



Item No. 12 Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT AGENDA

TO: HONORABLE MAYOR AND CITY COUNCIL

THROUGH: GEORGE RODERICKS, CITY MANAGER

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

DATE: JANUARY 15, 2020

**SUBJECT: ADOPTION OF AMENDMENTS DELETING AND REPLACING
ATHERTON MUNICIPAL CODE CHAPTER 8.10 “REMOVAL OF AND
DAMAGE TO HERITAGE TREES”**

RECOMMENDATIONS

It is recommended that the City Council adopt an Ordinance deleting and replacing Municipal Code Chapter 8.10 “Removal of and Damage to Heritage Trees”.

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 Heritage Tree Preservation 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 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 and November 6, 2019 the Council received further reports from Staff on further refinements to the Heritage Tree Ordinance and Guidelines.

The City Council, at its December 18, 2019 regular meeting, conducted a public hearing and introduced amendments to the Heritage Tree Ordinance, as well as adopting a Resolution approving associated amendments to the Town's Heritage Tree Guidelines.

ANALYSIS

The Ordinance amending the Heritage Tree Ordinance is attached for adoption by the City Council (Attachment 1). Following adoption, the Ordinance will be in effect 30-days from the date of the City Council hearing.

POLICY FOCUS

The Ordinance amendments considered the balance between protecting heritage trees in Town, protecting the rights of private property owners, and were found to not be overly restrictive and prevent too much use of private property. The Ordinance amendments were found to be consistent with related General Plan goals and policies.

FISCAL IMPACT

The cost associated with the preparation of the draft Heritage Tree Ordinance amendment and update to the Guidelines 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.

ENVIRONMENTAL IMPACT

The project is Categorically Exemption per Section 15305 of the CEQA Guidelines. Section 15305 relates to Minor Alterations in Land Use Limitations as the ordinance amendment would not result in any changes to land use or density.

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. A public notice of tonight's meeting was published in the Palo Alto Weekly on December 6, 2019. Additionally, interested parties that were previously notified of prior public meetings and study sessions were also notified via email of tonight's meeting.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item 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. Ordinance 641 Deleting and Replacing Chapter 8.10 "Removal of and Damage to Heritage Trees"
 - Exhibit A - Chapter 8.10 "Removal of and Damage to Heritage Trees"

ORDINANCE 641

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON TO DELETE AND REPLACE CHAPTER 8.10 “REMOVAL OF AND DAMAGE TO HERITAGE TREE” OF THE ATHERTON MUNICIPAL CODE

The City Council of the Town of Atherton does hereby ordain as follows:

SECTION 1: Chapter 8.10 “Removal of and Damage to Heritage Trees” is hereby amended to read as follows with Exhibit A.

SECTION 2: That the City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provision in the Ordinance severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

SECTION 3: This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Introduced on the 18th day of December, 2019.

Passed and adopted as an ordinance of the City Council of the Town of Atherton at a regular meeting thereof held on the 15th day of January, 2020 by the following vote:

Rick DeGolia, Mayor
Town of Atherton

ATTEST:

Anthony Suber, City Clerk

APPROVED AS TO FORM:

Mona Ebrahimi, City Attorney

EXHIBIT A

Chapter 8.10 “Removal of and Damage to Heritage Trees”

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 Tree Protection Zone (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 with 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.

- 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 Heritage 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. "Building Official" means the Director of Building and Planning or their designee.
- C. "Certified Arborist" means an individual possessing a current International Society of Arboriculture arborist certification.
- D. "Cutting" means the detaching or separating from a protected tree any substantial limb, branch, or root.
- E. "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.

- F. “Development Project” means any construction activity that requires a Demolition, Grading, Drainage Building, or Landscape Permit.
- G. “Diameter at Breast Height” is the 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: $DBH = \text{circumference at 4.5 feet} \div 3.142$
- H. “Disfavored” tree means any of the following species:
 - 1. *Acacia baileyana*—Bailey Acacia
 - 2. *Acacia decurrens*—Green Wattle
 - 3. *Acacia melanoxylon*—Black Acacia
 - 4. *Ailanthus altissima*—Tree of Heaven
 - 5. *Albizia julibrissin* – Mimosa
 - 6. Any species of Eucalyptus
 - 7. *Pinus radiata*—Monterey Pine

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

- I. “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 subject property line. Examples include, but are not limited to, Excessive Pruning, topping, Cutting, girdling, poisoning, over-watering, unauthorized relocation or transportation of a Heritage tree, trenching, excavating, altering the grade, compaction or paving near the tree, and screwing anything into the Heritage tree (ex. installing a tree houses).
- J. “Dripline” means the outermost circumference of the Heritage 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 Heritage tree’s branches as seen from overhead.

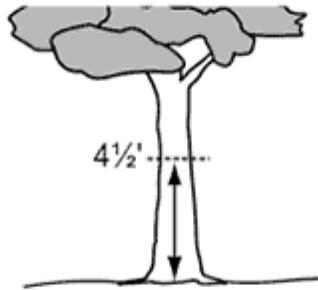
K. “Excessive Pruning” is considered Disturbance and/or Damage to the Heritage tree and is prohibited unless approval is granted by the Town Arborist prior to initiating the work. The percentage and distribution of foliage to be removed shall be adjusted according to the plant’s species, age, health, 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.

1. 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.
2. Topping- Is the reduction of tree size by cutting to stubs without regard for long-term tree health or structural integrity.

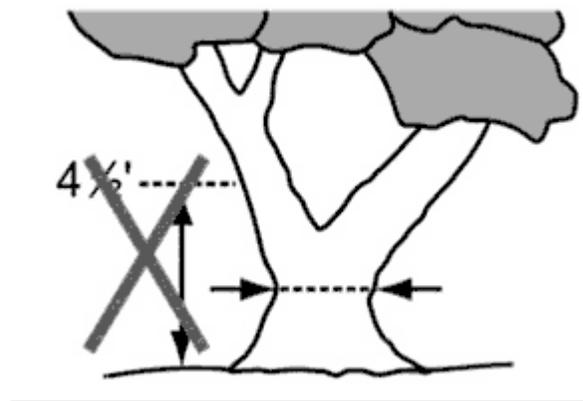
L. “Heritage tree” means:

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.

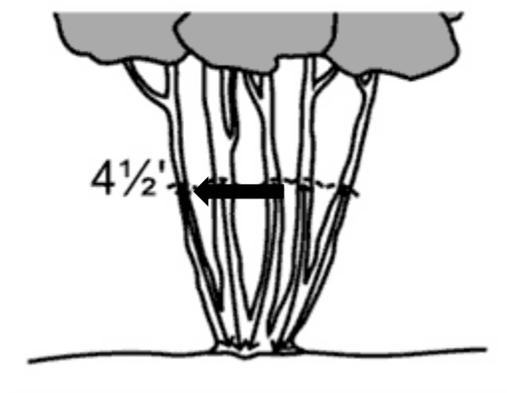
Measuring Tree Size for Existing Trees



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;
3. A tree that has been removed without a permit that cannot be measured pursuant to subsection (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 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

f. Eucalyptus—any species

- M. “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 Heritage tree.
- N. “Irreparable Damage” means any action undertaken by a person, as defined in this Ordinance, foreseeably leading to the death or permanent Injury of the Heritage tree, or which places the tree in a hazardous condition or an irreversible state of decline within one year from when action was taken. This includes, but is not limited to, Cutting, topping, girdling, poisoning, trenching or excavating within the Tree Protection Zone (TPZ), altering the grade, paving in excess of fifty percent (50%) of the Dripline, excessive watering of oak trees, and Excessive Pruning.
- O. “Main Buildable Area” is the area defined by applicable setbacks in which primary development is allowed under the Atherton Municipal Code.
- P. “Natural Grade” is the grade, as determined by the Town Arborist, unaffected by construction techniques such as fill, landscaping, or a berm.
- Q. “Person” means anyone having a property interest in a Heritage 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).
- R. “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 Heritage trees to be retained.
- S. “Pruning” means the selective removal of plant parts to meet the specific goals and objectives of ANSI A300 (Part 1).

- T. “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 and approved by the Town Arborist.
- U. “Street Heritage Tree” means any Heritage tree growing within the street right-of-way, outside of private property and adjacent to the applicant’s property.
- V. “Town Arborist” is an arboricultural professional working for the Town of Atherton, and his or her designee.
- W. “Tree Appraisal” means a method of determining the monetary value of a Heritage tree (herein “Appraised Value”), using its pre-existing condition if it has been Removed or Damaged. A Project Arborist shall determine the Appraised Value as part of the required Tree Protection and Preservation Plan.
- X. “Tree Preservation Area” means the area outside the Buildable Area of the lot, as defined in Section 17.60.020 of this code.
- Y. “Tree Protection Zone (TPZ)” is, unless otherwise specified by a Project Arborist or Town Arborist, 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 F. 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 a 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 Heritage Tree Preservation Standards and Specifications document. Said plan shall also show Heritage trees which border the development area but are on a neighboring property or

share a border within 15 feet of the property line and shall include neighbor notification as prescribed in the Town's current Heritage Tree Preservation Standards and Specifications document.

- C. No Person shall Disturb and/or Damage a Heritage tree by any means whatsoever, including, without limitation, those actions defined in Section 8.10.020(I), 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.

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 Heritage 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 D 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 for removal and/or relocation, then the application shall be referred to the Planning Commission for consideration at a public meeting, noticed in accordance with Section 17.06.080 B 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 Heritage 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 Heritage 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 Heritage tree (s) to allow for operation of existing solar panels that were installed prior to the planting of the Heritage tree(s) on the subject or adjoining property, and
6. The necessity to Remove the Heritage 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 and/or relocate a Heritage tree(s) 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 for a duration of between one (1) year and three (3) years, at the discretion of Town Arborist. Such person shall also post a maintenance bond or security deposit equal to the Appraised Value of each tree that is planted and/or relocated. If the condition of the replacement planting(s) is not satisfactory to the Town Arborist during the term of the maintenance agreement, the Town may take additional steps to ensure permanent establishment of replacement trees, including planting of new trees and/or an extension of the maintenance agreement and bond/security deposit. This requirement shall not apply to Dead or Dangerous trees.

The maintenance bond/security deposit shall be returned at permittee's request at the termination of the maintenance agreement, subject to the approval of the Town Arborist. The Town shall attempt to notify permittee at the address on file. If no response is received from initial Town attempt by 30 days from notification, then the Town shall attempt a second time to notify the permittee. If after three (3) years from the termination of the maintenance agreement the permittee has not requested the return of the maintenance bond/security deposit, the funds shall be considered forfeited and shall be deposited into the Town's General Fund and shall be purposed for projects and/or improvements as identified in the Town's current adopted Capital Improvement Plan (CIP) and/or other adopted Town plan or program.

- 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 Tree Protection Zone (TPZ).

Any request for an exception to the TPZ standards shall be processed in accordance with the Town's current Heritage 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 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 prior to such Disturbance and/or Damage, 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 Section 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 Heritage 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 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.