

## ARTICLE 15

### TREE PRESERVATION

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## **SEC. 10-15.10 PURPOSE AND INTENT.**

This Ordinance is intended to protect and preserve trees and control the pruning, removal or relocation of those trees that provide benefits for the neighborhood or the entire community, while balancing private property rights and development.

It is the intent of the City of Hayward to regulate the removal of trees within urbanized areas, preserve native trees, maintain a healthy urban forest, and increase tree canopy across the City. The City will accomplish this intent through staff review of tree removal permit applications and the development review process. Consistent with these goals, it is the City's intent that removed trees shall be replaced, and over time, urban areas deficient in trees will have greater tree canopy, and that replacement trees are drought tolerant and advance City goals.

## **SEC. 10-15.11 DEFINITIONS.**

For the purposes herein, certain words and phrases are defined, and certain provisions shall be construed, as herein set out, unless it shall be apparent from their context a different meaning is intended.

Applicant. "Applicant" shall mean the property owner submitting an application to remove or prune a Protected Tree(s) on their own property, or their representative authorized upon written consent.

Certified Arborist. A "Certified Arborist" shall be as defined by the International Society of Arboriculture. It shall include a "Consulting Arborist" who satisfied the requirements of the American Society of Consulting Arborists (ASCA) and who is determined by ASCA to meet the standards of Certified or Consulting Arborist as defined above.

City Property. "City property" shall mean all property owned or leased directly by the City.

Deadwood. "Deadwood" shall mean the limbs, branches, or portion of a tree that contains no green leaves or live wood during a period of the year when green leaves should be present.

Development. "Development" shall mean any work upon commercial, industrial, single, or multi-unit residential properties in the City of Hayward requiring a discretionary or ministerial permit approval or issuance. Examples include (but are not limited to) subdivision, rezoning, variance, grading, landscaping subject to the California Water Efficient Landscape Ordinance, and building permits.

Director. "Director" shall mean the Director of Development Services or their designee.

DSH. "DSH" shall mean a tree's diameter at standard height, which is measured at 54 inches (4.5 feet) above the ground surface. When measuring a multi-trunk tree, a tree's DSH will be calculated by adding the diameters of the largest three trunks.

Dripline. The "Dripline" shall mean all of the area of ground underneath the tree to the outermost edge of any portion of the tree's canopy. When depicted in plan view, the dripline will appear as an irregularly shaped circle that follows the outline of the tree's canopy as seen from above.

Emergency. “Emergency” means a sudden, serious, unexpected, and often dangerous situation requiring immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

Encroachment. “Encroachment” shall mean any intrusion of human activity into the protected zone of a Specimen or Protected tree. This includes, but is not limited to, pruning, grading, excavating, trenching, installation of fencing, parking vehicles, driving, storing materials or equipment, or construction of structures or other improvements.

Heritage Tree. “Heritage Tree” shall mean a tree recognized by the City of Hayward to be an exceptional tree with a distinctly high level of value to the community as set forth in section 10.15-19: Memorial or Heritage Trees.

International Society of Arboriculture (ISA). A 501c (5) non-profit organization that promotes the professional practice of arboriculture through research, technology, and education. ISA produces the standards and best practices for arboriculture. The ISA certification is a voluntary program that tests and certifies the achievement of a professional level of knowledge and skill in the field of arboriculture.

Memorial Tree. “Memorial Tree” shall mean any tree planted in memory of or in commemoration of an individual or individuals or a specific event and officially recognized by the City.

Native Tree. “Native Tree” shall mean a non-introduced tree species that is adapted to and grows naturally in the habitats and environments of Alameda County and specifically Hayward, California.

Parkway. “Parkway” shall mean the area of the street located in the right-of-way between the back of curb and the sidewalk that is typically planted or landscaped.

Person. “Person” shall mean any natural person, partnership, firm, corporation, governmental agency, or other legal entity.

Pollard. “Pollard” shall mean to drastically trim a tree removing the majority of the branching structure so that all that remains are stubs of the main branches, which then are forced to put out new branches. The new branches are weakly attached to the main structure of the tree. Because of the cuts, the tree is usually susceptible to air borne diseases and invasive insects.

Preserved Tree. “Preserved Tree” shall mean an existing tree to be maintained on a development project.

Protected Tree. “Protected Tree” shall mean a tree regulated by the City as set forth in Section 10-15.14: Protected Trees.

Pruning. “Pruning” shall mean the selective removal, detaching or separating of any live limb, branch, or root over two inches in diameter from a protected tree. Pruning includes crown cleaning which is the removal of water sprouts, crossed limbs, or other unhealthy branching structure as designated by the ISA. Such removal shall not change the natural form of the tree, shall not consist of stubbing or heading back branches, and shall in no case consist of removing more of the total tree canopy than recommended under ISA standards.

Relocation. “Relocation” shall mean the transplanting of a tree from its original location to another suitable location.

Removal. “Removal” shall mean the physical removal of a tree, such as cutting to the ground or the extraction of a tree.

Routine Maintenance. “Routine Maintenance” shall mean actions needed for the continued structural integrity of a tree including but not limited to, the removal of deadwood or storm damaged branches, light pruning to remove sucker growth or improve scaffolding when such pruning does not alter the natural form of the tree, and removal of branches less than two inches in diameter.

Street Tree. A “Street Tree” is a tree that is planted in the right-of-way of a street and in accordance with Street Tree Ordinance. It is usually located in the planter strip between the curb and the sidewalk or in a median island or it lies within the front yard setback where no parkway is present.

*“Topping”* is the removal of the main leader of a tree and a large portion of the major canopy limbs causing prolonged damage to the tree.

Tree. A “Tree” shall mean any woody perennial plant characterized by having a single trunk or multi-trunk structure and belonging to a species that commonly grows to at least ten feet high at maturity.

Tree Canopy: “Tree canopy” is the area of land shaded by tree leaves, branches, and stems when viewed from above.

Tree Maintenance: “Tree maintenance” shall mean maintenance that is provided by the property owner to maintain the health and vigor of the tree and to address any diseases or hazards affecting the tree including but not limited to pruning, watering, and mulching. The responsibility to maintain Protected trees is further defined by Section 10-15.15.

Tree Protection Zone (TPZ). The “Tree Protection Zone” shall mean the area located under the undisturbed canopy of the tree as described in “Dripline” and extending for an additional one (1) foot from the center point of the tree to beyond the farthest point of the dripline of the tree.

#### **SEC. 10-15.12 APPLICATION OF ORDINANCE.**

The Tree Preservation Ordinance is applicable to all protected trees within the City of Hayward, including Protected Native trees on private property. Refer to Section 10-15.14 for Protected Tree types.

#### **SEC. 10-15.13 NON-LIABILITY OF CITY.**

Nothing in this Chapter shall be deemed to impose any liability for damages or a duty of care and maintenance upon the City or upon any of its officers or employees. The person in possession of any public property or the owner of any private property shall have a duty to keep Protected Trees upon the property and under their control in a safe and healthy condition.

#### **SEC. 10-15.14 PROTECTED TREES.**

The following trees shall be Protected Trees:

- (1) **Native Trees** to the Hayward area of the following species that have a minimum diameter at standard height (DSH) of four (4) inches or greater:
  - a. Big leaf maple (*Acer macrophyllum*)
  - b. Box elder (*Acer negundo*)
  - c. California buckeye (*Aesculus californica*)
  - d. Pacific madrone (*Arbutus menziesii*)
  - e. California Black Walnut (*Juglans hindsii*)
  - f. California sycamore (*Platanus racemosa*)
  - g. Coast live oak (*Quercus agrifolia*)
  - h. Canyon live oak (*Quercus chrysolepis*)
  - i. Blue oak (*Quercus douglasii*)
  - j. Oregon white oak (*Quercus garryana*)
  - k. California black oak (*Quercus kelloggii*)
  - l. Valley oak (*Quercus lobata*)
  - m. Interior live oak (*Quercus wislizenii*)
  - n. Shining willow (*Salix lasiandra*)
  - o. Arroyo willow (*Salix lasiolepis*)
  - p. Sitka willow (*Salix sitchensis*)
  - q. California bay (*Umbellularia californica*)
- (2) **Non-Native Trees** on commercial properties or in front yards of a residential property, excluding those listed as invasive species by the California Invasive Plant Council, having a minimum DSH of eight (8) inches or greater.
- (3) Street Trees.
- (4) Memorial Trees recognized by the City.
- (5) Heritage Trees as defined by SEC. 10-15.19.
- (6) Replacement trees that were planted for previously removed Protected Trees.
- (7) Any tree shown to be preserved on an approved final map, development plan, building permit plan, site plan or required to be retained as a condition of approval or environmental mitigation measure.
- (8) Trees required as a condition of approval or other Zoning requirement.
- (9) Coast Redwoods (*Sequoia Sempervirens*) greater than 36" DSH.

#### **SEC. 10-15.15 PRESERVATION OF PROTECTED TREES.**

Any Person who owns, controls, or has custody of any real property within the City shall maintain all Protected Trees located thereon in a state of good health. This includes parcels designated as permanent open space or for recreational purposes. A tree in good health is a tree that exhibits strong growth, vitality, and resilience against environmental stress, pests and diseases. Failure to maintain said trees in a state of good health will constitute a violation of this section.

#### **SEC. 10-15.16 NESTING BIRDS.**

All tree work shall comply with the Federal Migratory Bird Treaty Act as well as California Fish and Wildlife Code 3503-3513, as amended, to not disturb nesting birds. To the extent feasible tree pruning and removal should be scheduled outside of the breeding season from February to August. A nesting bird survey shall be conducted prior to performing any sitework during the nesting season. A qualified biologist shall be involved in establishing work buffers for active nests. Work within one quarter mile (1,320 feet) of the San Francisco Bay tidal marsh will only be permitted from September to February.

#### **SEC. 10-15.17 REQUIRED STREET TREES FOR DEVELOPMENT PROJECTS.**

For new development projects, including but not limited to subdivisions, one street tree is required for every 30-foot length of street frontage of a property taking into account site conditions including utilities and driveways. The tree species to be planted are to be reviewed and approved by the City using the following required tree sizes:

- For residential properties: 24" box tree
- For commercial properties: 36" box tree

#### **SEC. 10-15.18 REQUIRED TREE PROTECTIONS FOR CONSTRUCTION AND DEVELOPMENT PROJECTS.**

All tree work conducted associated with a development project, including but not limited to pruning, tree removal, grading or work within the Tree Protection Zone, or the application of fertilizer or other soil amendments, must adhere to the following:

- (1) A tree protection plan shall be included in all plan sets submitted to the City including but not limited to grading plans, final maps and building permit plans.
- (2) Practices must be consistent with the standards set forth in the most current version of American National Standards Institute (ANSI) A300, as amended.
- (3) The retention of a Certified Arborist is required to supervise all pruning of branches or roots, or relocation of Protected Trees. Any trenching, excavating, alteration of grade, compaction of soil, adding of amendments, or paving within the Tree Protection Zone must be supervised by the Certified Arborist.
  - a. The Certified Arborist shall contact the City Landscape Architect and provide a schedule of when the observation is to take place.

- (4) The branch and root structure of all Protected Trees to remain in place shall be protected using a substantial construction fence, such as a non-movable chain link fence, placed around the Tree Protection Zone of each Protected Tree. Such protection shall be in place prior to any construction equipment or materials being brought on site and verified by the Certified arborist. Fencing shall remain in place until construction equipment, materials, and debris have been removed from the site and approval from the Director has been given for removal. No vehicles, construction equipment, material, debris, paint or paint products, pallets, chemicals, contaminated water, or other foreign material shall be allowed to be placed, poured, piled, or stored within the Tree Protection Zone of any tree. Digging, trenching, grade changes, and soil compaction are not permitted within the Tree Protection Zone without an approved permit.
- (5) Each Protected tree or any tree designated to remain in place on the construction site shall receive Routine Maintenance during the entire construction process determined by the project Certified Arborist.

#### **SEC. 10-15.19 MEMORIAL AND HERITAGE TREES**

- (1) **Memorial Tree Nomination:** Memorial Trees can be nominated by a Hayward community member or a local government official and shall be submitted to the Director for recommendation to City Council. City Council will review nominations and hold a vote to designate a Memorial Tree(s). Memorial Trees will be recorded protected and maintained unless they are in severe decline or must be removed for public benefit or safety. Memorial trees must be located on City property and cannot be recognized as an invasive species by the California Invasive Species Council. The fee to designate a Memorial Tree is established by the Master Fee Schedule.
- (2) **Heritage Trees Determination:** A tree is considered a Heritage Tree when the City Landscape Architect finds at least two of the following criteria are met:
  - a. **Native Tree:** The tree is a native species of Hayward, as listed in Section 10-15.14.
  - b. **Provides Essential Habitat:** The tree currently or commonly provides habitat for any state or federally listed endangered or threatened species as identified by the projects Certified Arborist. Note that such trees may be protected through other local, state, or federal regulations.
  - c. **Horticulture Significance:** The tree is rare or significant in the horticultural development of Hayward.
  - d. **Historical or Cultural Significance:** The tree has a documented historical or cultural connection to the City of Hayward including original plantings or coincides with historical events in the City.

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

## **SEC. 10-15.20 RESTRICTED ACTIONS.**

The following actions are restricted for any tree in the City of Hayward:

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

## **SEC. 10-15.21 PERMITS AND REPLACEMENT REQUIREMENTS.**

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

- a. Tree removal
- b. Routine maintenance for Memorial and Heritage trees.
- c. Any extreme root or branch pruning that is not consistent with standard arboriculture practices for a healthy tree, including pollarding, topping, lion-tailing, or severe pruning
- d. Removal of the bark around the circumference of the tree (girdling)
- e. Relocation or transportation of a tree without a permit
- f. Digging, trenching, grade changes, and soil compaction or paving within the tree protection zone
- g. Attaching ropes, signs, or wires to a tree
- h. Any action(s) that foreseeably leads to the death of a tree or permanent damage to its health or structure
- i. Pruning of branches greater than 4" in diameter of protected trees.

**(2) Tenants or any non-owners** of any property shall have the written consent of the property owner prior to applying for a permit prior to obtaining any required permits. Such written consent shall be submitted with the permit application.

**(3) Permit Fees** shall be determined by the City's Master Fee Schedule.

**(4) Arborist report:** An arborist report that contains all the information found in the City of Hayward's "Arborist Report Checklist" is required in the following circumstances:

- a. **For development projects:** An arborist report is required for actions (1a-i.) performed on any Protected Tree.
- b. **For all other projects:** An arborist report is required for actions (1a-i.) performed on a Heritage Tree, Memorial Tree, three or more Protected Trees, or if requested by the Director.
- c. **For all pruning permits:** An arborist report is required only when more than one-third of the canopy is to be removed, pruning does not conform to ANSI A300 standards, or if requested by the Director.

**(5) Additional Requirements for Development Projects:**

- a. A bond shall be required based on the appraised replacement value of the existing



trees that are to remain on site. The bond is to be submitted to the City Landscape Architect prior to issuance of the grading or building permit.

**(6) Tree Replacement:**

- a. **For street trees on commercial properties:** Every protected tree removed shall require one 36" box tree to be planted as a street trees.
- b. **Non-street trees for commercial properties (not street trees):** Tree mitigation is to be determined by the appraised value of the trees to be removed based on the valuation made in the required arborist report. If it is not possible to plant all the required mitigation trees on site, an in-lieu fee can be assessed per subsection (7) below.
- c. **For residential properties:**
  - i. The removal of two or fewer trees shall require two replacement 24" box trees per each tree removed, which must be planted on site.
  - ii. Mitigation of three or more trees shall be determined based on the valuation of the trees to be removed made in the required arborist report.
  - iii. If it is not possible to plant all the required mitigation trees on site as determined by the City Landscape Architect, an in-lieu fee can be assessed per subsection (7) below.
- d. **For Heritage Trees:** Heritage Tree mitigation is to be determined by the Director up to the full appraised value of the tree to be removed based on the valuation made in the required arborist report. If it is not possible to plant all the required mitigation trees on site, an in-lieu fee can be assessed per subsection (7) below.
- e. Replacement trees shall be suited to the available planting location, proximity to structures, overhead clearances, soil type, compatibility with surrounding canopy, and other relevant factors, and shall maximize canopy at maturity. Invasive species, as determined by the California Invasive Plant Council, are not permitted replacement trees. Replacement tree type to be approved by City Landscape Architect.
- f. **For Redevelopment Projects:** Replacement trees for Protected Trees removed from a site shall not count toward any tree or other planting required pursuant to the Zoning Ordinance Chapter 10 Article 2, which include the following:
  - i. Street trees
  - ii. Trees planted as part of a previous development approval
  - iii. Parking lot trees
- g. A tree canopy study plan may be required by the Director to demonstrate how replacement trees will replace the lost canopy.
- h. If any replacement tree dies or is removed within three (3) years of permit issuance, it must be replaced. The maintenance period will be automatically extended for a period of three (3) additional years for any replacement trees that are replaced due to death or

unauthorized removal.

**(7) In-Lieu Fees:**

- a. For situations where the City's Landscape Architect determines there is no replacement planting locations on site for all the required mitigation trees, the applicant may pay a fee of 125% the appraised value of the tree(s) to be removed in-lieu of replanting on site. In-lieu fees will be paid to the City, which may only be used to add or replace mitigation trees on public or private property in the vicinity of the subject property, plant or replace trees on City-owned property; or to support the City's urban forestry management program. The payment of the in-lieu fee is to be submitted to the City Landscape Architect prior to the issuance of the grading or building permit for development projects or the closure of the tree removal permit for non-development projects.

- (8) A nesting bird survey shall be submitted when tree work is being conducted in the nesting season (October – February).

**SEC. 10-15.22 REQUIRED FINDINGS FOR APPROVAL OF TREE REMOVAL AND PRUNING PERMITS**

The Planning Director may approve, conditionally approve, or disapprove the application if the Director makes all of the findings listed in subsections (1) through (5) and one or more of the findings listed in subsections (6) through (13):

- (1) Permit application adheres to the requirements set forth in SEC. 10-15.21.
- (2) An effort has been made to preserve the character of the tree's location, and the more valuable specimens have been preserved.
- (3) The requested action would not cause erosion, loss of soil, increase the flow of surface runoff, or cause a diversion of water that would affect downstream properties.
- (4) Permits for tree pruning for Protected Trees and routine maintenance of Memorial and Heritage Trees:
  - a. The proposed pruning complies with the Migratory Bird Treaty Act (16 U.S.C. § 703 et seq.) and the California Fish and Game Code (§ 3513). Specifically, the project will avoid any actions that could result in the 'take' of migratory birds, their nests, or eggs.
  - b. The proposed pruning adheres to established arboricultural standards and best practices, ensuring that the health and structural integrity of the trees will be maintained.
    - i. The objective of the proposed pruning, as outlined in ANSI A300, is to: manage risk, manage health, develop structure, provide clearance, manage size or shape, or improve aesthetics.
  - c. Pruning to remove a limb hazard which does not require full tree removal

- (5) For development projects: There is no feasible amendment to plans that would allow for tree preservation.
- (6) The tree is in severe decline and diseased, or remedial treatments or corrective practices that would facilitate saving the tree are not feasible, including on slopes.
- (7) Tree has been identified to have High or Extreme tree risk rating as calculated by an ISA Tree Risk Assessment Qualified Arborist and the proposed action would mitigate risk to an acceptable level. If a tree permit is submitted on the grounds of tree risk, an ISA tree risk assessment form must be included with the application.
- (8) The tree is the host of a pest or pathogen that has potential to cause irreconcilable effects to the urban forest.
- (9) The proposed action must be done in conformance with the provisions set forth in the Solar Shade Control Act (California Public Resources Code §25890 et seq.).
- (10) The tree has, or will imminently, interfere with utility services where such interference cannot be controlled or remedied through reasonable modification, relocation or repair of the utility service or the pruning of the root or branch structure of the tree; or where removal or pruning is required by a public utility to comply with California Public Utility Commission (CPUC) or Federal Energy Regulatory Commission (FERC) rules or regulations.
- (11) The proposed action is necessary to remediate damage caused by the tree to the surrounding permitted infrastructure and there are no reasonable solutions to adapt or relocate the infrastructure to accommodate for the tree.
- (12) The removal of the tree is necessary to repair a geological hazard.
- (13) The tree is suppressing or is suppressed by the growth and development of an adjacent protected tree of higher value, and removal of the tree will create improved growing conditions for the suppressed tree to thrive.

