

## Chapter 12.36 - TREE PRESERVATION AND PROTECTION

## 12.36.010 - Purpose.

The City of Grass Valley recognizes the importance of trees to the character and beauty of Grass Valley, as well as the role that trees have in advancing the public health, safety and welfare of its residents. The city has therefore determined that reasonable regulation of the removal of certain trees is necessary and that this regulation of trees is based upon the following general guidelines:

- A. The city recognizes that trees can provide soil stability, noise buffering, and wind protection benefits. The City of Grass Valley greatly values trees for their ecological importance, temperature mitigation, enhanced wildlife habitat and aesthetics.
- B. The city recognizes the special significance of heritage and distinctive trees, and values the contribution which such trees make to the beauty and quality of life in Grass Valley.
- C. The city recognizes that because of the known benefits of trees, development property should be protected from unregulated removal of trees prior to the approval of development plans. Trees on such properties should be preserved so that they may be considered for incorporation into development plans.
- D. The city recognizes that private and public properties often have special landscaping circumstances, and that these special circumstances have the potential to affect significantly larger numbers of persons if unregulated. Because of this, such properties require reasonable regulation.

(Ord. No. 726, § 1, 4-12-2011)

## 12.36.020 - Definitions.

As used in this chapter:

"Arborist" means a person who has met the criteria for certification from the International Society of Arboriculture or American Society of Consulting Arborists, and maintains his or her accreditation.

"Caliper inch" refers to a manner of expressing the diameter inches of a tree as calculated by measuring the tree's circumference and dividing by Pi (approximately 3.14159). Specially calibrated "diameter tapes" or "calipers" are used to determine caliper inches.

"Dead tree" means a tree is lifeless. Such evidence of lifelessness may include unseasonable lack of foliage, brittle dry branches, or lack of any growth during the growing season.

"Diameter at breast height" or "DBH" means the diameter of the trunk at its maximum cross section, measured fifty-four inches (four and one-half feet) above mean ground level at the base of the trunk.

"Drip line" means an imaginary vertical line extending downward from the outermost tips of a tree's branches to the ground.

"Heritage tree" means any tree listed on the official City of Grass Valley heritage tree list adopted by the city council.

"Immediate danger of collapse" means that the tree may already be leaning, with the surrounding soil heaving, and/or there is a significant likelihood that the tree will topple or otherwise fail and cause damage before a tree removal permit could be obtained through the nonemergency process. "Immediate danger of collapse" does not include hazardous conditions that can be alleviated by pruning or treatment.

"Person" means any individual or legal entity.

"Removal" means to cut down a tree, or remove fifty percent or more of the crown, trunk, or root system of a tree; or to damage a tree so as to cause the tree to decline and/or die. Removal includes, but is not limited to, damage inflicted upon a root system by application of toxic substances, operation of equipment and vehicles, storage of materials, change of natural grade due to unapproved excavation or filling, or unapproved alteration of natural physical conditions. Removal does not include normal trimming or pruning of trees when conducted in accordance with the standards established by the International Society of Arboriculture.

"Significant tree" means a tree having a trunk of twenty-four caliper inches or larger in diameter at breast height (DBH).

"Street tree" means any tree within the public right-of-way. It is the responsibility of the lighting and landscape district (LLD) or if there is not a LLD, the adjoining property owner, to maintain such street trees.

"Tree" means any woody plant having a trunk ten caliper inches or larger in diameter at breast height (DBH). If a tree splits into multiple trunks above ground, but below four and one-half feet, the trunk is measured at its most narrow point beneath the split, and is considered one tree if greater than ten inches in DBH. Plants commonly planted as shrubs, including, but not limited to, English laurel, photinia, arborvitae, poison oak, English holly, and English ivy shall not be considered a tree. Trees specifically planted and maintained as a hedge shall also not be considered a tree.

"Tree account" means an account established by resolution of the council for the receipt of funds to be utilized for future tree purposes, as outlined in the resolution.

"Tree permit administrator" means the director of public works or his/her designated representative. The tree permit administrator may delegate the assignment of certain development related tree responsibilities in writing to specific community development department staff with the written approval of the community development director.

"Tree protection zone" means the area reserved around a tree or group of trees in which no grading, access, stockpiling or other construction activity shall occur as determined by the tree permit administrator based on review of the tree and site conditions.

"Tree removal permit" means written authorization from the city for a tree removal to proceed as described in an application, such authorization having been given in accordance with this chapter.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.025 - Heritage trees.

