




City of Nevada City

TO: Planning Commission

FROM: Cindy Siegfried, City Planner 

DATE: January 12, 2010

RE: **STAFF PRESENTATION – TREES IN NEVADA CITY**
Staff Presentation by Verne Taylor, Director of Public Works, and Cindy Siegfried, City Planner, on various issues regarding trees in Nevada City.

Staff will provide an informational presentation on trees within Nevada City. Topics include:

- Review of the City's Tree Ordinance
- Historical uses of trees
- Types of trees in the City
- Various reasons why trees are removed
- Tree removal applications approved at Planning Commission and staff levels
- Mitigation and protection measures

Attached is a copy of the City's Tree Ordinance (Ord. 2009-04) for your review.

ORDINANCE 2004-09

An Ordinance Amending Title 18 of the
Nevada City Municipal Code to Add A Chapter
Pertaining to Tree Preservation

THE CITY COUNCIL OF THE CITY OF NEVADA CITY does hereby ordain as follows:

MUNICIPAL CODE TITLE: 18

Section 18.01.01 - Purpose

The City Council finds that the quality of life and character of the City of Nevada City and the value of property in the City are directly related to the large number of native and ornamental trees presently situated within the City which contribute to:

1. Its rural atmosphere and aesthetic appeal;
2. The establishment of natural watershed areas;
3. The control of soil erosion and flooding;
4. The improvement of air quality by the production of oxygen;
5. Its moderated air temperature;
6. Acoustical control; and
7. The ecological balance of the environment.

For these reasons, in order to promote the health, safety, and general welfare, to preserve and protect a most valuable resource, to enhance the beauty of the City and to complement and strengthen zoning, subdivision and land use standards and regulations while at the same time recognizing an individual's right to develop private property, the City Council establishes basic standards and measures for the preservation and protection of trees.

It shall be the policy of the City to:

1. Preserve trees through its development review process;
2. Require permits for cutting or removal of protected trees; and
3. Require property owners to coordinate with the City to ensure optimum maintenance and health of street trees.

Section 18.01.02 - Definitions

City: "City" shall mean the City of Nevada City.

City Planner: "City Planner" shall mean the City Planner of the City of Nevada City or his/her designee.

Critical Root Zone (CRZ): "Critical Root Zone (CRZ)" shall mean a circular area around a protected tree with a radius equal to a tree's largest dripline radius plus one foot (1').

Diameter at Breast Height (DBH): "Diameter at breast height (DBH)" shall mean the diameter of a tree trunk measured at four and one-half feet (4.5') above ground level along the center of the trunk axis. The diameter shall be calculated by use of the following formula:

$$DBH = \text{circumference at breast height} / 3.14$$

Discretionary Project: "Discretionary Project" shall mean a project that must be approved by one of the following approving bodies: The City Council or Planning Commission. "Discretionary projects" shall include, but are not limited to, a lot line adjustment, a tentative map, a rezone, a variance, a conditional use permit, a planned unit development or an Architectural Review approval.

Dripline Radius: "Dripline radius" shall mean a radius equal to the horizontal distance from the trunk of the tree to the end of the longest branch.

Excavation: "Excavation" shall mean cutting the ground more than 18".

Hazardous Tree: "Hazardous tree" shall mean a tree that has been certified by an arborist as being dead, or is so affected by a significant structural defect, damage or disease, or soil that may not provide adequate support, that falling or failure appears imminent, and poses a threat to life or property.

Pruning and trimming standards: "Pruning and trimming standards" shall mean the most current pruning standards as established by the American National Standards Institute (ANSI).

Regulated Activity: "Regulated activity" shall mean any activity conducted within the critical root zone of a protected tree, which would adversely impact the health of the tree, including but not limited to cutting, grading, excavating, adding fill soil, irrigating, trenching, boring, or compaction.

Tree Mitigation: "Tree Mitigation" shall mean a fee and/or a quantity of trees planted in exchange for the removal of one or more protected trees.

Tree Preservation Fund: "Tree mitigation fund" shall mean a *restricted* fund that will be used for tree-related activities including, but not limited to: the purchase of trees or tree care products, planting activities, preservation and care of trees, and education about trees in the City of Nevada City. The fund may receive funding from tree mitigation fees and other sources and shall be administered as determined by the City Council.

Tree Permit: "Tree Permit" shall mean an approval by the City Planner, Planning Commission, City Council or authorized staff member and shall include all protected trees.

Section 18.01.03 - Regulated Activities

A. Protected Tree

Trees are important in accomplishing our purpose and goals and shall be protected according to the following schedule:

PROTECTED TREES	Cumulative D.B.H.
Broadleaf Maple	6 inches
Cedar	6 inches
Fir	6 inches
Madrone	4 inches
Manzanita	4 inches
Oak	4 inch
Pine (Ponderosa, Gray)	6 inches
Pine (Sugar Pine) - rare	All protected
Sequoia giganteum	6 inches
All other trees not specified	6 inches

B. Exceptions

Each improved Nevada City address may receive permits to remove up to a maximum of two (2) trees in a five (5) year period that are not considered to be additionally protected trees as defined in Section 18.01.036. No reason need be given for said requested permits and the permits may be issued by the City Planner or an authorized staff member.

Section 18.01.035 Decision Criteria

Before a tree removal permit application can be approved by the City Planner or Planning Commission, the approving body shall have made a finding that removal of the tree(s) is necessary for a reasonable use of the property, based upon the following criteria:

1. Whether or not the preservation of the tree(s) would unreasonably compromise the owner's development of the land under current zoning and development regulations;
2. The condition of the tree(s) with respect to disease or danger of falling;
3. The age of the tree(s), the relative scarcity or rarity of the species within the City limits, and the number of trees remaining in the immediate area;
4. The number of healthy trees that the given parcel of land can reasonably support;
5. The effect of tree removal on soil stability and erosion, and on increased runoff;
6. The potential for the tree to be a public nuisance or to interfere with utility service, and its proximity to existing structures;
7. Present and future potential for the tree(s) to shade and provide natural cooling and warming;
8. Whether or not any alternatives have been presented that would allow for the preservation of the tree, such as paving with a permeable substance, relocating proposed structures, driveways or sidewalks, the use of standard tree care practices, landscaping with the existing native vegetation, etc.

Section 18.01.036 Additionally Protected Trees

In addition any tree or grove of trees growing on public or private property within the City limits which meet(s) the following criteria shall have additional protection:

- A. Any tree which has a trunk fourteen inches in diameter or more, measured at fifty-four inches DBH above existing grade;
 - B. Any tree, grove of trees which have historical significance, including but not limited to those which were/are:
 - 1) Identified as a Felix Gillet;
 - 2) Planted as a commemorative;
 - 3) Marking the spot of an historical event;
 - C. Any tree or grove of trees which have horticultural significance, including but not limited to those which are:
 - 1) Old (determined by comparing the age of the tree in question with other tree of its species within the City);
 - 2) Distinctive specimen in size or structure for its species (determined by comparing the tree to average trees of its species within the City);
 - 3) A rare or unusual species for the Nevada City area (to be determined by the number of similar trees of the same species within the City);
 - 4) Providing a valuable habitat;
 - 5) Identified by the City Council as having significant arboricultural value to the City.
1. Additional protection may consist of, but is not limited to, for one or more of the following:
- A. Modifications to existing structures, such as porches/decks or similar improvements
 - B. Pruning/trimming
 - C. Spraying for insects and disease
 - D. Special care and feeding
 - E. Method of tree removal

Section 18.01.04 - Protection of Trees

No person shall allow to exist any condition, including but not limited to any one of the following conditions, which may be harmful to any protected tree:

- A. Existence of any tree within the City limits that is irretrievably infested or infected with insects, scale or disease detrimental to the health of any protected tree.
- B. Filling up the ground area around any protected tree so as to shut off air, light or water from its roots.
- C. Piling building materials, parking equipment and/or pouring any substance which may be detrimental to the health of any protected tree.
- D. Driving metal stakes into the protected tree or their root area for any purpose other than supporting the protected tree.
- E. Causing a fire to burn near any protected tree.
- F. Utility Pruning/Trimming

The City recognizes that the utility companies are required by law to keep the utility lines clear of vegetation.

The City requires that permits be issued for public or private trees to be pruned or removed by a utility company.

All pruning is to be of the lateral or directional type of pruning to the minimum required by the PUC. Heading cuts are to be avoided. All pruning shall be done in accordance with

“ANSI A 300 Tree, Shrub and other Woody Plant Maintenance Standard Part I Pruning, the ANSI companion guide Best Management Practices – Pruning and Tree Pruning Guidelines “published by the International Society of Arboriculture.

In some circumstances no pruning may be allowed and the City may require that a fully covered conductor or Tree Wire by used in place of the standard conductor wires.

Section 18.01.05 - Emergencies

In the event of an emergency whereby immediate action is required because of danger to life or property, a protected tree may be pruned, altered or removed by permit or by order of the City Planner or by order of a responsible member of the police, fire or public works department. The person ordering the pruning, alteration or removal shall file a comprehensive report including photographs for the record immediately thereafter with the City Planner. The City Planner shall prepare the report if he or she orders the pruning, alteration or removal. The City Planner shall forward copies of the report to the Planning Commission and City Council for their information.

Section 18.01.06 - Permit Application Process

1. **General Tree Removal Requests**
 - A. Applications for tree removal permits shall be filed with the City Planner on forms provided by the City.
2. **Approval of Request:**
 - A. The City Planner is authorized to approve a request for tree(s) removal of a tree(s) that is dead or diseased and/or dangerous.
 - B. Requests for multiple tree removal of healthy trees may require approval by the Planning Commission upon recommendation of the City Planner.
 - C. Applicable Mitigation measures are to be included on the approval form
 - D. The City Planner’s signature plus that of one additional authorized staff member is required on all approval forms.
3. **Tree Removal Associated Site Plans**
 - A. Tree removal requests associated with new construction shall comply with all requirements of section 18.01.35. In addition a tree report may be required that includes all trees located within 50’ of any proposed development activity, as well as other areas as determined by the City Planner. The tree report shall meet the specifications provided by the City of Nevada City.
 - B. **Approval of Request:**
 - 1) The removal of a tree(s) associated with a construction project is permitted only after obtaining a building permit and paying all applicable fees associated with development and must be approved by the Planning Commission as a part of the site plan approval.
 - 2) Applicable Mitigation measures may be included with the approval as provided for in Section 18.01.07.
 - 3) The City Planner’s signature plus that of one additional authorized staff member is required on all approval forms.

Section 18.01.07 - Mitigation

- A. Mitigation may be provided for protected trees approved for removal in association with a tree permit. The total replacement requirement shall be based on the number of tree(s) removed. Mitigation trees shall be provided with the intent to reflect the character of the site prior to development and for developed parcels to protect the wooded nature of Nevada City. Native trees may be required for mitigation. Upon determination by the City Planner in-lieu fees may be substituted for replacement trees.

B. Mitigation Standards

1) Performance Guarantee

Prior to construction a Surety shall be posted and maintained to insure the preservation of trees that are identified on the site plan to be "additionally protected" during construction. The deposit shall be posted in a form and amount approved by the City Attorney and City Manager prior to any grading or movement of heavy equipment onto the site or issuance of any permits. Each violation of any tree permit condition regarding tree preservation shall result in forfeiture of a portion or the entirety of the deposit, at the discretion of the City Council, provided that such determinations may be appealed as provided by Section 18.01.10.

2) Tree Preservation Fund

A tree preservation fund is established for the City. The moneys received in lieu of replacement of illegally removed trees or trees removed through the permit process approved for in lieu mitigation shall be forwarded to the City Clerk for deposit in the tree preservation fund. Under no circumstances shall the funds collected by the City Clerk for the tree preservation fund be directed to any other fund to be used for any other purposes other than that described in Section 18.01.02 "Tree Preservation Fund." Upon approval of the City Council funds may be expended for the inspection and assistance in preservation of additionally protected trees on public or private properties.

3) Replacement Ratios

Replacement trees shall be provided in an amount and size to be determined by the City Planner.

Section 18.01.08 - Mitigation Requirements for Unapproved Removals or Damage of Protected Trees

- A. Any person who alters, damages, destroys or removes any protected tree, on public or private property without an approved permit issued pursuant to this chapter shall be liable to the City for the cost of replacement of said protected tree. In addition, all violations are subject to the penalties prescribed by Section 18.01.09 of this chapter.
- B. Except as provided in this article, if protected trees are removed without prior approval, the City Council may choose to deny or defer approval of any application for development of that property for a period of up to three (3) years.

Section 18.01.09 - Penalty Provision

Any person who personally, or through an agent, employee or representative, violates any provision of this chapter shall be guilty of a separate offense for each and every act constituting a violation of this chapter. The City Attorney shall have the discretion to prosecute any violation of this chapter either as a misdemeanor or an infraction punishable by a fine of **One hundred dollars (\$100.00) per inch of diameter DBH** of tree for each tree for a first offense and in doubling increments for each successive offense. Each person is guilty of a separate offense for each and every day during any portion of which such violation is committed, continued or permitted by such person and shall be punished accordingly. In addition, the damage, destruction or removal of any protected tree(s) without a permit issued pursuant to this Chapter shall render the owner and/or person performing the work liable for the damages set forth in Section 18.01-08 of this chapter. The remedies and penalties provided for herein shall be in addition to any other remedies and penalties provided by law.

Section 18.01.10 - Appeals

A. Appeal of the Planning Commission's Determination

1. **Authorized:** In the event the applicant or any other interested party is not satisfied with the action of the City Planner's decision that person may appeal such action to the Planning Commission. In the event the applicant or any other interested party is not satisfied with the action of the Planning Commission decision, that person may appeal such action to the City Council.
2. **Filing:** An appeal of a tree permit shall be filed in writing with the City Clerk no later than fifteen (15) calendar days after the decision of the City Planner or City Planning Commission. The written appeal shall specify the particular action or decision, or portion thereof, which is appealed, and shall describe the reasons for the appeal, and may include suggested remedies. The fee for an appeal shall be paid with the filing of an appeal request. No appeal request shall be deemed valid unless the prescribed fee has been paid.
3. **Hearings: Notices:** Upon the receipt of the Notice of Appeal, the City Clerk shall set a date for a public hearing upon such appeal, giving notice of the public hearing.
4. **City Council findings:** After the filing of the Notice of Appeal, the City Council may sustain, modify, reject, or overrule the decision of the City Planning Commission and make such findings and decisions as are consistent with the requirements of State laws and City laws. Following the Council hearing, the City Clerk shall prepare a written decision which either grants or denies the appeal, and contains the findings of fact and conclusions. The written decision, including a copy thereof, shall be provided to the applicant and shall be filed with the base file for the property.

Section 18.01.12 - Permit Expiration

Any permit issued for removal of a dead, diseased or dangerous tree shall expire sixty (60) days after issuance of the permit. No extensions of time may be granted for a dead, diseased or dangerous tree.


All other permits issued for tree removal under any section of this Ordinance, except as included in a site plan approval, shall expire one hundred eighty (180) days from the issuance of the permit. One (1) extension, not to exceed sixty (60) days may be granted if filed prior to the expiration of the permit.

Permits issued in conjunction with an approved site plan shall expire with the site plan expiration date.

This Ordinance shall become effective 30 days after its final adoption and a summary of this Ordinance shall be prepared by the City Attorney and shall be published in The Union, a newspaper of general circulation, within fifteen days of the date of its passage.

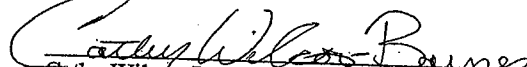
PASSED AND ADOPTED at a regularly scheduled meeting of the City Council of Nevada City held on the 8th day of November, 2004 by the following vote:

AYES: ARNETT, MCKAY, HARRIS, WEAVER
NOES: COTTRELL
ABSENT: NONE
ABSTAIN: NONE



Conley S. Weaver, Mayor

ATTEST:



Cathy Wilcox-Barnes, City Clerk