

CHAPTER 32 - TREES, SHRUBS AND PLANTS*

Sections:

ARTICLE I. - GENERAL

SEC. 32.1. - Short title.

This chapter shall be known and cited as the "Tree Regulations of the City of Mountain View."

(Ord. No. 175.659, 4/10/61.)

SEC. 32.2. - Definitions.

For the purpose of this chapter, the following terms, words, phrases and their derivations shall have the meanings ascribed to them in this section:

Director of parks and recreation. "Director of parks and recreation" shall mean the director of parks and recreation of the city or his authorized agents, assistants or deputies.

Official street trees. "Official street trees" are those trees or shrubs adopted by the parks and recreation commission as a part of the master street tree plan.

Owner. "Owner" shall mean the owner of a fee simple title of the property on which a street tree is planted.

Parkway strip. "Parkway strip" shall mean that portion of a public street between the curb and the sidewalk or the sidewalk and the property line or that portion of the public right-of-way which is not designed or used for vehicular or pedestrian travel.

Street. "Street" shall include every way maintained by a public agency and set apart for public travel or use in the city, including the entire planting strip, sidewalk area, easements and rights-of-way.

Street tree. "Street tree" includes any tree or shrub, by whomever owned or planted, in a street or public place, as defined in this section.

Unofficial street trees. "Unofficial street trees" are all street trees or shrubs which are not on the current master street tree plan.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.3. - Director of parks and recreation – Authority to enforce chapter; powers and duties generally.

- a. The director of parks and recreation is charged with the enforcement of this chapter and the performance of municipal functions as herein established.
- b. The director of parks and recreation shall have the authority to plant, trim, spray, preserve and remove street trees and shrubs and grassy areas to insure safety or preserve the symmetry and beauty of streets and public places.
- c. The director of parks and recreation shall have the authority to supervise all work done under a permit issued in accordance with the terms of this chapter.
- d. The director of parks and recreation shall have the authority to affix reasonable conditions to the granting of a permit hereunder and to require that applications for permits contain such information as he shall find reasonably necessary to a fair determination of whether a permit should be issued.
- e. The director of parks and recreation shall issue any permit provided for in this chapter when he finds that the desired action or treatment is necessary and that the proposed method and workmanship are satisfactory.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.4. - Same – Preparation of master street tree plan; contents; where filed.

A master street tree plan shall be established, which master street tree plan shall designate the type, form and location of all street trees and shrubs in the city. The master street tree plan shall be prepared by the director of parks and recreation for consideration and adoption by the parks and recreation commission. Such master street tree plan may from time to time be changed, modified, altered and amended by the parks and recreation commission. A copy of the master street tree plan shall be kept on file in the office of the city clerk.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.5. - Same – To decide in request for planting; items to be considered.

Any owner of property fronting on any street or public place may request the director of parks and recreation to cause to be planted or located on such street or public place the official street trees designated by the master street tree plan. The director of parks and recreation may cause such trees or shrubs to be planted or located on such street or public place.

In determining whether or not to proceed with such work, the director of parks and recreation shall consider the amount of money budgeted and available for such purposes, the number and scope of similar projects to be undertaken during the fiscal

year, and years following, the availability and cost of such trees or shrubs and the projected plan for planting such trees or shrubs as a part of a larger project. The decision of the director of parks and recreation shall be conclusive.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.6. - Same – Issuance of permits; conditions; term.

No person shall cut, trim, prune, plant, spray, remove, injure* or interfere with any street tree or shrub without the prior written permission of the director of parks and recreation. The director of parks and recreation may grant such permission in his discretion and, where necessary, condition such permit upon the requirement that the removed tree or shrub will be replaced by an approved tree or shrub in conformity with the master street tree plan and may impose such other reasonable conditions as he may deem in the public interest. No such permit shall be valid for a longer period than thirty (30) days after its date of issuance.

(Ord. No. 175.659, 4/10/61.)

* For state law concerning injury to trees and shrubs, see C. C., Sec. 3346; C. C. P., Sec. 733, 734; Pen. C., Sec. 600, 622; Sts. K H. C. A., Sec. 730.5.

SEC. 32.7. - Same – Interference with prohibited.

