



Item No. 2 Town of Atherton

CITY COUNCIL STAFF REPORT – STUDY SESSION

TO: HONORABLE MAYOR AND CITY COUNCIL

THROUGH: GEORGE RODERICKS, CITY MANAGER

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

DATE: NOVEMBER 6, 2019

**SUBJECT: DISCUSSION 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 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* and provide direction to staff.

BACKGROUND

In March 2016 staff received direction from the Tree Committee to evaluate the existing heritage tree regulations both within Chapter 8.10 “Removal of and Damage to Heritage Trees (“Heritage Tree Ordinance”) and the Tree Preservation Guidelines Standards and Specifications (“Guidelines”), as it was found that the amount of heritage trees within Town that were dying had 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 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 Heritage Tree Ordinance, including the Guidelines, and provided specific feedback to staff.

On October 10, 2018 the City Council and Planning Commission conducted a joint study session to further evaluate and discuss potential amendment topics under consideration. Final joint City Council / Planning Commission direction was offered to staff.

On March 20, 2019 the Council received a report from Staff on further refinements to the Heritage Tree Ordinance and Guidelines. The Council provided feedback to staff on various issues, noted that penalties need to be made more relevant to deter negative action, and that redwoods need to be counted over a period of 12-months rather than included as a protected tree in the buildable area at this time. The Council also asked that the Mayor appoint an Ad Hoc Subcommittee to work with staff over the next few months to fine tune the ordinance and standards before returning them to the Council. An Ad-Hoc Subcommittee of Mayor Widmer and Council Member DeGolia was appointed.

Staff updated the Heritage Tree Ordinance and Guidelines, based on the Council direction received at the March 20, 2019 meeting and in July 2019, met with the appointed Ad-Hoc Subcommittee to further discuss both documents. Key direction given by the Ad-Hoc was related to providing greater specificity in several of the Heritage Tree Ordinance definitions for clearer implementation and enforcement related to their intent, additional language stating applicability of provisions to trees on neighboring properties, discussion on the potential onus of a requirement of a security bond to ensure replacement trees are maintained and other editorial and formatting comments.

Following this Ad-Hoc Subcommittee meeting, staff made the subsequent revisions based on the comments and direction and provided the such revisions for an additional round of review and comment. The Ad-Hoc Subcommittee reviewed these subsequent revisions and provided final comments in October 2019. Staff updated both the Heritage Tree Ordinance and Guidelines, in tracked changes, based on these final Ad-Hoc comments and direction for discussion by the Council at tonight's meeting (see Attachments 1 and 2).

ANALYSIS

Final comments received from the Ad-Hoc Subcommittee in October 2019, have been addressed in in draft, track change version of both the Heritage Tree Ordinance and Guidelines, including a staff response to each comment received. (see Attachments 1 and 2). For legibility, clean versions of both these revised, draft documents are also included (see Attachments 3 and 4).

These final Ad-Hoc comments are summarized below. Any staff response that is requesting Council direction is noted.

Heritage Trees on Neighboring Properties

The Ad-Hoc Subcommittee directed staff to ensure that both the Heritage Tree Ordinance and Guidelines addressed heritage trees on neighboring properties. Within the Heritage Tree Ordinance and Guidelines, staff is recommending adding detail within the required site plan for a Tree Protection and Preservation Plan, as well as the required Written Inventory include the surveyed location, size/trunk diameter, and dripline of all heritage trees within 15 feet of a shared property line. This 15- foot distance was derived in the opinion of the Town Arborist as an adequate distance to protect

a tree's root and canopy system. Further, heritage trees on neighboring properties were also added within the Tree Protection Zone (TPZ) section of the Guidelines.

Heritage Tree Relocation

Ad-Hoc comment was received to address how proposed relocations of Heritage trees were to be addressed. Current policy is that any request to relocate a healthy heritage tree would be processed as a Planning Commission request for a Heritage Tree Removal (HTR) permit as it is in the opinion of the Town Arborist that such requests can be very risky in a tree's ability to sustain. By requiring a HTR permit, such requests have a heightened review of the specific conditions and relocation details of the individual tree(s) and ability to add associated replanting conditions should the tree(s) fail upon relocation. In order to vet this current policy, staff is recommending that the definition of tree removal for a healthy heritage tree be revised to include proposed tree locations, thus making such request subject to the Planning Commission review process as outlined in the Heritage Tree Ordinance.

Redwood Trees – Not added as a Protected Tree in the Buildable Area

Ad-Hoc comment was received on how the amendments would address the process of recording the removal of Redwood trees. Per direction received at March 2019 City Council meeting, redwood trees were removed as a potential, additional protected tree within the buildable area. Council direction was for staff to report back within 12 months the amount of redwood trees that were removed (by right) within the buildable area. Staff can prepare an updated report within 12 months of any Heritage Tree Ordinance amendments being adopted.

Maintenance Bond or Security Deposit – Replacement Trees

***City Council Policy Direction Requested**

Ad-Hoc comment was received on the potential onus of requiring a maintenance bond or security deposit to ensure any required replacement trees associated with an approved Heritage Tree Removal permit is permanently established and maintained. The current Ordinance requires posting of maintenance bond or security deposit for replacement trees in conjunction with any heritage tree violation.

Section 8.10.040 (F) Permit Process of the Heritage Tree Ordinance, *copied and pasted* below, was a new section recommended by staff to also include such a maintenance bond or security deposit with replacement trees in conjunction with any approved Heritage Tree Removal permit by the Planning Commission. The intent of such recommendation was to provide greater assurance that the required replacement trees would survive and be permanent. Such recommendation would not be applicable to the staff-level approved removal of dead or dangerous trees. A time frame of 1 year before such bond/deposit would be forfeited was recommended to be added in an attempt to incentivize the planting and maintenance of such required replanting.

- *Section 8.10.040 (F) Permit Process: Any Person required to plant replacement trees pursuant to this section shall maintain such trees in a good and healthy condition to ensure permanent establishment of said trees, to the satisfaction of the Town Arborist. Such Person shall execute a maintenance agreement with the Town and post a maintenance bond or security deposit equal to the Appraised Value of the each tree that is planted, which shall be returned at permittee's request at the end of one (1) calendar year, subject to the approval of*

the Town Arborist. If the condition of the replacement planting(s) is not satisfactory to the Town Arborist, the Town may take additional steps to ensure permanent establishment of replacement trees, including planting of new trees and/or an extension of the bond/security deposit This requirement shall not apply to Dead or Dangerous trees.

City Council policy direction is requested as to the inclusion of such requirement.

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 study sessions and City Council meeting 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)
- 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. DRAFT – Ch. 8.10 Removal of And Damage to Heritage Trees (tracked changes)
2. DRAFT - Draft Revised Tree Preservation Standards and Specifications (tracked changes)
3. DRAFT – Ch. 8.10 Removal of And Damage to Heritage Trees (clean)
4. DRAFT - Draft Revised Tree Preservation Standards and Specifications (clean)

DRAFT AMENDMENTS, ~~AUGUST~~OCTOBER 2019

Chapter 8.10 REMOVAL OF AND DAMAGE TO HERITAGE TREES

Sections:

- [8.10.010](#) Statement of findings and purpose.
- [8.10.020](#) Definitions.
- [8.10.030](#) Prohibitions and protections.
- [8.10.040](#) Permit process.
- [8.10.050](#) Request for Exceptions to the TPZ.
- [8.10.060](#) State tree care license.
- [8.10.070](#) Violation—Penalties and remedies.
- 8.10.080 Appeal.

8.10.010 Statement of findings and purpose.

The Town finds and declares as follows:

- A. The Town is endowed and forested by oaks, redwood, 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.

DRAFT AMENDMENTS, ~~AUGUST~~OCTOBER 2019

C. The Town establishes the policies, regulations and standards within this Chapter with purpose and intent to:

1. Establish policies and procedures for the protection of Heritage trees and criteria for their Removal.
2. Prevent the indiscriminate Removal of Heritage trees within the Town.
3. Prohibit activities that damage and/or disturb Heritage trees.
4. Preserve and maintain trees in the attempt to mitigate hazards using the most current and applicable arboricultural standards.
5. Provide for the enforcement and administration of tree protection and preservation.

D. The Town’s Tree Preservation Standards and Specifications document provides guidance on interpretation and implementation of the policies, regulations, and standards within this Chapter.

Formatted: Indent: Left: 0", First line: 0"

8.10.020 Definitions.

As used in this Chapter:

A. "Appraised Value" means the value of a tree as determined by the Town Arborist using the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers ~~for any procedure or requirement as specified in this Chapter.~~

B. "Certified Arborist" means an individual who has demonstrated knowledge and competency through obtainment of the current International Society of Arboriculture arborist certification.

C. "Cutting" means the detaching or separating from a protected tree any **substantial limb, branch, or root** ~~that causes Irreparable Damage to a tree. Cutting shall include Excessive Pruning.~~ Note I have questioned cutting and still believe it should be better defined to be a substantial limb etc.

Commented [SB1]: Staff Response: There is no industry standard definition for cutting. The word "substantial" has been added.

Formatted: Highlight

DRAFT AMENDMENTS, ~~AUGUST~~OCTOBER 2019

D. “Dead or Dangerous” tree means dead or dying trees, dead parts of live trees, or unstable live trees (due to structural defects or other factors) that are within striking distance of people or property, as determined by the Town Arborist.

E. “Disfavored” tree means any of the following species:

- a. Acacia baileyana—Bailey Acacia
- b. Acacia decurrens—Green Wattle
- c. Acacia melanoxylon—Black Acacia
- d. Ailanthus altissima—Tree of Heaven
- e. Albizia julibrissin – Mimosa
- f. Any species of Eucalyptus
- g. Pinus radiata—Monterey Pine

It is strongly recommended that these trees not be planted in the Town of Atherton.

F. “Disturbance or Damage to a Heritage tree” refers to demolition, construction, sub terrain grading activities, landscaping improvements, other development activities and/or any other action, as determined by the Building Official or Town Arborist, which may cause damage to the health of a Heritage tree, including any Heritage Tree within 15 feet of the property line. Examples include, but are not limited to, Excessive Pruning, topping, Cutting, girdling, poisoning, over-watering, unauthorized relocation or transportation of a tree, trenching, excavating, altering the grade, compaction or paving near the tree, and screwing anything into the tree (for example, but not limited to, installing tree houses, etc.). If some one wishes to relocate a tree, as is occasionally done, do they need to get a permit or just identify it on the plans?

G: “Dripline” means the outermost circumference of the tree’s canopy, from which water drips to the ground. When depicted on a map, the Dripline will appear as an irregularly shaped circle that follows the contour of the tree’s branches as seen from overhead.

Commented [SB2]: Staff Response: Sec. 8.10.020 O. Definition “Removal or Removing” of a heritage tree includes any act that removes or relocates a heritage tree from its location. Such request for removal would be processed in accordance with Sec. 8.10.040, requiring an application for such relocation to be considered by the Planning Commission. This is consistent with current Town policy.

Formatted: Highlight

Formatted: Highlight

DRAFT AMENDMENTS, ~~AUGUST~~OCTOBER 2019

H. "Excessive Pruning" - means ~~no more living material than what is necessary to be removed removing in excess of 25 percent (25%) of the functioning leaf, stem, or root area of a tree within an annual growing season.~~ Excessive Pruning is considered Damage to the tree and is prohibited unless approval is granted by the Town Arborist prior to initiating the work. The percentage and distribution of foliage to be removed shall be adjusted according to the plant's species, age, health, and site. Topping and lion's tailing shall be considered prohibited pruning practices for Heritage trees. ANSI A300 (Part 1)-2017 is required to be followed.

Commented [SB3]: Staff Response: Because the new standard has moved to an objectives approach and no longer states a percentage for excessive pruning I am recommending simplifying the definition and requiring the new standard ANSI A300 (Part 1)-2017 be followed.

~~a. Lion's tailing - the removal of an excessive number of inner and/or lower lateral branches from parent branches.~~The removal of interior lateral branches that results in a concentration of growth at the branch ends shall be considered an unacceptable practice.

~~b. Topping- Reduction of tree size using intermodal cuts without regard to tree health or structural integrity. Is the reduction of tree size by cutting to stubs without regard for long-term tree health or structural integrity.~~

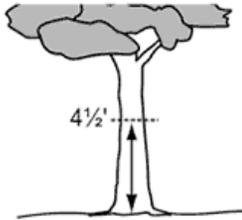
I. "Heritage tree" means:

1. A tree meeting any of the following conditions:
 - a. An oak tree (*Quercus lobata*, *Quercus agrifolia* or *Quercus douglasii*) located anywhere on a lot, that has a minimum trunk circumference of forty-eight (48) inches or diameter of fifteen ~~and two-tenths~~ (15.2) inches, as measured at fifty-four (54) inches above the Natural Grade.
 - b. A tree located outside the Main Buildable Area, that has a minimum trunk circumference of forty-eight (48) inches or diameter of fifteen ~~and two-tenths~~ (15.2) inches, as measured at fifty-four (54) inches above the Natural Grade.
 - c. A split trunk or low-branching tree located outside the Main Buildable Area, that has a minimum trunk circumference of forty-eight (48) inches or diameter of fifteen ~~and two-tenths~~ (15.2) inches, as measured at fifty-four (54) inches above the Natural Grade. If the trunk branches or splits below this point, the smallest circumference or diameter below the lowest branch shall be measured.
 - d. A multi-stemmed tree located outside the Main Buildable Area, that has a total trunk circumference of forty-eight (48) inches or total diameter of fifteen ~~and two-tenths~~ (15.2) inches when calculated as follows: considering at all the branches at fifty-four (54) inches above Natural Grade, add the measurement of the

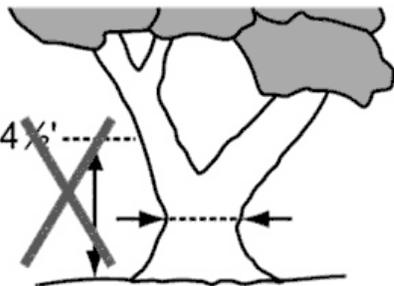
DRAFT AMENDMENTS, ~~AUGUST~~OCTOBER 2019

largest branch to one-half the measurement of each additional branch.
Reference the Guide for Plant Appraisal authored by representatives to the Council of Tree and Landscape Appraisers

Measuring Tree Size for Existing Trees



Measuring Split Trunk Tree

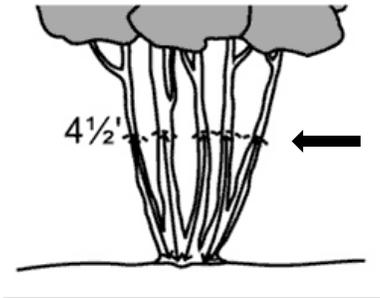


Commented [JL4]:

Commented [SB5R4]: Staff Response: It is important to distinguish between low branching and multi-stemmed trees for private arborists and the town arborist to have the same standard. For the inventory it is important to know that the private arborist is measuring to the town's standard. The new standard is an industry standard.

