

Chapter 12.20

STREET TREES TREE AND TREE PRESERVATION

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Article I. Street ~~Trees~~Tree and Tree Preservation

12.20.44001 Findings.

The City of Livermore is forested by a variety of trees, planted on both public and private property. These trees comprise an urban forest that provides tangible benefits to the community. A healthy urban forest reduces air and noise pollution, provides energy-saving shade and cooling, furnishes habitat for wildlife, enhances aesthetics and property values, and is an important contributor to community image, pride, and quality of life. The uncontrolled and indiscriminate destruction of trees within the urban forest detrimentally affects these tangible benefits. Therefore the City Council finds that in order to protect the health, safety, general welfare, and quality of life of the citizens of

Livermore, the establishment of basic standards for the preservation and protection of a healthy and sustainable urban forest is essential.

12.20.15002 Purpose and intent.

This article chapter establishes the policies, regulations, and standards for the protection of trees on any parcel of land or in the public right-of-way within the City of Livermore. These policies, regulations, and standards are necessary to ensure that the City will continue to realize the tangible benefits provided by its urban forest.

It is the policy of the City to require the preservation of street trees and protected trees, unless a reasonable and conforming use of a property justifies the removal, relocation, and/or encroachment into the protected zone of such a protected tree.

The provisions of this article chapter are enacted to:

A. Assist in the continuous development and maintenance of a healthy urban forest and sustainable tree cover on lands within the City of Livermore;

B. Assist in the continuous development and maintenance of a stable urban forest diverse with trees of various species and age classes;

C. Preserve and enhance the aesthetic and quality of life values provided by Livermore's urban forest;

D. Preserve and enhance the environmental benefits provided by Livermore's urban forest, including the reduction of air and noise pollution, the conservation of energy resources through shade and cooling, and the provision of wildlife habitat.

Article II. Street Tree

12.20.010- Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless otherwise specifically defined:

A. “Backing lot” means the area along a major or collector street located between the back of curb and property line that is inaccessible to the adjacent property owner due to a continuous barrier. In the case of a major street it pertains to either the rear or side property line. In the case of a collector street, it pertains only to the rear property line.

B. “City engineerEngineer” means the city engineerCity Engineer of the City of Livermore.

~~C~~B. “Days,” unless otherwise provided, always means calendar days.

~~D~~G. “Director” means the Director of Public Works or his/her designee.

~~D~~E. “Hazardous” means a tree or part of a tree that is or appears to be (i) dead; (ii) likely to fall; (iii) seriously diseased; (iv) an obstruction or potential obstruction to pedestrian or vehicular travel on any street; (v) an obstruction or potential obstruction to any traffic signs, traffic controls, street lights, regulatory sign, or similar type of equipment or sign; or (vi) in a condition that is detrimental to the public health, safety, or general welfare.

~~E~~F. “Landscaping” means any plant form planted within the public right-of-way other than a tree.

~~G~~. “Parkway,” “parkway strip,” or “planter strip” are used interchangeably and means that area within the public right-of-way lying between the curb and sidewalk.

~~E~~H. “Person” means individuals, corporations, associations, partnerships and, to the extent of the City’s jurisdiction, public entities.

~~F~~H. “Street/P~~ublic~~ right-of-way” means all property dedicated in fee or easement to public use for street, landscape, or sidewalk purposes and includes, but is not limited to, streets from property line to property line, alleys, or easements, dedicated bike paths, or open spaces.

~~G~~J. “Street tree” means any plant form planted single-trunked tree, multi-trunked tree, or stand of trees dependent upon each other for survival that is at least 1.5 inch in circumference at four and maintained one-half feet above grade, the base of which is

located wholly or partially within the public right-of-way under the ownership or control of the City by fee or easement.

H. "Superintendent" means the maintenance superintendent or his successor or designee. (Ord. 2065 § 1(A), 2018; 1960 code § 23B.2)

12.20.020 Street trees are city property.

All street trees within the City are the property of the City. The Director shall have the exclusive authority and responsibility, except as hereinafter provided, to plant, remove, prune, inspect, maintain, root-prune, or otherwise alter such street trees. (Ord. 2065 § 1(A), 2018; 1960 code § 23B.3)

12.20.030- Planting, removing or injuring street trees—Conformity with requirements.

It is unlawful, and a public nuisance, for any person to plant, remove, prune, injure or destroy any street tree, as defined in LMC 12.20.010, except in conformance with the provisions of this chapter. (1960 code § 23B.1)

12.20.040 Street Master street tree planlist – City engineerEngineer authority.

The city engineerCity Engineer is authorized and directed to maintain a precise plan for the establishment and maintenance of street trees within the City. The plan will include designation of particular species or varietiesmaster list of trees that may be planted on certain streets, together with a statement of such plants, shrubs or trees as shall not be planted within in the public right-of-way. Such plan will be approved by the City Council. (Ord. 2065 § 1(A), 2018; 1960 code § 23B.4)

12.20.050- Planting street trees – Permit required.

No street tree, plant or shrub shall be planted or placed in or upon any public right-of-way without a permit ~~therefor~~ having first been issued by the superintendentDirector, or as part of an approved development plan. Such permit shall not require the payment of any application fee or other cost to the applicant, and will only be issued if it is found that such proposed planting or placing is in accordance with the approvedmaster street tree plan. (1960 code § 23B.5)list and all City standards.

12.20.060- Planting street trees – Agreement prerequisite to building permit issuance.

A building permit for the construction of any new building residential or commercial building or improvement to any existing residential or commercial building in an amount exceeding 50 percent of the current replacement cost of the existing building shall not be issued unless the applicant therefor ~~shall agree to cause street trees to be planted within the city right of way adjacent to the property upon which the proposed building is located, in accordance with the adopted street tree plan for the particular streets, and the specifications of the city engineer. (1960 code § 23B.12)~~ agrees to the following:

1. Plant street trees along the frontage or in the public right-of-way adjacent to the property upon which the proposed or existing building is located, in accordance with all street tree planting standards and the master street tree list;
2. Ensure and/or install adequate irrigation along existing or proposed landscape areas in accordance with City standard details.

12.20.070 Tree trimming restrictions.

~~A. It is unlawful for the owner or occupant of any premises having street trees in front of or adjacent to such premises to fail or neglect to keep such street trees trimmed so that no limbs, branches or leaves thereon are more than two feet, measured horizontally from the trunk of the tree, adjacent to a sidewalk or bike path, or lower than eight feet above the normal grade of the sidewalk or bike path, or lower than 10 feet above the official curb grade on the street side of the tree.~~

12.20.070 Maintenance of street trees.

A. The property owner of a lot or portion of a lot fronting on or adjacent to a street shall maintain the street trees and landscaping along the frontage or in the public right-of-way, including in any parkway or planter strip, between the back of curb and property line.

B. If, and/or when ~~The~~A property owner's obligations under subsection (A) of this section include at a minimum all of the ~~superintendent~~following:

1. Maintaining the street trees and other landscaping in a safe and nondangerous condition as will not interfere with the public convenience or safety in the use of the public street and sidewalk, including:

- a. Ensuring sufficient passage of light from any public street light to the street;
- b. Ensuring a minimum 8 foot vertical pedestrian clearance from the top of the sidewalk and a minimum 12 foot vehicular clearance from the top of the street pavement, unless greater clearance is needed for unimpeded vehicular traffic, to any part of a street tree;
- c. Ensuring street signs, parking restriction signs, bus stop signs, and other directional and regulatory signs are not obstructed;
- d. Removing dead, decayed, or broken limbs or branches that overhang the public right-of way.

2. Deep root watering, root pruning, installing root barriers, fertilizing, and pest control.

3. Clearance, structural, and safety pruning.

4. Removal of fallen leaves, branches, and other debris.

5. Replacing any removed or otherwise missing street tree and landscaping if required to be planted by this code or an approved development plan.

C. Although property owners are not required to obtain a permit for trimming or maintenance of street trees, all trimming and maintenance of street trees must be conducted in accordance with the International Society of Arboriculture Standards or the American National Standard Institute and may not be excessive or cause harm to the street tree which negatively affects its growth.

D. A property owner owes a duty to members of the public to maintain street trees and other landscaping in a safe and nondangerous condition.

E. If any property owner fails to maintain any street tree or other landscaping in a safe and nondangerous manner as required by this section, and as a result any person suffers damage or injury to person or property, the property owner shall be liable to such person for the resulting damages and injuries.

F. If the Director becomes aware of such condition, that a property owner has failed to properly maintain any street trees or other landscaping he/she may:

1.- ___ Cause the work to be done immediately if such condition poses an extreme imminent hazard to the safe use of the street or sidewalk; and all costs for such work shall be charged to the property owner.

2.- ___ Place a notice of such condition violation on the street tree or landscaping in question and simultaneously notify the adjacent property owner or and occupant responsible for trimming such street tree of such hazard, violation and requiring such require the property owner or occupant to take corrective action to mitigate such hazardous condition within 4014 days of such notice. If the owner of such noticed property owner fails to complete the required remedial work corrective action within the time limit, the superintendent will Director may cause the work to be done, and all costs for such work will shall be charged to the noticed property owner. (1960 code § 23B.6)

3. The cost of any corrective action done in accordance with Section 12.20.070(F) or 12.20.110 may be assessed by the City Council against the affected parcel of property. The assessed cost, if not paid within five days after its confirmation by the City Council shall constitute a special assessment against said parcel of property, and shall be a lien on the property, which lien shall continue until the assessment and all interest thereon is paid, or until discharged.

12.20.075 City maintenance responsibility at residential lots.

The City shall maintain the street trees and landscaping in residential backing lots except for those backing lots having a private association or district that is responsible for such maintenance.

12.20.080 Trimming, root pruning or removal – Unlawful removal or injury to street trees; Application to City required – Superintendent for street tree removal authority.

A. ~~It is unlawful for any person to intentionally cut, trim, prune branches or roots, remove or cause injury by the use of chemicals such as salt, oil, herbicide or any other material deleterious to growth or health of street trees, in or upon any street right-of-way, parkway strip, sidewalk, park, landscaped area, playground, or other public area in the City, or to cause or permit the same to be done,~~ without first obtaining a valid street tree removal permit.

B. ~~Provided, however, that permission to cut, prune branches or roots, remove or otherwise impair the natural growth~~ Upon submission of any such a street tree may be had by the owner of the property upon approval of an removal application to do so, the Director, the Director may permit the removal of a street tree if the criteria set forth in LMC 12.20.090 and 12.20.105 are satisfied. Such application will be made to the ~~superintendent, Director~~ who will cause may require an inspection to be made of the circumstances described in the application, and may thereafter recommend approval or denial of such application. The Director shall set forth the reasons for the approval or denial of a street tree removal application in accordance with the provisions of this Chapter, ~~with specific reference to the approved street tree planting plan and the provisions of this chapter~~ There shall be no fee for such application or inspection.

C. A request to remove four or more street trees represents a potentially significant change to the property's previously approved development permit. The Director shall refer such applications to the Community Development Department Director for review and determination in compliance with Article III. The Community Development Department Director may in his/her discretion refer the application to the Planning Commission for determination. Street Tree Permit applications referred to the Planning Commission shall be converted to a site plan/design review modification application and shall be subject to the fees and review process associated therewith.

~~E. Upon approval of the application, the property owner may do or cause to be done such work as is described on the approved application. Any such work contemplated which may cause a hazard or nuisance to vehicular or pedestrian traffic, or threaten the~~

~~integrity or continuous operation of electric, telephone or cable TV systems or structures, or to any public utilities or public or private structures, may only be undertaken after the superintendent has certified that he is satisfied that proper and sufficient measures will be carried out by the applicant to mitigate against such hazards or nuisances, and in the event of such damage, that the applicant will bear full responsibility for the repair or replacement of such damaged facilities.~~

~~D. If such application is denied by the superintendent, the applicant may appeal such denial to the Livermore Beautification Committee within 10 working days.~~ **12.20.090**

Criteria for street tree removal.

