

CHAPTER 106.39 - TREE PRESERVATION AND PROTECTION

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106.39.010 - Purpose

This Chapter provides regulations for the protection, preservation, and maintenance of:

- A. Native oak trees;
- B. The habitat values of oak woodlands;
- C. Trees of historic or cultural significance;
- D. Groves and stands of mature trees; and
- E. Mature trees in general that are associated with proposals for development.

106.39.020 - Applicability

- A. **Applicability to protected trees.** The provisions of this Chapter shall apply in all zoning districts to the removal or relocation of any protected tree, and to any encroachment (for example, grading) within the protected zone of a protected tree. A protected tree is any of the following:
 1. A native oak tree with a diameter of six or more inches as measured 54 inches above the ground, or a multi-trunked oak tree having an aggregate diameter of 10 inches or more measured 54 inches above ground;
 2. A heritage, or landmark tree or grove identified by Council resolution;
 3. Significant groves or stands of trees identified by Council resolution;
 4. A mature tree other than those listed in Subsections A.1 through A.3, that is 19 inches or more in diameter as measured at 54 inches above the ground, and located on a commercial parcel, or on a residential parcel that can be further subdivided, or on a parcel in the RD-1, RD-2, or RD-3 zones, provided that the tree is not a willow (*Salix* spp.), fruit tree, eucalyptus (*Eucalyptus* spp.), alder (*Alnus* spp.), cottonwood (*Populus* spp.), pine (*Pinus* spp.), catalpa (*Catalpa* spp.), fruitless mulberry (*Morus* spp.), or palm (*Acroelorrphe* spp.);
 5. A tree required to be planted, relocated, or preserved by a requirement of this Zoning Code, or by a condition of approval of a Tree Permit or other discretionary permit, and/or as environmental mitigation for a discretionary permit; and

6. A tree within 25 feet of a seasonal stream that is 19 inches or more in diameter as measured at 54 inches above the ground.
- B. Tree Permit required.**
1. **Activities requiring a permit.** A Tree Permit shall be required prior to:
 - a. The relocation, removal, cutting-down, or other act that causes the destruction of a protected tree;
 - b. Any grading, paving, or other ground-disturbing activity within the protected zone of a protected tree or anything that would change the soil moisture content in the protected zone; and
 - c. Any pruning of a protected tree.
 2. **Permit issuance.** A Tree Permit shall not be issued for tree removal in a non-residential zoning district, except in conjunction with:
 - a. The approval of a discretionary project for the same site;
 - b. The approval of a Building Permit for the same site; or
 - c. The approval of improvement plans for a subdivision of the same property.
- C. Exceptions.** The removal or relocation of a protected tree is exempt from the provisions of this Chapter under the following circumstances.
1. **Existing tree on residential property.** The removal of a tree of the type described in Subsection A.1 and A.4 is exempt if the tree is within a residential zoning district on a parcel that contains a single dwelling, and that is 10,000 square feet or less, or that cannot be further subdivided based on the minimum lot area requirements of the applicable residential zone.
 2. **Emergency situation.** Cases of emergency where the Director, General Services Director, a member of a law enforcement agency, or the Fire Department determines that a protected tree poses an imminent threat to the public safety, or general welfare.
 3. **Traffic visibility obstructions.** Removal or relocation of trees necessary to maintain adequate line-of-sight distances as required by the Director, or City Engineer.
 4. **Public utility damage.** Removal of trees for the protection of existing electrical power or communication lines.
 5. **Street widening.** The widening of a street right-of-way approved by the City.
 6. **Nursery.** Removal of trees planted, grown, or held for sale by a nursery, tree farm, or similar commercial operation.
 7. **Orchards.** Removal of orchards or fruit trees grown, planted, or held for sale for cash crop or commercial purposes.
 8. **Dead or dying trees.** Removal of trees determined by the Director, or an arborist approved by the Director, to be dead or dying, have become hazardous or unsightly as a result, and provide limited habitat value.