DRAFT AMENDMENTS, ~~AUGUST~~OCTOBER 2019

Measuring Multi-stemmed Trees



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. A tree that has been removed without a permit that cannot be measured pursuant to subsection A(1), above, will be presumed to have been a Heritage tree if it meets any of the following criteria:

- a. the tree has a stump of at least seventeen and three-quarters inches (17 $\frac{3}{4}$ ") in diameter as measured at the Natural Grade;
- b. the tree is a native oak with a minimum of 75 years of age;

~~the tree is any other species of tree with a minimum of 45 years of age, unless otherwise specified in this Section.~~

~~c.~~

~~d.~~ the tree is a Redwood with a minimum age of 30 years of age;

~~e.~~ the tree is any other species of tree with a minimum of 45 years of age.

- e. In the absence of remaining physical evidence, photographs and other circumstantial evidence of characteristics, including but not limited to height,

DRAFT AMENDMENTS, ~~AUGUST~~OCTOBER 2019

canopy dimensions, and similar trees in the immediate area may be used to create a presumption that the tree was a Heritage tree.

Notwithstanding the foregoing, anyone may rebut this presumption by providing substantial evidence to the contrary to the satisfaction of the Town Arborist.

4. Exemptions: The trees listed below shall not be classified as Heritage trees, regardless of their size or age, nor shall they be used for replacement plantings:

- a. Acacia baileyana—Bailey Acacia
- b. Acacia decurrens—Green Wattle
- c. Acacia melanoxylon—Black Acacia
- d. Ailanthus altissima—Tree of Heaven
- ~~e. Albizia julibrissin - Mimosa~~
- f. Eucalyptus—any species

J. "Injury" - means bruising, scarring, tearing or breaking of roots, bark, trunk, branches or foliage, the application of herbicide or poisoning, or any other action that is likely to cause the death of or Irreparable Damage to a tree.

Commented [SB6]: Staff Response: There is no definition of injury or damage in ANSI A300 for pruning or BMP's for pruning.

K. "Irreparable Damage" means any action undertaken by a person, as defined in this Ordinance, foreseeably leading to the death or permanent Injury of the tree, or which places the tree in a hazardous condition or an irreversible state of decline within one year from when action was taken. The includes, but is not limited to, Cutting, topping, girdling, poisoning, vandalizing, trenching or excavating within the DriplineTPZ zone, altering the grade, paving in excess of fifty percent (50%) of the Dripline, excessive watering of oak trees, and Excessive Pruning.

Commented [SB7]: Staff Response: No excavation within TPZ zone. TPZ zone is for roots and they extend 2-4 past the dripline.

L. "Main Buildable Area" is the area defined by applicable setbacks in which primary development is allowed under the Atherton Municipal Code.

DRAFT AMENDMENTS, ~~AUGUST~~OCTOBER 2019

M. "Natural Grade" is the grade, as determined by the Town arborist, unaffected by construction techniques such as fill, landscaping, or a berm.

N. "Person" means anyone having a property interest in a tree. Property owners are liable under this Chapter for all violations, whether they were done directly by the property owner or someone acting on their property with or without specific authorization, including but not limited to contractors, gardeners, and maintenance persons; provided, however, it shall not include Persons acting under a right of easement without the direction of the property owner (e.g., PG&E).

Commented [SB8]: Staff Response: Staff recommends that language as proposed remain. By keeping definition broad, it would legally include a person; property owner, contractor, neighbor, etc

O. "Remove" or "removal" means any act that leaves the tree unviable, removes it from its location, ~~relocates it from its location,~~ or renders it "dead or dangerous" as determined by a Certified Arborist.

P. "Tree Appraisal" means a method of determining the monetary value of a tree (herein "Appraised Value"), using its pre-existing condition if it has been Removed or Damaged. A certified project arborist shall determine the Appraised Value as part of the required Tree Protection and Preservation.

Q. "Tree Preservation Area" means the area outside the Buildable Area of the lot, as defined in Section 17.60.020 of this code.

R. "Tree Protection Zone (TPZ)" is the designated protection area sufficiently large enough to protect a Heritage tree and its roots from disturbance and/or damage as defined in Section 8.10.020 C. The TPZ shall be determined and shall meet all provisions as detailed in the Town's current Tree Preservation Standards and Specifications document ~~and may extend onto neighboring properties.~~

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, special structures permit, or building permit. In addition, a Heritage tree protection and preservation plan may be required with each application, as determined

DRAFT AMENDMENTS, ~~AUGUST~~OCTOBER 2019

by the Town Arborist. The Heritage tree protection and preservation plan shall adhere to the specifications found in the Town’s current Tree Preservation Standards and Specifications document. Said plan shall also show heritage trees which border the development area but are on neighboring property or share a border within 15 feet of the property line.

Formatted: Highlight

Commented [SB9]: Staff Response: In the “Guidelines”, the Tree Protection and Preservation Plan submittal requirements do specify the need to locate neighboring trees within 15 feet of the property line on the required site plan, as well as noting the required protection of a neighboring trees TPZ. See Sec. 1.18 of the “Guidelines” and 2.2 of “Guidelines”

Formatted: Highlight

C. No Person shall Disturb and/or Damage a Heritage tree by any means whatever, including, without limitation, those actions defined in Section 8.10.020(C), or conduct any prohibited activities within the defined TPZ as specified in the Town’s current Tree Preservation Standards and Specifications document, unless a permit has first been issued by the Town. Staff-level decisions about the TPZ may be appealed to the Planning Commission within ten (10) days of the decision in writing to the Town.

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 Certified Arborist.

B. If the tree which is the subject of an application meets the requirements as set forth in this section and is determined by staff to be a Dead or Dangerous tree as defined in Section 8.10.020 F and pursuant to Chapter 8.08 of this code, based upon a review of the permit application and the inspection report, then the Building Department shall grant the permit and 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. Such replacements shall not require submittal of a bond.

C. If the Building Department determines that the tree does not meet the requirements of a Dead or Dangerous tree -and if the applicant requests Planning Commission review, then the application shall be referred to the Planning Commission for consideration at a public meeting, noticed in accordance with Section 17.06.080B of this

DRAFT AMENDMENTS, ~~AUGUST~~OCTOBER 2019

code. 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 Planning Commission review shall contain all requested information in order to be deemed complete.

D. 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, while considering 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.
2. The probability of a public safety hazard, personal injury or significant property damage as a function of proximity to existing structures and objects of value and interference with utility services;
3. 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;
4. Good forestry practices such as, but not limited to, the age, number of healthy trees a given parcel of land will support and/or the long term benefits of a proposed reforestation plan relative to existing site conditions;

5. The necessity to remove or relocate the tree (s) to allow for operation of existing solar panels that were installed prior to the planting of the tree(s) on the subject or adjoining property, and

~~56.~~ The necessity to Remove the tree(s) to allow reasonable use or other enjoyment of the property when there is no demonstrated feasible alternative to the Removal while meeting other adopted goals and policies of the General Plan to the greatest extent feasible.

Commented [JL10]: Staff Response: Staff has outreached to Menlo Park Fire and Open Space several times and has not received any feedback to date. Staff will continue to follow up to see if either organization has comments and/or questions.

DRAFT AMENDMENTS, ~~AUGUST~~OCTOBER 2019

E. 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. Replacement trees shall not be those listed as Disfavored **trees** above. Where 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 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.

F. Any Person required to plant replacement trees pursuant to this section shall maintain such trees in a good and healthy condition to ensure permanent establishment of said trees, to the satisfaction of the Town Arborist. Such Person shall execute a maintenance agreement with the Town and post a maintenance bond or security deposit equal to the Appraised Value of the each tree **that is planted**, which shall be returned at permittee’s request at the end of one (1) calendar year, subject to the approval of the Town Arborist. If the condition of the replacement planting(s) is not satisfactory to the Town Arborist, the Town may take additional steps to ensure permanent establishment of replacement trees, including planting of new trees and/or an extension of the bond/security deposit. **This requirement shall not apply to Dead or Dangerous trees. I still believe this puts too much additional work on the arborist. I am not in favor of the maintenance requirement being formal.**

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.

8.10.050 Request for Exceptions to the TPZ.

Any request for an exception to the TPZ standards shall be processed in accordance with the Towns current Tree Preservation Standards and Specifications document.

8.10.060 State tree care license.

Commented [SB11]: Staff Response: City Council policy direction requested. The idea of requiring a maintenance bond or security deposit is an attempt to provide greater assurance that the required replacement trees will survive and be permanent. Per Municipal Code, construction time limit is 3 years from data of permit issuance. While 1 calendar year is included as a potential, proposed time frame, staff requests the Ad-Hoc Committee provide any direction on their preference of when such a deposit/bond will be forfeited.....one year? Three years? At discretion of Town Arborist on case by case basis?

Formatted: Highlight

DRAFT AMENDMENTS, ~~AUGUST~~OCTOBER 2019

Except for the property owner, no ~~person~~ Person shall perform any ~~remov~~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)

8.10.070 Violation—Penalties and remedies.

A. Any Person causing a Heritage tree to be Disturbed and/or Damaged in violation of this chapter shall submit an amount equal to half (1/2) the Appraised Value of the Heritage tree as a civil penalty in addition to the penalties as outlined in Chapter 1.20. If a Heritage tree that has been Disturbed and/or Damaged dies within one (1) year of the date of the citation, it will be presumed that the Disturbance and/or Damage caused the death and the penalties set forth in subsection B, immediately below, shall apply instead of those herein.

B. Any Person causing a Heritage tree to be Removed in violation of this chapter shall submit an amount equal to two (2) times the Appraised Value of the Removed Heritage tree as a civil penalty in addition to the penalties as outlined in Chapter 1.20.

C. Pursuant to 1.20.020 of this Code, 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.

D. Where there has been a violation, the violator shall obtain a retroactive tree Removal permit for the previously conducted unlawful activity, subject to the full range of requirements and conditions as specified in 8.10.040 above.

EF. All remedies provided in this section shall be cumulative and are not exclusive.

8.10.080 Appeal

Decisions by staff pursuant to this Chapter are appealable to the Planning Commission and decisions by the Planning Commission are appealable to City Council. All requests for appeal must be made in writing to Town within ten (10) days of the date of the

DRAFT AMENDMENTS, ~~AUGUST~~OCTOBER 2019

contested decision and in accordance with the procedures contained in Chapter 17.06 of this Code.

I believe clarity of what cannot be done in a TPZ including compaction for border line driveways should be here.

Also neither document addresses the process of recording the removal of Redwood trees. If this is not formally so stated, how will it be done accurately.

Formatted: Highlight

Commented [SB12]: Staff Response: The definition of "Disturbance and/or Damage" to a heritage tree expanded to include reference to any heritage tree on a neighboring property within 15 feet of the property line. See Section 8.10.020 F above. Additionally, within the "Guidelines", the required Tree Protection Plan specifies that trees on neighboring properties within 15 feet shall be included on the required site plan, as well as the defined TPZ. See Sec. 1.18 "Tree Protection and Preservation Plan" and Sec 2.2 "Tree Protection Zone" of the Guidelines.

Formatted: Highlight

Commented [SB13]: Staff Response: Per direction received at 3-19 City Council meeting, redwood trees were removed as a potential, additional protected tree within the buildable area and that staff report back within 12 months the amount of redwood trees removed within the buildable area. Staff can prepare an updated report within 12 months of any HTO amendments being adopted.

DRAFT AMENDMENTS, ~~MARCH-OCTOBER~~ 2019

TOWN OF ATHERTON

Tree Preservation Standards and Specifications



____, 2019

DRAFT AMENDMENTS, ~~MARCH-OCTOBER~~ 2019

TOWN OF ATHERTON

TREE PRESERVATION STANDARDS AND SPECIFICATIONS

SECTION 1.00 DEFINITIONS

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

~~1.1~~

Appraised Value - means the value of a tree as determined by the Town Arborist using the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers.

1.1

1.2 **Building Official** - means the Director of Building and Planning or the Director's designee.

1.3 **Certified Arborist** – is an individual who has demonstrated knowledge and competency through obtainment of the current International Society of Arboriculture arborist certification.

