

ORDINANCE 04-01
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST SACRAMENTO
REPEALING AND READOPTING SECTION 2.18 OF THE MUNICIPAL CODE
RELATED TO TREE PRESERVATION

The City Council of the City of West Sacramento does ordain as follows:

Section 1.

On November 1, 1989 the City Council Adopted Ordinance 89-4 addressing tree preservation. The City Council hereby desires to update the tree preservation ordinance.

Section 2.

Chapter 8.24 of the Municipal Code is hereby repealed.

Section 3.

Chapter 8.24 is hereby adopted to read in full as follows:

Sections:

8.24.010	Purpose
8.24.020	Definitions
8.24.030	Responsibility
8.24.040	Street Trees Maintenance – Permit Required
8.24.050	Street Trees - Permit Exceptions/Utility Companies
8.24.060	Landmark and Heritage Trees/Maintenance - Permit Required
8.24.070	Landmark, Heritage and Street Trees - Construction - Permit
8.24.080	Tree Permit - Application - Process - Decision
8.24.084	Removal of Trees - Mitigation and Replacement
8.24.090	Development Projects - Tree Plan
8.24.100	Liability
8.24.110	Abatement of Dangerous Condition
8.24.120	Stop-work Order
8.24.130	Appeals
8.24.140	Violation - Penalty

8.24.010 Purpose.

It is recognized that the preservation of trees enhances the natural beauty of the City, sustains long-term potential increases in property values, maintains the environment, tempers the affect of extreme temperatures, creates the identity and quality of the City which is necessary for successful business to continue, improves the attractiveness of the City to visitors and increases the oxygen output of the area which is needed to combat air pollution. For these reasons, the City Council finds that in order to promote the public health, safety and general welfare of the City, while at the same time recognizing individual rights to develop private property in a manner which will not be prejudicial to the public interest nor prohibit development of private property, it is necessary to enact regulations governing the removal and preservation of certain trees on private and public property within the City in addition to the planning and maintenance of Street Trees within new and already established developments.

8.24.020. Definitions.

As used in this chapter the following words and terms shall have the following meanings:

"City Manager" means the City Manager or his/her designated representative.

"Construction Activity" means the incorporation of labor and materials to build any structure requiring a permanent or temporary location.

"Development Project" means any project undertaken for the purpose of development, to include projects involving the issuance of a permit for construction or reconstruction but not a permit to operate.

"Drip Line Area" means the area measured from the trunk of the tree outward to a point at the perimeter of the outermost branch structure of the tree.

"Emergency" means an imminently dangerous condition of a tree or trees, and if such condition were abated according to the procedures set forth in this Chapter requiring notice and an opportunity for a hearing, may, during the pendency of those proceedings subject the public, occupants, or neighbors, or the property of these persons to potential harm of a serious nature.

"Heritage Tree" means any living tree with a trunk circumference of 75" or more or a Native Oak with a trunk circumference of 50" or more, both measured 4'6" from ground level. The circumference of multi-trunk trees shall be based upon the sum of the circumference of each trunk.

"Landmark tree" means any tree or stand of trees that is especially prominent, stately or which is of historical significance as designated by the City Council.

"Maintain" or 'maintenance" means and includes major trimming or pruning and other similar acts which promotes the life, growth, health or beauty of trees, excepting only watering, unless specifically so stated. Major trimming and pruning means the removal of branches of 5 inches in diameter or greater.

"Native Oak Tree" means a living tree of any species of the Quercus Genus (all oaks, including the nine native California oaks); for example, the Interior Live Oak (*Quercus wislizenii*), Valley Oak, California White Oak (*Quercus lobata*), or Blue Oak (*Quercus douglasii*.)

"Owner" means the legal owner of real property fronted upon any street shown on the last equalized assessment role.

"Public Street" means any improved street, road, avenue, boulevard or parkway located within the City and dedicated to the public.

"Street Tree" means and includes any tree growing or placed within the tree maintenance strip or public right of way

"Tree" means any wooden perennial plant having one or several structural bearing trunk stems commonly achieving 9' or more in height.

"Tree Administrator" means the individual appointed by the City Manager who, among other things, administers and enforces this Chapter.

"Tree Maintenance Strip" means a strip of land parallel to a public street and adjacent thereto which is 12 %2' wide, measured from the back of the curb of the street, or the edge of the paved portion of the street if the street does not have a curb at that location.

"Tree Permit" means written authorization by the Tree Administrator to perform an activity on a Street, Heritage or Landmark Tree

8.24.30 Responsibility

It is the responsibility of the property owner to maintain, in a proper fashion, all trees on his/her property. The property owner must ensure that the trees on his/her property do not pose a danger to his/her own property or the property of others.

