

Chapter 12.24

PLANTING, ALTERATION, REMOVAL, OR MAINTENANCE OF TREES*

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* Prior ordinance history: Ords. 462 and 522.

12.24.010 Introduction and purpose. The Town of Ross recognizes the importance of trees to the community's health, safety, welfare, and tranquility. Ross is acclaimed widely for the beauty and grandeur of its urban forest, and much of the town's admired and valued ambiance derives from its arboreal canopy. In addition, trees offer windbreaks, provide erosion control, reduce runoff, act as filters for airborne pollutants, reduce noise, provide privacy, release oxygen, and prevent landslides through their extensive root systems. All trees provide these functions for the property on which they are growing. Trees of significant size and maturity and areas with extensive tree cover perform these functions for all persons living in their vicinity. These resources must be prudently protected and managed.

This chapter is adopted to accomplish the following purposes:

- (1) To maintain trees in the community in a healthy and safe condition through good arboricultural practices;
- (2) To provide reasonable regulations for the maintenance and removal of trees on town-owned property;
- (3) To provide reasonable regulations for the alteration or removal of trees on privately owned parcels;
- (4) To establish and maintain appropriate diversity in tree species and age classes to provide a stable and sustainable urban forest;
- (5) To promote and maintain the aesthetic values of the community in general for the benefit of those who currently reside in Ross and as a legacy to future residents. (Ord. 568(part), 2002).

12.24.020 Definitions. For the purpose of this chapter, the following definitions apply:

- (1) "Alter," means to take an action that diminishes the health and vigor of a tree. "Alter" includes, but is not limited to, excessive or improper pruning of a tree, grade changes around or near a tree, excessive irrigation of a tree, trenching in the root zone of a tree, and excessive use of herbicides, insecticides, or fungicides. "Alter" does not include: periodic trimming, shaping, thinning, or pruning of a tree to preserve or protect its health, growth, or appearance, in accordance with accepted arboricultural standards and practices and involving a removal of no more than 25% of an individual tree's crown consistent with the Approved American National Standard (ANSI) Pruning, Repairing, Maintaining, and Removing Trees and Cutting Brush – Safety Requirements and Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices (Pruning).
- (2) "Certified arborist," means a person who has been tested by, and is currently certified as, an "arborist" by the International Society of Arboriculture, or who is a member or registered member of the American Society of Consulting Arborists.
- (3) "Diameter," means the average diameter of the trunk of a tree measured at four feet and six inches (4'-6") above the average ground level immediately surrounding the trunk of the tree.
- (4) "Improved parcel," means any parcel in Ross which has a structure on it suitable for human habitation.
- (5) "Native tree," means a tree native to those lands that now constitute the town of Ross.
- (6) "Non-intrusion zone," means the area of ground surrounding the trunk of a tree within which certain activities may be restricted or prohibited in order to protect the tree. The table below shall serve as a general guideline for determining non-intrusion zones; the precise non-intrusion zone shall be determined by the project arborist and shall reflect individual site conditions.

| <u>Trunk Diameter (inches)</u> | <u>Protected Distance (radius in feet)</u> |
|--------------------------------|--|
| 4" | 6' |
| 6" | 10' |
| 12" | 12' |
| 18" | 16' |
| 24" | 18' |
| 30" | 20' |
| 36" | 24' |
| 42" | 28' |
| greater than 48" | 32' |

- (7) "Project arborist," means a certified arborist retained by the applicant to report on and oversee the protection of trees on a site subject to a tree protection plan.
- (8) "Protected tree," means any tree located within twenty-five feet (25') of the front or side yard property line or within forty feet (40') of the rear yard property line of any parcel, with such tree having a diameter greater than eight inches (8").
- (9) "Remove," means the cutting down of a tree or the relocation of a tree in a manner not in accordance with accepted arboricultural practices.
- (10) "Replacement tree list," means the advisory document that lists tree species which are suitable for new planting on town property or for replacing existing town trees.