~~A. The decision of the committee will be final, and will be made in writing to the applicant.~~

~~E. The superintendent~~Director, in his/her discretion, may ~~remove or cause~~permit the removal of any street tree which he/she finds to be:

1. ___ Dead;
2. ___ Damaged beyond repair;
3. ___ Having a root system not adequate to reliably support continued growth;
4. ___ Causing documented storm drainage or sanitary sewer stoppages;
5. ___ Part of a planned street-tree removal program;
6. ___ The obvious cause of continuing structural damage or damage to infrastructure which cannot be mitigated by pruning limbs or roots or other reasonable measures;
7. ___ Hazardous to public safety or welfare, or where unusual circumstances require action to be taken by the City. ~~(Ord. 2065 § 1(A), 2018; 1960 code § 23B.7);~~
8. Creating a hazard to utilities such as electrical, gas, telephone, drinking water, or cable television services;
9. Part of a land use entitlement.

12.20.090-100 ~~Valid S~~street tree permits - duration.

Street tree permits shall be valid for a period of no longer than 90 days from the issuance date, unless associated with a development application for in which case a street tree permit shall be valid concurrent with the validity of the approved development application.

12.20.105 Removal of street trees – ~~Notice posting required~~Conditions of approval.

~~A. Whenever it is determined, under the provisions of LMC 12.20.080, that a street tree is to be removed, the superintendent shall cause a notice of such action to be prominently posted on the tree to be removed. Such notice shall include the date following which the tree will be removed, the reason(s) for such removal, the person responsible for removal, the name, address and telephone number of the agent of or person responsible for such removal, and the approximate date of such removal.~~

A. Notice shall be required as a condition of approval for any permit to remove a street tree. The notice shall be made in a form approved and provided by the Director and shall be prominently displayed on or immediately adjacent to the tree that is proposed to be removed. Photographic evidence of posting of said notice shall be submitted to the Director.

B. The notice required by this section shall be posted at least five working days in advance of the proposed removal date so that any person wishing to comment on the proposed removal may have the opportunity to respond in writing to such notice to the superintendent.~~Director. All such comments as are received before the end of such posting period will be considered by the superintendent~~Director, who will have authority to~~shall proceed at his/her discretion. (1960 code § 23B.8)~~

C. Valid street tree permits shall be posted on site within view of the nearest public right-of-way during the removal process.

D. For any street tree removal permit granted by the Director, the Director shall require as a condition of approval that the applicant comply with the Street Tree Replanting

Policy. Failure to comply with the Street Tree Replanting Policy within one hundred twenty days of tree removal shall constitute a violation of this chapter and shall be punished in accordance with LMC 12.20.121 and LMC 12.20.122.

E. Upon approval of the application, the property owner, or his/her representative, may do or cause to be done such work as is described on the approved application street tree removal permit. Any such work contemplated which may cause a hazard or nuisance to vehicular or pedestrian traffic, or threaten the integrity or continuous operation of electric, gas, telephone, drinking water, sanitary sewer, or cable TV television systems or structures, or to any public utilities or public or private structures, may only be undertaken after the superintendent-Director has certified that he/she is satisfied that proper and sufficient measures will be carried out by the applicant to mitigate against such hazards or nuisances, and in the event of such damage, that the applicant will bear full responsibility for the repair or replacement of such damaged facilities.

12.20.100 Emergency removal of trees.

Notwithstanding the provisions of LMC 12.20.090, the superintendent

12.20.110 Hazardous street trees.

A. In the event that the Director determines a street tree or landscaping is hazardous to the public safety or welfare, the Director shall notify in writing the responsible property owner and occupant of such hazardous condition and that the property owner shall remove said street tree or landscaping within 14 days of the written notice. If the property owner fails to remove the street tree or landscaping within 14 days, the Director may cause the work to be done and all costs for such work shall be charged to the property owner.

B. The Director, at in his/her discretion, may proceed to remove or alter, or permit another entity to remove or alter, to any extent he/she deems necessary, any hazardous street tree found to be an imminent threat to the public safety or likely to cause

imminent injury or damage to persons, structures or utilities ~~if the provisions of LMC 12.20.090 are followed. (1960 code § 23B.9).~~

C. The cost of any removal of a street tree or landscaping shall constitute a special assessment and shall be enforced in accordance with the proceeding set forth in LMC 12.20.070(F)(3).

12.20.110 Appeal procedure.

12.20.115 Appeal procedure.

Any person ~~taking exception to any~~ may appeal the denial, suspension, or revocation by the public works department ~~Director~~ of a permit applied for or held by such person pursuant to the provisions of this chapter ~~may appeal in writing~~ article to the ~~Council~~ Beautification Committee by filing ~~with the city clerk a~~ a written notice of such appeal, ~~with the Director~~ setting forth the specific grounds thereof. Such notice shall be filed within 14 days after ~~notice~~ the decision of such action appealed from, but in no event later than 30 days after the date of such action. ~~the Director.~~ The city clerk ~~Director~~ shall ~~forthwith~~ set such matter for hearing before the ~~Council~~ Beautification Committee, and cause notice thereof to be given to the applicant not less than ~~three~~ seven days prior to such hearing. At such hearing, the applicant shall show cause, on the grounds specified in the notice of appeal, why the action ~~excepted to should not~~ be approved. ~~The Council may continue such hearing from time to time, and its~~ Any person choosing to challenge the determination made by the Beautification Committee shall file a written appeal to the City Council. The findings and decision of the appeal City Council shall be final and conclusive in the matter. (Ord. 2065 § 1(A), 2018; 1960 code § 23B.10).

12.20.120- Parkway paving restrictions.

