and, in the opinion of the town arborist, will provide equivalent value in terms of cost (as determined pursuant to a certified arborist's calculation of the value of the removed tree(s) in accordance with the latest edition of the Guide for Plant Appraisal published by the Council of Tree and Landscape Appraisers (adopted by reference)), aesthetic and environmental quality, size, height, location, appearance and other characteristics of the unlawfully removed tree; or

b. Where replacement trees cannot be accommodated on-site according to the town arborist, or cannot provide equivalent aesthetic or environmental quality of removed tree(s) on site, the violator shall either plant replacement trees off-site as designated by the town arborist or make a cash payment as described in subsection B of this section, or any combination thereof, in accordance with the following:

i. To the extent that a cash payment is required for any portion or all of the value of the removed tree, such payment shall be doubled to reflect the estimated installation costs that would be incurred if replacement trees are planted; and

ii. To the extent that the planting of off-site replacement trees is required, the retail cost of such trees, as shown by documentary evidence satisfactory to the town arborist, shall be offset against the value of the removed tree, but no credit shall be given for transportation, installation, maintenance and other costs incidental to the planting and care of the replacement trees; or

c. Where the unlawful activity did not result in tree removal, but did result in tree damage, the violator shall enhance the condition of the remaining trees or portions of trees according to good forestry practices which, in the opinion of the town arborist, will provide equivalent value in terms of damage to the tree(s), aesthetic and environmental quality, size, height, location, appearance and other characteristics of the unlawfully damaged tree; provide equivalent enhancement of the condition of trees off-site or make a cash payment to the fund described in subsection A of this section (based on the town arborist's calculation of the equivalent value of the unlawful damage to the tree).

2. Any person who is required to plant replacement trees on-site pursuant to this section shall permanently maintain such trees in a good and healthy condition to ensure permanent establishment of any such tree(s), as determined by the town arborist. Such person shall post a maintenance bond or security deposit in a form prescribed by the building official and execute a maintenance agreement with the town, which shall be recorded in the office of the county recorder.

E. All remedies provided in this section shall be cumulative and are not exclusive. (Ord. 565 § 1, 2006; Ord. 533 § 4, 2002; Ord. 490 § 16, 1996; Ord. 484 § 1(D) (part), 1994; Ord. 444 § 5, 1989)

The Atherton Municipal Code is current through Ordinance 633, passed June 20, 2018.

Disclaimer: The City Clerk's Office has the official version of the Atherton Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

TOWN OF ATHERTON

Tree Preservation Guidelines Standards and Specifications



February 2004

TOWN OF ATHERTON

TREE PRESERVATION GUIDELINES STANDARDS AND SPECIFICATIONS

SECTION 1.00 DEFINITIONS

For the purpose of these Guidelines and interpretation of the standards and specifications, the following definitions shall apply:

- 1.01 **Buildable Area** - means the area of a parcel upon which, under applicable zoning regulations, a main dwelling unit may be built without a variance
- 1.02 **Building Official** - means the Director of Building and Planning or the Director's designee
- 1.03 **Dead Tree** - means a tree that is dead or that has been damaged beyond repair or is in an advanced state of decline as determined by a certified arborist. If the tree has been determined to be dead, removal is permitted under Section 8.10 of the Atherton Municipal Code.
- 1.04 **Development Project** - means any construction activity including demolition, grading, drainage improvements, new construction of main house or accessory structures, added square footage to existing main house or accessory structures, site preparation and landscaping
- 1.05 **Diameter at Breast Height** - means the diameter of the tree trunk at 4 feet above natural grade level. The diameter may be calculated by using the following formula:
$$\text{DBH} = \text{circumference at 4 feet} \div 3.142$$
- 1.06 **Disturbance** - refers to construction or development activities that may damage trees
- 1.07 **Dripline** - means the width of the tree, as measured by the lateral extent of the foliage
- 1.08 **Excessive Pruning** - means removing in excess of 25 percent of the functioning leaf, branch. Pruning in excess of 25 percent is injurious to the tree and is prohibited
- 1.09 **Heritage Tree** - means a tree 48 inches or more in circumference (15.2 inches dbh), measured at 48 inches above natural grade, located outside of the Buildable Area on the parcel AND any native oak (*Quercus agrifolia*, *Q. lobata*, *Q. kelloggii*) greater than 48 inches in circumference located anywhere on the parcel.