No person shall interfere with the director of parks and recreation or persons acting under his authority, while engaged in planting, mulching, pruning, trimming, spraying, treating, removing or otherwise treating any tree or shrub in any street or public place or in the removal of any stone, cement or other substance from or about the trunk of any tree or shrub in any street or public place.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.8. - Same – Inspection of street trees, etc., to determine hazard to general public.

The director of parks and recreation may inspect any street tree or shrub or any tree, shrub or plant standing on any private property to determine whether the same, or any portion thereof, is in such condition as to constitute a hazard or an impediment to the progress of any person traveling on any street or public place and for such purpose may enter upon any private property at reasonable times and in a reasonable manner.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.9. - Damage to street trees or shrubs prohibited.

No person shall:

- a. Cause, authorize or permit any brine water, oil, liquid dye or other substance deleterious to tree life to lie, leak, pour, flow or drip upon or into the soil about the base of any street tree or shrub nor on any sidewalk, road or pavement at a point from which such substances may, by lying upon or by flowing, dripping or seeping into such soil, injure such tree or shrub, nor to otherwise harm or kill any such tree or shrub.
- b. Place or maintain any stone, cement or other substance so that it shall impede the free access of water or air to the roots of any tree or shrub, without prior written approval of the director of parks and recreation.
- c. Build any fire or station any engine in any place in such a manner that the heat, vapors or fumes therefrom may injure any street trees or shrubs.
- d. Permit any leak to exist in any gas pipe or main which may result in damage to any street tree or shrub.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.10. - Attachment of wire, rope, signs, etc., unlawful.

No person shall place, apply, attach or keep attached to any street tree or shrub or to a guard or stake intended for the protection thereof any wire, rope, sign, paint or any other substance, structure, thing or device of any kind or nature whatsoever.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.11. - Protection to be provided during building operations.

During the erection, repair, alteration or removal of any building, house or structure in the city, the person in charge of such work shall provide good and sufficient guards and protective measures as shall prevent injury to any street tree or shrub in the vicinity of such work, arising out of or by reason of such erection, repair, alteration or removal.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.12. - Trimming or removal of hazardous trees, shrubs, etc.

If, in the opinion of the director of parks and recreation, any tree, shrub or plant is hazardous to the traveling public or creates a hazard by impairing vision thereof or impedes the progress of the public on any street or public place, he may cause the same,

or so much thereof as in his opinion is reasonably required so as to remedy such condition, to be trimmed or removed.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.13. - Same – Trees, shrubs, etc., on private property; notice; hearing.

- a. The director of parks and recreation shall not trim or remove any tree, shrub or plant on private property except in the event of extreme urgency and imminent danger to persons or property, unless the owner or person shown as the owner upon the last equalized tax assessment roll, has been given notice of intent to do so. Such a notice shall be given by registered or certified mail, addressed to such owner at his last known address or at the address shown upon the last equalized tax assessment roll. A copy of such notice shall also be posted on the premises or in front thereof.
- b. If the owner or occupant of the property shall, within ten (10) days, file written objection to such trimming or removal with the director of parks and recreation, such officer shall give such owner or occupant a reasonable opportunity to be heard in support of such objection before such trimming or cutting shall be performed. Such cutting or trimming shall thereafter be done only by written order of the director of parks and recreation, and the objector shall have three days' notice of such order before such work is commenced. If the objector shall, within such three (3) day period, file a written appeal from such order with the parks and recreation commission, the proposed work shall not be done until the matter has been determined by the parks and recreation commission and, in the event of an appeal therefrom to the city council, filed within three (3) days of such determination in open meeting, until the matter has been finally determined by the city council.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.14. - Liability for hazards on private property.

Nothing contained in Sec. 32.11 to 32.13 of this chapter shall be deemed to impose any liability upon the city, its officers or employees, nor to relieve the owner of any private property from the duty to keep any tree, shrub or plant upon his property or under his control in such a condition as to prevent it from constituting a hazard or an impediment to travel or vision upon any street, park, pleasure ground, boulevard, alley or public place within the city.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.15. - Responsibility for watering street trees and shrubs abutting private property.

Owners of private property shall be responsible for watering street trees and shrubs in streets, parkways or other public places abutting such private property. The city can or may water such trees or shrubs at the discretion of the parks and recreation department.