A. ~~The city engineer~~ City Engineer shall ~~forthwith~~ cause rules and regulations to be established governing the paving of parkways or ~~parkway-planter~~ strips within the public right-of-way. Such rules and regulations shall be based on the area involved, the number of trees, ~~shrubs~~ or landscaping plants to be located therein, and the existence or nonexistence of public utilities and materials to be used.

B.- It is unlawful for any person to pave any parkway strip in any manner or with any material whatsoever without having first secured permission there to do so from the

~~public works department.~~Public Works Department. Such department shall grant permission to pave only when the proposal therefor shows that the work to be done shall be in accordance with the rules and regulations therefor as established by the ~~city engineer.~~ ~~(1960 code § 23B.11)~~City Engineer.

12.20.121 Violations.

A violation of any provision of this article or chapter shall be prosecuted as a misdemeanor or infraction at the option of the City Attorney and as further set forth in LMC 12.20.122 with respect to penalties and administrative proceedings.

12.20.122 Penalties and administrative proceedings.

A. In addition to the penalty provisions set forth in LMC 1.16.10, violations of this Article may be subject to the administrative proceedings set forth in Chapter 1.20 of the LMC, including, but without limitation, civil penalties, late payment penalties, administrative fees, other related charges and, to the maximum extent permitted by law, tree replacement costs as determined using the most recent edition of the Guide for Plant Appraisal, by the Council of Tree and Landscape Appraisers under the auspices of the International Society of Arboriculture.

B. Civil Penalties. In addition to the penalty provisions of subsection A of this section, the City may bring a civil action against any person who commits, allows or maintains a violation of any provision of this article. As part of such civil action, a court may assess against any person who commits, allows or maintains a violation of any provision of this article a civil penalty in an amount up to five thousand dollars (\$5,000) per violation or in an amount as set forth below:

1. Where the violation has resulted in irreparable injury to or removal of a tree, the civil penalty shall be in an amount up to five thousand dollars (\$5,000) per street tree unlawfully injured or removed, or in the full amount of the replacement value of each such tree, whichever amount is higher. Such amount shall be payable to the City's Urban Forestry Maintenance Fund. Replacement value shall be determined using the most recent edition of the Guide for Plant Appraisal, published by the International Society of Arboriculture.

2. Injunctive Relief. A civil action may be commenced to abate, enjoin, or otherwise compel the cessation of such violation.

3. Costs. In any civil action brought pursuant to this chapter in which the City prevails, the court shall 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.

12.20.123 Remedies not exclusive.

To the maximum extent permitted by law, administrative remedies specified in this article in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided herein shall be cumulative and not exclusive.

Article IIII. Tree Preservation

12.20.130 Title.

This article shall be known as the Livermore tree preservation ordinance. (Ord. 1830 § 3, 2007)

~~12.20.140 Findings.~~

~~The City of Livermore is forested by a variety of trees, planted on both public and private property. These trees comprise an urban forest that provides tangible benefits to the community. A healthy urban forest reduces air and noise pollution, provides energy-saving shade and cooling, furnishes habitat for wildlife, enhances aesthetics and property values, and is an important contributor to community image, pride, and quality of life. The uncontrolled and indiscriminate destruction of trees within the urban forest detrimentally affects these tangible benefits. Therefore the City Council finds that in order to protect the health, safety, general welfare, and quality of life of the citizens of Livermore, the establishment of basic standards for the preservation and protection of a healthy and sustainable urban forest is essential. (Ord. 2065 § 1(A), 2018; Ord. 1830 § 3, 2007)~~

~~12.20.150 Purpose and intent.~~

~~This article establishes the policies, regulations, and standards for the protection of trees on any parcel of land within the City of Livermore. These policies, regulations, and~~

~~standards are necessary to ensure that the City will continue to realize the tangible benefits provided by its urban forest.~~

~~It is the policy of the City to require the preservation of protected trees, unless a reasonable and conforming use of a property justifies the removal, relocation, and/or encroachment into the protected zone of such tree.~~

~~The provisions of this article are enacted to:~~

~~A. Assist in the continuous development and maintenance of a healthy urban forest and sustainable tree cover on lands within the City of Livermore;~~

~~B. Assist in the continuous development and maintenance of a stable urban forest diverse with trees of various species and age classes;~~

~~C. Preserve and enhance the aesthetic and quality of life values provided by Livermore's urban forest;~~

~~D. Preserve and enhance the environmental benefits provided by Livermore's urban forest, including the reduction of air and noise pollution, the conservation of energy resources through shade and cooling, and the provision of wildlife habitat. (Ord. 2065 § 1(A), 2018; Ord. 1830 § 3, 2007)~~

12.20.160 Definitions.

A. "Ancestral tree" means any tree determined by the City Council to be an ancestral tree based upon a finding that the particular tree is unique and of importance to the public due to its age, size, appearance, location, ecological value, habitat value, historical and/or cultural significance.

B. "California native" tree means:

Alder, White (*Alnus rhombifolia*)

Bay, California (*Umbellularia californica*)

Buckeye, California (*Aesculus californica*)

Madrone (*Arbutus menziesii*)

Maple, Big Leaf (*Acer macrophyllum*)

Oak, Blue (*Quercus douglasii*)

Oak, California Black (*Quercus kelloggii*)

Oak, Canyon Live (*Quercus chrysolepis*)

Oak, Coast Live (*Quercus agrifolia*)

Oak, Interior Live (*Quercus wislizenii*)

Oak, Scrub (*Quercus berberidifolia*)

Oak, Valley (*Quercus lobata*)

Pine, Grey (*Pinus sabiniana*)

Sycamore, California (*Platanus racemosa*)

Walnut, California Black (*Juglans hindsii californica*).

C. "City's ancestral tree inventory" means the inventory of trees compiled under Ordinance 902.

D. "Certified arborist" means an arborist certified by the International Society of Arboriculture or the National Association of Arborists and who is bonded and insured.

E. "Circumference at breast height (CBH)" means the circumference of a single-trunked tree, or a multi-trunked tree measured by the circumference of the two largest trunks combined, or a stand of trees dependent upon each other for survival and measured by the circumference of all trees combined, at four and one-half feet above grade.

