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**ANTIOCH**  
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TO: ANTIOCH PLANNING COMMISSION

FROM: Forrest Ebbs, Community Development Director 

SUBJECT: Tree Preservation Ordinance

DATE: April 6, 2022

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The purpose of this memorandum is to provide the Planning Commission with a comprehensive report on the City of Antioch's Tree Preservation Ordinance and related policies.

The Tree Preservation Ordinance is contained in Article 12 of Title 9 of the Antioch Municipal Code (AMC) and is titled "Tree Preservation and Regulation." The corresponding definitions used in the ordinance are contained in AMC 9-5.203, "Definitions." The current Ordinance dates to October 1994, which is the last time it was comprehensively amended. The stated intent of the ordinance is "to regulate the removal of trees, with the goal of retaining as many trees as possible while recognizing individuals' property rights." (AMC 9-5.1201(B))

Important Terminology

The ordinance includes a definition of Protected Tree that includes the following:

- Any tree required to be preserved as part of a development application.
- All indigenous trees as defined.
- All street trees as defined.
- All mature and landmark trees as defined.

There are also three size-related categories of trees that are addressed by the ordinance.

- **Established Tree:** This includes all trees that are at least 10 inches in diameter. Trees smaller than this are not protected under the ordinance.
- **Mature Tree:** Includes larger trees that are at least 26 inches in diameter.
- **Landmark Tree:** This includes trees that are at least 48 inches in diameter and/or 40 feet in height.

Other important terms include the following:

- **Indigenous Tree:** This includes naturally occurring specimens of the following species:
  - Blue Oak (*Quercus douglasii*)
  - Valley Oak (*Quercus lobata*)
  - Coast Live Oak (*Quercus agerifolia*)
  - Canyon Live Oak (*Quercus chrysolepis*)
  - Interior Live Oak (*Quercus wislizenii*)
  - California Buckeye (*Aesculus californica*)
  - California Bay (*Umbellularia californica*)
- **Street Tree:** This includes any tree planted within either the public right-of-way and/or tree planting easement, where applicable.

A single tree can fall under multiple categories depending on its size, species and/or location. For example, a 30" diameter, 42' tall Dutch Elm tree planted in a sidewalk planting strip would be considered a Protected Tree, an Established Tree, a Mature Tree, a Landmark Tree, and a Street Tree. Similarly, a 20" diameter, 34' tall naturally occurring Interior Live Oak tree in a rear yard would be considered a Protected Tree, an Established Tree, and an Indigenous Tree.

#### Tree Removal Permits and Regulations

Tree Removal Permits are required to remove any Established Tree, which is a tree with a diameter of at least 10 inches. Per the ordinance, Tree Removal Permits are issued by the Department of Parks, Leisure and Community Services, which is the prior name of the current Department of Parks and Recreation. The administration of Tree Removal Permits has since been moved to the Department of Public Works, where it resides today.

There are two important exceptions to the Tree Removal Permit requirement.

First, a tree that presents an immediate hazard to life and/or property may be removed with approval from the City Engineer. This still requires City approval, but the formal permit from the Department of Public Works is not required.

Second, a homeowner may remove a tree from their residential property without a Tree Removal Permit if the tree does not otherwise meet the definition of a Protected Tree, which includes Indigenous Trees, Street Trees, Mature Trees or Landmark Trees. In short, non-indigenous trees with diameters of less than 26" may be removed from private property without City approval.

#### Tree Committee

The Ordinance establishes a Tree Committee consisting of the Parks and Recreation Director, City Engineer, Community Development Director and one member of the general public appointed by the City Council. This committee is used for specific situations, including the following:

- Review of Landmark Tree removals,
- Reconsideration of a City Engineer decision, and
- Review of tree removal requests on undeveloped property.

#### Tree Removal Process – Developed Property and Street Trees

There are multiple processes for review of Tree Removal Permit applications. For trees on developed property, including Street Trees, the owner must follow the following process applies:

- Owner submits a Tree Removal Permit application to the Public Works Department.
- Within 10 days, the City Engineer makes a decision on the application.
- If the proposed tree is a Landmark Tree, the City Engineer defers to the Tree Committee for decision. In such cases, a notice is mailed to all adjacent neighbors, followed by a 10-day public comment period to “allow neighbors to respond to the notice”. (AMC 9-5.1203(B)(4)).
- The decision is final unless appealed to the Board of Administrative Appeals.
- Decisions of the Board of Administrative Appeals may be appealed to the City Council.