106.39.030 - Tree Permit Application Requirements

- A. **Application contents.** Each Tree Permit application shall include the following information and materials.
1. **General content requirements.** The application shall use the forms provided by the Department, shall include an Arborist's report in compliance with Section 106.39.040 (Arborist's Report), and shall be accompanied by the application fee required by the City fee schedule.
 2. **Site plan.** A Tree Permit application shall include a site plan with the following information, provided that the requirement for a site plan may be waived by the Director if the permit is for removal of dead trees or hazardous trees.
 - a. **Physical features of the site.** The site plan shall accurately show the location of the following existing and proposed features of the site, and structures on the site:
 - (1) Property lines;
 - (2) Streets, access easements and/or public or private driveways and other paved areas;
 - (3) Existing and proposed buildings or structures, including eaves and other architectural features, and the dimensions of the setbacks of all buildings and structures from property lines;
 - (4) Parking and other paved areas;
 - (5) Land uses on the site (existing and proposed as applicable);
 - (6) Proposed grading and construction, including utility trenches;
 - (7) Existing and proposed grades; and
 - (8) Chimneys.
 - b. **Tree locations and protected zones.** The site plan shall show each protected tree on the site, together with the exact location of the base and protected zone for each protected tree within areas of the site subject to grading, other construction or alteration of the ground surface. The site plan shall also show any tree on an adjacent parcel with a dripline that extends over the site property line.
 - (1) A survey of the exact horizontal and vertical locations of the protected trees trunks shall be conducted by a professional engineer or a licensed land surveyor. Each tree shall be numbered on both the site plan and grading plan. The base elevation of each protected tree shall be shown on the grading plan.
 - (2) The exact location of the protected zone of a protected tree is crucial to evaluate impacts from construction; consequently, rough approximations will not be acceptable.
 - (a) The radius of the protected zone is a circle equal to the trunk diameter in inches converted to feet. (For example, the radius of the protected zone of a tree with a trunk diameter of six inches is six feet.) Trunk diameter is measured at 54 inches above the ground.

- (b) In the case of a trunk that is divided into limbs at a point below 54 inches, the trunk diameter shall be measured at the narrowest diameter of the trunk between the base of the tree and 54 inches above the ground.

In certain cases, it may be possible to physically stake the surveyed corner of a buildings or related improvements in the field in order to assess the potential impacts upon the trees.

- B. **Application filing.** An application for a Tree Permit involving a discretionary project shall be included as part of the application for the discretionary project. An application for a Tree permit not associated with a discretionary project shall be filed with the Department separately.

106.39.040 - Arborist's Report

A Tree Permit application involving one or more live trees shall include an Arborist's report, in compliance with the following requirements, where determined by the Director to be necessary based on the number, type, and locations of trees on the site.

- A. **Minimum information.** The Arborist's report shall include the following information:
1. Botanical name of trees by tree number;
 2. Common name of trees by tree number;
 3. Location of trees by tree number;
 4. Diameter at 54 inches above the ground, by tree number;
 5. Height by tree number (optional);
 6. Protected zone radius by tree number (measure longest radius);
 7. Condition (structure and vigor as described below) by tree number;
 8. Construction impacts; and
 9. Recommendations.
- B. **Determination of tree condition.** The information on tree condition in the report shall be developed as follows:
1. **Rating system.** The condition of each tree is to be considered when determining a tree's rating according to the following categories: excellent (it is rare that a tree qualifies in this category); good; fair to good; fair; fair to poor; or poor.
 2. **Factors to be considered.** At least the following factors shall be considered in light of the trees life expectancy under existing and planned conditions when determining a tree's rating:
 - a. The condition and environment of the tree's root crown (also roots, if applicable);
 - b. The condition of the trunk, including decay, injury callusing or presence of fungus sporophores;
 - c. The condition of the limbs, including strength of crotches, amount of deadwood, hollow areas, and whether there is excessive weight borne by them;

