

ORDINANCE NO. 2008-138

AN ORDINANCE ADDING SECTION 18-1.407, 18-1.7, AND
18-5.14 OF CHAPTER XVIII OF THE MUNICIPAL CODE
OF THE CITY OF CLEARLAKE

The City Council of the City of Clearlake, State of California does hereby ordain as follows:

SECTION 1. **DECLARATION OF INTENT**

The purpose of this Ordinance is to establish regulations to protect certain native trees to enhance the attractiveness and livability of the City.

SECTION 2. Section 18-5.702 is hereby deleted.

SECTION 3. Section 18-1.407 of the Clearlake Municipal Code is hereby added as follows:

18-1.407 Native Tree Protection and Removal Permits

A Tree Protection Permit and Tree Removal Permit shall be required for the following:

1. Native oak trees as follows:
 - a. Blue Oak (*Quercus douglasii*);
 - b. Valley Oak (*Quercus lobata*);
 - c. Interior Live Oak (*Quercus wislizeni*);
 - d. California Black Oak (*Quercus kelloggii*);
 - e. Canyon Live Oak (*Quercus chrysolepsis*); and
 - f. Oregon White Oak (*Quercus garryana*).
2. Any other tree designated by the City Council as a "Heritage Tree"

SECTION 4. Section 18-1.7 of the Clearlake Municipal Code is hereby added as follows:

18-1.7 Native Tree Protection and Removal Permits

18-1.700 Application

Application for Native Tree Protection and Removal permits shall be made in accordance with Section 18-1.5. The City may retain an arborist at the expense of the applicant to make determinations on whether trees are sick or diseased, should be removed, and/or maintenance security can be released.

18-1.701 Native Tree Removal Permit

A Native Tree Removal permit shall be approved or approved with conditions by the Director of Planning and Community Development if, based upon information provided by the applicant, all of the findings of Section 18-5.1403 or 18-5.1406 are made. Native Tree Removal Permits shall

be valid for a period of one year from the date of issuance unless an extension is granted by the Director of Planning and Community Development

18-1.702 Appeal

A decision of the Director of Planning and Community Development may be appealed to the Planning Commission in accordance with the requirements of Section 18-1.11.

SECTION 5. Section 18-5.14 is hereby added as follows:

18-5.14 Native Tree Protection and Removal

18-5.1401 Purpose.

The City has the obligation and responsibility to preserve and protect resources that cannot be replaced while balancing the needs of commerce, industry, and the human population within its bounds. Trees are also a valuable asset to make the City environment a healthier and more aesthetically appealing place to live. Given these recognized benefits and constraints, the intent and objectives of this section are to:

- A. Protect and enhance the aesthetic qualities of the community provided by mature native trees;
- B. Promote a healthy and attractive urban landscape as the community grows;
- C. Limit the indiscriminate felling, removal, and destruction of certain trees;
- D. Require the replacement of certain trees that are removed, where appropriate; and
- E. Promote the preservation of existing trees during development.

18-5.1402 Protected Trees

A Native Tree Removal Permit shall be required for the following unless exempted under section 18-5.1403:

- a. Native oak trees with the following diameter at breast height (DBH):
 - 1. Blue Oak (*Quercus douglasii*) greater than 4 inch DBH
 - 2. Valley Oak (*Quercus lobata*) greater than 4 inch DBH
 - 3. Interior Live Oak (*Quercus wislizeni*) greater than 4 inch DBH
 - 4. California Black Oak (*Quercus kelloggii*) greater than 4 inch DBH
 - 5. Canyon Live Oak (*Quercus chrysolepsis*) greater than 4 inch DBH
 - 6. Oregon White Oak (*Quercus garryana*) greater than 4 inch DBH
- b. Any other tree designated by the City Council as a "Heritage Tree" as described in section 18-5.1406.