- A. The City of Grass Valley recognizes that specific trees in Grass Valley are deserving of special status due to distinctive form, size, age, location, species, unique qualities, or historical significance.
- B. Any person may nominate, with the written consent of the property owner, a mature tree for consideration as a heritage tree. This nomination shall include all information necessary for evaluation based on the items described in subsection A of this section. The planning commission shall review all nominations and shall make a written final recommendation to the city council. The city council shall review the recommendation and make the final determination for heritage tree status.
- C. Should the council approve the nomination, the tree shall be included on the heritage tree list adopted by resolution of the city council. The property owner shall be notified of the council's action.
- D. Once designated, a heritage tree shall be subject to the applicable provisions of this chapter. The maintenance of any and all heritage trees on private property continues to be the responsibility of the property owner.
- E. A heritage tree may be removed from the list by the city council upon its own motion or upon written request by the property owner. A request by the owner must state the reasons for removal from the list. The council shall have the right to determine removal or addition to the list. The council may utilize criteria in their decision on the

removal of the heritage tree including, but not limited to, the tree is dead or dying or represents an immediate danger of collapse.

- F. No tree removal permit for any tree designated as a heritage tree shall be issued by the city until such tree is removed from the heritage tree list by formal action of the city council.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.030 - Regulated activities.

- A. All tree removal activities, unless exempted below, shall be carried out in accordance with the requirements of this chapter.
- B. No person who is required to install or maintain tree protection measures pursuant to this chapter shall do any development activities including, but not limited to, clearing, grading, excavation or demolition work on a property or site which requires a planning action without approved tree protection measures properly installed and maintained pursuant to this chapter.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.035 - Exempt tree removal activities.

The following activities are exempt from the requirement for tree removal permits:

- A. Those activities associated with the establishment or alteration of any public park. However, the city parks maintenance division shall file an annual plan in April with the tree plan administrator outlining proposed tree removal activities, and reporting on tree removal activities that were carried out in the previous year;
- B. Removal of trees less than ten inches DBH, excluding those street trees within the public right-of-way planted at the direction of the city or required as conditions of approval with landscape improvements for planning actions;
- C. Removal of trees less than twenty-four inches DBH on any public lands; but excluding significant trees and street trees within the public right-of-way;
- D. Removal of trees within any wildfire lands area of the city, as defined on adopted maps by the city, for the purposes of wildfire fuel management;
- E. Removal of dead trees or tree removal caused by natural weather conditions shall not be deemed a violation of this chapter and shall be exempt from this chapter;
- F. Those activities associated with tree pruning or trimming for safety reasons, as mandated by the California Public Utilities Commission Rule 35, the Public Resource Code 4293 or the city engineer. However, the utility shall file: (1) an annual plan with the tree plan administrator identifying a list of trees within city limits which are targeted for pruning or removal within the year, (2) a notice with the tree plan administrator of when such pruning and removal work would occur in accordance with the annual plan. The notice shall be provided at least two weeks prior to undertaking the work, unless emergency conditions exist. Tree pruning or trimming shall be done, at a minimum, by a journeyman tree trimmer, as defined by the utility, and will be done in conformance and to comply with the standards established by the International Society of Arboriculture.
- G. Removal of a tree constituting a nuisance recommended by the tree plan administrator with advance notice of consideration to the property owner and a subsequent determination by the planning commission. The property owner shall be given notice and provided at least ten days to respond to the tree plan administrator. The planning commission would only consider the request and make a determination if the owner is either nonresponsive or unwilling to remove the tree. Such trees shall be removed by the property owner within thirty days of receipt of a notice of such a determination from the city.

- H. The removal of any size of invasive tree species of *Ailanthus altissima* (common name: "Tree of Heaven") or *Albizia* (common name: "Mimosa or Persian Silk Tree").

(Ord. No. 726, § 1, 4-12-2011; Ord. No. 760, § 1, 9-22-2015)

12.36.040 - Approval and permit required.

It shall be unlawful for any person to remove a tree, not otherwise exempted herein, without first obtaining and having in his or her possession a valid tree removal permit. A person who desires to remove a tree, not otherwise exempted in Section 12.36.035 of this chapter, shall first apply for and receive one of the following tree removal permits before tree removal occurs:

A. Emergency Tree Removal Permit.

1. If the condition of a tree presents an immediate danger of collapse and requires immediate action for the safety of life or property, it may be removed without prior issuance of an emergency tree removal permit upon the order of the tree permit administrator or a member of the police or fire department. The payment of a fee shall be waived.
2. Emergency tree removal permits shall be reviewed and considered for approval by the tree permit administrator. The tree permit administrator may require the applicant to hire an arborist to review the evidence to ascertain whether the tree presents an immediate danger of collapse.