If the Tree Removal Permit is for a Street Tree, a replacement Street Tree will be required. The species may be selected by the property owner but is subject to approval from the City Engineer to ensure a compatible species. If a tree were removed without the appropriate Tree Removal Permit, the City may impose penalties according to ordinary Code Enforcement procedures at its discretion. This would be most applicable if the Tree Removal Permit were denied. There is not a specific punitive fine for unauthorized tree removal.

#### Tree Removal Process - Undeveloped Property

It is common in the City of Antioch to have large undeveloped parcels containing Indigenous Trees or other Protected Trees. Preemptive or unnecessary removal of trees from undeveloped property is discouraged by the ordinance and such decisions should be deferred to the eventual review of the development of the property. Should the owner proceed prior to development review, the Tree Removal Permit application would be considered by the Tree Committee, who would evaluate the age, size, and risk of the tree, as informed by a report from a Certified Arborist. In cases of Landmark Tree removal, noticing comparable to that for a Use Permit is required. In general, healthy trees will not be approved for removal.

In addition to the permitting and review requirements, the ordinance imposes submittal requirements that ensure that removal of trees is included in the ordinary development review process. Planning staff ensure that all trees are identified as part of all development applications and review their removal appropriately.

In addition, provisions are provided to protect trees during the development of the surrounding land. For example, should grading occur within the dripline of a tree, which is generally prohibited, a monetary bond is required ranging from \$1,000 to \$10,000 to ensure that the tree is protected. Tree replacement standards are also imposed requiring a minimum of two 24” box trees to replace each Established Tree or two 48” box trees to replace each Mature Tree, at minimum.

#### Tree Planting Restrictions

In addition to regulating tree removal, the ordinance identifies two species of restricted trees that may not be planted anywhere within the City of Antioch. These include the following:

- The Salix species, which includes all willows except for “Australian willow” (Geijera perviflora) which has non-evasive roots and may be planted without restrictions.
- The populus species, which includes all cottonwoods, poplars and aspens.

In addition, trees planted on private property must be planted at least five feet from a public sidewalk and their branches must be maintained at least seven feet above the sidewalk and/or 14 feet above the street. This is a common issue for the Code Enforcement Division as overhanging trees can be hazardous to pedestrians, cyclists, or vehicles.

**SUMMARY**

In summary, the City of Antioch's Tree Preservation Ordinance provides a clear process and consideration for the review of Tree Removal Permit applications. The

**ATTACHMENTS**

- A. Title 9, Article 12: Tree Preservation and Regulation
- B. Definitions from Zoning Ordinance – Tree Preservation

**ARTICLE 12: TREE PRESERVATION AND REGULATION****§ 9-5.1201 PURPOSE AND INTENT.**

(A) Within the city there exists many native and non-native trees that greatly add to the aesthetic quality of the city. The older parts of the city adjacent to the San Joaquin River contain several horticultural trees planted by early settlers that have since become landmarks. In addition, recent annexations have added areas of oak woodland worthy of protection.

(B) The city recognizes that the retention of existing trees enhance the built environment, thus beautifying the community and benefiting the city with increased property values. It is the intent of this chapter to regulate the removal of trees, with the goal of retaining as many trees as possible while recognizing individuals' property rights.

(Ord. 897-C-S, passed 10-25-94)

**§ 9-5.1202 APPROVAL REQUIRED TO REMOVE TREES.**

(A) *Permit or development application.* Except as provided below, it is unlawful to destroy or remove any established tree on any property within the city without either:

- (1) Obtaining a tree removal permit from the Department of Parks, Leisure and Community Services; or
- (2) Receiving approval to remove such trees as part of the regular development application process.

(B) *Penalty.* A person who either removes or destroys an established tree prior to obtaining the required permits and/or approvals, or deliberately damages an established tree so that its removal is then necessitated for public safety, is subject to the penalties of this chapter and code.