- 1.10 **Injury** - means bruising, scarring, tearing or breaking of roots, bark, trunk, branches or foliage, herbicide or poisoning, or any other action which is likely to cause the death or permanent damage to a tree.
- 1.11 **Mechanical Injury** - means a noninfectious injury which often leads to poor growth, a damaged appearance or death to the tree. Common causes of mechanical injury are landscape maintenance equipment, staking damage, vehicles, vandalism, weather, insects and animals.
- 1.12 **Monthly Inspection Report** - means a monthly written report prepared by the Project Arborist
- 1.13 **Project Arborist** - means a certified arborist retained by the owner for the purpose of overseeing on-site activity involving the welfare of the trees to be retained
- 1.14 **Protective Tree Fencing** - means a temporary enclosure erected around a tree to be protected at the boundary of the **Tree Protection Zone**
- 1.15 **Root Buffer** - means a temporary layer of material to protect the soil texture and roots. The buffer shall consist of a base course of tree chips spread over the root area, keeping one foot clear of the trunk clear, to a 4"- 6" depth, capped by a base course of 3/4-inch quarry gravel to stabilize the 3/4" plywood on top.
- 1.16 **Site Plan** - means a set of drawings (e.g. preliminary drawings, grading, demolition, building, utilities, landscape, irrigation, tree survey, etc.) that show existing site conditions and proposed landscape improvements, including trees to be removed, relocated or to be retained. Site plans shall include the following minimum information that may impact trees:
- A. Surveyed location, species, size, dripline area of heritage trees (including trees located on neighboring property that overhang the project site) and Street Trees within 30-feet of the project site
 - B. Paving, concrete, trenching or grade change located within the **Tree Protection Zone (TPZ)**
 - C. Existing and proposed utility pathways
 - D. Surface and subsurface drainage and aeration systems to be used
 - E. Walls, tree wells, retaining walls and grade change barriers, both temporary and permanent
 - F. Landscaping, irrigation and lighting within dripline of trees
 - G. All of the final approved site plan sheets shall reference tree protection instructions
- 1.17 **Soil Compaction** - means the compression of soil particles that may result from the movement or parking of heavy machinery and trucks, storage of construction materials, structures, paving, etc. within the **Tree Protection Zone. (TPZ)**
- 1.18 **Soil Fracturing** - means the loosening of hard or compacted soil around a tree

- 1.19 **Street Tree** - means any tree growing within the street right-of-way, outside of private property
- 1.20 **Tree Appraisal** - means a method of determining the monetary value of a tree as it relates to the real estate value of the property, neighborhood or community
- 1.21 **Tree Protection and Preservation Plan** - means a plan prepared by a certified arborist that outlines measures to protect and preserve trees
- 1.22 **Tree Protection Zone, (TPZ)** - means, unless otherwise specified by a Project Arborist or Town Arborist, the area of temporary fenced tree enclosure, as set forth in Section 2.03
- 1.23 **Trenching** - means any excavation to provide irrigation, install foundations, utility lines, services, pipe, drainage or other property improvements below grade
- 1.24 **Verification of Tree Protection** - means the Project Arborist shall verify, in writing, that all pre-construction requirements have been met
- 1.25 **Vertical Mulching** - means auguring, hydraulic or air excavation of vertical holes within a tree's root zone to loosen and aerate the soil, typically to mitigate Soil Compaction

TOWN OF ATHERTON

TREE PRESERVATION GUIDELINES STANDARDS AND SPECIFICATIONS

SECTION 2.00 PROTECTION OF TREES DURING CONSTRUCTION

The objective of this section is to reduce the negative impacts of construction on trees. The tree protection regulations are intended to guide a construction project to insure that appropriate practices will be implemented in the field to eliminate or mitigate undesirable consequences that may result from construction activities.

Typical negative impacts that occur during construction may include:

- Mechanical injury to roots, trunk or branches
- Compaction of soil, which degrades the functioning roots, inhibits the development of new ones and restricts drainage
- Changes in existing grade which can cut or suffocate roots
- Alteration of the water table - either raising or lowering
- Sterile soil conditions associated with stripping off topsoil

SECTION 2.01 TREE PROTECTION AND PRESERVATION PLAN

Prior to commencement of a development project, a property owner shall have prepared a *Tree Protection and Preservation Plan* if any activity is likely to impact a Heritage Tree as determined by the Town Arborist. The *Tree Protection and Preservation Plan* will be prepared by a certified arborist to assess impacts to trees, recommend mitigation to reduce impacts to a less than significant level and identify construction guidelines to be followed through all phases of a construction project.

SECTION 2.02 PRE-CONSTRUCTION REQUIREMENTS

The following six steps shall be incorporated within the *Tree Protection and Preservation Plan* prior to grading, demolition or building permit issuance:

A. Site Plan

On the *Tree Protection and Preservation Plan* for the project, plot accurate trunk locations and the Dripline of all Heritage Trees. In addition, for Heritage Trees the plans shall accurately show the species, trunk diameter, dripline and clearly indicate the **Tree Protection Zone (TPZ)** to be enclosed with the specified tree fencing as a bold dashed line.