- d. The condition and growth rate history of the twigs, including pest damage and diseases;
 - e. Leaf appearance, including abnormal size and density as well as pest and disease damage; and
 - f. The dripline environment, including evidence of grade changes and presence of water courses or ponding.
3. **Formulation of tree condition.** Using an averaging of the above factors together with the Arborist's best judgment, the tree shall be described using the above rating categories. It is important to rate structural condition separately from the tree's vigor condition if they are different. Root crown, trunk and limb ratings relate most to structure, while twigs and foliage, including growth rate, relate most to vigor. The structure of the root crown-trunk area is of primary importance and takes precedence over any other factor. This information should not be considered to be a formula but simply a guideline to help describe a tree's condition.
- C. **Arborist's recommendations.** The Arborist's recommendations shall be developed in compliance with the following:
- 1. **Recommendations by tree number.** Based upon the conditions and findings, recommendations should be made that logically follow the report conditions. For instance, if weak crotches are reported, cabling would be a logical recommendation to include in the report. These recommended mitigative measures should be spelled out and in some cases may even improve the tree's condition ratings.
 - 2. **Preservation measures for each tree not being removed.** The specific recommendations must consider the impacts from the activities proposed.

106.39.050 - Standard Policies and Procedures for Approved Work

Great care must be exercised when work is conducted upon or around protected trees. The purpose of this Section is to define procedures necessary to protect the health of affected protected trees. The policies and procedures described in this Section apply to all encroachments into the protected zone of protected trees. All Tree Permits shall be deemed to incorporate the provisions of this chapter except as the Tree Permit may otherwise specifically provide.

- A. **Trenching procedure.** Trenching within the protected zone of a protected tree, when permitted, may only be conducted with hand tools or as otherwise directed by an arborist, in order to avoid root injury.
- B. **Cutting roots.**
 - 1. Minor roots less than one inch in diameter may be cut, but damaged roots shall be traced back and cleanly cut behind any split, cracked or damaged area.
 - 2. Major roots over one inch in diameter may not be cut without approval of an Arborist. Depending upon the type of improvement being proposed, bridging techniques or a new site design may need to be employed to protect the root and the tree.
- C. **Ground surface fabric.** If any native ground surface fabric within the protected zone must be removed for any reason, it shall be replaced within 48 hours.
- D. **Irrigation systems.** An independent low-flow drip irrigation system may be used for establishing drought-tolerant plants within the protected zone of a protected tree. Irrigation shall be gradually reduced and discontinued after a two-year period.

- E. **Plant materials under oaks.** Planting live material under native oak trees is generally discouraged, and it will not be permitted within six feet of the trunk of a native oak tree with a diameter at breast height (DBH) of 18 inches or less, or within 10 feet of the trunk of a native oak tree with a DBH of more than 18 inches. Only drought tolerant plants will be permitted within the protected zone of native oak trees.
- F. **Protective fencing.**
1. **Type of fencing.** A minimum five-foot high chain link or substitute fence approved by the Director shall be installed at the outermost edge of the protected zone of each protected tree or groups of protected trees. Exceptions to this policy may occur in cases where protected trees are located on slopes that will not be graded. However, approval must be obtained from the Department to omit fences in any area of the project.
 2. **Fence installation.** The fences shall be installed in accordance with the approved fencing plan prior to the commencement of any grading operations or such other time as determined by the review body. The developer shall call the Department for an inspection of the fencing prior to grading operations.
 3. **Signing.** Signs shall be installed on the fence in four equidistant locations around each individual protected tree. The size of each sign must be a minimum of two feet by two feet and must contain the following language:

"WARNING, THIS FENCE SHALL NOT BE REMOVED OR RELOCATED WITHOUT WRITTEN AUTHORIZATION FROM THE CITRUS HEIGHTS COMMUNITY DEVELOPMENT DEPARTMENT."

Signs placed on fencing around a grove of protected trees shall be placed at approximately 50-foot intervals.
 4. **Fence removal.** Once approval has been obtained, the fences shall remain in place throughout the entire construction period and shall not be removed without obtaining written authorization from the Department.
- G. **Retaining walls and root protection.** Where a Tree Permit has been approved for construction of a retaining wall within the protected zone of a protected tree, the developer shall provide for the immediate protection of exposed roots from moisture loss during the time prior to completion of the wall. The retaining wall shall be constructed within 72 hours after completion of grading unless appropriate root protection is provided, as approved by the arborist.
- H. **Preservation devices.** If required, preservation devices such as aeration systems, oak tree wells, drains, special foundation systems, special paving and cabling systems must be installed per approved plans and certified by the Arborist.
- I. **Grading.**
1. Every effort should be made to avoid cut and/or fill slopes within or in the vicinity of the protected zone of any protected tree.
 2. No grade changes are permitted which cause water to drain to within twice the longest radius of the protected zone of any protected tree.
 3. No grade changes are permitted that will lower the ground on all sides of the tree.
- J. **Chimney locations.** A chimney for a wood-burning fireplace or stove shall not be located within the canopy of a tree, within eight feet of any branch of a tree, or in another location where sparks from the chimney may damage a tree.

- K. Certification letters.** Certification letters are required for all regulated activities within the protected zone of protected trees. The developer's Arborist will be required to submit a certification letter to the Department within five working days of completing any regulated activity, attesting that all work was conducted in accordance with the appropriate permits and the requirements of this Chapter.
- L. On-site information.** The following information shall be on-site while any construction activity is on going for a project requiring a Tree Permit:
1. Arborist's Report and all future modifications;
 2. Tree location map with a copy of the tree fencing plan;
 3. Tree Permit and inspection card;
 4. Approved construction plans;
 5. Tree Preservation Guidelines; and
 6. Approved planting and irrigation drawings.
- M. Information on standards.** The developer shall be responsible for informing all subcontractors and individuals who will be performing work around protected trees of the requirements of this Section for working around trees and conditions of approval for the project. This information shall be provided in writing to the subcontractors and employees by the general contractor or applicant.
- N. Utility trenching pathway plan.** As a condition of the Tree Permit, the developer will be required to submit a utility trenching-pathway plan for approval following approval of the project improvement or civil plans.
1. **Contents.** The trenching-pathway plan shall depict all of the following systems: storm drains, sewers, easements, water mains, area drains, and underground utilities. Except in lot sale subdivisions, the trenching-pathway plan must show all lateral lines serving buildings. To be completely effective, the trenching-pathway plan must include the surveyed locations of all protected trees on the project as well as an accurate plotting of the protected zone of each protected tree.
 2. **Standards for plan.** The trenching-pathway plan should be developed considering the following general guidelines:
 - a. The trenching-pathway plan must be developed to avoid going into the protected zone of any protected tree on its path from the street to the building.
 - b. Where it is impossible to avoid encroachment, the design must minimize the extent of such encroachment. Encroachments and mitigation measures must be addressed in a supplemental Arborist's Report.
- O. Final certification of tree work.** All of the tree preservation measures required by the conditions of the discretionary project approval, the Arborist's report and the Tree Permit, as applicable, shall be completed and certified by the developer's Arborist prior to issuing an occupancy permit.

106.39.060 - Tree Planting and Replacement

The City's principal objective for the Tree Permit process is the preservation of protected trees. The review authority may condition any Tree Permit involving removal of a protected tree upon the replacement of trees in kind. The replacement requirement shall be calculated based upon an inch for an inch replacement of the DBH of the removed trees where a 15 gallon tree (i.e., nursery stock in a #15 container) will replace one inch DBH of the removed tree; a 24 inch box tree will replace two inches, and a 36 inch box tree will replace three inches. The replacement trees shall have a combined diameter equivalent not less than the total diameter of the trees removed. A minimum of 50 percent of the replacement requirement shall be met by native oaks. Up to 50 percent may be met by non-native species. The review authority may approve a replacement program using one of the following four methods or any combination of the four methods. The preferred alternative is on-site replacement.

- A. **Replacement trees.** Replacement trees may be planted on-site or in other areas where maintenance and irrigation are provided to ensure survival of the trees.
- B. **Relocation of trees.** In certain cases, the City may consider the relocation of native oak trees from one area in a project to another. Credit shall be given for relocation on the same basis as replacement. The guidelines and limitations for relocation are as follows:
 1. The trees being recommended for relocation must be approved by the review authority whose decision will be based upon factors relating to health, type, size, time of year and proposed location.
 2. The relocation of a tree shall be conditioned to require a secured five-year replacement agreement for the tree with security provided by the developer in a form satisfactory to the City Attorney. If at the end of five years the tree is deemed by an arborist to be in a substantially similar condition to that prior to the transplanting, the agreement will be terminated. If the tree dies during the five-year period, it shall be replaced as required by this Section.
- C. **Revegetation requirements.** The review authority may, instead of requiring replacement trees, require implementation of a revegetation plan. The applicant shall enter into a written agreement with the City obligating the applicant to comply with the requirements of the revegetation plan. A performance security or bond for 150 percent of the cost of the revegetation plan shall be required to insure that the agreement is fulfilled. The review authority shall approve the proposed plan. The revegetation program shall propagate native oak trees from seed using currently accepted methods. A revegetation program shall identify the seed source of the trees to be propagated, the location of the plots, the methods to be used to ensure success of the revegetation program, an annual reporting requirement, and the criteria to be used to measure the success of the plan. A revegetation program shall not be considered complete until the trees to be propagated have reached one-half inch in diameter or the revegetation plan demonstrates the need for alternative success criteria and achieves mitigation on an inch for inch basis as approved by the Commission.
- D. **In-lieu mitigation fee.** The review authority may determine that the remedies described above are not feasible or desirable and may require instead payment of a cash contribution based upon the cost of purchasing, planting, irrigating and maintaining the required number of 15 gallon trees. The cost of purchasing, planting, irrigating and maintaining a 15 gallon oak tree shall be set by Council resolution. The cash contribution shall be deposited into one or both of the following funds as determined by the Director:
 1. **Native Oak Tree Propagation Fund.** This fund shall be used to propagate, purchase, plant, protect and maintain native oak trees. Uses of the fund include purchasing property to plant or protect native oak trees, propagating native oak trees from seed or container stock and maintaining existing and replacement native oak trees.
 2. **Non-Native Tree Fund.** This fund shall be used to purchase, plant, irrigate and maintain non-native trees within the City. Uses of the fund include purchasing and propagating non-native trees from seed or container stock and maintaining existing and replacement non-native trees.

106.39.070 - Tree Permit Approval or Denial

Each Tree Permit application shall be reviewed, and approved or denied in compliance with this Section.

- A. Review authority.** A Tree Permit shall be reviewed, and approved or denied by the Director, except that the Commission shall decide upon a Tree Permit application where tree removal is part of a project that otherwise requires approval by the Commission.
- B. Application evaluation criteria.** The following criteria shall be used to support the findings required by Subsection C. for the approval of a Tree Permit.
- 1. General criteria.**
 - a. The gross floor area of proposed buildings in relation to the "usable" size of the site and the amount of usable space on the site that does not require the removal of protected trees;
 - b. Design features in comparison with other existing or approved projects in the vicinity and in the same zone that have or had protected trees on their sites;
 - c. Factors that are unique to the site, such as topographic constraints, lot configuration and other physical limitations;
 - d. The overall health and structural condition of the potentially impacted protected trees;
 - e. The approximate age of the each protected tree compared with the average life span for each species;
 - f. The number of healthy protected trees that the site will support, with and without the proposed development;
 - g. The effect of tree removal on soil stability/erosion, particularly near watercourses or on steep slopes;
 - h. Whether there are any alternatives that would allow for the preservation of the protected tree; and
 - i. Any other information the review authority finds pertinent to the decision, including any information obtained at a public hearing.
 - 2. Criteria for removal.**
 - a. The age of the protected tree with regard to whether its removal would encourage healthier, more vigorous growth of younger similar trees in the area;
 - b. The number of existing protected trees in the area and the effect of removal upon public health, safety and the general welfare of the area;
 - c. The potential for the protected tree to be a public nuisance or interfere with utility service, as well as its proximity to existing structures; and
 - d. Present and future shade potential with regard to solar heating and cooling.

3. **Criteria for encroachment.** Whether the degree of encroachment is likely to result in the subsequent decline of the affected protected tree or create a future risk to public safety or pose a hazard to adjacent structures.
- C. **Required findings for approval.** The approval of a Tree Permit shall require that the review authority first make all the following findings:
1. The approval of the Tree Permit will not be detrimental to the public health, safety or welfare, and approval of the Tree Permit is consistent with the provisions of this Chapter; and
 2. Measures have been incorporated into the project or permit to mitigate impacts to remaining trees or to replace the trees removed.
- D. **Considerations for denial of a Tree Permit.** A Tree Permit shall be denied if the review authority finds that any one of the following situations exists.
1. Removal or damage of a healthy tree could be avoided by:
 - a. Reasonable redesign of the site plan prior to construction; or
 - b. Pruning, thinning, tree surgery, or other reasonable treatment, as determined by the Director.
 2. Adequate provisions for drainage, erosion control, land stability, windscreen, buffers along the road and between neighbors have not been made where these problems are anticipated as a result of the removal.
 3. The tree to be removed contains an active nest of a bird covered by the Migratory Bird Treaty Act, that has been identified through the project environmental review process or that is otherwise known to the review authority, and a qualified professional has determined that the relocation of the nest without damage to the nestlings is not possible. In this case, tree removal shall be delayed until nesting is complete.
- E. **Limitation on approved activities.** A Tree Permit shall not be issued for temporary parking, or the storage of vehicles, trailers, equipment, construction materials, or temporary structures within the protected zone of a protected tree.
- F. **Conditions of approval.** The approval of a Tree Permit shall include conditions of approval as necessary to ensure compliance with Section 106.39.060 (Tree Planting and Replacement).

106.39.080 - Post Approval Procedures

The following procedures apply after the approval of a Tree Permit application.

- A. **Appeals.** The decision of the Director shall be final unless an appeal is filed in compliance with Chapter 106.72 (Appeals).
- B. **Expiration/extension.** Except where otherwise provided by this Chapter, a Tree Permit shall be exercised within six months from the date of approval or other time limit established through a concurrent land use permit approval. Time extensions, for up to a total of two additional years, may be granted in compliance with Chapter 106.64 (Permit Implementation, Time Limits, and Extensions). A Tree Permit not exercised within its time limits shall expire in compliance with Chapter 106.64.

- C. **Performance guarantee.** The review authority may require that a monetary security deposit, or surety bond if acceptable to the City, be posted and maintained where deemed necessary to ensure:
1. The preservation of protected trees during construction; and
 2. The completion of required mitigation measures.
- The deposit shall be posted in a form approved by the City Attorney prior to any grading or movement of heavy equipment onto the site or issuance of any permits. Each violation of any Tree Permit condition regarding tree preservation shall result in forfeiture of a portion or the entirety of the deposit, at the discretion of the review authority, provided that this determination may be appealed in compliance with Chapter 106.72.
- D. **Construction monitoring.** Monitoring of tree protection and restoration measures specified as conditions of approval shall be performed by site inspection conducted by the Director.
- E. **Revocation.** A Tree Permit may be revoked or modified after a public hearing conducted by the Commission, with any of the following findings that the tree removal, relocation, or protection activities:
1. Cannot support the original findings;
 2. Resulted from misrepresentation or fraud;
 3. Has not been implemented in a timely manner;
 4. Has not met, or has violated any condition of approval;
 5. It is in violation of any code, law, ordinance, or statute;
 6. Is detrimental to public health, safety, or welfare; or
 7. Constitutes a nuisance.
- F. **Stop work orders.** Whenever any construction or work is being performed contrary to the provisions of this Chapter or applicable conditions of approval, the Director may issue a written notice to the responsible party to stop work on the project on which the violation has occurred or upon which the danger exists. The notice shall state the nature of the violation and the risk to the trees. No further work shall be allowed until the violation has been corrected and approved by the Department.
- G. **Enforcement.** Any person who cuts, damages, or moves a protected tree in violation of this Chapter shall be subject to the enforcement provisions of the Municipal Code.
1. Violation of the tree preservation requirements of this Chapter shall be punishable as a misdemeanor or an infraction at the discretion of the City Attorney.
 2. A person responsible for the damage or removal of protected trees not authorized by a permit issued in compliance with this Chapter shall be required to pay a mitigation fee equal to three times the value of each damaged or removed tree, as determined by an arborist engaged by the City.