

BEFORE THE CITY COUNCIL OF THE CITY OF ORINDA

In the Matter of:

Ordinance 25-03

An Ordinance Amending Orinda Municipal Code Chapter 17.21 – Tree Management.

The City Council of the City of Orinda DOES ORDAIN as follows:

SECTION 1. The City Council of the City of Orinda intends, by adopting this ordinance, to amend Chapter 17.21 of the Orinda Municipal Code (OMC). These amendments are intended to clarify the City's regulations regarding protected tree status, incorporate an additional exception for insurance company requirements, ensure flexibility in meeting the requirements of state, regional, and local regulations, and provide additional protection against tree removal in certain circumstances not involving a development application.

SECTION 2. Chapter 17.21 is amended as specified below and in Exhibit A, which shows additions with double-underlined text and deletions with ~~strike-out text~~.

SECTION 3. Purpose and intent.

- A. The management of trees on public and private property is essential to maintenance of the city's semi-rural character, a goal set forth in the general plan.
- B. Trees contribute to the image and quality of life in the city. Healthy trees reduce air and noise pollution, provide energy-saving shade and cooling, furnish habitat for wildlife, enhance aesthetics and property values, and help to maintain soil stability.
- C. The city values the diverse and distinctive character of its neighborhoods, some heavily wooded, some more open.
- D. This chapter is intended to ensure that the city will continue to realize the benefits provided by its tree resources, while recognizing the rights of individuals to develop property, maintain views and privacy, and protect against fire and other hazards.
- E. These regulations are consistent with the local Fire Code adopted by the Moraga-Orinda Fire District (MOFD) and ratified by the City of Orinda.

SECTION 4. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 5. This ordinance is consistent with the Orinda General Plan.

SECTION 6. The City Council finds that this ordinance is exempt from CEQA under CEQA Guidelines section 15061(b)(3) (it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment).

SECTION 7. This ordinance becomes effective thirty (30) days after adoption.

SECTION 8. The City Clerk shall either (a) have this ordinance published once within fifteen (15) days after adoption in a newspaper of general circulation, or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

Following a duly-noticed public hearing, the foregoing ordinance was introduced at a meeting of the City Council of the City of Orinda held on April 6, 2025, and was adopted and ordered published at a regular meeting held on May 6, 2025, by the following vote:

AYES: COUNCILMEMBERS: Gee, Hoxie, Iverson, Malkani, Riley

NOES: COUNCILMEMBERS: None



Latika Malkani, Mayor



Sheri Marie Smith, City Clerk

Exhibit A: Chapter 17.21 – TREE MANAGEMENT

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17.21.1 Findings and declaration of intent.

The City Council finds that:

- A. The management of trees on public and private property is essential to maintenance of the city's semi-rural character, a goal set forth in the general plan.
- B. Trees contribute to the image and quality of life in the city. Healthy trees reduce air and noise pollution, provide energy-saving shade and cooling, furnish habitat for wildlife, enhance aesthetics and property values, and help to maintain soil stability. Tree management can both create and protect privacy and views and reduce fire hazards.
- C. The city values the diverse and distinctive character of its neighborhoods, some heavily wooded, some more open.
- D. This chapter is intended to ensure that the city will continue to realize the benefits provided by its tree resources, while recognizing the rights of individuals to develop property, maintain views and privacy, and protect against fire and other hazards.
- E. These regulations are consistent with the local Fire Code adopted by the Moraga-Orinda Fire District (MOFD) and ratified by the City of Orinda.

17.21.2 Definitions.

In this chapter unless the context otherwise requires:

"Destroy" means to kill or to take action that could foreseeably endanger the health or vigor of a tree, including but not limited to, excessive or improper pruning of a tree, grade changes around or near a tree, excessive irrigation of a tree, and trenching within the protected perimeter of a tree.

"Development application" is an application for a building or grading permit, or any other city application which if approved would ultimately require the issuance of a building permit or grading permit.