(11) “Significant tree,” means any tree having a single trunk diameter greater than twelve inches (12”), or any tree designated to be preserved on plans approved by the town council, or as a condition of approval of a project approved by the town council.

(12) “Specifications for tree work,” means those town standards maintained by the director of public works in consultation with the town arborist which both public and private parties must observe when spraying, pruning, or removing trees from town property

(13) “Tree,” means a perennial plant having a permanent, woody, self-supporting main stem or trunk ordinarily growing to a considerable height. As defined herein, a “tree” may include a shrub as well as a tree.

(14) “Tree planting specifications,” means the town’s standards maintained by the director of public works in consultation with the town arborist which must be followed when planting trees on town property.

(15) “Unimproved parcel,” means any parcel in Ross which does not have a structure on it suitable for human habitation. (Ord. 591 §§1, 2. 2005; Ord. 568 (Part), 2002).

12.24.030 Liability. Nothing in this chapter shall be deemed to impose any liability for damages or a duty of care and maintenance upon the town or upon any of its officers or employees. The person in possession of public property or the owner of any private property shall have a duty to keep the trees upon the property and under their control in a safe, healthy condition. Any person who feels a tree located on property possessed, owned, or controlled by them is a danger to the safety of themselves, others, or structural improvements on site or off-site shall have an obligation to secure the area around the tree or support the tree, as appropriate, to safeguard both persons and property from harm. (Ord. 568 (part), 2002).

12.24.040 Pruning, maintenance, and removal of trees on town property. The pruning, maintenance, and removal of all trees on town property shall be subject to the following provisions:

(1) All work performed on public trees, by either public staff or private contractor, shall be done in conformance with the Approved American National Standard A300 pruning standards and Z133.1 safety standards.

(2) Tree service contractors working on public trees must have on their staff a certified arborist or other qualified person approved by the director of public works. The arborist or other qualified person must certify that all work is performed in accordance with ANSI A300 pruning standards and Z133.1 safety standards.

(3) No public tree shall be altered or removed without a permit issued pursuant to Section 12.24.080.

(4) Any party violating these provisions shall be subject to the penalties in Section 12.24.130.

(5) In the event of an emergency, when such tree poses an imminent threat to life or property, the director of public safety or his designee may issue an on-the-spot tree removal permit in the absence of the director of public works.

(6) In the event of noncompliance with subsection (2) of this section, the director of public works may hire at the applicant’s expense a certified arborist or other qualified person to oversee tree work.

12.24.050 Line-clearing work. The following provisions are designed to aid in line clearing to protect the trees from unwarranted damage by poor pruning practices.

(1) The director of public works shall be notified at least three working days before any line-clearing commences. The only allowed exception to this requirement is in the event of an emergency.

(2) The utility or its contractor must have on its staff a certified arborist, or other qualified person approved by the director of public works, to ensure professional arboricultural practices consistent with ANSI A300 and Z133.1 safety standards and to observe and certify that the line-clearing work done meets the town's specifications.

(3) No tree shall be altered or removed without a permit issued pursuant to Section 12.24.080.

(4) Violation of these provisions shall subject the offender to those penalties provided in Section 12.24.130.

(5) In the event of noncompliance with subsection (2) of this section, the director of public works may hire at the applicant's expense a certified arborist or other qualified person to oversee the tree work. (Ord. 568 (part), 2002).

12.24.060 Alteration or removal of trees on unimproved parcels. The following provisions apply to the alteration or removal of trees on unimproved parcels:

(1) It is unlawful for any person to alter or remove, or cause to be altered or removed, any tree on an unimproved parcel in Ross without first obtaining a permit from the town planner.

(2) Any person desiring to alter or remove a tree on an unimproved parcel must file for a permit following the application procedure as described in Section 12.24.080.

