

Chapter 12.36 - PROTECTED TREES (City of Oakland Tree Protection Ordinance)

**Sections:**

12.36.010 - Intent and findings.

The ordinance codified in this chapter is enacted in recognition of the following facts and for the following reasons:

- A. Among the features that contribute to the attractiveness and livability of the city are its trees, both indigenous and introduced, growing as single specimens, in clusters, or in woodland situations. These trees have significant psychological and tangible benefits for both residents and visitors to the city.
- B. Trees contribute to the visual framework of the city by providing scale, color, silhouette and mass. Trees contribute to the climate of the city by reducing heat buildup and providing shade, moisture, and wind control. Trees contribute to the protection of other natural resources by providing erosion control for the soil, oxygen for the air, replenishment of groundwater, and habitat for wildlife. Trees contribute to the economy of the city by sustaining property values and reducing the cost of drainage systems for surface water. Trees provide screens and buffers to separate land uses, landmarks of the city's history, and a critical element of nature in the midst of urban settlement.
- C. For all these reasons, it is in the interest of the public health, safety and welfare of the Oakland community to protect and preserve trees by regulating their removal; to prevent unnecessary tree loss and minimize environmental damage from improper tree removal; to encourage appropriate tree replacement plantings; to effectively enforce tree preservation regulations; and to promote the appreciation and understanding of trees.

(Prior code § 7-6.01)

12.36.020 - Definitions.

For the purposes of this chapter, the meaning and construction of words and phrases hereinafter set forth shall apply:

"Applicant" means either one of the following:

- 1. The owner of the real property upon which the protected tree(s) involved in a tree removal permit and/or site inspection applications are located, also referred to herein as the tree owner;
- 2. The agent of the property owner (tree owner), as established by legally binding written stipulations between the property owner and the agent for the property owner.

"dbh (diameter at breast height)" means trunk diameter measured at four and one-half feet above the ground. For multistemmed trees, a permit is required if the diameter of all individual trunks when added together, equals or exceeds the minimum size stipulated for the species.

For convenience in the field, circumferences are considered equivalent to diameter as follows:

Diameter	Circumference
4"	12"
9"	28"

"Development related" means any activity regulated by the city of Oakland and which requires design review or a zoning, building, grading or demolition permit.

"Nonnative" means any tree species which does not naturally occur within the Oakland city limits.

"Protected perimeter" means an area of land located underneath any protected tree which extends either to the outer limits of the branches of such tree (the drip line) or such greater distance as may be established by the Office of Parks and Recreation in order to prevent damage to such tree.

"Protected tree" means a protected tree for the purpose of this chapter is the following:

1. On any property, *Quercus agrifolia* (California or Coast Live Oak) measuring four inches dbh or larger, and any other tree measuring nine inches dbh or larger except *Eucalyptus* and *Pinus radiata* (Monterey Pine);
2. *Pinus radiata* (Monterey Pine) trees shall be protected only on city property and in development-related situations where more than five Monterey Pine trees per acre are proposed to be removed. Although Monterey Pine trees are not protected in non-development-related situations, nor in development-related situations involving five or fewer trees per acre, public posting of such trees and written notice of proposed tree removal to the Office of Parks and Recreation is required per Section 12.36.070A and Section 12.36.080A.
3. Except as noted above, *Eucalyptus* and Monterey Pine trees are not protected by this chapter.

"Topping" means elimination of the upper twenty-five percent or more of a tree's trunk(s) or main leader(s).

"Tree" means a woody perennial, usually with one main trunk, attaining a height of at least eight feet at maturity.

"Tree removal" means the destruction of any tree by cutting, regrading, girdling, interfering with the water supply, or applying chemicals, or distortion of the tree's visual proportions by topping.

"Tree reviewer" means a city employee in the classification of Arboricultural Inspector, Tree Supervisor II or Tree Supervisor I assigned by the Director of Parks and Recreation to review, inspect and prepare findings for all tree removal permit applications and appeals of decisions related thereto.

"Working day" means Monday through Friday, except officially designated city holidays.

(Prior code § 7-6.02)

#### 12.36.030 - Application for permits.

All applications for tree removal permits shall only be made by applicants, as defined in this chapter, and no person who does not meet the definition of an applicant shall be issued a tree removal permit.

(Prior code § 7-6.03)

#### 12.36.040 - Permit required.

- A. A protected tree may not be removed without a tree removal permit.
- B. A tree removal permit, if one is required, shall be authorized by the Tree Reviewer prior to the approval of any building, grading, or demolition permit application, and shall only be issued to the applicant concurrent with or subsequent to all other necessary permits pertinent to site alteration and construction.

- C. Tree removal permits shall be transferrable from one applicant to another applicant only upon the following conditions:
1. The new applicant must meet the eligibility criteria set forth in Section 12.36.020;
  2. Prior to transfer, a written, notarized statement must be provided to the Tree Reviewer by the permit holding applicant and the new applicant identifying the new applicant by name, address, and telephone number, and stating the reason and effective date for the permit transfer;
  3. The permit holding applicant and new applicant must present proper identification to the Tree Reviewer;
  4. The new applicant must pay the fee established by the master fee schedule of the city for tree removal permit transfers;
  5. The transfer must be approved by the Tree Reviewer. Approval shall be granted, if the requirements of subsections (C)(1), (2), (3) and (4) of this section are met.
- D. All tree removal permits shall remain valid for one year from the date of permit issuance. An additional one year extension shall be granted upon receipt of a written request from the permit applicant by the Tree Reviewer. No tree removal permit shall remain valid for a period in excess of two years from the date of permit issuance. The applicant must pay the fee established by the master fee schedule of the city for tree removal permit extensions.