"Diameter" means the distance across the tree from outside bark to outside bark measured at 4.5 feet above the natural grade of the tree. The diameter of a multi-trunk tree is the sum of the diameters of its trunks measured at 4.5 feet above natural grade multiplied by two-thirds.

"Director" means the Planning Director or his or her designated representative.

"Dripline" means the outermost edge of the tree's canopy. When depicted on a map, the dripline appears as an irregularly shaped circle that follows the contour of the tree's canopy as seen from above.

"Native Riparian tree" is a native tree within thirty (30) feet of the edge of a creek bank or a native tree beyond thirty (30) feet but in such proximity to a creek bank that it requires or tolerates soil moisture levels in excess of that available in adjacent uplands.

"Native tree" means a tree indigenous to the local oak woodland, chaparral, grassland or riparian habitats including, but not limited to, valley oak (*Quercus lobata*), coast live oak (*Quercus agrifolia*), black oak (*Quercus kelloggii*), white oak (*Quercus garryana*), canyon oak (*Quercus chrysolepis*), blue oak (*Quercus douglasii*), interior live oak (*Quercus wislizenii*), California bay (*Umbellularia californica*), bigleaf maple (*Acer*

macrophyllum), buckeye (Aesculus California), white later (Alnus rhombifolia), madrone (Arbutus menziesii), flowing ash (Fraxinus dipetala), Oregon ash (Fraxicus latifolia), western sycamore (Platanus racemosa), arroyo willow (Salix lasiolepis), red willow (Saxis laevigata), western dogwood (Cornus sericea), California hazelnut (Corylus californica), black walnut (Juglans hindsii), and blue elderberry (Sambucus mexicanus).

"Professional arborist" means a person certified as an arborist by the International Society of Arboriculture or a person who, as determined by the Director, is equally qualified in the field of arboriculture.

"Protected perimeter" means the area around the tree within the dripline plus a ten-foot-wide strip of ground surrounding the dripline.

"Protected tree" means a live tree located on public or private property (including within a public or private right-of-way or easement) meeting one or more of the **following standards designations listed in Schedule 17.21.2:**

- ~~1. A tree located on an assessor's parcel upon which there is an existing structure, which is of the following species and which has a trunk diameter equal to or greater than twelve (12) inches at 4.5 feet above its natural grade: valley oak (Quercus lobata), live oak (Quercus agrifolia), black oak (Quercus kelloggii), white oak (Quercus garryana), canyon oak (Quercus chrysolepis), blue oak (Quercus douglasii), interior live oak (Quercus wislizenii);~~
- ~~2. A tree that is located on a vacant or undeveloped assessor's parcel and has a trunk diameter equal to or greater than six (6) inches at 4.5 feet above its natural grade, unless it is a tree identified on the Disallowed Plant List adopted by City Council resolution;~~
- ~~3. A native riparian tree with a trunk diameter of four inches at 4.5 feet above its natural grade or a multi-trunk native riparian tree with a cross-sectional area of all trunks equal to a cross-section area of a single stem of four inches at 4.5 feet above its natural grade;~~
- ~~4. A replacement tree planted as restitution for an act in violation of this chapter;~~
- ~~5. A tree that is located in the DC (downtown commercial) or DO (downtown office) district and has a trunk diameter equal to or greater than six (6) inches at 4.5 feet above natural grade, unless it is a tree identified on the Disallowed Plant List adopted by City Council resolution.~~

Schedule 17.21.2

Protected Tree Designations

<u>#</u>	<u>Location</u>	<u>Type of Tree</u>	<u>Trunk Diameter Requirement at 4.5 Feet Above Natural Grade</u>
<u>1</u>	<u>On a developed parcel (with a structure)</u>	<u>- Valley Oak (Quercus lobata)</u> <u>- Live Oak (Quercus agrifolia)</u> <u>- Black Oak (Quercus kelloggii)</u> <u>- White Oak (Quercus garryana)</u> <u>- Canyon Oak (Quercus</u>	<u>≥ 12 inches</u>