18-5.1403 Exemptions From Protection and Removal Regulations

No Protected Trees meeting the standards in Section 18-5.1402 may be removed until Zoning Clearance is granted pursuant to this Section. In the following situations, Protected Trees may be removed without the need for planting replacement trees as described in section 18-5.1405(c) but are first required to obtain a Zoning Clearance:

- a. The removal of dead or hopelessly diseased trees.
- b. The removal of trees judged to be hazardous to life or property;
- c. The removal of trees judged by a public utility company to be a hazard to the safety of high voltage power lines in accordance with Public Resources Code 4293.
- d. The removal of trees that must be felled to accommodate public improvements by the City, County, or public utility company.
- e. The removal of trees that pose a fire safety hazard as certified by the Lake County Fire Protection District.
- f. The removal of trees whose dripline falls within the footprint of a proposed single family dwelling, garage, and driveway on an existing lot where the trees cannot be reasonably avoided for construction.
- g. The thinning of a stand of trees to improve the overall health of the stand. In this instance, the Planning and Community Development Director shall have discretion to approve which trees shall be removed.

A Zoning Clearance shall be issued for removal of a Heritage Tree meeting criteria a-f only.

18-5.1404 Tree Protection Regulations

Any disturbances including, but not limited to the following, which might cause harm to a protected tree, are strictly prohibited within the root protection zone (RPZ) of that tree:

- a. Removing, moving, or failing to install and maintain proper temporary protection fencing in the vicinity of construction prior to completion of on-site work;
- b. Trenching;
- c. Any permanent or temporary structures, however temporary structures not fixed to the ground shall be allowed as long as they will not compact the soil;
- d. Grading, cutting, filling, or changing the natural grade in any way;
- e. Installation of an irrigation system;
- f. Covering with any substance impermeable to air and rain water, such as asphalt, concrete, plastic, etc.; however, pervious surfacing such as pavers, gravel, pervious asphalt or other such materials may be used to within $\frac{1}{2}$ the distance from the dripline of the tree to the trunk;
- g. Burning, open fires, or open flames;
- h. Compaction of the soil;
- i. Girdling; and/or
- j. Topping.

18-5.1405 Removal Regulations

a. **Removal Criteria:** Unless exempt under Section 18-5.1403, no Heritage tree shall be approved for removal unless first declassified in accordance with Section 18-5.1406(b). Native Tree Removal permits may be issued for all other Protected Trees meeting the following criteria unless a waiver is granted for a parking reduction in accordance with section (b) below:

1. Protected Trees that cannot be avoided and associated with residential or non-residential construction, remodels, renovations, expansions, or grading that does not meet exemption criteria;
2. Installation of temporary structures such as above-ground pools, sheds, or other structures that are not fixed to the ground.

A tree removal permit shall not be granted prior to the granting of all other permits required for the project in question.

b. **Waiver of Parking Spaces:** At the discretion of the Director of Planning and Community Development, the number of required parking spaces for commercial development may be reduced by up to two parking spaces per protected tree that is retained within a proposed parking lot.

c. **Removal of slash and felled trees:** All slash, downed trees or tree scraps except for wood that is cut, stacked and stored for firewood, shall be chipped, burned or removed from the property by the Permittee within forty-five (45) days following the felling of any tree. Should debris be burned, the Permittee shall first obtain a burn permit from the Lake County Fire Protection District and comply with all burning regulations. Exceptions to this section may be approved by the Director should extenuating circumstances exist that delay the clean up of the debris.

d. **Replacement Trees:**

1. For each protected tree felled and/or removed, two replacement trees shall be planted for the first six (6) inches DBH of tree removed and one tree for each additional inch of DBH of the protected tree felled. The replacement trees shall be of the same species type as that of the removed tree and shall be planted by the permittee within twelve (12) months of issuance of the removal permit. Replacement saplings shall be a minimum of a five (5) gallon sapling. All required replacement trees shall be maintained, or replaced if needed, until they are established. Should the site not contain appropriate habitat to allow for the success of same-species replacement, the Director may authorize all or partial on-site replacement of a different species from among the list of Protected Trees.
2. Where replacement trees cannot be reasonably accommodated on-site, replacement trees shall be planted off-site at a ratio of four (4) replacement trees for the first six (6) inches DBH of the protected tree felled and/or removed and one tree for each additional inch of DBH of the protected tree felled. Maintenance of replacement trees shall be as required for (d)(1) above.