(Prior code § 7-6.04)

#### 12.36.050 - Criteria for tree removal permit review.

- A. In order to grant a tree removal permit, the city must determine that removal is necessary in order to accomplish any one of the following objectives:
1. To insure the public health and safety as it relates to the health of the tree, potential hazard to life or property, proximity to existing or proposed structures, or interference with utilities or sewers;
  2. To avoid an unconstitutional regulatory taking of property;
  3. To take reasonable advantage of views, including such measures as are mandated by the resolution of a view claim in accordance with the view preservation ordinance (Chapter 15.52 of this code);
  4. To pursue accepted, professional practices of forestry or landscape design. Submission of a landscape plan acceptable to the Director of Parks and Recreation shall constitute compliance with this criterion;
  5. To implement the vegetation management prescriptions in the S-11 site development review zone.
- B. A finding of any one of the following situations is grounds for permit denial, regardless of the findings in subsection A of this section:
1. Removal of a healthy tree of a protected species could be avoided by:
    - a. Reasonable redesign of the site plan, prior to construction;
    - b. Trimming, thinning, tree surgery or other reasonable treatment.
  2. Adequate provisions for drainage, erosion control, land stability or windscreen have not been made in situations where such problems are anticipated as a result of the removal.
  3. The tree to be removed is a member of a group of trees in which each tree is dependent upon the others for survival.

4. The value of the tree is greater than the cost of its preservation to the property owner. The value of the tree shall be measured by the Tree Reviewer using the criteria established by the International Society of Arboriculture, and the cost of preservation shall include any additional design and construction expenses required thereby. This criterion shall apply only to development-related permit applications.
- C. In each instance, whether granting or denying a tree removal permit, findings supporting the determination made pursuant to subsection A or B of this section, whichever is applicable, shall be set forth in writing.

(Prior code § 7-6.05)

#### 12.36.060 - Conditions of approval.

The following conditions of approval, depending upon the facts of each application, may be issued in conjunction with any tree removal permit:

- A. Adequate protection shall be provided during the construction period for any trees which are to remain standing. Measures deemed necessary by the Tree Reviewer in consideration of the size, species, condition and location of the trees to remain, may include any of the following:
1. Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the Tree Reviewer. Such fences shall remain in place for duration of all such work. All trees to be removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.
  2. Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filling, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within a distance to be determined by the Tree Reviewer from the base of any protected tree at any time. No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree.
  3. No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the Tree Reviewer from the base of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within a distance from the base of any protected trees to be determined by the tree reviewer. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree.
  4. Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration.
  5. If any damage to a protected tree should occur during or as a result of work on the site, the applicant shall immediately notify the Office of Parks and Recreation of such damage. If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed.
  6. All debris created as a result of any tree removal work shall be removed by the applicant from the property within two weeks of debris creation, and such debris shall be properly disposed of by the applicant in accordance with all applicable laws, ordinances, and regulations.

- B. Replacement plantings shall be required in order to prevent excessive loss of shade, erosion control, groundwater replenishment, visual screening and wildlife habitat in accordance with the following criteria:
1. No tree replacement shall be required for the removal of nonnative species, for the removal of trees which is required for the benefit of remaining trees, or where insufficient planting area exists for a mature tree of the species being considered.
  2. Replacement tree species shall consist of *Sequoia sempervirens* (Coast Redwood), *Quercus agrifolia* (Coast Live Oak), *Ancutus merciesii* (Madrone), *Aesculus californica* (California Buckeye) or *Umbelluiana californica* (California Bay Laurel).
  3. Replacement trees shall be of twenty-four (24) inch box size, except that three fifteen (15) gallon size trees may be substituted for each twenty-four (24) inch box size tree where appropriate.
  4. Minimum planting areas must be available on site as follows:
    - a. For *Sequoia sempervirens*, three hundred fifteen square feet per tree;
    - b. For all other species listed in subsection (B)(2) of this section, seven hundred (700) square feet per tree.
  5. In the event that replacement trees are required but cannot be planted due to site constraints, an in lieu fee as determined by the master fee schedule of the city may be substituted for required replacement plantings, with all such revenues applied toward tree planting in city parks, streets and medians.
- Plantings shall be installed prior to the issuance of a certificate of occupancy, subject to seasonal constraints, and shall be maintained by the applicant until established. The Tree Reviewer may require a landscape plan showing the replacement planting and the method of irrigation. Any replacement planting which fails to become established within one year of planting shall be replanted at the applicant's expense.
- C. Workers compensation, public liability, and property damage insurance shall be provided by any person(s) performing tree removal work authorized by a tree removal permit.
- D. The removal of extremely hazardous, diseased, and/or dead trees shall be required where such trees have been identified by the Tree Reviewer.
- E. Any other conditions that are reasonably necessary to implement the provisions of this chapter.

