

## ORDINANCE NO. 6-2011

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE REPEALING AND REPLACING CHAPTER 19.12 AND REPEALING CHAPTER 19.04 OF THE ELK GROVE MUNICIPAL CODE

The City Council of the City of Elk Grove does ordain as follows:

#### Section 1: Purpose and Authority

The purpose of this ordinance is to update the City's tree preservation and protection regulations for consistency with the City's General Plan.

#### Section 2: Findings

##### **California Environmental Quality Act (CEQA)**

Finding: The project is categorically exempt from the California Environmental Quality Act (CEQA) review pursuant to Sections 15308 and 15183 of Division 6 of Chapter 3 of Title 14 of the California Code of Regulations (State CEQA Guidelines).

Evidence: The proposed project is exempt from CEQA under Sections 15183 and 15308 of Division 6 of Chapter 3 of Title 14 of the California Code of Regulations (State CEQA Guidelines). The Section 15183 exemption (Projects Consistent with a General Plan) applies to projects that are consistent with the local general plan and for which an Environmental Impact Report (EIR) was certified. The City's General Plan was adopted in 2003 in conjunction with certification of the accompanying EIR (SCH# 2002062082). The Conservation and Air Quality Element of the City's General Plan includes goals, policies, and actions related to the preservation and enhancement of the City's urban forest. Programs and actions identified in the General Plan call for the "[p]reservation and protection of the large oak and other tree species which are an important part of the City's historic and aesthetic character" (Focused Goal 4-2). Policy CAQ-8 states that "[t]rees which function as an important part of the City's or a neighborhood's aesthetic character or as natural habitat should be retained to the extent possible during [development design, planning, and approval]." Finally, action CAQ-8-5 directs the update of the Tree Preservation Ordinance to conform to the policies of the General Plan. The proposed project is consistent with the General Plan. Therefore, the project qualifies for this exemption.

The Section 15308 exemption (Action by Regulatory Agencies for Protection of the Environment) applies exemption applies to actions taken by regulatory agencies to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. This Ordinance revises and updates the City's existing regulatory process to protect trees in Elk Grove. The Ordinance does not involve or cause any physical change to the environment. No circumstances exist that create a reasonable possibility that the

proposed Ordinance will have a significant adverse effect on the environment. Therefore the proposed amendments qualify for this exemption.

Therefore, as the project qualifies for both of these exemptions, no further environmental review is required.

### **General Plan Consistency**

Finding: The project is consistent with the goals, policies, and actions of the Elk Grove General Plan.

Evidence: The Conservation and Air Quality Element of the City's General Plan includes the City's goals, policies, and actions related to the preservation and enhancement of the City's urban forest. The proposed update of the City's Tree Preservation and Protection Ordinance focuses on expanding protection to other varieties of native trees and other landmark trees. Specifically, the proposed amendments (1) establish a City Arborist who is a certified arborist; (2) requires a tree permit for removing trees protected under the provisions; (3) establishes a requirement for an arborist report to be completed prior to deciding a tree permit that proposes removal of a tree; (4) requires mitigation for loss of trees as part of development projects; (5) includes control measures for development to ensure impacts to existing trees are minimized; and (6) continues the Tree Preservation Fund which is used to further tree maintenance and tree replacement through tree planting and preservation programs and public education programs regarding trees.

These amendments implement General Plan Policy CAQ-8 and associated action items 1, 5, 7, and 9, which call for (1) retention of existing tree stock as part of new development; (2) the establishment of criteria as part of the review process for the removal of trees; (3) updating the Tree Preservation and Protection Ordinance consistent with the General Plan; (4) the creation of a City Arborist position filled by a "qualified arborist;" and (5) providing funds for education, programs, and materials for tree preservation and replanting.

Therefore, the proposed amendments directly implement the policies and action items of the General Plan and as such are consistent with the General Plan.

### Section 3: Action – Chapter 19.04

Chapter 19.04 of the Elk Grove Municipal Code is hereby repealed in full.

### Section 4: Action – Chapter 19.12

Chapter 19.12 of the Elk Grove Municipal Code is hereby repealed in full and replaced as follows:

**Chapter 19.12**  
**TREE PRESERVATION AND PROTECTION**

Sections:

Article 1: Purpose and Definitions

19.12.010 Purpose

19.12.020 General Definitions

Article 2: Types of Trees

19.12.030 Landmark Trees

19.12.040 Trees of Local Importance

19.12.050 Secured Trees

19.12.060 Trees in the Right of Way or on City Property

Article 3: Tree Permit

19.12.070 Work Requiring a Tree Permit

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19.12.090 Application Procedure and Permit Processing

19.12.100 Arborist Review

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**Article 1**  
**Purpose and Definitions**

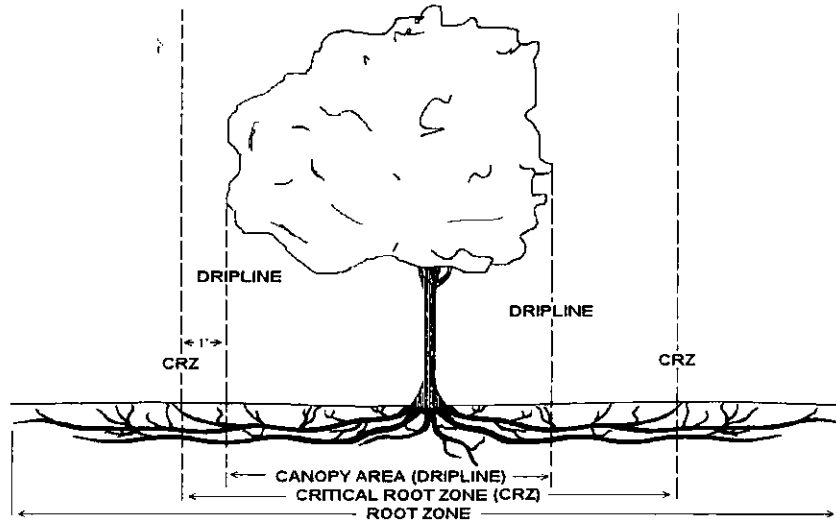
**19.12.010 Purpose**

The City of Elk Grove desires to preserve the existing trees within the City whenever reasonably possible. The City wants to preserve the historic and aesthetic character of the community as described in the General Plan, of which older trees are a critical component. In doing so, the City is establishing these regulations as a way to protect the health and integrity of the City's existing urban forest while providing for an optimal level of species and age diversity. Further, the City recognizes that trees provide numerous benefits to the community, including improving water quality, providing shade for buildings, providing shelter for animals and other plants, and reducing pollution, thereby positively impacting the health and welfare of the community. Older, more mature trees are often the most effective types of trees for achieving these objectives. These provisions are intended to complement and strengthen zoning, subdivision, and land use standards and regulations, while at the same time recognizing the rights of individual property owners. It is, therefore, the objective of these provisions to preserve existing trees through both the development review process and subsequent activities such as work within the canopy or within the critical root zone of trees and provide a process for replacement in instances where preservation is not reasonably possible.

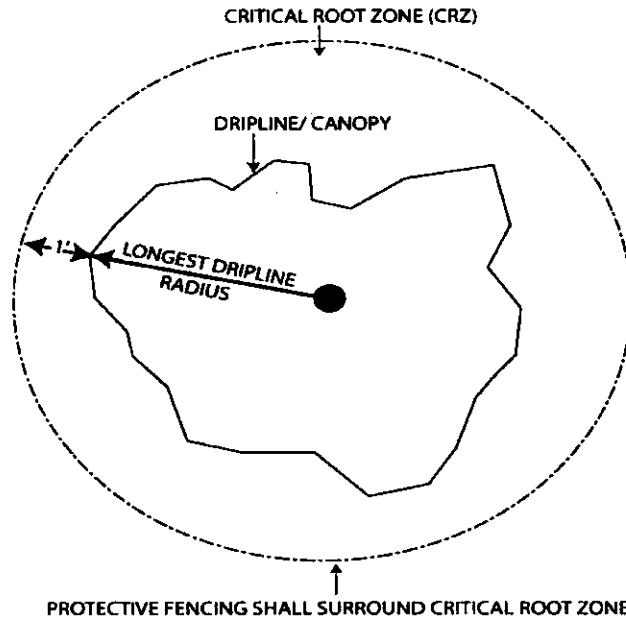
**19.12.020 General Definitions**

For the purposes of this Chapter, certain words or terms used herein shall be interpreted as follows.

- A. Approving Body. Approving body shall be any one of the following: City Council, Planning Commission, or Planning Director.
- B. Arborist. Arborist shall mean an individual who is certified as an arborist by the International Society of Arboriculture (ISA) and who agrees to perform all work to the most current American National Standard Institute (ANSI) A300 standards.
- C. Arborist Report. Arborist Report shall mean a report prepared by an arborist containing information required under this Chapter as part of a Tree Permit application.
- D. CEQA. CEQA shall mean California Public Resources Code Section 21000-21177, commonly referred to as the California Environmental Quality Act, and Sections 15000-15387 of Chapter 3, Division 6, Title 14 of the California Code of Regulations, commonly referred to as the CEQA Guidelines.
- E. City Arborist. City Arborist shall mean the Arborist for the City of Elk Grove, who shall be an ISA-certified arborist.
- F. Critical Root Zone (CRZ). Critical Root Zone shall mean a circular area around a tree with a radius measured to the tree's longest existing dripline radius plus one (1' 0") foot.



- G. **Critical Tree Disease:** Critical Tree Disease shall mean any tree disease, identified by the City Arborist, as a severe threat (i.e., likely to result in the death of the tree) to trees in Elk Grove including but not limited to Dutch Elm Disease and Sudden Oak Death.
- H. **Crown.** Crown shall mean the upper part of a tree, measured from the lowest branch, including all the branches and foliage.
- I. **dbh.** Dbh shall mean the diameter at breast height is the diameter of a tree measured at four and one-half (4' 6") feet above the ground while standing on the high side of the tree. The diameter may be calculated by use of the following formula:
- $$\text{diameter} = \text{circumference} / 3.142$$
- J. **Development Projects.** Development project shall mean a project that must be approved by one of the following approving bodies: City Council, Planning Commission, or Planning Director. Development projects shall include, but are not limited to: Design Review, Tentative Subdivision Map or Tentative Parcel Map, a rezone, a variance, or a conditional use permit.
- K. **Dripline.** Dripline shall mean an area delineated by projection of the periphery of the crown of a tree down to the ground surface.
- L. **Dripline radius.** Dripline radius shall mean a radius equal to the horizontal distance from the trunk of the tree to the end of the longest branch and is not the same as the critical root zone.



- M. Grading. Grading shall mean, as described in the building code, the act or result of digging, excavating, transporting, spreading, depositing, filling, compacting, settling, or shaping of land surfaces and slopes, and other operations performed by or controlled by human activity involving the physical movement of rock or soil.
- N. Landmark Tree. Landmark Tree shall mean those trees identified in EGMC Section 19.12.030 (Landmark Trees)
- O. Secured Tree. Secured Tree shall mean those trees identified in EGMC Section 19.12.050 (Secured Trees).
- P. Tree Permit. A Tree Permit is an authorization by the City for the removal, pruning, or work in the critical root zone of a tree, issued pursuant to this chapter.
- Q. Tree Permit Work. Tree Permit Work shall mean work for which a Tree Permit is required as described in EGMC Section 19.12.070.
- R. Trees of Local Importance. Trees of Local Importance shall mean those trees identified in EGMC Section 19.12.040 (Trees of Local Importance).

**Article 2**  
**Types of Trees**

**19.12.030 Landmark Trees**

- A. Landmark Tree Generally. A Landmark Tree is a tree that has been determined and designated, by resolution of the City Council, to be of high value to the community because of its species, size, age, form, historical significance, or some other professional criterion.
- B. Process for Designating a Landmark Tree.

1. Any person may submit a proposal to designate a tree as a Landmark Tree. Proposals shall be submitted to and reviewed by the Planning Director. The Planning Director shall route the application to the City Arborist for review and comment. Upon review and recommendation by the Planning Director and City Arborist, the proposal shall be submitted to the City Council for review and action.
  2. If a tree proposed as a Landmark Tree is located on private property and the property owner is not the person submitting the proposal, the application shall be routed to the property owner for their review and comment.
  3. The City Council may only approve designating a tree(s) as a Landmark Tree if the property owner has given their consent to the designation.
- C. Criteria for Landmark Tree. A tree may be designated a Landmark Tree if it meets any of the following criteria:
1. The tree is an outstanding specimen of a desirable species;
  2. The tree is one of the largest or oldest trees in the City;
  3. The tree is of historical interest;
  4. The tree is of distinctive form; or
  5. The tree is an unusual species, significant grove, or is otherwise unique.
- D. Benefits of Landmark Tree Designation. Owners of property upon which a Landmark Tree is located are eligible to receive benefits for the care and maintenance of their Landmark Tree. Typical benefits may include:
1. Discounts by participating local contractors and arborists for work on Landmark Trees. The City does not guarantee that discounts will be given in all cases but may work with Landmark Tree owners in securing a contractor discount on an individual basis.
  2. Owners shall receive a resolution of appreciation from the City Council.
  3. Free consultation and advice from the City Arborist for the Landmark Tree.
- E. Removal of Landmark Tree Designation. The designation of a tree as a Landmark Tree may be removed based upon the following process:
1. If the Landmark Tree is located on private property, the property owner shall submit a request for removal of Landmark Tree designation to the Planning Director.
  2. If the Landmark Tree is located on City property or within the public right of way, the Public Works Director shall submit a request for removal of Landmark Tree designation to the Planning Director.
  3. The Planning Director shall review all requests for removal of Landmark Tree designation and route the request to the City Arborist for review and recommendation. The City Arborist shall prepare a report identifying the

health and character of the Landmark Tree. The Planning Director shall then prepare a report and recommendation for the City Council.

4. The City Council shall consider the recommendation of the Planning Director and City Arborist and take action to either retain or remove the Landmark Designation of a tree. Removal of Landmark Tree status shall be completed through adoption of a resolution of the City Council.

#### **19.12.040 Trees of Local Importance**

For purposes of this chapter, the following species of trees with a diameter at breast height of six (0' 6") inches or greater, or multi-trunked trees with a combined diameter at breast height of six (0' 6") inches or greater, are considered Trees of Local Importance:

- A. Coast Live Oak (*Quercus agrifolia*);
- B. Valley Oak (*Quercus lobata*);
- C. Blue Oak (*Quercus douglasii*);
- D. Interior Live Oak (*Quercus wislizenii*);
- E. Oracle Oak (*Quercus X moreha*);
- F. California sycamore (*Platanus racemosa*); and
- G. California black walnut (*Juglans hindsii*).

#### **19.12.050 Secured Trees**

Secured Trees shall be all of the following:

- A. A Tree of Local Importance retained during the course of review and approval of a discretionary development project, inclusive of the environmental review process as required by CEQA; and
- B. Those trees planted as a result of a discretionary development project to satisfy a mitigation requirement under this chapter, an approved or certified CEQA document, or other regulation.

#### **19.12.060 Trees in the Right of Way or on City Property**

Trees in the Right of Way or on City Property shall be those trees that are located within the public right of way, within right-of-way easements owned by the City, or on property owned by the City.

### **Article 3** **Tree Permit**

#### **19.12.070 Work Requiring a Tree Permit**

No person shall conduct work within the critical root zone, cut down, remove, top, or relocate any Landmark Tree, Tree of Local Importance, Secured Tree, or Tree in the Right of Way or on City Property unless a valid Tree Permit has been approved



pursuant to the procedures contained in EGMC Sections 19.12.090 through 130. Exemptions to this requirement are provided in EGMC Section 19.12.080.

#### **19.12.080 Exemptions from Tree Permit Requirements**

The following are exemptions from Tree Permit Requirements:

- A. Trees of Local Importance when not part of a discretionary development project;
- B. Work on trees within parks, parkways, and public recreation easements owned, leased, or operated by the Cosumnes Community Services District;
- C. Removal and pruning work by utility providers for all types of trees other than Landmark Trees; and
- D. In case of emergency caused by the tree being in a hazardous or dangerous condition requiring immediate action for the safety of human life or buildings or structures, such tree may be removed by permission of the City Arborist during normal working hours or by the Public Works department at all other times.

#### **19.12.090 Application Procedure and Permit Processing**

##### **A. Application Procedure**

- 1. Generally. When a Tree Permit is required by this Chapter, the person or property owner desiring to complete the work shall make an application for a Tree Permit to the Planning Department on a form provided by the City. The application form shall be accompanied by the following information so that the City may adequately review the request. The application may cover one or more trees.
  - a. A brief statement of the reasons for the proposed work;
  - b. Consent of the owner of record of the land on which the proposed activity is to occur;
  - c. A tree survey with the accurate location, number, species, size (dbh), and approximate age (if known) of the tree or trees subject to the application;
  - d. If the project involves other discretionary development, then this survey must be part of the total development plan and must also describe any tree or trees which could be affected by the proposed development accurate trunk locations shall be indicated on all construction plans;
  - e. Payment of any permit fee or deposit shall be authorized by City Council resolution; and
  - f. Any other pertinent information requested by the City Arborist.
- B. Tree Removal as Part of a Development Project. When a development project proposes the removal of trees, no separate application for a Tree Permit shall be required as part of the application for the development project. However, all the

information required under EGMC Section 19.12.090(A) must be included with the development project application and no trees shall be authorized for removal until:

- a. The entitlement has been approved; and
- b. City staff has field-verified that proposed tree removal is consistent with the approved plan. It shall be the responsibility of the applicant to contact the City for field verification prior to tree removal.

C. **Approving Authority.** The designated approving authority for Tree Permits shall be as provided below:

1. **Tree Located on Private Land and Not Part of a Development Project.** For Tree Permit Work on privately owned land and not in conjunction with a discretionary development project, the Planning Director shall be the designated Approving Authority. The Planning Director shall make a decision on the Tree Permit application after a recommendation has been provided by the City Arborist.
2. **Tree Located on Private Land and Part of a Development Project.** For Tree Permit Work that is part of a discretionary development project, the Approving Authority shall be the same as the approving body for the relevant land use entitlement(s). The approving body shall make a decision after a recommendation from the City Arborist or City staff as a part of the overall development project recommendation.
3. **Tree Located on City-Owned Land.** For Trees in the Right of Way and on City Property, the Planning Director shall be the designated Approving Authority. The Planning Director shall make a decision on the permit after a recommendation has been provided by the City Arborist and the Public Works Director.

D. **Permit Process**

1. Except where otherwise provided by this Chapter, a Tree Permit shall be exercised within twelve (12) months from the date of approval, or other time limit established through a concurrent development project approval. Time extensions, for up to a total of two (2) additional one (1) year terms, may be granted in compliance with the following provisions. A Tree Permit not exercised within its time limits shall expire in compliance with EGMC Chapter 23.18 (Implementation, Time Limits, and Extensions).
  - a. **Time of Filing.** The applicant shall file a written request for an extension of time with the Planning Director before expiration of the permit, together with the required filing fee.
  - b. **Evidence to be provided.** The Director shall determine whether the applicant has made a good faith effort to exercise the permit. The burden of proof is on the applicant to establish, with substantial evidence, that circumstances beyond the control of the applicant

(e.g., demonstrated financial hardship, poor weather during periods of planned construction, etc.) have prevented exercising the permit.

- c. Action on extension request. A Tree Permit may be extended as follows for no more than two (2) additional one (1) year periods beyond the expiration of the original approval, provided that the Approving Authority first finds that there have been no changes in the conditions or circumstances of the site or project such that there would have been grounds for denial of the original project.
  - i. Planning Director's Action. Upon good cause shown, the first extension may be approved, approved with modifications, or disapproved by the Planning Director, whose decisions may be appealed to the Planning Commission, in compliance with EGMC Section 19.12.130 (Appeals).
  - ii. Planning Commission Action. One (1) subsequent extension may be approved, approved with modifications, or disapproved by the Planning Commission, whose decisions may be appealed to the City Council in compliance with EGMC Section 19.12.130 (Appeals).
2. If a permit is denied, the Planning Director shall provide written notification, including the reasons for denial, to the applicant.
3. It shall be the responsibility of the person conducting the permitted work to have the Tree Permit or a copy of the conditions of approval imposed by the approving body at the tree removal site.
4. The permit, or the conditions of approval granted by the approving body, shall entitle the applicant to conduct the approved work on the tree(s) identified under the permit. All other work outside the scope of the approved permit shall be considered a violation of this Chapter.

#### **19.12.100 Arborist Review**

Prior to the consideration of a request for tree removal by the designated Approving Authority, the City Arborist shall prepare an Arborist Report paid for by the project applicant. The report shall identify the basis, if any, for supporting the removal of the tree(s). The Arborist Report shall include an analysis of the following factors:

- A. The condition of the tree with respect to disease, general health, damage, structural integrity, and whether or not the tree acts as a host for an organism which is parasitic to another species of tree which is in danger of being exterminated by the parasite;
- B. The number of existing trees on the subject property, on adjacent property, and immediately proximate to the subject tree(s) as deemed relevant by the City Arborist, and the effect of the tree removal upon public health, safety, prosperity of surrounding trees, visual impact, and general welfare of the area;

- C. Age of tree, specifically with regard to whether or not removal of the tree would encourage healthier, more vigorous growth of other trees in the area;
- D. The number of healthy trees that a given parcel of land will support, with and without the proposed development;
- E. The effect of tree removal on soil stability/erosion, particularly near water courses, drainage ditches, or on steep slopes, or the effect on runoff interception;
- F. The potential for the tree to be a public nuisance, or interfere with utility service, as well as its proximity to existing buildings and structures;
- G. Present and future shade potential with regard to solar heating and cooling;
- H. Identification of alternatives that would allow for the preservation of the tree(s) proposed for removal; and
- I. Any other information the City Arborist finds pertinent (e.g., site conditions, other vegetation).

**19.12.110 Decision Criteria and Findings**

- A. Review by Designated Approving Authority. The approving authority shall determine, after preparation of the Arborist Report and a recommendation by the City Arborist, whether or not the tree(s) cannot or should not be retained. The determination of the approving authority in granting or denying a Tree Permit for tree removal shall, at a minimum, be based upon the factors analyzed in the Arborist Report.
- B. Findings for Permit Issuance. The designated Approving Authority shall make at least two (2) of the following findings as part of the approval of a Tree Permit for tree removal:
  - 1. For development projects, every effort has been made to integrate the existing tree(s) into project design, including the use of Minor Deviations.
  - 2. The effect of the removal of the tree will not negatively impact the health, safety, and prosperity of surround trees, or the aesthetics and general welfare of the area.
  - 3. The tree presents a threat to public health and safety and must be removed.
- C. Findings for Permit Denial. The designated Approving Authority shall make all of the following findings as part of the denial of a Tree Permit for tree removal:
  - 1. Removal of the tree is inconsistent with the standards for tree removal as provided in EGMC Section 19.12.110; and
  - 2. The denial of the permit for tree removal will not unreasonably compromise the owner's rights to enjoy and develop the property.

**19.12.120 Mitigation for Tree Loss**

As part of the approval of a Tree Permit for removal of a tree, the designated Approving

Authority shall require mitigation for the loss of the tree consistent with Article 4 (Mitigation Standards) of this Chapter. The requirement for mitigation may be waived under those circumstances provided in EGMC Section 19.12.180 (Alternative Mitigation Requirements).

#### **19.12.130 Appeals**

The decision of the designated Approval Authority shall be final unless an appeal is filed in compliance with EGMC Section 23.14.060 (Appeals).

### **Article 4** **Mitigation for Tree Loss**

#### **19.12.140 Mitigation Required**

When mitigation for tree loss is required by this Chapter or through the CEQA process, mitigation shall be provided consistent with this Article.

#### **19.12.150 Mitigation Standards**

When tree removal is authorized as part of issuance of a valid Tree Permit, mitigation for the loss shall be provided at a ratio of one new inch dbh of tree for each inch dbh lost (1:1 ratio), unless an alternative mitigation is approved by the City as provided in EGMC Section 19.12.180 (Alternative Mitigation Requirements). The applicant for the Tree Permit shall prepare a Tree Mitigation Plan for review and approval by the City Arborist. Only the mitigation authorized under an approved Mitigation Plan shall be used.

#### **19.12.160 Mitigation Options**

Unless an alternative mitigation is approved by the City as provided in EGMC Section 19.12.180 (Alternative Mitigation Requirements), the City allows all of the following mitigation options, subject to review and approval by the City Arborist, as part of a Tree Mitigation Plan. Mitigation measures or conditions of approval on a project, as imposed by the designated Approving Authority, may specify which options are available to an applicant.

- A. On-site or off-site replacement. The plan shall specify where the tree(s) shall be planted and how the tree(s) shall be monitored and maintained for a minimum of five years. The City may require the establishment of a performance bond or other surety as a way to ensure that the replacement trees survive for the minimum establishment period as provided in EGMC Section 19.12.190. The City will allow the use of on-site trees planted under a Mitigation Plan as a way to meet any other on-site landscaping requirement, including parking lot shading, street landscaping, and street trees on residential lots.
- B. Payment of an in-lieu fee as adopted by Resolution of the City Council. The applicant may pay an in-lieu fee for the loss of the tree(s) at a rate established by the City Council. Such monies shall be deposited in the Tree Preservation Fund as described in EGMC Section 19.12.220.

- C. Credit for existing trees smaller than when a permit is required. An applicant may be entitled to mitigation credit when they preserve species of trees that are listed in EGMC Section 19.12.040 (Trees of Local Importance) but are smaller than the size threshold defined in EGMC Section 19.12.040 (e.g., less than six (0' 6") inches dbh). The City Arborist shall make the determination after reviewing the location of the tree(s), the quality of the environment (both pre- and post-project) in which the tree(s) is located, potential impacts to the tree(s) from proposed development, and other relevant factors that the City Arborist deems relevant to the long-term viability of the tree(s). If approved for credit, retained trees shall receive credit at a rate of one (0' 1") inch dbh per tree with a two (0' 2") inch minimum credit. The City may require the establishment of a performance bond or other surety as a way to ensure that the tree(s) survive for the minimum establishment period as provided in EGMC Section 19.12.190.
- D. On-site or off-site relocation, subject to approval of a relocation plan by the City Arborist. The relocation plan shall include specific provisions detailing how the tree will be moved, where it will be moved to, and how the tree will be monitored and maintained for a minimum of ten (10) years. The City may require the establishment of a performance bond or other surety as provided in EGMC Section 19.12.190 to ensure that the tree becomes well established.

**19.12.170 Mitigation Equivalents**

- A. Except when funded through the Tree Preservation Fund, trees planted as mitigation shall be of an equivalent species as those being removed. For instance, a Tree of Local Importance shall be replaced with another Tree of Local Importance. Landmark Trees shall be replaced with a species or species to the satisfaction of the City Arborist, with consideration given to species diversity and ensuring that the right tree is planted in the right location.
- B. The following equivalent sizes shall be used whenever new trees are planted (either on-site or off-site) under a Mitigation Plan:
  - 1. A one-gallon container or seedling-sized containerized tree = 1 inch dbh
  - 2. A 15-gallon container = 1 inch dbh
  - 3. A 24-inch box = 2 inch dbh
  - 4. A 36-inch box = 2 inch dbh
  - 5. A 60-inch box = 2 inch dbh
  - 6. A 72-inch box = 2 inch dbh

**19.12.180 Alternative Mitigation Requirements**

- A. Authority and Grounds for Alternative. The designated Approving Authority may allow for an alternative mitigation standard than that otherwise required by this article as required under this Section, provided the tree(s) is being removed because:

1. The tree is diseased, as diagnosed by the City Arborist, and is not treatable;
2. The tree is causing or has a high degree of probability to cause significant property damage (e.g., damage to a building foundation) ; or
3. The tree is or has a high degree of probability to be a hazard to the public health and safety (e.g., likely to fall into the roadway or onto a habitable structure).

The simple proximity of a tree to a habitable structure or roadway shall not, in and of itself, be grounds for a waiver of the mitigation requirement. Rather, the tree must, in the opinion of the City Arborist, be exhibiting indications that it is likely to fall in the direction of the structure or roadway.

- B. **Alternative Mitigation Required.** In granting an alternative to the mitigation requirement, the designated Approving Authority shall require that the applicant mitigate for the loss of the tree by requiring that a new tree (minimum 15-gallon container) be planted in place of the removed tree unless the City Arborist determines that there is no feasible space remaining on the project property for a new tree. The species and final planting location shall be subject to review and approval of the City Arborist to ensure, to the greatest degree possible, that the new tree will not create a similar circumstance in the future.
- C. **Findings for Granting Alternative Mitigation.** The designated Approving Authority, in granting an Alternative Mitigation, shall make the following finding:
  1. The Alternative Mitigation is being granted because the tree is either a) diseased, b) has a high degree of probability to cause significant property damage, or c) has a high degree of probability to be a hazard to the public health and safety.

#### **19.12.190 Replanting Security**

- A. Replanting security shall be required for any Tree Mitigation Plan excluding payment of an in-lieu fee. The purpose of such security shall be to guarantee the applicant's compliance with conditions of approval and City provisions regarding tree protection and preservation. Security may also be required at the discretion of the approving body to insure the completion of any additional work specified as a condition of permit approval or other approvals.
- B. The security shall be in the amount of one hundred (100%) percent of the estimated cost of the required work. The applicant shall include the cost estimate as part of the Tree Mitigation Plan for City Arborist review and approval. The terms and conditions of the security shall be reviewed and approved by the Planning Director prior to approval of the Tree Mitigation Plan.
- C. The security may be in the form of a letter of credit, cash deposit, a combination thereof, or other acceptance method of security by the City and shall be approved by the City Attorney.

- D. Security posted on actual work required shall be maintained for a minimum of five (5) years. The City may require additional length of security of up to ten (10) years when larger trees are being planted and/or site conditions warrant.
- E. Any interest gained on security posted by requirement of the City shall accrue to the applicant or his or her designee.

**Article 5**  
**Development Control Measures**

**19.12.200 Development Control Measures**

The approving authority may mandate any or all of the following control measures to mitigate damage to trees protected through new development project approval:

- A. A circle with a radius measurement from the trunk of the tree to the tip of its longest limb plus one (1' 0") foot shall constitute the critical root zone of all trees to be retained and all portions of off-site tree driplines that extend into the site, and shall not be cut back in order to change the dripline. Removing limbs which make up the driplines does not change the protected zones.
- B. Chain link or City approved barrier shall be installed one (1' 0") foot outside the critical root zone of the on-site tree(s) to be retained and all portions of off-site tree(s) critical root zone that extend onto the site, prior to initiating project construction, in order to avoid damage to the trees and their root systems. The barrier around a tree's critical root zone may be moved to allow building construction when such encroachment has been previously authorized. The new barrier locations shall be four (4' 0") feet outside the structure wall and/or driveway location. Orange plastic netting is not a permitted barrier type.
- C. All driveways which pass through the critical root zone of the on-site trees to be retained and all portions of off-site tree driplines which extend on the site shall be constructed such that the entire driveway section is placed directly above existing grade. No excavation or scarification for driveway construction shall be allowed within the critical root zone except as approved by the City Arborist.
- D. Any pruning of retained trees shall be supervised by a certified arborist and shall be completed to the most current ISA standards ("Tree Pruning Guidelines") and ANSI A300 standards. Branch and limb pruning shall be limited to that which has been deemed necessary in order to correct a safety hazard, structural defect, crown cleaning, or arborist recommended pruning in the tree. Pruning due to canopy encroachment by buildings shall be limited to the minimum amount needed to safely accommodate the structure while still maintaining the tree.
- E. All trees on site shall be pruned, as per arborist City recommendations, prior to starting any site improvements. Any pruning of a tree shall be supervised by a certified arborist.
- F. No signs, ropes, cables (other than those which may be recommended by a certified arborist to provide limb support) or any other item shall be attached to



the on-site trees to be retained and all portions of off-site tree driplines which extend onto the site.

- G. No vehicles, construction equipment, mobile home/office, supplies, materials or facilities shall be driven, parked, stockpiled or, located within the dripline area of the on-site trees to be retained and all portions of the off-site tree driplines which extend onto the site. No tree toxic materials shall be dumped on the project site (e.g., gasoline, herbicide, salt).
- H. No grading (grade cut or fills) shall be allowed within the critical root zone of the on-site trees to be retained and all portions of off-site trees which extend onto the site with the exception of approved encroachment areas on the Final Development Plans. If, in the opinion of the City Arborist, the impact of permitted grading in the critical root zone is severe, then the affected tree shall be retained on-site but determined lost, and mitigation as required by the approving body shall be imposed.
- I. No trenching shall be allowed within the critical root zone of the on-site trees to be retained and all portions of the off-site tree driplines which extend onto site. If it is absolutely necessary to install underground utilities within the dripline of the tree, the utility line shall be bored or drilled under the direct supervision of a certified arborist.
- J. Landscaping beneath the on-site trees to be retained and all portions of off -site tree driplines which extend on the site shall be consistent with ISA recommended provisions for plantings under trees. The only plant species which shall be planted within the driplines of trees are those which are tolerant of the natural semiarid environs of the trees. Limited drip irrigation approximately monthly during late spring, summer and early fall is recommended for understory plants. Non-plant materials such as river gravel, woodchips, etc, may be used in limited cases upon approval by the City Arborist.
- K. No in-the-ground sprinkler or irrigation system shall be installed in such a manner that irrigates the ground within the critical root zone of the on-site trees to be retained and all portions of off-site tree driplines which extend onto the site. An "above ground drip irrigation system" with drip lines and emitters placed on natural grade will be permitted under tree driplines. No trenching for irrigation lines will be permitted under critical root zones.
- L. Prior to installation of new asphalt, weed control chemicals shall not be applied where they can leach into the dripline of any protected tree(s).
- M. During construction, the frequency and amount of water for protected trees shall not differ from that received prior to construction, unless otherwise authorized by the City Arborist.
- N. Paving within the critical root zone of trees should be stringently minimized and only allowed under approval by the City Arborist. When pavement is absolutely necessary in the determination of the Public Works Director, porous material shall be used, or alternative design solutions may be utilized as approved by the

City Arborist.

**Article 6**  
**Administration and Enforcement**

**19.12.210 Application Fees**

The City Council, by resolution, shall establish a fee to cover the expenses of the application and appeal process.

**19.12.220 Tree Preservation Fund**

A Tree Preservation Fund is established for the City of Elk Grove for the purposes of furthering tree maintenance and tree replacement. The monies received in lieu of replacement of removed trees shall be forwarded to the City Treasurer for deposit in the Tree Preservation Fund. Except as provided in this section, under no circumstances shall the funds collected by the City Treasurer for the Tree Preservation Fund be directed to any other fund to be used for any other purposes other than for tree planting (including but not limited to tree support such as installation of driplines and drainage) and preservation programs (including the creation of new woodland areas, under plantings as part of a tree planting program, and other planting activities that support the purposes of this Chapter), public education programs regarding trees, and other activities in support of the administration of this Chapter. Tree Preservation Fund monies may be directed by the City Council to non-profit organizations for the implementation of programs consistent with the purposes of the Tree Preservation Fund.

**19.12.230 Violations**

- A. Whenever any construction or work is being performed contrary to the provisions of this Chapter, the Code Enforcement Department may issue a written notice to the responsible party to stop work on the project on which the violation has occurred or upon which the danger exists.
- B. Violations of this Chapter shall be enforced as provided in EGMC Chapter 1.08 (Enforcement of Code).

**Section 5: No Mandatory Duty of Care.**

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

**Section 6: Severability.**

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City

Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

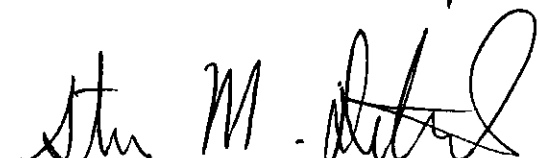
Section 7: Savings Clause.

The provisions of this chapter shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal or amendment shall take affect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and affect to all intents and purposes as if such ordinance or part thereof so repealed or amended had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or amended by that provisions of the Elk Grove Municipal Code shall be discharged or affected by such repeal or amendment; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or amended.


Section 8: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

**ORDINANCE:** 6-2011  
**INTRODUCED:** February 9, 2011  
**ADOPTED:** February 23, 2011  
**EFFECTIVE:** March 25, 2011

  
\_\_\_\_\_  
STEVEN M. DETRICK, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
SUSAN COCHRAN, CITY ATTORNEY

Date signed: February 28, 2011

**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 6-2011**

**STATE OF CALIFORNIA            )**  
**COUNTY OF SACRAMENTO        )**        **ss**  
**CITY OF ELK GROVE             )**

***I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on February 9, 2011 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on February 23, 2011 by the following vote:***


**AYES :        COUNCILMEMBERS:        *Detrick, Cooper, Davis, Hume, Scherman***

**NOES:        COUNCILMEMBERS:        *None***

**ABSTAIN:    COUNCILMEMBERS:        *None***

**ABSENT:     COUNCILMEMBERS:        *None***

***A summary of the ordinance was published pursuant to GC 36933(c) (1).***

  
**Jason Lindgren, City Clerk  
City of Elk Grove, California**