

**ORDINANCE NO. 2481**

**AN ORDINANCE OF THE CITY OF FREMONT AMENDING THE MUNICIPAL CODE TO ESTABLISH NEW TREE PROTECTION REGULATIONS REPLACING EXISTING ONES; TO AMEND RELATED SUBDIVISION AND ZONING ORDINANCE SECTIONS; TO AMEND DEVELOPMENT STANDARDS RELATING TO TREES AND LANDSCAPING; AND TO AMEND PENALTIES PROVISIONS TO CONFER TREE PROTECTION ORDINANCE ENFORCEMENT POWER ON THE LANDSCAPE ARCHITECT AND BUILDING AND SAFETY DIRECTOR**

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The City Council of the City of Fremont does hereby ordain as follows:

Section 1:

Chapter 5 (Preservation of Trees) of Title IV (Sanitation and Health) of the Fremont Municipal Code is amended in its entirety to read as follows:

**CHAPTER 5. TREE PRESERVATION\***

- §4-5100 Title
- §4-5101 Legislative findings.
- §4-5102 Definitions.
- §4-5103 Prohibition on removal of or damage to trees except when expressly permitted.
- §4-5104 Trees subject to or exempt from permit requirements.
- §4-5105 Status of retained, added, replaced or relocated trees.
- §4-5106 Standards for evaluation of applications to remove, damage or relocate private protected trees.
- §4-5107 Standards for mitigation of authorized removal of private protected trees
- §4-5108 Standards for mitigation of unauthorized removal of private protected trees
- §4-5109 Use of cash payments.
- §4-5110 Procedure for applications to remove, damage or relocate private protected trees when no development project application is contemplated or pending.
- §4-5111 Procedure for applications to remove, damage, relocate or retain private protected trees when a development project application is contemplated or pending.
- §4-5112 Designation and listing of landmark trees.
- §4-5113 Procedure for designation of landmark trees and removal of such designation.
- §4-5114 Policy for protection of landmark trees.

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\* **Editor's note**—Pursuant to Section 25985, Public Resources Code, the city, by Ord. No. 1316, adopted March 27, 1979, declared the City of Fremont exempt from Ch. 12, Div. 15 of the Public Resources Code, also known as the Solar Shade Control Act.

- §4-5115 Procedure for applications to remove, damage or relocate a landmark tree when no development project application is contemplated or pending.
- §4-5116 Procedure for applications to remove, damage, retain or relocate landmark trees when a development project application is contemplated or pending.
- §4-5117 Responsibility and liability for unauthorized tree removal or damage.
- §4-5118 Procedures for imposition of mitigation requirements for trees unlawfully removed.
- §4-5119 Penalties.
- §4-5120 Severability.

**Sec. 4-5100 Title.**

This Chapter shall be known as the “Tree Preservation Ordinance.”

**Sec. 4-5101 Legislative findings.**

This Chapter is enacted in recognition of the following facts:

- (A) Among the features that contribute to the attractiveness and livability of the City of Fremont are its trees, both indigenous and introduced, growing as single specimens, in clusters, or in woodland situations. These trees have significant psychological and tangible benefits for both residents and visitors to the City.
- (B) Trees contribute to the visual framework of the City by providing scale, color, silhouette and mass. Trees contribute beneficially to the climate of the City by reducing heat buildup and providing shade, moisture, and wind control. Trees contribute to the protection of other natural resources by providing erosion control for the soil, oxygen for the air and habitat for wildlife. Trees contribute to the economy of the City by increasing and sustaining property values. Trees reduce the cost of storm water systems by increasing the water retention capacity of soils. Trees provide screens and buffers to separate land uses, are often landmarks of the City’s history, and are a critical element of nature in the midst of an urban setting.
- (C) The City’s trees collectively constitute an urban forest, and removals or additions of even a single tree can negatively or positively affect the urban forest and the City as a whole. The loss or removal of a tree from one location in the City’s urban forest can often be at least partially mitigated by planting a replacement tree or replacement trees in the same or a different location. However, the negative effect of the loss or removal of a mature tree may in some cases take generations to fully mitigate by the planting of immature replacement trees.
- (D) For all these reasons, it is the purpose of this Chapter, and in the interest of the public health, safety and welfare of the people of the City of Fremont, while recognizing private rights to develop and use property in a manner not prejudicial to the public interest, to protect and preserve trees by regulating their removal and damage to them; to prevent unnecessary tree loss and damage; to minimize environmental damage from improper tree removal or pruning; to encourage or, when appropriate, to require tree

replacement plantings; to effectively enforce tree preservation regulations; and to promote the appreciation and understanding of trees.

**Sec. 4-5102 Definitions.**

- (A) “Arborist,” means a person with at least three years experience in the practice of arboricultural analysis, and certified by and in good standing with the International Society of Arboriculture (ISA).
- (B) “Container tree” means any tree whose roots are entirely contained in an above-ground container.
- (C) “Contemplated development project application,” means an application for development project approval that an applicant intends to file and for which he or she has already done preparatory planning. Development project applications filed within one hundred twenty days after removal of a tree from a lot which is the subject of the application shall be presumed in any City enforcement action to have been contemplated at the time of tree removal.
- (D) “Cutting,” means the detaching or separating from a tree any limb, branch or root. Cutting shall include pruning and trimming.
- (E) “Damage,” means any action taken which causes or may cause death or significant injury to a tree or its roots, or which places the tree in an irreversible state of decline. This includes, but is not limited to, cutting, topping (i.e. cutting of the main leader branch), removal or stubbing of major scaffold branches, girdling, poisoning, and trenching or excavating within the drip line. Normal pruning, as prescribed by currently adopted standards of the International Society of Arboriculture, which are on file and available for review in the Engineering Division of the City, does not constitute damage.
- (F) “DBH,” means diameter at breast height, which in turn means trunk diameter measured at four and one-half feet above a tree’s natural grade. For multi-trunked trees, DBH means the DBH of all individual trunks added together.
- (G) “Developed lot,” means a lot which is neither an underdeveloped lot nor a vacant lot as these terms are defined in this section.
- (H) “Development project,” has the meaning given this term by section 8-2135.3 of this Code, except that, for the purposes of this Chapter, removing, damaging or relocating any tree shall not in itself constitute a development project.
- (I) “Drip line” means the outermost edge of a tree’s canopy. When depicted on a map, the drip line will appear as a line that follows the contour of the tree’s branches as seen from overhead. At a minimum, the drip line is a circle whose diameter is fifteen times a tree’s DBH.
- (J) "Landmark tree" means a tree that has been so designated by resolution of the City Council as well as any tree that has been designated in the General Plan as a primary historic resource.
- (K) “Landscape Architect,” means the City’s Landscape Architect or his or her or the City Manager's designee.

- (L) “Native tree,” means any of the following trees native to the San Francisco Bay area: Oak, Redwood, Buckeye, Madrone, Sycamore, Big-Leaf Maple, Red-Bud, and Bay.
- (M) “Person,” means any natural person, partnership, firm, corporation, governmental agency or other legal entity.
- (N) “Private tree,” means any tree growing on private land or planted in the public right-of-way by an owner of adjacent property.
- (O) “Protected tree,” means any tree which under section 4-5104 may be removed, damaged or relocated only subject to a permit or other authorization conferred pursuant to the provisions of this Chapter; except for landmark trees, which are protected by special regulations set out in this Chapter.
- (P) “Removal,” means the physical removal of a tree; causing the death of a tree through damaging, poisoning or other direct or indirect action; or severely damaging a tree.
- (Q) “Severely damage,” means any action constituting damage as defined in this Chapter that destroys the natural character of a tree to such an extent that the tree has irreparably lost most of the beauty characteristic of its species or other valuable attributes referenced in the above-stated legislative findings.
- (R) “Tree,” means a perennial plant having a self-supporting, woody main stem or trunk usually characterized by the ability to grow to considerable height and size, and the development of woody branches at some distance above the ground. Usually distinguished from a bush or shrub by size, manner of growth, and usual botanical nomenclature. Perennial shrubs are not classified as trees in this Chapter.
- (S) “Tree of exceptional adaptability to the Fremont area” means, but is not limited to, a tree of the following species: Fremont Cottonwood, California Pepper, European Olive, Black Walnut, and Deodar Cedar. A list of other trees of exceptional adaptability to the Fremont area is on file and available for review in the Engineering Division of the City.
- (T) “Tree protection zone,” means the limit of undisturbed space that is required to be maintained around an existing tree or grove of trees to ensure a tree or its roots are not damaged during grading or construction. The City may require that a tree protection zone be fenced or marked to further its protective purpose.
- (U) “Underdeveloped lot,” means any lot that:
  - (1) Is currently lawfully used for commercial agriculture or arboriculture or zoned (A), Agricultural District;
  - (2) If subject to floor area ratio regulations, is not built out to the maximum building floor area allowed by those regulations; or
  - (3) Is zoned to allow residential use and can lawfully accommodate an additional dwelling, other than a secondary dwelling as this term is defined in section 8-2141.2.1 and used in section 8-22159.5.
- (V) “Vacant lot,” means a lot that is not occupied by a principal building as this term is defined in section 8-2115.2.

**Sec. 4-5103 Prohibition on removal of or damage to trees except when expressly permitted.**

No person shall remove, damage or relocate a private tree or any landmark tree, whether publicly or privately owned, except as follows:

- (A) When authorized by a permit issued by the Landscape Architect, which permit shall, while any person is removing or damaging the subject tree, be posted on the lot by the applicant so as to be prominently visible from the street;
- (B) When removal, damage or relocation is allowed without permit under section 4-5104;
- (C) When expressly authorized as part of a City-issued entitlement or permit for a development project; or
- (D) In the case of a landmark tree, when authorized by the City Council in accordance with this Chapter.

**Sec. 4-5104 Trees subject to or exempt from permit requirements.**

- (A) *Permit or other authorization required for private trees other than landmark trees.*

A permit or other authorization conferred in accordance with this Chapter is required to remove, damage or relocate a private tree if it is:

- (1) A tree having a DBH of six inches or more and located on a vacant or underdeveloped lot;
- (2) A tree having a DBH of six inches or more and located on a developed lot which is the subject of a contemplated or pending application for a development project;
- (3) A native tree or tree of exceptional adaptability to the Fremont area having a DBH of 10 inches or more;
- (4) A tree having a DBH of eighteen inches or more;
- (5) A tree that was required by the City to be planted or retained as mitigation for the removal of a tree;
- (6) A tree planted or retained as a condition of any City-conferred development project approval, including approvals conferred prior to adoption of this Chapter; or
- (7) One of six or more trees of the same species that are located on the same lot and that each have six or more inches in DBH.

- (B) *Permit or other authorization required for all landmark trees.*

Authorization conferred in accordance with this Chapter is required to remove, damage or relocate any landmark tree, whether privately or publicly owned.

- (C) *Trees exempt from permit requirements.*

Except as provided in this subsection (C), no permit or other authorization conferred in accordance with this Chapter and no mitigation is required to remove, damage or relocate a private tree if it is:

- (1) A tree on a developed lot not greater than 10,000 square feet in area and zoned either R-1, or single family detached Planned District, when the tree is behind the forward-most face of the front

of the principal building. Any architectural feature that is allowed to project into a required front yard under section 8-22207 of this Code shall not constitute any part of the face of a building for the purposes of this subsection. This exemption shall not apply to any landmark tree or to any tree planted or retained in accordance with any City-imposed requirement;

- (2) A container tree;
- (3) A fruit or nut tree of a species grown for commercial food production, except a black walnut or olive tree; or
- (4) A tree removed or damaged under emergency circumstances as follows:
  - (a) The tree has been damaged by storms, floods, earthquakes, or by any other cause; and a city official has determined that its immediate removal or further damage is necessary to protect persons from imminent personal injury or to prevent imminent and substantial damage to property;
  - (b) When immediate removal or damage is determined to be necessary by Fire Department personnel actively engaged in fighting a fire; or
  - (c) When immediate removal or damage is determined by the Landscape Architect to be necessary to protect persons from imminent personal injury or to prevent imminent and substantial damage to property; or
- (5) A tree, other than a landmark tree, removed or damaged by a public utility to the extent that such removal or damage is necessary for building or maintaining the public utility's facilities.

**Sec. 4-5105 Status of retained, added, replaced or relocated trees.**

Any decision made under this Chapter, or as part of a development project approval, which requires the retention, addition, replacement or relocation of any tree shall confer on such tree the status of a tree which, under Section 4-5104, may not be damaged or removed except in accordance with this Chapter. Further, all such trees shall be maintained in a healthy condition and, except for landmark trees, shall be replaced by the then current owner of the lot in accordance with the standards set out in Section 4-5108 if they die or are removed substantially before expiration of their normal life span. Replacement requirements for landmark trees shall be established on a case by case basis and shall reflect the special quality and importance of any such tree.

**Sec. 4-5106 Standards for evaluation of applications to remove, damage or relocate private protected trees.**

An application for authorization to remove, damage or relocate a private protected tree shall be approved, denied or conditionally approved so as to further the public welfare and based upon a balancing of the following criteria in light of the above-stated legislative findings. Applicability of any of the criteria set out under subsection (A) supports authorization of a tree's removal or damage, while the

applicability of any of the criteria set out under subsection (B) supports denial of such authorization.

(A) *Criteria supporting authorized removal or damage:*

- (1) Because of disease, age or damage, the tree or a part of the tree is in danger of falling and injuring persons or causing substantial damage to property; and the tree cannot otherwise be returned to a safe condition through reasonable preservation or preventive practices not requiring damage to or removal of the tree.
- (2) The tree has a relatively short life expectancy.
- (3) The tree is a host to a plant, insect, or other parasitic organism, which condition endangers other healthy trees; and reasonable treatment to rid the tree of the infestation would not eliminate an unacceptable level of endangerment to other trees.
- (4) The portion of the lot on which the tree is located is overcrowded with trees in that the number of healthy trees that can be supported is exceeded, and the subject tree contributes to this condition of overcrowding so that its removal would contribute to the health and vigor of nearby trees whose preservation is more desirable under the above stated legislative findings and under a balancing the applicable criteria of this section.
- (5) Development project plans currently filed for the lot indicate that it is necessary to damage, remove or relocate the tree to enable reasonable and conforming use of the property or to achieve a superior project; and the tree cannot be preserved or left undamaged by a reasonably required redesign of the project.
- (6) The tree substantially interferes with full enjoyment of an existing structure, with utility services, or with other uses of real property; and this interference cannot be adequately remedied through reasonable measures not requiring damage to or removal of the tree.
- (7) The tree has lost most of the aesthetic value generally possessed by trees of the same size and species, which value cannot be feasibly restored.

(B) *Criteria supporting denial of authorization to remove:*

- (1) The tree is an important asset to the community based on such factors as its service as part of a windbreak system, its assistance in drainage or in the avoidance of soil erosion, its service as a component of a wildlife habitat, its role in maintaining the existing urban forest or its contribution to reducing reflective glare from buildings and pavement.
- (2) The tree contributes substantially to the aesthetic beauty of an area, and its removal would adversely affect the appearance of the area. The tree's potential, or lack thereof, for a long life and for a substantial increase over time of its contribution to the City's urban forest shall be taken into consideration in making this determination.