B. Tree Disclosure Statement

A statement signed by the owner of the property, on a form provided by the Town, acknowledging the existence of Heritage Trees on the property. (See *Appendix II*)

C. Verification of Tree Protection

The Project Arborist shall verify, in writing, that all pre-construction requirements have been met as set forth in Section 2.02. Written verification must be submitted to and approved by the Town Arborist prior to demolition, grading or building permit issuance.

D. Pre-Construction Meeting

The demolition, grading and general contractors are required to meet with the Project Arborist and the Town Arborist at the site prior to beginning demolition, grading or new construction to review tree protection measures and to establish haul routes, staging areas, etc.

E. Protective Tree Fencing for Heritage Trees or Street Trees

Fenced enclosures shall be erected around trees to be protected to establish the TPZ in which no soil disturbance is permitted and activities are restricted.

1. Size and type of fence

All trees to be preserved shall be protected with 6 foot high, minimum 12 gauge chain link fence. Fences are to be mounted on 2-inch diameter galvanized iron posts, driven into the ground to a depth of at least 2-feet at no more than 10-foot spacing (See detail, *Appendix III*). This detail shall appear on grading, demolition and building permit plans.

2. Duration

Tree fencing shall be erected before any demolition, grading or construction begins and remain in place until the Town Arborist approves the removal.

3. "Warning" Sign

A warning sign shall be prominently displayed on each fence. (*See Appendix IV*). The signs are available at the Building Department.

SECTION 2.03 TREE PROTECTION ZONE or (TPZ)

Each Heritage Tree to be protected, including those on neighboring properties, shall have a designated TPZ identifying the area sufficiently large enough to protect the tree and roots from disturbance. **The TPZ area can be determined by the formula: One foot per inch of diameter.** For example a 20" diameter tree shall have a 20' radius from the perimeter of the trunk or a 20 foot TPZ. Any deviation in determining the TPZ will require approval by the Town Arborist.

A. Activities prohibited within the TPZ include:

1. Storage or parking vehicles, building materials, refuse, excavated spoils or dumping of poisonous materials, including but not limited to, paint, petroleum products, concrete, stucco mix or dirty water
2. The use of tree trunks as a winch support, anchorage, as a temporary power pole, sign posts or other similar function

3. Cutting of tree roots by utility trenching foundation digging, placement of curbs and trenches and other miscellaneous excavation
4. Soil Disturbance, Soil Compaction or grade changes
5. Drainage changes

B. Activities permitted or required within the TPZ include:

1. **Mulching** - During construction, it is recommended that wood chips or similar material be spread within the **TPZ** to a 4-to 6-inch depth, leaving the trunk clear of mulch.
2. **Root Buffer** - When areas within the **TPZ** cannot be fenced, a Root Buffer is required and shall cover the root zone.
3. **Irrigation, aeration, fertilizing** or other beneficial practices that have been specifically approved for use by the Project Arborist within the **TPZ**.

C. Erosion Control

If a tree is adjacent to or in the immediate proximity to a grade slope of 8% (23 degrees) or more, then approved erosion control or silt barriers shall be installed outside the **TPZ** to prevent siltation and/or erosion within the **TPZ**.

D. Tunneling and Directional Drilling

If trenching or pipe installation has been approved within the **TPZ**, then the trench shall be either cut by hand, air spade, or by mechanically boring the tunnel under the roots with a horizontal directional drill and hydraulic or pneumatic air excavation technology. In all cases, install the utility pipe, immediately backfill with soil and soak within the same day.

E. Tree Pruning and Surgery

The most compelling reason to prune is to develop a strong, safe framework and tree structure and to reduce hazards. If the Project Arborist recommends that trees be pruned, the standard pruning shall consist of "crown cleaning" as defined by ISA Pruning Guidelines.

1. Maximum Pruning

Maximum pruning should only occur if approved by the Town Arborist. No more than one fourth (25 percent) of the functioning leaf, branch and stem area may be removed within one calendar year of any Heritage Tree, or removal of foliage so as to cause the unbalancing of the tree. Trees should not be topped.

2. Tree Workers

Pruning shall not be attempted by construction or contractor personnel, but shall be performed by a qualified tree care specialist or certified tree worker, according to specifications contained within these procedures.

