



## **SUBJECT**

Work Session on Proposed Text Amendments to the Hayward Municipal Code for the adoption of an updated Tree Preservation Ordinance.

## **RECOMMENDATION**

That the Commission review and provide feedback, as appropriate, on the draft Tree Preservation Ordinance.

## **SUMMARY**

Hayward Municipal Code Chapter 10, Article 15, Tree Preservation Ordinance, contains guidelines for the preservation of existing trees and the process for removing, replacing, and mitigating the loss of trees covered by the Ordinance. A comprehensive update of the Ordinance, which was last amended in 2002, was included as Program NR-61 of the Natural Resources Element of the General Plan and Special Project CP7 under Champion Climate Resilience and Environmental Justice in the 2025 Strategic Roadmap.

In May 2023, the City hired Dudek to help prepare updates to the City's Tree Preservation Ordinance, complete a citywide Tree Canopy Survey, and prepare landscaping guidelines for the Hayward Executive Airport. The proposed Amendments are based on best practices in the field of tree preservation, landscape architecture, and support the broader equity, environmental, and sustainability goals of the City.

The Planning Commission held a work session on September 26, 2024, to provide feedback on several key policies for inclusion in the Ordinance. Based on City Council and Planning Commission feedback, staff updated the draft Ordinance (Attachment II) to address expansion of preservation requirements for *native trees* on private property; established a process for designation and removal of *heritage trees*; established a calculation for the mitigation of the loss of tree canopy; and established an *in-lieu fee* option that could be available for off-site mitigation. Other updates to the Tree Preservation Ordinance are minor in nature and intended to clarify the tree preservation and removal process. All policy updates are summarized in the Ordinance Update Summary (Attachment III).

## **BACKGROUND**

The City of Hayward adopted a Tree Preservation Ordinance in the late 1950s, establishing a need to classify and preserve significant trees based on size and species. There have been two

updates since then, in 1971 and 2002. These updates ranged from minor updates to more significant policy changes, with the most substantial updates occurring in 2002.

Since the last update in 2002, the City's population has grown significantly leading to a higher demand for additional housing and non-residential development. To address the housing crisis in California, the State recently enacted new legislation intended to streamline development review processes and spur new housing construction. These new laws required changes and updates to the City's General Plan<sup>1</sup>, Zoning Ordinance, and related development standards to allow for by right higher-density developments. However, many projects located on infill sites require the removal of existing mature trees and a reduction in the amount of landscape area to accommodate the new development thus limiting an applicant's opportunity to mitigate tree removals on the development site as required by the current Ordinance requiring flexibility and alternatives for compliance with the Ordinance. The proposed Ordinance update covers three main areas:

- A comprehensive review and update of the City's existing Tree Preservation Ordinance, and related Zoning Regulations, to reflect best practices;
- An update to the landscape design guidelines for projects near the Hayward Executive Airport to ensure that landscaping in the vicinity of the Airport is appropriate to deter wildlife and ensure public safety within established FAA flight safety zones; and
- Completion of a tree canopy survey, which mapped all trees located on public and private property, open space and natural resource areas, creek and riparian areas and within golf courses. The survey is a tool to establish a baseline for current tree canopy citywide and help identify areas of Hayward that are currently underserved with tree canopy.

Since 2002, the State of California and City of Hayward have adopted several goals and policies that focus on sustainability and the reduction of greenhouse gas emissions associated with climate change and related environmental impacts. The State adopted Senate Bill 32<sup>2</sup> and Assembly Bill (AB) 32<sup>3</sup>, known as the Global Warming Solutions Act of 2006, among other actions. The City of Hayward adopted the Shoreline Adaptation Master Plan (2021) to combat sea-level rise; updates to the Climate Action Plan<sup>4</sup> (2009 and 2024) adopting specific Goals, Policies and Programs to reduce our carbon footprint and greenhouse gas emissions; amendments to the Hazards Element to address extreme heat, drought, wildfire risk and sea level rise among others; and, adoption of an Environmental Justice Element (2024) to support public health.

The adopted Climate Action Plan and related General Plan Natural Resources (NR) Element<sup>5</sup> contains specific goals, policies and programs related to updates of the Tree Preservation Ordinance and related activities including but not limited to:

- Policy NR-1.1 - Native Wildlife Habitat Preservation

<sup>1</sup> Hayward General Plan. <https://www.hayward-ca.gov/2040-General-Plan>

<sup>2</sup> Senate Bill 32 (2006). [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB32](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB32)

<sup>3</sup> California Air Resources Board AB32. <https://ww2.arb.ca.gov/resources/fact-sheets/ab-32-global-warming-solutions-act-2006>

<sup>4</sup> Hayward Climate Action Plan webpage. <https://www.hayward-ca.gov/services/city-services/climate-action>

<sup>5</sup> Hayward General Plan Natural Resources Element. <https://www.hayward-ca.gov/your-government/documents/general-plan/natural-resources-element>

- Policy NR-1.2 - Sensitive Habitat Preservation
- Policy NR-1.7 - Native Tree Preservation
- Policy NR-1.9 - Native Plant Species Preservation and Promotion
- Policy NR-2.4 - Community Green House Gas Reduction
- Policy NR-6.5 - Erosion Control
- Policy NR-6.9 - Water Conservation
- Policy NR-6.14 - Native and Drought Tolerant Landscaping
- Policy NR-615 - Native Vegetation Planting
- Policy NR-61.16 - Landscape Ordinance Compliance
- Program NR 61 (CAP Action CS-1.1). Update the Tree Preservation Ordinance by Q2 2024 to maintain existing carbon stock and identify replacement trees that are climate resilient and drought tolerant for Hayward's climate. Ordinance updates may include development requirements to protect or replace value-to-value existing trees and greenspace; and a requirement for a cash mitigation fee equal to the value of trees removed.
- Program NR 66 (CAP Action CS-1.6). Conduct an urban canopy study to identify areas in Hayward that have below average canopy coverage and implement a tree planting program focusing on the least covered portions of the City. Establish a goal of having no significant difference in canopy coverage between high and low-income areas citywide by 2030.

*City Council Work Session:* On September 17<sup>th</sup>, 2024, the City Council held a work session to review several of the proposed policy updates recommended by staff. The City Council was generally supportive of the recommended updates, including the following:

- The protection of native trees on private property and the recognition of the importance of native trees to the environment;
- The addition of heritage trees to the Ordinance as well as the support for a higher level of discretionary review for approving removal;
- The addition of mitigation requirements for loss of tree canopy as a means of expanding the overall canopy coverage of Hayward;
- The establishment of an in-lieu fee for tree mitigation with a request to bring back how the fee would be utilized and for a portion of the fee to be used to assist property owners maintain trees; and
- The creation of a sliding scale fee for the tree removal permit to decrease costs to property owners and incentivize acquiring the removal/pruning permit.

*Planning Commission Work Session:* On September 26, 2024<sup>6</sup>, the Planning Commission held a study session to consider the proposed amendments. Overall, the Commission was supportive of the proposed major policy updates to the Ordinance including new protections for heritage trees; a requirement to replace lost tree canopy; and the addition of an in-lieu fee option for tree mitigation. The Commission was less supportive of protecting native trees on private property without further consideration of the economic impact to property owners and was concerned about the added costs of tree care for property owners if trees were to become

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<sup>6</sup> Planning Commission Work Session, <https://hayward.legistar.com/LegislationDetail.aspx?ID=6868945&GUID=40CB2824-5A04-4B49-AD88-3073AA82B56D&Options=&Search=>

protected with adoption of the proposed updates. The Commission also expressed concern with several policy recommendations and requested staff continue to explore the following topics prior to finalizing the draft Ordinance, including:

1. Preservation of native trees on private property;
2. Heritage tree designation and process/consideration for removal;
3. Mitigation requirement for development project;
4. Amount and use of in-lieu fees;
5. The penalty for the removal of a Protected Tree without a permit; and
6. Reduced duration of a tree removal permit.

In response to comments received from the City Council and Planning Commission, staff and the consultant team have made several updates to the draft Ordinance, which are discussed in greater detail below.

## DISCUSSION

***Native Trees on Private Property.*** Staff recommends that all native trees on private property be considered protected by this Ordinance update. Native trees in rear yards generally make up a small portion of trees on private property, but their positive impact on the environment far surpasses non-native trees by providing mature shade canopies, habitat to support native wildlife, and require minimal water use and maintenance. For the purposes of this Ordinance, “native” trees are defined as those trees that grow naturally (minimal water, non-invasive) to the Hayward area. Protecting native trees on private property ensures that the removal of a native tree is mitigated with the planting of new native trees as well as providing oversight and preservation when native trees require pruning. To address the Commissions’ concerns regarding the impact to property owners, staff recommends the following process:

***Tree Removal Permit.*** A Tree Removal Permit would be required to remove a native tree on private property but instead of requiring an arborist report and requiring mitigation based on the overall appraised value, staff is proposing a two-to-one mitigation requirement with 24” box trees until the tree is established. The current fee for a Tree Removal Permit is \$587 and the planting of (2) 24” box replacement trees is valued at approximately \$1,000. This proposed mitigation would likely reduce the overall cost to homeowners because applying the appraised value of the removed tree as the required mitigation, as originally proposed, can pose a significant financial burden as many mature native trees are routinely appraised between \$20,000-\$40,000, or more. For requests of three or more native trees removed from private property, staff recommends that the current method of mitigation which is based on the appraised value of the trees to be removed, would remain unchanged. This would allow additional flexibility for applicants wanting to remove only one or two trees but would discourage the removal of multiple native trees on a property.

***Tree Removal Permit Fee.*** As part of the Ordinance update, staff is recommending a sliding scale fee be adopted for Tree Removal Permit, based on the number of trees proposed for removal. Based on staff review of previously approved Tree Removal Permits, a majority of homeowners would actually see a reduction in the permit fee,

which makes up a majority of tree removal requests. Staff are also recommending that the permit fee be waived entirely if the applicant can demonstrate the tree is dead or dying or provides evidence that the tree poses an eminent danger to health, life safety, or property. Applicants would still be required to submit a permit application to ensure the loss of the tree is mitigated, but no permit fee would be assessed for these exceptions. Staff believes this revision would provide a more equitable solution that reduces the overall cost to the property owner.

***Tree Pruning Permit.*** For pruning of native trees on private property, staff is recommending the current Tree Pruning Permit requirement remain but recommends the permit fee be reduced, commensurate with the amount of staff time needed to review the permit. The current Tree Pruning Permit fee, which was recently revised in the Master Fee Schedule, is \$587. Historically, the City does not receive many applications for a Tree Pruning Permit from individual homeowners. Instead, the City has issued Tree Pruning Permits to landscape contractors who are hired on behalf of homeowners to prune one or more trees on a property. Staff believes the reduced fee associated with the Tree Pruning Permit will incentivize compliance and allow the City to better monitor and anticipate tree maintenance schedules. Tree Pruning Permits are an important way to verify that any pruning activities are reviewed by a certified arborist to ensure the tree(s) continue to remain healthy and undamaged.

***Heritage Trees Designation and Removals.*** The Planning Commission was supportive of adding a definition of Heritage Trees to the Ordinance session but requested further information about the designation and removal process. In order to be considered a Heritage Tree, staff recommends that at least two of the following criteria be met:

- a. Native Tree: The tree is a native species of Hayward, as listed in Section 10-15.14 (Attachment II).
- b. Provides Essential Habitat: The tree currently or commonly provides habitat for any state or federally listed endangered or threatened species. Note that such trees may be protected through other local, state, or federal regulations.
- c. Horticulture Significance: The tree is rare or significant in the horticultural development of Hayward.
- d. Historical Significance: The tree has historical connection to the City of Hayward, including original plantings that coincide with historical events in the City.
- e. Cultural Significance: The tree has cultural connection to the City of Hayward per historical documents or references.

In addition to defining a Heritage Tree, the Commission and Council were supportive of establishing a higher level of discretion when considering the request to remove a Heritage Tree. As such, staff is recommending that the removal of a Heritage Tree follow the existing Site Plan Review process, which does require public noticing but does not necessarily require a public hearing. Staff believes this approach would allow the public an opportunity to comment on the more significant trees proposed for removal and provide a framework that allows stakeholders to appeal a decision. Similar to other

discretionary reviews, staff is proposing specific findings be made for the removal of Heritage Trees, which are reflected in Section 10-15.22 of the draft Ordinance (Attachment II).

In addition, staff added a list of considerations that should be considered when removing a Heritage Tree. Specifically, a heritage tree may be approved only if the reviewing body finds the burden to the Applicant in preserving the tree outweighs the benefit to the public. In making the foregoing determinations, staff recommends the following factors be considered:

1. Reasons for why the tree is considered a Heritage Tree, and the subsequent benefits it provides.
2. The contribution of the tree to the character of the site, local ecology, and the neighborhood.
3. Species, health condition and value of the tree.
4. Whether the tree is part of an important grove of trees.
5. The visibility of the tree to the neighborhood and the public.
6. Whether the development provides a public benefit.
7. Whether measures short of removing the tree can be employed consistently with the development.

Mitigation for Development Projects. In general, tree mitigation is the process whereby the City ensures that a property owner or developer adequately offsets the loss of tree(s) by requiring installation of new trees that are proportionate in cost or size to those trees removed. Currently, the City applies the appraised value of trees to determine the amount of tree mitigation required, as determined by a licensed arborist, following the submittal of an arborist report. For development projects, staff is recommending the appraised value method be maintained as the primary method for determining the amount of mitigation required; however, staff is recommending that development projects include canopy replacement if the tree types proposed by an applicant do not maximize canopy coverage, as determined by the City's Landscape Architect. Maintaining the appraised value of the removed trees as the primary mitigation method eliminates the confusion of having two metrics, while providing the option and flexibility for staff to collaborate with developers to ensure maximum tree canopy is considered and included in the project design.

The Planning Commission also expressed support for allowing an in-lieu fee as a mitigation option, which would provide developers an option to maximize the development potential on-site while simultaneously establishing a funding mechanism to plant additional trees in areas of the City currently underserved with tree canopy.

In Lieu Fees. As part of the Tree Preservation Ordinance update, staff is recommending an in-lieu fee be provided as an option to provide additional flexibility to applicants when the total appraised value of removed trees cannot be planted on site due to limited space. Specifically, staff recommends that the value of the in-lieu fee be set at 125%, minus any value of trees to be planted onsite. While the proposed in-lieu fee would exceed the value of the tree to be

removed, the additional 25% assessment would help to cover staff time to purchase, install and manage the trees in addition to cover on-going maintenance costs.

While specific use of the funds has yet to be determined, staff believes that the monies could be used for planting and maintenance of new native trees in underserved areas of the City, based upon data from the Tree Canopy Survey. In addition to planting in underserved areas, the in-lieu fee could be used to provide limited support for pruning of native trees on private property to reduce the financial burden to certain low-income households and/or could be allocated to support local non-profit organizations to support the City's efforts towards tree plantings at City events.

*Tree Removal Penalty.* The current penalty for removing a protected tree without first obtaining a Tree Removal Permit is twice the amount of the Tree Removal Permit fee, as reflected in the Master Fee Schedule. In addition to the penalty an applicant or homeowner would be required to pay, the applicant or homeowner would still need to mitigate the loss of that tree, similar to the mitigation requirement for other Tree Removal Permits. Staff recommends keeping the current penalty for removal of trees in place except that mitigation for the lost tree(s) would follow the updated guidelines.

*Permit Duration.* As discussed in previous work sessions, staff is recommending the duration of the Tree Removal Permit be reduced from one year to three months. Currently, Tree Removal Permits are valid for one year, which is difficult for staff to manage and has resulted in challenges for Code Enforcement trying to require replacement mitigation months later. As such, staff proposes to reduce the permit duration to three months, with an additional three-month extension upon request. Reducing the permit duration incentivizes applicants to remove unhealthy trees in a timely manner to minimize any public safety or property risks while ensuring any replacement trees are planted more quickly.

*Misc Updates.* In addition to the recommendations listed above, staff is adding the following provisions to ensure the draft Ordinance is consistent with State and local regulations and provide clarity to applicants as they proceed through the planning entitlement process:

- Add Section 10-15.16 (Attachment II), which protects migratory and nesting birds, as required by State Law.
- Add Section 10-15.18, which codifies many of the tree preservation and protection techniques that get added to construction and development projects. Currently staff adds these techniques as a condition of approval for development projects at the entitlement stage but adding this to the Municipal Code ensure that any activity, regardless of planning entitlement, follows the same techniques.
- Add Section 10-15.20, which establishes a list of restricted activities that could inadvertently harm or damage tree(s).
- Add Section 10-15.26 to provide a list of Exemptions that allow applicants to remove trees that are dying or dead, considered hazardous or conflict with FAA safety guidelines around the Hayward Executive Airport.

## PUBLIC OUTREACH

Public outreach efforts on the updates to the Tree Preservation Ordinance have entailed a series of targeted focus group meetings, an online survey, face-to-face interviews, and creating a project webpage to solicit feedback and provide project updates. Additional details on public outreach efforts to date are provided below:

*Targeted Focus Group Meetings.* To ensure the updated Tree Preservation Ordinance considers and incorporates the priorities of people who live and work in Hayward, an online survey was distributed to various Focus Groups. The Focus Groups included Developers, Landscape Architects, Arborists, Environmental Groups, Homeowner Associations, Mobile Home Parks, Neighborhood Groups, and other stakeholders, including PG&E. Additionally, staff met with internal stakeholders from Planning, Code Enforcement, Building, Public Works Engineering, Public Works Utilities and Environmental Services, Public Works Transportation, Landscape Maintenance, and the Hayward Executive Airport to discuss the potential impacts and components of the updated Tree Preservation Ordinance. Each Focus Group was given two weeks to complete the survey and was invited to a follow-up meeting, which highlighted the issues and opportunities that each group was interested in. The summarized feedback received from all the Focus Groups was to provide more flexibility with mitigating tree removals, update inconsistencies or ambiguities in the current Ordinance, establish a more equitable fee structure that fluctuates depending on the number of trees to be removed, and establish policies that support habitats for wildlife and migratory birds.

*Public Events.* In October 2023, staff attended a series of public events, including the Hayward Farmers Market and Trunk-or-Treat event to promote the Tree Preservation Ordinance. Staff discussed the project with interested parties and encouraged residents to complete an online survey as well as participate in a hands-on activity to share their views on the benefits of trees in an urban environment. Staff also conducted two face-to-face interviews with stakeholders interested in taking the survey but unable to take the survey online. Postcards provided in English, Spanish and Mandarin included a QR code linking to the Tree Preservation Ordinance update webpage.

*Project Webpage.* In early October 2023, staff launched a webpage<sup>7</sup> that provides regular project updates and information related to the Hayward Tree Preservation Ordinance. The webpage also contains staff contact information, indicates key project milestones, and provides members of the public access to the draft Tree Preservation Ordinance.

*Online Survey.* In addition to the Focus Group meetings, a broader public outreach effort took place through an online survey, which was developed to give the public an additional opportunity to give their opinions on the Tree Preservation Ordinance and get a better understanding of interests, opportunities, and concerns tied to the project. The survey was available in English, Spanish, Mandarin and other languages upon request and was open from

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<sup>7</sup> Hayward Tree Preservation Ordinance Update Webpage. <https://www.hayward-ca.gov/your-government/departments/planning-division/tree-preservation-ordinance-update-project>



October 20, 2023, to April 2, 2024, and a link was made available on the project webpage and featured in a *Stack Extra* article published in early November 2023.

The online survey received a total of 219 responses, which indicates the top three benefits of trees, as ranked by the responses, are: improving the environment (air quality, water and pollution), providing shade and reducing the heat island effect in neighborhoods, and providing habitat for wildlife.


*Stakeholder Public Notices.* On February 14, 2025, postcard notices about this Work Session were emailed and mailed to 344 community members, stakeholders and interested parties who requested to be notified about the project.

## **NEXT STEPS**

Following review and feedback from the Planning Commission and City Council, staff will complete the revised draft Tree Preservation Ordinance and release it for public review and comment. Staff expects the final Ordinance to be completed and presented to the City Council for consideration by Spring/Summer 2025.

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