B. Construction Related Tree Removal Permit.

1. If a site has received development approval through a planning action consistent with the standards of this chapter, then a construction related tree removal permit shall be required for those trees approved for removal through that process. To obtain a construction related tree removal permit, an applicant must: (a) file an application and filing fee with the tree permit administrator, (b) submit a site plan indicating the location of the requested trees for removal, (c) clearly identify on the property, the trees to be removed by tying pink tagging tape around each tree, and (d) if trees are to be protected, submit a tree protection plan pursuant to Section 12.36.200A. of this chapter. Vegetation four inches to ten inches DBH that is to be removed shall also be marked with pink tagging tape. The tree permit administrator may require the building footprint of the development to be staked to allow for accurate verification of the permit application. The tree permit administrator will then verify that the trees requested for removal match the approved site plan and that the project has addressed all conditions relative to the protection and planting of trees. The city shall require the applicant to mitigate for the removal of each tree pursuant to Section 12.36.085 of this chapter. Such mitigation requirements shall be a condition of approval of the original development permit granted by the city.
2. Construction related tree removal permits shall be required prior to the issuance of a grading and/or building permit for the subject property, whichever occurs first.

C. Tree Removal Permit.

1. Tree removal permits are required for the following activities:
  - a. Removal of trees greater than ten inches DBH on any private lands;
  - b. Removal of significant trees or street trees greater than twenty-four inches DBH on any public lands or within the public right-of-way.
2. Applications for tree removal permits between ten inches and less than twenty-four inches DBH on private lands, the tree permit administrator may approve a no cost over the counter permit with a completed application, if the applicant agrees to mitigate the removal of such trees in accordance with Section 12.36.085.
3. Applications for tree removal permits twenty-four inches DBH and larger shall be reviewed and approved

by the tree permit administrator pursuant to Section 12.36.080 (approval criteria) of this chapter. After determining the application is complete, the tree permit administrator shall act upon the application and provide a decision to the applicant within a minimum of ten days to a maximum of thirty days. If the tree plan administrator does not act upon a complete application within thirty days after deeming it complete or having requested and received a continuance of the application time frame from the applicant, the application shall be considered approved.

The tree plan administrator shall ensure that a tree or a grove of trees proposed for removal shall be conspicuously posted with a weatherproofed copy of the tree removal application a minimum of ten days before the tree permit administrator intends to make a decision on the permit.

4. It shall be the responsibility of all licensed tree cutters or any other person who is removing the tree to have a copy of the applicable tree permit, a valid city business license and any required state licenses, in his or her possession and available for inspection upon request.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.050 - Plans required.

- A. An application for all tree removal permits shall be made upon forms prescribed by the city. The application for a tree removal permit shall contain:
  1. A completed city application and filing fee;
  2. The number, size, species and location of the trees proposed to be removed or topped on a site plan of the property;
  3. The anticipated date of removal;
  4. A statement of the reason for removal;
  5. Information concerning proposed landscaping or planting of new trees to replace the trees to be removed;
  6. Evidence that the trees proposed for removal have been clearly identified on the property for visual inspection; and
  7. Any other information reasonably required by the city.
- B. The applicant shall have the burden of proving that the application complies with the criteria for approval of the applicable class of permit. If the application is for a tree removal permit, the applicant shall submit specific written findings and evidence addressing the criteria in Section 12.36.080 of this chapter for issuance of a tree removal permit.
- C. Misrepresentation of any fact necessary for the city's determination for granting a tree removal permit shall invalidate the permit. The city may at any time, including after a removal has occurred, independently verify facts related to a tree removal request and, if found to be false or misleading, may invalidate the permit and process the removal as a violation. Such misrepresentation may relate to matters including, without limitation, tree size, location, health or hazard condition, justification for issuance of permit, or owner's authorized signature.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.060 - Exceptions.

No tree removal permit shall be required for the cutting down, destruction or removal of:

- A. Any tree grown for commercial harvesting and sale on real property zoned to permit such commercial harvesting and sale as the primary use of the property under the provisions of the Forest Practices Act of the State of California;

- B. Any tree grown as part of a commercial orchard.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.070 - Street trees.

- A. The preservation or removal of trees within public easements and city streets shall be determined by the director of public works.
- B. Property owners adjoining city streets are encouraged to plant trees in the unused portions of the public right-of-way in front of their property. Property owners shall be responsible for the care and preservation of public trees within the city street right-of-way adjacent to the owner's property when adequate space is available. Once trees planted by the adjoining property owner reach a trunk size of ten inches, all the provisions of this chapter shall apply to removal of such trees.
- C. If the public works director determines any street tree must be removed because such tree is dead or otherwise creates a hazard, it is the responsibility of the adjoining property owner to remove the tree at his/her expense.
- D. It is the responsibility of the adjoining property owner to keep such public trees growing within the city street right-of-way pruned and trimmed so as not to interfere with pedestrian or vehicular traffic.
- E. The city may trim any tree which has been determined by the director of public works to be an actual hazard or sight hazard for pedestrian or vehicular traffic.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.080 - Criteria for issuance of tree removal permit.

