

CHAPTER 37 TREE PLANTING, PRESERVATION, AND PROTECTION

ARTICLE 37.01 - ADMINISTRATIVE PROVISIONS

37.01.010 INTRODUCTION AND PURPOSE OF CHAPTER.

The City of Davis acknowledges the importance of trees to the community's health, safety, welfare and tranquility. Much of the city's admired and valued appearance and ambiance is due to its tree canopy, a dominant visual and spatial element of the landscape and urban form. Trees maintain an aesthetically pleasing environment and can provide environmental, social and economic benefits.

Specifically, trees increase property values, provide visual continuity, provide shade and cooling, decrease wind velocities, provide erosion control, conserve energy, reduce stormwater runoff, act as filters for airborne pollutants, provide privacy, provide habitat and food value, and release oxygen. The community forest shall be prudently protected and managed to secure these benefits.

It is the intent of this chapter to establish regulations for the planting of new trees and the preservation and protection of city trees (street trees, trees in parks, greenbelts, and open spaces, on city property or easements), landmark trees, parking lot trees, and certain private trees in order to retain and augment the health of the existing community forest. (Ord. 2099 § 1, 2002)

37.01.020 APPLICABILITY.

The provisions of this Chapter shall apply to all regulated activities affecting Protected Trees, excluding those activities undertaken by the City. Trees that are not Protected Trees are not subject to the provisions of this Chapter. When a Tree qualifies as more than one type of Protected Tree, the more stringent requirements apply.

37.01.030 DEFINITIONS.

The following words are defined for purposes of this chapter as follows:

ANSI A300 Standards means the industry standards, as adopted and amended from time to time, for woody plant management (e.g. Pruning, Fertilization, etc.) published by the American National Standards Institute (ANSI).

Appraised Value is the estimated dollar value to Reproduce, Functional Replacement, or Repair a Tree as determined by using the current edition of the Council of Landscape and Tree Appraiser's *Guide for Plant Appraisal*.

Arborist means an individual currently certified as an Arborist by the International Society of Arboriculture (ISA) or registered by the American Society of Consulting Arborists (ASCA).

Arborist Report means a report prepared and signed by an Arborist containing specific information on the location, condition, potential impacts of development, recommended actions and Mitigation measures regarding one or more Trees on an individual lot or project site.

Building Permit refers to any permit required by the Community Development and Sustainability Department (CSDS) for any construction (above-ground or underground).

Canopy means the top part of the Tree, which features branches, foliage, flowers, and seeds

that grow out from the main trunk and support the various leaves used for photosynthesis.

City Arborist means an Arborist employed by the City responsible for review, evaluation and/or preparation of reports, permits and requests regarding Pruning, construction Damage, Removing and/or relocating City-owned or other Protected Trees. In performing these duties and responsibilities, the city Arborist may conduct field inspections independently as an authorized representative of the City.

City Master Street Tree List refers to the Tree Commission-approved species list for Street Trees and parking lot trees.

City Tree means any Tree planted or maintained by the city within a city easement, right-of-way, park, greenbelt, public place or property owned or leased by the city that is not inventoried as a Street Tree.

City Tree Management Program refers to the identified portion of the city budget that is used for Street Tree and City Tree planting, replacement, Mitigation, establishment and maintenance.

City Tree Planting and Maintenance Specifications are the city-adopted standards for care of Trees, including, but not limited to, Tree planting, young Tree care, Pruning, mulching, fertilization, Irrigation, pest management and Removal and replacement.

Community Forest refers to all publicly and privately-owned Trees within the city, its open space areas, and surrounding planning area(s).

Community Forest Management Plan (CFMP) is the city's long-term plan for comprehensive management of the community forest.

Critical Root Zone (CRZ) means the area defined by the Dripline Radius plus 1 foot or 1.5 times the Diameter at Breast Height value in feet for Trees with an asymmetrical Canopy, whichever is greater.

Cutting means the trimming, detaching or separating of any limb, trunk or portion of the trunk, root, or any other part of a Tree.

Damage means any action undertaken that causes injury, death or disfigurement of a Tree. Damage may occur by, among other means, Cutting, poisoning, overwatering, under watering, relocating or transplanting a Tree, or Grading or compaction of soil within the Critical Root Zone of a Tree.

Day means one calendar Day.

Developer means any developer or individual creating new single-family, duplex or multifamily lots or developing multifamily or commercial property.

Diameter at Breast Height (DBH) means the diameter of a Tree measured at four feet six inches above ground level. The diameter may be directly measured with calipers or diameter tape or be calculated by use of the following formula: $DBH = \text{circumference at breast height} \div 3.14$.

Director means the Department Head of the Parks and Community Services Department or designee.

Discretionary Project means any non-ministerial development entitlement that is subject to the approval of either the City Council, Planning Commission, Subdivision Committee, or by City staff through an approved process. Discretionary Projects include, but are not limited to, conditional use permits, tentative maps or waivers thereof, rezones, design review, minor modifications,

modifications to historic resources, minor improvements, sign permits, variances or planned developments.

Dripline Radius (DLR) means a circle around the Tree with the radius being the distance equal to the longest branch of the Tree, measured in feet.