F. "Damage" or "damaging" means any action undertaken which causes or is likely to cause injury, death, or disfigurement to a protected tree. This includes, but is not limited to, cutting, improper pruning, topping, poisoning, overwatering, relocating or transplanting a tree, or trenching, excavating or paving within the protected zone of such tree.

G. "Development" means any work on any property in the City of Livermore that requires a permit or approval for subdivision, planned development, variance, zoning use permit, site plan approval, building, demolition, or any other city approval or permit.

H. "Director" means the Community Development Director or the Public Works Director of the City, or his or her designated representative.

I. "Dripline" shall mean the outermost edge of a tree's canopy. When depicted on a map, the dripline will appear as an irregular-shaped circle that follows the contour of a tree's branches as seen from overhead.

J. "Encroach" or "encroachment" means grading, excavating, trenching, parking of vehicles, storage of materials or equipment, or the construction of structures or other improvements.

K. "Healthy tree" means a tree exhibiting good structural integrity, free of serious diseases, and maintaining the normal appearance and displaying the normal vigor and growth characteristics of the species. The health of a particular tree shall be determined consistent with International Society of Arboriculture standards.

L. "Person" means individuals, associations, corporations, public agencies, joint ventures, partnerships, independent contractors and their agents and employees.

M. "Protected tree" means a single-trunked tree, a multi-trunked tree, or a stand of trees dependent upon each other for survival that meets any one or more of the following criteria:

1. Any tree located on private property occupied by single-family residential development that meets the following criteria:

a. Any tree with a circumference (CBH) of 60 inches or more; or

b. Any California native tree having a circumference (CBH) of 24 inches or more;

2. Any tree located on private property occupied by commercial, industrial, institutional (i.e., religious, public agency, hospital, care facilities, etc.), mixed-use or

multifamily residential (two or more units) development with a circumference (CBH) of 24 inches or more; or

3. Any tree located on an undeveloped or underdeveloped property, regardless of zoning district, use, or development status, for which new development is proposed, with a circumference (CBH) of 18 inches or more; or

4. Any tree located in an open space, riparian, or habitat area with a circumference (CBH) of 18 inches or more; or

5. Any tree approved as part of a site plan approval, or required as a condition of approval for a development project, zoning use permit, use permit or other site development review; or

6. Any tree designated by the City Council as determined to be an ancestral tree; and/or

7. Any tree listed on the City's ancestral tree inventory; or

8. Any tree required to be planted as mitigation for unlawfully removed trees.

N. "Protected zone" shall mean a specifically defined area totally encompassing a protected tree within which work activities are strictly controlled. When depicted on a map, the outermost edge of the protected zone will appear as an irregular-shaped circle that follows the contour of the dripline of the tree. Using the dripline as a point of reference, the protected zone shall commence at a point five feet outside of the dripline and extend inward to the trunk of the tree. In no case shall the protected zone be less than 10 feet from the trunk of the tree.

O. "Remove" or "removal" means the physical displacement of a tree, or the death of a tree caused through damaging, cutting, improper pruning, topping, poisoning, over-watering, relocation or transplantation, trenching, excavating or paving within the protected zone of such tree, or other direct or indirect action that causes the physical removal or death of a protected tree.

P. "Routine maintenance" means actions required to maintain the health of a tree including, but not limited to, removal of deadwood, diseased or crossing limbs, control of

deleterious insects, watering, and pruning pursuant to the pruning standards specified by the Western Chapter of the International Society of Arboriculture Pruning Standards.

Q. “Street” or “public right-of-way” means all property dedicated to public use, including, but not limited to, streets, alleyways, easements, dedicated bike paths, trails (bike, equestrian and pedestrian), parkways, parks, or other open spaces.

R. “Street tree” means any plant form planted and maintained within the street or public right-of-way as defined in LMC 12.20.010 and as governed by Article I of this chapter.

S. “Topping” means the pruning of a tree to reduce the height of such tree by cutting back a dominant leader or major structural limbs or by cutting back of the crown and/or creating large stubs without regard to form.

T. “Unhealthy” or “poses a hazard” means a tree that is in poor condition or represents a hazard with respect to its general health, status as a public nuisance, danger of falling, proximity to existing or proposed structures, interference with utility services, and/or its status as a host for plant pest or disease, endangering the tree itself, or other trees or plants, with infection or infestation, that cannot be controlled or remedied through reasonable preservation and/or preventative procedures and practices. (Ord. 2065 § 1(A), 2018; Ord. 2045 § 1(B), 2016; Ord. 2016 § 1(B), 2015; Ord. 1986 § 1(A), 2014; Ord. 1830 § 3, 2007)

12.20.170 Tree preservation and protection.

All persons in possession of property within the City shall keep the trees on the property in a safe and healthy condition. Any tree within the City that may be a danger to the safety of any person, or to on-site or off-site structural improvements, shall be safeguarded to prevent any damage to persons or improvements by appropriately securing the area around the tree, or providing support for the tree, by any person who owns, possesses, or controls the property on which the tree is located. (Ord. 2065 § 1(A), 2018; Ord. 1830 § 3, 2007)

12.20.180 Enforcement.

Except as otherwise provided herein, the provisions of this article shall be administered and enforced by the Director in his or her capacity as enforcement officer. (Ord. 2065 § 1(A), 2018; Ord. 1830 § 3, 2007)

12.20.190 Tree permit required.

A. Permit Required. No person shall remove or encroach into the protected zone of any protected tree or trees upon a property within the City unless a tree permit has been issued by the City pursuant to the provisions of this article. (Ord. 2065 § 1(A), 2018; Ord. 1830 § 3, 2007)

12.20.200 Exemptions.

A tree permit is not required under the following circumstances:

A. The performance of routine maintenance on private property that is provided in accordance with the most recent pruning standards established by the International Society of Arboriculture as amended under the provisions of this chapter.

