ORDINANCE NO. 835 N.S.
AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
AMENDING SECTION 10.01 ET SEQ. AND RELATED PROVISIONS OF THE MUNICIPAL CODE (MUNICIPAL CODE AMENDMENT 2001-001 - OAK TREES)

WHEREAS, in 1988 the City Council of the City of El Paso de Robles adopted an Amendment to the City's Municipal Code to provide for an Oak Tree Preservation Ordinance; and

WHEREAS, based on changes in City organizational structure and experience in implementing the 1988 Ordinance, there is a need to up-date and refine the current ordinance; and

WHEREAS, Municipal Code Amendment 2001-001 also proposes to provide the desired up-date and refinement to the Oak Tree Preservation Ordinance, including but not limited to provisions for the City to recover the costs of implementing the Oak Tree Preservation Ordinance; and

WHEREAS, at its meetings of January 29, 2002, and March 12 and 26, 2002, the Planning Commission took the following actions regarding this ordinance:

a. Considered the facts and analysis, as presented in the staff report prepared for this project;

b. Conducted a public hearing to obtain public testimony on the proposed ordinance;

c. Recommended that the City Council approve the proposed ordinance; and

WHEREAS, at its meeting of April 16, 2002, the City Council took the following actions regarding this ordinance:

a. Considered the facts and analysis, as presented in the staff report prepared for this project;

b. Conducted a public hearing to obtain public testimony on the proposed ordinance;

c. Considered the Commission's recommendation from the Planning Commission's March 26, 2002, public meeting;

e. Introduced said ordinance for first reading; and

WHEREAS, on July 16, 2002, the City Council determined the need to make further refinements to the subject ordinance and directed that the ordinance be re-introduced for first reading at the August 6, 2002 City Council meeting.

NOW, THEREFORE, BE IT KNOWN that the Paso Robles City Council, based upon the substantial evidence presented at the above referenced public hearing, including oral and written staff reports, finds as follows:

1. The above stated facts of this ordinance are true and correct.

2. This code amendment is consistent with the City's General Plan.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES ORDAIN AS FOLLOWS:

Section 10.01 et seq. is hereby amended to replace the current text with the text of the code amendment attached and labeled Exhibit "A" (Oak Tree Preservation Ordinance); and

By Separate Resolution the City Council shall establish processing fees for recovering the cost of the City implementing the provisions of the Oak Tree Preservation Ordinance.

SECTION 1. Publication. The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Section 36933 of the Government Code.

SECTION 2. Severability. If any section, subsection, sentence, clause, or phrase of the Ordinance is, for any reason, found to be invalid or unconstitutional, such finding shall not affect the remaining portions of this Ordinance.

The City Council hereby declares that it would have passed this ordinance by section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

SECTION 3. Inconsistency. To the extent that the terms or provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance(s), motion, resolution, rule, or regulation governing the same subject matter thereof and such inconsistent and conflicting provisions of prior ordinances, motions, resolutions, rules, and regulations are hereby repealed.

SECTION 4. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

Introduced at a regular meeting of the City Council held on August 6, 2002, and passed and adopted by the City Council of the City of El Paso de Robles on the 20th day of August 2002 by the following roll call vote:

AYES:	Finigan, Heggarty, Nemeth, Picanco and Mecham
NOES:	None
ABSTAIN:	None
ABSENT:	None

Frank R. Mecham, Mayor

ATTEST:

Sharilyn Ryan, Deputy City Clerk

10.01.010 Purpose and Intent.

A. It is declared that the public interest and welfare requires that the city establish a program for the preservation of oak trees in order to maintain the heritage and character of the City of El Paso de Robles ("The Pass of the Oaks") as well as preserve the beauty and identity of the community.

B. This chapter provides policies, regulations and specifications necessary to govern the preservation of oak trees within the city and to control their pruning and/or removal. This code also prescribes measures to preserve existing oak trees. These provisions apply to private property owners and to tree maintenance services and arborists. These provisions also apply to new development, redevelopment and any discretionary considerations by the City of Paso Robles that could result in development of intensities that could impact existing oak trees.

C. It is the intent of this ordinance to hold private property owners strictly liable for removing oak trees within the City without a required permit, and to avoid endangerment of oak trees that are to be preserved. Further, it is the intent of this ordinance that “tree maintenance services” and “Arborists” shall be Certified and licensed by the City and should be aware of the provisions of this ordinance and shall be held accountable for violation of the terms of this ordinance. Further, it is the intent of the City of Paso Robles to be construed as the “aggrieved party” in regards to any criminal enforcement of this manner in which restitution can be obtained.