Street trees, except those in a street center median, are the responsibility of the property owner of the adjacent property.

Property owners that do not properly maintain trees on their property or Street Trees for which they are responsible and, as a result, create an emergency will be subject to the provisions of 8.24.120 of this chapter.

8.24.040 Street Trees/Maintenance - Permit Required.

Except as required in this chapter, it is unlawful for any person to perform any of the following acts with respect to Street Trees, without a tree permit issued by the Tree Administrator:

- A. Plant any tree within a Tree Maintenance Strip or public right of way, other than those species that are designated in the West Sacramento Landscape Development Guidelines.
- B. Move, remove, cut down, poison, set fire to or permit fire to burn in proximity to or perform or fail to perform any act which results in the unnatural death or destruction of a Street tree;
- C. Perform any activity that will interfere with or retard the natural growth of any Street Tree;
- D. Perform any work or permit any work to be performed within the drip line area of a Street Tree which would endanger the tree;
- E. Trim or prune any branch of a Street Tree which is 5" in diameter or greater

8.24.050 Street Trees - Permit Exceptions/Utility Companies.

A public utility shall not be prohibited from performing such acts with respect to Street Trees as may be necessary to make repairs, comply with applicable safety regulations or to avoid the interruption of services.

8.24.060 Landmark and Heritage Trees/Maintenance - Permit Required.

It shall be unlawful to perform any of the following acts with respect to a Landmark or Heritage Tree within the city limits without a tree permit issued by the Tree Administrator:

- A. Move, remove, cut down, poison, set fire to or permit fire to burn in proximity to or perform or fail to perform any act which results in the unnatural death or destruction of a Landmark or Heritage Tree;
- B. Perform any activity that will interfere with or retard the natural growth of any Landmark or Heritage Tree ;
- C. Perform any work or permit any work to be performed within the drip line area of a Landmark or Heritage Tree which would endanger the tree; Trim or prune any branch of a Landmark or Heritage Tree which is 5" in diameter or greater

8.24.070 Landmark , Heritage and Street Trees - Construction - Permit Required.

During construction activity on any property upon which a Landmark, Heritage or Street Tree is located, it is unlawful for any person to perform any of the following acts without a tree permit issued by the Tree Administrator, which permit shall not be denied if the activities are deemed necessary for the project and proper care is taken to protect any Landmark , Heritage or Street Tree:

- A. Change the appropriate amount of irrigation or drainage water provided to any Landmark, Heritage or Street Tree;
- B. Trench, grade pave or otherwise damage or disturb any exposed roots within one foot outside the drip line area of any Landmark Heritage or Street Tree;
- C. Park or operate any motor vehicle within one foot outside the drip line area of any Landmark, Heritage or Street Tree;
- D. Place or store any equipment or construction materials within one foot outside the dripline area of any Landmark, Heritage or Street Tree;
- E. Place, apply or attach any signs, ropes, cables or any other items to any Landmark, Heritage or Street Tree;
- F. Cut or trim any branch of any Landmark, Heritage or Street Tree that is 5" in diameter or greater;
- G. Place or allow to flow any oil, fuel, concrete mix or other deleterious substance into or over within one foot outside the drip are of any Landmark, Heritage or Street Tree.

8.24.080 Tree Permit - Application - Process- Decision.

- A. Any person seeking to perform any activity on a Landmark, Heritage or Street Tree shall contact the Tree Administrator to discuss to proposed activity, and, if deemed necessary, the Tree Administrator will inspect the site of the proposed activity. After initial consultation between the applicant and the Tree Administrator, the Tree Administrator shall confirm whether or not a permit is required. If it is determined that a permit is required, the applicant shall apply for a permit. The application shall be signed by the property owner or his/her authorized agent.
- B. The application shall contain the following information:
 - 1. Location, size and species of the tree;
 - 2. The type of activity for which the permit is sought;
 - 3. A statement of the reasons for the activity;
 - 4. Funds for an arborists report if applicable.
 - 5. For a development project, the tree plan as provided by Section 8.24.100;
 - 6. And such pertinent information as the Tree Administrator may require.