		<u>chrysolepis)</u> <u>- Blue Oak (Quercus douglasii)</u> <u>- Interior Live Oak (Quercus wislizenii)</u>	
<u>2</u>	<u>On a vacant or undeveloped parcel, or on a parcel within a downtown district identified in Chapter 17.8</u>	<u>Any Tree not identified on the Disallowed Plant List</u>	<u>≥ 6 inches</u>
<u>3</u>	<u>Near the edge of a creek bank (see "Native Riparian Tree" definition)</u>	<u>Native Riparian Tree</u>	<u>Single-trunk ≥ 4 inches or Multi-trunk with combined cross-sectional area ≥ a single stem of 4 inches</u>
<u>4</u>	<u>Any location</u>	<u>Replacement Tree planted as restitution for a violation of tree removal regulations or as a condition of approval for a development project</u>	<u>Any size</u>

"Remove" means to cut down a tree or relocate a tree.

17.21.3 Permit required for removal or destruction of a protected tree.

- A. *When Required.* No person may remove or destroy a protected tree without a Category I or Category II permit as provided in Sections 17.21.4 and 17.21.5.
- B. *Exceptions.* A permit is not required in the following circumstances if documentation or direct communication with the Planning Department is provided by the appropriate authority identifying the reason for removal and location of trees to be removed:
1. When a hazardous or dangerous condition requires immediate action to protect life or property;
 2. Under emergency conditions when ordered by a fire official, the Public Works Director, Parks and Recreation Director or City Manager;
 3. For a city project on city property or for a city project within the public right-of-way;
 - ~~4. To maintain a firebreak as required by state law;~~
 - ~~54.~~ To maintain an unobstructed flow of water for flood control safety in creek beds and waterways as determined by the City Engineer;
 - ~~65.~~ When required ~~in writing~~ by the Moraga-Orinda Fire District for Fire Code compliance; ~~following consultation with the Planning Director, who will annually make available to the City Council data regarding how many times and where this exception is invoked; and~~
 - ~~76.~~ When ~~alternation~~ alteration, removal, or destruction of a protected tree is required for compliance with any local, federal, or state law; ~~and~~

7. When alteration, removal, or destruction of a protected tree is required at a specified property to retain or obtain insurance coverage.

The applicability of an exception under this section in no way exempts activity from other regulatory requirements (e.g., City encroachment permit requirement) addressing slope stability, water quality, and other issues: nor does it exempt activity from property instrument restrictions (e.g., the terms of conservation and open space easements.)

17.21.4 Permit Category I—Protected trees on properties not involving a development application.

- A. *Permit Required.* A person who desires to remove or destroy a protected tree from a property upon which grading, building or development is not proposed, shall file an application on a form provided by the city, together with the fee fixed by resolution of the City Council.
- B. *Application.* The application shall identify the location, species and diameter of each protected tree to be removed or destroyed; the application shall contain a statement of the reason the permit is requested; and shall contain other supplemental information as may be necessary to properly review an application, such as the written recommendation of a professional arborist concerning the health and quality of the subject tree ~~in question~~ and possible alternative actions.
- C. *Director Review.* The Director shall inspect the tree and review the application. The Director may refer the application to the Planning Commission and may require such additional information considered necessary.
- D. *Decision-Maker Determination.* The decision-maker shall approve or disapprove the application to remove or destroy a protected tree. The decision-maker shall consider the following factors:
 - 1. The effect of tree removal or destruction on shade, views, privacy, fire safety, soil erosion and flow of surface water;
 - 2. Whether the tree poses an impending threat to public health, safety, or property, supported by evidence from a certified arborist;
 - 3. The degree to which the tree interferes with the reasonable use or enjoyment of the property;
 - 4. The health and structural stability of the tree, including any documented signs of disease, decay, or structural issues that pose a significant risk of failure, as determined by an arborist report;
 - 25. The number, species, size and location of other protected trees to remain in the area-, the potential for additional tree removals by other entities or authorities, and the cumulative impact of the removal on the area's environmental and aesthetic character; and
 - 6. Whether practical alternatives exist to address concerns related to the tree's presence, such as pruning, root management, or other preservation strategies that mitigate perceived impacts without necessitating removal.
- E. *Permit Conditions.* The permit may include reasonable conditions such as replacement in accordance with the provisions of Subsection 17.21.5.F.2 or moving the tree to a suitable location on the site.

- F. *Expiration of Permit.* A permit is valid for one year from date of issuance unless a longer period is stated in the permit. If the applicant does not begin work before the expiration date, the permit is void. Once work authorized by a permit is begun, it shall be expeditiously pursued to completion.

17.21.5 Permit Category II—Protected trees on property involving a development application project.

- A. *Permit Required.* A person applying for a building or grading permit, or an application which may subsequently require a building or grading permit, on a lot with a protected tree shall concurrently apply for a tree permit if construction related activity may remove or destroy a protected tree.
- B. *Application.* The application shall contain the following information on the form provided by the Planning Department together with the fee fixed by resolution of the City Council:
1. A site plan map showing all protected trees on the property by trunk location and diameter, tree species and an accurate outline of each tree's dripline. The site plan shall indicate whether each protected tree will be altered, removed, destroyed, relocated or protected.
 2. Justification statement setting forth the reason for proposed alteration, removal, relocation or destruction of any protected tree.
 3. Other pertinent information required by the Director.
- C. *Development Coordination.* The application shall be reviewed with the development project application. A development project could be a project subject to discretionary permit, such as design review, or ministerial project subject only to a building permit.
- D. *Standards.* In addition to the factors and guidelines set forth in Subsection 17.21.4.D, a permit shall be granted or denied based on the following factors and guidelines consistent with actions taken on the concurrent development application:
1. The necessity for destruction or removal in order to construct an improvement that allows reasonable economic enjoyment of private property;
 2. The extent to which a proposed improvement may be modified to preserve and protect a protected tree;
 3. The extent to which a change in the natural grade within the protected perimeter may be modified to maintain and preserve a protected tree.
- E. *Conditions of Approval.* Each permit may require as a condition of approval:
1. If a protected tree proposed for removal can be relocated, the applicant shall move the tree to a suitable location on a site shown on the approved plans.
 2. The applicant shall guarantee the health and vigor of each protected tree required to be preserved during the construction process and for two years after construction is certified as complete.
 3. The applicant shall replace a protected tree that dies during the guarantee period in accordance with the tree replacement provisions of subsection F of this section.
 4. The applicant shall comply with care requirements of subsection G of this section.