D. The policies and procedures contained in this chapter apply equally to private property and to projects being pursued by public agencies, including but not limited to the City of El Paso de Robles. It shall be the City's policy to encourage other agencies to comply with these provisions even when the City does not have legal jurisdiction over the actions of that agency.

E. The permits required under this Chapter fall into two categories: permits for pruning oak trees, which are the purview of the Public Works Department, and permits for oak tree removal, which are processed by the Community Development Department.

F. Preservation of existing oak trees and opportunities to promote the establishment of new oak trees shall be a focus of the Planning Commission and/or City Council in conjunction with consideration of any development project or development related entitlement. Public education regarding the value of preserving oaks and other trees shall be promoted by the City of Paso Robles.

G. Modifications to Chapter 10.01 et seq shall apply to all projects and/or developments that have been approved by the Planning Commission or City Council as of the effective date of the ordinance implementing the Municipal Code Amendment, except that the new requirements for fencing and protection of oak trees shall apply as of the effective date of this ordinance.

10.01.020 Definitions.

As used in this chapter:

A. "Arborist" means a person who is Certified by the Western Chapter of the International Society of Arboriculture and who has specific knowledge regarding trees with the ability to determine whether such tree is diseased, and holds themselves out as able to make recommendations regarding preservation, pruning and cutting of trees and for which they receive remuneration.

B. Bond" means a type of financial security; equivalent forms of financial security shall be subject to approval by the director.

C. "Caliper" means the diameter of a tree trunk that is taken twelve (12) inches above the ground. Caliper is a basis for measuring oak trees that are less than six (6) inches in DBH.

D. "Construction area" means any area in which movement of earth, alteration in topography, soil compaction, disruption of vegetation, change in soil chemistry, and any other change in the natural character of the land occurs as a result of site preparation, grading, building construction or any other construction activity.

E. "Critical Root Zone" (CRZ) means an area of root space that is within a circle circumscribed around the trunk of a tree using a radius of 1 foot per inch DBH, e.g. a 20-inch diameter tree has a CRZ with a radius of 20 feet as measured from the center of the tree. For trees that do not have a circular trunk, CRZ shall be calculated by measuring the circumference of the tree and dividing that number by "pi".

F. "DBH" (Diameter at breast height) means the diameter of a tree trunk measured in inches at a height of 4 ½ (four and one half) feet above the ground. If a tree splits into multiple trunks below 4 ½ feet, then the trunk is measured at its most narrow point beneath the split.

G. "Director" means the director of the Community Development Department or his/her designated representative.

H. "Oak tree" means any species of the genus "Quercus" that is native to the Paso Robles area.

I. "Monitor" is a person hired by a certified, licensed Arborist. A Monitor is required in conjunction with an approval for development of a property that contains one or more oak tree(s) or which is impacted by the CRZ of an oak on an adjacent property. The function of a monitor is to insure that grading activities are conducted in a manner consistent with the approved development plan relative to oak tree preservation issues.

J. "Permit to Prune" means a written authorization by the Director of Public Works that specifically designates the location, number, type and size of oak trees that a person has permission to prune.

K. "Permit to Remove" means a written authorization by the director or the city council that specifically designates the location, number, type and size of oak trees that a person has permission to remove.

L. "Person" means individuals, associations, corporations, public agencies, and their agents and employees.

M. “Pruning” means the removal of any dead parts of a tree, and/or normal seasonal maintenance shaping or thinning of a tree necessary to its health, growth and view maintenance. The intent is to clean the crown of the tree and enhance the tree’s structural strength. Foliage reduction shall not exceed one quarter of the total tree foliage.

10.01.030 Permits Required.

A. Permit to Prune: No person shall prune an oak tree growing on private or public property within the City Limits of the City of Paso Robles if said pruning involves cutting a portion of the tree that is six (6) inches or greater diameter unless they have first received approval of a Permit to Prune issued by the City’s Public Works Director. The Director of Public Works is authorized to establish standards for pruning of oak trees. Pruning of tree limbs of less than six (6) inches diameter does not require a permit. Exception to requirement for Permit to Prune: Owners of developed properties (parcels with existing buildings and related improvements) that are not being considered for new construction or other development entitlements may prune oak trees on their property without the need for a permit and without limitation as to limb size as long as the pruning does not endanger the health of the oak tree.

B. Permit to Remove: No person shall remove or otherwise destroy an oak tree of six (6) inches or greater diameter (DBH) growing on private or public property within the City Limits of the City of Paso Robles unless they have first received approval of a Permit to Remove as authorized by the Director of Community Development or the City Council. See “Removal of Oak Tree – Application Process”. Removal of oak trees of less than six (6) inches DBH does not require a permit from the City of Paso Robles.

10.01.040 License and City Council Approval Required

No tree maintenance service or arborist shall provide such services for remuneration within the City without a business license from the City and complying with any other applicable State license or permit requirements. In order to provide services as an Arborist in the City of Paso Robles a person must be a Certified Arborist and must be on the list of Arborists approved by the Paso Robles City Council.

10.01.050 Removal of Oak Tree -- Application Process.

A. Any person wishing to remove one or more oak trees from any parcel in the city shall apply in writing to the Community Development Department for a Permit to Remove. A deposit in an amount to be established by City Council resolution shall be made at the time of application for each oak tree proposed to be removed. The director shall have the authority to adjust the deposit amount to reflect the City’s

expected cost of time and materials to process the specific application(s). Administrative costs of processing the permit will be deducted from the deposit, and remaining funds shall be refunded to the applicant; if the City's costs for processing the applications (including the need for consulting Arborist assistance) exceeds the deposit amount, the director shall request additional funding and may delay work on the application until the additional funding is received.

B. Exceptions to deposit requirement: A property owner may make a written request for authorization to remove a dead or diseased oak tree without the need to provide a deposit if he or she can provide documentation from an arborist concluding that the tree's death or disease is not their fault. Owners of developed properties that are not being considered for new construction or other development entitlements may apply for a permit to remove oak trees on their property without limitation as to tree size and without the need to post a deposit if the trees are located in a manner that is either inconsistent with or interferes with the growth and health of other oak trees (example: trees under the canopy of larger trees can be requested to be removed). The Community Development Director shall bring such requests forward to City Council for consideration.

C. A Permit to Remove application shall contain a plot plan showing the location, type and size of tree(s) proposed to be removed, a brief statement of the reason for removal, and other pertinent information that the director may require.

D. Except as specifically provided in Section 10.01.065 of this chapter, the director shall not be authorized to approve removal of a healthy oak tree that is six (6) inches or greater DBH. The only oak trees which are six (6) inches or greater DBH whose removal the director is authorized to permit are trees that are in the director's judgment, clearly dead or diseased beyond correction. The extent to which a tree may be diseased shall be subject to evaluation by an Arborist. Based on the recommendation of an Arborist the director may authorize removal of a tree that is diseased beyond correction.

E. If a request is being made to remove one or more healthy oak trees for which a Permit to Remove is required, the director shall prepare a report to the city council, outlining the proposal and his recommendation, considering the following factors in preparation of his recommendation.

1. The condition of the oak tree with respect to its general health, status as a public nuisance, danger of falling, proximity to existing or proposed structures, interference with utility services, and its status as host for a plant, pest or disease endangering other species of trees or plants with infection or infestation;

2. The necessity of the requested action to allow construction of improvements or otherwise allow reasonable use of the property for the purpose for which it has been zoned. In this context, it shall be the burden of the person seeking the permit to demonstrate to the satisfaction of the director that there are no reasonable alternatives to the

proposed design and use of the property. Every reasonable effort shall be made to avoid impacting oak trees, including but not limited to use of custom building design and incurring extraordinary costs to save oak trees;

3. The topography of land, and the potential effect of the requested tree removal on soil retention, water retention, and diversion or increased flow of surface waters. The director shall consider how either the preservation or removal of the oak tree(s) would relate to grading and drainage. Except as specifically authorized by the planning commission and city council, ravines, stream beds and other natural watercourses that provide a habitat for oak trees shall not be disturbed:

4. The number, species, size and location of existing trees in the area and the effect of the requested action on shade areas, air pollution, historic values, scenic beauty and the general welfare of the city as a whole;

5. Good forestry practices such as, but not limited to, the number of healthy trees the subject parcel of land will support.