1.4 **Dead or Dangerous Tree** - ~~means dead or dying trees, dead parts of live trees, or unstable live trees (due to structural defects or other factors) that are within striking distance of people or property, as determined by the Town Arborist.~~ ~~is dead or dying trees, dead parts of live trees, or unstable live trees (due to structural defects or other factors) that are within striking distance of people or property, as determined by Town Arborist. If the tree has been determined to be dead or dangerous, removal is permitted under Section 8.10 of the Atherton Municipal Code.~~

1.5 **Development Project** - means any construction activity ~~that requires a Demolition, Grading, Drainage or Building Permit.~~

1.6 **Diameter at Breast Height** – measurement of trunk diameter taken at 4.5 feet (or 54 inches) above the natural grade. The diameter may be calculated by using the following formula:

$$DBH = \text{circumference at 4.5 feet} \div 3.142$$

~~1.7~~ **Disturbance and/or Damage** - ~~refers to demolition, construction, sub terrain grading activities, landscaping improvements, other development activities and/or any other action, as determined by the Building Official or Town Arborist, which may cause damage to the health of a Heritage tree. Examples include, but are not limited to, Excessive Pruning, topping, Cutting, girdling, poisoning, over-watering, unauthorized relocation or transportation of a tree, trenching, excavating, altering the grade, compaction or paving near the tree, and screwing anything into the tree (for example, but not limited to, installing tree houses, etc.).~~ ~~refers to demolition, construction, subterrain~~

Commented [RDG1]: Please put all definitions in alphabetical order 1.1-1.27

Commented [SB2R1]: Staff Response: Done – no tracked changes, to increase readability/legibility

DRAFT AMENDMENTS, MARCH-OCTOBER 2019

~~grading activities, landscaping improvements, other development activities and/or any other action, as determined by the Building Official or Town Arborist, which will cause irreparable damage to the health of a Heritage tree, including, by way of example, but not limited to, excessive 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, screwing anything in the tree (for example, but not limited to, signs, mailboxes and or treehouses).~~

~~1.81.7~~

~~1.91.8 **Dripline** - means the outermost circumference of the tree's canopy, from which water drips to the ground. When depicted on a map, the Dripline will appear as an irregularly shaped circle that follows the contour of the tree's branches as seen from overhead.~~
~~means the the outermost circumference of the tree's canopy, from which water drips onto the ground. The tree dripline is the guide measurement used to prevent unnecessary damage to trees during construction works. When depicted on a map, the Dripline will appear as an irregularly shaped circle that follows the contour of the tree's branches as seen from overhead.~~

~~1.101.9~~

Excessive Pruning - means no more living material than what is necessary to be removed. Excessive Pruning is considered Damage to the tree and is prohibited unless approval is granted by the Town Arborist prior to initiating the work. The percentage and distribution of foliage to be removed shall be adjusted according to the plant's species, age, health, and site. Topping and lion's tailing shall be considered prohibited pruning practices for Heritage trees. ANSI A300 (Part 1)-2017 is required to be followed.

a. Lion's tailing - The removal of ~~fd~~ interior lateral branches that results in a concentration of growth at the branch ends shall be considered an unacceptable practice.

b. Topping- Is the reduction of tree size by cutting to stubs without regard for long-term tree health or structural integrity.

~~1.11 — means removing in excess of 25 percent of the functioning leaf, stem, or root area of a tree within an annual growing season branch. Excessive Pruning in excess of 25 percent is considered disturbance and/or Ddamage to the tree as defined in Section 1.7 and is prohibited. Pruning in excess of twenty five percent (25%) is injurious to the tree and is prohibited unless approval is granted by the Town Arborist prior to initiating the work. Not more than 25 percent of the foliage shall be removed within an annual growing season. The percentage and distribution of foliage to be removed shall be adjusted according to the treeplant's species, age, health, and site. Topping and lion's tailing shall be considered prohibited pruning practices for Heritage trees. ANSI A300 (Part 1).~~

DRAFT AMENDMENTS, MARCH-OCTOBER 2019~~1.12 —~~~~1.13 — Lion's tailing—the removal of an excessive number of inner and/or lower lateral branches from parent branches. Lion's tailing is a prohibited practice. ANSI A300 (Part 1).~~~~1.14 —~~~~1.15 — Topping—Reduction of tree size using intermodal cuts without regard to tree health or structural integrity. Topping is a prohibited pruning practice. ANSI A300 (Part 1).~~~~1.16 —~~~~1.17 — Unbalanced crown—Removal of leaf or stem area predominantly on one side.~~~~1.18 —~~~~1.19 — Roots—Excessive pruning may include the cutting of any root 2 inches or greater in diameter and/or severing in excess 25% of the roots.~~1.9 **Heritage tree** means:

1. A tree meeting any of the following conditions:

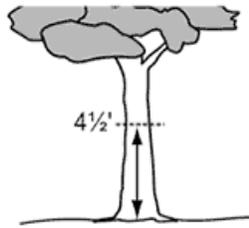
- a. An oak tree (*Quercus lobata*, *Quercus agrifolia* or *Quercus douglasii*) located anywhere on a lot, that has a minimum trunk circumference of forty-eight (48) inches or diameter of fifteen and two-tenths (15.2) inches, as measured at fifty-four (54) inches above the Natural Grade.
- b. A tree located outside the Main Buildable Area, that has a minimum trunk circumference of forty-eight (48) inches or diameter of fifteen and two-tenths (15.2) inches, as measured at fifty-four (54) inches above the Natural Grade.
- c. A split trunk or low-branching tree located outside the Main Buildable Area, that has a minimum trunk circumference of forty-eight (48) inches or diameter of fifteen and two-tenths (15.2) inches, as measured at fifty-four (54) inches above the Natural Grade. If the trunk branches or splits below this point, the smallest circumference or diameter below the lowest branch shall be measured.
- d. A multi-stemmed tree located outside the Main Buildable Area, that has a total trunk circumference of forty-eight (48) inches or total diameter of fifteen and two-tenths (15.2) inches when calculated as follows: considering at all the branches at fifty-four (54) inches above Natural Grade, add the measurement of the largest branch to one-half the measurement of each additional branch. Reference the Guide for Plant Appraisal authored by representatives to the Council of Tree and Landscape Appraisers.

Commented [JL3]:

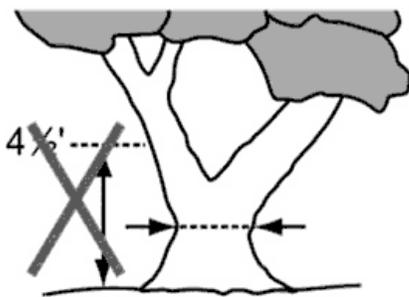
Commented [SB4R3]: Staff Response: It is important to distinguish between low branching and multi-stemmed trees for private arborists and the town arborist to have the same standard. For the inventory it is important to know that the private arborist is measuring to the town's standard. The new standard is an industry standard

DRAFT AMENDMENTS, [MARCH-OCTOBER 2019](#)

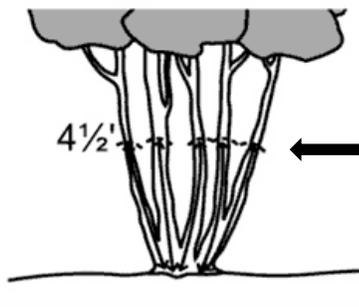
Measuring Tree Size for Existing Trees



Measuring Split Trunk Tree



Measuring Multi-stemmed Trees



[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;](#)

DRAFT AMENDMENTS, ~~MARCH-OCTOBER~~ 2019

3. A tree that has been removed without a permit that cannot be measured pursuant to subsection A(1), above, will be presumed to have been a Heritage tree if it meets any of the following criteria:

- a. the tree has a stump of at least seventeen and three-quarters inches (17 ¾”) in diameter as measured at the Natural Grade.
- b. the tree is a native oak with a minimum of 75 years of age.
- c. the tree is any other species of tree with a minimum of 45 years of age, unless otherwise specified in this Section.
- d. the tree is a Redwood with a minimum age of 30 years of age.
- e. In the absence of remaining physical evidence, photographs and other circumstantial evidence of characteristics, including but not limited to height, canopy dimensions, and similar trees in the immediate area may be used to create a presumption that the tree was a Heritage tree.

Notwithstanding the foregoing, anyone may rebut this presumption by providing substantial evidence to the contrary to the satisfaction of the Town Arborist.

4. Exemptions: The trees listed below shall not be classified as Heritage trees, regardless of their size or age, nor shall they be used for replacement plantings:

- a. Acacia baileyana—Bailey Acacia
- b. Acacia decurrens—Green Wattle
- c. Acacia melanoxylon—Black Acacia
- d. Ailanthus altissima—Tree of Heaven
- e. Albizia julibrissin – Mimosa

f. Eucalyptus—any species

~~a. A tree located outside the Main Buildableing Area, that has a minimum trunk circumference of forty eight (48) inches in circumference or at least fifteen point two and two tenths (15.2) inches in diameter, as measured at fifty four (54) inches above the natural grade.~~

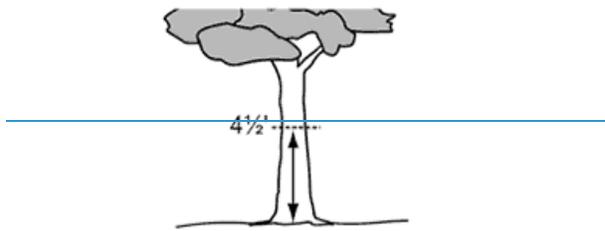
~~b. An oak tree (Quercus lobata, Quercus agrifolia or Quercus douglasii) or redwood tree Sequoia sempervirens located anywhere on a lot, that has a minimum trunk circumference of forty eight (48) inches or at least fifteen and two tenths point two (15.2) inches, as measured fifty four (54) inches above the natural grade.~~

~~e. Any split trunk tree located outside the Main Buildableing Area measuring at least fifteen and two tenths point two (15.2) inches in diameter, as measured at fifty four (54) inches above the natural grade. If the trunk branches or splits less than four point~~

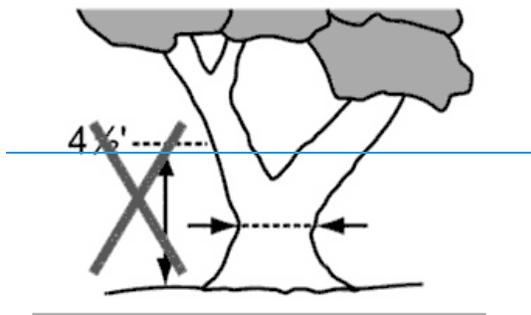
DRAFT AMENDMENTS, [MARCH-OCTOBER 2019](#)

~~five and a half (4.5) feet from the ground above the natural grade, the smallest circumference below the lowest branch shall be measured. For multi-stemmed trees, measure all trunks at 4.5 feet, then add the total diameter of the largest trunk to one-half the diameter of each additional trunk. Ex: largest branch is 4" plus 3", 3", 2", 3", 2", 3" You take 4 (largest branch) x 1.5' x 1.5' x 1" x 1.5' x 1" x 1.5' (half of all branches) = 20" diameter tree. Reference the Guide for Plant Appraisal authored by representatives to the Council of Tree and Landscape Appraisers.~~

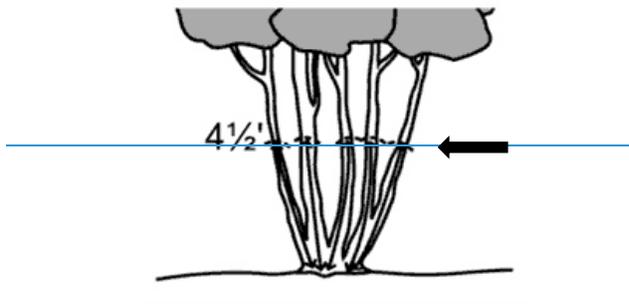
Measuring Tree Size for Existing Trees



Measuring Split Trunk Tree



Measuring Multi-stemmed Trees



DRAFT AMENDMENTS, ~~MARCH-OCTOBER~~ 2019

~~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. A tree that has been removed without a permit that cannot be measured pursuant to subsection 1 (a), above, will be presumed to have been a Heritage tree if it meets any of the following criteria: Anyone so cited for removing a Heritage tree without a permit may rebut this presumption by providing substantial evidence to the contrary to the satisfaction of the Town Arborist.~~

~~f. the tree has a stump of at least seventeen and three quarters inches (17 3/4") as measured at the natural grade;~~

~~g. the tree is a native oak with a minimum of 75 years of age;~~

~~h. the tree is a Redwood with a minimum age of 30 years of age;~~

~~i. the tree is any other species of tree with a minimum of 45 years of age.~~

~~— In the absence of remaining physical evidence, photographs and other circumstantial evidence, including but not limited to height, canopy dimensions, and similar trees in the immediate area may be used to create a presumption that the tree was a Heritage tree.~~

~~Notwithstanding the foregoing, anyone may rebut this presumption by providing substantial evidence to the contrary to the satisfaction of the Town Arborist.~~

~~4. Exemptions: The trees listed below shall not be classified as Heritage trees, regardless of their size or age:~~

~~f. Acacia baileyana — Bailey Acacia~~

~~g. Albizia julibrissin — Mimosa~~

~~h. Acacia decurrens — Green Wattle~~

~~i. Acacia melanoxylon — Black Acacia~~

~~— Ailanthus altissima — Tree of Heaven~~

~~j. Albizia julibrissin — Mimosa~~

~~— Eucalyptus — any species~~

~~k. Pinus radiata — Monterey Pine~~

1.10 **Injury** - means bruising, scarring, tearing or breaking of roots, bark, trunk, branches or foliage, ~~the application of~~ herbicide or poisoning, ~~natural issues such as weather, insect and animals,~~ or any other action ~~that is likely to cause the death of or Irreparable Damage to a tree, which is likely to cause the death or permanent damage and/or disturbance to Heritage tree.~~

1.11 **Main Buildable Area** - ~~is the area defined by applicable setbacks in which primary development is allowed under the Atherton Municipal Code. (front, interior side, street side, and/or rear) of a lot is the horizontal plane between the minimum setbacks of the respective yard.~~

1.12 **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, ~~and~~ vandalism, ~~weather, insects and animals.~~

Commented [RDG5]: Why wouldn't we include this here?

Commented [SB6R5]: Staff Response: Prior citizen advisory committees and Planning Commission wanted to keep as heritage. There is no fine if they are dead and some MP are thriving and may recover after the drought. Policy direction requested.

Commented [JL7]: Staff Response: There is no definition of injury or damage in ANSI A300 for pruning or BMP's for pruning.