An applicant for a tree removal permit shall demonstrate that the following criteria are satisfied. The tree permit administrator may require an arborist's report to substantiate the criteria for a permit.

- A. Hazard Tree. The tree permit administrator shall issue a tree removal permit for a hazard tree if the applicant demonstrates that a tree is a hazard and warrants removal:
  1. A hazard tree is a tree that is physically damaged to the degree that it is clear that it is likely to fall and injure persons or property. A hazard tree may also include a tree that is located within public rights-of-way and is causing damage to existing public or private facilities or services and such facilities or services cannot be relocated or the damage alleviated. The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard or a foreseeable danger of property damage to an existing structure and such hazard or danger cannot reasonably be alleviated by treatment or pruning.
  2. The city may require the applicant to mitigate for the removal of each hazard tree pursuant to Section 12.36.085 of this chapter. Such mitigation requirements shall be a condition of approval of the permit.
- B. Tree that is Not a Hazard. The city shall issue a tree removal permit for a tree that is not a hazard if the applicant demonstrates one of the following two options:
  1. The tree is proposed for removal in order for the property to achieve compliance with other applicable city requirements and standards (i.e., other applicable site design and use standards). The tree permit administrator may require the building footprint of an improvement that would prompt the removal of a tree to be staked on the property prior to removal of the tree;

The city shall require the applicant to mitigate for the removal of each tree granted approval pursuant to Section 12.36.085 of this chapter. Such mitigation requirements shall be a condition of approval of the permit.

2. Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface

waters, protection of adjacent trees, or existing windbreaks;

Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within two hundred feet of the subject property. The city shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted by the city zoning ordinances. In making this determination, the city may consider alternative site plans or placement of structures or alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with other provisions of the city zoning ordinance.

The city shall require the applicant to mitigate for the removal of each tree granted approval pursuant to Section 12.36.085 of this chapter. Such mitigation requirements shall be a condition of approval of the permit.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.085 - Mitigation required.

An applicant may be required to provide mitigation for any tree approved for removal. The mitigation requirement shall be satisfied by one or more of the following:

- A. Replanting On-site. The applicant shall plant either a minimum one and one-half-inch caliper healthy and well-branched deciduous tree or a five- to six-foot tall evergreen tree for each tree removed. The replanted tree shall be of a species that will eventually equal or exceed the removed tree in size if appropriate for the new location. The tree shall be planted and maintained in accordance with city policies and standards or recommendations provided by an arborist.
- B. Replanting Off-site. If in the city's determination there is insufficient available space on the subject property, the replanting required in subsection A of this section shall occur on other property in the applicant's ownership or control within the city, in an open space tract that is part of the same subdivision, or in a city-owned or dedicated open space or park. Such mitigation planting is subject to the approval of the authorized property owners. If planting on city-owned or dedicated property, the city may specify the species and size of the tree. Nothing in this section shall be construed as an obligation of the city to allow trees to be planted on city-owned or dedicated property.
- C. Payment in Lieu of Planting. If in the city's determination no feasible alternative exists to plant the required mitigation, the applicant shall pay into the tree account an amount as established by resolution of the city council.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.090 - Expiration of tree removal permits.

Tree removal permits shall remain valid for a period of one hundred eighty days from the date of issuance or date of final decision by a hearing body, if applicable. A thirty-day extension shall be automatically granted by the tree permit administrator if requested in writing before the expiration of the permit. Permits that have lapsed are void. Trees removed after a tree removal permit has expired shall be considered a violation of this chapter.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.095 - Conditions of approval for tree removal permits.

- A. The city may impose conditions of approval on any tree removal permit if the condition is reasonably related to preventing, eliminating or mitigating a negative impact or potential negative impact on natural features or

processes or on the built environment of the neighborhood which is as created or contributed to by the approved tree removal.

B. Conditions of approval may include, but are not limited to:

1. Preparation of a tree protection plan pursuant to Section 12.36.200A. of this chapter;
2. Requiring modifications in the location, design or intensity of a development or activities on a site or to require or prohibit certain construction methods. Modifications may result in a decrease in size of residential or commercial structures, but modifications shall not reduce the density of residential development below the permitted density allowed by the zone;
3. Requiring vegetation not requiring a tree removal permit to remain in place or be planted;
4. Requiring all or a portion of remaining trees to be protected from construction activities with fencing or other screening methods;
5. Requiring the removal of injurious or noxious vegetation (such as English ivy) from other trees on the property.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.100 - Tree removal permit appeals.

Decisions of the tree permit administrator may be appealed to the planning commission within seven days of issuance of the notice of decision by filing a written appeal with the requisite appeal fee to the city's planning department. A public hearing will be noticed, mailed to all property owners within three hundred feet of the subject trees and posted conspicuously on the tree or grove of trees in question. Any tree removal permit shall be suspended until the planning commission reaches a decision after its public hearing.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.110 - Application.