F. Conditions, Including Replacement Requirements: In conjunction with the intended decision made on an application for a Permit, the director shall attach or recommend for city council consideration reasonable conditions to ensure compliance with the stated purposes of this chapter, and a condition requiring replacement trees of the same species as the tree(s) requested for removal, based on the replacement oaks being equivalent to 25 percent of the diameter of the removed tree(s). (For example, the replacement requirement for removal of two trees of 15 inch DBH (30 total diameter inches), would be 7 ½ inches (30" removed x 0.25 replacement factor). This requirement could be satisfied by planting five (5) 1 ½ inch caliper trees, or three (3) 2 ½ inch caliper trees, or any other combination totaling 7 ½ inches). A minimum of two (2) 24 inch box, 1 ½ inch minimum trunk caliper measurement trees shall be required for each oak tree removed. Replacement trees shall be located on the same property as where the tree is approved for removal or, subject to approval of the director, arrangements can be made to locate the replacement trees on public property. Planting standards for replacement trees shall be consistent with City Standard Details and Specification L-4 except that deep root barriers shall not be required if the trees are not adjacent to sidewalk areas. Oak Tree preservation and maintenance measures shall be consistent with the provisions of this chapter.

G. Exceptions to replacement requirement: A property owner may make a written request for authorization to remove a dead or diseased oak tree without the need to provide the required replacement trees if he or she can provide documentation from a Certified Arborist on the City Council's approved list concluding that the tree's death or disease is not their fault. Owners of developed properties that are not being considered for new construction or other development entitlements may apply for a permit to remove oak trees on their property without limitation as to tree size and without

need for replacements if the trees are located in a manner that is either inconsistent with or interferes with the growth and health of other oak trees (example: trees under the canopy of larger trees can be requested to be removed). The Community Development Director shall bring such requests forward to City Council for consideration.

H. In conjunction with the development or use of any property where there is a question in the mind of the director as to possible impacts on an existing oak tree that is intended to be protected and for which a "Permit to Remove" would be required, the director shall require that a tree preservation security be posted, in an amount based on the valuation of the trees according to the guidelines set forth within the Council of Tree and Landscape Appraisers "Guide for Plant Appraisal". The purpose of the security is to ensure the intention to preserve trees not approved for removal. The City Council may adopt a standard schedule for the value of replacement trees in lieu of utilizing the "Guide for Plant Appraisal".

I. This security shall be held for a reasonable period of time following grading or other development activity on the parcel, not to exceed three years; the security is to be released upon the satisfaction of the director that the trees to be preserved have not been endangered. In instances where trees not approved for removal have been destroyed or damaged the security shall be applied, for the value of the destroyed tree(s), and be used for the replacement and preservation of city oak trees, as required by the director.

J. Any fees or deposits to be charged pursuant to the provisions of Chapter 10.01 shall be established by City Council Resolution.

10.01.51 Pruning of an Oak Tree – Application Process

A. Any person or agent of any person wishing to prune one or more oak trees in a manner that would involve cutting limbs of six (6) or more inches in diameter on any parcel within the City shall apply in writing to the Public Works Department for a permit. A processing fee in an amount to be established by City Council Resolution shall be made for each tree at the time of the application. For large numbers of trees or forested areas, the Director of Public Works shall have the authority to adjust the fee to reflect the City's actual costs for administrating the permitting and inspection process, and shall be authorized to establish an oak tree management program for the subject property. (Please note exceptions to Permit to Prune requirements under Section 10.01.030A)

A Permit to Prune application shall contain a description of the subject tree and shall identify with specificity the limbs to be removed.

If a request is being made to prune one or more healthy, oak trees that would require a "Permit to Prune", the Director of Public Works shall approve or deny the request considering the factors described in Section 10.01.050 of this Code Section. The Public Works Director may, at his or her

discretion, require an arborist report prepared under contract to the City at the applicant's cost.

10.01.055 Planning Commission Role in Implementing the Oak Tree Preservation Ordinance.

A. The first step in the City's consideration of any development entitlement that could impact existing oak trees that have a DBH of six (6) inches or greater shall be an inventory and map of the location, size and CRZ of any potentially impacted oak trees. The inventory shall be prepared by a registered civil engineer or land surveyor. The size or configuration of proposed parcels of land, and the extent of development on such parcels, shall be planned in a manner so as not to encroach into the CRZ of any oak tree with a DBH of six (6) inches or greater size unless the Planning Commission can make findings of extenuating circumstances that warrant exception to the rule of not encroaching into the CRZ. In addition to the inventory, a photographic record shall be provided to the City illustrating the nature of oak trees on the subject property.

B. The Planning Commission may act as an advisory committee for the director and city council and may, in the course of reviewing development applications before them, require that certain trees be retained and/or protected from destruction. Their decision can be appealed to the city council in the same manner as described within this chapter.

C. The planning commission shall not have the authority to approve removal of any oak trees that have a DBH of six (6) inches or greater. The commission may, however, as part of a development review process, recommend to the city council that the council permit certain oak trees to be removed. The criteria to be used by the planning commission in making such recommendation shall be as specified in Section 10.01.050 of this chapter.

D. The Planning Commission may approve the relocation of an existing oak tree based on the recommendation of a City approved Certified Arborist. The property owner shall post a security equal to the value of the tree proposed to be relocated and the City shall hold the security for three (3) years to have reasonable assurances that the tree has survived the relocation.

10.01.060 Appeals of Permit Decisions.

A. Any person aggrieved or affected by a decision of either the Director of Community Development or the Director of Public Works may appeal the decision to the city council by filing a written appeal with the city clerk within fifteen days of the date of the director's notice. Any such appeal shall be accompanied by an appeal fee in the amount established by resolution of the city council.

B. If no appeal is filed within such time, the Director of Community Development or the Director of Public Works shall promptly implement his intended decision by denying or issuing the permit, with or without conditions. An appeal shall automatically stay execution of the implementation of the intended decision until the appeal has been considered and decided by the city council.

C. The City Clerk shall place all such appeals on the agenda of the next regular council meeting and shall give notice to the applicant and/or appellant. The city council shall consider and decide all issues raised in the appeal and may call for expert witness from a consulting Certified Arborist, for which the city may require to be reimbursed by the applicant. The decision of the council shall be final.

10.01.065 Emergencies.

A. In the case of emergency caused by the dangerous condition of an oak tree requiring immediate action for the protection of life or property, a tree may be cut down in whole or in part on the order of the Public Works Director or any on-duty member of the police or fire departments. A report recording the reasons for such action shall be required by the director.

B. Public utilities subject to the jurisdiction of the Public Utilities Commission of the State of California may also take such action as may be necessary to maintain a safe operation for their facilities.

10.01.070 Preservation and Maintenance of Existing Oak Trees.

A. As a general rule, the existing ground surface within the CRZ of any oak tree shall not be cut, filled, compacted or pared. Excavation adjacent to any oak tree shall not be permitted where, in the judgment of the director, damage to the root system will result. Exceptions may be approved by the director based on consultation with a Certified Arborist from the City's list of approved arborists, at the cost of the developer, resulting in reasonable assurance that the tree will not be damaged. Anticipated exceptions include making allowances to construct planned public improvements such as roads and sidewalks when it is not feasible to design the public improvements in a manner that will avoid encroachment into the CRZ. The following criteria are to be used when considering permission to encroach into the CRZ of an oak tree:

1. When proposed developments encroach into the CRZ of any oak tree, whether the tree is located on the property being developed or on an adjacent property, special construction techniques to protect the roots shall be required by the director with respect to any application for a building, grading or development permit. During construction, such protection measures may include, but not be limited to, installing a tree protection fence around the CRZ(s) of a tree or trees to be preserved. All development applications, where oak trees may be affected by development, shall include a certification by a registered civil engineer or land surveyor attesting to the accuracy of the tree trunk and CRZ locations.

2. In connection with a proposed subdivision of land into two or more parcels, the subdivider shall design the lots such that development within the CRZ of any remaining oak trees can be entirely avoided. Details showing the footprint of the buildings shall be submitted at the time of tentative map approval to satisfy this requirement, and constructive notice shall be required to be recorded to advise future property owners of the limitation on development of the subject parcel(s).

3. Except unless specifically approved by a Certified Arborist from the City's list of approved Arborists, no trenching whatsoever shall be allowed within the CRZ(s) of oak trees. If it is absolutely necessary to install underground utilities within the CRZ(s) of an oak tree, the trench shall be either bored or drilled unless the Certified Arborist determines that the trenching can be accomplished without endangering the oak tree.

4. Landscaping beneath oak trees may include non-plant materials such as boulders, cobbles, wood chips, etc. The only plant species which shall be located within the CRZ(s) of oak trees are plants that are indigenous to the Paso Robles area. All landscaping shall be subject to the approval of the City.