5. The tree removal permit is valid only upon the issuance of a building permit for the associated development project.

- F. *Protected Tree Replacement.* An applicant shall replace a protected tree in accordance with the following standards:
1. For each six inches or fraction thereof of the aggregate diameter of trees approved for destruction or removal, the applicant shall plant 1 native tree with a diameter no less than 0.75 inches. One-third of the replacement tree requirement may be fulfilled by planting native shrubs that mature at a height no less than five feet. The applicant may substitute a larger number of smaller trees or a smaller number of larger trees if approved by the decision-maker based on a finding that tree replacement will be more beneficial to the health and vigor of all trees on the property.
 2. If the development site cannot accommodate the replacement trees, with the written approval of the decision-maker and the property owner, the applicant may plant the replacement trees on public or private property located in Orinda. Alternatively, the applicant may make an in lieu payment of one hundred twenty-five dollars (\$125.00) for each replacement tree otherwise required. All in lieu payments shall be used for city landscape-related projects.
- G. *Care of Protected Trees.* In order to protect each protected tree on a site where grading or building is to take place, an applicant may, at the discretion of the decision-maker, be required to meet the following requirements:
1. Before starting, the applicant shall securely fence off every protected tree or grouping of protected trees at the protected perimeter. The fence shall remain continuously in place for the duration of work undertaken in connection with the building or grading permit. The fenced area may not be used as a storage area or altered or disturbed except as may be permitted by the decision-maker.
 2. If the proposed development or work on-site encroaches upon the protected perimeter of a protected tree, the applicant shall take special measures, as approved by the decision-maker, to allow tree roots to obtain oxygen, water and nutrients as needed.
 3. An authorized excavation, filling or compaction of the existing ground surface within the protected perimeter of a tree shall be minimized and subject to such reasonable conditions as may be imposed by the decision-maker.
 4. No significant change in existing ground level may be made within the dripline of a protected tree.
 5. No burning or use of equipment with an open flame may occur near or within the protected perimeter.
 6. All brush, earth and debris shall be removed in a manner that prevents injury to the tree.
 7. No oil, gas, chemical or other substance that may be harmful to a tree may be stored or dumped within the protected perimeter of a protected tree or at any other location on the site from which such substances might enter the protected perimeter of a tree.

8. Trenching for utilities shall avoid interfering with roots of protected trees wherever possible. If complete avoidance of the root zone is impractical, a tunnel shall be made below the roots. A trench shall be consolidated to serve as many units as possible. Trenching and tunneling within the protected perimeter shall be avoided to the extent possible and shall be done only under the on-site supervision of a professional arborist.
 9. No concrete, asphalt or other impervious paving shall be placed within the protected perimeter of a protected tree. No supplementary irrigation shall occur within the protected perimeter of a native oak.
- H. *Expiration of Permit.* A permit is valid for the same period as the building or grading permit. If the applicant does not begin work before the expiration date, the permit is void.

17.21.6 Appeal.

A person may appeal the decision to grant or deny a protected tree permit within the time and manner set forth in Chapter 17.43.

17.21.7 Reserved.

17.21.8 Restitution and replacement of protected trees.

Protected trees are valuable assets to the city and, as a result of the death or damage of a protected tree without benefit of a permit, the public should be compensated. A person who removes or destroys a protected tree in violation of this chapter shall replace each tree removed or destroyed, in accordance with each of the following conditions:

- A. Replacement trees in at least twenty-four- (24) inch boxes shall be planted in the following ratio: two replacement trees for each six inches or fraction thereof of the diameter of each tree removed or destroyed.
- B. Each replacement tree shall be of an appropriate species as determined by the decision-maker.
- C. Each replacement tree shall be planted on the site where the tree was destroyed or removed unless the site cannot accommodate the replacement trees, in which case the property owner shall make an in-lieu payment of six hundred seventy-five dollars (\$675.00), adjusted for the cost of living from year 2002 under the Bureau of Labor Standards Consumer Price Index All Urban Consumers San Francisco/Oakland/San Jose Area, for each replacement tree otherwise required.
- D. The decision-maker may impose requirements to ensure a replacement tree's health for up to two years and may authorize the planting of a lesser number of larger trees or a larger number of smaller trees than specified in this section if either will be more beneficial to the health and vigor of all trees on the property.

17.21.9 Enforcement.

The destruction or removal of a protected tree without the required permit constitutes a continuing violation of this chapter and a separate violation shall occur each day from the act of destruction or removal until restitution is made as required in Section 17.28.8. A person who violates the requirements of this chapter shall be subject to enforcement as described in Title 19 of this code.

17.21.10 Nonliability of city.

Nothing in this chapter imposes liability upon the city or upon its officers or employees or relieves the owner or occupant of private property from the duty to keep in safe condition any tree and shrub upon that private property or within a public right-of-way or easement upon or adjacent to that property.