Engineered Soils means soils that are designed to provide both favorable conditions for root growth and structural stability for construction, and are manufactured of specific ratios of sand, silt, clay, and other organic amendments.

Encroachment means any activity conducted within the Tree Protection Zone and/or the Critical Root Zone of a Protected Tree.

Functional Replacement means replacing a Tree with another that provides equivalent utility, benefits, or function.

Grading means the trenching, boring, removal, movement, addition, or compaction of soil or earth material.

Heat Island means an urban or metropolitan area that has higher average temperatures than surrounding rural areas due to the greater absorption, retention, and generation of heat by buildings, pavements, and human activities.

Irrigation means application of water by artificial means.

ISA Best Management Practices (BMPs) means recommended methods for the planting, care, maintenance, protection, risk assessment, and Pruning of Trees prepared by the International Society of Arboriculture.

Landmark Tree means a Tree that has determined by resolution of the City Council to be of high value because of its species, size, age, form, or historical significance.

Major Impact means Damage to 20% of the CRZ or 25% of the Canopy. Mitigation is typically required for Trees subjected to Major Impacts, even if the Tree is not Removed.

Major Pruning shall apply to both above-surface and underground Cutting. For branches, it shall mean the Removal of more than twenty-five percent of the leaf area of the Tree or Removal of any limb with a diameter of four inches or a circumference of 12.6 inches or greater at the pruning location. For Roots, "Major Pruning" shall include the Cutting of any Root four inches or greater in diameter at any point on such a Root.

Minor Impact means Damage to less than 10% of the CRZ or 10% of the Canopy. Mitigation is typically not required for Trees subjected to Minor Impacts.

Minor Pruning means the Cutting of any individual branch of less than four inches in diameter or any Root of less than four inches in diameter at the point of the cut on such branch or Root. The cumulative amount of Pruning shall not be more than 25 percent of the leaf area of the live Canopy. Removal of dead limbs is considered Minor Pruning, regardless of the limb diameter.

Mitigation is the act of compensating for healthy Tree Removal or Damage by planting a proportionate number of Replacement Trees based upon the species and size of each existing Tree that is lost, payment of in lieu fees equal to the current Appraised Value of the Tree, or taking other actions to restore and biologically enhance existing green space.

Moderate Impact means Damage to between 10% and 25% of the CRZ or Canopy. Mitigation requirements for Trees subjected to Moderate Impacts will be evaluated on a case by case basis.

Modification refers to direct (e.g., Pruning) and indirect (e.g., grade changes, trenching,

compaction) impacts to a Tree and changes to Trees in the surrounding area that results in structural or health impacts to the Tree.

Parking Lot Shading Guidelines refers to the technical handout for design and shading of new and/or re-constructed parking lots.

Planting Strip means the ten-foot zone behind the sidewalk (or if no sidewalk exists, behind the street curb, gutter, edge of street, or property line at street) within either a City-owned easement or right-of-way used for planting and maintaining City Trees.

Private Tree means any Tree privately owned and growing on private property, which may include Landmark Trees.

Protected Tree means Trees protected under this article: Landmark Trees, City Trees, and Private Trees.

Prune shall refer to both above surface and underground Cutting; to cut off or cut back parts to enhance health and structure. All Pruning shall conform to the guidelines set forth in ANSI A300 Pruning Standards and follow the Best Management Practices of the ISA.

Removal means Removal of a Tree by Cutting to the ground, complete extraction, or killing by spraying, girdling, or any other means.

Repair means to correct or Mitigate Damage so that Tree will continue to provide benefits similar to those provided prior to Damage.

Replacement Tree means Tree required to be planted as Mitigation for Removal of a Protected Tree in accordance with the requirements of this Chapter.

Reproduce means to replace a Tree with a virtually identical Tree of the same species, size, shape, and condition.

Roots means the underground parts or appendages of a Tree providing functions including anchoring and providing water and nutrients to the Tree.

Single-Family or Duplex Dwelling means up to two dwellings on a lot designed for and/or occupied by one family per dwelling.

Solar Easement means a right of a property owner to legally protect access of property to direct sunlight.

Street Tree means any Tree planted, inventoried, and/or maintained by the City, or recorded as a Street Tree, located adjacent to a street or within a City easement on private property or within the City right-of-way in front of a given property.

Street Tree Planting Requirements are the standards and requirements for Developers to plant Street Trees for each lot fronting a public right-of-way and to pay Street Tree fees, as referenced in Section 37.02.040.

Topping / Top is reducing the size of the vertical stem leader and/or upper primary limbs on Trees back to an improperly sized lateral branch.

Tree means any woody perennial plant having one or several main stems commonly achieving ten or more feet in height and capable of being Pruned and shaped to develop a branch-free trunk at least nine feet in height, with at least one trunk measuring five inches or more DBH. Plants with multiple trunks must have a cumulative DBH of twelve inches or greater. Reference to any Tree indicates the entire plant, including parts both visible and below grade.

Tree Modification Permit is a permit granted by the City of Davis Urban Forestry Division for Tree-related work to be performed within the Tree Protection Zone of a Protected Tree or the Tree itself under Section 37.05.040.

Tree Modification Permit Application refers to the completed application required prior to consideration for a Tree Modification Permit.

Tree Preservation Fund refers to the Tree management and preservation fund maintained by the City for use as needed for specialized preservation projects of the Community Forest. Tree Mitigation fees will be deposited into the Tree Preservation Fund.

Tree Preservation and Protection Standards are the City standards for preservation and protection of Trees during construction.

Tree Protection Zone (TPZ) means the area to be fenced during construction as shown on the approved plans for any Discretionary Project.

Tree Removal Request means an application to the Parks and Community Services Department and reviewed by the Tree Commission to Remove a City Tree or Landmark Trees under Section 37.05.050. (Ord. 2099 § 1, 2002; Ord. 2390 § 3, 2012)

Trunk-Inch means the inches of trunk diameter as expressed in DBH and is used to calculate Mitigation requirements.

Urban Forest Manager is the manager of the City's Urban Forestry or designee.

37.01.040 POWERS AND DUTIES.

- A. **Tree Commission.** The Tree Commission shall review and approve or deny Tree Removal Requests; hear appeals from decisions of the Urban Forest Manager regarding public nuisances; hear appeals regarding denials of Tree Modification Permit Applications; and review and make recommendations to City Council regarding designations of Landmark Trees.
- B. **Urban Forest Manager.** The Urban Forest Manager shall be charged with the enforcement of this chapter and shall be responsible for the selection, planting, maintenance, preservation, protection, and Removal of City Trees in accordance with the provisions of this chapter. The Urban Forest Manager may coordinate with other city departments and/or local agencies non-profit/private groups as necessary to maintain the urban forest. The Urban Forest Manager shall create and publish documents as required to facilitate implementation of the ordinance.

Article 37.02 - CITY TREES

37.02.010 APPLICABILITY.

This Article concerning City Trees is applicable to all properties having a City Tree and to all Discretionary Projects or projects requiring a Building Permit.

37.02.020 RIGHTS AND OBLIGATIONS OF PRIVATE PROPERTY OWNERS FOR STREET TREES AND CITY TREES.

- A. Private property owners shall be responsible for irrigating City Trees that exist on their property, and are subject to the restrictions contained in Section 37.02.030.

- B. Private property owners may place and maintain plants on their property adjacent to or within the Critical Root Zone (CRZ) of Street Trees or City Trees adjacent to their property unless otherwise prohibited by this chapter. However, any such placement of plants within the CRZ of a Street Tree or City Tree will be at the risk of the property owner, as the city is not liable for damage of any items, including landscaping, located within the CRZ of a Street Tree or City Tree. Street Trees and City Trees shall assume priority over other vegetation. The City of Davis may require removal of other vegetation at owner's expense if it determines that such vegetation is harmful to City Tree(s) or other City of Davis infrastructure. (Ord. 2099 § 1, 2002)

37.02.030 PROHIBITED ACTS.

- A. It shall be unlawful for any person other than the Urban Forest Manager or his authorized designee to cut, Prune, spray, brace, plant, move, Remove, replace or Damage any Street Tree or City Tree or to cause the same to be done, unless an approved Tree Removal Request and/or Tree Modification Permit has been issued per Section 37.05.

37.02.040 STREET TREES PLANTED BY DEVELOPER.

- A. Developers are hereby required to provide and plant Street Trees within the Planting Strip; one city Street Tree shall be planted for each lot fronting a public street and two Trees per corner lot, unless adequate Street Trees already exist or conflicts with City infrastructure make planting infeasible. Street Trees shall shade at least 30 percent of total street paved surface at fifteen-year growth of the Tree Canopy. Determination as to whether adequate Street Trees exist shall be made by the Urban Forest Manager at the time of the approval of a Discretionary Project based upon site conditions, Canopy coverage, existing Tree species and condition, and conformance with the City's Street Tree planting requirements.
- B. Nursery stock will conform to current ANSI Standards and is subject to inspection by Urban Forest Manager or their designee prior to installation. Developer shall provide a minimum of 5 Days notice to Urban Forest Manager prior to delivery of nursery stock to a project site. Any Street Trees installed without proper notice and deemed out of compliance with ANSI A300 Standards shall be Removed and replaced as directed by Urban Forest Manager at Developer's expense.
- C. Street Trees shall be provided a minimum rooting volume for mature Tree growth as described in the City Tree Planting and Maintenance Specifications.
- D. Trees installed by Developer shall be subject to inspection and approval by Urban Forest Manager prior to issuance of final occupancy permit.
- E. Developers are required to deposit a Street Tree fee, as established by the city council by resolution, for use by the city during an initial three-year establishment period and after any warranty period assigned to the project has expired. During the initial three-year establishment period, the city may provide, among other services, structural Pruning, stake Removal, weeding, and mulching of Street Trees, funded by Street Tree fees. The time of payment shall be concurrent with the final map recordation or as required by law. (Ord. 2099 § 1, 2002)

- F. Any requirements imposed under this chapter including protection of existing Trees, new Tree planting requirements, Street Tree fees and/or an independent certified Arborist's report shall be completed, or performance secured, to the satisfaction of the Urban Forest Manager and the CDS, prior to issuance of the Building Permit or Discretionary Project permit. (Ord. 2099 § 1, 2002)

37.02.050 VIOLATION OR FAILURE TO COMPLY.

Violation of this article may result in fines or project stop work orders, as described in Article 37.09.

ARTICLE 37.03 - LANDMARK TREES

37.03.010 APPLICABILITY.

This article relating to Landmark Trees is applicable to all properties that have a city council approved Landmark Tree on the property.

37.03.020 RIGHTS AND OBLIGATIONS OF PRIVATE PROPERTY OWNERS.

Private property owners shall be responsible for all necessary care of privately owned Landmark Trees to maintain them in good condition. This may include, but is not limited to Irrigation, Pruning, and treatment of pests and disease as appropriate for the individual Tree.

Any work performed on a Landmark Tree must be performed to the ANSI A300 Standards and supervised by an ISA Certified Arborist. The work should be performed by an ISA Certified Tree Worker.

37.03.030 PROHIBITED ACTS.

No person shall Remove; Prune, including Roots; change grades, encroach with impermeable surfaces, or substantially alter the existing landscape within the Tree Protection Zone; Top; or relocate any Landmark Tree unless an approved Tree Removal Request and/or Tree Modification Permit has been issued per Section 37.05.

37.03.040 DESIGNATION.

- A. **Process.** Any person may and is encouraged to submit a proposal to designate a Tree as a Landmark Tree. Property owners of Trees under consideration, if different from applicant, shall be notified that a proposal has been submitted and shall have the opportunity to be fully involved in the designation process. Proposals shall be reviewed by the Urban Forest Manager and sent to the Tree Commission for its review. Upon an affirmative recommendation by the Tree Commission, the Landmark Tree designation proposal shall be sent to the City Council for review and action. A Tree may be designated as a Landmark Tree if it meets any of the following criteria:
 1. The Tree is an outstanding specimen of a desirable species;
 2. The Tree is one of the largest or oldest Trees in the City;
 3. The Tree is of historical interest; or
 4. The Tree is an unusual species or specimen, is in a significant grove or is otherwise unique.

The Urban Forest Manager shall notify, in writing, the person who submitted the proposal and the Tree owner (if different from the applicant) of the City Council's decision.

1. When considering designating, removing designation (per Section 37.03.050) or Removing (per Section 37.05.050) Landmark Trees of historic value, the Historical Resources Management Commission shall be given the opportunity to comment on the proposal prior to Tree Commission review. (Ord. 2099 § 1, 2002)
- B. **Benefits to property owners.** Owners of property of a Landmark Tree(s) are eligible to receive benefits for the care and maintenance of their Landmark Tree. Typical benefits may include:
 1. Owners shall receive a resolution of appreciation from the City of Davis.
 2. Consultation and advice from the Urban Forest Manager for the Landmark Tree. (Ord. 2099 § 1, 2002)

37.03.050 REMOVAL OF DESIGNATION.

- A. Only property owners of Landmark Trees may request removal of the Landmark Tree designation. The property owner shall submit a written request to the Urban Forest Manager and identify the purpose and reasons for the request for removal of designation. The property owner shall be exempt from any permit fees related to this request.
- B. The Tree Commission shall review the request for the removal of the Landmark Tree designation from a Landmark Tree and recommend that the designation be removed if the Tree has died, been Damaged beyond reasonable Repair as determined by the Urban Forest Manager, is diseased, or for reason(s) indicated in the designation removal request. The Urban Forest Manager shall notify the property owner, the Historical Resources Management Commission, and the Director, in writing, of the change and forward its recommendation to the City Council. The Urban Forest Manager shall work with property owner to establish a reasonable course of action that may include removal of the Landmark Tree designation. (Ord. 2099 § 1, 2002)

ARTICLE 37.04 - PRIVATE TREES

37.04.010 APPLICABILITY.

This article is applicable to commercial, industrial, and multi-family properties, and unimproved property zoned R-1, R-2, and R-2CD. Private Trees located on properties with developed Single-Family or Duplex Dwellings are exempt from the requirements of this article. However, any type of Tree(s) located on a property with a Single-Family or Duplex Dwelling that has been preserved as a condition of approval or as part of a project description of a planned development zone shall be subject to the regulations relating to Private Trees.

37.04.020 TREE PROTECTION.

- A. Property owner shall maintain Canopy coverage of existing Trees on developed property. Trees that die from natural causes shall be replaced within 6 months of death.
- B. No person shall Remove, conduct Major Pruning, including Roots, encroach with impermeable surfaces, or substantially alter the existing landscape within the Tree Protection Zone, top or relocate any Private Tree unless an approved Tree Removal

Request and/or Tree Modification Permit has been issued per Section 37.05. Minor Pruning does not require a Tree Modification Permit.

37.04.030 VIOLATION OR FAILURE TO COMPLY.

Violation of this article may result in fines or project stop work orders, as described in Article 37.09.