- C. In reaching a decision to grant or deny a tree permit, the Tree Administrator shall take into account the following:
1. The condition of the tree with respect to disease, general health, damage, public nuisance, danger of falling, proximity to existing or proposed structures, and interference with utility services, and whether or not the tree acts as host for a plant which is parasitic. If the removal of the tree is requested for this reason, a written evaluation of the health and status of the tree(s), by an I.S.A. Certified Arborist; may be commissioned by the Tree Administrator. The person requesting removal of the tree shall be responsible for the cost of the arborist report.
 2. The number of existing trees in the area and the effect of any proposed removal upon the public health and safety, or the prosperity, beauty and general welfare of the area.
 3. Mitigation measures as proposed or replacement measures as required;
 4. Steps to avoid or minimize removal and destruction of trees.
 5. The adverse impacts on the future development of the site, including the increased costs of development and construction, the reduction in the size of the proposed structure or structures and other adverse economic impacts on the landowner or developer.
 6. The zoning of the property and the immediate and future impacts based on the granting or denial of the permit.
- D. The Tree Administrator shall render a decision granting or denying the application for a tree permit within 30 days from the date the completed application is received. As a condition of granting a tree permit, the Tree Administrator may require that the work be performed by a person who, in the opinion of the Tree Administrator, is qualified by education or experience to perform the work and holds a valid business license issued by the City for such purpose. Decisions made by the Tree Administrator are subject to appeal pursuant to the procedures set forth in 8.24.140 of this chapter. If the Tree Administrator fails to make a decision in 30 days, it will be assumed that the tree permit has been denied and the applicant will be granted an appeal hearing before the Hearing Officer at no cost to the applicant.
- E. If a permit is granted to remove the tree(s), a copy of the tree permit shall be posted in a conspicuous location on the property near the tree during the removal of the tree. The tree contractor removing the tree(s) shall provide the Tree Administrator proof of current liability insurance prior to final issuance of the tree permit.

8.24.084. Removal of Trees - Mitigation and Replacement.

- A. Heritage or Landmark Trees. When the Tree Administrator has granted a Tree Permit to remove a Heritage or Landmark Tree, said permit shall require the applicant to replace the tree with a living tree on the property or within the City of West Sacramento in a location approved by the Tree Administrator. Said location will be specified in the tree permit. The property owner will replace the tree and continue to replace the replacement tree if the tree dies any time within three years of the initial planting. Replacement shall not be required if a tree is in need of removal solely because it poses a risk to persons or property or if the tree acts as a host for a plant that is parasitic.

Replacement trees will be planted at the rate of one (1) inch diameter of replacement plant for every one (1) inch diameter of tree removed. A diameter shall be measured at 4'6" from ground level. Replacement trees may be a combination of fifteen (15) gallon size trees, which are the equivalent of a 1" diameter tree or 24" box trees which are the equivalent of a 3" diameter tree.

If the property owner is unable to replace the tree on his/her property or within an area approved by the Tree Administrator, the Tree Administrator shall require the property owner to pay an in lieu fee to the City. An in lieu fee payment shall not be required if the tree is in need of removal solely because it poses a risk to persons or property or if the tree acts as a host for a plant that is parasitic. Such fees shall be set by City Council resolution and be used for the purpose of purchasing and planting trees elsewhere in the City of West Sacramento.

- B. Street Trees. When the Tree Administrator has granted a Tree Permit to remove a Street Tree, said permit shall require the permittee to replace the tree. The permittee shall provide the replacement tree of a size and species pursuant to the City of West Sacramento Landscape Development Guidelines and plant said tree in the location specified by the Tree Administrator in the tree permit. The minimum replacement tree size should be at least 15 gallons and shall be planted in accordance with the guidelines set forth in the West Sacramento Landscape Development Guidelines. In the event a Street Tree also meets the definition of a Heritage or Landmark Tree then the replacement guidelines shall be those specified for Heritage and Landmark Trees.
- C. Development. Trees removed as a result of a Development Project shall be replaced in accordance with the replacement schedule set forth for Landmark, Heritage and Street Trees. Tree plantings required for the replacement of removed trees shall be in addition to those required as a condition of a Development Project pursuant to the West Sacramento Landscape Development Guidelines.

8.24.090 Development Projects - Tree Plan.

Any application for a Development Project shall be accompanied by a tree plan containing the following information:

- A. Contour map showing the location, size, species and condition of all existing trees which are located on the property proposed for development;
- B. Identification of those trees which the applicant proposes to preserve and those Heritage , Landmark and Street Trees which are proposed to be removed and the reason for such removal;
- C. A description of measures to be followed to ensure survival of Heritage, Landmark and Street Trees during construction;
- D. A program for the preservation of Heritage, Landmark and Street Trees during and after completion of the project which shall include the following:
 - 1. Each tree or group of trees to be preserved shall be enclosed with a fence prior to any grading, movement of heavy equipment, approval of improvement plans or the issuance of any permits and such fence shall be removed following construction but prior to installation of landscaping material.
 - 2. Fencing shall be located one foot outside of dripline of the tree or trees and shall be a minimum of 6' in height.