(3) In the event of an emergency, when such tree poses an imminent threat to life or property, the director of public safety or their designee may issue an on-the-spot tree alteration or removal permit in the absence of the town planner.

(4) Any person who alters or removes a tree, or causes a tree to be altered or removed in violation of the above restrictions shall be subject to those penalties provided in Section 12.24.130. (Ord. 568 (part), 2002).

12.24.070 Alteration or removal of trees on improved parcels. The following provisions apply to the alteration or removal of trees on improved parcels:

(1) No protected or significant tree shall be altered or removed without a permit.

(2) Any person desiring a tree alteration or removal permit must file for approval following the procedure as required by Section 12.24.080.

(3) In the event of an emergency, when such tree poses an imminent threat to life or property, the director of public safety or their designee may issue an on-the-spot tree alteration or removal permit in the absence of the town planner.

(4) Any person who alters or removes a tree, or causes a tree to be altered or removed, in violation of the above restrictions shall be subject to those penalties provided in Section 12.24.130. (Ord. 568(part), 2002).

12.24.080 Permits and appeals. Requests for tree alteration or removal permits made pursuant to Sections 12.24.040 and 12.24.050, 12.24.060 and 12.24.070 shall be made to the town planner.

(a) Application Content. Applications that propose tree alteration or removal shall include the following:

(1) The address of the property on which trees are proposed to be removed;

(2) The name and mailing address of the legal owner of the property;

(3) The species and diameter of each tree proposed to be removed;

(4) Justification for the removal of each tree proposed to be removed;

- (5) Proposed replacement trees and their locations;
- (6) A scaled plan showing parcel property lines, exact locations of the trees proposed to be removed keyed to the application form, the proposed locations of any replacement trees, and any additional information deemed necessary by the town planner. Each tree proposed to be altered or removed must also be physically marked on site;
- (7) The name of the contractor designated to do the tree work and their Town of Ross business license expiration date;
- (8) The signature of the legal owner of the parcel;
- (9) Payment of tree permit application fees as enacted by the town council.
- (b) Criteria for approval. A permit may be issued only if one or more of the following considerations are met:
 - (1) The alteration or removal is necessary due to disease, danger of falling, proximity to existing structures, or interference with utility services;
 - (2) The alteration or removal is necessary to allow the economic enjoyment of the property;
 - (3) The alteration or removal will not adversely impact the subject property or neighboring properties; nor result in significant erosion or the diversion of increased flows of surface water;
 - (4) The alteration or removal is necessary due to fire hazards;
 - (5) The alteration or removal represents good forestry practices;
 - (6) The applicant proposes suitable replacement trees at a ratio equal to or greater than that recommended in section 12.24.080 (d);
- (c) Additional criteria. Criteria for approval of a permit will be weighed against:
 - (1) The number, species, age, size, and location of existing trees in the area;
 - (2) The effect of the requested alteration or removal on shade areas;
 - (3) The effect of the requested alteration or removal on historic value;
 - (4) The effect of the requested alteration or removal on scenic beauty;
 - (5) The effect of the requested alteration or removal on the general welfare of the town as a whole.
- (d) Replacement tree. Where feasible, replacement trees shall be of a species native to those lands that now constitute the town of Ross. The town recommends replacement trees at the following ratios:
 - (1) One new tree for every tree proposed to be removed on parcels zoned R-1, R-1:B-6, R-1:B-7.5, R-1:B-10, R-1:B-15, C-L, C-C, and C-D;
 - (2) Three new trees for every tree proposed to be removed on parcels zoned R-1:B-20, R-1:B-A, R-1:B-5A, and R-1:B-10A.
- (e) In lieu fees. Where on-site replacement trees are not feasible, the applicant may instead make an in lieu payment to the town for provision of off-site trees at the ratio recommended in section 12.24.080 (d).
- (f) Appeal. Any staff decision on a tree removal permit may be appealed to the town council pursuant to the procedures set forth in Chapter 18.60. The filing of a notice of appeal shall automatically stay the issuance of any permit until determination by the council. (Ord. 591 §§3, 4, 2005; Ord. 568 (part), 2002).

