



MEMORANDUM

Date: December 10, 2008

To: Prospective Heritage Tree Board of Appeals Members

From: Mike Fulford, City Landscape Architect
Lee Phillips, Landscape Architect Assistant

Subject: Tree Preservation Ordinance and Appeal Hearings

Summary

- Chapter 17.16 of the Municipal Code protects large, or "Heritage trees" on public and private property.
- Removal requires a permit.
- The penalty for unpermitted removal is a fine, equal to the value of the tree.
- The Tree Preservation Ordinance provides for an appeal process in the event that a permit for tree removal has been denied.
- Appeals are heard before the Heritage Tree Board of Appeals.

The following was prepared to acquaint you with the Tree Preservation Ordinance and how it is administered. It will explain the procedures that citizens and staff follow when a permit is requested for the removal of a Heritage tree. Next, the requirements of the Ordinance and various interpretations are explained, as well as the appeal process, including staff's role and your role.

The following is simply an overview of the key points of the Ordinance. We have attached a copy of the Tree Preservation Ordinance for your further review. Please feel free to ask staff any questions that you may have about the Ordinance or the permit process.

Permit Process

When a person wishes to remove a Heritage tree, they are required to fill out an application for permit (see copy attached). They may also write a letter requesting permission, but the application is most common. The application form is brief, and no fee is required. Once the application is received by staff, we review the information on the application and make a site visit to confirm the conditions surrounding the request. At the site, we first verify whether the tree is a Heritage tree. Next we consider the applicant's listed reasons for requesting permission to remove the tree. These reasons may require staff to: 1) assess the health and structure of the tree; 2) consider whether the tree is close enough to the house to be affecting the foundation; 3) consider the ultimate size of the tree and what impact the tree will have when it reaches this size; 4) consider whether other trees are on the property; 5) consider other extenuating circumstances. We consider this information and compare it to the reasons cited in the Ordinance that would allow the removal of the Heritage tree. If any of the conditions are contained within the Ordinance, we allow for removal of the tree. If the tree is in the front yard and is the only tree in the front yard, we require that the applicant plant a replacement tree somewhere in the front. If the conditions of the tree do not fall within the reasons for removal listed in the Ordinance, then we will deny the removal request and advise the applicant of the appeal process should they wish to further pursue the removal.

Tree Preservation Ordinance, Background

In 1971, the City of Pleasanton adopted Chapter 17.16 of the Municipal Code – the Tree Preservation Ordinance. The Ordinance recognizes certain trees as "Heritage Trees". In 1995, the City made changes to the Ordinance with respect to pruning requirements and penalties for illegal removal of a Heritage tree. The changes include a provision which requires that all Heritage trees be pruned in accordance with International Society of Arboriculture (ISA) guidelines (see copy of "Best Management Practices, Tree Pruning", attached). It also allows the City to fine persons whom are responsible for improper pruning. This modification was prompted by a property owner being denied permission to remove several very tall Eucalyptus trees. The property owner responded to the denial by pruning the trees so severely that they resembled "telephone poles".

The City Council also modified the penalty for removal of a Heritage tree without a permit. Instead of a flat fine of \$5,000 per tree, the change allows for a fine of \$5,000 or the appraised value of the tree, whichever is greater. This modification was prompted by a property owner in the Golden Eagle Farm development who removed two very large Oak trees and was fined only \$10,000 total, whereas the actual value of the trees was much greater.

The most recent changes to the Ordinance (approved by City Council in February 1998) address the reasons why a Heritage tree may be removed. These changes were prompted by several cases which did not fall within any of the listed criteria for removal as the Ordinance then read. The other major change again involved the fine for the unlawful removal of a Heritage tree. The Ordinance was modified so that the fine for an unlawful removal would be the appraised value of the tree. This change was prompted by a property owner who was fined for the unlawful removal of 10 Eucalyptus trees. According to the Ordinance in effect at that time, the fine for unlawful removal was \$5,000 per tree, or \$50,000 total. The property owner argued that the "value" of a Eucalyptus tree is not the same as an Oak tree and thus the fine should be reduced accordingly. The fine was reduced to \$3,000 per tree (the appraised value), or \$30,000 total.

It should be noted that consulting arborists utilize a formula for the empirical determination of a tree's value. The formula considers tree size, species, condition (health), and location.

Definition of Heritage Tree

A Heritage tree is defined as any of the following:

- any single-trunked tree with a circumference of fifty-five inches (55") or more measured four and one half feet (4½') above ground level;
- any multi-trunked tree of which the two largest trunks have a circumference of fifty-five inches (55") or more measured four and one half feet (4½') above ground level;
- any tree thirty-five feet (35') or more in height;
- any tree of particular historical significance specifically designated by official action; and/or
- a stand of trees, the nature of which makes each dependent upon the other for survival or the area's natural beauty.

Pruning Procedures and Standards

The Ordinance requires that all pruning of Heritage trees be performed by a California licensed contractor familiar with the International Society of Arboriculture's "Best Management Practices, Tree Pruning", and that the pruning itself shall comply with these guidelines. Copies of these standards are available to the general public through the Landscape Architecture Division of Parks and Community Services Department and on-line at www.isa-arbor.com.

Utility companies, in particular PG&E, are also required to prune Heritage trees in accordance with the International Society of Arboriculture guidelines. If for some reason topping is the only way to achieve the necessary line clearance, the City may grant permission after careful review of the situation. In the event that improper pruning techniques are performed on Heritage trees, the City may assess a civil penalty commensurate with the damage to the tree based on the "Guide for Plant Appraisal" written by the International Society of Arboriculture.

Procedure for Tree Preservation During New Construction

The Ordinance requires that a tree survey (location, number of trees, size and species), report (health, appraisal and recommendations for preservation) and appraised value be provided during the development review process. The appraisal shall be performed for all trees to remain as noted in the tree report. If the subject tree is damaged or removed without prior approval during construction, "the developer shall pay a fine in the amount of the appraised value of such tree".

A final tree report, prepared by a certified or consulting arborist, must be submitted prior to acceptance of the project improvements or occupancy of the project. This report will evaluate any damage or unapproved tree removal and determine the total value of the damage or loss.

Protection of Existing Trees

A number of means and methods may be utilized to protect trees from construction damage. The City's Public Works and Engineering Divisions maintain Standard Specifications for tree protection and Development plans routinely include arborist's recommendations which become a part of the Development approval by Council action. For instance: A sturdy fence must be installed at the dripline of any tree affected by construction. The fence shall be installed prior to construction and shall not be altered during the course of construction. Installing utility lines within the dripline of a Heritage tree is prohibited unless no other location is feasible. Installing utilities within the dripline of the tree can compromise the stability of the tree as well as damage the root structure of the tree. Unfortunately, these problems may not materialize until months or years later. The Ordinance requires that a certified or consulting arborist periodically monitor the site and the health of the tree(s) during any construction activities that might pose a threat to the health of the tree(s).

Fines and Penalties

The penalty for unpermitted removal or destruction of a Heritage tree is its "appraised value"; however, should there be inadequate plant material to properly appraise the value of the tree, the penalty shall be a minimum of \$5,000.

Miscellaneous

Contractors engaged in the trimming of Heritage trees must be California licensed and carry insurance. While most tree-trimming contractors working in the City conform with these requirements, there are many small operators that do not. The requirement that the contractor be licensed and insured will ensure that both developers and homeowners are protected against damage and liability caused by the contractor's work.

Heritage Tree Removal Permits

Following are the conditions for which the City shall issue a permit to remove a Heritage tree:

1. The Heritage tree is in such a dangerous or hazardous condition as to threaten or endanger the safety of people, structures, other property or other Heritage trees;
2. The Heritage tree has a significant impact on the property;
3. The Heritage tree is dead, dying or diseased and good forestry practices cannot be reasonably undertaken to preserve the tree; or
4. Where the Heritage tree in question is not diseased or hazardous, the removal of the tree is consistent with the purpose and intent of this chapter and in keeping with the health, safety and general welfare of the community.

The City will not normally approve requests for removal due to maintenance-related issues, such as leaves clogging up rain gutters, normal limb drop and/or continual leaf or pod/seed drop. The City also does not generally consider minor damage to concrete patios and pathways a dangerous condition so as to warrant the removal of the tree.

Significant Impact

The Ordinance allows the removal of a Heritage tree if it has been determined that the tree is creating a "significant impact" (assumed to be "negative"). The process for determining significant impact is somewhat subjective; therefore, it allows the City some latitude when deciding the fate of a Heritage tree which is in an unusual situation.

To receive permission to remove a Heritage tree due to significant impact, the property owner applies through the normal permit process. Upon review by staff, if it is determined that the tree does not fit within any of the criteria of the Ordinance except the significant impact category, an administrative hearing is held. All property owners within 300 feet of the subject tree are notified of the hearing. The hearing is informal, and is held before staff only to receive input from the neighboring area. Any person may speak regarding the preservation or removal of the tree. After all public testimony is heard, the City issues a written decision to preserve or allow the removal of the tree. This decision will be sent to the resident as well as all property owners within 300 feet. The decision will not be effective for 20 days. This will allow the property owner and/or neighbors to appeal the decision to the Board of Appeals.

Appeal Process

If staff denies permission to remove a Heritage tree, the decision may be appealed. The appeal consists of a letter to the City Clerk requesting an appeal of staff's decision within 20 days after receipt of the letter denying permission. Once the City Clerk receives a request for an appeal, staff will schedule a hearing with the Board of Appeals. This meeting must be set and held within 45 days following receipt of the request. In the past staff has had few appeals. Therefore, in lieu of a scheduled hearing date every month, the Heritage Tree Board of Appeals meets on an "as needed" basis.

The process for hearing an appeal is similar to most other public hearings. Staff provides a brief report about the subject tree, the appellant makes a presentation, the community has an opportunity to speak (residents within 300 feet are notified of the hearing), and the appellant may rebut. The public hearing is then closed, and the Board discusses the matter and makes its decision. Once a decision by the Board has been made, its decision is final.

If you have any questions about the Ordinance, any of the process or general ideas, please contact Mike Fulford at 931-5672 or Lee Phillips at 931-5673. Thank you.

Attachments: Application for Heritage Tree Removal
Pleasanton Municipal Code, Chapter 17.16 - Tree Preservation Ordinance
International Society of Arboriculture, "Best Management Practices, Tree Pruning"
Heritage Tree Board of Appeals Rules & Regulations