Any person desiring to cut down, destroy or remove one or more trees shall make application to the director of public works not less than thirty days prior to the time desired to physically remove the tree. The application shall contain:

- A. A brief statement of the reasons for removal, including a statement of whether or not the proposed tree removal is part of a discretionary project, and, if so, the status of such project;
- B. Consent of the owner of record of the land on which the proposed activity is to occur;
- C. If the proposed tree removal involves discretionary development, a copy of the approval or conditional approval from the approving body for the discretionary project, including the existing tree survey, trees to remain, trees to be removed and any trees to be replaced as a mitigation measure; and
- D. If the project does not involve other discretionary development, a tree survey with the accurate location, number, species, size (diameter at fifty-four inches above the ground), approximate age, if known, of the tree or trees to be removed;
- E. Any other pertinent information requested by the director of public works.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.120 - Decision criteria—Nondiscretionary project.

- A. In those instances where there is a nondiscretionary project involved prior to the issuance of a tree removal permit, the director of public works shall ascertain whether or not the tree(s) cannot or should not be retained. Within



fourteen days of receipt of the application, the director of public works shall inspect the premises and the tree or trees, and shall issue a proposed decision determining which, if any, trees may be destroyed, moved or removed and setting forth the conditions to be imposed. However, failure to act within fourteen days shall not constitute approval.

- B. The determination of the director of public works in granting or denying a permit shall be considered upon the following criteria:
1. The condition of the tree with respect to disease, general health, damage, danger of falling, threat to nearby structures and whether or not the tree acts as a host of an organism which is parasitic to another species of tree which is in danger of being exterminated by the parasite. A certification from a certified arborist stating the tree(s) is (are) diseased or in danger of falling if such reason is given for removal may be required of the applicant by the director of public works.
  2. The approximate age of the tree compared with the average life span for that species;
  3. The relative scarcity or rarity of the species within the Grass Valley city limits;
  4. Age of the tree with regard to whether or not removal of the tree would encourage healthier, more vigorous growth of younger, similar trees in the area;
  5. The number of existing trees in the area and the effect of the tree removal upon public health, safety, prosperity, beauty and general welfare of the area;
  6. The effect of tree removal on soil stability/erosion, particularly near watercourses or on steep slopes;
  7. The potential for the tree to be a public nuisance, or interfere with overhead or underground utility service or street or sidewalk improvements, as well as its proximity to existing structures;
  8. Present and future shade potential with regard to solar heating and cooling;
  9. Whether or not there are any alternatives that would allow for the preservation of the tree; and
  10. Any other information the director of public works finds pertinent to the decision, including, if necessary, information obtained at a public hearing.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.125 - Evidence of violation.

- A. If a tree is removed without a tree removal permit, a violation shall be determined by measuring the stump. A stump that is ten caliper inches or more in diameter shall be considered initial evidence of a violation of this chapter.
- B. Removal of the stump of a tree removed without a tree removal permit prior to the determination provided in subsection A of this section is a violation of this chapter.
- C. Proof of violation of this chapter shall be deemed prima facie evidence that such violation is that of the owner of the property upon which the violation was committed. Prosecution of or failure to prosecute the owner shall not be deemed to relieve any other responsible person.
- D. Tree removal caused by natural weather conditions shall not be deemed a violation of this chapter and shall be exempt from all penalties set forth in Section 12.36.130 of this chapter.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.130 - Penalties.

- A. Fine. A violation of any provision of this chapter, a permit issued under this chapter or any condition of a permit issued under this chapter shall, upon a conviction, constitute a misdemeanor with a minimum fine of five hundred dollars per tree up to a maximum fine of one thousand dollars per tree, and up to one year in jail, or both. The

removal of a tree in violation of this chapter, in violation of a permit or any condition of a permit issued under this chapter shall be a separate offense for each tree. Failure to comply with the provisions of this chapter or a permit or any condition of a permit issued under this chapter shall be a separate offense each day the failure to comply continues.

