

# HERITAGE TREE ORDINANCE ADMINISTRATIVE GUIDELINES

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These guidelines are in draft form. It is anticipated they will be finalized and approved in July 2020.

## Background

These administrative guidelines are supplemental procedures to further explain how to comply with the heritage tree ordinance and are to be read with it. This living document allows the public works director or designee the flexibility to strengthen and clarify the ordinance to reflect changes in industry standards and establish best practices. The public works director has designated the city arborist as responsible for maintaining and updating these administrative guidelines, unless otherwise specified in Menlo Park Municipal Code Section 13.24.080. The administrative guidelines are a companion document that refers to the heritage tree ordinance and is not intended to replace the ordinance.

## 13.24.020 Definitions

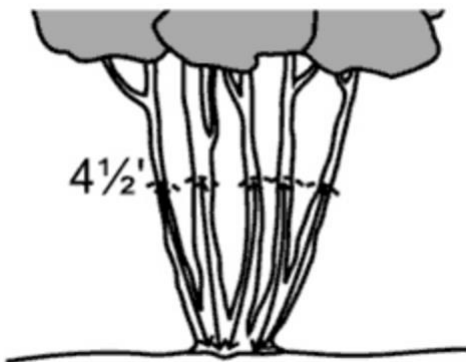
Section 13.24.080(4)(B) identifies special provisions for an oak tree which is native to California. The city arborist has determined the following species of oak trees are native to California:

- Coast live oak (*Quercus agrifolia*)
- Scrub oak (*Quercus berberidifolia*)
- Canyon live oak (*Quercus chrysolepis*)
- Blue oak (*Quercus douglasii*)
- Leather oak (*Quercus dumosa*)
- Englemann oak (*Quercus englmannii*)
- Oregon white oak (*Quercus garryana*)
- Black oak (*Quercus kelloggii*)
- Valley oak (*Quercus lobata*)
- Shreve oak (*Quercus parvula* var. *shrevei*)
- Oracle oak (*Quercus x morehus*)
- Island oak (*Quercus tomentella*)
- Interior live oak (*Quercus wislizenii*)

Multi-trunk trees, also known as multi-stemmed trees, with a union above the existing grade is measured by the following steps:

1. Measure the diameter of each trunk at 4.5 feet in height above the ground
2. Add the diameter measurement of each trunk and use the sum to determine trunk diameter. See the figure below:
- 3.

### Measuring Multi-stemmed Trees



Multi-stemmed trees with a union occurring below the existing grade shall be considered individual trees and diameter measurements will be taken for each individual stem to determine trunk diameter – independent of the other stem diameters.

As of July 1, 2020, the City Council has not designated any trees under Menlo Park Municipal Code Section 13.24.020(4)(C).

### 13.24.050 Permits and decision making criteria for removal

Applicants who submitted a heritage tree permit application before March 16, 2020, have the option to have their applications be reviewed under (a) the current ordinance or (b) the updated ordinance. The review process includes, but not limited to be, the decision making criteria, replacement tree requirements and the appeal process. These applicants must make a determination through an email to Joanna Chen (jpchen@menlopark.org) by July 1, 2020, otherwise the application will be processed under the new ordinance.

If an applicant submitted a non-development related application before July 1, 2020, and chose to be reviewed under the updated ordinance, he/she will be granted an exception to use an arborist who is not on the City-approved consulting arborist list.

The City is slowly transitioning from the use of paper applications to the use of an online permitting system. Permit applicants can submit electronic permit applications online at [menlopark.org/onlinepermits](http://menlopark.org/onlinepermits). You will need to create an account (username and password).

The City will continue to allow paper submittals until October 1, 2020, with a few exceptions. For instance, those who do not have internet access may contact staff at 650-330-6780 for assistance. Paper permit applications with the payment may be mailed to the Building Division (701 Laurel St., Menlo Park, CA 94025).

The determination in granting or denying a permit shall in most instances be based on the articulated criteria in Municipal Code Section 13.24.050(a):

1. Death:

Permit applicants need to submit these documents to confirm the tree is dead:

- Images to show the tree does not have living foliage. This does not apply to deciduous tree during winter months when these trees are typically dormant; or
- An arborist report from city approved arborist stating the tree is dead.

2. Tree risk rating:

Considerations:

- Tree risk assessment is a systematic process used to identify, analyze and evaluate tree risk. Risk is assessed by categorizing or the likelihood (probability) of occurrence (failure), the likelihood of impacting a target, and the severity of consequences should failure occur to determine a risk rating.
- Trees with moderate, high or extreme risk are required to have been evaluated by City-approved consulting arborists.

The following documentation may be used to support Criteria 2:

- Evidence that the tree risk rating cannot be mitigated to low residual risk rating (through pruning, cabling, bracing or other means), as reported by a City-approved consulting arborists. This may require an advanced level 3 assessment such as an aerial inspection, sounding with mallet, pull test, tomographic or resistograph (or equivalent) testing.

3. Tree health rating:

Intolerance to adverse site conditions can include factors such as soil or water salinity, exposure to sun or wind, or increasingly high temperatures, or overcrowded growing conditions.

Table 4.1 of the Guide for Plant Appraisal, 10th Edition, or its successor manual, defines tree health as the following:

- Excellent rating – High vigor and nearly perfect health with little or no twig dieback, discoloration, or defoliation.
- Good rating – Vigor is normal for the species. No significant damage due to diseases or pests. Any twig dieback, defoliation, or discoloration is minor.
- Fair rating – Reduced vigor. Damage due to insects or diseases may be significant and associated with defoliation but is not likely to be fatal. Twig dieback, defoliation, discoloration, and/or dead branches may comprise up to 50% of crown.
- Poor rating – Unhealthy and declining in appearance. Poor vigor. Low foliage density and poor foliage color are present. Potentially fatal pest infestation. Extensive twig and/or branch dieback.
- Very poor rating – Poor vigor. Appears to be dying and in the last stages of life. Little live foliage.

#### 4. Species:

The trees listed below have been designated by the city arborist to be invasive or low desirability species. Note that heritage tree removal permits are still required for the removal of these trees in order to verify accurate species and document replacement tree planting conditions. The permit issuance may be expedited as no appeals are allowed.

- Bailey acacia (*Acacia baileyana*)
- Black locust (*Robinia pseudoacacia*)
- Blackwood acacia (*Acacia melanoxylon*)
- California fan palm (*Washingtonia filifera*)
- Glossy privet (*Ligustrum lucidum*)
- Mexican fan palm (*Washingtonia robusta*)
- Myoporum (*Myoporum laetum*)
- Purple leaf plum (*Prunus cerasifera* 'Atropurpurea')
- Red ironbark eucalyptus (*Eucalyptus sideroxylon*)
- Tree of heaven (*Ailanthus altissima*)

#### 5. Development:

The following documentation may be required to support criterion 5:

- Schematic diagrams that demonstrate the feasibility/livability of alternative design(s) that preserve the tree, including utilizing zoning ordinance variances that would preserve the tree;
- Documentation on the additional incremental construction cost attributable to an alternative that preserves the tree (i.e. construction cost of alternative design minus cost of original design) in relation to the appraised value of tree(s) and based on the most recent addition to the Guide for Plant Appraisal.

The following guidance will be used to determine feasibility:

- If the incremental cost of the tree preservation alternative is more than 140% of the appraised value of the tree, the cost will be presumed to be financially infeasible.
- If the incremental cost of the tree preservation alternative is less than 110% of the appraised value of the tree, the cost will be presumed to be financially feasible.
- If the incremental cost of the tree preservation alternative is between 110% and 140% of the appraised value of the tree, public works director or their designee will consider a range of factors, including the value of the improvements, the value of the tree, the location of the tree, the viability of replacement mitigation and other site conditions.
- In calculating the incremental cost of the tree preservation alternative, only construction costs will be evaluated. No design fees or other soft costs will be considered.

Removal applications based on shading interference with proposed solar facilities shall employ the following screening criteria before applying the feasibility guidance above:

- Can the proposed array be ground mounted or positioned elsewhere to avoid shading by tree
- Can pruning resolve the conflict
- Is the proposed array sized appropriately
- Are there other energy efficiency measures that owner could employ to replace or reduce the need for the proposed solar array (energy efficiency analysis should be prepared by a certified energy auditor).