(Ord. No. 175.659, 4/10/61; Ord. No. 11.71, 4/12/71.)

SEC. 32.16. - Public nuisances – Enumerated.

The following are declared to be public nuisances:

- a. Any dead, diseased, infested or dying trees on public or private property so near to any street as to constitute a danger to street trees or streets or portions thereof.
- b. Any tree or shrub, or part thereof, which is unsafe and constitutes a hazard to the life, health or safety or property of the public or constitutes a center of infection for disease or insects which may endanger the health or life of other trees or shrubs.
- c. Any tree or shrub on any private or public property which is of a type or species apt to destroy, impair or otherwise interfere with any street improvements, sidewalks, curbs, approved street trees or other official street trees, gutters, sewers, other public improvements including utility mains, pipes or lines or their appurtenances.
- d. Vines or climbing plants growing into or over street trees, public hydrants, poles or electroliers.
- e. Existence of any tree on private or public property within the city limits that is infested, infected or in danger of becoming infested or infected with objectionable insects, scales, fungus or growth injurious to trees.
- f. Thorny shrubs and plants or foliage of any type which would tend to catch the clothing of a pedestrian using the street or sidewalk.
- g. Shrubs and plants more than twelve (12) inches in height in any parkway strip between the curb and the sidewalk, measured from the top of the curb grade.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.17. - Same – Abatement by property owner.

It shall be the duty of the owner of the property wherein or whereon any such nuisance exists to abate such nuisance by destroying, removing or trimming the growth by spraying or by other usual means of abatement.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.18. - Same – Abatement by city – Procedure generally.

- a. If any property owner fails or refuses to abate any nuisance as defined in Sec. 32.16 hereof, the city council may, after report and request filed with the city council by the director of parks and recreation, adopt a resolution requiring such property owner to abate such nuisance by removal or destruction at his cost and expense within time specified in the resolution, a copy of which resolution shall be served on such property owner personally or by registered or certified mail; if the removal or destruction is not made by such owner within the time specified, the director of parks and recreation may forthwith enter upon the premises whereon such nuisance exists and abate the same.
- b. When the city has abated any such nuisance, the director of parks and recreation shall promptly determine the cost thereof to the city, and such costs, plus accrued interest at the rate of six (6) percent per annum from the date of the completion of the work, shall be paid by the owner to the city within thirty (30) days of completion.
- c. Where the full amount so due the city is not paid by such owner within such thirty (30) days after completion, then, and in that case, the director of parks and recreation shall cause to be filed in the office of the county auditor a sworn statement showing the cost and expense incurred for the work, the date the work was done and the location of the property on which such work was done. The recordation of such sworn statement shall constitute a lien and privilege on the property and shall remain in full force and effect for the amount due in principal and interest, plus costs of court, if any, for collection until final payment has been made. Such costs and expenses shall be collected in the manner fixed by law for the collection of taxes and, further, shall be subject to the delinquent penalty of ten (10) percent in the event same is not paid in full on or before the date the tax bill upon which such charge appears become delinquent. Sworn statements filed in accordance with the provisions thereof shall be prima facie evidence that all legal formalities have been complied with and that the work has been done properly and satisfactorily and shall be full notice to every person concerned that the amount of the statement, plus interest and penalties, constitutes a charge against the property designated or described in the statement and that the same is due and collectible as provided by law.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.19. - Same – Same – Notice to property owner; mailing and posting of notice.

The resolution mentioned in Sec. 32.18(a) shall not be passed until the property owner is given at least five (5) days' notice that a report of the director of parks and recreation and a request for adoption of such resolution has been filed with the city council. Such notice shall be given by the director of parks and recreation by registered or certified mail to the owner or the person shown as the owner upon the last equalized tax assessment roll; a copy of the notice shall be posted upon the property or in front thereof. The mailing and posting shall be made at least five (5) days before the resolution is adopted, and proof thereof shall be made by affidavit of the director of parks and recreation filed with the city clerk.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.20. - Unlawful to damage, etc., street tree or shrub without permit.