B. Landscape activities on private property, including but not limited to planting and maintenance thereof.

C. Trees damaged by severe weather conditions (i.e., thunderstorms, windstorms, floods, and temperature), earthquakes, fires or other natural disasters and determined to be dangerous by a peace officer, firefighter, civil defense official, building officer or code enforcement officer in their official capacity.

D. A public utility, subject to the jurisdiction of the Public Utilities Commission of the state of California, when taking such action as may be necessary to maintain the safe operation of their facilities when due to damage by thunderstorm, windstorm, flood, earthquake, fire or other natural disaster. The utility shall promptly notify the Director within 24 hours of the nature of the emergency and action that was taken.

E. Removal is determined to be necessary by fire department personnel actively engaged in fighting a fire.

F. Trees planted, grown and/or held for sale as part of a licensed nursery business. (Ord. 2065 § 1(A), 2018; Ord. 1830 § 3, 2007)

12.20.210 Processing of tree permits.

A. Tree Permit Application Requirements. The applicant shall furnish all necessary information as required by this chapter in a clear and accurate format to the City and shall pay the appropriate filing fee as prescribed by City Council resolution.

1. Removal, relocation or encroachment into the protected zone of trees not associated with a development permit.

An application for the removal, relocation, or encroachment into the protected zone of any protected tree, whether healthy, unhealthy or poses a hazard, shall include the following:

- a. A completed application form.
- b. Photographs of the subject tree(s) and the area around the tree(s).
- c. A site plan or diagram indicating the location of the tree on the property.
- d. A written statement that describes the necessity of the requested action to allow improvements or otherwise allow economic or other reasonable enjoyment of the property.
- e. For unhealthy trees, a certified arborist's determination of the health and value of the tree may be required.
- f. Other pertinent information may be requested, based on the size, location and number of trees to be removed.

2. Removal, relocation or encroachment into the protected zone of trees associated with a development permit.

An application for the removal, relocation or encroachment into the protected zone of any protected tree, whether healthy, unhealthy, or poses a hazard, shall include the following:

- a. A completed application form.

b. A scaled plot plan indicating the location of all trees (whether of significant value or not) on the property. The site plan shall also include the location of all proposed structures and site improvements, property lines, and utility locations. Each tree shall be assigned a number, and shall be physically tagged with and identified on the plot plan by their assigned number (tagging to be performed consistent with the standards specified by the Western Chapter of the International Society of Arboriculture so as not to cause harm to the tree). In addition, protected trees shall be identified on the plot plan by botanical name, common name, age, CBH, dripline, protected zone, and the requested disposition for each. The applicant shall be required to provide certification by a registered civil engineer, land surveyor or licensed tree specialist attesting to the accuracy of the tree trunk, dripline, and protected zone locations.

c. A table shall be required that lists all trees on the property by their assigned number, botanical name, common name, CBH, age, valuation, health, and the requested disposition, and reason for such, for each tree.

d. A report by a certified arborist that verifies the number, species, size, age, health, and valuation of all protected trees on the property, the effect of the requested action on tangible urban forest benefits (shade, environmental, aesthetic, etc.), and recommendations for any special precautions necessary for the preservation of trees as required by this article.

e. A map indicating the topography of the land and a written statement as to the potential effect of the request on soil retention, water retention, and the diversion or increased flow of surface waters may be required.

f. Photographs of the subject property and all trees thereon identified by their assigned number.

g. A written statement that describes the necessity of the requested action to allow construction or improvements or otherwise allow economic or other reasonable enjoyment of the property.

h. Other pertinent information as may be requested.

B. Tree Permit Submittal and Review Process.

1. Public Works Department Review.

a. The following types of tree permit applications shall be submitted to the public works department:

i. A request to remove, relocate or encroach into the protected zone of any number of protected trees on developed single-family, multifamily, commercial, industrial, institutional, mixed-use, open space, riparian or habitat property where such removal, relocation or encroachment is not associated with a development application (i.e., site plan approval, tentative map, etc.);

ii. A request to remove or relocate four or more protected trees on developed commercial, industrial, institutional or mixed-use property represents a potentially significant change to the property's previously approved development permit. The Public Works Director shall refer such applications to the community development department for review and determination.

b. The Director may approve, conditionally approve, or deny a tree permit application for the removal, relocation or encroachment into the protected zone of a protected tree consistent with the findings established under subsection C of this section. The Director may refer the application to the Beautification Committee, which may approve, conditionally approve, or deny any tree permit application referred by the Director, consistent with the findings established under subsection C of this section.

2. Community Development Department Review.

a. The following types of tree permit applications shall be submitted to the community development department:

i. A request to remove or relocate four or more protected trees on a developed commercial, industrial, institutional or mixed-use property. If warranted (i.e., a significant change to a previously approved development permit), the Director may refer the application to the Planning Commission for determination. Tree permit applications referred to the Planning Commission shall be converted to a site plan approval amendment application and shall be subject to the fees and review process associated therewith.

ii. A request to remove, relocate or encroach into the protected zone of any number of protected trees when such application is associated with a development application.

b. The Director may approve, conditionally approve or deny the application consistent with the findings established under subsection C of this section. The Director may refer the application to the Planning Commission, which may approve, conditionally approve, or deny the application referred by the Director, consistent with the findings established under subsection C of this section.

c. Applications associated with a development application shall be processed concurrently with the development application, and shall be reviewed and approved by the approval body (the Director, design review committee, Planning Commission or City Council) making the final determination on the development application, consistent with the findings established under subsection C of this section.

C. Findings. A tree permit may be approved only if such approval is based upon at least one of the following findings:

1. That due to the condition of the tree with respect to its general health, status as a public nuisance, danger of falling, proximity to existing or proposed structures, interference with or impacts to utility services, damage to infrastructure or private property, production of invasive suckers or seedlings (i.e., privet or sumac) leading to excessive maintenance requirements, and/or its status as a host for plant,

pest or disease endangering other trees or plants with infection or infestation that cannot be controlled or remedied through reasonable preservation and/or preventative procedures and practices, it must be removed.