(Prior code § 7-6.06)

#### 12.36.070 - Procedure—Development-related tree removals.

- A. Notice and Posting of Monterey Pine Removals. Any property owner or arborist who intends to remove one or more Monterey Pine trees from any parcel must notify the Office of Parks and Recreation in writing of the address, number and size of Monterey Pine trees to be removed, with such notice addressed to the Tree Reviewer, Park Services Division, 7101 Edgewater Drive, Oakland, CA 94621.

In addition, the public posting procedures detailed in subsections F of this section shall be required for all Monterey Pine tree removal situations.

- B. Pre-application Design Conference. Prior to the submission of a tree removal permit application, a prospective applicant may request a pre-application design conference or a design review checklist conference by filing a request with the City Planning Department.

The pre-application design conference shall be convened by City Planning staff, and shall include the applicant, the Tree Reviewer, City Planning staff, Public Works staff (if necessary), and property owners of parcels located adjacent to the site of the proposed tree removal. The purpose of the pre-

application design conference shall be to review proposed tree removals and determine whether alternative designs might be possible which would reduce the number of trees to be removed.

The results of the pre-application design conference shall be advisory, and shall not be binding on the prospective applicant; however, failure of a prospective applicant to reasonably incorporate the advisory findings made at the pre-application design conference into a subsequent tree removal permit application may be considered by the Tree Reviewer when making final permit determinations.

C. Application. In any development-related situation which requires removal or possible damage to a protected tree or trees, including application for design review, zoning permits, planned unit developments, or land subdivisions, a tree removal permit application must be filed with the City Planning Department at the same time any zoning permit, design review, planned unit development, or land subdivision application is filed in accordance with the requirements of the regulations governing such applications.

All applicants for tree removal permits shall provide two copies of a survey and site plan as specified by Section 12.36.080 of the Oakland Municipal Code and Section 302(c) of the Oakland Building Code. All such surveys and site plans shall indicate the location, species, and dbh of all protected trees located within thirty (30) feet of proposed development activity on the subject property, regardless of whether or not the protected trees in question are included on any tree removal permit application; those protected tree(s) which are proposed for removal shall also be clearly identified.

The applicant shall also be required to certify in writing that the applicant has read, understood, and shall comply with the terms and provisions of this title, including any conditions of permit approval made pursuant thereto.

D. Initial City Review. The City Planning Department shall review and receive all applications for development-related tree removal permits.

In those cases where a tree removal permit is required, the applicant shall submit a tree removal permit application. Tree removal permits shall be required for all protected trees which are to be removed by the applicant, or which are located within ten feet of the proposed building footprint or perimeter of earthwork. City Planning staff shall then:

1. Accept the tree removal permit application after confirming that the required information has been provided by the applicant;
2. Collect the fee established by the master fee schedule of the city for tree removal permit review from the applicant, who shall pay such fee;
3. Advise the applicant of the requirement to mark all protected trees proposed for removal in plain view of the street with water soluble paint using a numbering scheme consistent with the numbering scheme used on the survey and site plan;
4. Issue the applicant sufficient summary notices to be posted and maintained by the applicant in clear public view from all street frontages of the subject property; and
5. Immediately forward the original tree removal permit application to the Office of Parks and Recreation for further processing.

E. CEQA Review. All tree removal permit applications shall be reviewed by the Tree Reviewer under the California Environmental Quality Act (CEQA) within five working days of permit application receipt using checklists established for this purpose.

Exemption from CEQA shall be determined by the application of criteria which take into account the existing property use (developed versus undeveloped), the total extent of requested tree removals, and the size of any individual protected tree proposed for removal.

In the event the Tree Reviewer determines that additional CEQA review is required, a referral shall be made to the City Planning Department within five working days of permit application receipt. City Planning staff shall review all referrals within established CEQA review time frames, and shall notify the Tree Reviewer of the projected CEQA completion date.

- F. Site Posting. The applicant shall paint a sequential number of not less than twelve (12) inches in height on each protected tree proposed for removal, and shall post the summary notices as required herein within two days after making an application for a tree removal permit. The painted numbers and summary notice shall not be removed until such time as a tree removal permit is issued or denied by the city for the tree(s) in question.

Failure of the applicant to properly post any tree tag or summary notice shall result in the extension of all time limits established for a permit application until such time as the applicant has provided proper tree and/or site posting.

- G. Application Verification. The Tree Reviewer, within four working days of receipt of a permit application, shall notify the applicant whether the application is complete and accepted for filing. If the Tree Reviewer determines that a permit application is incomplete, the notice to the applicant shall set forth the reasons for the incompleteness, and the application shall be deemed rejected. If the applicant is not notified by the Tree Reviewer within four working days, said permit application shall be deemed complete.
- H. Public Notice and Input. The Office of Parks and Recreation shall, within ten working days of permit application, notify occupants and proper owners of all parcels located adjacent to the site of proposed tree removal(s) in writing of the fact that a tree removal permit application has been made, the name of the applicant, and the closing date for public input. Notice to occupants shall be addressed to "Occupant." The Office of Parks and Recreation shall accept public comment regarding a tree removal permit application for a period of not less than twenty (20) working days following verification of proper site posting.
- I. Site Inspection. The Tree Reviewer of the Office of Parks and Recreation shall review all tree removal inspection requests, and shall inspect all such sites within five working days after the application is filed.
- J. Site Design Conference. The City Planning Department shall meet and confer with the applicant, the Tree Reviewer and concerned parties in an effort to achieve a design which will accommodate the jeopardized tree(s). Such site design conference shall be convened not later than ten working days after permit application.

This time limit may be modified by the mutual consent of the applicant, the City Planning Department, and the Office of Parks and Recreation. In addition, when an application for a Planned Unit development or land subdivision is filed with the city, the City Planning Department shall convene a design conference with the applicant, concerned parties and the Tree Reviewer to address tree removal issues.

- K. Permit Determinations. The Tree Reviewer of the Office of Parks and Recreation shall review all tree removal permit applications and shall be responsible for making all necessary findings for approval or denial of such permit applications, including attaching all necessary conditions of approval.

Any public input or comments shall be noted by the Tree Reviewer.

- L. Permit Issuance and Denial. Based upon the determinations of the Tree Reviewer, except as otherwise stated herein and except as necessitated by CEQA review, the Office of Parks and Recreation shall issue or deny a tree removal permit application within twenty (20) working days of application. The Office of Parks and Recreation shall hold all tree removal permits until the appeal deadline established in Section 12.36.100 has expired.

If an application for tree removal is approved and not appealed, a tree removal permit shall be issued by the Office of Parks and Recreation and immediately forwarded to the Office of Public Works. The Office of Public Works shall hold all tree removal permits until determinations are made regarding any other permit applications affecting the project in question. Once all permit applications for a particular project have been approved, the Office of Public Works shall issue the applicable tree removal permit.

If an application for tree removal is approved and not appealed, but any other related permit application affecting the project in question is denied, the tree removal permit shall be withheld by the Office of Public Works until such time as all permit applications for said project are approved.

If the application for tree removal is denied and not appealed, it shall be returned to the applicant by the Office of Public Works, along with the reasons for denial provided by the Office of Parks and Recreation.

Following issuance of a tree removal permit, the applicant shall post a copy thereof in plain view on the site while tree removal work is underway.

- M. **Appealed Permits.** Once a decision has been made regarding an appeal of a tree removal permit or application for tree removal, such permit or application for tree removal shall be processed as described in subsection L of this section.
- N. **Suspended Permits.** The Tree Reviewer, after notice to the tree permit holder, may, in writing, suspend a permit issued under the provisions of this code whenever the Tree Reviewer, based upon substantial evidence, determines that a permit was issued in error either because the applicant supplied incorrect information, the applicant failed to supply all relevant information, and such information could not have been reasonably discovered by the Tree Reviewer during the site investigation, or that work done pursuant to the permit has resulted in violation of this code or some other related code, ordinance, or resolution.

The notice to the tree permit holder shall state the grounds for suspension. In addition, it shall state the conditions that must be satisfied to have the suspension lifted. The notice shall also state the permit holder, upon receipt of the notice, may submit evidence to the Tree Reviewer indicating that there are no grounds for permit suspension. Upon receipt of any such evidence, the Tree Reviewer shall immediately review the evidence and, within two working days of receipt of said evidence, shall notify the permit holder in writing whether the suspension shall be lifted.

The decision of the Tree Reviewer shall be final unless appealed within five working days, pursuant to Section 12.36.100.

(Prior code § 7-6.071)

#### 12.36.080 - Procedure—Non-development-related tree removals.

- A. **Notice and Posting of Monterey Pine Removals.** Any property owner or arborist who intends to remove one or more Monterey Pine trees from any parcel must notify the Office of Parks and Recreation in writing of the address, number and size of Monterey Pine trees to be removed, which such notice addressed to the Tree Reviewer, Park Services Division, 7101 Edgewater Drive, Oakland, CA 94621.

In addition, the public posting procedures detailed in subsection F of this section shall be required for all Monterey Pine tree removal situations.

- B. **Pre-application Design Conference.** Prior to the submission of a tree removal permit application, a prospective applicant may request a pre-application design conference by filing a written request with the Office of Parks and Recreation.

The pre-application design conference shall be convened by the Tree Reviewer, and shall include the applicant, the Tree Reviewer, City Planning staff, Public Works staff (if necessary), and property owners of parcels located adjacent to the site of the proposed tree removal. The purpose of the pre-application design conference shall be to review proposed tree removals and determine whether alternatives might be possible which would reduce the number of trees to be removed.

The results of the pre-application design conference shall be advisory, and shall not be binding on the prospective applicant; however, failure of a prospective applicant to reasonably incorporate the advisory findings made at the pre-application design conference into a subsequent tree removal permit application may be considered by the Tree Reviewer when making final permit determinations.

- C. **Application.** In any non-development-related situation which requires removal or possible damage to a protected tree or trees, a tree removal permit application must be filed with the Office of Parks and



Recreation at 1520 Lakeside Drive (Parks and Recreation Main Office) or at 7101 Edgewater Drive, Room 405 (Park Services Division Office).

All applicants for tree removal permits shall provide a site plan as specified by the city. All such site plans shall indicate the location, species, and dbh of all protected trees which are proposed for removal.

The applicant shall also be required to certify in writing that the applicant has read, understood, and shall comply with the terms and provisions of this chapter, including any conditions of permit approval made pursuant thereto.

D. Initial City Review. The Office of Parks and Recreation shall review all applications for non-development-related tree removal permits.

In those cases where a tree removal permit is required, the applicant shall submit a tree removal permit application. Tree removal permits shall be required for all protected trees which are to be removed by the applicant. Parks and Recreation staff shall then:

1. Accept the tree removal permit application after confirming that the required information has been provided by the applicant;
2. Collect the fee established by the master fee schedule of the city for tree removal permit review from the applicant, who shall pay such fee;
3. Issue a sufficient number of tree tags to the applicant, one of which is to be posted and maintained by the applicant in plain view of the street on each protected tree;
4. Issue the applicant sufficient summary notices to be posted and maintained by the applicant in clear public view from all street frontages of the subject property; and
5. Immediately forward the original tree removal permit application to the Tree Reviewer for further processing.

E. CEQA Review. All tree removal permit applications shall be reviewed by the Tree Reviewer under the California Environmental Quality Act (CEQA) within five working days of permit application receipt using checklists established for this purpose.

Exemption from CEQA shall be determined by the application of criteria which take into account the existing property use (developed versus undeveloped), the total extent of requested tree removals, and the size of any individual protected tree proposed for removal.

In the event the Tree Reviewer determines that additional CEQA review is required, a referral shall be made to the City Planning Department within five working days of permit application receipt. City Planning staff shall review all referrals within established CEQA review time frames, and shall notify the Tree Reviewer of the projected CEQA completion date.

F. Site Posting. The applicant shall place one of the tree tags issued by the city on each protected tree, and shall post the summary notices as required herein within two days after making an application for a tree removal permit. The tags and notice shall not be removed until such time as a tree removal permit is issued or denied by the city for the tree(s) in question.

Failure of the applicant to properly post any tree tag or summary notice shall result in the extension of all time limits established for a permit application until such time as the applicant has provided proper tree and/or site posting.

G. Application Verification. The Tree Reviewer, within four working days of receipt of a permit application, shall notify the applicant whether the application is complete and accepted for filing. If the Tree Reviewer determines that a permit application is incomplete, the notice to the applicant shall set forth the reasons for the incompleteness, and the application shall be deemed rejected. If the applicant is not notified by the Tree Reviewer within four working days, said permit application shall be deemed complete.

H. Public Notice and Input. The Office of Parks and Recreation shall, within ten working days of permit application, notify occupants and property owners of all parcels located adjacent to the site of proposed tree removal(s) in writing of the fact that a tree removal permit application has been made,

the name of the applicant, and the closing date for public input. Notice to occupants shall be addressed to "Occupant." The Office of Parks and Recreation shall accept public comment regarding a tree removal permit application for a period of not less than twenty (20) working days following verification of proper site posting.

- I. Site inspection. The Tree Reviewer of the Office of Parks and Recreation shall review all tree removal inspection requests, and shall inspect all such sites within five working days after the application/request is filed.
- J. Permit Determinations. The Tree Reviewer of the Office of Parks and Recreation shall review all tree removal permit applications and shall be responsible for making all necessary findings for approval or denial of such permit applications, including attaching all necessary conditions of approval.

Any telephone calls or written comments received regarding the tree removal permit application shall be considered in the preparation of findings, and written records of such calls and/or comments shall be entered into the permanent permit file.

- K. Permit Issuance and Denial. Based upon the determinations of the Tree Reviewer, and except as otherwise stated herein, the Office of Parks and Recreation shall issue or deny a tree removal permit application within twenty (20) working days of application. The Office of Parks and Recreation shall hold all tree removal permits until the appeal deadline established in Section 12.36.100 has expired.

If an application for tree removal is approved and not appealed, a tree removal permit shall be issued by the Office of Parks and Recreation and immediately forwarded to the applicant.

If the application for tree removal is denied and not appealed, it shall be returned to the applicant by the Office of Parks and Recreation, along with the reasons for denial.

Following issuance of a tree removal permit, the applicant shall post a copy thereof in plain view on the site while tree removal work is underway.

- L. Appealed Permits. Once a decision has been made regarding an appeal of a tree removal permit or application for tree removal, such permit or application for tree removal shall be processed as described in subsection K of this section.
- M. Suspended Permits. The Tree Reviewer, after notice to the tree permit holder, may, in writing, suspend a permit issued under the provisions of this code whenever the Tree Reviewer, based upon substantial evidence, determines that a permit was issued in error either because the applicant supplied incorrect information, the applicant failed to supply all relevant information, and such information could not have been reasonably discovered by the Tree Reviewer during the site investigation, or that work done pursuant to the permit has resulted in violation of this code or some other related code, ordinance, or resolution.

The notice to the tree permit holder shall state the grounds for suspension. In addition, it shall state the conditions that must be satisfied to have the suspension lifted. The notice shall also state the permit holder, upon receipt of the notice, may submit evidence to the Tree Reviewer indicating that there are no grounds for permit suspension. Upon receipt of any such evidence, the Tree Reviewer shall immediately review the evidence and, within two working days of receipt of said evidence, shall notify the permit holder in writing whether the suspension shall be lifted.

The decision of the Tree Reviewer shall be final unless appealed within five working days, pursuant to Section 12.36.110.

(Prior code § 7-6.072)

#### 12.36.090 - Procedure—City-owned tree removals.

- A. Tree Posting. Except as exempted in Section 12.36.140, all city-owned trees proposed for removal shall be posted by the Office of Parks and Recreation. A tree tag shall be affixed to each tree

proposed for removal in plain view of the street. The tags shall not be removed until such time as tree removal is approved or denied by the city for the tree(s) in question.

- B. Public Notice and Input. The Office of Parks and Recreation shall, within ten working days of tree posting, notify property owners of all parcels located adjacent to the site of proposed tree removal(s) in writing of the fact that city-owned trees have been proposed to be removed, and the closing date for public input. The Office of Parks and Recreation shall accept public comment regarding the proposed removal of city-owned trees for a period of not less than twenty (20) working days following proper site posting.
- C. Tree Removal Determinations. The Tree Reviewer of the Office of Parks and Recreation shall review all proposed city-owned tree removals and shall be responsible for making all necessary findings for approval or denial of such removals, including attaching all necessary conditions of approval.

Any telephone calls or written comments received regarding the public input period shall be considered in the preparation of findings, and written records of such calls and/or comments shall be entered into the permanent Tree Reviewer files.

- D. Tree Removal Approval and Denial. Based upon the determinations of the Tree Reviewer, and except as otherwise stated herein, the Office of Parks and Recreation shall approve or deny city-owned tree removals within twenty (20) working days of application. The Office of Parks & Recreation shall suspend all city-owned tree removals until the appeal deadline established in Section 12.36.120 has expired.

If the proposed tree removal(s) are approved and not appealed, the city-owned tree(s) shall be removed in accordance with regular work schedules.

If the proposed tree removal(s) are not approved, the city-owned tree(s) shall not be removed.

Following approval of city-owned tree removal, the Office of Parks and Recreation shall post a public notice thereof in plain view on the site while tree removal work is underway.

- E. Appealed Permits. Once a decision has been made regarding an appeal of city-owned tree removal, such tree removal shall be processed as described in subsection D of this section.

(Prior code § 7-6.073)

#### 12.36.100 - Appeals—Development-related tree removal permits.

Any person with standing as defined herein may appeal a tree removal permit decision made by the Office of Parks and Recreation to the City Council.

- A. Standing. A decision of the Office of Parks and Recreation with regard to a development-related tree removal permit may be appealed by the applicant or the owner of any adjoining or confronting property. In the case of a planned unit development or subdivision, the decision may be appealed by the owner of any property adjoining or confronting any parcel of the planned unit development or subdivision. As used herein, the term "adjoining" means immediately next to, and the term "confronting" means in front or in back of.
- B. Venue. All such appeals shall be made to the City Council. The decision of the City Council shall be final.
- C. Procedure. The appeal shall be filed within five working days after the date of a decision by the Office of Parks and Recreation, and shall be made on a form prescribed by and filed with the City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director of Parks and Recreation or wherein such decision is not supported by the evidence in the record.

Upon receipt of such appeal, the City Clerk shall set the appeal for hearing at the next available City Council meeting. The hearing date set by the City Clerk shall be not more than thirteen (13) working days from the date of the decision by the Office of Parks and Recreation.

The City Clerk shall, not less than five days prior to the date set for the hearing on appeal, give written notice to the appellant and any known adverse parties, or their representatives, of the time and place of the hearing.

In considering the appeal, the City Council shall determine whether the proposed tree removal conforms to the applicable criteria. It may sustain the decision of the Office of Parks and Recreation or require such changes or impose such reasonable conditions of approval as are, in its judgement, necessary to ensure conformity to said criteria.

If the appeal is not finally disposed of by the City Council within eighteen (18) working days of the date of the decision by the Office of Parks and Recreation, said decision shall be deemed affirmed, and the permit appeal denied.

Should an appeal be filed during an officially declared City Council recess, the City Manager shall be authorized to appoint a Hearing Officer to hear the appeal and make a final determination on the appeal. All provisions of this section shall apply to such administrative appeal hearings, and the decision of the Hearing Officer shall be final.

D. The appellant shall pay the fee established by the master fee schedule of the city for tree removal permit appeals.

(Prior code § 7-6.081)

#### 12.36.110 - Appeals—Non-development-related tree removal permits.

Any person with standing as defined herein may appeal a non-development-related tree removal permit decision made by the Office of Parks and Recreation to the Park and Recreation Advisory Commission.

- A. Standing. A decision of the Office of Parks and Recreation with regard to a non-development-related tree removal permit may be appealed by the applicant or the owner of any adjoining or confronting property. As used herein, the term "adjoining" means immediately next to, and the term "confronting" means in front or in back of.
- B. Venue. All such appeals shall be made to the Park and Recreation Advisory Commission. The decision of the Park and Recreation Advisory Commission shall be final.
- C. Procedure. The appeal shall be filed at 1520 Lakeside Drive within five working days after the date of a decision by the Office of Parks and Recreation, and shall be made on a form prescribed by and filed with the Director of Parks and Recreation. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director of Parks and Recreation or wherein such decision is not supported by the evidence in the record.

Upon receipt of such appeal, the Director of Parks and Recreation shall set the appeal for hearing at the next available Park and Recreation Advisory Commission meeting. The Director of Parks and Recreation shall, not less than five days prior to the date set for the hearing on appeal, give written notice to the appellant and any known adverse parties, or their representatives, of the time and place of the hearing.

In considering the appeal, the Park and Recreation Advisory Commission shall determine whether the proposed tree removal conforms to the applicable criteria. It may sustain the decision of the Office of Parks and Recreation or require such changes or impose such reasonable conditions of approval as are, in its judgement, necessary to ensure conformity to said criteria.

If the appeal is not finally disposed of by the Park and Recreation Advisory Commission within thirty (30) working days of the date of the decision by the Office of Parks and Recreation, said decision shall be deemed affirmed, and the permit appeal denied.

Should an appeal be filed during an officially declared Park and Recreation Advisory Commission recess, the City Manager shall be authorized to appoint a Hearing Officer to hear the

appeal and make a final determination on the appeal. All provisions of this section shall apply to such administrative appeal hearings, and the decision of the Hearing Officer shall be final.

- D. Fee. The appellant shall pay the fee established by the master fee schedule of the city for tree removal permit appeals.

(Prior code § 7-6.082)

#### 12.36.120 - Appeals—City-owned tree removal permits.

Any person with standing as defined herein may appeal a city-owned tree removal decision made by the Office of Parks and Recreation to the Park and Recreation Advisory Commission and the City Council.

- A. Standing. A decision of the Office of Parks and Recreation with regard to a city-owned tree removal may be appealed by any concerned resident of the city.
- B. Venue. All appeals shall be made to the Park and Recreation Advisory Commission. The decision of the Park and Recreation Advisory Commission may be further appealed to the City Council, whose decision shall be final.
- C. Procedure. The appeal shall be filed within five working days after the date of a decision by the Office of Parks and Recreation, and shall be made on a form prescribed by and filed with the Director of Parks and Recreation. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director of Parks and Recreation or wherein such decision is not supported by the evidence in the record.

Upon receipt of such appeal, the Director of Parks and Recreation shall set the appeal for hearing at the next available Park and Recreation Advisory Commission meeting. The Director of Parks and Recreation shall, not less than five days prior to the date set for the hearing on appeal, give written notice to the appellant and any known adverse parties, or their representatives, of the time and place of the hearing.

In considering the appeal, the Park and Recreation Advisory Commission shall determine whether the proposed tree removal conforms to the applicable criteria. It may sustain the decision of the Office of Parks and Recreation or require such changes or impose such reasonable conditions of approval as are, in its judgement, necessary to ensure conformity to said criteria.

Any decision of the Parks and Recreation Advisory Commission may be appealed to the City Council.

Should an appeal be filed during an officially declared Park and Recreation Advisory Commission or City Council recess, the City Manager shall be authorized to appoint a Hearing Officer to hear the appeal and make a final determination on the appeal. All provisions of this section shall apply to such administrative appeal hearings, and the decision of the Hearing Officer shall be final.

- D. Fee. The appellant shall pay the fee established by the master fee schedule of the city for tree removal permit appeals.

(Prior code § 7-6.083)

#### 12.36.130 - Emergency situations.

In case of an emergency in which a protected tree is in so dangerous a condition as to pose an immediate threat to safety or property, the Director of Parks and Recreation or the Director of Public Works, or their respective designees, shall be empowered to waive the requirement for a tree removal permit. Supervisory personnel for East Bay municipal utility district, Pacific Bell, Pacific Gas and Electric

Company, and Alameda County flood control and water conservation district shall also be authorized to conduct emergency tree removal without a tree removal permit.

The removal of a protected tree under emergency conditions shall be reported to the Office of Parks and Recreation on the first business day following the emergency tree removal.

(Prior code § 7-6.09)

#### 12.36.140 - Exemptions.

- A. City of Oakland. In situations which require the removal of hazardous trees located on city property, a tree removal permit shall not be required. Hazardous city trees shall be verified by city staff using the criteria contained in Chapter 12.40 of this code hazardous tree ordinance.
- B. Other Public Agencies. A tree removal permit shall be required for removal of protected trees as defined in this chapter, unless the agency has previously and continuously demonstrated that it has adopted a vegetative management program that is consistent with the city's tree policies, as enunciated in this code and the Oakland comprehensive plan. The Parks and Recreation Advisory Commission shall review the vegetation management plans annually or upon any major revisions to ascertain exemption status.

In accordance with the California Public Utilities Code, Rules 35 of General Order 95, reasonable clearance of branches, foliage or trees on Pacific Gas and Electric property to allow the safe and reliable operation of utilities shall be exempt from tree removal permit requirements.

- C. Court Mandated Tree Removals. A tree removal permit shall not be required for the removal of any protected tree mandated by a court of law in accordance with Chapter 15.52 of this code (view preservation ordinance) or Chapter 12.40 of this code hazardous tree ordinance.

(Prior code § 7-6.10)

#### 12.36.150 - Enforcement and penalties.

- A. Except in compliance with the terms of this chapter, no person shall remove, damage, or endanger any protected tree in the city.
- B. Any person violating any of the provisions of this chapter shall be deemed guilty of an infraction.
- C. Park Rangers, Senior Park Rangers, Supervising Park Rangers, Senior Park Supervisor, Senior Tree Supervisor, Arboricultural Inspector, and Management Assistant (Parks) of the city of Oakland are authorized to enforce the provisions of this chapter and, pursuant to the provisions of Section 5 of the California Penal Code, are further authorized to arrest without a warrant any person violating said chapter.
- D. A violation shall be liable for all costs associated with the investigation and enforcement of this chapter by the city.
- E. In addition, a violator shall be required to provide replacement trees and/or fees, but not to exceed the value of the tree or trees legally removed or damaged, as evaluated by the formula developed by the International Society of Arboriculture.
- F. An applicant or property owner who fails to comply with the provisions of this chapter, or who violates said provisions, shall not receive a certificate of occupancy from the city for any project wherein such noncompliance and/or violations have occurred until such time as the provisions of this chapter have been fully satisfied.
- G. The remedies set forth in subsections A through G of this section shall be considered alternative, and shall be in addition to any other remedies available to the city in law or equity.

(Prior code § 7-6.11)

12.36.160 - Investigation of violations.

When, in the opinion of the Tree Reviewer, a violation of this chapter may have occurred, the Tree Reviewer shall investigate the alleged violation(s) and make written preliminary findings. If the preliminary findings suggest that a violation of this chapter has occurred, the Tree Reviewer shall notify the alleged violator and/or property owner, if different than the alleged violator, in writing. The notice shall include a description of each alleged violation, and shall provide the alleged violator and/or property owner ten working days in which to respond in writing, or to request a hearing before the City Council, or both. The notice shall also indicate that, if the alleged violator and/or property owner do not respond within the ten working day period, the preliminary findings of the Tree Reviewer shall become final, and the alleged violator and/or property owner shall become subject to the provisions of Sections 12.36.180 and 12.36.190.

(Prior code § 7-6.121)

12.36.170 - Violation hearing.

If the alleged violator and/or property owner, pursuant to Section 12.36.160, requests a hearing before the City Council, the date of the hearing shall be set within five working days of the city's receipt of the request for a hearing. Written notice of the hearing, which may be continued from time to time, shall be given to alleged violator and/or property owner at least five working days prior to the hearing.

At the hearing, the alleged violator and/or property owner shall have the burden of disapproving the preliminary findings of the Tree Reviewer. In the event any party requesting a hearing fails to appear, the decision of the Tree Reviewer shall become final, and the violator shall be subject to the provisions of Sections 12.36.180 and 12.36.190.

At the close of the hearing, the City Council, using the evidence in the record, shall determine whether any violations of this chapter have occurred. The decision of the City Council shall be supported by written findings, and shall be final. A copy of the City Council's findings shall be served on the alleged violator and/or property owner.

In any case in which the City Council determines that a violation has occurred, the violator shall be subject to the provisions of Sections 12.36.180 and 12.36.190.

(Prior code § 7-6.122)

12.36.180 - Cost of tree removal permit violation investigation, enforcement, and replacement plantings a lien.

The costs outlined in Section 12.36.150 above shall constitute a special assessment against the real property whereupon a tree removal permit violation has been investigated, confirmed and enforced. Said costs shall be itemized in writing in a report of assessment. The Director of Parks and Recreation shall cause a copy of the report of assessment to be served upon the owner of said property not less than five days prior to the time fixed for confirmation of said assessment: service may be by enclosing a copy of the report of assessment in a sealed envelope, postage prepaid, addressed to the owner at his or her last known address as the same appears on the last equalized assessment rolls of the city, and depositing same in the United States mail; and service shall be deemed completed at the time of deposit in the United States mail.

A copy of the report of assessment shall be posted in the Office of Parks and Recreation at least three days prior to the time when the report will be submitted to the City Council. After the assessment is made and confirmed, it shall be a lien on said real property.

Such lien attaches upon recordation in the Office of the County Recorder, Alameda County, by certified copy of the resolution of confirmation. After confirmation of the report, a certified copy shall be filed with the County Auditor, Alameda County, on or before August 10th. The description of the parcel reported shall be that used for the same parcel as the County Assessor's map books for the current year. The County Assessor shall enter each assessment on the county tax rolls opposite the parcel of land. The amount of the assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure for foreclosure and sale in case of delinquencies as provided for ordinary municipal taxes.

(Prior code § 7-6.131)

12.36.190 - Notice of lien—Tree removal permit violation investigation, enforcement, replacement plantings.

The lien mentioned in Section 12.36.180 shall take the following form:

**NOTICE OF LIEN**

Pursuant to authority vested in me by Resolution No. \_\_\_\_\_ C.M.S., of the Council of the City of Oakland, passed on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ and the provisions of Chapter 12.36, of the Oakland Municipal Code. I did, on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ initiate a tree removal permit violation investigation, an enforcement of this chapter, and replacement plantings to be made at the location hereinafter described at the expense of the owners thereof, in the amount of \$ \_\_\_\_\_, and that said amount has not been paid nor any part thereof, and the City of Oakland does hereby claim a lien upon the hereinafter described real property in said amount; the same shall be a lien upon the said property until said sum with interest thereon at the legally allowable rate from the date of the recordation of this lien in the Office of the County Recorder of the County of Alameda, State of California, has been paid in full. The real property hereinafter mentioned and upon which a lien is claimed is that certain parcel of land lying and being in the City of Oakland, County of Alameda, State of California, and particularly described as follows, to wit:

(insert description of property)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_

Director of Parks and Recreation

CITY OF OAKLAND

(Prior code § 7-6.132)

12.36.200 - Liabilities.

- A. The issuance and exercise of a permit pursuant to this chapter shall not be deemed to establish any public use or access not already in existence with regard to the property to which the permit is applicable.
- B. The issuance of a permit pursuant to this chapter shall not create any liability of the city with regard to the work to be performed, and the applicant for such permit shall agree to hold harmless the city and its officers and employees from any damage or injury that may occur in connection with, or resulting from, such work.



(Prior code § 7-6.15)