#### 6. Utility inference (Criterion 6):

The following documentation may be required to support criterion 6:

- Schematic diagrams that demonstrate the feasibility/livability of alternative design(s) that preserve the tree, including utilizing zoning ordinance variances that would preserve the tree;
- Documentation on the additional incremental construction cost attributable to an alternative that preserves the tree (i.e. construction cost of alternative design minus cost of original design) in relation to the appraised value of tree(s) and based on the most recent addition to the Guide for Plant Appraisal.

According to Section 13.24.050(b) noticing requirements:

- For decisions made under either Criterion 5 or 6, staff will email a city-issued notice to the applicant who is expected to post the notice.
- Notice posting instructions:
  1. Print out city-issued notice on an 11" by 17" yellow-colored paper.
  2. Place the notice so it is visible to the public. If the tree is in front of the property, either staple the notice on the tree, tie it around the tree, or hang it on the tree. If the tree is not visible to the public, place the notice in the front of the property.

3. Send at least two (2) pictures of each tree to the city staff at on Day 1 of notice issuance, Day 5, Day 10, and Day 15 to ensure the notice is visible to the public during the appeal period.
  - Picture #1: Overview of the heritage tree with the notice visible in relation to the property address. Picture must include the main building in the background.
  - Picture #2: Close up image of tree trunk with the notice visible

### 13.24.060 Appeals

In addition to Section 13.24.060(1):

- The purpose of review period is to allow appeals to be processed in an appropriate, meaningful, and efficient manner to respect both permit applicant time and other city priorities. An appeal can only be based upon the decision making criteria used to make staff's recommendation.
- It is recommended for any party interested in appealing to first schedule a meeting with City staff to understand the decision making process.
- The City may offer mediation before or after an appeal process, which will be evaluated case by case basis.
- Appellants may submit an appeal form electronically on the City website and will receive an invoice to be paid within three (3) days of the invoice date. The online submission and invoice payment must be made within the appeal period of 15 days.
- A hardcopy appeal form is available until October 1, 2020. The appellant must fill in the appeal form and submit payment together to the Sustainability Division (701 Laurel St, 2<sup>nd</sup> floor). The postmark date must be within the appeal period.

Under Section 13.24.060(2), the appeal fee is nonrefundable if the appellant withdraws his/her appeal after seven (7) days of payment.

Under Section 13.24.060(3)(B):

- If the appellant is the permit applicant, he/she may submit the same design alternatives as when the heritage tree removal permit application was submitted or propose new designs.
- If the appellant is a community member, the alternative designs must include site plans and drawings to support his/her claim.

Upon request by either party, the City may extend the review period (up to 60 days from the appeal file date) for the appellant to provide additional evidence and strategies on preserving the heritage tree(s). After the review period is over, new design plans will be not accepted.

### 13.24.070 Establishment of heritage tree fund

Funds authorized to be used for site modifications and underlying treatments (such as concrete excavation, installation of structural soils, pervious pavers, Silva Cells, and cantilever sidewalks) to facilitate tree planting, limit infrastructure conflicts, and promote healthy tree growth.

### 13.24.080 Administrative guidelines

Before amending these Guidelines, the public works director shall make all proposed amendments available for public review and comment for 30 days by posting the amendments on the City's website.

### 13.24.090 Heritage tree replacements

Under Section 13.24.090 (1), an approved replacement tree list is not provided as site conditions are unknown and will vary from each property. A specified list also limits species diversity. However, below are some examples of replacement tree species that meet the criteria listed above. It is recommended that assistance of a certified arborist be sought prior to selecting a tree and planting location. The replacement tree species are not limited to the following trees if the above criteria are met:

Deciduous tree (lose their leaves in winter)

- Accolade elm (Ulmus 'Morton')
- Black oak (Quercus kelloggii)
- Black walnut (Juglans hindsii)
- Blue oak (Quercus douglasii)
- California sycamore (Platanus racemose)
- Chinese flame (Koelreuteria bipinnata)
- Chinese pistache (Pistacia chinensis)
- Chinese tallow (Triadica sebiferum)
- Engelmann oak (Quercus engelmannii)
- Forest green oak/Hungarian oak (Quercus frainetto 'Forest Green')

- Frontier elm (*Ulmus carpinifolia* x *parvifolia* 'Frontier')
- Japanese pagoda (*Styphnolobium japonicum*)
- Kentucky coffee (*Gymnocladus dioicus* 'Espresso', 'Prairie Titan')
- Pecan (*Carya illinoensis*)
- Rotundiloba sweetgum (*Liquidambar styraciflua* 'Rotundiloba')
- Shademaster locust (*Gleditsia triancanthos* var. *inermis* 'Shademaster')
- Silver linden (*Tilia tomentosa*)
- Texas red oak (*Quercus buckleyi*)
- Valley oak (*Quercus lobata*)
- Western catalpa (*Catalpa speciosa*)

Evergreen trees (retain their leaves in the winter)

- African fern pine (*Afrocarpus gracilior*)
- Arizona cypress (*Hesperocyparis arizonica*)
- Atlas cedar (*Cedrus atlantica*)
- Avocado tree (*Persea Americana*)
- Brisbane box (*Lophostemon confertus*)
- Cajeput tree (*Melaluca quinquenervia*)
- California bay laurel (*Umbellaria californica*)
- Camphor tree (*Cinnamomum camphora*)
- Canary island pine (*Pinus canariensis*)
- Carob tree (*Ceratonia siliqua*)
- Catalina ironwood (*Lyonothamnus floribundus*)
- Coast live oak (*Quercus agrifolia*)
- Cork oak (*Quercus suber*)
- Deodar cedar (*Cedrus deodara*)
- Incense cedar (*Calocedrus decurrens*)
- Island oak (*Quercus tomentella*)
- Lemon-scented gum (*Corymbia citriodora*)
- Peruvian pepper (*Schinus molle*)
- Red flowering gum (*Corymbia ficifolia*)
- Saratoga laurel (*Laurus nobilis* 'Saratoga')
- Silk oak (*Grevillea robusta*)
- Silver leaf oak (*Quercus hypoleucoides*)
- Spotted gum (*Corymbia maculata*)
- Torrey pine (*Pinus torreyana*)

In reference to Section 13.24.090(2), applicants may use the following monetary value of the replacement trees to help design their landscape plans for development-related removals:

- One (1) #5 container – \$100
- One (1) #15 container – \$200
- One (1) 24-inch tree box – \$400
- One (1) 36-inch tree box – \$1,200
- One (1) 48-inch tree box – \$5,000
- One (1) 60-inch tree box – \$7,000

To be eligible for the in lieu fee, applicants must explain why the value of the replacement trees are not equal to the appraised value of the removed heritage trees.

In reference to Section 13.24.090 (3) for decisions made under Criteria 1, 2, 3, or 4, the monetary value of a replacement tree correlates with the size of the heritage tree trunk diameter (measured from 54 inches above grade). For every heritage tree proposed for removal, it must be replaced by the following replacement tree requirement:

- An oak heritage tree with a trunk diameter of 10 to 15 inches has a minimum replacement tree requirement of one (1) #5 container. The monetary value is \$100.
- Any heritage tree with a trunk diameter of greater than 15 inches to 20 inches has a minimum replacement tree requirement of one (1) #15 container. The monetary value is \$200.
- Any heritage tree with a trunk diameter of greater than 20 inches to 30 inches has a minimum replacement tree requirement of one (1) 24-inch tree box. The monetary value is \$400.

- Any heritage tree with a trunk diameter of greater than 30 inches to 40 inches has a minimum replacement tree requirement of one (1) 36-inch tree box. The monetary value is \$1,200.
- Any heritage tree with a trunk diameter of greater than 40 inches to 50 inches has a minimum replacement tree requirement of one (1) 48-inch tree box. The monetary value is \$5,000.
- Any heritage tree with a trunk diameter of greater than 50 inches has a minimum replacement tree requirement of one (1) 60-inch tree box. The monetary value is \$7,000.

Applicants shall submit written statements or landscape plans to describe how they will fulfil the replacement tree requirements. The submissions shall include: (a) the replacement tree species, (b) the container size, (c) the planting location, and (d) an in lieu fee payment, if applicable.

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