2. That it is necessary to issue a tree permit to remove, relocate, or encroach into the protected zone of a protected tree to enable the reasonable and conforming use of the subject property, or an adjoining property, which is otherwise prevented by the presence of the tree. Reasonable and conforming use of the property shall be determined in accordance with the Livermore general plan and the Livermore Development Code. The applicant must demonstrate to the satisfaction of the Director or the deciding body that there are no reasonable alternatives to the proposed use or design of the property that would cause the request to be unwarranted.

3. In addition to the above findings, the following findings may justify removal of a non-native tree (any tree not identified as a California native in LMC 12.20.160(B)) from the rear yard of a developed single-family residential property:

- a. The tree is not identified as an ancestral tree; and
- b. The tree is not of unique importance to the public based on its size, appearance, location, or historical and/or cultural significance; and
- c. That one or more of the following conditions exist: that the tree based on its size, age or condition is nearing the end of its useful life; is blocking access to sunlight; is dropping an amount of litter or debris resulting in damage or risk to the property; is overhanging a residential structure and cannot be trimmed to alleviate this condition; is damaging other landscaping; has grown out of scale with the portion of the yard it occupies; or that the ongoing maintenance of the tree is an unmanageable burden to the property owner. (Ord. 2065 § 1(A), 2018; Ord. 2045 § 1(A), 2016; Ord. 2016 § 1(A), 2015; Ord. 1901 § 3 (Exh. A § 16), 2010; Ord. 1830 § 3, 2007)

12.20.220 Preservation of protected trees.

If the Director or deciding body has reason to believe that construction or development activities may endanger a protected tree, the Director or deciding body may, during development project review or as a condition of development project approval, seek professional consultation at the expense of the person seeking to perform the construction or development of the property in order to determine the measures necessary to safeguard the tree. Such measures may include but are not limited to:

A. If encroachment into the protected zone of any protected tree occurs, special construction to allow the roots to breathe and obtain water shall be required.

B. The protection zone shall be clearly marked by a three-foot high fence of a highly visible material. Tree wells may be used when advisable. Excavation adjacent to any protected tree shall not be permitted where material damage to the root system will result. The existing ground surface within the protection zone shall not be cut, filled, compacted or paved.

C. Oil, gasoline, chemicals and other construction materials or equipment that might be harmful shall not be stored within the protection zone or upslope of the protected tree. (Ord. 2065 § 1(A), 2018; Ord. 1830 § 3, 2007)

12.20.230 Conditions of approval.

A. The Director or deciding body may attach reasonable conditions to the tree permit to ensure compliance with the stated purposes of this chapter.

B. The issuance of a tree permit for the removal of a protected tree may be conditioned upon mitigation consisting of the planting of replacement trees on or off site at the sole expense of the applicant, and/or by payment to the urban forestry maintenance fund by the applicant, as determined by the Director or deciding body consistent with the following:

1. Single-Family Residential Property.

a. The number and type of replacement trees or the amount of funds paid in mitigation may be based on the diminution of economic, aesthetic, environmental and property values, and in relation to the size, age relative to average lifespan, and location of existing trees to be removed, as

determined by the Director. In no case shall the replacement value be less than two trees of a minimum 15-gallon size for each tree removed, or one tree of a minimum 15-gallon size, if a California native (as identified under LMC 12.20.160(B)) species is planted.

b. There shall be no mitigation required for protected trees that are determined by the City to be unhealthy or pose a hazard, and where such condition is not the result of an action by the property owner to directly or indirectly damage or remove the tree, or where an invasive species (i.e., privet or sumac) is removed.

2. Multifamily Residential (Two or More Units), Commercial, Industrial, Institutional, Mixed-Use, Open Space, Riparian or Habitat Property.

a. The number and type of replacement trees or the amount of funds paid in mitigation shall be provided corresponding to the value (see LMC 12.20.290) of the loss or diminution of economic, aesthetic, environmental, and property values, and in relation to the size, age relative to average lifespan, and location of existing trees to be removed, as determined by the Director. Depending on the size and number of trees to be removed, the City may require the preparation of a report by a certified arborist at the expense of the applicant and in compliance with this chapter to the satisfaction of the Director. In no case shall replacement value be less than three trees of a minimum 15-gallon size, or two trees of a minimum 24-inch box size, or one tree of 48-inch box size for each tree removed. To the extent possible, the type of replacement trees shall be of a species identified under LMC 12.20.160(B) as a California native.

b. For protected trees that are determined by the City to be unhealthy or pose a hazard and where such condition is not the result of an action by the property owner to directly or indirectly damage or remove the tree, replacement shall be required on a one-to-one basis at a minimum of 15-gallon size.

C. Tree Maintenance Provisions. Applications for multifamily (two or more units), commercial, industrial, institutional, open space, riparian or habitat properties shall be required to prepare an objectively observable maintenance and care program designed to ensure the continued health and care of relocated, replacement, or preserved trees. The applicant may also be required to post a bond or other adequate security to ensure that relocated or replacement trees are properly established and maintained, and that preserved trees are protected from the potential impacts of development. Bonding or surety shall be based upon the following, to be provided at the property owner's expense:

1. Replacement Trees. A written estimate from a landscape professional based on the value of the replacement trees, irrigation improvements, and planting/installation costs.

2. Preserved Trees. A written valuation of the trees to be preserved (pursuant to subsection (B)(2)(a) of this section) as determined by a certified arborist. If the value of the protected tree cannot be determined, surety equal to \$5,000 per tree shall be required.

3. Relocated Trees. A written valuation of the trees to be relocated (pursuant to subsection (B)(2)(a) of this section) as determined by a certified arborist, and a written estimate from a landscape professional based on the value of irrigation improvements and planting/installation costs. If the value of the tree cannot be determined, surety equal to \$5,000 per tree shall be required.

Said bond or security shall be held for a period of time not to exceed two years from the issuance of a certificate of final occupancy for development on the subject site and shall be released upon the satisfaction of the Director that the trees to have been relocated, preserved or replaced are in good health and have not been endangered or damaged during the development of the property.

D. Damage to any protected tree that is due to the development of a property shall be immediately reported to the Director by the person causing the damage, the responsible contractor, or the owner of the site.

E. When any development permit is applied for and such proposed activity would require the destruction, removal, relocation, or encroachment into the protected zone of a protected tree, said permit shall not be issued until all the requirements of this article are met.

F. In the event a permit to remove, relocate, or encroach into the protected zone of a protected tree is issued in order to enable the applicant to carry out a development project, such tree permit shall be valid and effective only in connection with the actual accomplishment of such development project. Otherwise, no protected tree shall be removed, relocated, or encroached upon.

G. A development permit, issued for the construction of any new residential, commercial, industrial, institutional or mixed-use building, or issued for the improvement or expansion of such, shall not be issued unless the applicant causes street trees to be planted within the public right-of-way adjacent to the property upon which the proposed building is located in accordance with the adopted street tree plan and the provisions of Article I of this chapter. (Ord. 2065 § 1(A), 2018; Ord. 1830 § 3, 2007)

12.20.240 Valid tree permits.

A. Tree permits shall be valid for a period no longer than 90 days from the issuance date, unless associated with a development application for which a tree permit shall be valid concurrent with the validity of the approved development application.

B. Valid tree permits shall be posted on site within view of the nearest public right-of-way during the removal process. (Ord. 1830 § 3, 2007)

12.20.250 Appeals.

A. Tree Permit Applications Processed Through the Public Works Department. Appeals of the Director's determination shall be made to the Beautification Committee. Appeals of the Beautification Committee's determination shall be made to the City Council. Appeals shall be filed and acted upon consistent with the requirements of Chapter 9.15 LDC.

B. Tree Permit Applications Processed Through the Community Development Department. Appeals of the Director's determination shall be made to the Planning

Commission. Appeals of the Planning Commission's determination shall be made to the City Council. Appeals shall be filed and acted upon consistent with the requirements of Chapter 9.15 LDC. (Ord. 2065 § 1(A), 2018; Ord. 2045 § 1(A), 2016; Ord. 2016 § 1(A), 2015; Ord. 1901 § 3 (Exh. A § 17), 2010; Ord. 1830 § 3, 2007)

12.20.260 Right of inspection.

In the enforcement of this chapter, such enforcement officer and his or her designees may enter upon private or public property to examine any protected tree and may issue citations for any violations of this chapter. (Ord. 1830 § 3, 2007)

12.20.270 Interference with enforcement officers prohibited.

No person shall interfere with or delay the authorized representative of the City from the execution and enforcement of this chapter, except as provided by law. (Ord. 2065 § 1(A), 2018; Ord. 1830 § 3, 2007)

12.20.280 Violations – penalties.

It is unlawful for any person to violate the provisions of this chapter by:

- A. Causing damage to a protected tree;
- B. Removing, relocating, and/or encroaching into the protected zone of a protected tree without a valid tree permit;
- C. Failing to have a valid tree permit in one's possession during the course of removing, relocating, or encroaching into the protected zone of a protected tree;
- D. Violating the valid tree permit's conditions of approval, or the construction guidelines provided herein.

Any violation of this chapter shall be deemed an infraction and shall be abated pursuant to the provisions of LMC Title 1.

Violations of any provision of this chapter may result in the immediate suspension of any tree or development permit previously issued for the property upon which said violation occurred, until compliance with all the requirements of this chapter is demonstrated to the satisfaction of the Director.

Any person who violates the provisions of this chapter by causing damage to a protected tree, or removing, relocating, and/or encroaching into the protected zone of a protected tree without a valid tree permit shall be required to obtain a valid tree permit and shall mitigate the damage or loss of the protected tree pursuant to LMC 12.20.230(B). If the value of the protected tree cannot be determined, a \$5,000 flat fee per protected tree damaged or removed, or mitigation through the planting of replacement trees valued at \$5,000 per protected tree damaged or removed, shall be required. (Ord. 2065 § 1(A), 2018; Ord. 1830 § 3, 2007)

12.20.290 Valuation.

For purposes of calculating the value of any tree that has been damaged or removed, or is to be replaced, relocated or protected, the most current edition of the “Guide for Establishing Values of Trees and Other Plants” by the Council of Tree and Landscape Appraisers under the auspices of the International Society of Arboriculture shall be used. (Ord. 1830 § 3, 2007)

12.20.300 Urban forestry maintenance fund.

The urban forestry maintenance fund shall be established for the purpose of preserving, protecting, monitoring and enhancing the City of Livermore’s urban forest, and shall be funded in part by those funds collected under this chapter, and in part by those portions of fines that may be assessed by the courts, known as “civil penalty assessments” for violations of this chapter. Urban forestry maintenance funds may be utilized only toward furthering the purpose and intent of this chapter. (Ord. 2065 § 1(A), 2018; Ord. 1830 § 3, 2007)

12.20.310 Effective date – Effect on applications in process.

Where a request to remove, relocate or encroach into the protected zone of a protected tree is associated with a development application under LMC 12.20.210(B)(2)(c), and the associated development application is deemed complete prior to the effective date of the ordinance codified in this article, the development application shall not be subject to the requirements of this article.

All other tree permit applications shall be subject to the requirements of this article upon the effective date of the ordinance codified in this article. (Ord. 1830 § 3, 2007)

12.20.311 Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this chapter is held to be unconstitutional or invalid or ineffective by any court or tribunal of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter, or any part thereof.

If the application of any provision of this chapter on any person, property, or circumstance is found to be unconstitutional or invalid or ineffective in whole or part by any court or tribunal of competent jurisdiction, the effect of such decision shall be limited to the person, property, or circumstance immediately involved in the controversy, and the application of any such provision to other persons, properties or circumstances shall not be affected. (Ord. 1830 § 3, 2007)