- B. Enforcement Fee. In addition to any fine, the court may impose an enforcement fee as restitution for the enforcement costs incurred by the city. This fee may be imposed upon any person who violates any provision of this chapter or who violates any permit or condition of any permit issued under this chapter. The fee shall be in an amount established by resolution of the city council.
- C. Restoration Fee. In addition to any fine and enforcement fee, the court may impose a restoration fee as restitution to the city for restoring the tree. This fee may be imposed upon any person who violates any provision of this chapter or who violates any permit or condition of any permit:
  - 1. The fee shall be paid into the city's tree account and shall be a standard fee per caliper inch for the total number of caliper inches of the tree damaged or removed in violation of this chapter. The standard fee shall be in an amount as established by resolution of the city council;
  - 2. The court may require the person to pay into the city's tree account an increased fee per caliper inch or pay for the value of the tree, whichever is greater, if any of the following apply:
    - a. The person has committed a previous violation of a provision of this chapter,
    - b. Tree protection measures as required by this chapter were not installed or maintained, or
    - c. The tree removed or damaged was:
      - i. Twenty-four caliper inches in diameter or greater,
      - ii. A designated heritage tree,
      - iii. Expressly protected or required to be preserved as a condition of approval of a development permit pursuant to the Grass Valley zoning or development codes or standards, or
      - iv. Located on public right-of-way, city-owned or dedicated property, public or private open space area or conservation easement;
  - 3. The value of a tree under this section shall be determined by an arborist in accordance with the methods set forth in the "Guide for Plant Appraisal" an official publication of the International Society of Arboriculture.
- D. Injunction. Upon request of the tree permit administrator, the city attorney may, or upon order of the city council, the city attorney shall institute appropriate action in any court to enjoin any violation of this chapter or any violation of a permit or condition of a permit issued under this chapter.
- E. Arborist Report and Required Treatment. Upon request by the city, a person who violates any provision of this chapter shall submit a report prepared by an arborist to evaluate the damage to a tree and/or make recommendations to remedy the violation. The city upon evaluating these recommendations, may, at the city's discretion, require that the recommended measures be implemented.
- F. Cumulative Remedies. The rights, remedies, and penalties provided in this chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the city under any other provision of law.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.140 - Decision criteria—Discretionary project.

In instances involving a discretionary project, before a tree removal permit application can be approved by the director of public works, the approving body shall have made a finding that removal of the tree(s) is necessary for a reasonable use of the property, based upon the following criteria:

- A. Whether or not the preservation of the tree(s) would unreasonably compromise the owner's development of the land current zoning and development regulations;
- B. The condition of the tree(s) with respect to disease or danger of falling;
- C. The age of the tree(s), the relative scarcity or rarity of the species within the Grass Valley city limits, and the number of trees remaining in the immediate area;
- D. The effect of such tree removal upon public health and safety, on property values and on the economic prosperity of the community, and on aesthetic values and the quality of life for residents;
- E. The number of healthy trees that the given parcel of land can reasonably support;
- F. The effect of tree removal on soil stability and erosion, and on increased runoff;
- G. The potential for the tree to be a public nuisance or to interfere with utility service, and its proximity to existing structures;
- H. Present and future potential for the tree(s) to shade and provide natural cooling or warming;
- I. Whether or not any alternatives have been presented that would allow for the preservation of the tree, such as paving with a permeable substance, relocating proposed structures, driveways or sidewalks, the use of standard tree care practices, landscaping with the existing native vegetation, etc.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.150 - Permits—Discretionary project.

Applications for tree removal permits in conjunction with discretionary development projects shall not be issued by the director of public works until final approval of site development plans or building permits by the approving body. The tree removal permit applications may be considered concurrently with the site development plans or building permits. Any condition imposed by the approving body (planning commission, city planner, design review board or city council) relating to retention or replacement of trees, shall be incorporated into and made a part of the improvement standards for the grading and/or building permit.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.160 - Activities within drip lines.

Grading, irrigation and paving beneath trees to be retained shall be given special attention. Every reasonable effort shall be made to avoid creating conditions adverse to the tree's health.

- A. Fencing at the drip line shall be installed prior to the start of any grading or construction activity. This requirement shall be noted on all relevant construction and grading plans.
- B. The natural ground within the drip lines of protected trees shall remain as undisturbed as possible.
  - 1. No grade cuts whatsoever shall occur within six feet of the trunk of a tree to be retained, and no grade cuts shall occur within the drip line of such tree; except, that when recommended by a certified arborist, grade cuts not to exceed a maximum of one foot in depth may be permitted when not closer than six feet of the trunk and not exceeding one-third of the area of the drip line of the tree; provided, however, that higher standards may be applied by the approving body.
  - 2. No fill whatsoever shall be placed within six feet of the trunk of a tree to be retained, and no fill shall be placed within the drip line of such tree; except, that when recommended by a certified arborist, up to one-third of the area of the drip line of such tree may be filled not exceeding a maximum depth of one foot, with no fill whatsoever placed within six feet of the trunk; provided, however, that higher standards may be applied by the approving body.

3. No mechanical trenching whatsoever shall be allowed within the drip line of a tree to be retained. If it is abs install underground utilities within the drip line of a tree, the trench shall be hand dug in the vicinity of majc root cutting and mangling which may be caused by heavy equipment.
  - a. Major roots two inches or greater in diameter encountered within the tree's drip line in the course of excavation from beneath trees which are not to be removed shall not be cut and shall be kept moist and covered with earth as soon as possible.
  - b. Roots one inch to two inches in diameter which are severed shall be sawed clean two inches behind the damage and painted with latex base paint or pruning compound and covered with earth as soon as possible.
  - c. Support roots that are inside the drip line of the tree shall be protected.
  - d. Cross-section drawings of proposed grading may be required where trees are located adjacent to roadways, new slopes or critical areas. In addition, a dimension from the face of a tree to some critical point or line may be required.
- C. Drainage changes shall be minimized within drip lines of trees to be retained.
- D. No irrigation system shall be installed within the drip line of a tree which may be detrimental to the preservation of the tree unless specifically authorized by the approving body or the director of public works.
- E. Paving within the drip line of a tree to be retained should be stringently minimized, with no paving whatsoever within six feet of the trunk. When paving is absolutely necessary within the drip line, porous material should be used, and not cover more than one-third of the area of the drip line.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.170 - Compliance with other codes.

No city department shall issue tree removal, encroachment, grading or any other permits which purport to authorize a use, construction, or other activity which is subject to the provisions of this chapter or the zoning code prior to review and approval as provided in this chapter.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.180 - Action on tree removal permit.

The director of public works shall approve, conditionally approve or deny an application for tree removal permit, and shall, within ten days of the decision, provide written notification to the applicant.

- A. If a permit is denied, the director of public works shall include the reasons for denial in the notification to the applicant.
- B. A granted permit shall be valid for a period of six months from the date of issuance. An extension of time may be granted not to exceed six months.
- C. It shall be the responsibility of the person trenching, grading or filling within a tree drip line or cutting, destroying or removing any tree under this chapter to have the tree removal permit and a copy of the conditions of approval imposed by the approving body at the tree removal site.
- D. The permit and the conditions of approval of the approving body shall entitle the applicant to remove only the tree or trees approved for removal in conformance with this chapter and any conditions of approval pursuant thereto.

(Ord. No. 726, § 1, 4-12-2011)

## 12.36.190 - Performance security.

- A. Adequate security may be required for any project for which a permit or other approval is required pursuant to the provisions of this chapter or the zoning code. The purpose of such security shall be to guarantee the applicant's compliance with conditions of approval and the provisions of this chapter regarding tree protection and preservation. Security may also be required at the discretion of the approving body to ensure the completion of any additional work specified as a condition of permit approval or other approvals. Security may be required to guarantee survival of plant materials for a period of one year, or such longer period as may be required by the approving body, and to guarantee replacement of such plant materials that do not survive for the prescribed time.
- B. The security shall be in the amount of ten to one hundred percent of the estimated cost of the required work as determined by the approving body or the director of public works.
- C. The security may be in the form of a letter of credit, cash deposit, or a combination thereof and shall be approved by the city attorney.
- D. The terms and conditions of the security shall be determined by the approving body and shall be stated in the conditions of approval.
- E. Security posted on actual work required shall be maintained for a period of time not to exceed five years.
- F. Any interest earned on cash security posted shall accrue to the applicant or his or her designee.
- G. Prior to the release of security, the consulting engineer for the project shall certify on a form to be provided by the director of public works that the grading within drip lines of trees to be retained has been completed in conformance with the requirements of Section 12.36.130 of this chapter, and any conditions imposed by the approving body or the director of public works.

(Ord. No. 726, § 1, 4-12-2011)

## 12.36.200 - Tree protection.

Tree protection as required by this section is applicable to any planning action or building permit:

- A. Tree Protection Plan Required.
  1. A tree protection plan approved by the tree permit administrator shall be required prior to conducting any development activities including, but not limited to, clearing, grading, excavation, or demolition work on a property or site, which requires a planning action or building permit.
  2. In order to obtain approval of a tree protection plan; an applicant shall submit a plan to the city, which clearly depicts all trees to be preserved and/or removed on the site. The plan must be drawn to scale and include the following:
    - a. Location, species, and diameter of each tree on-site and within fifteen feet of the site;
    - b. Location of the drip line of each tree;
    - c. Location of existing and proposed roads, water, sanitary and storm sewer, irrigation, and other utility lines/facilities and easements;
    - d. Location of dry wells, drain lines and soakage trenches;
    - e. Location of proposed and existing structures;
    - f. Grade change or cut and fill during or after construction;
    - g. Existing and proposed impervious surfaces;
    - h. Identification of a contact person and/or arborist who will be responsible for implementing and maintaining the approved tree protection plan; and
    - i. Location and type of tree protection measures to be installed per subsection of this section.