- a. Except to abate a nuisance as defined in Sec. 32.16, or to perform official duties required by this chapter, it shall be unlawful to damage, destroy or mutilate any street tree or shrub without a permit from the director of parks and recreation so to do.
- b. No person shall, without a permit from the director of parks and recreation:
 1. Pick the flowers or seeds of any street tree or shrub; or
 2. Dig in or otherwise disturb grass areas or flower beds in public streets or places, or in any way injure or otherwise impair the natural beauty or usefulness of any such area.

(Ord. No. 175.659, 4/10/61.)

SEC. 32.21. - Remedies not exclusive.

The remedies prescribed in this article are in addition to all other remedies provided or authorized by law.

(Ord. No. 175.659, 4/10/61.)

ARTICLE II. - PROTECTION OF THE URBAN FOREST*

* Former Article II, Preservation of Heritage Trees, added by Ord. No. 4.75, 3/10/75 and amended by Ord. No. 8.88, 4/26/88, was amended in its entirety by Ord. No. 10.96, 9/24/96.

SEC. 32.22. - Findings and purpose.

The City of Mountain View lies between the foothills of the Santa Cruz Mountains and the San Francisco Bay and the beauty and health of this area has been greatly enhanced by the presence of large numbers of majestic trees. Development of the city and the surrounding urban sprawl have resulted in the removal of a great number of these trees. Further uncontrolled and indiscriminate destruction of mature trees would detrimentally affect the health, safety and welfare of the City of Mountain View. The preservation program outlined in this article contributes to the welfare and aesthetics of the community and retains the great historical and environmental value of these trees.

This article sets forth the policy of the city to require the preservation of all healthy heritage trees unless reasonable and conforming use of the property justifies the removal, cutting, pruning, and/or encroachment into the drip line of a heritage tree.

(Ord. No. 10.96, 9/24/96; Ord. No. 1.03, 1/14/03.)

SEC. 32.23. - Definitions.

For the purposes of this chapter, the following terms shall have the meaning set forth in this section:

- a. "Director" shall mean the director of the city's community services department or his/her designee.
- b. "Drip line" shall mean the outermost edge of the tree's canopy. When depicted on a map, the drip line will appear as an irregular-shaped circle that follows the contour of the tree's branches as seen from overhead.
- c. "Heritage tree" shall mean any one of the following:
 1. A tree which has a trunk with a circumference of forty-eight (48) inches or more measured at fifty-four (54) inches above natural grade;
 2. A multi-branched tree which has major branches below fifty-four (54) inches above the natural grade with a circumference of forty-eight (48) inches measured just below the first major trunk fork.
 3. Any quercus (oak), sequoia (redwood), or cedrus (cedar) tree with a circumference of twelve (12) inches or more when measured at fifty-four (54) inches above natural grade;
 4. A tree or grove of trees designated by resolution of the city council to be of special historical value or of significant community benefit.
- d. "Owner" shall mean the owner of the real property on which the tree is situated as shown on the most recent county assessor's roll, and includes any successor in interest to the owner.

- e. "Permit" or "removal permit" or "heritage tree removal permit" may be used interchangeably and shall mean the permit required by Sec. 32.27 of this article.
- f. "Person" shall mean any individual, partnership, firm, association, corporation, and any agent, employee, contractor or representative thereof.
- g. "Proposed decision" shall mean the decision of the director in nondevelopment-related removals.
- h. "Removal" shall mean the physical removal of a tree or causing the death of a tree through damaging, poisoning, or other direct or indirect action, including excessive trimming, pruning or mutilation that sacrifices the health, destroys or diminishes the aesthetic quality, or diminishes the life expectancy of the tree(s).

(Ord. No. 10.96, 9/24/96; Ord. No. 1.03, 1/14/03.)

SEC. 32.24. - Council designation of heritage trees.

The council may, by resolution, designate any tree or grove of trees on public or private property as heritage trees. Prior to adoption of a resolution designating a tree or grove of trees on private property to be heritage trees as defined in Sec. 32.23(c)(4), the owner shall receive written notice of the proposal by personal delivery or by certified mail not less than ten (10) days prior to the decision.

(Ord. No. 10.96, 9/24/96; Ord. No. 1.03, 1/14/03.)

SEC. 32.25. - Heritage tree preservation.

- a. Any person who owns, controls, has custody or possession of any real property within the city shall maintain and preserve all heritage trees located thereon in a state of good health. Failure to do so shall constitute a violation of this section.
- b. No person shall willfully injure, damage, destroy, move or remove a heritage tree except pursuant to the terms and conditions of a permit granted pursuant to this article.
- c. **Construction/grading activity.** Any owner or person who conducts any grading or construction activity on property shall do so in such a manner as to not threaten the health or viability or cause the removal of any heritage tree. The director or the community development director may impose conditions on any city permit to require construction fencing and/or the use of protective grading methods to assure compliance with this section. In addition to said conditions, the following shall apply:
 - 1. Except as otherwise provided in this section, excavation adjacent to any heritage tree shall not be permitted where material damage to the root system may result. When proposed developments encroach into the drip line of any

heritage tree, special construction techniques to allow the roots to breathe and obtain water may be required as a condition(s) to the approval of any application for a building, zoning permit or removal permit.

2. The existing ground surface within four (4) feet (measured horizontally) of the base of any heritage tree shall not be cut, filled, compacted or pared except for existing, permitted encroachments such as sidewalks or as otherwise expressly approved by the community development director pursuant to an approved arborist's report. Tree wells may be used where advisable.

(Ord. No. 10.96, 9/24/96; Ord. No. 1.03, 1/14/03.)

SEC. 32.26. - Urban forestry board.

- a. The urban forestry board of the City of Mountain View is hereby created and shall consist of the members of the parks and recreation commission.
- b. The urban forestry board shall have the following powers and duties:
 1. Act as decision-making body for heritage tree appeals as set forth in Sec. 32.31 of this chapter;
 2. Make recommendations to the city council regarding modifications to this article;
 3. Assist in the planning of urban forest management for the city; and
 4. Make recommendations relative to appropriate mitigation for removals associated with city capital projects pursuant to Section 32.33.

(Ord. No. 10.96, 9/24/96; Ord. No. 1.03, 1/14/03.)

SEC. 32.27. - Permit required: Exemptions.

- a. **Permit required.** No person shall cut down, destroy, remove or relocate any heritage tree growing on public or private property, or on any city-owned property, unless a valid heritage tree removal permit has been granted by the city pursuant to this article. Construction of improvements within the drip line of a heritage tree shall also require a permit issued pursuant to this article.
- b. **Exemptions.** A permit is not required to cut, encroach, remove, or relocate a tree(s) under the following circumstances:
 1. Trees damaged by thunderstorms, windstorms, floods, earthquakes, fires or natural disasters and determined to be dangerous by a peace officer, firefighter, civil defense official or code enforcement officer acting in their official capacity. The owner shall notify the director within five (5) days of any action taken with respect to the emergency; or

2. When removal is determined necessary by fire department personnel actively engaged in fighting a fire; or
 3. Employees of the city, during an emergency, may take such action with regard to trees on city-owned property as may be necessary to maintain the safety of city operations and/or the safe conditions of city property; or
 4. Public utilities subject to the jurisdiction of the Public Utilities Commission of the State of California may take such action as may be necessary to comply with the safety regulations of said commission and as may be reasonably necessary to maintain the safe operation of their facilities. No pruning at the direction of any public utility or its agents pursuant to this subsection shall be performed in such a manner as to leave the tree in an unbalanced, unstable or other dangerous condition; or
 5. Any heritage tree may be removed from the landfill area, including the Shoreline golf course, when determined by the city's director of public works or the director to be necessary for the proper maintenance and operation of the landfill or golf course; or
 6. Any heritage tree which the city's arborist has determined is dead may be removed.
- c. **Process.** Permits for development-related removals shall be secured pursuant to Sec. 32.29. Permits for nondevelopment-related removals shall be secured pursuant to Sec. 32.30. Sec. 32.31 shall apply to all removal permits.

(Ord. No. 10.96, 9/24/96; Ord. No. 1.03, 1/14/03.)

SEC. 32.28. - Application for removal permit; Term of permit.

- a. An application for removal of any heritage tree connected with a discretionary development project permit subject to review by the Development Review Committee, Zoning Administrator or the city council shall be filed as a development-related removal pursuant to Sec. 32.29.
- b. All other applications for removal of a heritage tree or trees, including construction projects which require a building permit only, shall be filed as a nondevelopment-related permit pursuant to Sec. 32.30.
- c. All applications for heritage tree removal permits shall specify the number, species, size, and exact location of the tree or trees involved, a brief statement of the reason for the requested removal, and any other pertinent information as may be required by the city. The applicant may be required to provide a plot plan or survey drawn to scale depicting the tree(s) and any improvements on the property and/or an arborist's report.

- d. A heritage tree removal permit shall be valid for a period of two (2) years from the date of issuance. Said permit may be extended by and at the discretion of the Zoning Administrator for development-related permits and by the director for nondevelopment-related permits. Removal permits shall expire when any underlying permit expires and extensions shall not exceed the life of any underlying permit.

(Ord. No. 10.96, 9/24/96; Ord. No. 1.03, 1/14/03.)

SEC. 32.29. - Permits: Development-related removals.

a. **Filing an application.**

An application for a development-related heritage tree removal permit shall be filed with the community development department. The application shall be filed and processed concurrently with any other application(s) for development entitlements.

b. **Processing.**

1. The community development department shall review all heritage tree removal permits filed pursuant to this section. The permit application shall be referred to the director for review and comment before action is taken. The application shall be approved, conditionally approved or denied by the official or hearing body that acts on the companion development permits.
2. Five (5) days prior to the hearing on the heritage tree removal application, the applicant shall be required to wrap each heritage tree subject to removal with designated yellow tape as directed by the community development department and shall also be required to post a notice approved by the community development department stating the time, date and place of the development project and heritage tree removal hearing. Said notice shall be posted at or near the public right-of-way and shall be legible from the public right-of-way.
3. In no event shall any heritage tree approved for removal pursuant to this section be removed prior to the expiration of any applicable appeal period or issuance and initiation of the building permit for the companion development project.
4. Notice of the decision on the permit shall be made by personal delivery or certified mail to the owner, the applicants and by first-class mail to any other person who has filed a written request for such notice with the community development department. Notice of the decision shall also be incorporated into any noticing of the accompanying development permit.

(Ord. No. 10.96, 9/24/96; Ord. No. 1.03, 1/14/03.)

SEC. 32.30. - Permits: Nondevelopment-related removals.

a. **Filing an application.**

An application for a nondevelopment-related heritage tree removal permit, including projects requiring a building permit only, shall be filed with the community services department.

b. **Processing.**

1. The director shall review and approve, conditionally approve or deny the nondevelopment-related removal application.
2. In no event shall any heritage tree approved for removal pursuant to this section be removed prior to the expiration of any applicable appeal period or issuance of a building permit for the companion project when a building permit is required.
3. The community services department staff or, at their discretion, the applicant, shall wrap each heritage tree subject to removal with designated yellow tape within five (5) days of filing the application. The community services department shall post notice of the decision on the application for such permit on the tree or trees or at or near the public right-of-way and by personal delivery or certified mail to the owner and by first class mail to any other person who has filed a written request for such notice with the director. The on-site posting shall be legible from the public right-of-way. Such notice shall state the director's decision on the application and shall provide information on the appeal process pursuant to this section.

(Ord. No. 10.96, 9/24/96; Ord. No. 1.03, 1/14/03.)

SEC. 32.31. - Appeals.

- a. Any person aggrieved or affected by a decision on a requested removal, or a member of the urban forestry board, or of the city council if the decision was made by the development review committee or the zoning administrator, may appeal the decision by filing a written notice of appeal with the city clerk stating the grounds for the appeal, and paying the requisite appeal fee, as established by council resolution, within ten (10) calendar days after the notice of the decision is posted or mailed. A member of the city council or urban forestry board shall be exempt from payment of the appeal fee.
- b. Development-related removal permit appeals shall be heard by the city council. Nondevelopment-related appeals shall be heard by the urban forestry board.
- c. An appeal shall automatically stay issuance or denial of the permit until the appeal has been completed. If no appeal is timely filed, the permit shall issue as indicated in the notice of the decision.

- d. Notice of the appeal shall be made by personal delivery or certified mail to the owner, the permit applicant and by first-class mail to any other person who has filed a written request for such notice. Notice shall also be given to the decision-maker. The decisions of the urban forestry board and city council shall be final. Notice of the decision shall be incorporated into the findings report. The denial of a permit shall be with prejudice, and neither the owner nor any applicant shall reapply for the removal of the same heritage tree for a period of two (2) years from said denial unless the community services director or community development director finds, in writing, prior to the filing of the application for removal, that there has been a material change in circumstances.
- e. The property owner for nondevelopment-related permits will be required to post a copy of the approved permit on the tree twenty-four (24) hours in advance of the tree removal.

(Ord. No. 1.03, 1/14/03; Ord. No. 1.13, § 1, 1/22/13.)

SEC. 32.32. - Post-removal permits.

- a. Any person who removes a heritage tree without a permit issued pursuant to this article shall secure from the city a post-removal permit.
- b. **Process.** The post-removal permit shall be processed pursuant to Sec. 32.29 or 32.30, as applicable.
- c. **Determination of heritage tree status.** If the removal has reduced the tree below fifty-four (54) inches from the natural grade, the tree will be presumed to be of heritage status and thus subject to this article if the cut portion of the tree meets the applicable measurement threshold, or if the remaining in-ground portion, including the stump, meets the minimum threshold for protection.
- d. In granting a post-removal permit, the decision-maker may require the replanting of a tree, including a tree of heritage size, in the exact location where the illegal removal occurred.

(Ord. No. 1.03, 1/14/03.)

SEC. 32.33. - City capital improvement projects.

City capital improvement projects which propose the removal of any heritage tree shall be submitted by the city project staff to the city's arborist for review and recommendation of appropriate mitigation measures. The arborist's recommendations shall be forwarded by city project staff to the urban forestry board for their recommendation on the number, size and location of replacement trees. The recommendation of the urban forestry board shall be forwarded by city project staff to the city council for their consideration with the approval of the project.

(Ord. No. 1.03, 1/14/03.)

SEC. 32.34. - Other public agency projects.

Unless otherwise exempted by state law, other public agencies which propose to remove any heritage tree within the City of Mountain View for any reason shall comply with the provisions of this article. If the agency is exempt, the agency shall submit any environmental study of the proposed project, if applicable, including any proposed mitigation of the loss of any heritage tree, to the director for review. City staff shall review the project documentation, including any relandscaping plan, and shall work cooperatively and informally with that agency's staff to adequately mitigate the removal of any heritage tree.

(Ord. No. 1.03, 1/14/03.)

SEC. 32.35. - Criteria for removal; Conditions; Findings.

- a. **Criteria for removal.** The determination on each application shall be based upon a minimum of one of the following criteria; however, the decision-maker shall consider additional criteria, if applicable, in weighing the decision to remove a heritage tree, with an emphasis on the intent to preserve heritage trees.
 1. The condition of the tree with respect to age of the tree relative to the life span of that particular species, disease, infestation, general health, damage, public nuisance, danger of falling, proximity to existing or proposed structures, and interference with utility services.
 2. The necessity of the removal of the heritage tree in order to construct improvements and/or allow reasonable and conforming use of the property when compared to other similarly situated properties.
 3. The nature and qualities of the tree as a heritage tree, including its maturity, its aesthetic qualities such as its canopy, its shape and structure, its majestic stature and its visual impact on the neighborhood.
 4. Good forestry practices such as, but not limited to, the number of healthy trees a given parcel of land will support and the planned removal of any tree nearing the end of its life cycle and the replacement of young trees to enhance the overall health of the urban forest.
 5. **Balancing criteria.** In addition to the criteria referenced above which may support removal, the decision-maker shall also balance the request for removal against the following which may support or mitigate against removal:
 - A. The topography of land and effect of the requested removal on erosion, soil retention, water retention, and diversion or increased flow of surface waters.

