

## CHAPTER 8.12

### TREES ON PRIVATE PROPERTY—PRESERVATION, PROTECTION AND REMOVAL

#### 8.12.010 - Purpose.

- A. This Chapter governs preservation of certain protected trees in the City of Martinez. The purpose of this Chapter is to provide for protection of trees on private property by controlling tree removal while allowing for reasonable enjoyment of private property rights and property development for the following reasons:
1. The City finds it necessary to preserve trees on private property in the interest of the public health, safety and welfare and to preserve scenic beauty.
  2. Trees provide soil stability, improve drainage conditions, provide habitat for wildlife and provide aesthetic beauty and screening for privacy.
  3. Trees are a vital part of a visually pleasing, healthy environment for the City of Martinez.

(Ord. 1209 C.S. § I, 1993.)

#### 8.12.020 - Permit Required.

- A. No person shall trench, grade or fill within the dripline of any protected tree (as defined below) or cut down, destroy, trim by topping or remove any protected tree on private property within the City without a tree permit, except as provided for in Section 8.12.050.

A protected tree is any one of the following:

1. On all properties within the City:
  - a. All oak trees and indigenous trees measuring 20 inches or larger in circumference (approximately 6.5 inches in diameter), measured 4 ½ feet from ground level. Oak trees include but are not limited to: *Quercus agrifolia* (California or Coast Live Oak), *Quercus douglasi* (Blue Oak), *Quercus kelloggii* (California Black Oak) or *Quercus lobata* (Valley Oak). Indigenous trees include but are not limited to: *Sequoia Sempervirens* (Coast Redwood), *Alnus Rhombifolia* (White Alder), *Alnus Oregona* (Red Alder), *Acer Macrophyllum* (Bigleaf Maple), *Aesculus Californica* (California Buckeye), *Arbutus Menziesii* (Madrone), *Umbellularia Californica* (California Bay or Laurel), *Juglans Hindsii* (California Black Walnut), *Platanus Racemosa* (California Sycamore), or *Sambucus Calliarpa* (Coast Red Elderberry).
  - b. Any tree shown to be preserved on an approved tentative map or development plan or required to be retained as a condition of approval.
  - c. Any tree required to be planted as a replacement for an unlawfully removed tree.
2. On any of the properties specified in Subsection 3 below:

- a. Any tree measuring 20 inches or larger in circumference (approximately 6.5 inches diameter), measured 4 ½ feet from ground level including the oak trees listed above);
  - b. Any multi-stemmed tree with the sum of the circumferences measuring 40 inches or larger, measured 4 ½ feet from ground level;
  - c. and any significant grouping of trees, including groves of four or more trees.
3. Specified properties referred to in Subsection 2 above includes:
- a. Any developed property within any commercial, professional office or industrial district.
  - b. Any undeveloped property within any district.
  - c. Any area designated on the General Plan for recreational purposes or open space.
  - d. Any area designated in the General Plan Open Space element as visually significant riparian or skyline vegetation and where the tree is adjacent to or part of a riparian, foothill woodland or oak savanna area, or cultivated orchard (within the Open space element) designated. Riparian trees include but are not limited to those listed as indigenous trees in subsection A.1.a. above.
- B. Any person proposing to trench, grade or fill within the dripline of any protected tree or cut down, destroy, trim by topping or remove any protected tree shall apply to the City of Martinez Community Development Department for a tree permit, not less than ten days prior to the proposed tree removal or tree alterations.
- C. The application shall include the following information:
1. The number, size (including height and diameter measured 4 ½ feet above ground), species, location, dripline and condition of each tree proposed to be altered or removed;
  2. The reason(s) for alteration or removal;
  3. A plot plan showing the approximate location of all trees on the site, including those proposed to remain;
  4. Proposed method of tree alteration or removal;
  5. Information indicating the effect of tree alteration or removal on soil stability and erosion if located on a steep slope or near any creek;
  6. The signature of the property owner or if the permit is requested by someone other than the owner, a written authorization from the owner.
  7. Additional information as may be required by the City upon review of the above information.

(Ord. 1209 C.S. § I, 1993.)

8.12.030 - Review of Permit Application.