3. Off-site replacement may be on other property owned by the applicant, or on public property, in locations to be determined by the City. All off-site replanting requests shall be submitted to the Director or his/her designee at the time of the tree removal permit application.
4. For off-site replacement on public property, the applicant shall contribute to a fund established by the City to replant and maintain the trees. The fee shall be established by the City Council and shall be equivalent to the estimated cost to purchase, replant, and maintain the trees until established.

A Tree Replacement Plan shall be submitted with all applications for a Native Tree Removal Permit where the applicant is proposing to undertake the replanting. The plan shall be reviewed and approved by the Community Development Department prior to issuance of a permit. The plan shall depict the proposed location and manner of tree replacement, consistent with the above requirements.

- e. **Security:** Security shall be provided to the City, guaranteeing the maintenance of the replacement trees for a period not less than five (5) years to minimize loss. The security shall be relinquished when it is determined the trees are established.
- f. **Inspections:** The Community Development Department may make inspections at any time during which the security is in effect to verify that the replacement trees are being maintained according to the terms of the permit.

18-5.1406 Heritage Trees

- a. Designation of Heritage Trees.
 1. A tree owner may submit an application to the City requesting that the City Council establish by resolution the designation of a tree or group of trees located on his or her property as a heritage tree(s). Applications shall be submitted on a form supplied by the City. The Council may also, on its own motion, commence the process of designating a heritage tree. The City shall notify the owner of the proposed heritage tree(s) by mail twenty (20) days prior to the meeting to consider the application. Once an application has been submitted, and prior to City Council action, the tree or trees shall be afforded the same level of statutory protection as a designated heritage tree.
 2. In order to designate a tree as a heritage tree, the City Council must find that the tree is a significantly beneficial feature of the community because it possesses one or more of the following attributes:
 - i. The tree is an outstanding specimen of a desirable species;
 - ii. The tree is one of the largest or oldest trees in Clearlake;
 - iii. The tree is of historical interest; or;
 - iv. The tree is of distinctive appearance

b. Declassification of heritage trees.

An owner of a heritage tree may submit an application to the City requesting that the City Council declassify by resolution a tree or group of trees previously designated as a heritage tree(s). The Council may also, on its own motion, commence the process of declassifying a heritage tree. The City shall notify the owner of the heritage tree(s) twenty (20) days prior to the City Council meeting scheduled for the proposed action.

The Council may declassify a heritage tree upon a finding that the tree(s) is no longer a significant community benefit because:

- i. It has deteriorated in health or appearance;
- ii. It no longer has habitat value; or
- iii. It prevents reasonable use of the property.

18-5.1407 Definitions.

For purposes of this section, the following words and phrases shall be construed as defined in this section:

- A. "Arborist" means an arborist certified by the International Society of Arboriculture (hereafter "ISA") National Arborist's Association, or American Society of Consulting Arborists.
- B. "Damage" means any intentional action or gross negligence which causes injury, death or disfigurement of a tree.
- C. "Dead tree" means a tree in which one hundred (100) percent of the foliage-bearing crown is dead or fading in color from a normal green to yellow, sorrel or brown, excluding normal autumn coloration changes.
- D. "DBH (diameter at breast height)" shall mean the diameter of a tree at four and one-half feet (54 inches) above the ground on the high side of the trunk. In the case of a tree with two or more trunks, the DBH height is the sum of the diameters of all the trunks at breast height.
- E. "Director" means Director of Planning and Community Development or his/her designee.
- F. "Disturbance" means any action which is likely to damage or to produce a negative impact of detrimental effect on the life or health of a tree.
- G. "Drip line" means the projection to the ground of the outermost edge of a tree's natural canopy. Depicted on a map it would appear as an irregular-shaped circle that follows the contour of the trees outer branches as seen from above.
- H. "Establishment" means the ability of a tree to grow well on its own.
- I. "Girdle" means to encircle the stem of a living tree with cuts that completely sever all bark layers to kill the tree by preventing the passage of carbohydrates to the roots.

- J. "Heritage tree" means any tree or grove of trees so designated by the Council for reasons of historical significance or for reasons of age, size, visibility, beauty, rarity, or for an ecological or other special/unusual attribute.
- K. "Permittee" means a property owner who has been issued a tree removal permit by the City.
- L. "Protected Tree" means a tree species or type that requires a tree removal permit to fell and/or remove.
- M. "Removal" means cutting to the ground, falling, complete extraction, destroying, or killing by girdling, root disturbance, the application of chemicals, or any other means
- N. "Replacement/restoration" means planting and nurturing new, young trees until they become established, i.e., can continue to grow well on their own.
- O. "Root protection zone" (hereafter "RPZ") means a circle around the trunk of a tree, the radius of which is equal to the largest radius of the tree's drip line.
- P. "Temporary protective fencing" means an enclosure at the outer margin of the root protection zone of a tree, sufficient to warn drivers of vehicles and heavy equipment not to enter. Examples that would be satisfactory are a wire fence at least five feet high or bright orange construction fence 40 inches high, supported by iron posts.
- Q. "Topping" means the removal of more than 25% of the tree canopy in any given year.
- R. "Tree Removal Permit" means a permit issued by the Community Development Department to allow felling, removal, and or other actions within the root protection zone of a protected tree.
- S. "Tree Replacement Plan" means a plan submitted and approved by the Community Development Department for the replacement of trees that are to be removed under a tree removal permit.

18-5.1408 Penalty.

It is unlawful for any person to commit an act which is prohibited by this section. Any violation of this section shall constitute a misdemeanor; provided, however, the City Attorney or prosecuting attorney shall have the discretion to deem a violation of this section as an infraction in accordance with section 1-5 of the City Code.

Any person found guilty of violating this section shall be fully responsible for all costs arising from or relating to enforcement, investigation and legal costs associated with an infraction or misdemeanor. Each tree removed or damaged in violation of this section shall constitute a separate violation.

The felling, removal, or damage of a tree in violation of this section shall be punishable by a fine of \$1,000.

Any person who causes a tree to be removed or damaged in violation of this section, shall repair or replace any such tree at the violator's expense pursuant to double the ratio of the tree replacement requirements set forth in section 18-5.1406(c). The location, species, and planting specification for replacement trees shall be approved by the Director prior to replanting.

SECTION 7: **CONFLICTS:**

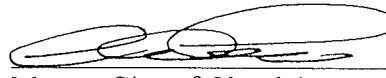
All ordinances or parts of ordinances or resolutions in conflict herewith are hereby repealed to the extent of such conflicts and no further.

SECTION 8: **EFFECTIVE DATE:**

The effective date of this Ordinance is thirty (30) days after its adoption by the City Council.

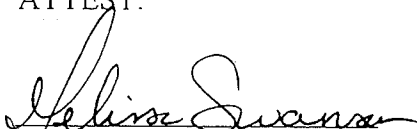
PASSED AND ADOPTED this 24th day of April, 2008
by the following vote:

AYES: Mayor Curt Giambruno, Vice Mayor Chuck Leonard, Council Member Judy
 Thein, Council Member Roy Simons
NOES: None
ABSENT: Council Member Joyce Overton
ABSTAIN: None



Mayor, City of Clearlake

ATTEST:


City Clerk, City of Clearlake