3. For development requiring a planning action, the tree preservation plan shall include an inventory of all trees in poor or hazardous condition, and recommendations for treatment for each tree.
- B. Tree Protection Measures Required.
1. Except as otherwise determined by the tree permit administrator, all required tree protection measures set forth in this section shall be instituted prior to any development activities, including, but not limited to, clearing, grading, excavation or demolition work, and shall be removed only after completion of all construction activity, including landscaping and irrigation installation.
  2. Fencing, a minimum of six feet tall with posts placed no farther than ten feet apart, shall be installed at the edge of the tree protection zone or drip line, whichever is greater, and at the boundary of any open space tracts, riparian areas, or conservation easements that abut the parcel being developed.
  3. The fencing shall be flush with the initial undisturbed grade.
  4. Approved signs shall be attached to the fencing stating that inside the fencing is a tree protection zone, not to be disturbed unless prior approval has been obtained from the tree permit administrator for the project.
  5. No construction activity shall occur within the tree protection zone, including, but not limited to, dumping or storage of materials such as building supplies, soil, waste items, equipment, or parked vehicles.
  6. The tree protection zone shall remain free of chemically injurious materials and liquids such as paints, thinners, cleaning solutions, petroleum products, and concrete or dry wall excess, construction debris, or run-off.
  7. No excavation, trenching, grading, root pruning or other activity shall occur within the tree protection zone unless approved by the tree permit administrator.
- C. Inspection. The applicant shall not proceed with any construction activity, except installation of erosion control measures, until the city has inspected and approved the installation of the required tree protection measures and a building and/or grading permit has been issued by the city.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.210 - Suspension, revocation, restoration.

In addition to, or instead of, the measures set forth in this chapter, the approving body may request that the director of public works, or the building official, as appropriate, suspend any tree removal, encroachment, grading or building permit subject to a public post-suspension hearing upon the finding that a violation of conditions of approval has occurred.

Following the public hearing, if the city revokes the permit or finds that a violation of conditions of approval has occurred, it may require conditions of restoration. The restoration shall include a requirement to replace in kind any tree(s) which have been removed without a permit. Further, the replacement shall consist of specimen trees (no less than a fifteen-gallon size) having a total combined diameter equal to the total combined diameter of the illegally removed trees(s). If the project site is not capable of supporting all the required replacement trees, the violator shall pay to the city a sum equivalent to the replacement cost (labor and materials) of the number of trees that cannot be accommodated. These funds will be deposited into a tree preservation fund maintained by the director of finance.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.220 - Tree preservation fund.

A tree preservation fund is established for the City of Grass Valley. The moneys received in lieu of replacement of illegally removed trees shall be forwarded to the director of finance for deposit in the tree preservation fund. Under no circumstances shall the funds collected by the director of finance for the tree preservation fund be directed to any other fund to be used for any other purposes other than the planting of trees on publicly owned property, easements or rights-of-way.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.230 - Appeal.

- A. Discretionary Projects. Any decision regarding tree removal in conjunction with the approval or conditional approval of a discretionary project made by the approving body (other than the city council) may be appealed by the applicant property owner or any other interested party to the city council. The procedure for filing and considering such appeals shall be the same as set forth for appealing the discretionary project.
- B. Nondiscretionary Project. Any decision regarding tree removal where no discretionary project is involved made by the director of public works may be appealed by the applicant property owner. Such appeal must be submitted in writing to the city clerk within fifteen days of the date on which the original decision occurred, briefly stating the facts and grounds of appeal, and signed by the appellant. Upon receipt of the appeal, the city clerk shall set the item on the city council's agenda not later than thirty days from the date of filing the appeal, and shall notify the appellant of the hearing date. The city clerk shall, at the time of setting the date of the hearing, mail a copy of the appeal, together with a notice of public hearing to each member of the council and the director of public works. Following the hearing of any such appeal, the city council may affirm, reverse or modify the former action. The action of the city council on any such appeal shall be final and conclusive.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.240 - Fees.

The city council, by resolution, shall establish fees to cover the expenses of the application and appeal process.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.250 - Performance security.

The city may require the permittee to post with the city a bond, or other suitable collateral as determined by the city attorney, ensuring the satisfactory completion and maintenance of the tree protection plan. Suitable collateral may be in the form of letters of credit, certificates of deposit, cash bond, or bonds issued by an insurance company legally doing business in the State of California.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.260 - Cumulative penalties.

The remedies provided for in this chapter shall be cumulative and not exclusive.

(Ord. No. 726, § 1, 4-12-2011)

#### 12.36.300 - Liability disclaimer.

Nothing contained in this chapter shall be deemed to impose any liability upon the city, its officers or employees, nor to relieve the owner of any private property from the duty to maintain any and all trees on his or her property or maintain any street tree under his or her control in such condition as to prevent it from constituting a hazard, in danger of collapse or an impediment to

travel.

(Ord. No. 726, § 1, 4-12-2011)