- A. Prior to making a decision, a representative of the Community Development Department shall make a site inspection and shall review the application using the criteria below.
- B. If the reasons for alteration or removal relate to the health of the tree or if grading, trenching or filling is proposed under the dripline of an existing tree and the Community Development Department determines that more technical expertise is necessary to make the decision, a report prepared by an arborist may be required, to be paid for by the applicant.
- C. In granting or denying the tree permit the following factors shall be considered:
  1. General.
    - a. The proximity and number of other trees in the vicinity;
    - b. The relationship of the subject property to open space or open space plans and policies.
  2. Approval.
    - a. The arborist report indicates that the tree is in poor health and cannot be saved;
    - b. The tree is a public nuisance and is causing damage to public utilities or streets and sidewalks that cannot be mitigated by some other means (such as root barriers etc.);
    - c. The tree is in danger of falling and cannot be saved by some other means (such as pruning);
    - d. The tree is damaging existing private improvements on the lot such as a building foundation, walls, patios, decks, roofs, retaining walls, etc.;
    - e. The tree is a species known to be highly combustible and is determined to be a fire hazard;
    - f. The proposed tree species or the form of the tree does not merit saving (i.e. a tree stunted in growth, poorly formed, etc.);
    - g. Reasonable development of the property would require the alteration or removal of the tree and this development could not be reasonably accommodated on another area of the lot;
  3. Denial.
    - a. The applicant seeks permission for the alteration or removal of a healthy tree that can be avoided by reasonable redesign of the site plan prior to project approval (for non-discretionary permits);
    - b. It is reasonably likely that alteration or removal of the tree will cause problems with drainage, erosion control, land stability, windscreen, visual screening, and/or privacy and said problems cannot be mitigated as part of the proposed removal of the tree.
    - c. The tree to be removed is a member of a group of trees in which each tree is dependent upon the others for survival.

- d. The value of the tree to the neighborhood in terms of visual effect, wind screening, privacy and neighboring vegetation is greater than the hardship to the owner.
- e. If the permit involves trenching or grading and there are other reasonable alternatives including an alternate route, use of retaining walls, use of pier and grade beam foundations and/or relocating site improvements.

C. Permit Decision:

1. The Community Development Director or his/her designee shall grant or deny tree permits in accordance with this Chapter. If a permit is granted, the Director may attach conditions to insure compliance with this Chapter. These conditions may include a requirement to replace any or all trees on a comparable ratio of either size or quantity. Permits shall be valid for a period of 90 days and may be renewed by the Director upon request by the applicant.
2. If a permit is denied, the Director shall state the reason for denial.
3. Notice of decision shall be mailed to the applicant.

D. Appeals:

1. Any person may appeal the Director's decision within ten days of the Director's decision as outlined in Section 22.06.050 of the Zoning Ordinance.
2. Appeals shall be made in writing and state the specific reasons why the decision does not meet the criteria for granting or denial of a permit as stated in this ordinance.

(Ord. 1209 C.S. § I, 1993.)

8.12.040 - Exceptions.

A tree permit is not required for the following situations:

- A. Any tree whose condition creates a hazardous situation which requires immediate action as determined by the Community Development Director, Director of Leisure and Community Services, Police Department or the Fire District.
- B. Any tree whose removal was specifically approved as a part of an approved development plan, subdivision or other discretionary project.

(Ord. 1209 C.S. § I, 1993.)

8.12.050 - Property Proposed for Development.

- A. On any property proposed for development approval, tree alterations or removal shall be considered as a part of the project application.
- B. All trees proposed to be removed, altered or otherwise affected by construction shall be clearly indicated on all grading and development plans. A tree survey shall be required as a part of the project application indicating the number, size, species and location of the dripline of all trees on the property. This survey shall be overlaid on the proposed grading

and development plans. The plan shall include a tabulation of all trees proposed for removal.

- C. The granting or denial of a tree removal program which is a part of a development proposal covered by this section shall be governed by Sections 8.12.030(B). A separate tree removal permit shall not be required.

(Ord. 1209 C.S. § I, 1993.)

#### 8.12.060 - Tree Protection.

##### A. Tree Protection Required

On all properties where trees are required to be saved during the course of development, the developer shall follow the following tree preservation standards:

1. Prior to the start of any clearing, stockpiling, trenching, grading, compaction, paving or change in ground elevation on a site with trees to be preserved, the applicant shall install fencing at the drip line or other area as determined by an arborist report of all trees adjacent to or in the area to be altered. Prior to grading or issuance of any permits the fences shall be inspected and the location thereof approved by City staff.
2. No grading, compaction, stockpiling, trenching, paving or change in ground elevation shall be permitted within the drip line unless indicated on the grading plans approved by the City and addressed in a report prepared by a licensed arborist. If grading or construction is approved within the dripline, the arborist may be required to be present during grading operations. The arborist shall have the authority to require protective measures to protect the roots and to stop construction if necessary to protect the trees. Upon completion of grading and construction, the arborist shall prepare a report outlining further methods required for tree protection if any are required.
3. No parking or storing vehicles, equipment, machinery or construction materials, construction trailers and no dumping of oils or chemicals shall be permitted within the drip line of any tree to be saved.