(C) *Exceptions.* The following trees may be removed without either a tree removal permit and/or regular development application:

- (1) If the condition of any tree presents an immediate hazard to life and/or property its removal may be authorized by the City Engineer.
- (2) Other than for protected trees as defined by this article, trees on developed residential properties may be removed without a permit.

(Ord. 897-C-S, passed 10-25-94) Penalty, see § 9-5.2904

**§ 9-5.1203 TREE REMOVAL PERMIT APPLICATIONS; DEVELOPED PROPERTY.**

(A) It is the purpose of this section to regulate the removal of protected trees on developed property, when such removal is not associated with a regular development application.

(B) Such requests are typically related to routine maintenance and/or re-landscaping.

(1) *Application required.* An application shall be made in writing on a form furnished by the Department of Parks, Leisure and Community Services and shall be accompanied by the following information:

- (a) A sketch showing the location(s), size (in diameter and approximate height), and species of tree(s).
  - (b) The applicant and/or property owner's name, address and telephone number.
  - (c) The name of the company or individual designated to remove the tree(s), their address, phone number (and business license number if applicable).
- (2) Decision regarding permit application.

(a) *Time of decision.* The Department of Parks, Leisure and Community Services shall render a decision regarding the permit application within 10 working days after filing of a complete application.

(b) *Criteria.* In deciding whether to issue a permit, the Department of Parks, Leisure and Community Services shall consider the following criteria:

1. The condition of the tree(s) with respect to its health, proximity to existing structure(s), and the likelihood of future damage to said structure(s) and nearby utilities should the tree(s) not be removed.
2. The necessity to remove the tree(s) for reasonable use and/or enjoyment of the property.
3. The aesthetic impacts of tree removal in relation to the size and species of the subject and nearby tree(s). Typically the city will encourage the preservation of uniform street tree patterns where such patterns have long been established.

(3) *Requirement for street tree replacement.* In allowing for the removal of a street tree, the Department of Parks, Leisure and Community Services will require that a replacement street tree be planted. The property owner may select the species of the replacement tree, with tree selection subject to city approval.

(4) *Special concern for landmark trees.* Applications to remove landmark trees as defined by this section will require the mailed noticing of said application to all adjacent property owners. Decisions on landmark trees are to be made by the tree committee, which shall provide a 10 day comment period to allow neighbors to respond to the notice.

(5) *Appeal.* A person aggrieved or affected by the decision of the Department of Parks, Leisure and Community Services may ask that the city's standing Tree Committee, as defined by this chapter, review the permit applications. Should the Tree Committee not grant the permission to remove the tree(s), a further appeal may be filed with the Board of Administrative Appeals pursuant to § 1-4.01 of this code.

(Ord. 897-C-S, passed 10-25-94)

**§ 9-5.1204 RESTRICTIONS ON REMOVAL OF ESTABLISHED TREES FROM UNDEVELOPED PROPERTY.**

(A) The city discourages the removal of trees from undeveloped property as defined by this chapter.

(B) Over the past years, the city has needlessly lost many valuable established trees that could have been incorporated into proposed developments had the tree(s) not been previously removed.

(1) *Special circumstances to allow tree removal.* Unless the subject established tree(s) is deemed to cause imminent potential harm to the public, neighboring property, and/or adjacent streets and utilities if it is not removed, decisions regarding potential tree removal are to be deferred to the time of regular development application. Should a property owner wish to remove a tree(s) from undeveloped property, an application shall be submitted to the Department of Parks, Leisure and Community Services as described in this chapter.

(2) *Tree Committee review of all applications on undeveloped property.* All applications concerning trees on undeveloped property shall be reviewed by the Tree Committee as defined by this chapter. Factors to be considered are the trees' age, size, and the presence of imminent risks as documented by a certified arborist. The city may commission a certified arborist, at the applicant's expense, to provide information on the health of the tree. Typically, healthy trees may not be removed from undeveloped property.

(3) *Special concern for landmark trees.* Applications for removal of landmark trees as defined by this section shall be subject to the same noticing requirement as is required for a use permit.

(Ord. 897-C-S, passed 10-25-94)

**§ 9-5.1205 ESTABLISHED TREE PRESERVATION AND/OR REMOVAL IN CONJUNCTION WITH PROPERTY DEVELOPMENT.**

It is the purpose of this section to encourage the preservation of existing trees and outline the conditions which allow for the removal of trees in conjunction with property development.

(A) *Request for tree removal incorporated into regular development application.* If any established trees are on the subject property, the following information shall be provided with the regular development application.

- (1) A site plan showing the existing topography with location of all established trees, clearly labeling those trees which are proposed for either saving or removal.
- (2) A description of all established trees on the property, including the size (in diameter), estimated height, species, and relative condition (i.e., healthy vs. in decline).
- (3) A written statement requesting permission to remove the subject tree(s) providing the reason for the request.

(B) *Action on tree removal request by decision-making body.* Approval or denial of the tree removal request will be made as part of the regular development application process. As part of the discretionary project review process, the decision-making body may require the preservation of a tree proposed for removal and conversely may condition the removal of a tree. Decisions to preserve and/or remove will be based on the following factors:

- (1) The highest priority will be placed on the preservation of landmark and indigenous trees as defined by this chapter. Mature and established trees shall generally be preserved in respective order, although tree appearance, species and aesthetic compatibility with the proposed project are additional factors to be considered.
  - (2) Permission to remove tree(s) species that do not or will not contribute to the aesthetic value of the proposed project may typically be granted. The provision of shade and context of the landscape design are both to be considered.
  - (3) While the city may require some more modifications to a proposed site plan, if the retention of a tree would severely limit the development potential of a property when compared to neighboring property, its removal may be permitted. In order for such tree removal to be granted, the applicant must document, with alternative plans and cost estimates, how the tree preservation would unduly burden the property and development.
- (C) *Need of an expert opinion.* Anytime during the project review process, the city may commission a certified arborist, at the applicant's expense, to provide a report on the health of a tree that the applicant requests permission to remove solely for reasons based on the alleged health of the tree such as the creation of a hazard to future circulation, buildings and/or utilities. Other factors may include the relative health and the age of the tree and its likelihood of long term survival.
- (D) *Appeal.* As with all discretionary approvals and/or conditions of the Zoning Administrator, Planning Commission and the Design Review Board, requirements for tree preservation and/or removal may be appealed as stipulated in this chapter.
- (E) *Required plus prior to initiating development.* Prior to the granting of a building and/or grading permit, the applicant shall provide a site plan showing all protected trees as defined by this chapter. There is to be no excavation within the drip line of such trees with the drip line to be clearly shown in all grading and layout plans.
- (F) *Special circumstances to allow grading within the drip line.* Although it is always preferable to avoid grading within the drip line, there may be special circumstances where grading may be permitted, such as when the preservation of a tree would otherwise not be possible. The permission to grade within the drip line is not to be seen as a routine procedure for protected trees, but as an alternative to removing trees that would otherwise be removed.

(1) *Required plans and additional arborist studies.* There is to be no excavation within the drip line of such trees unless specific plans are to be submitted to the Department of Community Development staff that indicates how grading within the drip is to be carried out without critically harming the tree. Additional arborist's studies must be provided to support the grading proposed.

(2) *Bonding for protected trees where grading will occur within the drip line.* Prior to the granting of a building and/or grading permit, the developer shall post a bond for each protected tree at which grading will occur within the drip line. The bonding schedule will be as listed under section "bonds and penalties." The city will conduct ongoing inspections during the course of the grading to assure adherence to approved plans. Should the tree(s) die "during the course of property development" as defined by this chapter, the bond shall be forfeited to the city and used for tree replacement. A percentage of the bond will be retained in either case to assure tree survival for up to five years after the issuance of a certificate of occupancy.

(G) *Protection of trees during construction.* Unless specific exceptions are granted prior to the initiation of construction, all construction activity and traffic shall be prohibited from the area within the drip line of a protected tree. Should the tree(s) die "during the course of property development" as defined by this chapter, the applicable penalties of this chapter shall be levied.

(H) *Damage of protected tree during construction.* Should a protected tree be damaged during site development, the developer shall administer all reasonable methods of treatments as approved by the Director of Community Development. The repair of the damage shall be at the expense of the developer. In addition, the city may require the posting of a bond pursuant to the requirements of this section.

(I) *Need for re-hearing of a project.* Any time after initial approval of a site plan by either the Zoning Administrator, Planning Commission and/or City Council, an applicant's request to remove a "protected tree" as shown on the approved site plan will require a hearing. A new public hearing will be held on the issue of tree removal and the applicant will be required to re-notice the surrounding property owners as stipulated in this chapter.

(J) *Replacement of trees that were legally removed.*

- (1) All trees that are legally removed shall be replaced according to the following schedule:
    - (a) Each established tree: two 24 inch box trees.
    - (b) Each mature tree: two 48 inch box trees.
  - (2) Legally removed indigenous and land-mark trees shall be replaced by boxed specimens at a rate and size to be established by the decision-making body at the time of regular development application approval.
- (K) *Requirement of subsequent owners to maintain trees.* All future owners of parcels on which trees were required to be maintained, (as a condition of approval) shall be responsible for continued maintenance of such trees. Buyers of property with such trees, as well as buyers of new all single-family homes, shall be given disclosure notices from the owner and/or developer of this requirement, and all other responsibility of tree management and/or preservation as required by this chapter.

(L) *Previously approved projects.* Projects having tentative map, final development plan, use permit, and/or design review approval prior to the effective date of this chapter are not subject to this section of the chapter, unless those pre-existing approvals expire.

(Ord. 897-C-S, passed 10-25-94)

#### **§ 9-5.1206 BONDS AND PENALTIES.**

(A) *Payment required.*

(1) *Payment amount.* Payments in the amounts as listed by the following table will be collected by the city pursuant to the requirements for bonds and/or penalties as mandated by this chapter:

<b>Tree Size (Diameter)</b>	<b>Bond Amount</b>
10 to 17 inches	\$1,000
18 to 25 inches	\$2,000
26 to 36 inches	\$3,500
37 to 48 inches	\$5,000
48 and larger	\$10,000

(2) *Acceptable methods of payments.* All payments made for penalties and or bonds shall be cash, or equivalent security, as approved by the City Attorney.

(3) *Maximum bond amount per development parcel.* The property owners' and/or developers' obligation for cash or other security deposit shall not exceed a maximum of \$25,000 per development parcel.

(B) *Refund of bond security.* At the end of the course of property development as defined by this chapter, the city shall make a determination as to the health of the protected tree(s) for which a security deposit was made. Unless the tree(s) shows obvious signs of ill health, the deposit shall be returned to the developer and/or property owner. Should the tree be in poor condition, the city may either:

- (1) Extend the length of time the bond is held; or
- (2) Require that the bond be forfeited and used for tree replacement.

(C) *Use of penalties and forfeited bonds.* The money acquired by the city under this section shall be used as follows:

(1) Money collected in conjunction with property development shall be used in the following order or preference, at the direction of the Director of Community Development:

- (a) To replace trees that have died during the course of property development with a tree of the same species and as close in size as reasonably possible.
- (b) To provide additional landscaping on the developers' or property owners' property.
- (c) To upgrade and/or landscape public places in the vicinity of the property.

(2) Money collected by the payment of penalties for failure to obtain a tree removal permit from the Department of Parks, Leisure and Community Services (independent from site development) shall be used for neighborhood beautification project as per the discretion of the Director of Parks, Leisure and Community Services.

(D) *Exemption from fine.* No penalty shall be paid and/or security deposit bond forfeited if a tree dies during the course of property development but for reasons beyond the developer's reasonable control. In order for this exception to be granted, all grading and construction must be consistent with approved plans.

(Ord. 897-C-S, passed 10-25-94)

#### **§ 9-5.1207 TREE PLANTING RESTRICTIONS.**

In order to protect underground utilities and sidewalks, it is necessary for the city to place restrictions on the location and species of trees to be planted.

(Ord. 897-C-S, passed 10-25-94)

#### **§ 9-5.1208 DEFINITION OF RESTRICTED TREES.**

The following trees are to be restricted due to their evasive root systems.

(A) The *Salix* species, which includes all willows except for "Australian willow" (*Geijera perviflora*) which has non-evasive roots and may be planted without restrictions.

(B) The *populus* species, which includes all cottonwoods, poplars and aspens.

(Ord. 897-C-S, passed 10-25-94)

#### **§ 9-5.1209 REGULATIONS OF PLANTING RESTRICTED TREES.**

It shall be unlawful to plant any restricted trees as defined by this article anywhere in the city, unless the City Engineer first approves the proposed site as one where the roots will not likely interfere with underground utilities.

(Ord. 897-C-S, passed 10-25-94) Penalty, see § 9-5.2904

#### **§ 9-5.1210 REGULATIONS ON TREE LOCATIONS.**

Trees planted on private property, outside of a city right-of-way, shall be at least five feet from the sidewalk. Branches from such trees shall be trimmed to clear the sidewalk by at least seven feet and to clear the street by at least 14 feet.

(Ord. 897-C-S, passed 10-25-94; Am. Ord. 926-C-S, passed 7-23-96) Penalty, see § 9-5.2904

#### **§ 9-5.1211 DECLARATION OF PUBLIC NUISANCE.**

Any tree or shrub growing on private property, which tree or shrub is endangering or in any way may endanger the security or usefulness of any public street, sewer, sidewalk, or other public facility, is hereby declared to be a public nuisance.

(Ord. 897-C-S, passed 10-25-94)

#### **§ 9-5.1212 REQUIRED ABATEMENT OF PUBLIC NUISANCE.**

(A) The property owner is required to abate the tree and or shrub declared a public nuisance. The city may remove or trim such tree or shrub on private property. Failure of the property owner to remove or trim such tree or shrub after 10 days' notice by the City Engineer shall be deemed a violation of the provisions of this chapter.

(B) Nothing contained in this chapter shall be deemed to impose any liability upon the city or its officers or employees, nor to relieve the owner of any private property from the duty to keep any tree or shrub upon his property, or under his control, in such condition as to prevent such tree or shrub from constituting a public nuisance as set forth in this section.

(Ord. 897-C-S, passed 10-25-94) Penalty, see § 9-5.2904



Antioch Municipal Code Section 9-5.203, Definitions

The following definitions are contained in the Antioch Municipal Code and pertain directly to the preservation of trees:

TREE. A usually tall woody plant, distinguished from a shrub by having a comparatively greater height and, characteristically, a single trunk rather than several stems. To be considered a TREE, the subject species's height at maturity should be no less than 15 feet.

(1) ESTABLISHED TREE. This shall be any tree which is at least 10 inches in diameter, as measured four and one half feet above natural or finished grade. ESTABLISHED TREES include mature and landmark trees as defined by this chapter.

(2) INDIGENOUS TREE. This shall be a naturally growing tree of the following species:

Blue Oak (*Quercus douglasii*)

Valley Oak (*Quercus lobata*)

Coast Live Oak (*Quercus agerifolia*)

Canyon Live Oak (*Quercus chrysolepis*)

Interior Live Oak (*Quercus wislizenii*)

California Buckeye (*Aesculus californica*)

California Bay (*Umbellularia californica*)

(3) LANDMARK TREE. This shall be any tree which is at least 48 inches in diameter and/or in excess of 40 feet in height.

(4) MATURE TREE. This shall be any tree which is at least 26 inches in diameter, as measured four and one-half feet above natural grade.

(5) PROTECTED TREE. This shall be defined as any of the following:

(a) Any tree required to be preserved as a condition of an approval from a "regular development application" as defined by this section, and/or any tree that is shown to be preserved on an approved development plan as submitted by the applicant and subsequently approved by the city.

(b) All established indigenous trees as defined by this section.

(c) All street trees as defined by this section.

(d) All mature and landmark trees as defined by this section.

(6) STREET TREE. This shall be any tree planted within either the public right-of-way and/or tree planting easement, where applicable.

TREE COMMITTEE. A committee consisting of Director of Parks, Leisure and Community Services, City Engineer, Director of Community Development and one member of the general community with documented experience in horti-



culture, to be selected by the City Council. This committee shall review matters related to tree preservation.