- B. The effect of the requested removal on the remaining number, species, size and location of existing trees on the site and in the area.
 - C. The effect of the requested removal with regard to shade, noise buffers, protection from wind damage and air pollution and the effect upon the historic value and scenic beauty and the health, safety, prosperity and general welfare of the area and the city as a whole.
- b. **Conditions of approval.** Approval of an application for a permit may include reasonable conditions to insure compliance with the content and purpose of this article, including but not limited to:
- 1. Requiring the replacement or placement of an additional tree or trees on the subject property or off-site to offset the loss of a tree, limbs, or encroachment into the drip line. The number, species, size and location of said replacement tree(s) shall be determined by the director upon recommendation of the city arborist.
 - 2. Requiring construction fencing or barriers to protect adjacent heritage trees or other landscaping.
 - 3. Requiring protective grading requirements to avoid damaging the root structure of the tree or adjacent trees.
 - 4. Requiring posting of a security bond to ensure that replacement trees are planted and become established (one year after planting) and to compensate for the lost trees due to illegal removal.
 - 5. Requiring the relocating of a tree on-site or off-site, or the planting of a new tree on-site or off-site to offset the loss of a tree.
 - 6. Requiring a maintenance and care program be initiated to ensure the continuing health and care of heritage trees on the property.
 - 7. Requiring payment of a fee or donation of a boxed tree(s) to the city or other public agency to be used elsewhere in the community should a suitable replacement location of the tree not be possible on-site. The fee for replacement of a tree or trees shall be, at a minimum, based on the cost of a 24" boxed tree of same species, delivered and installed.
- c. **Findings.** If a permit is denied or conditions are attached, the director or decision-maker shall provide the applicant with a written statement of the reasons for said denial or conditions based upon the criteria and conditions set forth in this section.
- d. **Off-site replacement option.** An applicant for a preremoval permit may request that any replacement trees be placed off-site or that he/she be permitted to pay a fee in lieu of replacement. The decision-maker shall consider the request in light of the balancing criteria set forth in Section 32.35(a)(5), above.

(Ord. No. 10.96, 9/24/96; Ord. No. 1.03, 1/14/03.)

SEC. 32.36. - Nonliability of city.

Nothing in this article shall be deemed to impose any liability for damages or a duty of care of maintenance upon the city or upon any of its officers or employees. The owner of any private property shall have the duty to keep heritage trees upon the property in a safe, healthy condition. Unless subject to an exemption from a permit pursuant to this article, any person who believes that a tree located on property possessed, owned or controlled by them is a danger to the safety of themselves, others or structural improvements on-site or off-site shall secure the area around the tree or support the tree, as appropriate, to safeguard both persons and property from harm pending compliance with this article.

(Ord. No. 10.96, 9/24/96; Ord. No. 1.03, 1/14/03.)

SEC. 32.37. - Regulations.

The City Council by resolution may promulgate administrative guidelines and/or regulations as necessary to implement this article. The director or the urban forestry board may promulgate administrative guidelines and/or regulations consistent with this article as needed, subject to council approval.

(Ord. No. 1.03, 1/14/03.)

SEC. 32.38. - Penalty; Restitution.

a. **Penalty.**

Any violation of this article shall be deemed a misdemeanor, punishable as set forth in the City Charter.

b. **Restitution for unlawful removal.**

1. It has been determined that heritage trees within the city are valuable assets to the citizens of Mountain View and the neighboring communities. The loss or damage to any of these trees results in a loss to the community and detrimentally affects the health, safety and welfare of the citizens of Mountain View. Therefore, the loss of or damage to any unlawfully removed or damaged heritage tree will require restitution. In addition to any applicable penalties, any person who willfully injures, damages, destroys, removes or relocates any heritage tree in violation of the terms of this article shall be responsible for proper restitution in the form of replacement trees or fees in lieu of replacement.
2. The number, species, size and location of said replacement tree(s) shall be determined by the director or other decision-maker, as applicable. The

minimum size of a replacement tree shall be a twenty-four inch (24") box size tree.

3. Any fees collected in lieu of planting replacement trees shall be used for the purpose of enhancing the urban forest.

(Ord. No. 10.96, 9/24/96; Ord. No. 1.03, 1/14/03.)

SEC. 32.39. - Tree valuation.

For purposes of replacement for trees removed, the method of valuation shall be the "Standards for Valuation of Amenity Trees" of the International Society of Arboriculture. These standards shall apply to those trees removed without a permit as well as those removed with a permit, which require on-site or off-site replacements of similar value for the trees removed.

(Ord. No. 10.96, 9/24/96; Ord. No. 1.03, 1/14/03.)