

**BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE**

**IN THE MATTER OF:**

An ordinance of the City Council of the City of Lafayette, )	
California recommending approval of a Zoning Text )	Ordinance 633
Amendment ("ZT04-14") amending Chapter 6-17 )	
<u>"Tree Protection" of the Lafayette Municipal Code )</u>	

The City Council of the City of Lafayette does ordain as follows:

**Section 1. Findings.** The City Council finds the following:

**WHEREAS**, staff reviewed Chapter 6-17 "Tree Protection" of the Lafayette Municipal Code ("LMC") to ensure that it is current, since it has not been updated since 2009; and

**WHEREAS**, the City reviewed the language of Chapter 6-17 to resolve inconsistencies and make minor modifications to the Chapter, such as updating the title of "Manager" to "Director", clarifying the method of calculating the diameter of multi-trunk trees, adding the Downtown Street Improvement Master Plan Committee as a referral body to the Director, and adding language to the purpose that speaks to the Downtown Specific Plan and the Downtown Street Improvement Master Plan; and

**WHEREAS**, there have been recent projects in the County that propose to remove mass amounts of trees; and

**WHEREAS**, the preservation and protection of the City's trees and tree groves throughout the City is important to the community, and is consistent with the General Plan, Downtown Specific Plan, and Downtown Street Improvement Master Plan. While Chapter 6-17 of the LMC protects and preserves trees in the community, the chapter does not speak to tree removal projects on a large scale. The City is therefore creating a new definition and mitigation requirements to address major tree removal projects; and

**WHEREAS**, the City prepared Zoning Text Amendment ZT04-14 to amend Chapter 6-17 "Tree Protection" of the Lafayette Municipal Code to define a "major tree removal project" and make modifications of the current language to resolve inconsistencies; and

**WHEREAS**, on June 16, 2014, the Planning Commission of the City of Lafayette conducted a duly noticed public hearing pursuant to Government Code section 65854, at which time all persons wishing to testify in connection with ZT04-14 were heard and ZT04-14 was fully studied and the Planning Commission adopted Resolution No. 2014-12 forwarding a recommendation of approval to the City Council; and

**WHEREAS**, on July 28, 2014 the City Council conducted a public hearing where it received written and oral testimony, including a staff report that detailed the research, options, and recommendations from the City. The Council discussed the project including the trigger for major tree removal projects, types of trees considered protected, and restitution and mitigation amounts. After consideration and deliberation, the City Council continued the project until August 11 to allow staff to respond to the Council's comments.

**WHEREAS**, on August 11, 2014 the project was on the Consent Calendar and was continued, without discussion, to September 8 to allow staff to respond the Council's comments.

**WHEREAS**, on September 8, 2014 the project was on the Consent Calendar and was continued, without discussion, to September 22 to allow staff to respond the Council's comments.

**WHEREAS**, on September 22, 2014 the City Council conducted a public hearing where it received written and oral testimony, including a staff report that detailed the research, options, and recommendations from the City. Staff responded to the questions and comments from the Council at the July 28 Council meeting. After consideration and deliberation, the City Council introduced Ordinance 633 and continued the project to October 14, 2014 for second reading and adoption.

**WHEREAS**, on July 28, August 11, September 8, September 22, and October 14, 2014 the City Council of the City of Lafayette conducted a duly noticed public hearing pursuant to Government Code section 65854, at which time all persons wishing to testify in connection with ZT04-14 were heard and ZT04-14 was fully studied;

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF LAFAYETTE CITY COUNCIL THAT:**

**Section 2. Zoning Text Amendment Findings.** Pursuant of Lafayette Municipal Code Section 6-213 and based on the entire record before the City Council and all written and oral evidence received at the public hearing on this matter, the City Council hereby makes and adopts the following findings:

- (a) The zoning text amendment is compatible with the General Plan and each of its elements and all elements therein because:
1. The General Plan includes a stated goal to "ensure that development respects the natural environment of Lafayette. Preserve the scenic quality of ridgelines, hills, creeks, and trees" (Goal LU-2); and
  2. The General Plan includes as a stated goal to "preserve and enhance the open space scenic viewsheds, and semi-rural qualities around the residential entryways to Lafayette." (Goal LU-5); and
  3. The General Plan includes as a stated goal to "maintain the semi-rural character and beauty of the City by preserving its open and uncluttered natural topographic features" (Policy OS-3); and
  4. The General Plan includes as a stated policy to "preserve existing woodlands and associated vegetation." (Policy OS-4.3)
  5. The General Plan includes as a stated policy to "protect important groves of trees and significant existing vegetation...and avoid the cutting of mature trees." (Policy OS-4.4)
- (b) The Amendment is compatible with the uses authorized in, and the regulations prescribed for, the land use districts for which it is proposed and with the regulations for each land use district.
- (c) There is community need to amend Chapter 6-17 "Tree Protection" of the Lafayette Municipal Code to provide clarity and resolve inconsistencies in the "Tree Protection" chapter.

**Section 3. CEQA.** The City finds and determines with certainty that the amendments described in ZT04-14 are categorically exempt under Section 15308 of the California Environmental Quality Act ("CEQA"), where an action is taken by a regulatory agency [the City] to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures [tree permit] for protection of the environment. A Notice of Exemption will be filed upon final City Council approval of the project.

**Section 4. Adoption of Amendment.** Based on the record before the City Council, all written and oral evidence presented to the City Council, and the findings made in this ordinance, the City Council hereby approves ZT04-14 amending Chapter 6-17 "Tree Protection" of the Lafayette Municipal Code, as described in Exhibit "A" attached hereto and incorporated herein by reference.

**Section 5. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

**Section 6. Public Records.** The location and custodian of the documents and any other material which constitute the record of proceedings upon which the City Council based its decision is as follows: City Clerk, City of Lafayette, 3675 Mt. Diablo Blvd #210, Lafayette, CA 94549.

**Section 7. Publication.** The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, including the names of the city council members voting for and against its passage, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption, including the names of the city council members who voted for and against its passage.

**Section 8. Effective Date.** This Ordinance becomes effective thirty (30) days after its adoption.

**Section 9. Certification.** The City Clerk shall certify to the adoption of this Ordinance.

**PASSED AND ADOPTED** by the City Council of the City of Lafayette at a regular meeting on October 14, 2014, by the following vote:

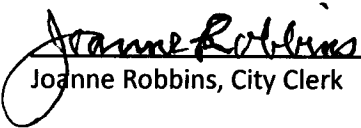
**AYES: Tatzin, B. Andersson and Mitchell**

**NOES: None**

**ABSTAIN: None**

**ABSENT: M. Anderson and Reilly**

**ATTEST:**

  
Joanne Robbins, City Clerk

**APPROVED:**



Don Tatzin, Mayor

**Attachments**

- Exhibit "A" Amendments to Chapter 6-17 "Tree Protection" of the Lafayette Municipal Code (Strikethrough and underline version)

**Exhibit "A"**  
**Chapter 6-17 "Tree Protection" of the Lafayette Municipal Code**

**6-1701 Purpose and Findings.**

- A. Purpose The City of Lafayette consists of oak woodland and savannah covered hills, and valleys that originally contained many large and majestic trees, orchards and creeks lined with giant valley oak, madrone, buckeye and black walnut trees. Historically, in the course of development, especially for residential purposes, many of these original trees were destroyed. It is now recognized that the preservation of trees enhances the natural scenic beauty, increases property values, encourages quality development, aids in tempering the effect of extreme temperatures, helps to reduce air and noise pollution, furnishes habitat for wildlife and gives Lafayette an identity and quality that enhances the environment for all residents and the business community. As seen in the master and specific plans adopted by the City, trees are vital to the community. The Downtown Street Improvement Master Plan has a number of objectives to improve the appearance of the downtown and reinforce the visual character of the community which includes the widespread planting of trees in the downtown. The Downtown Specific Plan has goals and policies aimed to preserve the downtown's trees so that they continue to contribute to the character of the community's quality of life. The General Plan has goals and policies for the preservation of the community's biological resources, including its trees, and it is the purpose of this ordinance to implement these goals and policies.
- B. Findings. The City Council finds that:
1. The policies of the City are to protect existing woodlands and their associated vegetation, protect native trees, preserve riparian habitat, encourage the planting of native species, and avoid the cutting of mature trees.
  2. In order to implement these policies and to promote the public health, safety and welfare, it is necessary to protect existing trees and require the replacement of trees that have been destroyed or removed.
  3. Protected trees are valuable assets to the City and the community, and the public shall be compensated when a protected tree is destroyed or removed in a manner that is not in compliance with this chapter.

(Ord. 539, § 1(part), 2003)

**6-1702 Definitions.**

In this chapter, unless the context otherwise requires:

- A. "Arborist" is a person having one of the following qualifications:
1. Current listing as a certified arborist by the International Society of Arboriculture; or
  2. Current American Society of Consulting Arborists registered consulting arborist.

- B. "Arborist report" means a report of an arborist developed in a manner consistent with the guidelines for report writing by the American Society of Consulting Arborists on the following:
1. Description of the tree's location, genus, species, diameter and dripline;
  2. Health and condition of the tree, including existing hazards to the tree;
  3. Potential impact of development on the tree or existing tree condition;
  4. Evaluation of preservation potential based on the tree's existing condition and in relation to any potential development; and
  5. Recommendations for protection and preservation techniques and requirements, including restorative or other remedial actions that might be feasible to maintain and improve tree health or to assure survival.
- C. "Commercial zoning district" means business and commercial districts as further defined in Chapter 6-9 of the Lafayette Municipal Code.
- D. "Construction" means the act of placing, erecting, modifying or relocating a structure or the act of preparing property for such work, including clearing, stockpiling, trenching, grading, compaction, paving or change in ground elevation.
- E. "Defensible space" means the area within the perimeter of a parcel providing a key point of defense from an approaching wildland or escaping structure fire, as defined by Section 316.2 of the California Fire Code. Defensible space rarely requires the complete removal of a tree. Trees may be maintained provided they are well spaced, well pruned, and do not create a 'fire ladder' that would promote the spread of fire to a structure. When defensible space warrants complete removal of a tree, the tree is typically of a non-native species, is completely dead, or contains substantial amounts of dead branches or leaves/needles that would readily burn.
- F. "Destroy" means an action that kills or endangers the health or vigor of a tree, and includes removal, relocation, excessive or improper pruning, topping, grading, irrigation, application of chemicals, trenching within the drip line or protected perimeter, soil compaction within the protected perimeter, or damage caused to the trunk or primary limbs during construction.
- G. "Developed property" means an existing lot of record that has an existing legal dwelling unit as defined in Section 6-320.
- H. "Development application" means an application to subdivide, alter, develop or use a property that, if approved, will require the issuance of a development permit, including a building or grading permit that may potentially result in the removal or destruction of a protected tree.
- I. "Diameter" means the distance across the tree from outside bark to outside bark with the distance being determined by the circumference of the tree measured at 4.5 feet above the natural grade of the tree (also known as diameter at standard height) and divided by  $\pi$  (3.1416). The diameter of a multi-trunk tree is the sum of the diameters of its component trunks multiplied by  $2/3$  (.66).
- J. "Director" means the Planning and Building Department Director or the Director's designee.

- K. "Dripline area" means the area surrounding tree trunk whose outer perimeter is defined by the length of the outermost branch tips.
- L. "Major tree removal project" means a request for a tree permit by a public or private entity, utility company, or individual that may potentially result in the removal or destruction of more than twenty-five protected trees on public and/or private property from one or more associated projects either in one occurrence or multiple occurrences over the span of five years.
- M. "Native riparian species" means a tree or plant indigenous to a riparian habitat along a perennial or intermittent creek, stream or other watercourse and that is within thirty-feet of the top of a creek bank or that is beyond thirty-feet but in such proximity to a creek bank that it requires or tolerates soil moisture levels in excess of that available in adjacent uplands.
- N. "Native species" means a tree or plant indigenous to a Lafayette oak woodland, chaparral, grassland or riparian habitat.
- O. "Planting program" means the planting of native species on public or private property, including but not limited to trails, parks, and creeks, for the purposes of restoration, re-vegetation, and/or landscaping for the benefit of the public.
- P. "Protected area" means the delineated area encompassing the rooting zone of a tree to be protected from encroachment by construction activities. The area is determined by projecting from the base of the trunk two feet for every one inch of trunk diameter.
- Q. "Protected tree" means a tree on public or private property meeting one or more of the following standards:
1. Developed property. Located on a developed property, that has a trunk diameter of twelve-inches or more, and that is one of the following species:
 

<ul style="list-style-type: none"> <li>▪ coast live oak (<i>Quercus agrifolia</i>)</li> <li>▪ canyon oak (<i>Quercus chrysolepis</i>)</li> <li>▪ blue oak (<i>Quercus douglasii</i>)</li> <li>▪ white oak (<i>Quercus garryana</i>)</li> <li>▪ black oak (<i>Quercus kelloggii</i>)</li> </ul>	<ul style="list-style-type: none"> <li>▪ valley oak (<i>Quercus lobata</i>)</li> <li>▪ interior live oak (<i>Quercus wislizenii</i>)</li> <li>▪ California bay (<i>Umbellularia californica</i>)</li> <li>▪ California buckeye (<i>Aesculus californica</i>)</li> <li>▪ madrone (<i>Arbutus menziesii</i>)</li> </ul>
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  2. Approved development application. Of any size or species and designated to be protected and preserved as part of an approved development application;
  3. Riparian tree. Is a native riparian tree with a trunk diameter of six-inches or more or one component trunk of a multi-trunked tree with a diameter of four-inches or more and that is one of the following species:
 

<ul style="list-style-type: none"> <li>▪ bigleaf maple (<i>Acer macrophyllum</i>)</li> <li>▪ boxelder (<i>Acer negundo</i>)</li> <li>▪ white alder (<i>Alnus rhombifolia</i>)</li> <li>▪ black walnut (<i>Juglans hindsii</i>)</li> <li>▪ cottonwood (<i>Populus fremontii</i>)</li> <li>▪ red willow (<i>Salix laevigata</i>)</li> </ul>	<ul style="list-style-type: none"> <li>▪ arroyo willow (<i>Salix lasiolepis</i>)</li> <li>▪ coast live oak (<i>Quercus agrifolia</i>)</li> <li>▪ valley oak (<i>Quercus lobata</i>)</li> <li>▪ California bay (<i>Umbellularia californica</i>)</li> <li>▪ California buckeye (<i>Aesculus californica</i>)</li> </ul>
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- blue Elderberry (*Sambucus Mexicana, aerulea, or glauca*)
4. Undeveloped property. Of any species with a diameter of six-inches or more and located on an undeveloped property;
  5. Replacement tree. Is a replacement tree planted as restitution for a violation of this chapter;
  6. Restricted ridgeline area. Is a native tree of any size or species within a restricted ridgeline area;
  7. Street tree. Is a tree of any size or species and is located within a public right-of-way or a private access easement; or
  8. Downtown tree. Is a tree of any size or species within a commercial zoning district.
- R. "Pruning" means the removal of tree parts. Proper pruning is performed in a manner intended to achieve a specific goal while minimizing the negative effects on the tree. Excessive or improper pruning is that which employs techniques that result in negative physiological or structural impacts on the tree. Improper pruning includes topping. Excessive or improper pruning includes removing one-fourth (25-percent) or more, of the functioning leaf, stem or root area.
- S. "Relocate" means to move a tree from one location to another, either on-site or off-site.
- T. "Remove" means to cut down completely or extract a tree.
- U. "Restricted ridgeline area" means a class III ridgeline or an area within 400-feet of a class I ridge or 250-feet of a class II ridge, as designated on the Lafayette Area Ridge Map pursuant to subsection 6-2004(A.1.)
- V. "Topping" means a pruning cut that removes the main stem or stems between nodes, buds or laterals or a to lateral branch or limb not large enough to assume the terminal role that would result in serious decay and/or permanent alteration of the tree's structure.
- W. "Tree" means a large woody perennial plant with one or more trunks that generally reaches a minimum height of ten-feet at maturity. It does not include shrubs shaped to tree forms.
- X. "Tree education program" means the preparation of materials, holding of workshops, and other methods to disperse information to provide public knowledge and outreach about the maintenance, preservation, and benefits of native species.
- Y. "Undeveloped property" means a vacant parcel without an existing legal dwelling unit as defined in Section 6-320.

(Ord. 593, § 1(Exhibit A), 2010; Ord. 539, § 1(part), 2003)



**6-1703 Destruction of a protected tree.**

It is a violation of this chapter for any person to remove or destroy a protected tree without a category I or category II permit under sections 6-1706 or 6-1707, or without the approval of an exception under section 6-1705.

(Ord. 593, § 1(Exhibit A), 2010; Ord. 539, § 1(part), 2003)

**6-1704 Permit required to remove a protected tree.**

A category I or category II permit under sections 6-1706 or 6-1707 is required to remove or destroy a protected tree.

(Ord. 593, § 1(Exhibit A), 2010; Ord. 539, § 1(part), 2003)

**6-1705 Exceptions.**

- A. A person seeking an exception to the requirements of this chapter shall file a written request with the Director, together with the necessary information that sets forth the basis upon which the applicant believes an exception warranted. The Director shall review the information submitted and may request additional documentation. The Director will evaluate the request as it relates to the five (5) circumstances outlined Part B of this Section and shall either approve, conditionally approve, or deny the exception. The applicant shall be required to pay all costs of the City's processing of the request including verification of the information submitted.
- B. An exception to the requirements of this chapter may be granted:
1. When a hazardous or dangerous condition requires immediate action to protect life or property as determined by the Director or when the imminent threat is certified by an arborist and an emergency tree removal permit is granted by the Director. The Director may impose reasonable conditions, such as planting trees pursuant to subsection 6-1707(G);
  2. Under emergency conditions when ordered by the Director, an official of the Contra Costa County Fire Protection District, or an official of the Contra Costa County Building Department;
  3. To maintain defensible space on land covered by flammable material, as required by Public Resources Code §4291 and evaluated and approved by the Director with consultation with the Contra Costa County Fire Protection District;
  4. To maintain an unobstructed flow of water for flood control safety in a creek or other waterways as determined by the City Engineer or the Public Works Director; or
  5. When the City must remove a protected tree to protect the health, safety and general welfare of the community.

(Ord. 593, § 1(Exhibit A), 2010; Ord. 539, § 1(part), 2003)

**6-1706 Permit category I: Protected tree on property not associated with a development application.**

- A. Permit required. A category I permit is required to remove or destroy a protected tree on property not currently associated with a development application or that will not be associated with a development application for a minimum of one-year from the date of the issuance of the permit.
- B. Application. An application for a category I permit shall be filed with the Director on a form approved by the City together with a fee fixed by resolution of the City Council. The application shall include the following information:
1. Identification of the location, species and diameter of each protected tree to be removed;
  2. Statement justifying the permit request; and
  3. Supplemental information as may be necessary for the Director to properly review the application, such as photographs or an arborist report concerning the health and quality of the tree and possible alternative actions.
- C. Application review. The Director shall review the application and inspect the subject tree. The Director may refer the application to the Downtown Street Improvement Master Plan Implementation Committee (DSIMPIC), Design Review Commission, Planning Commission, or City Council. The Director may refer the application to an arborist or landscape consultant with arborist certification for additional review and report. The applicant shall pay the costs of this additional review and report.
- D. Determination. Within thirty-days of deeming an application complete, the Director shall approve, conditionally approve, or deny the application. If the application is referred to the DSIMPIC, Design Review Commission, Planning Commission, or City Council, then the application shall be approved, conditionally approved, or denied within sixty-days of the date the application is deemed complete. In acting on the application, the Director, Design Review Commission, Planning Commission, or City Council shall consider the following:
1. Health, condition and form of the tree;
  2. Number, size and location of other trees to remain in the area;
  3. Relationship of the property to riparian corridors, a scenic or biological resource area or a restricted ridgeline area;
  4. Role of the tree in a tree grove or woodland habitat;
  5. Value of the tree to the neighborhood in terms of visual effect, wind screening and privacy;
  6. Damage caused by the tree to utilities, streets, sidewalks or existing private structures or improvements;
  7. Role of the tree in mitigating drainage, erosion or geologic stability impacts; and

8. Health and condition of the area within the protected perimeter.
- E. Permit conditions. The permit may include reasonable conditions, such as planting replacement trees pursuant to subsection 6-1707(G).
- F. Expiration of permit. The permit is valid for sixty-days from the date of issuance unless a longer period is stated in the permit. If the applicant does not begin the work authorized by the permit by the expiration date, the permit shall expire.

(Ord. 593, § 1(Exhibit A), 2010; Ord. 539, § 1(part), 2003)

**6-1707 Permit category II: Protected tree on developed or undeveloped property associated with development application.**

- A. Permit required. A category II permit is required if the proposed construction may result in the destruction or removal of a protected tree.
- B. Application. An application for a category II permit shall be filed with the Director concurrently with the development application. The category II application shall be on a form approved by the City together with a fee fixed by resolution by the City Council. The application shall include the following information:
  1. Depending on the type of development application, one of the following is required:
    - a. Site plan showing the trunk location, diameter, species and dripline of each protected tree within fifty-feet of any proposed construction on the subject property and adjacent properties and indicating which protected tree is proposed to be pruned or removed; or
    - b. For those development applications that require a survey by a licensed surveyor or engineer, a field-verified topographical survey showing the trunk location, elevation at the base, diameter, species and accurate dripline of each protected tree within 100-feet of any proposed construction on the subject property and adjacent properties, and a table that identifies each protected tree, its diameter and species, and whether the tree is proposed to be pruned or removed; and
  2. Arborist report; and
  3. Statement justifying the removal of each protected tree; and
  4. Evidence of compliance with the requirements of responsible agencies for the removal of a protected tree if applicable; and
  5. Supplemental information required by the Director.
- C. Application review. The category II permit application shall be reviewed concurrently with the development application by the Director, DSIMPIC, Design Review Commission, Planning Commission or City Council as required by type of development application. The Director may refer

the applicant's arborist report to an arborist for peer review. The applicant shall pay the cost of a peer review.

- D. Determination. Within thirty-days of deeming an application complete or within the time limit associated with the review of the discretionary development application, the Director, Design Review Commission, Planning Commission, or City Council shall approve, conditionally approve, or deny the application based on the factors in subsection 6-1706(D) and the following additional factors:
1. Necessity for the pruning or removal in order to construct a required improvement on public property or within a public right-of-way or to construct an improvement that allows reasonable economic enjoyment of private property;
  2. Extent to which a proposed improvement may be modified to preserve and maintain a protected tree; and
  3. Extent to which a proposed change in the existing grade within the protected perimeter may be modified to preserve and maintain a protected tree.

The City shall not issue a building permit or a grading permit until after the Director, Design Review Commission, Planning Commission, or City Council makes a determination on the category II permit.

- E. Permit condition. An approved category II permit shall include a condition where the applicant shall guarantee the health and vigor of each protected tree to be preserved during construction as provided in subsection (F) of this section and shall enter into a landscape maintenance agreement with the City assuring the long-term maintenance of the protected trees. The applicant shall replace a protected tree that is removed or destroyed without approval as provided in section 6-1710.
- F. Tree protection during construction. The applicant shall comply with the following requirements:
1. Before the start of construction, the applicant shall install fencing per City specifications at the perimeter of the protected area, or other area identified in an arborist report, of each protected trees to be preserved as shown on the approved construction plans. The Director shall inspect and approve the fencing and its location before the issuance of a development permit.
  2. No construction may occur within the perimeter of the protected area unless approved as a condition of the application. The Director may require an arborist to be present to observe the construction and prepare a report identifying further requirements for tree protection upon completion of construction.
  3. No construction may occur within the perimeter of the protected area until pruning of the tree required for access of construction equipment is completed under the supervision of an arborist.
  4. Under each circumstance where an arborist is required to supervise or observe construction, the arborist may require additional mitigation measures or halt construction if necessary to protect the subject trees. The applicant shall pay the costs of an arborist's supervision or observation.

5. The parking or storing of a vehicles, construction trailers, equipment and material shall not be allowed within the perimeter of the protected area of a tree to be preserved.
- G. Protected tree replacement. When the removal or destruction of a protected tree is permitted, the applicant shall comply with the following requirements:
1. For each six-inches or its fraction of the diameter of the tree to be removed, two (2) 15-gallon trees shall be planted. If the tree that is removed is listed in subsections 6-1702(P)(1) and 6-1702(P)(3), each replacement tree shall be:
    - a. The same genus and species as the removed or destroyed tree; or
    - b. An alternative species approved by the Director.
  2. The Director may require larger trees for the benefit of the project. In addition, the Director, Design Review Commission, Planning Commission or City Council may substitute a lesser number of larger trees or another species based on the finding from an arborist that such a substitution will be more beneficial to the health and vigor of other protected trees on the property. The following qualify as substitution ratios.
    - a. One (1) 24" box sized tree equals two (2) 15-gallon replacement trees;
    - b. One (1) 36" box sized tree equals four (4) 15-gallon replacement trees;
    - c. One (1) 48" box sized tree equals eight (8) 15-gallon replacement trees;
    - d. One (1) 60" box sized tree equals sixteen (16) 15-gallon replacement trees; or
    - e. One (1) 72" box sized tree equals thirty-two (32) 15-gallon replacement trees
  3. If the property associated with the development application cannot accommodate a replacement tree, as a condition of the permit, the applicant shall make an in-lieu payment of an amount set by resolution by the City Council for each 15-gallon replacement tree. The in-lieu payment shall be used by the City for a tree education and planting program. The Director may waive the in-lieu payment when the protected tree is not a native species.
  4. The Director, Design Review Commission, Planning Commission or City Council may reduce the amount of required replacement trees at its discretion due to the project's site conditions and if it finds that the reduction will be beneficial to the health and vigor of other protected trees on the property.
  5. If the City approves a tree removal request as part of a major tree removal project, the mitigation shall be the payment or planting, or combination thereof, equal to the full appraised value of the trees removed. The value of replacement trees shall be as set forth on the City's adopted fee schedule. The appraised value shall be determined by the City based on the *Council of Tree & Landscape Appraisers Guide for Plant Appraisal*.

H. Permit expiration. A permit is valid for the same period of time as the approved development permit. If the work authorized by the permit is not started before the expiration date, the permit expires.

(Ord. 593, § 1(Exhibit A), 2010; Ord. 539, § 1(part), 2003)

**6-1708 Tree maintenance by private parties.**

Except for trees planted by the City, it shall be the property owner's responsibility to maintain trees within the public right-of-way directly adjacent to private property.

(Ord. 593, § 1(Exhibit A), 2010; Ord. 539, § 1(part), 2003)

**6-1709 Restriction on the issuance of a development permit.**

A development permit may not be issued for construction on a property upon which a protected tree was destroyed or removed without a permit for a period of five years from the date of violation as determined by the Director. The Director may waive this time limit if the tree is replaced as provided in section 6-1710. The restriction on the issuance of a development permit applies to a successor-in-interest in the subject property. Upon transfer of the property, the owner shall notify the successor-in-interest of the violation of this chapter. The Director may record a notice of violation on the property with the Contra Costa County Recorder.

(Ord. 539, § 1(part), 2003)

**6-1710 Restitution and replacement of protected trees.**

A person who destroys or removes a protected tree in violation of this chapter shall pay restitution to the City by replacing each six-inches or its fraction of the diameter of the protected tree with four (4) replacement 24" box trees of the same species. The replacement trees shall be planted on the property on which the protected tree was destroyed or removed. Based on a report by an arborist that includes an appraisal of the damage, where feasible, and recommendations for replacement, the Director may impose additional requirements to ensure the health of the replacement trees for a minimum of two years and /or may authorize the substitution of a greater number of smaller trees, lesser number of larger trees or on another property if it is found that a substitution is more beneficial to health and vigor of other protected trees on the property. The person responsible for the destruction or removal of a protected tree shall pay the cost of the arborist report.

If the Director determines the property cannot accommodate replacement trees, an in-lieu payment of an amount set by resolution by the City Council shall be required for each replacement tree. All in-lieu payments shall be used by the City for tree education programs or planting programs.

A person who destroys or removes more than twenty-five protected trees, a major tree removal project, in violation of this chapter shall pay restitution to the City by replacing each six-inches or its fraction of the diameter of the protected tree with four (4) replacement 24" box trees of the same species and pay the appraised values of the trees removed. The appraised value shall be determined by the City based on the *Council of Tree & Landscape Appraisers Guide for Plant Appraisal*.

(Ord. 539, § 1(part), 2003)

**6-1711 Enforcement.**

A person who violates this chapter is liable in a civil action in an amount set by resolution by the City council for each violation.

(Ord. 539, § 1(part), 2003)

**6-1712 Appeal.**

An appeal of a decision made pursuant to this chapter is governed by sections 6-217 through 6-238 or section 8-2110.

(Ord. 539, § 1(part), 2003)

**6-1713 Nonliability of the City.**

Nothing in this chapter imposes liability upon the City or its officers or employees, or relieves the owner or occupant of private property from the duty to keep in safe condition a tree or other vegetation upon private property or upon or within a public right-of-way or easement adjacent to the private property.”

(Ord. 539, § 1(part), 2003)

# Contra Costa Sun

PO Box 599  
Lafayette, CA 94549  
(925) 284-4444

Legal No. 0005230406

LAFAYETTE, CITY OF  
ATTN: ACCOUNTS PAYABLE, 3675 MT. DIABLO BLVD.,  
#210  
LAFAYETTE CA 94549-3793

## PROOF OF PUBLICATION

In the matter of

Contra Costa Sun

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter.

I am the Principal Legal Clerk of the Contra Costa Sun, a newspaper of general circulation, printed and published at 2640 Shadelands Drive in the City of Walnut Creek, County of Contra Costa, 94598

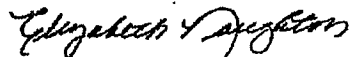
And which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Contra Costa, State of California, under the date of November, 1938. Case Number 23392.

The notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

7/4/2014

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.  
On this 21th day of August, 2014.



Signature





## NOTICE OF PUBLIC HEARING

City Council  
Don Tatzin, Mayor  
Brandt Andersson, Vice Mayor  
Mike Anderson, Council Member  
Mark Mitchell, Council Member  
Traci Relly, Council Member

**BODY:** City Council  
**DATE:** Monday, July 14, 2014  
**TIME:** 7:00 p.m. (please see the agenda for estimated start time of each item)  
**PLACE:** Lafayette Library & Learning Center, 3491 Mt. Diablo Blvd • Community Hall  
**RE:** ZT04-14 City of Lafayette (Applicant): City-initiated zoning text amendment to amend Chapter 6-17 of the Lafayette Municipal Code to update the City's Tree Protection Ordinance. The proposed amendment to the Lafayette Municipal Code is not subject to the requirements of the California Environmental Quality Act ("CEQA"), pursuant to CEQA Guidelines Section 15308.  
*The Planning Commission forwarded a unanimous recommendation of approval on June 16, 2014*

The Lafayette City Council will hold a public hearing on the above application on Monday evening, July 14, 2014, which will commence at 7:00 p.m. in the Community Hall at the Lafayette Library & Learning Center, 3491 Mt. Diablo Blvd. Public notification is provided for the first meeting only; interested parties are responsible for tracking the matter on subsequent agendas. You may review the agenda and staff report, posted the Monday before the hearing, by visiting the City Calendar on the City's website and clicking on the meeting date. The agenda includes an estimated start time and staff recommendation on each item. Any last minute changes or cancellations will be posted here. The Action Agenda, summarizing the Commission's action on each item including any continuance date, is posted to the same location on the City's web site the following day. If you would like to subscribe to receive agendas via email, sign-up for free on the home page of the City's website.

The application described above is available for public review at the City Offices during Planning Counter Hours. You can also view information on this application, including maps, aerial photos, and project plans online at:

[www.lovelafayette.org](http://www.lovelafayette.org) > City Calendar > Meeting Date

You are invited to provide oral testimony at the meeting. Written comments received by 5:00 p.m. on the Monday seven days prior to the hearing date will be included with the staff report provided to each Council Member prior to the hearing. Copies of comments submitted by noon on the hearing date will be made available to the Council and public at the meeting; however there is no guarantee that there will be adequate time to read and discuss these comments at the meeting. Individuals who submit comments are encouraged to attend the hearing to answer any questions. Any comments received during the hearing will be distributed to the Council Members in the next packet if the item requires an additional hearing. Comments and questions should be directed to the Project Planner, listed below.

If you challenge the City's decision on this matter in court, you may be limited to raising only those issues you or someone else raised at the public hearings described in this notice, or in written correspondence delivered to the City at, or prior to, the public hearing. California Code of Civil Procedure §1094.8 (review of administrative decisions) is applicable to the City of Lafayette and provides for the review of any decision of the City only if the petition for writ of mandate is filed within 90 days after the decision becomes final.

Project Planners: Megan Canales, Planning Technician | (925) 299-3243 | Email: [MCanales@lovelafayette.org](mailto:MCanales@lovelafayette.org)

Anthony Arrivas, Planning Technician | (925) 289-3205 | Email: [AArrivas@lovelafayette.org](mailto:AArrivas@lovelafayette.org)

City Council Email: [cityhall@lovelafayette.org](mailto:cityhall@lovelafayette.org).

Nirup K. Srivatsa, Planning & Building Director

June 30, 2014

City of Lafayette  
3875 Mount Diablo Boulevard, Suite 210, Lafayette, CA 94549  
Planning Counter Hours: 12:00 – 5:00 Monday – Friday

Planning Services Division  
Phone: 925.284.1976  
[www.lovelafayette.org](http://www.lovelafayette.org)

SU# 6230406 July 4, 2014

# Contra Costa Times

PO Box 4147  
Walnut Creek, CA 94596  
(925) 935-2525

LAFAYETTE, CITY OF  
ATTN: ACCOUNTS PAYABLE, 3675 MT. DIABLO BLVD.,  
#210  
LAFAYETTE CA 94549-3793

## PROOF OF PUBLICATION

FILE NO. ORDINANCE 633

In the matter of

### Contra Costa Times

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter.

I am the Principal Legal Clerk of the Contra Costa Times, a newspaper of general circulation, printed and published at 2640 Shadelands Drive in the City of Walnut Creek, County of Contra Costa, 94598

And which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Contra Costa, State of California, under the date of October 22, 1934. Case Number 19764.

The notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

10/20/2014

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.  
On this 21th day of October, 2014.

Signature

Legal No. 0005326913

#### NOTICE OF ADOPTION OF ORDINANCE 633 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE

At its regular meeting on October 14, 2014 the City Council of the City of Lafayette adopted Ordinance 633. The recorded vote of the City Council was as follows:

AYES: Tatzin, B. Andersson and Mitchell

NOES: None

ABSTAIN: None

ABSENT: M. Anderson and Reilly

Ordinance 633: City-initiated zoning text amendment to amend Sections 6-17 of the Lafayette Municipal Code regarding tree protection:

1. Add and define the term "Major Tree Removal Project."
2. Establishes the mitigation requirements for Major Tree Removal Projects.
3. Establishes the restitution requirements for unpermitted Major Tree Removal Projects.
4. Defines the methodology for evaluating the trunk diameter of a multi-trunk tree.

Note: The above is a summary of the major highlights of the ordinance. A reading of the entire ordinance is necessary to obtain a full understanding of the ordinance. Certified copies of the full text of the ordinance are posted in the City Clerk's office at 3675 Mt. Diablo Boulevard, Lafayette, California 94549. A copy may be obtained from the office upon payment of the fee based on the City's actual cost of providing the copy.

Publish date: October 20, 2014

Joanne Robbins, City Clerk

CCT# 5326913 Oct. 20, 2014