

# Tree Preservation Ordinance Updates Summary

## Tree Ordinance Update Goals

- Updating purposes and goals to be aligned with current climate action goals of the City
  - Reducing greenhouse gas (GHG) emissions to mitigate climate change
- Eliminating the ambiguity in the ordinance
  - Current Areas of ambiguity
    - Protection of Private Trees
    - Mitigation of removed trees
    - Penalties for tree removal
    - Tree pruning and removal permit process
    - New tree planting recommendations
    - Definition Updates
- Bringing flexibility to tree permit and replacement practices to benefit overall City environment

## Section 10-15.11 Application of Ordinance

### Policy Change:

The Tree Preservation Ordinance is applicable to all protected trees within the City of Hayward. Maintenance and removal of street trees is governed by the City's Street Tree Ordinance.

### Reasons for Policy Change:

1. A simpler approach to which trees are included or exempted creating easier and more efficient permit processing.
2. Removes loophole for tree removal on single family home lots. Given the interest to address sustainability in the ordinance, excluding trees on existing single-family lots seems to be at odds with this intention.

## Section 10-15.12 Definitions

Moved this section before the 10-15.11 Application of Ordinance section because there are several definitions mentioned in the application section.

### Definition Revisions:

- "Certified Arborist": "An individual in the profession of arboriculture who, through experience, education, and related training, possesses the competence to provide a tree report, risk assessment, tree survey or supervise the care and maintenance of trees; and who is certified by the International Society of Arboriculture or a member of the American Society of Consulting Arborists"

- Added the following language to the “Street Tree” definition: A “Street Tree” is a tree that is planted in the right-of-way of a street and in accordance with Street Tree Ordinance. It is usually located in the planter strip between the curb and the sidewalk or in a median island or it lies within the front yard setback.
- Tree definition changed. New definition: A “Tree” shall mean any woody perennial plant characterized by having a single trunk or multi-trunk structure and belonging to a species that commonly grows to at least ten feet high at maturity.

**New Definitions Added:**

- “Heritage tree” shall mean a tree (or grouping of trees) specifically designated by action of the City Council that possesses exceptional and unique size, age, horticultural significance, aesthetic, biological, cultural, or historic value, and is irreplaceable and expected to have a continuing contribution to the community.
- “Memorial Tree” shall mean any tree planted in memory of or in commemoration of an individual or individuals or a specific event and officially recognized by the City.
- “Protected Tree” shall mean a tree regulated by the City as set forth in Section 10-15.13: Protected Trees.

**Section 10-15.14 - Protected Trees**

Summary of changes:

- Native trees greater than 4” DSH are protected, non-native trees (excluding invasive tree species) greater than 8” DSH are protected.
- Ordinance now applies to all protected trees in the city, independent of when they were planted.
- Heritage trees – Refer to Heritage Section.
- Redwood Trees with protections changed to only larger diameter mature trees: Coastal Redwood trees are not native to the Hayward area, and therefore aren’t protected like the other natives @ 4” dbh. Instead, they are protected starting at 36” DSH.
- Native trees are now also protected on private property.

**New section: 10-15.16 Nesting Birds**

This new section was added to ensure that applicants and contractors that are conducting tree pruning or removal work, are complying with the Federal Migratory Bird Treat Act as well as California Fish and Wildlife Code 3503-3513, to not disturb nesting birds.

### **New section: 10-15.17 Required Street Trees for Development Projects**

This new section was added to specify the sizes and number of street trees required for development projects on both residential and commercial properties.

### **New section: 10-15.18 Required Tree Protections for Construction and Development Projects**

This new section consolidates information on tree protection requirements for construction and development projects that were previously scattered throughout the previous version of the ordinance.

### **Section 10-15.19: Memorial and Heritage Trees**

Heritage trees established to place greater protections on the community's most valuable trees.

#### ***Full new version of this section:***

**“Memorial Tree Nomination:** Memorial Trees can be nominated by a Hayward community member or a local government official and shall be submitted to the Director for recommendation to City Council. City Council will review nominations and hold a vote to designate a Memorial Tree(s). Memorial Trees will be recorded and protected in perpetuity unless they are in severe decline or must be removed for public safety. Memorial trees must be located on City property and cannot be recognized as an invasive species by the California Invasive Species Council. The fee to designate a Memorial Tree is established by the Master Fee Schedule.

**Heritage Trees Determination:** A tree is considered a Heritage Tree when the City finds at least two of the following criteria are met:

**Native Tree:** The tree is a native species of Hayward, as listed in Section 10-15.14.

**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.

**Horticulture Significance:** The tree is rare or significant in the horticultural development of Hayward.

**Historical Significance:** The tree has historical connection to the City of Hayward including original plantings, or coincides with historical events in the City.

**Cultural Significance:** The tree has cultural connection to the City of Hayward.

The removal of a Heritage Tree as part of a Development Project shall be approved by the highest approving body, based on the findings per Sec. 10-15.22.”

### **New section: 10-15.20 Restricted Actions**

This section was added to specify what actions are restricted for any tree in the City of Hayward, including:

- a. Introduction of harmful chemicals or poisons within the dripline of any tree
- b. Introduction of pests or pathogens

### **Section 10-15.21 Permits and Replacement Requirements**

This section was updated to clarify what tree-related activities require a permit, and what the replacement requirements are for removed trees. This section now reads:

**“A permit is required to perform any of the following actions on Protected Trees per Sec. 10-15.14:**

1. Tree removal
2. Routine maintenance for Memorial and Heritage trees.
3. Any extreme root or branch pruning that is not consistent with standard arboriculture practices for a healthy tree, including pollarding, topping, lion-tailing, or severe pruning
4. Removal of the bark around the circumference of the tree (girdling)
5. Relocation or transportation of a tree
6. Digging, trenching, grade changes, and soil compaction or paving within the tree protection zone
7. Attaching ropes, signs, or wires to a tree
8. Any action(s) that foreseeably leads to the death of a tree or permanent damage to its health or structure
9. Pruning of branches greater than 4” in diameter of protected trees.”

### **Tree Replacement and New In-Lieu Fee Option:**

**Policy Update:** Replacement trees are required for tree removals. If tree mitigation is not feasible on the property, the applicant can choose to pay an in-lieu fee amounting to 125% the appraised value of the tree. In-lieu fees will be paid to the City Tree Replacement Fund, which may only be used to add or replace mitigation trees on public or private property in the vicinity of the subject property, plant or replace trees on City-owned property; or to support the City’s urban forestry management program.

### **Section 10-15.22 Required Findings for Permit Approval**

Section has been modified for clarity and ease of implementation. Clear steps for required findings are listed.

### **New section: 10-15.24 Annual Pruning Permits**

This new section was added to provide more clarity on the conditions that must be met in order for the City to grant an annual pruning permit.

### **Section 10-15.25 Duration of Permit**

The duration of the permit was reduced from 1 year to 3 months from issuance, or 3 months from the final decision of an appeal, with the opportunity to apply for one 3-month extension.

### **Section 10-15.26 Exceptions**

The section has been updated to provide more clarity on what situations are granted exceptions to getting a permit, including “tree removals consistent with the safety requirements defined by the FAA and the City of Hayward Executive Airport plan.”

### **Section 10-15.29 Penalties**

Penalties adjusted to ensure they incentivize adherence to the ordinance.

#### ***Updated Text from this Section:***

“When it is found that this ordinance has been violated, the following process shall be taken:

1. A fine equal to double the amount of the permit fee shall be charged if the City determines that any tree activity for which a permit under this ordinance is required but not issued, or the activity is not in substantial compliance with the related permit or plan.
2. Additional mitigation requirements may be determined, as follows.
  - a. If there is sufficient evidence available to appraise the value of the removed tree(s), then mitigation shall be determined per Sec. 10-15.21 (6). Sufficient evidence may include evaluation of any remaining portions of the tree on site, or through evaluation of resources such as photographs, past plans, or Google Earth and Streetview to determine the species, size, and condition of the tree prior to removal.
  - b. If there is no measurable part of the tree remaining, and the other resources discussed in item (a.) cannot be used to estimate the value of the removed tree(s), then mitigation will be determined by the Director.

If the City determines that a tree removal or pruning permit is required, the property owner and/or party responsible for the tree cutting work shall apply for the necessary tree removal or pruning permit within a specified period set by the Director.

In the case of projects associated with development, an order to cease work may be issued and retained until the retroactive permit has been processed and requirements under this ordinance have been achieved.”