3. Signs shall be posted on all sides of fences surrounding each tree stating that each tree is to be preserved;
 4. Any and all exposed roots shall be covered with a protective material during construction.
- E. A program for the replacement of any trees proposed to be removed. Said program shall be in conformance with section 8.24.081 of this Chapter.

8.24.100 Liability

This chapter shall not be construed to impose any liability upon the city, its officers or employees for the performance of any act or the failure to perform any act under this chapter, and shall not relieve the owner from the duty to keep any tree upon his or her property in such condition as to prevent it from causing damage or constituting a nuisance. By enactment of this chapter, the city is not assuming responsibility for the maintenance of Heritage, Landmark or Street Trees, nor relieving the property owner of the duty to maintain such trees at his or her own expense.

8.24.110 Abatement of Dangerous Condition

- A. An owner is not precluded by this chapter from taking action, in the event of an emergency, which action would otherwise violate the terms of this chapter, if such action is necessary to minimize a dangerous condition. In the event such emergency action is taken, the owner shall notify the Tree Administrator the next working day.
- B. In the event that an owner has not properly maintained trees for which the owner is responsible and the trees pose an imminent danger to persons and/or property, constituting an emergency the Tree Administrator shall refer the matter to the Chief of Police for commencement of Summary Abatement pursuant to Chapter 19.05.03 of the Municipal Code. at the owner's expense, cause the tree to be removed or have the dangerous condition otherwise rectified.
- C. In the event that an owner has not properly maintained trees for which the owner is responsible and the trees and the condition does not pose an imminent threat to persons and/or property but has the potential to pose such a threat, the Tree Administrator shall give the owner 30 days to eliminate the potentially dangerous condition. If the condition has not changed in 30 days the Tree Administrator shall refer the matter to the Chief of Police for the commencement of Abatement pursuant to Chapter 19.05.04 of the Municipal Code.

8.24.120 Stop-work Order.

Whenever the Tree Administrator determines that an action being taken is in conflict with this chapter, he shall cause there to be issued a stop work order, which shall prohibit such action. Such stop work order shall set forth the alleged violations and may list remedies to be taken to correct the violations. The person receiving the stop work order shall be required to report in writing to the Tree Administrator within forty-eight hours regarding the steps to be taken to correct the violations or to appeal the posting of the stop work order. The stop work order shall remain in effect until a finding is made that the circumstances giving the rise to its order no longer exist. Any party receiving a stop work order may appeal through the process outlined in Section 8.24.140.

8.24.130 Appeals.

Any person dissatisfied with any decision of the Tree Administrator made under this chapter may appeal such decision to the City's Hearing Officer. The process for appeal is set forth in Chapter 1.08 of the Municipal Code.

8.24.140 Violation - Penalty.

Any person, corporation or other legal entity that violates or fails to comply with any provision of this chapter is guilty of a misdemeanor. Any person, corporation or other legal entity convicted of a misdemeanor for violation of this chapter is punishable for a fine of not more than one thousand dollars, or by imprisonment not to exceed six months, or both. Each person, corporation or other legal entity is guilty of a separate offense for each and every tree each and every day, during any portion of which violation of this chapter is committed, continued or permitted by any such person, corporation or legal entity; and such person, corporation or legal entity shall be punished accordingly. In addition to the general penalty set forth above, any condition caused or permitted to exist in violation of this chapter shall be deemed a public nuisance and may be abated by the city in accordance with Title 19 of the Municipal Code. and other applicable provisions of law. Each day such condition continues shall be regarded as a new and separate offense. In any abatement action the remedies ordered may include, but need not be limited to, compliance with the mitigation and replacement requirements as set forth in Section 8.24.084.

Section 4. Effective date and publication

This ordinance shall take effect 30 days after its adoption, and pursuant to Resolution 99-46, published in summary format prior to adoption and within 15 days after adoption in a paper of general circulation published and circulated within the city of West Sacramento.

PASSED AND ADOPTED by the City Council of the City of West Sacramento this 18th day of February, 2004, by the following vote:

AYES: Kristoff, Montemayor, Pierson, Villegas, Cabaldon
NOES: None
ABSENT: None

ATTEST:

Christopher L. Cabaldon, Mayor

Helen M. Kanowsky, City Clerk

APPROVED AS TO FORM:

Robert E. Murphy, City Attorney

CODIFY