DRAFT AMENDMENTS, ~~MARCH~~ OCTOBER 2019

- 1.13 **Monthly Inspection Report** - means a monthly written report prepared by the Project Arborist as detailed in Section 1.18 (B).
- 1.14 **Project Arborist** - means a private Certified Arborist retained by the property owner for the purpose of overseeing on-site activity involving the welfare of the trees to be retained.
- 1.15 **Protective Tree Fencing** - means a temporary enclosure erected around a tree to be protected at the boundary of the Tree Protection Zone as defined by Atherton Municipal Code and Section 2.2 of this document. The fence serves three primary functions: 1) to keep the foliage, crown, branch structure and trunk clear from direct contact and damage by equipment, materials or disturbances; 2) to preserve roots and soil in an intact and non-compacted state; and 3) to identify the tree protection zone in which no soil disturbance is permitted and activities are restricted. (See detail, Appendix I)
- 1.16 **Pruning** – The selective removal of plant parts to meet the specific goals and objectives of ANSI A300 (Part 1).
- 1.17 **Root Buffer** - means a temporary layer of material to protect the soil texture and roots. The buffer shall consist of (i) a base course of tree chips spread over the root area, keeping one foot clear of the trunk clear, to a 4”- 6” depth, (ii) a base course of 3/4-inch quarry gravel which shall cover the tree chips and (iii) a ¾” plywood board covering the gravel and on the surface.
- 1.18 **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).
- 1.19 **Soil Fracturing** - means the loosening of hard or compacted soil around a tree by means of a pneumatic soil probe that allows sudden bursts of air to crack, loosen or expand the soil to improve the root growing environment.
- 1.20 **Street Tree** - means any tree growing within the street right-of-way, outside of private property and adjacent to the applicant’s property. Please note that most trees in the Right of Way are the adjacent property owners maintenance responsibility per Atherton Municipal Code Chapter 12.06.
- 1.21 **Tree Protection and Preservation Plan** – Prepared by a Certified Arborist and required for all Development Projects, including any site improvements at grade or sub terrain, and shall include the following minimum information:

A. 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,

DRAFT AMENDMENTS, [MARCH-OCTOBER 2019](#)

relocated or to be retained. Site plans shall include the following minimum information that may impact trees:

1. The site plan shall be scaled at 1" = 10' or 1" = 20' as necessary to clearly detail tree protection requirements, depending on the scope and complexity of the project and include all existing and proposed buildings and structures.
2. Include the **Tree Protection Zone (TPZ)**, as defined in Section 2.2, measurement on the plans, which identifies the area to protect the trees and roots from disturbance and mulch to be applied within the TPZ.
3. Surveyed location, species, size/trunk diameter, dripline area of existing Heritage trees (including trees located on neighboring property that overhang the project site) and street trees within 30-feet of the project site within the public right-of-way. Show trees on neighboring property that are within 15' of the property line.
4. Paving, concrete, excavation, trenching, irrigation lines and/or grade change located within the **Tree Protection Zone (TPZ)**, as defined in Section 2.2.
5. All proposed and existing hardscape, including but not limited to, driveways, slabs, walkways, etc. Identify proposed materials, impervious and semi-impervious surfaces.
6. Existing and proposed utility pathways with detail on the location, depth and materials for all proposed underground utilities, including, but not limited to, sewer, water, electrical, water retention tanks, etc.
7. The location of any areas where hand digging is proposed. Significant root cutting (over 2") will require a letter from the Project Arborist which will include mitigation measures. The Town Arborist shall review any and all proposed hand digging, significant root cutting and mitigation measures within required tree protection areas and plan approval is required prior to starting such work.
7. _____
8. _____
9. _____ Surface and subsurface drainage and aeration systems to be used.
8. _____
10. _____
11. Walls, tree wells, retaining walls and grade change barriers, both temporary and permanent.
12. _____
- 13.9. Landscaping, irrigation and lighting within the TPZ of all Heritage trees. Show Landscape Screening [in accordance with the Atherton Municipal Code](#) 3X away from all heritage trees.
- 14.10. All of the final approved site plan sheets shall reference tree protection instructions.

DRAFT AMENDMENTS, [MARCH-OCTOBER 2019](#)

~~15.11.~~ OSHA Cuts (Occupational Safety and Health administration). OSHA Cut (means a method of protecting employees from cave-ins by excavating to form sides of an excavation that are inclined away from the excavation so as to prevent cave-ins. The angle of incline required to prevent a cave-in varies with differences in such factors as the soil type, environmental conditions of exposure, and application of surcharge loads).

Commented [RDG8]: This isn't defined.

Commented [SB9R8]: Staff Response: Definition added.

B. Written Inventory

A written inventory is required for demolition, grading and drainage and building permits and at Town Arborist or Building Officials discretion.

Commented [JG10]: BW Comment- And their TPZ

A Project Arborist letter report shall include:

Commented [SB11R10]: Staff Response: See newly added Item #3 in tracked change.

1. A written narrative from an ISA Certified Arborist report.
2. Arborist Name, Certification # and company letterhead.

The letter report shall include the following for each Heritage tree, including any heritage trees on neighboring properties within 15 feet of the shared property line:

1. Species (common and scientific name).
2. Size (diameter, height and crown spread).
3. TPZ zone.
- ~~3.4.~~ Condition (foliage, vigor, structural integrity, fair, good, etc.)
- ~~4.5.~~ Prognosis (dangerous, imminent hazard, property damage). The Hazard Evaluation Form may be used to rate a dangerous condition. Life expectancy Location diagram (and photograph, if desired).

C. Photo Inventory

Prior to any site demolition, the applicant shall provide ~~c~~Colored photographs all of existing Heritage trees on-site, within the public right-of-way adjacent to the property and on adjacent property within fifteen feet of the property demolition. These photographs can be integrated into the written inventory.

D. Appraisal

See Sections 1.22 -“Tree Appraisal” and 1.23 and “Appraised Value”. Appraise each ~~H~~heritage tree or 12” dbh or greater.

Commented [RDG12]: What is a “soon to be Heritage tree”? It makes no sense to require appraisal of every tree on the property.

E. Grading & Drainage submittal:

Commented [SB13R12]: Staff Response: Please see added, enhanced text in tracked changes noted as “12” or greater”

Arborist Report/ Tree Removals / Arborist Letter, shall include but not be limited to:

1. Showing any impact to Heritage trees as a result of either grading or the

DRAFT AMENDMENTS, ~~MARCH-OCTOBER~~ 2019

installation of the drainage system.

2. Recommend Heritage tree protection and which drainage and utility lines require hand digging.
3. Submit a report by a Certified Arborist that the removal of the trees indicated on the Plans is in compliance with Town regulations. The Town's Arborist will need to review the proposed removal of any Heritage tree.
4. At the beginning of the job, prior to permit issuance, provide a letter signed by the arborist who produced the Arborist Report attesting that they have reviewed the plans and the project is designed in accordance with their recommendations and the project plans are designed in accordance with their recommendations and is accordance with the Town's Heritage Tree Ordinance and Standards documents to protect Heritage trees.

~~1.22~~

~~**Tree Appraisal and Appraised Value** means a method of determining the monetary value of a tree (herein "Appraised Value"), using its pre-existing condition if it has been Removed or Damaged. A certified project arborist shall determine the Appraised Value as part of the required Tree Protection and Preservation means a method of determining the monetary value of a tree using its pre-existing condition if it has been removed or Damaged as it relates to the real estate value of the property, neighborhood or community. The Certified Project Arborist shall determine the Tree Appraisal Appraised Value as part of the required Tree Protection and Preservation Plan by adjusting a tree's basic value by its pre-existing condition, location, and species using the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers. An "Appraised Value" means the value of a tree as determined by the Town Arborist using the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers.~~

~~1.23~~ 1.22

~~1.24 **Appraised Value** means the value of a tree as determined by the Town Arborist using the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers.~~

~~1.25~~ 1.23 **Tree Protection Zone, (TPZ)** - means, unless otherwise specified by a Project Arborist or Town Arborist, the area of temporary fenced tree enclosure, as described in Section 2.2.

~~1.26~~ 1.24 **Trenching** - means any excavation to provide irrigation, install foundations, utility lines, services, pipe, drainage or other property improvements below grade.

~~1.27~~ 1.25 **Verification of Tree Protection** - means the Project Arborist shall verify, in writing, that all pre-construction requirements have been met.

DRAFT AMENDMENTS, ~~MARCH~~OCTOBER 2019

~~1.28~~1.26 **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.

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 for each construction project to insure the appropriate practices will be implemented in the field to eliminate or mitigate undesirable consequences that may result from construction activities associated with a Development Project as defined in Section 1.5.

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 off new roots 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
- Trenching for utilities and irrigation

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 as defined in Section 2.01 as part of the building permit submittal. The Tree Protection and Preservation Plan shall be prepared by a Certified Arborist with detail as specified by the Tree Preservation Standards and Specifications.

2.1 **Pre-Construction Requirements**

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

A. Site Plan

See Section 1.18 *Tree Protection and Preservation Plan*.

B. Tree Protection Disclosure Statement

A statement signed by the owner of the property and permit applicant, on a form provided by the Town, acknowledging the existence of Heritage ~~T~~rees on the property and that the approved Tree Protection and Preservation Plan shall be implemented and adhered through the finaling of the associated building permit.

C. Verification of Tree Protection

DRAFT AMENDMENTS, [MARCH-OCTOBER 2019](#)

The Project Arborist shall verify, in writing, that all pre-construction requirements have been met as set forth in Section 2.01. 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 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 and Street Trees

1. Fenced enclosures

Fenced enclosures shall be erected around all Heritage trees at 8x the diameter of each Heritage tree to be protected to establish the TPZ in which no soil disturbance is permitted and various activities are restricted.

2. Size and type of fence

All Heritage 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 I). This detail shall appear on grading, demolition and building permit plans.

3. Duration

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

4. "Warning" Signs

Warning signs shall be prominently displayed on each fence side so that they are clearly visible. (See Appendix II). The signs are available at the Building Department.

5. Mulch

A 4"-6" layer of coarse mulch or woodchips shall be placed beneath the dripline of the protected trees. Mulch is to be kept 12" from the trunk.

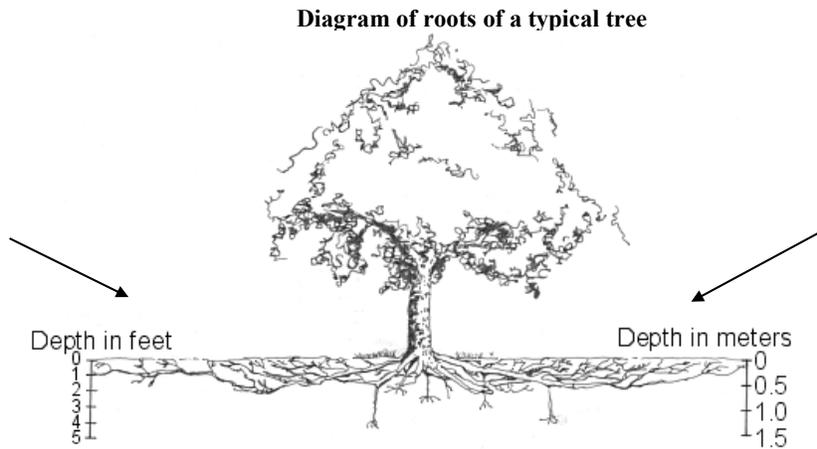
2.2 TREE PROTECTION ZONE (TPZ)

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 and/or Damage~~ as defined in Section 1.7. Within the TPZ, roots that are critical for tree survival are typically found in the upper three foot soil horizon

Commented [SB14]: Staff Response: Important to keep, in conjunction with definition of Disturbance and/or Damage of the Ordinance. Recommend keeping in reference to disturbance.

DRAFT AMENDMENTS, [MARCH-OCTOBER 2019](#)

and may extend beyond the dripline area. Protecting the roots in the TPZ is necessary to ensure the tree's survival.



A. Tree Protection Zone (TPZ)

“Tree Protection Zone (TPZ)” is the designated protection area sufficiently large enough to protect a Heritage tree and its roots from ~~Disturbance and/or damage~~ as defined in Section 8.10.020 C of the Atherton Municipal Code and as specified below. Unless otherwise specified below, the TPZ is a radius 10 times the diameter of a tree ([expressed as 10x](#)) measured at 4.5 feet above the natural grade

Commented [SB15]: Staff Responses: Important to Keep in conjunction with definition of Disturbance and/or Damage of the Ordinance. Recommend keeping in reference to disturbance.

The TPZ shall be determined the following way: the TPZ radius shall be 10 times the DBH (4.5”) of the trunk. For example: a 15” DBH = a 12.5 foot radius from the perimeter of the tree, or a 25 foot TPZ. Any deviation in determining the TPZ shall be in accordance with ANSI standards subject to approval by the Town Arborist.

1. R1-A Zoning District for lots of more than 10,000 square feet:
 - a. The TPZ is 10x away from all buildings and structures.
 - b. The TPZ is 8x away from any new driveway.
2. R1-B Zoning District and lots in the R1-A Zoning District that are 10,000 square feet or less:
 - a. The TPZ is 6x away from all buildings, structures, and new driveways.
3. For all lots:

DRAFT AMENDMENTS, ~~MARCH~~-OCTOBER 2019

- a. The TPZ is 6x away from all CMU walls and 5x away from all wood or metal fences.
- b. The TPZ is 3x from all landscaping, Landscape Screening trees and bushes.
- c. For replacement of existing driveways and/or new, proposed compacted surfaces, allow for replacement in the existing location, but in no cases less than 3 times (3x).

B. Staff Level Exception From the TPZ.

A staff level exception from the TPZ standards noted in Section 2.2 (A) can be considered under any of the following scenarios.

- A TPZ exception in the R1-A from 10x the diameter, down to a minimum of 8x the diameter, for all development types unless otherwise specified.
 - A TPZ exception in the R1-A from 6x the diameter, down to a minimum of 3x the diameter, for lots in the R1-B, or lots in the R1-A 10,000 square feet or less.
 - A TPZ exception for CMU walls from 6x the diameter, down to 3x the diameter.
1. An application and fee are required to be completed prior to a staff level TPZ exception review. Submitting and paying for the application does not guarantee approval to reduce the TPZ. If the Town Arborist denies an application submitted for a staff level exception to the TPZ, the application can be appealed to the Planning Commission in accordance with the Atherton Municipal Code.

The application for a staff level TPZ exception shall be submitted to the Town of Atherton with a narrative stating why the exception is requested, what the impact to any and all Heritage trees would be and any identified mitigation. The following information shall accompany the application and application fee:

- a. A plan showing location of the structure and the Heritage trees with size and species stated. Show TPZ zones from 5x to 10x on the plan.
- b. Arborist report – stating what the damage and mitigation would be.
- c. The percentage of roots to be cut.
- d. Any utility easements.
- e. Any supporting letters from Menlo Fire, PG&E and/or other utility providers.

DRAFT AMENDMENTS, MARCH-OCTOBER 2019

- f. The Town Arborist can require a meeting with all parties to discuss further.
- 2. Any application to be submitted shall be reviewed by the Town Arborist for demonstrated compliance with any the following criteria, to the satisfaction of the Town Arborist:
 - a. The utility location is required by a utility company and it cannot be moved. A confirmation in writing from the utility is required.
 - b. If the species is tolerant of construction based on species, health, size and age from Mathilda and Clark tolerance chart.
 - c. There are no roots over 2” diameter that need to be cut.
 - d. Other criteria as may be required by the Town Arborist.

C. Prohibited Activities

Activities prohibited within the TPZ:

- 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, dirty water, swimming pool and/or spa water, trailer, container boxes, clean up areas, debris boxes, building materials, trenching, grade changes, tree houses, and soil compaction, OSHA Cut
- 2. .
- 3. The use of tree trunks as a winch support, anchorage, as a temporary power pole, sign posts or other similar function.
- 4. Cutting of tree roots by utility trenching, foundation digging, placement of curbs and trenches and other miscellaneous excavation.
- 5. Landscaping and irrigation improvements, unless approved in accordance with 2.2.D.3 below.
- 6. Soil disturbance, soil compaction or grade changes.
- 7. Drainage changes, including swimming pool, spa, and/or water features discharge.
- 8. Any other activities which cause Damagem, disturbance and/or damage to trees as defined in Section 1.7 and or as specified in AMC Sec 8.10.020.

Commented [RDG16]: This isn't defined.

D. Permitted Activities

Activities permitted within the TPZ:

DRAFT AMENDMENTS, [MARCH-OCTOBER 2019](#)

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 in accordance with 1.17. A root buffer is a temporary layer of material to protect the soil texture and roots. The buffer shall consist of a base of mulch chips spread over the root area to minimum of 6 inches depth, capped by a base course of 3/4th inch quarry gravel to stabilize 3/4th inch plywood on top.
3. Irrigation, aeration, fertilizing or other beneficial practices that have been specifically approved for use by the Project Arborist within the TPZ.

E. 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**.

F. 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 where there is tunneling or directional drilling, installation of the utility pipe, immediate backfilling with soil and soaking the TPZ within the same day. If boring is set up outside the dripline of a tree and not directly under trunk, the depth of hole should be a minimum of 3 feet, preferably 4 feet such that it goes under the root depth of the tree. The bore hole should be offset by a distance based on the trees diameter (table below). From Best Management Practices- Managing Trees During Construction.

Minimum distance requirements for boring or auguring underneath tree roots.

Tree Diameter (dbh) (centered on trunk)	Minimum offset distance	Minimum length of bore hole
15 inches	12 feet	15 feet
20 inches	15 feet	20 feet
25 inches	18 feet	25 feet

G. 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 a Heritage tree be pruned, the standard pruning shall consist of “crown cleaning” as defined by the ISA Pruning Guidelines.

1. Excessive Pruning

DRAFT AMENDMENTS, MARCH-OCTOBER 2019

There shall be no Excessive Pruning in accordance with Section 1.10 above.

2. Tree Workers

Pruning, as defined in Section 1.9 above, shall not be attempted by construction or contractor personnel, but shall be performed by a qualified tree care specialist or certified tree worker

3. Root Pruning

All root pruning should follow the most current ANSI A300 Root Management Standard - Part 8-2013 and Root Management Best Mangement Practices.

Commented [SB17]: Staff Response: Has been updated to current industry standard.

H. Tree Removal Procedure

When Heritage trees are proposed to be removed, tree removal practices shall adhere to the procedures as prescribed in Chapter 8.10 of the AMC.

I. Post Tree Protection and Preservation Plan Implementation

A mitigation program is required if, as determined by the Project Arborist required Monthly Inspection Form and/or as determined by the Town Arborist, the approved development is expected to create drought stress, dust accumulation or soil compaction to trees that are to be protected and preserved. To help reduce Damage, one or more of the following mitigation measures shall be implemented and supervised by the Project Arborist.

1. Irrigation Program

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

2. Dust Control Program

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

3. Soil Compaction Damage

Compaction of the soil is significantly detrimental to the long term viability 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 and/or the Town Arborist.

a. 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.

b. Type II 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.

J. Disturbance and/or Damage to Trees

1. Reporting

Any disturbance and/or damage or injury to trees, whether accidental or otherwise, as verified by the Town Arborist, shall be reported within 6-hours to the Project Arborist and Town Arborist so that mitigation can take place. All injury to branches, trunk or to roots over 2-inches in diameter shall be reported in the Monthly Inspection Report. Any trenching work 10 x the diameter of the tree is required to be reported in the monthly arborist report.

2. Appraised Value

If a tree is Damaged, a Certified Arborist shall determine the Appraised Value of the tree. The formula used should also be noted. Refer to Section 1.23.

3. Mitigation

Mitigation for Damage or Injury to Heritage trees will be directed and performed under the Project Arborist's supervision.

Typical mitigation efforts for disturbance and/or damage may include, but not be limited to, the following:

a. Root injury

If trenches are cut and tree roots 2-inches or larger are encountered they shall be cleanly cut back to a sound wood lateral root under the supervision of the Project Arborist. The end of the severed root shall be sealed and kept moist. All exposed root areas within the **TPZ** shall be backfilled or covered within one hour. Exposed roots shall 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 shall be kept wet until backfilled to reduce evaporation from the trench walls.

b. Bark or trunk wounding

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

c. 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

DRAFT AMENDMENTS, ~~MARCH~~-OCTOBER 2019

equipment exhaust pipes, the Project Arborist shall be informed within 6 hours.

K. Inspection Schedule

The Project Arborist shall conduct the following required inspections of construction sites containing protected Heritage trees. Inspections shall verify implementation of the approved Tree Protection and Preservation Plan as defined in Section 2.01.

1. Pre -Construction Meeting

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

2. Inspection of Protective Tree Fencing

Prior to issuance of a demolition, grading, or building permit, the Project Arborist shall provide the Town Arborist with a written statement verifying that the Project Arborist has conducted a field inspection of the Heritage trees and that the protective tree fencing and signage is in place.

3. Inspection of Rough Grading

The Project Arborist shall perform an inspection during the course of rough grading adjacent to the TPZ to ensure Heritage 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.

4. 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, referring to this document by the 15th of every month on a form as prescribed by the Town Arborist. If the 15th falls on a weekend or holiday, the form shall be submitted on the next working business day. Submission shall be by email to the Town Arborist.

5. Landscape Phase

Tree protection fencing is required to remain in place during the landscape phase of each project. No trenching for irrigation or plantings shall occur within the TPZ of Heritage trees. No irrigation should be installed within the TPZ of a Heritage Oak tree.

6. Removal of Tree protection fencing

DRAFT AMENDMENTS, ~~MARCH~~ OCTOBER 2019

To request removal of the fencing a report from the Project Arborist is required to be sent to the Town Arborist stating that all work is complete and no additional use of equipment or trenching will occur on site.

L. Violation – Penalties and remedies

1. ~~Any Person causing a Heritage tree to be Disturbed and/or Damaged in violation of this chapter shall submit an amount equal to half (1/2) the Appraised Value of the Heritage tree as a civil penalty in addition to the penalties as outlined in Chapter 1.20. If a Heritage tree that has been Disturbed and/or Damaged dies within one (1) year of the date of the citation, it will be presumed that the Disturbance and/or Damage caused the death and the penalties set forth in subsection 2, immediately below, shall apply instead of those herein. Any Person causing a Heritage tree to be Ddisturbed or damaged in violation of this chapter shall submit an amount equal to half (1/2) the Appraised Value of the Heritage tree as a civil penalty in addition to the penalties as outlined in Chapter 1.20 of the Atherton Municipal Code. If a Heritage tree that has been Ddisturbedd or damaged dies within one (1) year of the date of the citation, it will be presumed that the Ddisturbance or damage caused the death and the penalties set forth in subsection B, immediately below, shall apply instead of those herein.~~
2. ~~Any Person causing a Heritage tree to be Removed in violation of this chapter shall submit an amount equal to two (2) times the Appraised Value of the Removed Heritage tree as a civil penalty in addition to the penalties as outlined in Chapter 1.20 of the AMC. Any person causing a Heritage tree to be removed in violation of this chapter shall submit an amount equal to two (2) times the Appraised Value as a civil penalty in addition to the penalties as outlined in Chapter 1.20 of the Atherton Municipal Code.~~
- 3.1. Pursuant to 1.20.020 of the Atherton Municipal Code, 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.

DRAFT AMENDMENTS, ~~MARCH-OCTOBER~~ 2019

~~4.2.~~ Where there has been a violation, ~~the~~ violator shall obtain a retroactive tree removal permit for the previously conducted unlawful activity, subject to the full range of requirements and conditions as specified in Section 8.10.040 of the Atherton Municipal Code.

~~5.3.~~ All remedies provided in this section shall be cumulative and are not exclusive.

DRAFT AMENDMENTS, OCTOBER 2019

Chapter 8.10 REMOVAL OF AND DAMAGE TO HERITAGE TREES

Sections:

- [8.10.010](#) Statement of findings and purpose.
- [8.10.020](#) Definitions.
- [8.10.030](#) Prohibitions and protections.
- [8.10.040](#) Permit process.
- [8.10.050](#) Request for Exceptions to the TPZ.
- [8.10.060](#) State tree care license.
- [8.10.070](#) Violation—Penalties and remedies.
- 8.10.080 Appeal.

8.10.010 Statement of findings and purpose.

The Town finds and declares as follows:

- A. The Town is endowed and forested by oaks, redwood, 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.

DRAFT AMENDMENTS, OCTOBER 2019

C. The Town establishes the policies, regulations and standards within this Chapter with purpose and intent to:

1. Establish policies and procedures for the protection of Heritage trees and criteria for their Removal.
2. Prevent the indiscriminate Removal of Heritage trees within the Town.
3. Prohibit activities that damage and/or disturb Heritage trees.
4. Preserve and maintain trees in the attempt to mitigate hazards using the most current and applicable arboricultural standards.
5. Provide for the enforcement and administration of tree protection and preservation.

D. The Town's Tree Preservation Standards and Specifications document provides guidance on interpretation and implementation of the policies, regulations, and standards within this Chapter.

8.10.020 Definitions.

As used in this Chapter:

A. "Appraised Value" means the value of a tree as determined by the Town Arborist using the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers for any procedure or requirement as specified in this Chapter.

B. "Certified Arborist" means an individual who has demonstrated knowledge and competency through obtainment of the current International Society of Arboriculture arborist certification.

C. "Cutting" means the detaching or separating from a protected tree any substantial limb, branch, or root. Note I have questioned cutting and still believe it should be better defined to be a substantial limb etc.

Commented [SB1]: Staff Response: There is no industry standard definition for cutting. The word "substantial" has been added.

DRAFT AMENDMENTS, OCTOBER 2019

D. “Dead or Dangerous” tree means dead or dying trees, dead parts of live trees, or unstable live trees (due to structural defects or other factors) that are within striking distance of people or property, as determined by the Town Arborist.

E. “Disfavored” tree means any of the following species:

- a. Acacia baileyana—Bailey Acacia
- b. Acacia decurrens—Green Wattle
- c. Acacia melanoxylon—Black Acacia
- d. Ailanthus altissima—Tree of Heaven
- e. Albizia julibrissin – Mimosa
- f. Any species of Eucalyptus
- g. Pinus radiata—Monterey Pine

It is strongly recommended that these trees not be planted in the Town of Atherton.

F. “Disturbance or Damage to a Heritage tree” refers to demolition, construction, sub terrain grading activities, landscaping improvements, other development activities and/or any other action, as determined by the Building Official or Town Arborist, which may cause damage to the health of a Heritage tree, including any Heritage Tree within 15 feet of the property line. Examples include, but are not limited to, Excessive Pruning, topping, Cutting, girdling, poisoning, over-watering, unauthorized relocation or transportation of a tree, trenching, excavating, altering the grade, compaction or paving near the tree, and screwing anything into the tree (for example, but not limited to, installing tree houses, etc.). **If some one wishes to relocate a tree, as is occasionally done, do they need to get a permit or just identify it on the plans?**

G: “Dripline” means the outermost circumference of the tree’s canopy, from which water drips to the ground. When depicted on a map, the Dripline will appear as an irregularly shaped circle that follows the contour of the tree’s branches as seen from overhead.

Commented [SB2]: Staff Response: Sec. 8.10.020 O. Definition “Removal or Removing” of a heritage tree includes any act that removes or relocates a heritage tree from its location. Such request for removal would be processed in accordance with Sec. 8.10.040, requiring an application for such relocation to be considered by the Planning Commission. This is consistent with current Town policy.

DRAFT AMENDMENTS, OCTOBER 2019

H. "Excessive Pruning" - means no more living material than what is necessary to be removed. Excessive Pruning is considered Damage to the tree and is prohibited unless approval is granted by the Town Arborist prior to initiating the work. The percentage and distribution of foliage to be removed shall be adjusted according to the plant's species, age, health, and site. Topping and lion's tailing shall be considered prohibited pruning practices for Heritage trees. ANSI A300 (Part 1)-2017 is required to be followed.

Commented [SB3]: Staff Response: Because the new standard has moved to an objectives approach and no longer states a percentage for excessive pruning I am recommending simplifying the definition and requiring the new standard ANSI A300 (Part 1)-2017 be followed.

- a. Lion's tailing - The removal of interior lateral branches that results in a concentration of growth at the branch ends shall be considered an unacceptable practice.
- b. Topping- Is the reduction of tree size by cutting to stubs without regard for long-term tree health or structural integrity.

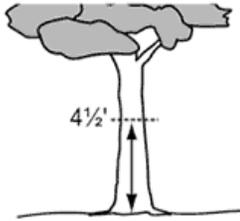
I. "Heritage tree" means:

- 1. A tree meeting any of the following conditions:
 - a. An oak tree (*Quercus lobata*, *Quercus agrifolia* or *Quercus douglasii*) located anywhere on a lot, that has a minimum trunk circumference of forty-eight (48) inches or diameter of fifteen and two-tenths (15.2) inches, as measured at fifty-four (54) inches above the Natural Grade.
 - b. A tree located outside the Main Buildable Area, that has a minimum trunk circumference of forty-eight (48) inches or diameter of fifteen and two-tenths (15.2) inches, as measured at fifty-four (54) inches above the Natural Grade.
 - c. A split trunk or low-branching tree located outside the Main Buildable Area, that has a minimum trunk circumference of forty-eight (48) inches or diameter of fifteen and two-tenths (15.2) inches, as measured at fifty-four (54) inches above the Natural Grade. If the trunk branches or splits below this point, the smallest circumference or diameter below the lowest branch shall be measured.
 - d. A multi-stemmed tree located outside the Main Buildable Area, that has a total trunk circumference of forty-eight (48) inches or total diameter of fifteen and two-tenths (15.2) inches when calculated as follows: considering at all the branches at fifty-four (54) inches above Natural Grade, add the measurement of the largest branch to one-half the measurement of each additional branch. Reference the Guide for Plant Appraisal authored by representatives to the Council of Tree and Landscape Appraisers

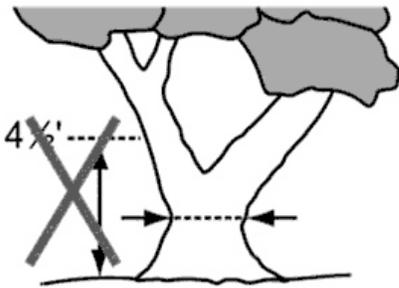
Commented [JL4]:
Commented [SB5R4]: Staff Response: It is important to distinguish between low branching and multi-stemmed trees for private arborists and the town arborist to have the same standard. For the inventory it is important to know that the private arborist is measuring to the town's standard. The new standard is an industry standard.

DRAFT AMENDMENTS, OCTOBER 2019

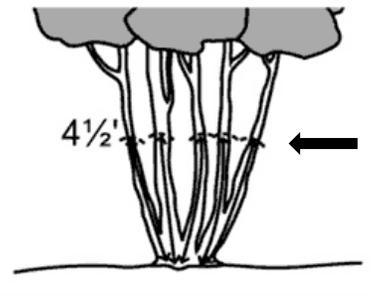
Measuring Tree Size for Existing Trees



Measuring Split Trunk Tree



Measuring Multi-stemmed Trees



DRAFT AMENDMENTS, OCTOBER 2019

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. A tree that has been removed without a permit that cannot be measured pursuant to subsection A(1), above, will be presumed to have been a Heritage tree if it meets any of the following criteria:

- a. the tree has a stump of at least seventeen and three-quarters inches (17 $\frac{3}{4}$ ") in diameter as measured at the Natural Grade;
- b. the tree is a native oak with a minimum of 75 years of age;
- c. the tree is any other species of tree with a minimum of 45 years of age, unless otherwise specified in this Section. .
- d. the tree is a Redwood with a minimum age of 30 years of age;
- e. In the absence of remaining physical evidence, photographs and other circumstantial evidence of characteristics, including but not limited to height, canopy dimensions, and similar trees in the immediate area may be used to create a presumption that the tree was a Heritage tree.

Notwithstanding the foregoing, anyone may rebut this presumption by providing substantial evidence to the contrary to the satisfaction of the Town Arborist.

4. Exemptions: The trees listed below shall not be classified as Heritage trees, regardless of their size or age, nor shall they be used for replacement plantings:

- a. *Acacia baileyana*—Bailey Acacia
- b. *Acacia decurrens*—Green Wattle
- c. *Acacia melanoxylon*—Black Acacia
- d. *Ailanthus altissima*—Tree of Heaven
- e. *Albizia julibrissin* - Mimosa

DRAFT AMENDMENTS, OCTOBER 2019

f. Eucalyptus—any species

J. "Injury" - means bruising, scarring, tearing or breaking of roots, bark, trunk, branches or foliage, the application of herbicide or poisoning, or any other action that is likely to cause the death of or Irreparable Damage to a tree.

Commented [SB6]: Staff Response: There is no definition of injury or damage in ANSI A300 for pruning or BMP's for pruning.

K. "Irreparable Damage" means any action undertaken by a person, as defined in this Ordinance, foreseeably leading to the death or permanent Injury of the tree, or which places the tree in a hazardous condition or an irreversible state of decline within one year from when action was taken. The includes, but is not limited to, Cutting, topping, girdling, poisoning, vandalizing, trenching or excavating within the tpz zone, altering the grade, paving in excess of fifty percent (50%) of the Dripline, excessive watering of oak trees, and Excessive Pruning.

Commented [SB7]: Staff Response: No excavation within TPZ zone. TPZ zone is for roots and they extend 2-4 past the dripline.

L. "Main Buildable Area" is the area defined by applicable setbacks in which primary development is allowed under the Atherton Municipal Code.

M. "Natural Grade" is the grade, as determined by the Town arborist, unaffected by construction techniques such as fill, landscaping, or a berm.

N. "Person" means anyone having a property interest in a tree. Property owners are liable under this Chapter for all violations, whether they were done directly by the property owner or someone acting on their property with or without specific authorization, including but not limited to contractors, gardeners, and maintenance persons; provided, however, it shall not include Persons acting under a right of easement without the direction of the property owner (e.g., PG&E).

Commented [SB8]: Staff Response: Staff recommends that language as proposed remain. By keeping definition broad, it would legally include an person; property owner, contractor, neighbor, etc

O. "Remove" or "removal" means any act that leaves the tree unviable, removes it from its location, relocates it from its location, or renders it "dead or dangerous" as determined by a Certified Arborist.

P. "Tree Appraisal" means a method of determining the monetary value of a tree (herein "Appraised Value"), using its pre-existing condition if it has been Removed or Damaged. A certified project arborist shall determine the Appraised Value as part of the required Tree Protection and Preservation.

DRAFT AMENDMENTS, OCTOBER 2019

Q. “Tree Preservation Area” means the area outside the Buildable Area of the lot, as defined in Section [17.60.020](#) of this code.

R. “Tree Protection Zone (TPZ)” is the designated protection area sufficiently large enough to protect a Heritage tree and its roots from disturbance and/or damage as defined in Section 8.10.020 C. The TPZ shall be determined and shall meet all provisions as detailed in the Town’s current Tree Preservation Standards and Specifications document and may extend onto neighboring properties.

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, special structures permit, or building permit. In addition, a Heritage tree protection and preservation plan may be required with each application, as determined by the Town Arborist. The Heritage tree protection and preservation plan shall adhere to the specifications found in the Town’s current Tree Preservation Standards and Specifications document. Said plan shall also show heritage trees which border the development area but are on neighboring property or share a border within 15 feet of the property line.

C. No Person shall Disturb and/or Damage a Heritage tree by any means whatever, including, without limitation, those actions defined in Section [8.10.020](#)(C), or conduct any prohibited activities within the defined TPZ as specified in the Town’s current Tree Preservation Standards and Specifications document, unless a permit has first been issued by the Town. Staff-level decisions about the TPZ may be appealed to the Planning Commission within ten (10) days of the decision in writing to the Town.

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)

Commented [SB9]: Staff Response: In the “Guidelines”, the Tree Protection and Preservation Plan submittal requirements do specify the need to locate neighboring trees within 15 feet of the property line on the required site plan, as well as noting the required protection of a neighboring trees TPZ. See Sec. 1.18 of the “Guidelines” and 2.2 of “Guidelines”

DRAFT AMENDMENTS, OCTOBER 2019

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 Certified Arborist.

B. If the tree which is the subject of an application meets the requirements as set forth in this section and is determined by staff to be a Dead or Dangerous tree as defined in Section 8.10.020 F and pursuant to Chapter 8.08 of this code, based upon a review of the permit application and the inspection report, then the Building Department shall grant the permit and 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. Such replacements shall not require submittal of a bond.

C. If the Building Department determines that the tree does not meet the requirements of a Dead or Dangerous tree and if the applicant requests Planning Commission review, then the application shall be referred to the Planning Commission for consideration at a public meeting, noticed in accordance with Section 17.06.080B of this code. 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 Planning Commission review shall contain all requested information in order to be deemed complete.

D. 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, while considering 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.
2. The probability of a public safety hazard, personal injury or significant property damage as a function of proximity to existing structures and objects of value and interference with utility services;

DRAFT AMENDMENTS, OCTOBER 2019

3. 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;

4. Good forestry practices such as, but not limited to, the age, number of healthy trees a given parcel of land will support and/or the long term benefits of a proposed reforestation plan relative to existing site conditions;

5. The necessity to remove or relocate the tree (s) to allow for operation of existing solar panels that were installed prior to the planting of the tree(s) on the subject or adjoining property, and

6. The necessity to Remove the tree(s) to allow reasonable use or other enjoyment of the property when there is no demonstrated feasible alternative to the Removal while meeting other adopted goals and policies of the General Plan to the greatest extent feasible.

E. 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. Replacement trees shall not be those listed as Disfavored trees above. Where 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 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.

F. Any Person required to plant replacement trees pursuant to this section shall maintain such trees in a good and healthy condition to ensure permanent establishment of said trees, to the satisfaction of the Town Arborist. Such Person shall execute a maintenance agreement with the Town and post a maintenance bond or security deposit equal to the Appraised Value of the each tree that is planted, which shall be returned at permittee's request at the end of one (1) calendar year, subject to the approval of the Town Arborist. If the condition of the replacement planting(s) is not

Commented [JL10]: Staff Response: Staff has outreached to Menlo Park Fire and Open Space several times and has not received any feedback to date. Staff will continue to follow up to see if either organization has comments and/or questions.

DRAFT AMENDMENTS, OCTOBER 2019

satisfactory to the Town Arborist, the Town may take additional steps to ensure permanent establishment of replacement trees, including planting of new trees and/or an extension of the bond/security deposit. This requirement shall not apply to Dead or Dangerous trees. I still believe this puts too much additional work on the arborist. I am not in favor of the maintenance requirement being formal.

Commented [SB11]: Staff Response: City Council policy direction requested. The idea of requiring a maintenance bond or security deposit is an attempt to provide greater assurance that the required replacement trees will survive and be permanent. Per Municipal Code, construction time limit is 3 years from date of permit issuance. While 1 calendar year is included as a potential, proposed time frame, staff requests the Ad-Hoc Committee provide any direction on their preference of when such a deposit/bond will be forfeited.....one year? Three years? At discretion of Town Arborist on case by case basis?

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.

8.10.050 Request for Exceptions to the TPZ.

Any request for an exception to the TPZ standards shall be processed in accordance with the Towns current Tree Preservation Standards and Specifications document.

8.10.060 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)

8.10.070 Violation—Penalties and remedies.

A. Any Person causing a Heritage tree to be Disturbed and/or Damaged in violation of this chapter shall submit an amount equal to half (1/2) the Appraised Value of the Heritage tree as a civil penalty in addition to the penalties as outlined in Chapter [1.20](#). If a Heritage tree that has been Disturbed and/or Damaged dies within one (1) year of the date of the citation, it will be presumed that the Disturbance and/or Damage caused the death and the penalties set forth in subsection B, immediately below, shall apply instead of those herein.

B. Any Person causing a Heritage tree to be Removed in violation of this chapter shall submit an amount equal to two (2) times the Appraised Value of the Removed Heritage tree as a civil penalty in addition to the penalties as outlined in Chapter [1.20](#).

C. Pursuant to 1.20.020 of this Code, 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

DRAFT AMENDMENTS, OCTOBER 2019

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.

D. Where there has been a violation, the violator shall obtain a retroactive tree Removal permit for the previously conducted unlawful activity, subject to the full range of requirements and conditions as specified in 8.10.040 above.

E. All remedies provided in this section shall be cumulative and are not exclusive.

8.10.080 Appeal

Decisions by staff pursuant to this Chapter are appealable to the Planning Commission and decisions by the Planning Commission are appealable to City Council. All requests for appeal must be made in writing to Town within ten (10) days of the date of the contested decision and in accordance with the procedures contained in Chapter 17.06 of this Code.

I believe clarity of what cannot be done in a TPZ including compaction for border line driveways should be here.

Also neither document addresses the process of recording the removal of Redwood trees. If this is not formally so stated, how will it be done accurately.

Commented [SB12]: Staff Response: The definition of "Disturbance and/or Damage" to a heritage tree expanded to include reference to any heritage tree on a neighboring property within 15 feet of the property line. See Section 8.10.020 F above. Additionally, within the "Guidelines", the required Tree Protection Plan specifies that trees on neighboring properties within 15 feet shall be included on the required site plan, as well as the defined TPZ. See Sec. 1.18 "Tree Protection and Preservation Plan" and Sec 2.2 "Tree Protection Zone" of the Guidelines.

Commented [SB13]: Staff Response: Per direction received at 3-19 City Council meeting, redwood trees were removed as a potential, additional protected tree within the buildable area and that staff report back within 12 months the amount of redwood trees removed within the buildable area. Staff can prepare an updated report within 12 months of any HTO amendments being adopted.

DRAFT AMENDMENTS, OCTOBER 2019

TOWN OF ATHERTON

Tree Preservation Standards and Specifications



____, 2019

DRAFT AMENDMENTS, OCTOBER 2019

TOWN OF ATHERTON

TREE PRESERVATION

STANDARDS AND SPECIFICATIONS

SECTION 1.00 DEFINITIONS

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

- 1.1 **Appraised Value** - means the value of a tree as determined by the Town Arborist using the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers.
- 1.1 **Building Official** - means the Director of Building and Planning or the Director's designee.
- 1.2 **Certified Arborist** – is an individual who has demonstrated knowledge and competency through obtainment of the current International Society of Arboriculture arborist certification.
- 1.3 **Dead or Dangerous Tree** - means dead or dying trees, dead parts of live trees, or unstable live trees (due to structural defects or other factors) that are within striking distance of people or property, as determined by the Town Arborist..
- 1.4 **Development Project** - means any construction activity that requires a Demolition, Grading, Drainage or Building Permit.
- 1.5 **Diameter at Breast Height** – measurement of trunk diameter taken at 4.5 feet (or 54 inches) above the natural grade. The diameter may be calculated by using the following formula:
- DBH = circumference at 4.5 feet ÷ 3.142
- 1.6 **Disturbance and/or Damage** - refers to demolition, construction, sub terrain grading activities, landscaping improvements, other development activities and/or any other action, as determined by the Building Official or Town Arborist, which may cause damage to the health of a Heritage tree. Examples include, but are not limited to, Excessive Pruning, topping, Cutting, girdling, poisoning, over-watering, unauthorized relocation or transportation of a tree, trenching, excavating, altering the grade, compaction or paving near the tree, and screwing anything into the tree (for example, but not limited to, installing tree houses, etc.).
- 1.7 **Dripline** - means the outermost circumference of the tree's canopy, from which water drips to the ground. When depicted on a map, the Dripline will appear as an irregularly shaped circle that follows the contour of the tree's branches as seen from overhead.

Commented [RDG1]: Please put all definitions in alphabetical order 1.1-1.27

Commented [SB2R1]: Staff Responses: Done – no tracked changes, to increase readability/legibility

DRAFT AMENDMENTS, OCTOBER 2019

1.8 **Excessive Pruning** - means no more living material than what is necessary to be removed. Excessive Pruning is considered Damage to the tree and is prohibited unless approval is granted by the Town Arborist prior to initiating the work. The percentage and distribution of foliage to be removed shall be adjusted according to the plant's species, age, health, and site. Topping and lion's tailing shall be considered prohibited pruning practices for Heritage trees. ANSI A300 (Part 1)-2017 is required to be followed.

a. Lion's tailing - The removal of interior lateral branches that results in a concentration of growth at the branch ends shall be considered an unacceptable practice.

b. Topping- Is the reduction of tree size by cutting to stubs without regard for long-term tree health or structural integrity.

1.9 **Heritage tree** means:

1. A tree meeting any of the following conditions:

a. An oak tree (*Quercus lobata*, *Quercus agrifolia* or *Quercus douglasii*) located anywhere on a lot, that has a minimum trunk circumference of forty-eight (48) inches or diameter of fifteen and two-tenths (15.2) inches, as measured at fifty-four (54) inches above the Natural Grade.

b. A tree located outside the Main Buildable Area, that has a minimum trunk circumference of forty-eight (48) inches or diameter of fifteen and two-tenths (15.2) inches, as measured at fifty-four (54) inches above the Natural Grade.

c. A split trunk or low-branching tree located outside the Main Buildable Area, that has a minimum trunk circumference of forty-eight (48) inches or diameter of fifteen and two-tenths (15.2) inches, as measured at fifty-four (54) inches above the Natural Grade. If the trunk branches or splits below this point, the smallest circumference or diameter below the lowest branch shall be measured.

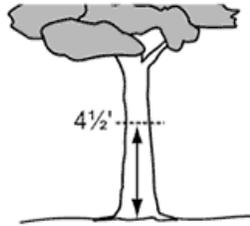
d. A multi-stemmed tree located outside the Main Buildable Area, that has a total trunk circumference of forty-eight (48) inches or total diameter of fifteen and two-tenths (15.2) inches when calculated as follows: considering at all the branches at fifty-four (54) inches above Natural Grade, add the measurement of the largest branch to one-half the measurement of each additional branch. Reference the Guide for Plant Appraisal authored by representatives to the Council of Tree and Landscape Appraisers.

Commented [JL3]:

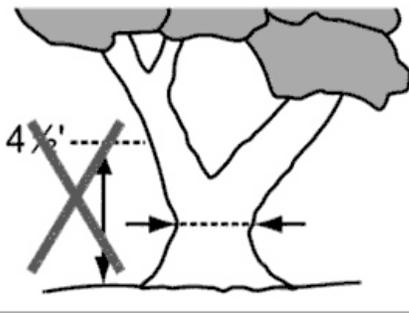
Commented [SB4R3]: Staff Response: It is important to distinguish between low branching and multi-stemmed trees for private arborists and the town arborist to have the same standard. For the inventory it is important to know that the private arborist is measuring to the town's standard. The new standard is an industry standard

DRAFT AMENDMENTS, OCTOBER 2019

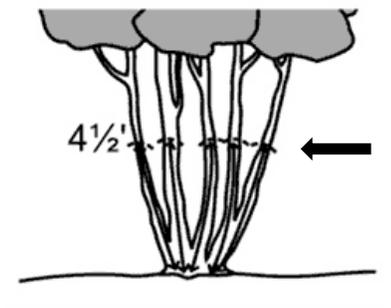
Measuring Tree Size for Existing Trees



Measuring Split Trunk Tree



Measuring Multi-stemmed Trees



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;

DRAFT AMENDMENTS, OCTOBER 2019

3. A tree that has been removed without a permit that cannot be measured pursuant to subsection A(1), above, will be presumed to have been a Heritage tree if it meets any of the following criteria:
- a. the tree has a stump of at least seventeen and three-quarters inches (17 ¾”) in diameter as measured at the Natural Grade.
 - b. the tree is a native oak with a minimum of 75 years of age.
 - c. the tree is any other species of tree with a minimum of 45 years of age, unless otherwise specified in this Section.
 - d. the tree is a Redwood with a minimum age of 30 years of age.
 - e. In the absence of remaining physical evidence, photographs and other circumstantial evidence of characteristics, including but not limited to height, canopy dimensions, and similar trees in the immediate area may be used to create a presumption that the tree was a Heritage tree.

Notwithstanding the foregoing, anyone may rebut this presumption by providing substantial evidence to the contrary to the satisfaction of the Town Arborist.

4. Exemptions: The trees listed below shall not be classified as Heritage trees, regardless of their size or age, nor shall they be used for replacement plantings:
- a. Acacia baileyana—Bailey Acacia
 - b. Acacia decurrens—Green Wattle
 - c. Acacia melanoxylon—Black Acacia
 - d. Ailanthus altissima—Tree of Heaven
 - e. Albizia julibrissin – Mimosa
 - f. Eucalyptus—any species

- 1.10 **Injury** - means bruising, scarring, tearing or breaking of roots, bark, trunk, branches or foliage, the application of herbicide or poisoning, natural issues such as weather, insects and animals, or any other action that is likely to cause the death of or Irreparable Damage to a tree.
- 1.11 **Main Buildable Area** - is the area defined by applicable setbacks in which primary development is allowed under the Atherton Municipal Code.
- 1.12 **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, and vandalism.

Commented [JL5]: Staff Response: There is no definition of injury or damage in ANSI A300 for pruning or BMP's for pruning.

DRAFT AMENDMENTS, OCTOBER 2019

- 1.13 **Monthly Inspection Report** - means a monthly written report prepared by the Project Arborist as detailed in Section 1.18 (B).
- 1.14 **Project Arborist** - means a private Certified Arborist retained by the property owner for the purpose of overseeing on-site activity involving the welfare of the trees to be retained.
- 1.15 **Protective Tree Fencing** - means a temporary enclosure erected around a tree to be protected at the boundary of the Tree Protection Zone as defined by Atherton Municipal Code and Section 2.2 of this document. The fence serves three primary functions: 1) to keep the foliage, crown, branch structure and trunk clear from direct contact and damage by equipment, materials or disturbances; 2) to preserve roots and soil in an intact and non-compacted state; and 3) to identify the tree protection zone in which no soil disturbance is permitted and activities are restricted. (See detail, Appendix I)
- 1.16 **Pruning** – The selective removal of plant parts to meet the specific goals and objectives of ANSI A300 (Part 1).
- 1.17 **Root Buffer** - means a temporary layer of material to protect the soil texture and roots. The buffer shall consist of (i) a base course of tree chips spread over the root area, keeping one foot clear of the trunk clear, to a 4”- 6” depth, (ii) a base course of 3/4-inch quarry gravel which shall cover the tree chips and (iii) a ¾” plywood board covering the gravel and on the surface.
- 1.18 **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).
- 1.19 **Soil Fracturing** - means the loosening of hard or compacted soil around a tree by means of a pneumatic soil probe that allows sudden bursts of air to crack, loosen or expand the soil to improve the root growing environment.
- 1.20 **Street Tree** - means any tree growing within the street right-of-way, outside of private property and adjacent to the applicant’s property. Please note that most trees in the Right of Way are the adjacent property owners maintenance responsibility per Atherton Municipal Code Chapter 12.06.
- 1.21 **Tree Protection and Preservation Plan** – Prepared by a Certified Arborist and required for all Development Projects, including any site improvements at grade or sub terrain, and shall include the following minimum information:

A. 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,

DRAFT AMENDMENTS, OCTOBER 2019

relocated or to be retained. Site plans shall include the following minimum information that may impact trees:

1. The site plan shall be scaled at 1" = 10' or 1" = 20' as necessary to clearly detail tree protection requirements, depending on the scope and complexity of the project and include all existing and proposed buildings and structures.
2. Include the **Tree Protection Zone (TPZ)**, as defined in Section 2.2, measurement on the plans, which identifies the area to protect the trees and roots from disturbance and mulch to be applied within the TPZ.
3. Surveyed location, species, size/trunk diameter, dripline area of existing Heritage trees (including trees located on neighboring property that overhang the project site) and street trees within 30-feet of the project site within the public right-of-way. Show trees on neighboring property that are within 15' of the property line.
4. Paving, concrete, excavation, trenching, irrigation lines and/or grade change located within the **Tree Protection Zone (TPZ)**, as defined in Section 2.2.
5. All proposed and existing hardscape, including but not limited to, driveways, slabs, walkways, etc. Identify proposed materials, impervious and semi-impervious surfaces.
6. Existing and proposed utility pathways with detail on the location, depth and materials for all proposed underground utilities, including, but not limited to, sewer, water, electrical, water retention tanks, etc.
7. The location of any areas where hand digging is proposed. Significant root cutting (over 2") will require a letter from the Project Arborist which will include mitigation measures. The Town Arborist shall review any and all proposed hand digging, significant root cutting and mitigation measures within required tree protection areas and plan approval is required prior to starting such work.
8. Surface and subsurface drainage and aeration systems to be used.
9. Walls, tree wells, retaining walls and grade change barriers, both temporary and permanent. Landscaping, irrigation and lighting within the TPZ of all Heritage trees. Show Landscape Screening in accordance with the Atherton Municipal Code 3X away from all heritage trees.
10. All of the final approved site plan sheets shall reference tree protection instructions.
11. OSHA Cuts (Occupational Safety and Health administration). **OSHA Cut** (means a method of protecting employees from cave-ins by excavating to form sides of an excavation that are inclined away from the excavation so as to prevent cave-ins. The angle of incline required to prevent a cave-in varies with differences in such factors as the soil type, environmental conditions of exposure, and application of surcharge loads).

Commented [RDG6]: This isn't defined.

Commented [SB7R6]: Staff Response: Definition added.

DRAFT AMENDMENTS, OCTOBER 2019

B. Written Inventory

A written inventory is required for demolition, grading and drainage and building permits and at Town Arborist or Building Officials discretion.

Commented [JG8]: BW Comment- And their TPZ

A Project Arborist letter report shall include:

Commented [SB9R8]: Staff Response: See newly added Item #3 in tracked change.

1. A written narrative from an ISA Certified Arborist report.
2. Arborist Name, Certification # and company letterhead.

The letter report shall include the following for each Heritage tree, including any heritage trees on neighboring properties within 15 feet of the shared property line:

1. Species (common and scientific name).
2. Size (diameter, height and crown spread).
3. TPZ zone.
4. Condition (foliage, vigor, structural integrity, fair, good, etc.)
5. Prognosis (dangerous, imminent hazard, property damage). The Hazard Evaluation Form may be used to rate a dangerous condition. Life expectancy Location diagram (and photograph, if desired).

C. Photo Inventory

Prior to any site demolition, the applicant shall provide colored photographs all of existing Heritage trees on-site, within the public right-of-way adjacent to the property and on adjacent property within fifteen feet of the property demolition. These photographs can be integrated into the written inventory.

D. Appraisal

See Sections 1.22 “Tree Appraisal” and 1.23 and “Appraised Value”. Appraise each Heritage tree or 12” dbh or greater.

Commented [RDG10]: What is a “soon to be Heritage tree”? It makes no sense to require appraisal of every tree on the property.

E. Grading & Drainage submittal:

Arborist Report/ Tree Removals / Arborist Letter, shall include but not be limited to:

Commented [SB11R10]: Staff Response: Please see added, enhanced text in tracked changes noted as “12” or greater”

1. Showing any impact to Heritage trees as a result of either grading or the installation of the drainage system.
2. Recommend Heritage tree protection and which drainage and utility lines require hand digging.
3. Submit a report by a Certified Arborist that the removal of the trees indicated on the Plans is in compliance with Town regulations. The Town’s Arborist will need to review the proposed removal of any Heritage tree.

DRAFT AMENDMENTS, OCTOBER 2019

4. At the beginning of the job, prior to permit issuance, provide a letter signed by the arborist who produced the Arborist Report attesting that they have reviewed the plans and the project is designed in accordance with their recommendations and the project plans are designed in accordance with their recommendations and is accordance with the Town's Heritage Tree Ordinance and Standards documents to protect Heritage trees.
- 1.22 **Tree Appraisal** - means a method of determining the monetary value of a tree (herein "Appraised Value"), using its pre-existing condition if it has been Removed or Damaged. A certified project arborist shall determine the Appraised Value as part of the required Tree Protection and Preservation
- 1.23 **Tree Protection Zone, (TPZ)** - means, unless otherwise specified by a Project Arborist or Town Arborist, the area of temporary fenced tree enclosure, as described in Section 2.2.
- 1.24 **Trenching** - means any excavation to provide irrigation, install foundations, utility lines, services, pipe, drainage or other property improvements below grade.
- 1.25 **Verification of Tree Protection** - means the Project Arborist shall verify, in writing, that all pre-construction requirements have been met.
- 1.26 **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.

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 for each construction project to insure the appropriate practices will be implemented in the field to eliminate or mitigate undesirable consequences that may result from construction activities associated with a Development Project as defined in Section 1.5.

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 off new roots 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
- Trenching for utilities and irrigation

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 as defined in Section 2.01 as part of the building permit submittal. The Tree Protection and Preservation Plan shall be prepared by a Certified Arborist with detail as specified by the Tree Preservation Standards and Specifications.

DRAFT AMENDMENTS, OCTOBER 2019

2.1 Pre-Construction Requirements

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

A. Site Plan

See Section 1.18 *Tree Protection and Preservation Plan*.

B. Tree Protection Disclosure Statement

A statement signed by the owner of the property and permit applicant, on a form provided by the Town, acknowledging the existence of Heritage trees on the property and that the approved Tree Protection and Preservation Plan shall be implemented and adhered through the finaling of the associated building permit.

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 2.01. 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 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 and Street Trees

1. Fenced enclosures

Fenced enclosures shall be erected around all Heritage trees at 8x the diameter of each Heritage tree to be protected to establish the TPZ in which no soil disturbance is permitted and various activities are restricted.

2. Size and type of fence

All Heritage 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 I). This detail shall appear on grading, demolition and building permit plans.

3. Duration

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

DRAFT AMENDMENTS, OCTOBER 2019

4. "Warning" Signs

Warning signs shall be prominently displayed on each fence side so that they are clearly visible. (See Appendix II). The signs are available at the Building Department.

5. Mulch

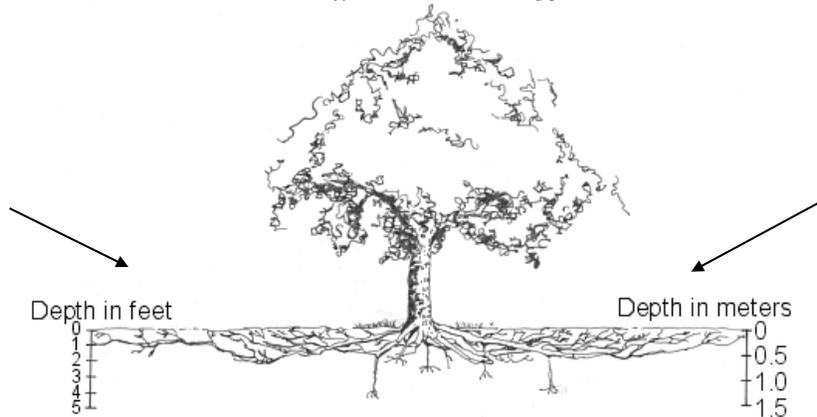
A 4"-6" layer of coarse mulch or woodchips shall be placed beneath the dripline of the protected trees. Mulch is to be kept 12" from the trunk.

2.2 **TREE PROTECTION ZONE (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 Damage as defined in Section 1.7. Within the TPZ, roots that are critical for tree survival are typically found in the upper three foot soil horizon, and may extend beyond the dripline area. Protecting the roots in the TPZ is necessary to ensure the tree's survival.

Commented [SB12]: Important to keep, in conjunction with definition of Disturbance and/or Damage of the Ordinance. Recommend keeping in reference to disturbance.

Diagram of roots of a typical tree



A. Tree Protection Zone (TPZ)

“Tree Protection Zone (TPZ)” is the designated protection area sufficiently large enough to protect a Heritage tree and its roots from Damage as defined in Section 8.10.020 C of the Atherton Municipal Code and as specified below. Unless otherwise specified below, the TPZ is a radius 10 times the diameter of a tree (expressed as 10x) measured at 4.5 feet above the natural grade.

Commented [SB13]: Staff Response: Important to Keep in conjunction with definition of Disturbance and/or Damage of the Ordinance. Recommend keeping in reference to disturbance.

DRAFT AMENDMENTS, OCTOBER 2019

The TPZ shall be determined the following way: the TPZ radius shall be 10 times the DBH (4.5') of the trunk. For example: a 15" DBH = a 12.5 foot radius from the perimeter of the tree, or a 25 foot TPZ. Any deviation in determining the TPZ shall be in accordance with ANSI standards subject to approval by the Town Arborist.

1. R1-A Zoning District for lots of more than 10,000 square feet:
 - a. The TPZ is 10x away from all buildings and structures.
 - b. The TPZ is 8x away from any new driveway.
2. R1-B Zoning District and lots in the R1-A Zoning District that are 10,000 square feet or less:
 - a. The TPZ is 6x away from all buildings, structures, and new driveways.
3. For all lots:
 - a. The TPZ is 6x away from all CMU walls and 5x away from all wood or metal fences.
 - b. The TPZ is 3x from all landscaping, Landscape Screening trees and bushes.
 - c. For replacement of existing driveways and/or new, proposed compacted surfaces, allow for replacement in the existing location, but in no cases less than 3 times (3x).

B. Staff Level Exception From the TPZ.

A staff level exception from the TPZ standards noted in Section 2.2 (A) can be considered under any of the following scenarios.

- A TPZ exception in the R1-A from 10x the diameter, down to a minimum of 8x the diameter, for all development types unless otherwise specified.
 - A TPZ exception in the R1-A from 6x the diameter, down to a minimum of 3x the diameter, for lots in the R1-B, or lots in the R1-A 10,000 square feet or less.
 - A TPZ exception for CMU walls from 6x the diameter, down to 3x the diameter.
1. An application and fee are required to be completed prior to a staff level TPZ exception review. Submitting and paying for the application does not guarantee approval to reduce the TPZ. If the Town Arborist denies an application submitted for a staff level exception to the TPZ, the application can be appealed to the Planning Commission in accordance with the Atherton Municipal Code.

DRAFT AMENDMENTS, OCTOBER 2019

The application for a staff level TPZ exception shall be submitted to the Town of Atherton with a narrative stating why the exception is requested, what the impact to any and all Heritage trees would be and any identified mitigation. The following information shall accompany the application and application fee:

- a. A plan showing location of the structure and the Heritage trees with size and species stated. Show TPZ zones from 5x to 10x on the plan.
 - b. Arborist report – stating what the damage and mitigation would be.
 - c. The percentage of roots to be cut.
 - d. Any utility easements.
 - e. Any supporting letters from Menlo Fire, PG&E and/or other utility providers.
 - f. The Town Arborist can require a meeting with all parties to discuss further.
2. Any application to be submitted shall be reviewed by the Town Arborist for demonstrated compliance with any the following criteria, to the satisfaction of the Town Arborist:
- a. The utility location is required by a utility company and it cannot be moved. A confirmation in writing from the utility is required.
 - b. If the species is tolerant of construction based on species, health, size and age from Mathilda and Clark tolerance chart.
 - c. There are no roots over 2” diameter that need to be cut.
 - d. Other criteria as may be required by the Town Arborist.

C. Prohibited Activities

Activities prohibited within the TPZ:

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, dirty water, swimming pool and/or spa water, trailer, container boxes, clean up areas, debris boxes, building materials, trenching, grade changes, tree houses, and soil compaction,
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.

DRAFT AMENDMENTS, OCTOBER 2019

4. Landscaping and irrigation improvements, unless approved in accordance with 2.2.D.3 below.
5. Soil disturbance, soil compaction or grade changes.
6. Drainage changes, including swimming pool, spa, and/or water features discharge.
7. Any other activities which cause Damagem, disturbance and/or damage to trees as defined in Section 1.7 and or as specified in AMC Sec 8.10.020.

D. Permitted Activities

Activities permitted within the TPZ:

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 in accordance with 1.17. A root buffer is a temporary layer of material to protect the soil texture and roots. The buffer shall consist of a base of mulch chips spread over the root area to minimum of 6 inches depth, capped by a base course of 3/4th inch quarry gravel to stabilize 3/4th inch plywood on top.
3. Irrigation, aeration, fertilizing or other beneficial practices that have been specifically approved for use by the Project Arborist within the TPZ.

E. 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.

F. 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 where there is tunneling or directional drilling, installation of the utility pipe, immediate backfilling with soil and soaking the TPZ within the same day. If boring is set up outside the dripline of a tree and not directly under trunk, the depth of hole should be a minimum of 3 feet, preferably 4 feet such that it goes under the root depth of the tree. The bore hole should be offset by a distance based on the trees diameter (table below). From Best Management Practices- Managing Trees During Construction.

Minimum distance requirements for boring or auguring underneath tree roots.

DRAFT AMENDMENTS, OCTOBER 2019

Tree Diameter (dbh) (centered on trunk)	Minimum offset distance	Minimum length of bore hole
15 inches	12 feet	15 feet
20 inches	15 feet	20 feet
25 inches	18 feet	25 feet

G. 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 a Heritage tree be pruned, the standard pruning shall consist of “crown cleaning” as defined by the ISA Pruning Guidelines.

1. Excessive Pruning

There shall be no Excessive Pruning in accordance with Section 1.10 above.

2. Tree Workers

Pruning, as defined in Section 1.9 above, shall not be attempted by construction or contractor personnel, but shall be performed by a qualified tree care specialist or certified tree worker

3. Root Pruning

All root pruning should follow the most current ANSI A300 Root Management Standard - Part 8-2013 and Root Management Best Mangement Practices.

Commented [SB14]: Staff Response: Has been updated to current industry standard.

H. Tree Removal Procedure

When Heritage trees are proposed to be removed, tree removal practices shall adhere to the procedures as prescribed in Chapter 8.10 of the AMC.

I. Post Tree Protection and Preservation Plan Implementation

A mitigation program is required if, as determined by the Project Arborist required Monthly Inspection Form and/or as determined by the Town Arborist, the approved development is expected to create drought stress, dust accumulation or soil compaction to trees that are to be protected and preserved. To help reduce Damage, one or more of the following mitigation measures shall be implemented and supervised by the Project Arborist.

1. Irrigation Program

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

2. Dust Control Program

DRAFT AMENDMENTS, OCTOBER 2019

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

3. Soil Compaction Damage

Compaction of the soil is significantly detrimental to the long term viability 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 and/or the Town Arborist.

a. 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.

b. Type II 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.

J. Disturbance and/or Damage to Trees

1. Reporting

Any disturbance and/or damage or injury to trees, whether accidental or otherwise, as verified by the Town Arborist, shall be reported within 6-hours to the Project Arborist and Town Arborist so that mitigation can take place. All injury to branches, trunk or to roots over 2-inches in diameter shall be reported in the Monthly Inspection Report. Any trenching work 10 x the diameter of the tree is required to be reported in the monthly arborist report.

2. Appraised Value

If a tree is Damaged, a Certified Arborist shall determine the Appraised Value of the tree. The formula used should also be noted. Refer to Section 1.23.

3. Mitigation

Mitigation for Damage or Injury to Heritage trees will be directed and performed under the Project Arborist's supervision.

Typical mitigation efforts for disturbance and/or damage may include, but not be limited to, the following:

a. Root injury

If trenches are cut and tree roots 2-inches or larger are encountered they shall be cleanly cut back to a sound wood lateral root under the supervision of the

DRAFT AMENDMENTS, OCTOBER 2019

Project Arborist. The end of the severed root shall be sealed and kept moist. All exposed root areas within the **TPZ** shall be backfilled or covered within one hour. Exposed roots shall be kept from drying out by temporarily covering the roots and draping layered burlap or carpeting over the upper 3-foot of trench walls. The materials shall be kept wet until backfilled to reduce evaporation from the trench walls.

b. Bark or trunk wounding

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

c. 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, the Project Arborist shall be informed within 6 hours.

K. Inspection Schedule

The Project Arborist shall conduct the following required inspections of construction sites containing protected Heritage trees. Inspections shall verify implementation of the approved Tree Protection and Preservation Plan as defined in Section 2.01.

1. Pre -Construction Meeting

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

2. Inspection of Protective Tree Fencing

Prior to issuance of a demolition, grading, or building permit, the Project Arborist shall provide the Town Arborist with a written statement verifying that the Project Arborist has conducted a field inspection of the Heritage trees and that the protective tree fencing and signage is in place.

3. Inspection of Rough Grading

The Project Arborist shall perform an inspection during the course of rough grading adjacent to the TPZ to ensure Heritage 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.

4. Monthly Inspections

DRAFT AMENDMENTS, OCTOBER 2019

The Project Arborist shall perform monthly inspections to monitor changing conditions and tree health and submit a written report to the Town Arborist, referring to this document by the 15th of every month on a form as prescribed by the Town Arborist. If the 15th falls on a weekend or holiday, the form shall be submitted on the next working business day. Submission shall be by email to the Town Arborist.

5. Landscape Phase

Tree protection fencing is required to remain in place during the landscape phase of each project. No trenching for irrigation or plantings shall occur within the TPZ of Heritage trees. No irrigation should be installed within the TPZ of a Heritage Oak tree.

6. Removal of Tree protection fencing

To request removal of the fencing a report from the Project Arborist is required to be sent to the Town Arborist stating that all work is complete and no additional use of equipment or trenching will occur on site.

L. Violation – Penalties and remedies

1. Any Person causing a Heritage tree to be Disturbed and/or Damaged in violation of this chapter shall submit an amount equal to half (1/2) the Appraised Value of the Heritage tree as a civil penalty in addition to the penalties as outlined in Chapter 1.20. If a Heritage tree that has been Disturbed and/or Damaged dies within one (1) year of the date of the citation, it will be presumed that the Disturbance and/or Damage caused the death and the penalties set forth in subsection 2, immediately below, shall apply instead of those herein. Any Person causing a Heritage tree to be Removed in violation of this chapter shall submit an amount equal to two (2) times the Appraised Value of the Removed Heritage tree as a civil penalty in addition to the penalties as outlined in Chapter 1.20 of the AMC. Pursuant to 1.20.020 of the Atherton Municipal Code, 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.
2. Where there has been a violation, the violator shall obtain a retroactive tree removal permit for the previously conducted unlawful activity, subject to the full range of requirements and conditions as specified in Section 8.10.040 of the Atherton Municipal Code.
3. All remedies provided in this section shall be cumulative and are not exclusive.