##### B. Deposit.

Prior to the issuance of any grading or building permit for a property where trees are required to be saved, the owner or developer shall deposit cash or other acceptable security with the Community Development Department on a per tree basis in an amount determined by City Council resolution.

The City shall hold the deposit for a two year period to guarantee the health of the trees for a two year period upon completion of construction. In addition, the applicant or developer shall be required to enter into a tree maintenance agreement secured by said deposit/bond by which they shall agree to maintain said trees in a living and viable condition throughout the term of the agreement. This agreement may be transferred to any new owner of the property for the remaining length of the agreement.

C. Replacement.

The property owner or developer shall notify the Community Development Department of any damage that occurs to any tree during the construction process. The owner or developer shall repair any damage as determined by an arborist.

Any tree not approved for destruction or removal that dies or is significantly damaged as a result of construction or grading shall be replaced with a tree or trees of equivalent size and of a species approved by the Community Development Department. If it is not possible or feasible to replace the tree, the Community Development Director may accept the equivalent monetary value as determined by the City to be used for other related improvements such as replacement or addition of street trees in the area.

D. Stop Work.

If any tree is damaged or destroyed during the course of construction, the City may stop further work on the project until measures to replace the tree or mitigate the damage have occurred.

(Ord. 1209 C.S. § I, 1993.)

8.12.070 - Violation

A. Misdemeanor.

1. Violation of any Section of this Chapter constitutes a misdemeanor punishable as such.
2. Each tree damaged or removed in violation of this chapter shall constitute a separate offense.

B. Joint and several liability.

1. If two or more persons are responsible for any violation of the provisions of this chapter, they shall be jointly and severally liable for the penalties and remedies set forth herein. In this connection, the person(s) who actually performs the removal, damage or cutting of a tree in violation of this Chapter shall be liable for the penalties, punishment and remedies specified in 8.12.060(A) and (C), irrespective of whether or not such conduct was authorized, directed or permitted by any other person.

C. Restitution/Mitigation.

1. In addition to and not in lieu of the criminal penalties set forth in subsection A above, any person who damages or removes a tree or causes the damage or removal of a tree in violation of this Chapter shall be civilly liable to the City for (i) providing and planting a replacement tree of value equal to the tree so damaged or removed or (ii) a payment to the City of a monetary penalty equal to such value. Said value shall be determined by City council resolution.
2. Any person who violates any provision of this chapter is liable in a civil action brought by the City Attorney to collect the replacement fees as listed above.

3. Amounts recovered under this section shall be deposited into a fund which shall be used exclusively for the planting of trees in public places in the City and for tree related educational projects or programs.

D. Violation/City approvals.

1. For as long as Section 8.12.060(C)(1) has not been complied with, the owner, owner's agent, or occupant of any property on which a violation of the provisions of this Chapter was committed shall be precluded from applying for any approval or permit issued by the City for the development or further improvement of such property. Prohibited approvals or permits shall include, but not be limited to, conditional use permits, tentative maps, variances, design review approvals, building or demolition permits or grading permits. The provisions of this Chapter shall not apply to any approval or permit which is needed or required to maintain the health or safety of those occupying existing improvements on the property.
2. Before criminal or civil proceedings may be initiated against the suspected violator, or before the City may institute the application preclusion specified in subsection D(1), above, a hearing shall be scheduled with the zoning administrator, on the alleged violation, giving the property owner notice thereof and a summary of the facts which indicated a violation has occurred. Said notice and hearing shall comply with any other procedural due process requirements that are determined to be applicable. Following the hearing at which the owner or any other interested party may present testimony and evidence, the zoning administrator shall determine whether a violation has occurred on the property. Notice of a violation and the restriction of development of the property shall be recorded in the office of the county recorder to implement the provisions of this section. If no violation of this Chapter is determined to have occurred or have been perpetrated by the persons notified of said proceedings, then no criminal or civil proceedings may be initiated against said persons under Section 8.12.060, and the City may not apply the application preclusion described in Section 8.12.060(D)(1), above.

E. Liability for Costs.

1. Any person criminally or civilly liable hereunder shall further be liable for all costs incurred by the City in connection with the investigation and enforcement of the violation.

(Ord. 1209 C.S. § I, 1993.)

8.12.080 - Definitions

As used in this chapter only, the following terms shall have the following meanings:

- A. Arborist: 1) a Certified Arborist as currently listed by the International Society of Arboriculture; or 2) a Consulting Arborist as currently listed as a member of the American Society of Consulting Arborists.
- B. Arborist Report: The report of a Certified or Consulting Arborist on (1) the possible impact of development on trees or existing tree condition; (2) the impact of any

alteration; and/or (3) restorative or other remedial action that might be feasible to address tree alterations.

- C. Development: Any changes to private property which requires the issuance of a permit from the City which permit is subject the requirements of Chapters 15 (Buildings and Construction), 21 (Subdivision) and/or 22 (Zoning).
- D. Development Application: An application for development requiring either ministerial or discretionary approvals including Design Review, Use Permits, Subdivisions, Rezoning applications, building and/or grading permits.
- E. Person: Person means any individual, agency, corporation, entity or organization.
- F. Routine Pruning: The removal of dead or dying, diseased, weak or objectionable branches of a tree in a scientific manner.
- G. Topping: The removal of the upper 25% or more of a tree's trunk(s) or primary leader.
- H. Tree: A large woody perennial plant with one or more trunks, branches and leaves, not including shrubs shaped to tree forms.
- I. Tree Removal: The destruction of any tree by cutting, regrading, girdling, interfering with water supply, applying chemicals, or by other means.
- J. Undeveloped Property:
  - 1. A parcel of private land which is vacant or a developed parcel which has remaining development potential;
  - 2. A parcel of land which can be further divided in accordance with zoning regulations of the City;
  - 3. A parcel of land on which the structures are proposed to be demolished or relocated.

(Ord. No. 1209 C.S. § I, 1993)

DEC 10 1993

93 352827

RECORDED AT REQUEST OF

RECORD AND RETURN TO:

City Clerk, City of Martinez  
525 Henrietta Street  
Martinez, CA 94553

DEC 10 1993  
AT 12:00 O'CLOCK P.M.  
COUNTY RECORDS  
L. WEIR  
RECORDER

BOOK 19253 PG 324

**RESOLUTION NO. 154-93**

**ESTABLISHING PENALTY AMOUNTS FOR VIOLATIONS TO THE  
TREE ORDINANCE AND DEPOSIT AMOUNTS FOR TREES REQUIRED  
TO BE SAVED DURING CONSTRUCTION PROJECTS**

**WHEREAS**, the City Council of the City of Martinez has adopted a revised tree ordinance; and

**WHEREAS**, the ordinance establishes criteria for posting bonds for trees to be saved during construction; and

**WHEREAS**, the ordinance provides for any person who damages or removes a tree in violation of the ordinance to provide a replacement or provide payment of equal value of said damaged or destroyed tree; and

**WHEREAS**, methods for plant appraisal to determine the value of trees have been established by the International Society of Arboriculture; and

**WHEREAS**, it has been recommended by the Planning Commission of the City of Martinez that a maximum amount of \$1000 be required as a deposit for any individual single family lot with an existing residence.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Martinez that the methods of plant appraisal established by the International Society of Arboriculture shall be used to determine the amount of deposit for the saving of trees during construction and for providing replacement trees or penalties; and

**BE IT FURTHER RESOLVED** that the maximum deposit required for existing single family lots is \$1000; and

**BE IT FURTHER RESOLVED** that should the value of trees to be saved exceed \$25,000, the following formula shall apply. If the appraised value exceeds \$25,000 the deposit would be \$25,000 plus 1/2 any amount between \$25,000 and \$50,000 plus 1/4 any amount between \$50,000 and \$100,000 plus 1/10 any amount in excess of \$100,000.

**BE IT FURTHER RESOLVED** that the City Clerk of the City of Martinez is hereby directed to cause a duly certified copy of this resolution to be filed in the office of the Recorder of Contra Costa County, State of California.

\* \* \* \* \*

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at an Adjourned Regular Meeting of said Council held on the 6th day of December, 1993, by the following vote:

AYES: Councilmembers Burt, Farley, Frazer, Vice Mayor Woodburn and Mayor Menesini

NOES: None

ABSENT: None

GUS S. KRAMER, City Clerk

By: *Jim Caroompas*  
Jim Caroompas  
Acting Deputy City Clerk  
City of Martinez

RECORDED AT REQUEST OF  
*City of Martinez*  
DEC 10 1993  
AT 11 O'CLOCK *A* M  
CONTRA COSTA COUNTY RECORDS  
STEPHEN L. WEIR  
COUNTY RECORDER

FEE: *off*

BOOK 136231  
PAGE 260