F. Tree Removal Procedure

When Heritage Trees are removed, tree removal practices apply:

1. A permit is required to remove any Heritage Tree.
2. Any tree to be removed that may impact a Heritage Tree shall be done under the supervision of a certified arborist.
3. The removal of trees that extend into the branches or roots of Heritage Trees shall not be attempted by demolition or construction personnel, grading or other heavy equipment. A certified arborist or certified tree worker shall remove, or oversee the removal of the tree in a manner that causes no damage above or below ground to trees that remain.

SECTION 2.04 INJURY MITIGATION

A mitigation program is required if the approved development will cause drought stress, dust accumulation or Soil Compaction to trees that are to be saved. To help reduce impact injury, one or more of the following mitigation measures shall be implemented and supervised by the Project Arborist.

A. Irrigation Program

Irrigate to wet the soil within the **TPZ** during the dry season as specified by the Project Arborist.

B. Dust Control Program

During periods of extended drought, or grading, spray trunk, limbs and foliage to remove accumulated construction dust.

C. Soil Compaction Damage

Compaction of the soil is the largest killer of trees on construction sites due to suffocation of roots. If compaction to the upper 12-inch soil within the **TPZ** has occurred, then one or more of the following mitigation measures shall be implemented as recommended by the Project Arborist or the Town Arborist.

1. Type I Mitigation

If an approved paving, hardscape or other compromising material encroaches within the **TPZ**, an aeration system shall be designed by a certified arborist and used within this area.

2. Type 11 Mitigation

If inadvertent compaction of the soil has occurred within the **TPZ**, the soil shall be loosened by a method approved by the Town Arborist, such as Vertical Mulching or Soil Fracturing.

SECTION 2.05 DAMAGE TO TREES

A. Reporting

Any damage or injury to trees shall be reported within 6 hours to the Project Arborist and Town Arborist so that mitigation can take place. All mechanical or chemical injury to branches, trunk or to roots over 2-inches in diameter shall be reported in the Monthly Inspection Report.

B. Appraised Value

If a tree is damaged, a Certified Arborist determines the Tree Appraisal value by adjusting a tree's basic value by its condition, location, and species using the most recent edition of the *Guide for Plant Appraisal*, published by the Council of Tree and Landscape Appraisers. The formula used should also be noted.

C. Mitigation

1. Root injury

If trenches are cut and tree roots 2-inches or larger are encountered they must be cleanly cut back to a sound wood lateral root under the supervision of the Project Arborist. The end of the root shall be sealed and kept moist. All exposed root areas within the **TPZ** shall be backfilled or covered within one hour. Exposed roots may be kept from drying out by temporarily covering the roots and draping layered burlap or carpeting over the upper 3-feet of trench walls. The materials must be kept wet until backfilled to reduce evaporation from the trench walls.

2. Bark or trunk wounding

Current bark tracing and treatment methods shall be performed by a qualified tree care specialist within two days.

3. Scaffold branch or leaf canopy injury

Remove broken or torn branches back to an appropriate branch capable of resuming terminal growth within five days. If leaves are heat scorched from equipment exhaust pipes, consult the Project Arborist within 6 hours.

SECTION 2.06 INSPECTION SCHEDULE

The Project Arborist retained by the applicant shall conduct the following required inspections of construction sites containing protected Heritage Trees. Inspections shall verify that the type of tree protection is consistent with the standards outlined within these Guidelines. For each required inspection, a monthly inspection report of any change in tree

conditions and actions taken shall be provided to the Town of Atherton. Inspection Reports shall be faxed to the Town Arborist at (650) 688-6539 or by e-mail at kanderson@ci.atherton.ca.us.

SECTION 2.07 REQUIRED INSPECTIONS

A. Pre-Construction Meeting

Prior to commencement of construction, the applicant or contractor shall conduct a pre-construction meeting to discuss tree protection with the job site superintendent, grading equipment operators, Project Arborist, and Town Arborist.

B. Inspection of Protective Tree Fencing

The Town Arborist shall be in receipt of a written statement from the applicant or Project Arborist verifying that he has conducted a field inspection of the trees and that the protective tree fencing is in place prior to issuance of a demolition, grading, or building permit.

C. Inspection of Rough Grading

The project arborist shall perform an inspection during the course of rough grading adjacent to the **TPZ** to ensure trees will not be injured by compaction, cut or fill, drainage and trenching, and if required, inspect aeration systems, tree wells, drains and special paving. The contractor shall provide the Project Arborist at least 48 hours advance notice of such activity.

D. Monthly Inspections

The Project Arborist shall perform monthly inspections to monitor changing conditions and tree health and submit a written report to the Town Arborist.

E. Special Activities within the Tree Protection Zone

Work in this area (TPZ) requires the direct onsite supervision of the Project Arborist.