5. Paving within the CRZ(s) of oak trees shall be stringently minimized. When it is absolutely necessary, porous material should be used.

6. During grading of any property on which there are oak trees of six (6) inches or greater DBH, the following standards of oversight shall apply:

(a) If grading, cutting or filling is approved for areas within the CRZ of oaks or within a five (5) foot distance of the CRZ of an oak to be preserved, the work shall be supervised by a Certified Arborist from the City's list of approved Arborists. The Arborist shall be responsible for maintaining protective fencing and insuring the oak trees are not damaged by grading related activities. The Arborist shall be paid for by the applicant / developer of the property. The City of Paso Robles reserves the right to hire an independent Certified Arborist if it is deemed necessary by the director to provide adequate supervision of grading.

(b) Grading, cutting and filling on property that has oak trees but which is planned to occur at least five (5) feet beyond the CRZ of any oak trees of six (6) inches or greater DBH shall not occur unless there is a monitor present to insure that grading occurs in accordance with approved plans and without encroachment into areas within five (5) feet of the CRZ of any oak tree(s) of six (6) inches or greater DBH. The monitor shall be paid for by the applicant / developer of the property and shall be present during all grading related activities. The City of Paso Robles reserves the right to hire an independent monitor if it is deemed necessary by the director to provide adequate supervision of grading.

10.01.080 Building Permits.

A. When any building permit is applied for pursuant to this code and the proposed structure would require encroachment into the CRZ of an oak tree or the removal of an oak tree, the official responsible for issuing the permit shall take into consideration the provisions of this chapter in the granting or denying of such permit, and the applicant shall be required to obtain a permit in accordance with the provisions of this chapter.

B. In the event a Permit to Remove an oak tree is issued in order to enable the applicant to carry out a development or improvement of his property, such permit shall be valid and

effective only in connection with the actual accomplishment of such project.

10.01.090 Safeguarding Trees During Construction.

A. For the purposes of safeguarding oak trees during construction, the following conditions shall apply:

1. Prior to issuance of a grading or building permit, all oak trees in a construction area shall be inventoried by the owner of such site or by the contractor as to size and location on the site. Such inventory shall be submitted to the director, and field checked by city staff or contract assistance at the applicant's cost to verify the number, size and location of the trees and the adequacy of protective fencing.

2. Damage to any tree during construction shall be immediately reported to the director. The property owner shall be responsible for correcting any damage to oak trees on the property in a manner specified by an Arborist hired by the City at the applicant's cost.

3. Oil, gasoline, chemicals and other construction materials or equipment which might be harmful to certain oak trees shall not be stored within the CRZ of the tree.

4. Drains shall be installed according to city specifications so as to avoid harm to the oak trees due to excess watering.

5. Wires, signs and other similar items shall not be attached to the oak trees.

6. Cutting and filling within the CRZ of an oak tree shall be done only after consultation with the director, and then only to the extent authorized.

7. No paint thinner, paint, plaster or other liquid or solid excess or waste construction materials or waste water shall be dumped on the ground or into any grate between the CRZ and the base of the oak trees, or uphill from any oak tree where such substance might reach the roots through a leaching process.

8. Tree protection fences, of a type and design subject to the approval of the director or his/her designated representative shall be installed at the CRZ to prevent compaction and injury to a tree's surface roots.

9. Wherever cuts are made in the ground near the roots of any oak tree, appropriate measures shall be taken to prevent exposed soil from drying out. All cuts within the CRZ of a tree are to be made with hand tools (no backhoes or graders).

10. All root pruning is to be done by hand.

B. If the director has reason to believe that construction or development activities may endanger an oak tree, he may seek professional consultation, at the expense of the applicant seeking to undertake construction or development of the property, to recommend measures necessary to safeguard the tree(s).

10.01.100 Safeguarding Trees After Construction.

Oak trees required to be kept on a building site and oak trees required to be planted as a condition of construction shall be maintained after completion of construction according to City requirements for the purpose of maintaining or furthering the health of such trees. The director may require that drought-resistant landscaping be installed as an alternative to irrigated landscaping where appropriate.

10.01.110 Willful Destruction or Endangerment of Oak Trees.

It is unlawful for any person to willfully destroy, mutilate, poison or attempt to kill an oak tree in the city. Any action that would endanger an oak tree and that results in its destruction shall be subject to the same penalties as removal without authorization. The person or party responsible for willfully causing the destruction or removal of an oak tree shall be held responsible for the payment of any penalties in conjunction with its removal.

10.01.120 Enforcement.

The director shall be responsible for the enforcement of this chapter in coordination with the Director of Public Works (who is responsible for issuance of Permits to Prune).

10.01.130 Violation--Penalty. Remedies for Violations.

In addition to all other remedies set forth in this code or otherwise provided by law, the following remedies shall be available for the City for violation of this chapter:

A. Against Property Owners and Developers:

1. Stop Work-Temporary Moratorium - If a violation occurs during development, the City may issue a Stop-Work Order suspending and prohibiting further activity on the property pursuant to the grading, demolition, and/or building permit(s) (including construction, inspection, and issuance of certificates of occupancy) until a mitigation plan has been filed with and approved by the Director, agreed to in writing by the property owner(s), and either implemented or guaranteed by the posting of adequate security. The mitigation plan shall include measures for the protection of any remaining trees on the property, and shall provide for replacement of each tree removed on the property or at locations approved by the Director of Community Development and by the Director of Public Works, if replacement is to occur on public property. Replacement ratio shall be in accordance with the standard set forth in Section 10.01.050, and shall be at a ratio equal to twice that required where the tree removal is permitted pursuant to the provisions of this chapter.

   If a violation occurs in the absence of development, or while an application for building permit or discretionary development approval for the lot upon which the tree is located is pending, the Director may issue a temporary moratorium on the development of the subject property, not to exceed 18 months from the date the violation occurred. The purpose of this moratorium is to provide the City an opportunity to

study and determine the appropriate mitigation measures for the tree removal, and to insure measures are incorporated into any future development approvals for the property. Mitigation measures as determined by the Director shall be imposed as a condition of any subsequent permits for the development on the subject property.

2. Civil Penalties - As a part of a civil action brought by the City, a court may assess against any person who commits, allows, or maintains a violation of any provision of this chapter a civil penalty in an amount not to exceed $5,000.00 per violation.

    a. Where the violation has resulted in the removal of a tree, the civil penalty shall be an amount not to exceed $5,000.00 per tree unlawfully removed or the replacement value of such tree, whichever amount is higher. Such amount shall be payable to the City. The replacement value for the purpose of this section shall be determined utilizing the most recent addition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers.

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

4. Costs - Any civil action brought pursuant to this chapter in which the City prevails, the Court shall award to the City all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action and reasonable attorneys' fees.

5. Criminal Citation - Any person violating any provision of this chapter is guilty of a crime. The crime may be charged as an infraction or a misdemeanor.

6. The remedies in this section shall be deemed to be cumulative and not mutually exclusive.

B. Against Tree Trimming Services and Arborists:

1. Any tree trimming service or arborist violating any provision of this chapter is guilty a crime. This crime can be charged as either an infraction or a misdemeanor. It shall be a separate violation for each oak tree trimmed, removed or destroyed.

2. It shall be an infraction for any tree trimming service or arborist to receive pay for such services within the City without a business license.

3. Any tree trimming service or arborist who is found in violation of any provision of this chapter shall have in addition to any other penalties, their license placed on probation for a period of one year. Any similar violation within a one year period shall be cause for suspension of the business license for a period of one

year. Any third violation within a five year period shall be cause for the termination of the business license and no further license shall be issued to the violator.

4. The remedies of this section shall be deemed to be cumulative and not mutually exclusive.

C. Any person convicted for violation of any portion of this chapter is punishable by a fine. Further, any person convicted shall be charged for restitution in the amount which would be determined based upon the valuation of the trees or reduction in value of the tree where the tree has been trimmed, according to the guidelines set forth in the amount not to exceed $25,000.00. The penalty shall be further specified as follows:

1. Infraction: Fine of $500.00 plus restitution.
2. Misdemeanor: Fine of $1,000.00 plus restitution.

In instances of additional violations beyond the first conviction of a violation of this chapter, the amount of the fine shall be doubled (two times the fine amount that would be applicable.

Restitution shall be levied in full or in part as deemed appropriate by a court of law.

Fines and restitution collected shall be placed in The Oak Tree Preservation Replacement Fund to be utilized for the preservation and replacement of oak trees within the City. Fines and restitution shall be designed to cover the costs of prosecution of oak tree enforcement.