ARTICLE 37.05 - TREE MODIFICATION PERMIT AND TREE REMOVAL REQUEST.

37.05.010 ACTIONS REQUIRING PERMIT.

Any action that may directly or indirectly affect a Protected Tree is prohibited unless approved through the Tree Modification Permit process. Acts prohibited by this chapter include, but are not limited to, the following:

- A. Pruning a Protected Tree even if done to make room for a Private Tree or to clear branches overhanging private property;
- B. Placing, applying, attaching or keeping attached any wire, rope, sign, nail, paint or other substance or structure to any Protected Tree or to any guard or stake intended to protect such Tree;
- C. Placing or maintaining any stone, pavement or other substance so that it substantially impedes the free access of water or air or that causes soil compaction within the Critical Root Zone or to the Roots of any Protected Tree;
- D. Cutting Roots within the Critical Root Zone so as to cause the Protected Tree's health to decline or cause a safety hazard;
- E. Placing fencing around a Street Tree that limits access to the Tree from the street;
- F. Grading so as to cut or fill greater than a 2" change of grade around the trunk or within the Tree Protection Zone of a Protected Tree. This includes temporary changes to grade such as necessary to install paving;
- G. Altering the landscaping or grade of the property including trenching, in a manner that could Damage, or potentially and adversely affect the well-being of a Protected Tree. (Ord. 2099 § 1, 2002);
- H. Removing Private Trees as described in Section 37.04;
- I. Any other activity causing significant Damage leading to the decline of the Tree as determined by a professional evaluation.

37.05.020 EMERGENCIES.

In the event of an emergency (when a Tree is imminently hazardous or dangerous to life or property) the Tree may be Pruned or Removed, whichever is appropriate, upon notification to the Urban Forest Manager. If, due to the immediacy of the emergency, notification prior to the Pruning or Removal is infeasible or impossible, notification shall be given to the Urban Forest Manager on the next Day following the Pruning or Removal.

Notification shall be made by e-mail and telephone and include the location, a description of the problem, and the actions necessary to remediate the problem.

37.05.030 DISCRETIONARY PROJECTS AND PROJECTS REQUIRING BUILDING PERMIT.

When Protected Trees exist on or within fifteen feet of the project site, an application for a Building Permit or Discretionary Permit shall include a Tree Modification Permit Application or Tree Removal Request with the submittal to the Community Development and Sustainability Department.

37.05.040 TREE MODIFICATION PERMIT APPLICATION.

Any person desiring to perform any activity identified in Section 37.06.010, to any Protected Tree shall make a written application to the City of Davis and pay a processing fee, as established by the city council by resolution.

- A. **Permit Application.** The Tree Modification Permit Application shall include the following items, as applicable:
1. Completed Tree Modification Permit Form.
 2. An Arborist Report that includes the following information for all Trees on or overhanging the project: unique identification number, species, DBH, DLR, CRZ, health and hazard condition rating, recommendations for treatment or maintenance, Appraised Value for each Tree proposed for preservation, and photographs showing the general site conditions.
 3. Tree Modification and Removal Plan: A scale drawing(s) showing the trunk locations and Critical Root Zone of all surveyed Trees labeled by identification number corresponding to the inventory; location of proposed and existing structures and/or improvements, including, but not limited to, trenching, paving grade changes, building heights, above or below ground utilities, etc.; and clearly identifying the Trees proposed for Removal or Modification;
 4. Tree Preservation Plan: A scale drawing(s) showing Trees to be preserved; proposed project, and Tree protection measures, prepared in accordance with the Tree Preservation and Protection Standards.
 5. Monitoring Plan: A monitoring and reporting program for preserved or Replacement Trees for 5 years following the completion of construction, including the Project contact (name, phone number, and address) that shall be responsible for implementing and maintaining the approved Tree Preservation Plan.
 6. For all discretionary projects, existing Trees must be located in the field by a licensed surveyor and reflected on the project plans.
 7. A bond or other security satisfactory to the city may be required as a condition of approval, of an amount determined by the CDS in coordination with the Urban Forest Manager and based upon the Appraised Value, to ensure the safety/health of Tree(s) during project construction. If a Tree is Damaged, as determined by the Urban Forest Manager, the applicant shall be required to a portion of the bond equal to the Appraised Value of the Tree into the Tree Preservation Fund.
- B. **Review of Permit Application.** The Urban Forest Manager shall review the Tree Modification Permit Application and respond within 15 business Days. The decision to approve or deny the permit shall be based on the following considerations:
1. The health, age and species of the Tree and whether the proposed Modification(s) will adversely affect the Tree or surrounding Trees.

2. The extent to which design and placement of development incorporates existing healthy Trees into the site design.
 3. Whether the permit applicant can achieve its goals without Modifying/ Removing a Tree. The Urban Forest Manager shall consult with the applicant if they believe such alternative action is feasible.
 4. If the proposed act and the proposed method complies with ANSI A300 Standards and follows the International Society of Arboriculture Best Management Practices
 5. The visual prominence and function of each Tree on the site.
- C. **Appeal of permit.** Within ten calendar Days from receiving the Tree Modification Permit, the applicant or other interested party may file a written appeal to the Tree Commission. An appeal of a decision of a permit application by the Tree Commission may be made within ten calendar Days from receiving a decision. Such appeal shall be made to the City Council pursuant to Chapter 40 of this Code. (Ord. 2099 § 1, 2002; Ord. 2269 § 2, 2006; Ord. 2271 § 1, 2006)

37.05.050 TREE REMOVAL REQUEST.

- A. **Permit application.** Any person desiring to Remove a City Tree or Landmark Tree, not part of a Building Permit or Discretionary Project review, shall complete the Tree Removal Request form and submit along with a processing fee, as established by the city council by resolution, to the Urban Forest Manager. The applicant shall identify the Tree(s) to be Removed, including species, size, condition, and location. If appropriate, the applicant shall also explain the purpose and proposed manner of Removing the Tree(s).
1. The request will require the signatures of adjacent property owners impacted by the potential Removal acknowledging that they have been informed of the request.
- B. **Approval of Tree Removal Request.** If the Tree Commission finds that no alternative, other than Removal of the Tree is available to meet the applicant's goals, the Tree Commission may approve the Tree Removal Request. Requests shall not be approved unless one of the following shall apply:
1. The Tree(s), due to its location in respect to topography and required setbacks and easements, prevents reasonable development of permitted uses. Existing development on similar sites in the same zone and having similar characteristics shall be considered when determining reasonable development of permitted uses.
 2. The condition of the Tree(s), with respect to general health; disease; maturity; structural integrity; proximity to existing structures; parking; high pedestrian traffic areas; activity areas or interference with utility services, cannot be controlled or remedied through reasonable preservation procedures and practices.
 3. Good forestry practice suggests a reduction in the number of Trees due to incapacity of the property to sustain the present number in healthy condition.
- C. If the application is approved, such conditions shall be imposed as are deemed necessary to fulfill the standards of this chapter. All Trees to be Removed shall be Mitigated in accordance with Section 37.08.

- D. **Appeal of Request.** Within ten calendar Days of the date of the letter of notification from the Tree Commission, the applicant or other interested party may file a written appeal to the City Council pursuant to Chapter 40 of this Code. (Ord. 2099 § 1, 2002; Ord. 2269 § 2, 2006; Ord. 2271 § 1, 2006)

37.05.060 PUBLIC UTILITIES PERMIT.

The Urban Forest Manager may issue a Tree Modification Permit to any public utility for the Pruning or other maintenance tasks of Protected Trees, in accordance with this section and the city public utility easement agreement (Ordinance 242, adopted on March 25, 1959) to be valid for a period of one year from the date of issuance. A public utility may request that a City Tree be Removed, pursuant to Section 37.05.050. (Ord. 2099 § 1, 2002)

Operations conducted under a Public Utilities Permit shall comply with the following requirements:

- A. Notify the Urban Forest Manager in writing at least 2 working Days prior to starting work on protected Trees.
- B. All Tree Pruning shall be conducted with current ANSI and ISA Pruning standards.
- C. Submit a summary report to the Urban Forest Manager by January 31 of each year documenting all work done under the Utility Permit during the previous calendar year.

Failure to comply with these requirements may result in fines or project stop work orders, as described in Article 37.09.

ARTICLE 37.06 - PARKING LOT TREES

37.06.010 APPLICABILITY.

Regulations contained within this article relate to all improved off-street parking lots within the City of Davis.

37.06.020 PARKING LOT TREE SELECTION AND PLANTING.

- A. Per Section 40.25.100 of the Davis Municipal Code and the Parking Lot Shading Guidelines, fifty percent of the paved parking lot surface shall be shaded with Tree Canopies within fifteen years of the Building Permit acquisition. (Ord. 2099 § 1, 2002)
- B. Tree selection shall be in accordance with the provisions of the Parking Lot Shading Guidelines and the City Master Street Tree List; only Trees identified as parking lot shade Trees may be planted unless otherwise approved by the Urban Forest Manager. The Tree species shall be varied throughout the parking lot.
- C. Parking lot planter design, materials, planting and Irrigation details shall be as per the City Tree Planting and Maintenance Specifications and the Parking Lot Shading Guidelines. (Ord. 2099 § 1, 2002)
- D. Parking lot planter areas shall provide a minimum rooting volume for mature Tree growth as described in the Parking Lot Shade Guidelines.

37.06.030 PARKING LOT SHADING AND MAINTENANCE PLAN.

- A. A parking lot shading plan and related shade calculations shall be submitted to the Community Development and Sustainability Department along with the Building Permit or Discretionary Project permit application for all new and/or reconstructed parking lots. (Ord. 2099 § 1, 2002)
- B. A five-year Maintenance Plan for the parking lot Trees shall be submitted to the Community Development and Sustainability Department along with the Building Permit or Discretionary Project permit application for all new and/or reconstructed parking lots. Maintenance Plan shall include:
 - 1. Tree height and Canopy height and width of Trees at planting, 15-years following planting, and maturity for each Tree species, with source of size information cited.
 - 2. Schedule of maintenance activities to be performed each year.
 - 3. Description of each maintenance activity included in schedule.
 - 4. Plan showing location, species, and root soil volume of all parking lot Trees and calculations showing compliance with Parking Lot Shade Guidelines.

37.06.040 REQUIRED REPLACEMENT.

Property owner must replace any dead parking lot Tree within 6 months of death and implement maintenance activities approved under the Maintenance Plan for five years following replanting.

37.06.050 VIOLATION OR FAILURE TO COMPLY.

Failure to comply with the approved Maintenance Plan may result in fines as described in Article 37.09.

ARTICLE 37.07 - PROTECTION OF TREES DURING NEW CONSTRUCTION

37.07.010 APPLICABILITY.

This section applies to any new construction occurring within 15 feet of the Critical Root Zone of a Protected Tree.

37.07.020 RESPONSIBILITIES OF PRIVATE PROPERTY OWNERS, PART OF PLANS AND SPECIFICATIONS.

- A. The Approved Tree Modification and Removal Plan and Tree Preservation Plan shall be included in the project plans and specifications.
- B. Any changes to the project that result in increased impacts to Protected Trees shall be reported in writing to the Urban Forest Manager within 7 Days.
- C. It is the responsibility of the property owner or his or her designated representative to ensure that all trades/subcontractors and utility companies abide by the preservation conditions of this provision.
- D. Prior to any demolition, trenching, Grading, construction, Repair, alteration, Removal or moving of any building, house or structure, or other site work, all Trees to be preserved in compliance with this chapter shall be protected in accordance with the Tree Preservation and Protection Standards.

- E. Tree protection fencing shall be labeled as described in the Tree Preservation and Protection Standards and shall not be Removed without prior authorization of the Urban Forest Manager.

37.07.030 VIOLATION OR FAILURE TO COMPLY.

Violation of this article may result in fines or project stop work orders, as described in Article 37.09.

Article 37.08 - TREE MITIGATION

Removal of or Major Impact to any Protected Tree shall be Mitigated in accordance with the guidelines provided in this ordinance.

37.08.010 EXEMPTIONS.

The following conditions may exempt a significantly impacted or Removed Protected Tree from requiring Mitigation:

- A. The condition of the Tree in regards to disease or likelihood of failure into a target area or utility services causes a threat to public health, safety, or welfare.
- B. An Arborist deems a Tree to be in poor condition based on a science-based set of rating guidelines and this evaluation is confirmed by the Urban Forest Manager.

37.08.020 MITIGATION CALCULATION.

- A. Protected Trees that are Removed or to which a project does Major Impacts or Moderate Impacts determined to require Mitigation shall require Mitigation on an inch-for-inch basis, based on DBH. One Trunk-Inch of Mitigation is required for every Trunk-Inch of DBH Removed. Mitigation Trunk-Inches are based on the size of the Tree to be installed as shown in the following table:

Replacement Tree Size	DBH Replacement Equivalent
#5-container	0.5 inches
#15 container	1 inch
24-inch box	2 inches
36-inch box	3 inches

- B. The applicant may receive Mitigation credit for preservation of young Trees with a trunk diameter of less than 5 inches on the same property being developed at a rate of 0.5 inches for every inch of trunk preserved.

37.08.030 MITIGATION IMPLEMENTATION.

Mitigation may be completed through on-site planting, off-site planting, payment of in-lieu fees, or a combination of these techniques.

- A. **On-Site Planting:** On-site planting is the preferred option. Replacement Trees must be species on the City Master Tree List or a species deemed fit by the Urban Forest Manager.
- B. **Off-Site Planting:** If there is insufficient space on the property for the Replacement Tree(s), required planting may occur on the other property in the applicant's

ownership, in City-owned open space or park, or in another off-site location within or nearby the City of Davis, subject to the approval of the Urban Forest Manager and authorized property owners.

- C. **In-lieu Fees:** If, in the Urban Forest Manager’s determination, no feasible alternative exists to plant the required Mitigation, or there are other considerations for alternative Mitigation, the applicant shall pay into the Tree Preservation Fund at a rate of \$189 per Trunk-Inch Removed or subject to Major Impact.

ARTICLE 37.09 - VIOLATION OF CHAPTER AS PUBLIC NUISANCE

37.09.010 PUBLIC NUISANCE—CERTAIN CONDITIONS DESIGNATED.

The following are declared public nuisances:

- A. Any Tree or other plant or part thereof growing upon private property but overhanging the street and/or interfering with the use of any street, which in the opinion of the Director endangers the life, health, safety or property of the public.
- B. The continued existence of any Tree or other plant on private property within the city that is dead, infected with disease or infested with pests which constitute a threat to or may be injurious to persons, property, Trees or other plants in the surrounding area.
- C. Any Tree or other plant more than thirty-six inches in height measured from the curb gutter and planted in a triangular area measured twenty-five feet along the curb in either direction from the sidewalk curb intersection.
- D. Any plant that interferes with, impairs or destroys any street improvement (including traffic signs or lights), sidewalk, curb, gutter, sewer, Street Trees or any public improvement.
- E. Vines, ivy, or climbing plants growing on, into, or over any City Tree.
- F. Any Tree that impedes sidewalks and bike paths, or by being lower than ten feet over pedestrian and bike paths, or any Tree which is lower than fourteen feet over a traffic lane.
- G. Non-permeable paving added within the Critical Root Zone of a Tree covered under this chapter after the Tree was planted for the city.
- H. Street Trees with invasive Root systems or surface Roots resulting in Damage to private paving. In this situation, City is responsible for Street Tree related work when private paving (excluding city rights-of-way but including, for example, private driveways and walkways) are disrupted, but the City is not responsible for private paving, Removal, or replacement work. Repairs to private paving shall be the responsibility of the property owner. The City offers property owners the opportunity to decide where a Street Tree(s) will be planted and cannot control the soil conditions, watering practices, and other cultural impacts that determine where Roots will grow. The Urban Forest Manager, or designee, shall work with the property owner to Remove or Modify the Root(s) that cause the paving Removal or replacement work to occur, so long as such Removal or other Modification complies with Section 37.0.010. (Ord. 2099 § 1, 2002)

37.09.020 RIGHT OF INSPECTION.

The Urban Forest Manager and/or his/her designee may inspect any Tree or other plant on private property in the City in accordance with law, to determine whether the same or any portion thereof is in such a condition as to constitute a public nuisance and, to consider abating or correcting any condition or thing declared to be a public nuisance under this chapter. When a public nuisance is declared relating to any City Tree, Street Tree, Protected Tree or Private Tree, the Urban Forest Manager (and/or the Tree Commission, as per the provisions of this chapter) shall determine the appropriate course of action, including, but not limited to, Tree or Root Pruning, site Modification, or Tree Removal. (Ord. 2099 § 1, 2002)

37.09.030 PUBLIC NUISANCE—ABATEMENT NOTICE—LIABILITY OF CITY, ETC.

Any condition constituting a public nuisance as defined in Section 37.09.010 may be abated pursuant to the procedures provided by Chapter 23 of this Code, or its successor ordinance. This remedy is cumulative of any other remedy provided by law for the abatement of public nuisances. (Ord. 2099 § 1, 2002)

37.09.040 VIOLATION—ENFORCEMENT.

- A. Any person who violates any of the provisions of this chapter or any of the conditions of any permit issued hereunder is guilty of a misdemeanor.
- B. In addition to criminal penalties and civil nuisance enforcement authorized by this code, any person who violates any provision of this chapter may be liable for a civil penalty for each Day or part thereof that said violation occurs pursuant to the process provided by Chapter 23 of this Code. Further, if such violation results in unauthorized Removal, destruction or disfigurement of Trees, the responsible person may be liable for a civil penalty equal to the Appraised Value of the Removed, destroyed or disfigured Tree. The city attorney is authorized to bring a civil action in any court of competent jurisdiction to recover such civil penalties and associated costs of the city. Penalties can be met through in-lieu payments into the Tree Preservation Fund, as approved by the Director.
- C. Progressive administrative enforcement may take place for violations of this chapter at the discretion of the Urban Forest Manager. Administrative enforcement may include:
 - 1. Written warning and description of the violation.
 - 2. Fines incurred by the property owner or Developer as well as the company performing the work.
 - 3. Issuance of Stop Work Order and project shut down. The notice shall state the nature of the violation or danger, and no work shall be allowed until the violation or danger has been rectified and approved by the Director and the Urban Forest Manager. (Ord. 2099 § 1, 2002; Ord. 2390 § 2, 2012)
- D. Examples of qualifying violations and applicable penalties include, but are not limited to:
 - 1. Unauthorized Removal or relocation of Tree protection fencing. \$500 per Day fine until fencing is Repaired.
 - 2. Storage of parts, tools, or equipment within Tree protection fencing. \$500 per Day fine and restoration of impacted soil as deemed necessary by Urban Forest Manager.

3. Chemical leakages within the dripline of Protected Trees. Minimum \$500 fine and restoration of impacted soil as deemed necessary by Urban Forest Manager. If Damage to Trees is significant as determined by the Urban Forest Manager, Mitigation for impacted Trees will be required in accordance with Section 37.08.
 4. Damage to Protected Trees caused by heavy equipment. Minimum \$500 fine and restoration of impacted soil as deemed necessary by Urban Forest Manager. If Damage to Trees is significant as determined by the Urban Forest Manager, Mitigation for impacted Trees will be required in accordance with Section 37.08.
 5. Unpermitted Pruning. Corrective Pruning or complete Removal and replacement in accordance with Section 37.08, depending on extent of Pruning, as deemed necessary by Urban Forest Manager.
 6. Unpermitted Removals. Trees must be replaced and Mitigated for in accordance with Section 37.08.
 7. Unpermitted Topping of Protected Trees. Trees must be completely Removed and replaced in accordance with Section 37.08.
- E. If Mitigation fees or plantings are required for Topped, Removed, or Damaged Trees, the dollar amount will be calculated using the Mitigation formula found in Article 37.08.
- F. All penalties incurred by responsible parties performing the work in violation shall be reported to the ISA or Licensing agency, as applicable.