12.24.083 Permit to be posted. During the full course of any activity associated with tree removal, relocation, or alteration requiring a tree permit, the property owner and tree contractor shall ensure that a copy of the town tree permit is posted on the subject property. The permit shall be posted adjacent to the main entry drive and must be clearly visible from the right-

of-way. Failure to post a copy of the tree permit as required herein may result in the issuance of a stop work order pursuant to the Building Code. (Ord. 591 §5, 2005).

12.24.085 Denial of incomplete or inactive applications. Consistent with state law, the town planner may administratively deny without prejudice any application which remains incomplete or inactive for a period of greater than ninety days, or is continued at the applicant's request for more than sixty days. (Ord. 584 §1, 2004).

12.24.090 Expiration. Failure to complete tree alteration or removal within six months from the date of approval will cause permit approval to expire without further notice. (Ord. 568 (part), 2002).

12.24.100 Tree protection plan. In order to protect trees during construction of a project and thereafter, and to maximize the chances of their subsequent survival, a tree protection plan shall be required. The tree protection plan shall include an arborist's report on existing conditions as well as a plan for tree protection during construction.

(a) When a Tree Protection Plan is Required. A tree protection plan shall be required as part of the materials submitted with applications for hillside lot review and hazard zone use permits. Tree protection plans may be required for subdivision, variances, demolition permits, design review, and/or building permit reviews at the discretion of the Planning Director.

(b) Submittal Requirements.

(1) An arborist's report shall provide the necessary information to determine the appropriate extent of tree preservation or protection and tree replacement requirements. The arborist's report shall clearly describe and evaluate in writing all significant trees on the property and all trees on neighboring properties that might be negatively impacted by the development. The report shall indicate the genus and species, shape, and trunk diameter of each tree, as well as its non-intrusion zone. The arborist's report shall indicate those trees that are proposed to be altered or removed and the reasons therefor.

(2). Tree delineations by trunk location keyed to the arborist's report, as well as an accurate outline of each tree's non-intrusion zone, must be shown on the project site plan or tentative map. Tree locations keyed to the arborist's report must also be included on every page of the development or improvement plans where any work is proposed within or near the non-intrusion zone of any protected or significant tree.

(c) Responsibility for tree protection during application review. The property owner and the person in control of the proposed development shall protect and preserve each tree situated within the site of the proposed development during the period the application for the proposed development is being considered by the town. Any person who alters or removes a tree, or causes a tree to be altered or removed without a tree removal permit shall be subject to those penalties provided in Section 12.24.130.

(d) Significant and protected trees. At the discretion of the town council, approved projects shall be subject to project design and construction requirements including, but not limited to, sub-sections (1) through (10), below. All applicable project design and construction requirements related to the protection of trees shall be implemented in accordance with International Society of Arboriculture guidelines, unless modified or waived by the town planner in consultation with the town arborist.

(1) Before the start of any clearing, excavation, construction, or other work on the site, or the issuance of a building or demolition permit, every significant and/or protected tree shall be securely fenced-off at the non-intrusion zone, or other limit as may be delineated in

approved plans. Such fences shall remain continuously in place for the duration of the work undertaken in connection with the development.

(2) If the proposed development, including any site work, will encroach upon the non-intrusion zone of a significant and/or protected tree, special measures shall be utilized, as approved by the project arborist, to allow the roots to obtain necessary oxygen, water, and nutrients.

(3) Underground trenching shall avoid the major support and absorbing tree roots of significant and/or protected trees. If avoidance is impractical, hand excavation undertaken under the supervision of the project arborist may be required. Trenches shall be consolidated to service as many units as possible.

(4) Concrete or asphalt paving shall not be placed over the root zones of significant and/or protected trees, unless otherwise permitted by the project arborist.

(5) Artificial irrigation shall not occur within the root zone of oaks, unless deemed appropriate on a temporary basis by the project arborist to improve tree vigor or mitigate root loss.

(6) Compaction of the soil within the non-intrusion zone of significant and/or protected trees shall be avoided.

(7) Any excavation, cutting, or filling of the existing ground surface within the non-intrusion zone shall be minimized and subject to such conditions as the project arborist may impose. Retaining walls shall likewise be designed, sited, and constructed so as to minimize their impact on significant and/or protected trees.

(8) Burning or use of equipment with an open flame near or within the non-intrusion zone shall be avoided. All brush, earth, and other debris shall be removed in a manner that prevents injury to the significant tree.

(9) Oil, gas, chemicals, or other substances that may be harmful to trees shall not be stored or dumped within the non-intrusion zone of any significant and/or protected tree, or at any other location on the site from which such substances might enter the non-intrusion zone of a significant and/or protected tree.

(10) Construction materials shall not be stored within the non-intrusion zone of a significant and/or protected tree.

(e) Authority of the town council to impose conditions. The town council, under its authority to approve, conditionally approve, or deny a project application, may, based on the certified arborist's report and the comments of the town arborist, modify the project site plan of a development, adopt conditions of approval, or take any other relevant action deemed necessary to preserve, protect, or replace existing trees on or adjacent to the site of a development.

Failure to comply with requirements or conditions of approval established by the council shall be considered a violation of the provisions of this chapter and shall be cause for the denial of a building permit or project final, and/or the application of those penalties provided in Section 12.24.130. (Ord. 591 §§6—8, 2005; Ord. 568 (part), 2002).

12.24.110 Funding. The town council, at its discretion, shall budget annually funds for the purpose of maintaining and improving the trees of the town and otherwise implementing the provisions of this chapter. (Ord. 568 (part), 2002).

12.24.120 Permit Fee. An application for a tree permit shall be accompanied by an application fee as shall be established by the town council by resolution. (Ord. 568 (part), 2002).

12.24.130 Violation- Penalties.

(a) Violation Constitutes a Nuisance. It is declared that any violation of the provisions of this chapter shall, in addition to any other remedy, constitute a public nuisance, and such nuisance may be abated as provided by law.

(b) Civil Penalties. Any person who alters or removes a tree in the town, causes a tree to be altered or removed, or fails to observe approved tree protection conditions in violation of the provisions of this chapter shall be held liable for compensation to the town in the amount of one thousand dollars (\$1,000) per day for each day the violation occurs. Such person shall include, but not be limited to, the property owner and the contractor removing the tree. A maximum civil penalty of one hundred thousand dollars (\$100,000) exclusive of administrative costs, attorney's fees and arborist fees, shall be assessed per incident lasting 100 days or more from the initial date of the violation until it is corrected. Any alteration or tree removal which results in a permanent tree loss, which therefore result in a violation exceeding 100 days in duration, shall be subject to the \$100,000 (one hundred thousand dollars) maximum penalty.

Any person violating this ordinance shall be notified in writing that the town council will hold a public hearing to establish the amount of the civil penalty. The council may accept the replanting of a comparable size and number of replacement trees, as determined appropriate by the town arborist, as correcting the violation. In such a case, the maximum civil penalty would be based on the number of days from date of the violation until the replanting date.

Unpaid compensation due to the town by a property-owner as a result of violation of the provisions of this chapter shall become a lien against the property on which the work is performed, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such special assessment. Any person violating this ordinance shall also be responsible for reimbursement to the town for its administrative, legal and arborist costs associated with the violation.

(c) Forfeiture of Business License. In addition to those penalties described in section 12.24.120 (b), any contractor who removes, relocates, or alters a tree in violation of the provisions of this chapter shall forfeit his or her Town business license for a period of two years from the date of the violation. (Ord. 568(part), 2002).