- (3) The tree is located on a vacant or undeveloped lot and, if left undisturbed, has the potential for becoming a community asset of substantial aesthetic value.
- (4) The tree is a member of a group of trees mutually dependent on each other for survival, structural integrity or aesthetics.

**Sec. 4-5107 Standards for mitigation of authorized removal of private protected trees.**

When a private protected tree's removal is authorized in accordance with this Chapter, mitigation shall be required as follows:

- (A) Required mitigation for each tree removed shall be the planting of one twenty-four inch box replacement tree of a species and in a location approved by the person or entity imposing mitigation requirements under this Chapter. When, because of lot size, configuration or development, the property cannot fully accommodate the mitigation that would otherwise be required under this subsection (A), the applicant shall pay the City a fee in lieu of on site replacement for each tree that is not replaced on site. The amount of the fee shall be equal to the per unit cost to the City for a planted twenty-four inch box tree as established by the City's last award of a contract following a competitive bid for such work.
- (B) Replacement requirements for trees removed from a lot which is the subject of a development project application shall be imposed in addition to any requirement for planting trees that would otherwise be imposed as a condition of project approval.
- (C) Replacement trees shall be planted in accordance with standard details that are on file with the Engineering Division of the City.
- (D) The mitigation required by this section may be waived or reduced in the following circumstances:
  - (1) Removal of the tree has a beneficial effect on the City's urban forest, or
  - (2) The cost of mitigation is disproportionately large when contrasted to the loss to the City's urban forest caused by tree removal.

**Sec. 4-5108 Standards for mitigation of unauthorized removal of private protected trees.**

Requirements for mitigation of unauthorized removal of private protected trees shall be imposed in accordance with the following policies and standards:

- (A) Replacements for trees removed shall, if reasonably possible, provide total beneficial attributes at least equivalent to those of the tree(s) to be replaced. For example, when replacing a tree whose principal beneficial attribute is aesthetic, the replacement tree(s) should provide equivalent aesthetic quality in terms of size, height, location and other beneficial aesthetic attributes.
- (B) Replacement requirements for trees removed from a lot that is the subject of a development project application shall be imposed in addition to any

- requirement for planting trees that would otherwise be required or imposed as a condition of project approval.
- (C) Subject to the provisions of subsection (E), replacement trees shall generally be planted on the same lot as were the trees removed, and the species and location of the replacement tree(s) shall be approved by the City.
  - (D) When the value of a tree must be established to apply the provisions of this section, such value shall be calculated by the Landscape Architect in accordance with the latest edition of the Guide for Plant Appraisal as prepared by the Council of Tree and Landscape Appraisers or a similar successor resource.
  - (E) When, because of lot size, configuration or development, or size, age or other characteristics of the tree to be replaced, it is not reasonably possible to provide an equivalent on-site replacement tree or trees, replacement equivalency may be established, at the discretion of the City, using one or a combination of the following standards:
    - (1) The total DBH of the replacement tree(s) is at least equal to the DBH of the tree(s) to be replaced, and the replacement tree(s) will at maturity be similar in size and character to the tree(s) to be replaced.
    - (2) The total value of the replacement tree(s), or cash payment to the City in lieu of replacement, or a combination of the total value of the replacement tree(s) plus such cash payment is at least equal to the value of the tree(s) to be replaced.
  - (F) Notwithstanding any other provision of this section, in the case of removal of a tree from a vacant or underdeveloped lot, the City may require mitigation to be made entirely by cash payment. In such cases, if an application for a development project for the lot is filed within one hundred twenty days of the date of such payment and if the project is completed within two years of such date, the cash payment may be used to reimburse the project applicant for on site tree replacement meeting the requirements of this section.
  - (G) Replacement trees shall be planted in accordance with standard details that are on file and available for review in the Engineering Division of the City.
  - (H) The mitigation required by this section may be waived or reduced in the following circumstances:
    - (1) Removal of the tree has a beneficial effect on the City's urban forest;
    - (2) The cost of mitigation is disproportionately large when contrasted to the loss to the City's urban forest caused by tree removal; or
    - (3) Following an unauthorized tree removal, the Landscape Architect determines that removal would have been authorized had timely application been made. The burden of proving that removal would have been authorized is on the person(s) responsible for mitigation.

**Sec. 4-5109 Use of cash payments.**

When a cash payment is received in accordance with section 4-5107 or 4-5108, the City shall use the proceeds as follows:

- (A) To plant or upgrade street trees throughout the City;
- (B) To beautify or enhance public places, including parks and open spaces, by the planting of trees;
- (C) To fund any administrative activity directly related to the advertising, promotion and execution of the provisions of this Chapter as well as any other activities that will benefit the City's urban forest; or
- (D) In accordance with subsection (F) of section 4-5108.

**Sec. 4-5110. Procedure for applications to remove, damage or relocate private protected trees when no development project application is contemplated or pending.**

(A) *Application.*

A person desiring to remove, damage or relocate a private protected tree when no development project application is contemplated or pending for the lot shall apply for a permit from the Landscape Architect.

(1) *Fee for application.*

There shall be no fee charged for the application except for the cost of any required arborist's report, for which an advance deposit of the estimated cost shall be made.

(2) *Time for application.*

Applications shall be made at least fifteen days prior to the proposed date of tree removal, damage or relocation.

(3) *Contents of application.*

Applications shall be made on a form provided by the City or shall otherwise contain the following information:

- (a) The number, location(s), size(s), quality, species of the protected tree(s) proposed to be removed, damaged or relocated;
- (b) A written explanation of why authorization is sought to remove, damage or relocate the protected tree(s);
- (c) A time schedule for the proposed work;
- (d) Any other information the Landscape Architect deems necessary including, when appropriate, a report by an arborist selected by the City and a tree survey prepared by a civil engineer or landscape architect indicating buildings, paved areas, the size and species of all existing protected trees on the subject lot and those protected trees which are proposed to be removed, damaged, relocated or retained;
- (e) A written proposal for mitigating the proposed removal of or damage to the protected tree(s) in accordance with section 4-5107, indicating the size, species and location of any proposed replacement tree(s) and the amount of any payment proposed in lieu of replacement; and

- (f) The applicant's written authorization for City staff or persons retained by the City to enter the subject property to conduct an on site inspection of trees.
- (B) *Action on application.*
- (1) *When decision is that removal, damage or relocation should not be authorized.*  
When the Landscape Architect decides that all or some part of the application should not be approved, it shall be denied in whole or in part.
  - (2) *When decision is that removal, damage or relocation should be authorized.*  
When the Landscape Architect decides that a tree's removal, damage or relocation should be authorized, a permit shall be granted subject to conditions that mitigation for removal of trees be provided in accordance with section 4-5107. If relocation of a tree is approved, the Landscape Architect may impose conditions to assure its health and survival.
  - (3) *Decision must be in writing.*  
The Landscape Architect's decision and the reasons supporting it shall be written.
  - (4) *Notice of decision and appeal rights.*  
The Landscape Architect's decision and a notification that it is appealable under this section shall be mailed to the applicant.
- (C) *Appeal of Landscape Architect's decision.*
- (1) *Landscape Architect's decision appealable.*  
The Landscape Architect's decision is appealable to the City Council only by the applicant and is final and conclusive as to other persons.
  - (2) *Form and time of appeal.*  
The appeal shall be made in writing and filed in the office of the City Clerk no later than ten days after mailing of the decision of the Landscape Architect. The basis of the appeal shall be completely stated. The City Council may refuse to consider matters not set forth in the written appeal.
  - (3) *Notice of appeal hearing.*  
At least ten days mailed notice of the hearing of an appeal shall be given to the applicant and to all owners of real property as shown on the latest equalized assessment roll whose properties are contiguous to or directly across the street from the subject lot. In lieu of utilizing the assessment roll, the City may utilize records of the County Assessor or Tax Collector which contain more recent information than the assessment roll.
  - (4) *Hearing on appeal.*  
The appeal hearing shall be conducted de novo and generally in accordance with Chapter 5 of Title I as supplemented by this section.
  - (5) *Notice of decision on appeal.*

Notice of the decision on appeal and reasons supporting it shall be in writing and shall be mailed to the appellant and to persons who have requested copies.

**Sec. 4-5111. Procedure for applications to remove, damage, relocate or retain private protected trees when a development project application is contemplated or pending.**

(A) *Applications.*

A person desiring to remove, damage, relocate or retain a private protected tree in connection with a development project for which an application is contemplated or pending shall submit an application to the Landscape Architect. The application shall meet the following requirements:

(1) *Application an essential part of a development project application.*  
Applications proposing removal, damage, relocation or retention of protected trees shall be required as essential components of applications for development project approval, which shall not be deemed complete until the requirements of this subsection (A) have been satisfied.

(2) *Fees and costs.*

All fees and other costs associated with applications made under this section shall be charged as components of the fees and costs charged for the entire development project application. The cost of any inspection or report required under this section shall be borne by the applicant.

(3) *Contents of application.*

Applications shall include, but not be limited to, the following:

- (a) The number, location(s), size(s), quality and species of the protected tree(s) proposed to be removed, damaged, relocated or retained;
- (b) A written explanation of why authorization is sought to remove, damage or relocate any protected tree;
- (c) A time schedule for the proposed work;
- (d) A tree survey in the same scale as the development plans prepared by a civil engineer or landscape architect indicating:
  1. The size and species of all existing protected trees on the subject lot;
  2. Those protected trees which are proposed to be removed, damaged, relocated or retained in place;
  3. Protective measures (including designated protection zones) proposed for any tree to be relocated or for protection of any protected tree that is to remain in place during grading or construction operations; and
  4. The locations of all proposed or existing buildings, paved areas, and utilities;

- (e) When required by the Landscape Architect, a report by an arborist selected by the City;
  - (f) A written proposal for mitigating the removal of any protected tree(s) in accordance with section 4-5107, indicating the proposed size, species and location of the replacement tree(s) and the amount of any payment proposed in lieu of replacement; and
  - (g) The applicant's written authorization for City staff or persons retained by the City to enter the subject property to conduct on-site inspections of trees.
- (B) *Landscape Architect's recommendation.*  
The Landscape Architect shall prepare a written recommendation which shall be considered by any official authorized to approve or disapprove the project or summarized or included in the agenda report(s) prepared for the body or bodies who will review and make recommendations or who will approve, conditionally approve or disapprove the development project application.
- (C) *Action on application.*  
Action on any protected tree related matter shall be made part of any recommendatory action and of any action to approve, conditionally approve or disapprove the development project application. Such action shall include mitigation requirements imposed in accordance with section 4-5107 for any authorized removal of protected trees.
- (D) *Inclusion of tree maintenance requirement in CC&Rs.*  
The obligations imposed under this section and by section 4-5105 shall be stated in any CC&R's for the project required by the City.
- (E) *Effect of appeal provisions.*  
During the pendency of any appeal of an approval of a development project application and during any period in which a timely appeal may be filed, the effectiveness of any such approval shall be stayed insofar as it pertains to trees.
- (F) *Exemptions.*  
The Landscape Architect may waive any requirement of this section when (s)he determines that that full compliance is not necessary to allow effective application of the tree protection provisions of this Chapter.

**Sec. 4-5112 Designation and listing of landmark trees.**

- (A) *City Council designation of landmark trees.*  
Any tree meeting the following criteria may be designated by resolution of the City Council as a landmark tree. All trees so designated shall be placed on a landmark tree list which may be updated from time to time by subsequent City Council resolutions.
- (1) *Presumptive qualification for landmark tree designation.*  
A tree meeting all of the following criteria presumptively qualifies for designation as a landmark tree:
    - (a) DBH is 54 inches or greater;

- (b) The tree's structure and character exemplify its species or it has an extraordinary form caused by environmental influences;
  - (c) The tree is free, or can practicably be made to be free, of any structural defect posing a threat of either injury to persons or of substantial damage to property;
  - (d) The tree has substantial aesthetic appeal, or its lack of such appeal can be remedied by standard arboricultural practices; and
  - (e) Probability that the tree will survive more than 5 years from date of landmarking while retaining substantial aesthetic appeal is at least 50 percent.
- (2) *Other factors supporting landmark tree designation.*  
Whether or not a tree meets the criteria of subsection (A)(1), it may qualify for landmark tree designation based on any of the following criteria:
- (a) The tree has an important historic significance in that:
    1. It is associated with events that have made a significant contribution to local, state or national cultural heritage; or
    2. It is associated with the life of a person important to local, state or national history;
  - (b) The tree is a native tree or a tree of exceptional adaptability to the Fremont Area which has a special significance to the community;
  - (c) The tree has an especially prominent and beautiful visual impact;
  - (d) The tree is one of a group of trees that as a group meets one or more of the criteria of this section for landmark tree designation; or
  - (e) Any other factor causing the tree to have a special and important significance to the community.

- (B) *Trees that are primary historic resources.*  
Trees which have been and which in the future are designated in the General Plan as primary historical resources are hereby further designated as landmark trees.

**Sec. 4-5113. Procedure for designation of landmark trees and removal of such designation.**

- (A) *Initiation of the process.*  
The Landscape Architect shall from time to time propose landmark tree designation or removal of such designation based on the criteria of section 4-5112, and the proposal shall be acted upon as provided in this section. Such proposals may include City-owned trees, which proposals shall be exempt from the payment of fees and costs. Additionally, the process for landmark tree designation or removal of such designation may be

commenced by motion of the City Council or by the tree's owner filing an application for such action.

- (B) *Fee and cost for application to remove landmark tree designation.*  
A fee in an amount established by resolution of the City Council and an advance deposit to cover estimated cost of inspection and any required report(s) shall be charged for an owner's application for removal of a landmark tree designation. In all other cases, no fee or costs shall be charged.
- (C) *Inspection and reports.*  
Following initiation of the process, the tree shall be inspected by the Landscape Architect or by a qualified arborist selected by the Landscape Architect and retained by the City. The Landscape Architect shall prepare a City Council agenda report applying the above stated legislative findings and the applicable criteria set out in section 4-5112. The report shall set out the Landscape Architect's recommendation on the proposal and reasons supporting it.
- (D) *Notice of hearing.*  
Notice of any hearing conducted pursuant to this section shall comply with section 8-23121, as though the matter were an application under Title VIII of this Code.
- (E) *Action by the City Council.*  
The City Council shall conduct a noticed public hearing and shall review the proposal, any written inspection report, and the recommendation of the Landscape Architect, all in light of the above-stated legislative findings and the applicable criteria of section 4-5112. The Council's decision shall be set out in a resolution.

**Sec. 4-5114. Policy for protection of landmark trees.**

- (A) *Special status of landmark trees.*  
Landmark trees, including those on City-owned property may be removed, damaged, or relocated only in accordance with the provisions of this Chapter which specifically pertain to them.
- (B) *Environmental Significance of landmark trees.*  
Landmark trees are significant community resources, and the damaging or removing of any landmark tree shall be regarded as causing at least a potentially substantial adverse change in the environment unless either of the following criteria is met:
  - (1) Probability that the tree will survive while retaining most of its aesthetic appeal for an additional 5 years is less than 50 percent; or
  - (2) Because of disease, age or damage, the tree has lost most of its original aesthetic appeal, which cannot feasibly be restored.
- (C) *Preservation standards for landmark trees.*

- (1) *When damage or removal would constitute a substantial adverse change in the environment.*

When removal of a landmark tree would constitute a substantial adverse change in the environment, authorization to either damage or remove the tree shall not be given if its preservation intact is feasible in light of economic, environmental and technological factors. Provided however, that authorization to damage or remove a landmark tree may be given if the tree meets the criteria of Section 4-5106, subsection (A)(1) or (A)(3).

- (2) *When removal would not constitute a potentially substantial adverse change in the environment*

Damage or removal of landmark trees which would not constitute a potentially substantial adverse change in the environment may be authorized when such action is found to be appropriate after balancing the above-stated legislative findings and the criteria of section 4-5106.

- (D) *Measures available to preserve landmark trees.*

In order to accommodate the preservation of landmark trees in cases where authorization of removal or damage might otherwise appear warranted, the City Council may, in its discretion, consider the following measures to make feasible the preservation of a tree:

- (1) Directing an application for variance of zoning regulations;
- (2) Transfer of development rights to offset any substantial economic burden or loss that City-required preservation of the tree might place on its owner; or
- (3) Any other reasonable means of avoiding removal or damage of the tree.

**Sec. 4-5115 Procedure for applications to remove, damage or relocate a landmark tree when no development project application is contemplated or pending.**

- (A) *Application: City Council authorization required.*

Removal, damage or relocation of a landmark tree requires authorization by the City Council. When no development project application is contemplated or pending for the lot, application for such authorization shall be filed initially with the Landscape Architect.

- (1) *Fee for application.*  
Except for landmark trees owned by the City, a fee in an amount established by resolution of the City Council and an advance deposit to cover estimated costs of inspection and any required report(s) shall be paid by the applicant.
  - (2) *Time for application.*  
Applications shall be made at least ninety days prior to the proposed date of tree removal, damage, or relocation.
  - (3) *Contents of application.*
    - (a) The application shall set out a complete description of the proposed action including the applicant's statement as to why it should be granted and any information, drawings or reports the Landscape Architect may deem necessary.
    - (b) The applicant shall provide a proposal for mitigating the effects of the proposed action, which shall reflect the difficulty or impossibility of achieving full mitigation for removal of or damage to a landmark tree and which shall therefore provide for very extensive mitigation for such an action. In cases where the landmark tree is owned by the City, any public benefit resulting from its damage or removal shall be considered as contributing to mitigation for removal.
- (B) *Inspection and report.*  
The tree(s) will be inspected by the Landscape Architect or by a qualified arborist selected by the Landscape Architect and retained by the City. The Landscape Architect's recommendation on the application and the reasons supporting it shall be set out in a report (s)he shall prepare for the City Council.
- (C) *Notice of hearing.*  
Notice of any hearing conducted pursuant to this section shall comply with section 8-23121 as though the matter were an application under Title VIII.
- (D) *Action by the City Council.*  
The City Council shall conduct a noticed public hearing and shall review the application, any written inspection report and the recommendations of the Landscape Architect in light of the above-stated legislative findings and the applicable criteria and policies set out in sections 4-5106 and 4-5114. The Council may approve, conditionally approve or deny the application and may, in its discretion, order measures to be taken by the City to assist in preservation of the landmark tree(s). Mitigation requirements for removal, damage or relocation of landmark trees shall be established on a case by case basis and shall reflect the special quality and importance of any such tree. The council's decision shall be set out in a resolution.
- (E) *Notice of decision.*

The City Council's decision and written findings supporting it shall be mailed to the applicant.

- (F) *Applications to remove, damage or relocate protected trees from the site must be filed contemporaneously.*

If the applicant also desires to remove, damage or relocate any protected tree(s) on the site, (s)he shall also contemporaneously file an application in accordance with section 4-5110.

**Sec. 4-5116 Procedure for applications to remove, damage, relocate or retain landmark trees when a development project application is contemplated or pending.**

- (A) *Section 4-5115 procedures incorporated.*

Applications to remove, damage, relocate or retain landmark trees on lots for which development project applications are contemplated or pending shall be processed in accordance with section 4-5115 as supplemented or modified by this section.

- (B) *Recommendation of the Landscape Architect.*

The Landscape Architect shall make a recommendation on the proposal, which shall be included in the agenda report(s) prepared for the City Council and for any subordinate body whose recommendation on the entire development project application is required by this Code.

- (C) *Procedures for City Council authorization.*

City Council authorization to remove, damage or relocate a landmark tree in connection with a development project for which an application is contemplated or pending shall be given as follows:

- (1) *When City Council approval of a development project application is otherwise required.*

When City Council approval of an entire development project application is otherwise required by this Code, the Council's decision regarding the landmark tree shall be made as part of its action on the entire development project.

If the Council's action on the entire development project application is required to be preceded by a recommendation of any subordinate official or body, such recommendation(s) shall encompass the proposal regarding the landmark tree.

- (2) *When City Council approval of a development project is not otherwise required.*

When City Council approval of an entire development project is not otherwise required by this Code, the development project shall be processed in accordance with the procedures that would be followed in the absence of a landmark tree proposal, except that:

- (a) Review by officials or bodies subordinate to the Council shall end with the official or body that would have had

authority to approve the development project in the absence of a landmark tree proposal;

- (b) The action of the last official or body to review the project shall be a recommendation that the City Council approve, conditionally approve or deny the entire development project, including the proposal pertaining to the landmark tree(s); and
- (c) The City Council shall approve, conditionally approve, or disapprove the entire development project, including the proposal pertaining to the landmark tree(s).

(3) *Optional Procedure.*

In lieu of the procedure prescribed by subsection (C) (2), the applicant may, prior to the commencement of any public hearing conducted on the application, elect that the landmark tree proposal be processed in advance of a decision on the entire development project application as follows:

- (a) The City Council shall make the City's final decision on the landmark tree proposal prior to any decision by a subordinate official, board or commission to approve, conditionally approve or disapprove the entire development project or to recommend any such action.

The authority of subordinate officials or bodies to approve, conditionally approve or disapprove the development project or to recommend any such action shall be exercised in a manner consistent with the City Council's prior landmark tree decision.

(D) *Fees and costs.*

All fees and other costs associated with applications made under this section shall be charged as components of the fees and costs charged for the entire development project application. The cost of any inspection or report required under this section shall be borne by the applicant.

(E) *Tree Applications an essential part of development project application.*

Applications for removal, damage or relocation of any landmark tree(s) shall be required as essential components of applications for development project approval, which shall not be deemed complete until the applications required by this Chapter has been completed and filed.

**Sec. 4-5117 Responsibility and liability for unauthorized tree removal or damage.**

All persons who, in violation of this Chapter, removes or damages a tree, including proprietors and employees of tree service businesses, owners of the lot on which the tree is located, and persons who direct such removal or damage, shall be jointly and severally responsible and liable for violations of this Chapter.

**Sec. 4-5118 Procedures for imposition of mitigation requirements for trees unlawfully removed.**

- (A) *Investigation and preliminary imposition of mitigation requirement.*  
When the Landscape Architect has cause to believe that a tree has been removed in violation of this Chapter, (s)he shall conduct an investigation. If the investigation establishes that such removal has occurred and the identity of the responsible person(s) is preliminarily established, the Landscape Architect shall notify such person(s) by mail of his or her intent to impose on him or her specified mitigation requirements and investigation costs as authorized by this section.
- (B) *Mitigation requirements.*  
A person who removes a tree in violation of this Chapter shall be required to provide mitigation in accordance with Section 4-5108, or, in the case of a landmark tree, as established on a case by case basis by the Landscape Architect.
- (C) *Cost of investigation.*  
In addition to the above-stated mitigation requirements, the person(s) found to have violated this Chapter shall pay the City's cost of investigation of the violation.
- (D) *Request for hearing.*  
The person(s) notified of the Landscape Architect's intent to impose mitigation requirements and payment of investigation costs shall have ten days from the mailing of the notice to file a written request for a informal hearing before the Landscape Architect. Unless such a request is made, the Landscape Architect may order the earlier specified mitigation plus payment of investigation costs, which order shall not be subject to appeal. Any such order and the reasons supporting it shall be written and mailed to the person(s) affected. Time(s) for performance shall be specified.
- (E) *Hearing.*  
If a timely request for a hearing is made, the Landscape Architect will conduct an informal hearing. If on the basis of the hearing and the City's investigation, it is established that a tree has been removed in violation of this Chapter, the Landscape Architect shall order mitigation and payment of costs in accordance with this section. The Landscape Architect's order and the reasons supporting it shall be made in writing and shall be mailed to the person responsible. Time(s) for performance shall be specified.
- (F) *Appeal of Landscape Architect's decision.*  
(1) *Landscape Architect's decision appealable.*  
The Landscape Architect's order made under this section is appealable to the City Council by the person(s) affected by the order.  
(2) *Form and time of appeal.*

The appeal shall be made in writing and filed in the office of the City Clerk no later than ten days after mailing of the order of the Landscape Architect. The basis of the appeal shall be completely stated. The City Council may refuse to consider not set forth in the written appeal.

(3) *Notice of appeal hearing.*

Notice of the hearing of an appeal, whether by the Director or the City Council, shall be given by mail to the appellant at least ten days prior to the hearing date.

(4) *Hearing on appeal.*

The appeal hearing shall be conducted de novo and generally in accordance with Chapter 5 of Title I, as supplemented by this section.

(5) *Notice of decision on appeal.*

Notice of the City Council's decision on appeal and findings supporting it shall be mailed to the appellant.

**Sec. 4-5119 Penalties.**

(A) *Separate offences.*

A person shall be guilty of a separate and distinct criminal or civil offense as follows:

(1) For each tree damaged or removed in violation of this Chapter:

(2) For each tree not replaced as required by section 4-5105.

(3) For each day's failure to comply with a final order issued pursuant to section 4-5118.

(4) For each day's failure to comply with a requirement imposed under this Chapter for tree replacement or payment in cash in lieu of replacement.

(B) Cumulative remedies.

Penalties for the foregoing offences shall be deemed non-exclusive, cumulative, and in addition to any other remedy the City may have at law or in equity, including but not limited to injunctive relief to prevent violation of this Chapter and to enforce any requirement imposed pursuant to this Chapter.

**Sec. 4-5120 Severability.**

If any section, subsection, sentence, clause or phrase of this Chapter is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter.