

**CITY OF BENICIA**

**ORDINANCE NO. 08-\_\_**

**AN ORDINANCE OF THE CITY OF BENICIA REPEALING AND REPLACING CHAPTER 12.24 (STREET TREES) OF TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) OF THE BENICIA MUNICIPAL CODE RELATING TO THE REGULATION OF TREES**

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN** as follows:

**Section 1.**

The contents of Chapter 12.24 (Street trees) of Title 12 (Streets, sidewalks, and public places) of the Benicia Municipal Code is hereby repealed in its entirety.

**Section 2.**

A new chapter, Chapter 12.24 (Trees and street trees) of the Benicia Municipal Code, is added to read as follows:

**CHAPTER 12.24**

**TREES AND STREET TREES**

**Sections:**

- 12.24.010 Purpose.
- 12.24.020 Definitions.
- 12.24.030 Protected trees.
- 12.24.040 Hazardous trees.
- 12.24.050 Heritage trees.
- 12.24.060 Heritage trees – maintenance.
- 12.24.070 Designated protected trees.
- 12.24.080 Property development.
- 12.24.090 Protection of trees on property during construction
- 12.24.100 Tree pruning.
- 12.24.110 Permitting process.
- 12.24.120 Application requirements.
- 12.24.130 Standards of application review – tree removal.
- 12.24.140 Standards of application review – tree pruning.
- 12.24.150 Appeals.
- 12.24.160 Fees.
- 12.24.170 Tree replacement and mitigation.
- 12.24.180 Penalties.

- 12.24.190 Tree fund.
- 12.24.200 Administration – tree subcommittee.

12.24.010 Purpose. The Benicia General Plan recognizes the importance of trees for their place in a natural setting and their contribution to community character and environmental health. Significant portions of the city are covered by trees, the conservation, sustainability, protection, maintenance and replanting of which is necessary for the health, safety and welfare of the citizens of the city. The city seeks to protect trees in order to provide urban wildlife habitat, preserve scenic beauty and esthetic and privacy characteristics, prevent erosion of topsoil, protect against flood hazards and the risk of landslides, counteract pollutants in the air, maintain climatic balance, decrease wind velocities, calm traffic and reduce public costs of installing and maintaining storm water drainage systems. The city has therefore determined that reasonable regulation of the removal, alteration, and planting of certain trees is necessary to promote the public health, safety and general welfare of the community.

12.24.020 Definitions. For the purpose of this chapter, the following terms shall be defined:

“Applicant” means a property owner requesting permission to remove or prune a tree at a designated site.

“Building footprint” means the two-dimensional configuration of a building’s perimeter boundaries measured on a horizontal plane at grade level.

“Certified arborist” means an individual who has demonstrated knowledge and competency by obtaining a current International Society of Arboriculture (ISA) Certification, or who is a member of the American Society of Consulting Arborists.

“Diameter” of the tree means as measured 48 inches above natural grade.

“City arborist” means a city employee that has an International Society of Arboriculture Certification and is so designated by the director of the parks and community services department.

“City property tree” means a tree maintained by the city on any property owned in fee by the City of Benicia, which includes trees within city parks, open space, lighting and landscaping districts, street median islands and along First Street (this does NOT include street trees which are listed as a separate category).

“Collar” means the ring of trunk tissue that surrounds a lateral branch at its point of attachment to the stem.

“Commission” means the parks, recreation and cemetery commission.

“Compaction” means compression of the soil structure by any means that creates an upper layer that is impermeable.

“Conditional replacement tree” means any tree that is planted on public or private property as a condition of mitigation for the removal of any tree(s).

“Construction zone access” means the area of a wooded parcel that is necessary to provide access to existing or future structures located on the parcel,

where there exists no feasible means of access that would avoid protected trees. On single-family residential parcels, the portion of the parcel deemed to be the construction zone access shall not exceed ten (10) feet in width.

“Designated protected tree” means any tree specifically designated by the city to be planted, or protected on public or private property that is subject to city commission or council discretionary development approval, such as a zoning variance, design review, or subdivision review.

“Diseased” means an abnormal condition of a tree or part that impairs normal physiological functioning, especially as a result of infection, inherent weakness, or environmental stress.

“Disturbance” means any activity that may damage trees.

