

ORDINANCE NO. 1060

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AMENDING CHAPTER 13.24 [HERITAGE TREES] OF TITLE 13 [STREETS,
SIDEWALKS AND UTILITIES]**

The City Council of the City of Menlo Park does hereby ordain as follows:

SECTION 1. FINDINGS AND DETERMINATIONS.

A. In August 2018, the City Council appointed a Heritage Tree Task Force (Task Force) to collaborate with staff to review and provide recommendations to update the Heritage Tree ordinance (ordinance);

B. The Task Force finalized their recommendations to the City Council at the end of June 2019;

C. On August 12, 2019, the Planning Commission reviewed the proposed updates to the Heritage Tree Ordinance and recommended approval;

D. On September 12, 2019, the Task Force reviewed the draft ordinance language and administrative guidelines, and recommended approval;

E. On September 18, 2019, the Environmental Quality Commission reviewed the draft ordinance language and administrative guidelines, and recommended approval;

F. On October 29, 2019, the City Council reviewed the updated Heritage Tree ordinance;

G. The City Council finds that the desired outcome of the ordinance update to ensure a significant and thriving population of large healthy trees in Menlo Park for public enjoyment and environmental sustainability while balancing property rights and implementation efficiency was achieved;

H. City Council finds the ordinance update process evaluated current issues and successes with the existing ordinance and explored options based on evidence and best practices in other communities and industry experts; and

I. The City Council finds that the preferred options were identified based on increasing clarity, increasing and maintaining canopy, and increasing effectiveness of ordinance implementation, and adopts the following amendments to the Heritage Tree Ordinance (13.24).

SECTION 2. AMENDMENT OF CODE. Chapter 13.24 [Heritage Trees] of Title 13 [Streets, Sidewalks and Utilities] is hereby repealed and replaced with the following:

**CHAPTER 13.24
HERITAGE TREES**

Sections:

13.24.010 Intent and purpose

13.24.020 Definitions

13.24.030 Maintenance and preservation of heritage trees

13.24.040 Removal and major pruning of heritage trees prohibited

13.24.050 Permits and decision making criteria for removal

13.24.060 Appeals

13.24.070 Establishment of heritage tree fund

13.24.080 Administrative guidelines

13.24.090 Heritage tree replacements

13.24.100 Enforcement and violations

13.24.110 Urban forest data collection and reporting

13.24.010 Intent and purpose.

This chapter is adopted with the intent and purpose of promoting the preservation and development of a healthy, diverse tree canopy in Menlo Park, which is highly valued by the community and is vital to the character and health of the city.

Heritage trees are valued for their many contributions to the environment, public health and quality of life of the Menlo Park community. Examples of those benefits include:

- provide shade
- enhance resilience to climate change
- improve air quality
- provide shelter from wind
- prevent erosion and landslides
- protect against flood hazards
- add to the city's scenic beauty and character
- recognize historical significance to our city
- create natural gathering places
- reduce noise pollution
- enhance privacy
- enhance neighborhood property values
- provide habitat for wildlife

This chapter establishes regulations for the removal and replacement of heritage trees, promotion of additional heritage tree planting and public education about the planting, maintenance and preservation of healthy heritage trees following industry best management practices and, consistent with the purposes of this chapter, the reasonable enjoyment of public and private property, protection of property rights, all in alignment with the General Plan.

13.24.020 Definitions.

For purposes of this Chapter, the terms below shall have the following meanings:

1. "Administrative guidelines" means staff-promulgated regulations implementing and interpreting this ordinance.

2. "Applicant" is the person seeking a Permit to remove or perform major pruning on a heritage tree under this Chapter.

3. "Major pruning" is the significant removal of roots or foliage that has the potential to negatively impact the health or structural stability of a heritage tree. Major pruning includes the removal of more than one-fourth of the live branches or roots within a twelve (12) month period.

4. "Public Works Director" shall mean the Public Works Director or their designee, including but not limited to the City Arborist.

5. "Heritage tree" shall mean:

(A) All trees other than oaks which have a trunk with a circumference of 47.1 inches (diameter of fifteen (15) inches) or more, measured fifty-four (54) inches above natural grade.

(B) An oak tree (*Quercus*) which is native to California and has a trunk with a circumference of 31.4 inches (diameter of ten (10) inches) or more, measured at fifty-four (54) inches above natural grade.

(C) A tree or group of trees of historical significance, special character or community benefit, specifically designated by resolution of the city council.

For purposes of Sections 13.24.020 (4) (A) and (B), trees with more than one trunk shall be measured at the diameter below the main union of all multi-trunk trees unless the union occurs below grade, in which case each stem shall be measured as a standalone tree. A multi-trunk tree under twelve (12) feet in height shall not be considered a heritage tree.

13. 24.030 Maintenance and preservation of heritage trees.

1. Any person who owns, controls, or has custody or possession of any real property within the city shall use reasonable efforts to maintain and preserve all heritage trees located thereon in a state of good health pursuant to the provisions of this chapter. Failure to do so shall constitute a violation of this chapter.

2. Any person who conducts any grading, excavation, demolition or construction activity on property shall do so in such a manner as to not threaten the health or viability or cause the removal of any heritage tree.

3. Any work performed within an area ten (10) times the diameter of a heritage tree (i.e., the tree protection zone) shall require submittal and implementation of a tree protection plan for review and approval by the public works director prior to issuance of any permit for grading or construction. The tree protection plan shall be prepared by a City-approved certified arborist and shall address issues related to protective fencing and protective techniques to minimize impacts associated with grading, excavation, demolition and construction. The public works director may impose conditions on any city permit to assure compliance with this section.

13.24.040 Removal and major pruning of heritage trees prohibited.

It is unlawful for any person to remove, or cause to be removed, any heritage tree from any parcel of property in the city, or perform major pruning on a heritage tree, without obtaining a permit; provided, that in case of emergency, when a heritage tree is imminently hazardous or

dangerous to life or property, it may be removed by order of the police chief, fire chief, the public works director or their respective designees. Any person who vandalizes, grievously mutilates, destroys or unbalances a heritage tree without a permit or beyond the scope of an approved permit shall be in violation of this chapter.

13.24.050 Permits and decision-making criteria for tree removal.

a. **Permit Requirement and Removal Criteria.** Any person desiring to remove one or more heritage trees or perform major pruning as described in Section [13.24.020](#) shall apply for a permit pursuant to procedures established by the public works director and shall pay a fee established by the city council. It is the joint responsibility of the property owner and party removing the heritage tree or trees, or portions thereof, to obtain the permit. The public works director may only issue a permit for the removal or major pruning of a heritage tree if he or she determines there is good cause for such action. In determining whether there is good cause, the public works director shall give consideration to the following:

1. **Death.** The heritage tree is dead.
2. **Tree Risk Rating.** The condition of the heritage tree poses a high or extreme risk rating under the International Society of Arboriculture Best Management Practices: Tree Risk Assessment and/or administrative guidelines; and the risk cannot be reasonably abated to a low risk rating with sound arboricultural treatments.
3. **Tree Health Rating.** The heritage tree is (a) dying or has a severe disease, pest infestation, intolerance to adverse site conditions, or other condition and pruning or other reasonable treatments based on current arboricultural standards will not restore the heritage tree to a fair, good or excellent health rating as defined in the Guide for Plant Appraisal, 10th Edition, or its successor manual or the administrative guidelines or (b) likely to die within a year.
4. **Species.** The heritage tree is a member of a species that has been designated as invasive or low species desirability by the public works director in the administrative guidelines.
5. **Development.** The heritage tree interferes with proposed development, repair, alteration or improvement of a site or the heritage tree is causing/contributing to structural damage to a habitable building (excluding amenities, such as walkways, patios, pools and fire pits); and there is no financially feasible and reasonable design alternative that would permit preservation of the heritage tree while achieving the applicant's reasonable development objectives or reasonable economic enjoyment of the property using the methodology established in the administrative guidelines.
6. **Utility Interference.** The removal is requested by a utility, public transportation agency, or other governmental agency due to a health or safety risk resulting from the heritage tree's interference with existing or planned public infrastructure and there is no financially feasible and reasonable design alternative that would permit preservation of the heritage tree.

b. **Notice Requirements.**

1. The City will use its best efforts to maintain a publicly accessible data base of permit applications.
2. Before a heritage tree is removed, notice of removal shall be posted by the applicant on the property containing the heritage tree. When a permit is sought under criteria number 5 (Development) or 6 (Utility), property owners within 300 feet of the exterior boundary of the

property containing the heritage tree shall be noticed by email or mail of the pending application. Failure to receive copies of such notice shall not invalidate any action taken by the City.

13.24.060 Appeals.

1. Authority to appeal. Removals based on criteria numbers 1 through 4 in section 13.24.050 may only be appealed by the permit applicant as set forth in section 13.24.060 (2) below. Removals based on criteria 5 and 6 may be appealed by the permit applicant or Menlo Park resident. Appeals must be filed on a city approved form and are subject to appeal fees. A permit shall not be issued until all appeals are completed and/or the time for filing an appeal has expired.

2. Criteria 1-4 Appeals. Permit decisions based on criteria numbers 1, 2, 3 or 4 in section 13.24.050 may only be appealed by the permit applicant. Such appeal must be filed within fifteen (15) days of the public works director's written decision and must be in writing. The appeal shall be heard by the City Manager or designee whose decision shall be final.

3. Criteria 5-6 Appeals. Notice of the public works director's decision shall be mailed to all property owners within 300 feet of the exterior boundary of the property where the heritage tree is located. In addition, the applicant shall post a notice on a form supplied by the city on the property in a location visible to the public.

A. Filing Appeal. Within fifteen (15) days of posting, the applicant or any Menlo Park resident may appeal the public works director's decision to the Environmental Quality Commission

B. Review Period for decision making criteria number 5 and 6 of section 13.24.050. If the Permit is timely appealed, the appellant shall have an additional fifteen (15) days to review the project file and to submit written evidence to the city clerk relating to the appeal. The appellant may submit one to five reasonable and feasible alternatives for the permit applicant to explore. If either party would like the appeal body to review third-party expert evidence, such party shall submit the evidence to the city within the review period. No additional removal alternatives/concepts or third party expert testimony will be accepted for review by the Environmental Quality Commission or City Council after the end of the review period.

C. Decision by Environmental Quality Commission. The Environmental Quality Commission shall consider the appeal. The Environmental Quality Commission may only consider removal alternatives/concepts and third party expert evidence submitted to the city during the review period. Within fifteen (15) days following the Environmental Quality Commission's decision, the applicant or any other party to the appeal may appeal the Environmental Quality Commission's decision to the City Council.

D. Planning Commission development related tree removals. When a removal permit is sought in conjunction with a project requiring Planning Commission review, the appeal to the Environmental Quality Commission, if any, should be completed before the Planning Commission takes final action on the development project.

i. If the Environmental Quality Commission approves the heritage tree removal, such approval shall be conditioned upon final approval of the project by the Planning Commission or City Council, as applicable. Following the Environmental Quality Commission's approval of the development related heritage tree removal, any appeal to the City Council is suspended until the Planning Commission acts. Once the Planning Commission makes a final decision on the overall development project that includes the heritage tree removal, any party to the

Environmental Quality Commission appeal may appeal the heritage tree removal decision to the City Council. Such appeal shall be filed with the city clerk within fifteen (15) days of the Planning Commission's decision.

ii. If the Environmental Quality Commission denies the removal permit, the permit applicant may appeal the decision to the City Council before the Planning Commission reviews the related development project. If the applicant does not appeal the permit decision within fifteen (15) days of the Environmental Quality Commission's decision, no appeal may be taken on the removal permit, and the development project shall be redesigned to include plans for retaining the heritage tree.

E. Decision by City Council. The City Council shall consider the appeal. The City Council may only consider removal alternatives/concepts and third party expert evidence submitted to the city during the review period.

4. Alternate appeal body. From time to time, the City Council may by resolution appoint a separate appellate body to hear Permit appeals in lieu of the Environmental Quality Commission.

5. Re-submittal. If an applicant fails to exhaust the appeals set forth in this Chapter or the City Council denies the Permit, the Applicant may not apply for another Permit applicable to that heritage tree for a period of six months from the denial decision.

13.24.070 Establishment of heritage tree fund.

There is hereby established a heritage tree fund. This fund may be used to plant additional trees, to assist with implementation of the Heritage Tree Ordinance and any other purpose established by the administrative guidelines.

13.24.080 Administrative guidelines.

The public works director shall have the authority to adopt and modify administrative guidelines to implement this chapter.

13.24.090 Heritage tree replacements.

1. If a permit for removal of a heritage tree is granted under Section 13.24.050, the applicant shall replace the heritage tree with a tree from a list of species approved by the City Arborist or pay a heritage tree in lieu fee in accordance with this section.

2. For development related removals, the applicant shall provide replacement heritage trees on site in an amount equivalent to the appraised value of the removed heritage tree. The City Arborist shall approve the location, size, species and number of replacement heritage trees. If the appraised value of the removed heritage tree, exceeds the value of the replacement heritage trees that can be accommodated on the property, the applicant shall pay the difference in value to the heritage tree fund.

3. For non-development related removals, the applicant shall provide replacement heritage trees on site, with a tree from a list of species approved by the City Arborist, in an amount based on a replacement matrix based on trunk diameter as set forth in the administrative guidelines. If the property cannot accommodate all replacement trees on site, the applicant may pay an in lieu fee equivalent to the value of the replacement trees not planted on site. The in lieu fee shall be deposited into the heritage tree fund.

13.24.100 Enforcement and violations.

In addition to all other remedies set forth in this code or otherwise provided by law, the following remedies shall be available to the city for violation of this chapter:

1. If a violation occurs during development, the city may issue a stop work order suspending and prohibiting further activity on the property pursuant to the grading, demolition, and/or building permit(s) (including construction, inspection, and issuance of certificates of occupancy) until a mitigation plan has been filed with and approved by the public works director and City Attorney, agreed to in writing by the property owner(s), and either implemented or guaranteed by the posting of adequate security as determined by the City Attorney.
2. Any person violating this chapter shall be subject to a civil fine or penalty in the amount established by the City Council by resolution. Civil fines or penalties collected under this chapter shall be deposited into the heritage tree fund.
3. The Code Enforcement Officer, Public Works Director and Building Official or designee are authorized to issue stop work orders, notices of violation, administrative penalties and citations under this chapter and/or pursuant to the administrative guidelines adopted by the Public Works Director.
4. Any citation or penalty received under this chapter may be appealed to the City Manager or designee whose determination shall be final. Such appeal must be filed within fifteen (15) days of receipt of the citation or penalty.
5. Whenever the amount of any administrative fine or penalty or administrative cost incurred by the city in connection with a violation of this chapter has not been satisfied in full within ninety (90) days and/or has not been successfully challenged by a timely writ of mandate, this obligation may constitute a lien or, in the alternative, a special assessment against the real property on which the violation occurred.
6. The City Attorney may bring a civil action against the violator to abate, enjoin, or otherwise compel the cessation of violation of any provision in this chapter. In a civil action brought pursuant to this chapter in which the City prevails, the court may award to the City all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action, and reasonable attorney fees.
7. The remedies provided in this section may be enforced against both the contractor or other person performing work in violation of this chapter as well as the owner of the real property on which the heritage tree is located.
8. All remedies provided in this section shall be cumulative and are not exclusive.

13.24.110 Urban forest data collection and reporting.

1. The City shall use its best efforts to collect and make publicly available data to monitor the effectiveness of this ordinance.
2. City staff shall submit an annual report to the Environmental Quality Commission on the effectiveness of this Heritage Tree Ordinance.

SECTION 3. SEVERABILITY. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such

section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") under Sections 15378 and 15061(b)(3) of the of the CEQA Guidelines. The ordinance update is intended to continue the level of tree canopy protection existing in the current ordinance while providing more clarity and better enforcement, and has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 5. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect July 1, 2020. The city clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, by posting in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the city council members voting for and against the amendment.

INTRODUCED on this twenty-ninth day of October, 2019.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on this nineteenth day of November, 2019, by the following vote:

AYES: Carlton, Combs, Mueller, Nash, Taylor

NOES: None

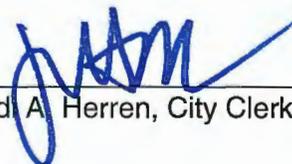
ABSENT: None

ABSTAIN: None

APPROVED:


Ray Mueller, Mayor

ATTEST:


Judi A. Herren, City Clerk