#### **SEC. 10-15.23 ADDITIONAL CONSIDERATIONS FOR PERMITS REGARDING HERITAGE TREES**

A Site Plan Review , as detailed in Section 10-1.3000 of this Code, shall be required prior to the removal of any tree designated as a Heritage Tree.. A Heritage tree removal permit may be approved only if the reviewing body finds the burden to the Applicant in preserving the tree outweighs the benefit to the public. In making the foregoing determinations, the reviewing body shall consider such factors as the following:

- (1) All the benefits provided by the Heritage Tree.
- (2) The contribution of the tree to the character of the site, local ecology, and the neighborhood.
- (3) Species, health condition and value of the tree.
- (4) Whether the tree is part of an important grove of trees.

- (5) The visibility of the tree to the neighborhood and the public.
- (6) Whether the development provides a public benefit.
- (7) Whether measures short of removing the tree can be employed consistent with the development.

#### **SEC. 10-15.24 ANNUAL PRUNING PERMITS**

An annual pruning permit that is not site-specific may be issued under the following circumstances:

- (1) The Applicant has at least one full-time Certified Arborist on staff who will be present to perform or supervise all permitted actions including the observation of trenching within the dripline of the tree.
- (2) The Applicant has a valid business license with the City of Hayward
- (3) The Applicant has proof of liability insurance.
- (4) All pruning, removal, and other tree work must conform to the standards set forth in the most current version of American National Standards Institute A300 and best management practices as defined by the International Society of Arboriculture.

#### **SEC. 10-15.25 DURATION OF PERMIT.**

A tree removal or pruning permit issued shall be valid for a period of three (3) months from issuance, or, if an appeal is taken, three (3) months from the final decision. One three (3) months extension may be permitted upon a written request and approval. This duration excludes the annual pruning permit referenced in SEC. 10-15.24, which is valid for one year.

#### **SEC. 10-15.26 EXCEPTIONS.**

- (1) Any permit, including Heritage and Memorial tree removal permits, shall be approved upon evidence that the tree is dying, diseased, or dead, as confirmed by the City's Landscape Architect.
- (2) Hazardous conditions. A Protected Tree may only be pruned or removed without a permit in the circumstances listed below. In such circumstances, a retroactive permit including detailed photographic evidence is required. No permit fee will be assessed.
  - a. Personal injury or property damage resulting from tree conditions is determined to be imminent by the Director.
  - b. The Protected Tree is an immediate impediment to the work of any public safety officers.
  - c. The Protected Tree presents a significant fire risk, which include only the following taxa: eucalyptus (*Eucalyptus* spp.), pines (*Pinus* spp.), acacia (*Acacia* spp.), tanoak

(*Notholithocarpus densiflorus*), and Italian cypress (*Cupressus sempervirens*). The tree trunk must be located within 100 feet of any habitable structure, including structures on adjacent properties; or within 30 feet of a private or public road necessary for emergency evacuations.

- d. The tree is in a high or very high fire severity zone as identified by CalFire's current Fire Hazard Severity Zone Map, poses an increased risk to life or property as determined by the Fire Marshal of the Hayward Fire Department, and no reasonable mitigation efforts can be taken to mitigate the risk and preserve the tree.
- e. Any Protected Tree that is removed in an emergency due to hazardous conditions, as determined by the Director, shall be mitigated in accordance with SEC 10-15.21.

(3) Tree removals consistent with the safety requirements defined by the Federal Aviation Administration.

#### **SEC. 10-15.27 CONDITIONS OF APPROVAL.**

In approving the permit, the City may impose conditions for the purpose of protecting any trees which are to remain or to otherwise ensure compliance with the intent and purpose of this chapter.

#### **SEC. 10-15.28 PERMIT APPEALS**

The decision of the Planning Director to approve, conditionally approve, or disapprove an application may be appealed to the Planning Commission in accordance with the appeals process detailed in Section 10-1.2845. The Planning Commission may approve, conditionally approve, or disapprove the application based on the criteria listed in Section 10-15.22. In the event that significant new evidence, which may include substantial changes in the application, is presented in conjunction with the appeal, the matter shall be returned to the Planning Commission for further consideration and action. In the absence of significant new evidence, the action of the Planning Commission shall be final and conclusive.

#### **SEC. 10-15.29 PENALTIES AND ENFORCEMENT.**

- (1) An administrative citation may be issued for a violation of any provisions of this ordinance, or if the City determines that any tree activity for which a permit under this ordinance is required has been performed without a permit, or the activity is not in substantial compliance with the issued permit or approved plan. The administrative fine shall be equal to double the amount of the permit fee.
- (2) As an alternative to issuing an administrative citation, a notice of violation or correction notice may be issued pursuant to Sections 1-7.14 and 1-7.15 of this Code.
- (3) Additional mitigation requirements for unpermitted or unapproved tree activity may be determined, as follows:
  - a. If there is sufficient evidence available to appraise the value of the removed tree(s), then mitigation shall be determined per Section 10-15.21 (6). Sufficient evidence may include evaluation of any remaining portions of the tree on site, or through evaluation of

- resources such as photographs, past plans, or Google Earth and Streetview to determine the species, size, and condition of the tree prior to removal.
- b. If there is no measurable part of the tree remaining, and the other resources discussed in item (a.) cannot be used to estimate the value of the removed tree(s), then mitigation will be determined by the Director.
- (4) If the City determines that a tree removal or pruning permit is required, the property owner and/or party responsible for the tree cutting work shall apply for the necessary tree removal or pruning permit within a specified period set by the Director.
- (5) In the case of development projects, an order to cease work may be issued until the developer obtains a permit and has demonstrated compliance with the requirements of this ordinance.
- (6) Appeal Hearing. Recipients of administrative citations may request an appeal before an administrative hearing officer pursuant to Sections 1-7.07 thru 1-7.10. The decision of the administrative hearing officer shall be subject to judicial review pursuant to Section 1-7.13 of this Code.

#### **SEC. 10-15.30 REVOCATION OF PERMIT.**

- (1) Any permit described in this ordinance shall be subject to revocation if the conditions of the permit or the regulations set forth herein or incorporated herein are violated. Before taking any action to revoke the permit, the Director shall give notice to the permittee in writing of the proposed revocation, the reasons therefore, and the time and place the permittee will be given an opportunity to show cause to the Director why the permit should not be revoked. The written notice may be personally served upon the permittee or mailed to the permittee at the address shown on the application at least ten days prior to the hearing. Upon conclusion of the hearing, the Director may revoke the permit upon a finding of noncompliance with the conditions of the permit or the regulations herein.
- (2) Any permittee who has had an annual, non-site-specific permit revoked shall not be eligible for a new annual, non-site-specific permit for a period of six months from the date of the final decision revoking the permit. During the six-month period, the permittee may apply for only individual, site-specific permits and must meet the requirements of Section 10-15.21. The Director's decision to revoke the permit may be appealed as set forth in Section 10-15.28 above.

#### **SEC. 10-15.31 COLLECTION OF PENALTIES.**

Fines must be paid within thirty (30) business days of issuance of an administrative citation or if appealed, within thirty (30) business days of the issuance of a decision by an administrative hearing officer. .

#### **SEC. 10-15.32 MISDEMEANOR; INJUNCTIVE RELIEF.**

Violation of any provisions of this Chapter shall be chargeable as a misdemeanor as provided in Chapter 1, Article 3 of the Hayward Municipal Code. In addition to the foregoing criminal penalty, violation of any provisions of this Chapter shall be the basis for injunctive relief.

**SEC. 10-15.33 IMPOSITION OF LIEN.**

Any unpaid costs or penalties imposed pursuant to this Article shall constitute a special assessment against the real property upon which a violation of this Chapter has occurred. All costs and/or fines shall be itemized in a written report of assessment. The Director shall cause a copy of the report and assessment to be served to the owner of the property not less than five days prior to the time fixed for confirmation of the assessment. Service may be made 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 County of Alameda and depositing the same in the United States mail. Service shall be deemed complete at the time of mailing.

A copy of the report of assessment shall be posted in the Office of the City Clerk on the bulletin board designated for the posting of agendas, not less than three days prior to the time when the report shall be submitted to the City Council. The City Council shall hear the report, together with any objections by the property owner. After the assessment is made and confirmed by the City Council, it shall be a lien on said property.