“Drip line” means the line enclosing the outermost area from which water would drip from the tree. In cases where the drip line is difficult to determine, the drip line is considered the area that extends out and away from the trunk of the tree in all directions and ends at a distance measured ten (10) times the diameter of the trunk at 48 inches above grade.

“Drip line area” means the area measured from the trunk of the tree outward to a point at the perimeter of the outermost branch structure of the tree.

“Emergencies” means the condition in which a tree presents an immediate hazard to life or property, it may be removed without a permit on order of the city manager, or a member of the police, fire, or emergency response personnel.

“Hazardous tree” means a tree determined by the city manager, a member of the police, fire or emergency response personnel, or a certified arborist to be an immediate danger to persons or property. (Also see “potentially hazardous tree.”)

“Heritage tree” means any tree or grove of trees within the city boundaries designated by a resolution of the city council due to special qualities or significance and having met the requirements set forth in this chapter.

“Historic tree(s)” means a protected tree or group of trees, which has importance or influence in marking the history and/or events of the City of Benicia and so designated by a resolution of the city council.

“Injure or injury” means any act that damages a tree including, but not limited to: cutting; carving; transplanting; neglect; injurious attachment of any rope, wire, nails, advertising posters, or other contrivance to any tree; allowing any gaseous, liquid, or solid substance that is harmful to trees to come into contact with them; setting fire or permitting any fire to burn when such fire or the heat will injure any part of any tree; knocking over any tree; or damage inflicted upon the root system of a tree by the application of toxic substances, the operation of heavy equipment, the change of natural grade above or below the root system or around the trunk of a tree.

“ISA” means the International Society of Arboriculture.

“Maintenance” means pruning, trimming, mulching, clipping, watering, staking, spraying, propping, fertilizing, bracing, treating disease or injury, and any other acts which promote the life, growth, or health of the city's trees.

“Mitigation” means any action taken to permanently eliminate or reduce the impact on the environment or community from the loss of a tree or trees.

“Multi-trunked tree” means any tree with more than one trunk at or below 48 inches from natural grade.

“Native tree” means a tree native to Northern California, suited to conditions in Benicia.

“Nuisance tree” means a tree that is prone to excessive litter, pollen, pest infestation, is invasive, or has other habits that cause it to be a problem for people.

“Potentially hazardous tree” means a tree that has been determined to be a potential hazard if it (1) harbors a serious disease or infestation threatening the health of other trees, plants or humans; (2) interferes with safe vehicular or pedestrian circulation; or (3) is causing or is likely to cause damage to property.

“Protected tree” means a tree designated by the City of Benicia as having characteristics such as great age, size, type, species, unique form or any other quality of significance to the community.

“Protective tree fencing” means a temporary enclosure erected around a tree to protect the tree and identify the boundary of the tree protection zone (TPZ).

“Registered consulting arborist” means and includes arborists who are registered with the American Association of Consulting Arborists and who typically offer advice but do not perform tree services.

“Relocate” means to remove a tree from the place where it is growing and replant it in another location.

“Replacement value” means the actual cost of replacing the same tree size and canopy removed or destroyed or if irreplaceable, its value as determined pursuant to the “basic value” or square inch formula” in effect by the Council of Tree and Landscape Appraisers adoption, as amended from time to time, and ensuring such planting results in survival for at least three years.

“Right-of-way” means the area upon which a legal right for a public street exists either as fee ownership or as an easement.

“Single-family residence” means any detached structure designed for occupation by one family. The term “single-family residence” includes mobile home spaces designed to be used for parking a mobile home on a temporary, semi-permanent or permanent basis.

“Street tree” means and includes trees intentionally planted along streets or roadways either within the public right-of-way or within private property adjacent to the roadway to enhance the environment Street trees shall typically be within 10 ft from face of curb and shall be maintained by the adjacent property owner.

“Topping,” means heading back (trimming) of the crown (top of the tree) and/or main leaders.

“Tree” means any live, woody plant with a single perennial woody stem of 4 inches diameter at 48 inches above natural grade, or a multi-stemmed perennial plant having an aggregate of 12 inches in diameter.

“Tree subcommittee” means a standing subcommittee of the Parks, Recreation and Cemeteries Commission, as set forth in 12.24.200 of this Chapter.

12.24.030 Protected trees.

A. List of protected trees. The following trees are protected by the city:

1. All city property trees over 8 inches in diameter (as measured 48 inches above soil level).
2. Street trees over 8 inches in diameter.
3. All heritage trees.
4. All designated protected trees.
5. All other trees over 12 inches in diameter.
6. California native trees – The following native species, which have a trunk diameter of 8 inches (25 inch circumference) are protected:
  - a. Blue oak (*Quercus douglasii*)
  - b. Live oak (*Quercus agrifolia*)
  - c. Valley/white oak (*Quercus lobata*)
  - d. Willow (*Salix*)
  - e. Buckeye (*Aesculus californica*)
  - f. Box elder (*Acer negundo*)
  - g. California Bay (*Umbellularia californica*)
  - h. Black walnut (*Juglans hindsii*)

B. Prohibited actions to protected trees. Pruning, cutting girdling poisoning or any other action causing or aiding the death or disfigurement of a protected tree as defined in this chapter is prohibited without a tree removal or pruning permit.

C. Exceptions to prohibited actions.

1. Emergencies. The city may take whatever action is needed to protect persons or property in the event of "emergencies" and/or "hazardous trees", as defined in section 12.24.020.
2. Fruit trees. A fruit or nut tree less than 18 inches in diameter (57 inches circumference) is not considered a protected tree, unless specifically designated by the city.

12.24.040 General requirements – public tree maintenance and hazardous tree removal.

A. City property trees. The city shall maintain city property trees.

1. Planting and maintenance. The selection, planting and maintenance of trees in all planting strips or planting easements within the city shall be in accordance with provisions of the chapter and the master tree plan.
2. Supervision. The director of parks and community services shall authorize the planting, maintenance and removal of trees in any planting strip, planting easement, public way or place in the city. In order to perform the services listed in this section, the director shall have authority to enter upon any part of the maintenance easement, and where necessary, the properties adjacent thereto. In authorizing a tree removal, the director shall prepare findings based on the factors used for tree removal permits described in section 12.24.130.

B. Potential hazardous tree removal. The city will remove or require to

be removed, at owner's expense, any trees or tree limbs that pose an immediate hazard to public safety/or property after consultation with a certified arborist. Except in such emergency circumstances, trees that are damaged or injured shall have conditions corrected if feasible, or otherwise shall be removed as soon as conditions permit in accordance with the recommendations of the city arborist.

12.24.050 Heritage trees.

A. Candidate trees for designation as heritage trees may be nominated for review and recommendation to the parks, recreation and cemetery commission. The city shall notify the property owner of the nomination. If the owner consents to the designation, the decision to nominate the tree as a heritage tree shall be submitted to the parks, recreation, and cemetery commission. Upon approval, the parks, recreation and cemetery commission will then send a recommendation to the city council. Upon resolution by the city council, after the holding of a noticed public hearing, a tree may be designated a heritage tree if it meets at least one of the following criteria:

1. Historical significance;
2. Over 30 inches in diameter measured 48 inches above the ground;
3. Unique or rare horticultural specimen;
4. Uniqueness of size or age;
5. Aesthetic value due to symmetry, form, color, or other qualities;
6. An outstanding specimen of a desirable species, especially native oak species;
7. Significance for habitat preservation, including where tree is one of a group of trees each dependant on the other for survival.

B. The city arborist shall identify each heritage tree with a tag and keep a list and map of all heritage trees.

C. Upon designation, the city shall cause a notice of heritage tree status to be recorded on the property deed at the Solano County Recorder.

D. The owner of a heritage tree shall receive a Resolution of Appreciation from the City of Benicia and may be eligible, based on availability of funding, for free consultation from a certified arborist and assistance with maintenance for the heritage tree.

E. Heritage tree designation can be removed subject to a noticed public hearing and recommendation by the parks, recreation and cemetery commission to the city council. The city council may approve the removal of a heritage tree designation upon a finding of good cause after a noticed public hearing.

F. Removal or alteration of any heritage tree on any property is prohibited without the prior issuance of a permit.

12.24.060 Heritage trees – maintenance.

A. Property owners shall be responsible for maintenance of heritage trees not in public right-of-way, consistent with the standards of this ordinance.

B. The city may assist with maintenance of heritage trees in the public right-of-way and the costs associated with such maintenance based on availability of funds in the tree fund and the recommendation of the tree subcommittee. Maintenance may include but not be limited to: pruning for tree health, structure, form and for public safety; spraying for pathogens and insects; fertilizing; and managing the root zone for health and vigor.

12.24.070 Designated protected trees.

A. Any tree identified by either a city commission or the city council to be planted or preserved as a specific condition of approval for a project, such as a zoning variance, design review, or subdivision review, is a designated protected tree and may not be removed without a permit.

B. Each designated protected tree that is planted or preserved shall be identified as follows:

1. In the conditions of approval or findings and on the approved plans associated with the action;

2. In the case of new development applications, with a metal tag placed on the tree at the expense of the property owner/applicant, that identified it as a designated protected tree;

3. In the case of new subdivisions, on the parcel map and in the deeds to be recorded for transfer to future property owners.

4. The community development department shall maintain a master list of designated trees and shall share said list with the parks and community services department.

C. A performance bond guaranteeing the health of a designated protected tree for a period of three years following the final occupancy or approval of the project shall be required as a condition of approval of any project involving designated protected tree(s).

12.24.080 Property development.

A. Any application for a proposed project or other action requiring city planning commission, historic preservation review commission, or council review shall be accompanied by a statement signed by the property owner or authorized agent that discloses whether any protected trees exist on the property, and describing each such tree, its species, size (diameter, canopy, drip line area, height) and location, or including such information on plans submitted in connection with a development application.

B. The community development director may require submittal of supplemental information including photographs.

C. A site sketch shall be submitted with the development application. The sketch shall show the location, diameter at 48" above natural grade, species (if known) and canopy extent of all trees on the subject property where the canopy or drip line is within 20 feet of the area to be occupied, utilized, or disturbed by the project.

D. Disclosure of information pursuant to this section shall not be required when the development for which the approval or permit is sought does

not involve any change in building footprint nor any grading, trenching or paving.

E. The community development director may require, based on the significance of any protected tree(s) and potential impact on them, that a supplemental tree survey be prepared by a certified or registered consulting arborist.

F. A city arborist, shall determine in writing (a) all trees that could potentially be affected by the project (directly or indirectly – immediately or in the long term), such as from upslope grading or compaction outside of the drip line; and (b) which trees are required to be preserved. This determination shall be made part of the staff report to the city reviewing body upon its consideration of the application for development, consistent with section 12.24.130.

G. Tree preservation report. If construction is proposed within the drip line of any protected tree, the community development director may require the applicant to provide a tree preservation report prepared by a certified or registered consulting arborist. The report, based on the tree survey and other relevant information shall include specific precautions necessary for preservation of those trees during all phases of development (demolition, grading, during construction, landscaping). The tree preservation report shall stipulate a required tree protection zone (TPZ) for trees to be retained, including street trees, protected trees and trees whose canopies are hanging over the project site from adjacent properties. The TPZ shall be fenced as specified in section 12.24.90. The final approved tree preservation report shall be included in the building permit set of development plans and referenced on all relevant documentation (civil, demolition, utility, landscape, irrigation) where tree impacts from improvements may occur.

#### 12.24.90 Protection of trees on property during construction.

A. Protective fencing shall be provided for all protected trees in conjunction with property development and construction projects, at the perimeter of the drip line, or as otherwise specified in the tree preservation report, arborist report, or as determined by the community development director.

B. Protective tree fencing shall meet the following specifications:

1. Size and materials: Based on the recommendation of the city arborist, one of three types of protective fencing may be specified:

a. Orange plastic fencing shall be wrapped around the trunk from the ground to the first branch with 2-inch wooden boards bound securely on the outside. Caution shall be used to avoid damaging any bark or branches.

b. Four-foot high orange plastic fencing mounted on steel T posts spaced at intervals of no more than 10 feet.

c. Five or six foot high chain link fencing, mounted on two inch diameter galvanized steel posts driven into the ground to a depth of a least 2 feet at no more than 10 feet spacing. For paving area that will not be demolished and when stipulated in a tree preservation plan, posts may be supported by a concrete base.

2. Duration of fencing. Fencing shall be erected before

demolition, grading or construction begins and remain in place until final landscaping is installed. Contractor shall obtain the city arborist approval prior to removing a tree protection fence.

C. All development requiring city commission or council review shall comply with the following precautions:

1. Prior to the commencement of construction, install the fence at the drip line, or TPZ when specified by the city arborist, around any tree to be retained that could be affected by the construction, and prohibit any storage of construction materials or other materials or vehicles inside the fence. The drip line shall not be altered in any way so as to increase the encroachment of the construction.

2. Submit for city arborist review verification that all pre-construction conditions have been met (tree fencing, erosion control, pruning, etc.) and are in place. An initial inspection of protective fencing and written verification must be submitted to the city arborist prior to demolition, grading or building permit issuance.

3. Prohibit excavation, grading, drainage and leveling within the drip line of the tree unless approved by the director.

4. Prohibit disposal or depositing of oil, gasoline, chemicals or other harmful materials within the decline of or in drainage channels, swaths or areas that may lead to the drip line of a protected tree.

5. Prohibit the attachment of wires, signs, or ropes to any protected tree.

6. Design utility services and irrigation lines to be located outside of the drip line when feasible (unless the irrigation line is specifically required for the tree)

7. Retain the services of the certified or registered consulting arborist for periodic monitoring of the project site and the health of those trees to be preserved. The certified or consulting arborist shall be present whenever activities occur that pose a potential threat to the health of the trees to be preserved.

8. A city arborist shall be notified if any damage occurs to a protected tree during construction so that proper treatment may be administered.

9. A performance bond guaranteeing the health of any protected tree during construction of the project shall be required as a condition of approval.

#### 12.24.100 Tree Pruning.

A. Applicability. Pruning any branch, root or limb of a diameter greater than three (3) inches of any of the following listed protected trees requires a permit pursuant to this chapter:

1. Street tree;
2. Heritage tree; or
3. Designated protected tree

B. Standards. All pruning of street trees and designated protected trees, including by utility companies, shall be:

1. Performed only when it enhances a tree's structural strength, health or form, for safety reasons or for utility service.

2. Consistent with the current edition of Best Management Practices Tree Pruning established by the International Society of Arboriculture (ISA), and any special conditions as determined by the parks and community services director.

C. Heritage trees. All pruning of Heritage trees shall be supervised by a certified arborist or registered consulting arborist.

D. New development. All protected trees to be retained as part of a new development project shall be cleared of dead wood of a diameter greater than one inch and treated for insects or diseases. For any development that requires a tree preservation report, a certified or registered consulting arborist shall oversee pruning, cabling, fertilizing, and/or any other activities to protect trees on-site.

E. Topping, as defined in section 12.24.020 of any protected tree is prohibited.

F. Pruning by utility companies.

1. All utility companies must contact the parks and community services department at least three working days (except in emergencies) prior to taking any action to prune any tree or trees related to line clearance, and to obtain a tree removal or pruning permit as required by this ordinance.

2. Pruning for clearance of utility lines and energized conductors shall be performed in compliance with the current version of the American National Standards Institute (ANSI) A300 (Part I) Pruning, Section 0.0 Utility Pruning. Using spikes or gaffs when pruning is prohibited. Such pruning may be inspected by a city arborist to ensure that proper pruning practices are followed. The parks and community services director shall have the authority to stop any tree pruning performed by a utility if such pruning practices are not being followed, or if the city has not been properly notified of the work.

3. Any public utility installing or maintaining any overhead wires or underground pipes or conduits in the vicinity of protected trees shall obtain permission from the parks and community services director before performing any work, including pruning, that may cause injury to a protected tree (e.g., cable TV, fiber optic trenching, gas, water, sewer trench, etc).

#### 12.24.110 Permitting process.

A. City department responsibilities. The parks and community services director shall have overall responsibility for the implementation of this chapter. The parks and community services director, city arborist, or their designee shall review and issue tree removal and pruning permits. The community development director or designee shall review all tree protection conditions related to actions requiring city planning commission, historic preservation review commission or council approval, in consultation with a city arborist, and make recommendations to the decision-making bodies.

B. All work performed on street trees, pursuant to a permit issued under this chapter shall be done within a six-month period from the issuance of

said permit or within the period specified by the permitting authority.

C. The permitting authority shall make findings consistent with the purposes and intent of this chapter and may place conditions on any permit granted under this section that the permitting authority determines to be necessary.

D. When requested, the tree subcommittee shall provide recommendations to the community development department or city council on tree removal permit or tree planting issues.

#### 12.24.120 Application requirements.

A. Basic information. Application for a permit to remove or prune a protected tree shall be obtained from the parks and community services department, except when such activity is proposed in conjunction with an action requiring historic preservation review commission or planning commission review, in which case the proposed removal or pruning shall be combined with the associated development application to the community development department. The application shall:

1. Identify the property by street address and assessor's parcel number on which the tree is located.
2. Inventory and locate all protected trees on the subject property.
3. Describe the location of the tree with reasonable accuracy to facilitate easy identification.
4. State the species of the tree, the approximate height of the tree, and the diameter of the trunk measured at 48 inches above the natural grade.
5. Furnish a statement of the reason for the request.
6. Include the signature of property owner granting permission.

B. Additional information that may be required by a city arborist includes:

1. A perimeter outline of any existing or proposed buildings on the property, and trees on the property.
2. A report by a certified or registered consulting arborist stating: (1) Any reasons for alteration or removal related to the health of a tree; and/or (2) If grading, trenching or filling is proposed under the drip line of an existing tree; and/or (3) If the action involves multiple trees.

C. Public notice. Within 24 hours following application for a tree removal permit for a protected city property tree or a street tree, the applicant shall place, in the most visible location at each tree to be removed, a public notice sign to be provided by the city stating the following:

“This tree is proposed to be removed. Removal may occur seven (7) days from (date of posting). Contact City of Benicia at 746-4285 for more information.”

The notice sign shall be no smaller than 11” by 17” with the largest feasible type, and shall be laminated for weather resistance. The sign shall remain posted for seven days from date of posting. Persons who call to comment shall be informed

of their right to appeal pursuant to section 12.24.150.

D. The parks and community services department shall maintain a list of current tree removal permit applications and make it available to the public upon request.

E. Responsibility for costs. The cost of providing reports and information shall be the responsibility of the applicant.

12.24.130 Standards of application review - tree removal.

A. When considering an application to remove a tree or trees which are protected by this chapter, the parks and community services director will consider various criteria designed to preserve trees. Such criteria include:

1. The proximity and number of other trees in the vicinity.
2. General Plan open space or other city open space plans and policies.
3. The arborist report of the tree's health and structure.
4. Topography, soil conditions and erosion potential.
5. Potential or actual damage to public utilities or streets and sidewalks.
6. If the tree is in danger of falling or is determined to be a fire hazard.
7. Potential or actual damage to private improvements such as building foundation, walls, patios, decks, roofs, retaining walls, etc.
8. The impact on reasonable development of the property or the ability to reasonably accommodate development on another area of the lot.
9. The impact of tree removal on the ability of other protected trees in the vicinity to survive.
10. The value of the tree to the neighborhood in terms of visual effect, wind screening, privacy and/or support of neighboring vegetation.
11. The availability of reasonable measures to correct the condition(s) of the tree, giving rise to the permit application.

B. Based on the above criteria the parks and community services director shall create specific tree preservation standards to be used to determine whether to grant a removal permit of a protected tree. The parks, recreation and cemetery commission shall then adopt said tree preservation standards of review.

C. Trees on the private property of single family residences, that are not heritage trees or street trees, shall be per se authorized for removal, provided that a completed permit application with fee is received by the parks and community services department. In all instances, city staff will advise applicants on alternatives to tree removal.

D. An applicant may appeal the decision of the city arborist, as set forth in chapter 1.44. The appellant body shall use the same standard of review as the city arborist.

12.24.140 Standards of application review – tree pruning.

A. A city certified arborist shall perform the application review. A tree pruning permit shall be approved, so long as the pruning meets the standards identified in section 12.24.100.

B. An applicant may appeal the decision of the city arborist, as discussed in section 12.24.150. The appellant body shall use the same standard of review as the city arborist.

12.24.150 Appeals.

A. Any permit applicant may appeal a permit decision of city staff within ten (10) calendar days of notification of denial.

B. Any citizen may appeal the city staff's decision to remove or permit removal of a protected city property tree or street tree within seven (7) days from the first day of posting the notice required under section 12.24.120.C.

C. The appeal shall be submitted in writing accompanied by the applicable fee and demonstrate one or more of the following:

1. The permit action does not conform to the purpose and intent of this chapter.

2. The permit action is arbitrary and capricious.

3. The permit action creates such a hardship that a reasonable person is unable to continue to use or enjoy property affected by the permit action.

D. The appeal shall adhere to the provisions of chapter 1.44 of the Benicia Municipal Code.

E. The parks, recreation and cemetery commission shall sustain or deny the appeal or modify the permit based on the commission's findings on the above criteria. The commission's decision shall be final.

12.24.160 Fees. Fees for permit applications and tree removal replacement or mitigation shall be set by resolution of the city council. The rate for such fees shall be that which is in effect at the time of the tree removal application. Notwithstanding this provision, a tree replacement fee can be waived for permits regarding hazardous and or harmful tree(s).

In addition to an administrative processing fee, a tree replacement and/or mitigation fee shall be charged if a tree is permitted to be removed. Notwithstanding this provision, a tree replacement fee can be waived for permits regarding hazardous and harmful trees.

12.24.170 Tree replacement and mitigation. Any tree removed under a permit shall be required to be replaced or mitigated in conformance with the following standards:

A. Any applicant whose tree has been authorized for removal shall be required to pay the applicable fee as a condition to final approval for tree removal. Fees collected for tree replacement and/or mitigation shall be placed in the tree fund.

B. In some situations, in accordance with section 12.24.130, the city

arborists may condition the removal of a tree with replacement of a new tree.

C. In case of a tree removal permit pursuant to property development as addressed in 12.24.080 of this chapter, the tree replacement requirement shall be the replacement value of the mature tree, as defined in 12.24.020 of this chapter.

D. The parks and community services director has discretion to reduce replacement or mitigation requirements.

#### 12.24.180 Penalties.

A. Violation of this chapter shall be subject to chapter 1.08 of the Benicia Municipal Code.

B. A violator shall be liable for all costs associated with the investigation and enforcement of this chapter by the city. In addition, a violator may be required to pay a fee equaling the value of the tree removed or damaged, as evaluated by the formula developed by the International Society of Arboriculture. The remedies set forth in this Section shall be considered alternative, and shall be deemed in addition to any other remedies available to the city in law or equity.

12.24.190 Tree Fund. There is established a "tree fund" for the purpose of undertaking tree maintenance and planting within city boundaries.

A. Funds may be used to make grants to individuals with a demonstrated financial hardship, to nongovernmental organizations or governmental organizations dedicated to urban forest improvement or otherwise spent to plant and maintain trees in the city.

B. The parks and community services director shall submit an annual report and budget to the city council on the amount of fees collected, and the manner and nature of the expenditure of the fees.

C. The fund shall be administered on an annual basis by the parks and community services director in consultation with the tree subcommittee of the parks, recreation and cemetery commission and with approval of the city council.

#### 12.24.200 Administration – tree subcommittee.

A. Tree subcommittee of the parks, recreation and cemeteries commission shall be established, consisting of three members, two of which shall be from the parks, recreation and cemetery commission and one member shall be a Benicia citizen demonstrating an interest in and knowledge about trees and landscaping. The Benicia citizen shall be nominated by any parks, recreation and cemetery commission member and shall be appointed by majority vote of the parks, recreation and cemetery commission.

B. The subcommittee shall be responsible for developing an information, education, and support program to assist home, business, and other property owners, as well as city staff and its representatives understand the benefits of trees, take proper care of trees, and plant trees of the appropriate species in appropriate locations.

C. The subcommittee, with the assistance of the director of parks and community services, and based on availability of funding for the purpose, shall initiate a city-wide heritage tree inventory and create a master tree plan recommending to the council a comprehensive plan of street trees for all streets of the city where planting areas are available and provided for trees. The plan may be reviewed and revisions recommended from time to time by the tree subcommittee to be forwarded for review and approval to the parks, recreation and cemeteries commission, and ultimately to the city council. In accordance with the plan, the director shall proceed each year to plant or replace trees to the extent that funds are appropriated for that purpose by the city council.

D. The subcommittee, with the assistance of the director of parks and community services, shall determine criteria for selection of street and park trees, selection of trees for private property, and shall develop a recommended tree list for the city, to be forwarded for review and approval to the parks, recreation and cemeteries commission, and ultimately to the city council.

E. The subcommittee shall, on an annual basis, report to the parks, recreation and cemetery commission on of the progress of their work.

F. The parks, recreation and cemeteries commission is responsible for oversight of the tree fund, based on the recommendations of the tree subcommittee.

### **Section 3.**

Section 17.70.190 is hereby repealed in its entirety.

### **Section 4.**

Supremacy. In the event of a conflict with another section of the Benicia Municipal Code, this ordinance shall prevail.

### **Section 5.**

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The city council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the foregoing ordinance was introduced at a regular meeting of the City Council on the 17<sup>th</sup> day of June, 2008 and adopted at a regular meeting of the Council held on the 1<sup>st</sup> day of July, 2008, by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk