



Staff Report

Date: February 9, 2023

To: Mayor Kuhl and Council Members

From: Richard Simonitch, Public Works Director/Town Engineer

Subject: Adoption of Ordinance No. 720 Amending Ross Municipal Code Section 12.24 Planting, Alteration, Removal, or Maintenance of Trees (AKA the “Tree Ordinance”).

Recommendation:

It is recommended that the Town Council hold a public hearing to amend the “Tree Ordinance” in order to facilitate fire-resistant landscaping by waiving the second reading and adopting Ordinance No. 720 amending Ross Municipal Code (RMC) Section 12.24 by Title.

Background and discussion:

The proposed amendments to RMC Section 12.24 focus on a desire by the Town Council to facilitate the process of removing trees that are dead, dying, or of a known fire-prone species during the application for a Tree Alteration or Removal Permit (Tree Permit). The Town Council introduced Ordinance 720 at the January 12, 2023 meeting. At that meeting, the Town Council discussed the merits of adopting a shorter, more specific list of fire-prone tree species instead of the list of fire-prone species proposed by staff in the introduction of Ordinance 720 and as provided by Fire Safe Marin (FSM), a non-profit organization dedicated to reducing fire hazards in Marin County. The public hearing was opened, and no one wished to speak. The Town Council then closed the floor to public comment and voted unanimously to introduce Ordinance No. 720 by Title with a revised definition of “fire hazard” which removes the references to the FSM list and instead refers to a specific list of fire-prone trees based on the list used by the City of Larkspur, with the addition of bamboo species, and the inclusion of acacia trees regardless of tree height.

Ordinance 720 as proposed for adoption now defines a specific list of fire-prone tree species as any tree of the species known as acacia trees, bamboo, arborvitae, California bay, bishop pine, cedars, Coulter pine, cypress, Douglas fir, eucalyptus species (blue gum and red gum), false cypress, gray pine, junipers, knobcone pine, larch trees, Monterey pine, Scots pine, spruces, Torrey pine, and yew.

Environmental review (if applicable)

This action is categorically exempt from the California Environmental Quality Act.

Attachments

1. Ordinance No. 720
2. Section 12.24 of the Ross Municipal Code (amended) highlighting changes.

ATTACHMENT 1

TOWN OF ROSS

ORDINANCE NO. 720

AN ORDINANCE OF THE TOWN OF ROSS AMENDING THE ROSS MUNICIPAL CODE CHAPTER 12.24 TO UPDATE THE REGULATIONS GOVERNING THE PLANTING, ALTERATION, REMOVAL, OR MAINTENANCE OF TREES

The Town Council of the Town of Ross does ordain as follows:

SECTION 1: Section 12.24.020 of the Ross Municipal Code is amended and restated as follows:

“12.24.020 Definitions. For the purpose of this chapter, the following definitions apply. Words and phrases used in this chapter that are not specifically defined in this section shall be interpreted to give them the meaning they have in common usage and to give this chapter its most reasonable application:

(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 currently a member or registered consulting arborist 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, also called Diameter at Breast Height or DBH. If there are multiple stems below 4-1/2 feet, the diameter shall be the single largest branch (stem) at 4-1/2 feet; except, if only two stems are present, then the tree is considered to be forked and diameter shall be the measurement of the smallest trunk diameter below the fork.

(4) “Fire hazard” means a tree that has been designated for removal in writing by the local fire authority, or the tree is identified as any tree of the species known as acacia trees, bamboo, arborvitae, California bay, bishop pine, cedars, Coulter pine, cypress, Douglas fir, eucalyptus species (blue gum and red gum), false cypress, gray pine, junipers, knobcone pine, larch trees, Monterey pine, Scots pine, spruces, Torrey pine, and yew.

(5) “Improved parcel,” means any parcel in Ross which has a structure on it suitable for human habitation.

(6) “Native tree,” means a tree native to those lands that now constitute the town of Ross.

(7) “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'

(8) “Project arborist,” means a certified or registered consulting arborist retained by the applicant to report on and oversee the protection of trees on a site subject to a tree protection plan.

(9) “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"); and any tree planted as a replacement tree for a tree removed pursuant to this chapter or planted within a required yard setback area pursuant to a landscape plan approved by the town council.

(10) “Remove,” means the cutting down of a tree or the relocation of a tree in a manner not in accordance with accepted arboricultural practices.

(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) “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.

(13) “Tree appraisal,” means a monetary valuation of a tree prepared by a certified or registered consulting arborist according to the most recent edition of the “Guide for Plant Appraisal” published by the Council of Tree & Landscape Appraisers.

(14) “Unimproved parcel,” means any parcel in Ross which does not have a structure on it suitable for human habitation. (Ord. 659 (part), 2015; Ord. 591 §§1, 2. 2005; Ord. 568 (Part), 2002).”

SECTION 2: Section 12.24.080 of the Ross Municipal Code is amended and restated as follows:

“12.24.080 Tree Alteration or Removal Permits and appeals. The Public Works Director shall review and approve, conditionally approve, or deny a Tree Alteration or Removal Permit application if no other entitlements are required. The Public Works Director shall give written

notice to the applicant of his or her decision on the application within 30 days. The Public Works Director may refer an application directly to the Town Council for consideration.

(1) Application. An application for a Tree Alteration or Removal Permit shall be filed with the Public Works Department on forms prescribed by the Public Works Department, along with any plans or additional information required and the fee as established by a resolution of the Town Council. The Tree Alteration or Removal Permit application fee may be waived by the Public Works Director if the tree is determined to be a fire hazard, or if the tree is located in the public right-of-way. The application must include evidence supporting the findings required by this chapter and the following information:

- (a) The address of the property on which trees are proposed to be removed;
- (b) The name and mailing address of the legal owner of the property;
- (c) The species and diameter of each tree proposed to be removed;
- (d) Justification for the removal of each tree proposed to be removed including a certified arborist's report describing the tree's condition and structure, unless waived by the Public Works Director;
- (e) Proposed replacement trees and their locations;
- (f) 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 Public Works Director. Each tree proposed to be altered or removed must also be physically marked on site;
- (g) The name of the contractor designated to do the tree work and a copy of their current Town of Ross business license;
- (h) The signature of the legal owner of the parcel;

(2) Criteria for approval. A Tree Alteration or Removal Permit may be issued only if one or more of the following considerations are met:

- (a) The alteration or removal is necessary due to the condition of the tree with respect to its general health, damage, disease, danger of falling, proximity or damage to existing structures, or interference with utility services;
- (b) The alteration or removal is necessary to allow the economic enjoyment of the property, such as construction of improvements;
- (c) 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;
- (d) The alteration or removal is necessary due to the tree being identified as a fire hazard;
- (e) The alteration or removal represents good forestry practices such as, but not limited to, consideration of the number of healthy trees the site will support;

(3) Additional criteria. Criteria for approval of a Tree Alteration or Removal Permit will be weighed against:

- (a) The number, species, age, size, and location of existing trees in the area;
- (b) The effect of the requested alteration or removal on shade areas or solar access;
- (c) The effect of the requested alteration or removal on soil retention, water retention, and diversion or increased flow of surface water;

- (d) The effect of the requested alteration or removal on wildlife or creek habitat;
- (e) The effect of the requested alteration or removal on historic value;
- (f) The effect of the requested alteration or removal on scenic beauty;
- (g) The effect of the requested alteration or removal on the general welfare of the town as a whole.

(4) Replacement tree. Unless otherwise specified by the Public Works Director or Town Council, replacement trees shall be required at the following ratios:

(a) A tree in good or excellent condition and structure shall be replaced on a one-to-one trunk diameter basis. (Example: 1 21" dbh tree in good or excellent condition must be replaced with new trees totaling 21" trunk diameter);

(b) A tree in fair or marginal condition or structure shall be replaced on a three-to-one trunk diameter basis. (Example: a 21" dbh tree in fair or marginal condition must be replaced with new trees totaling 7" trunk diameter);

(c) A tree in poor condition or creating a hazard to a building and/or structure or is identified as a fire hazard, shall be replaced with 2 inches replacement trunk diameter.

Inches of replacement tree may be translated into standard nursery planting sizes using the following formulas:

24" box replacement tree = 2 inch replacement trunk diameter

36" box replacement tree = 3 inch replacement trunk diameter

48" box replacement tree = 4 inch replacement trunk diameter

If native species are removed, replacement trees shall be of a species native to those lands that now constitute the Town of Ross, or a non-native species approved by town staff based on specific site circumstances. Replacement trees should have the same mature size as the trees that have been removed, unless town staff recommends otherwise based on specific site circumstances. In any case, the replacement tree shall not be identified as a fire hazard. If there is a conflict between arborists regarding the condition or structure of a tree, the town arborist's decision shall control. The Town Council or Public Works Director may reduce the number of replacement trees or the tree replacement ratio, as applicable, if the reduction will not negatively impact the environmental functions and value of the urban forest or the aesthetic values of the community.

The applicant shall complete tree replacement within sixty (60) days of tree removal, unless the Town has approved a longer time. Failure to plant required tree replacement may subject the property owner to Administrative Penalties under Chapter 9.70 until the replacement trees are planted.

(5) Alternatives to tree replacement.

(a) In lieu fees and offsite replacement. If onsite tree replacement is not feasible or desirable due to physical constraints or lack of adequate space on site, fire safety requirements, or tree canopy separation requirements, the applicant may instead make an in lieu payment to the Town for provision of off-site trees equivalent to the trunk diameter required in Section 12.24.080(4) and related improvements, or for the addition or the replacement of trees or vegetation on public property, or if approved by the Public Works Director, the applicant may install any remaining replacement trees on other property located within the Town. The Town Council shall establish the amount of the in lieu fee by resolution.

(b) Landscape restoration or screening. The Public Works Director or the Town Council may consider other measures, both on private and/or public property, designed to mitigate loss of trees or vegetation, such as screening shrubs, native shrubs, groundcover and related improvements, if tree replacement is not feasible. In any case, the replacement vegetation shall not include a tree that has been identified as a fire hazard.

(6) Appeal. The applicant or any interested person may appeal a staff decision on a Tree Alteration or Removal Permit 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 Tree Alteration or Removal Permit until determination by the Town Council. (Ord. 686 (part), 2018; Ord. 659 (part), 2015; Ord. 591 §§3, 4, 2005; Ord. 568 (part), 2002)."

SECTION 3: Section 12.24.080 of the Ross Municipal Code is amended and restated as follows:

"12.24.080 Tree Alteration or Removal Permits and appeals. The Public Works Director shall review and approve, conditionally approve, or deny a Tree Alteration or Removal Permit application if no other entitlements are required. The Public Works Director shall give written notice to the applicant of his or her decision on the application within 30 days. The Public Works Director may refer an application directly to the Town Council for consideration.

(1) Application. An application for a Tree Alteration or Removal Permit shall be filed with the Public Works Department on forms prescribed by the Public Works Department, along with any plans or additional information required and the fee as established by a resolution of the Town Council. The application must include evidence supporting the findings required by this chapter and the following information:

- (a) The address of the property on which trees are proposed to be removed;
- (b) The name and mailing address of the legal owner of the property;
- (c) The species and diameter of each tree proposed to be removed;
- (d) Justification for the removal of each tree proposed to be removed including a certified Arborist report describing the tree's condition and structure, unless waived by the Town;
- (e) Proposed replacement trees and their locations;
- (f) 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 Public Work Director. Each tree proposed to be altered or removed must also be physically marked on site;
- (g) The name of the contractor designated to do the tree work and a copy of their current Town of Ross business license;
- (h) The signature of the legal owner of the parcel;

(2) Criteria for approval. A Tree Alteration or Removal Permit may be issued only if one or more of the following considerations are met:

(a) The alteration or removal is necessary due to the condition of the tree with respect to its general health, damage, disease, danger of falling, proximity or damage to existing structures, or interference with utility services;

(b) The alteration or removal is necessary to allow the economic enjoyment of the property, such as construction of improvements;

(c) 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;

(d) The alteration or removal is necessary due to fire hazards;

(e) The alteration or removal represents good forestry practices such as, but not limited to, consideration of the number of healthy trees the site will support;

(3) Additional criteria. Criteria for approval of a Tree Alteration or Removal Permit will be weighed against:

(a) The number, species, age, size, and location of existing trees in the area;

(b) The effect of the requested alteration or removal on shade areas or solar access;

(c) The effect of the requested alteration or removal on soil retention, water retention, and diversion or increased flow of surface water;

(d) The effect of the requested alteration or removal on wildlife or creek habitat;

(e) The effect of the requested alteration or removal on historic value;

(f) The effect of the requested alteration or removal on scenic beauty;

(g) The effect of the requested alteration or removal on the general welfare of the Town as a whole.

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If native species are removed, replacement trees shall be of a species native to those lands that now constitute the Town of Ross, or a non-native species approved by town staff based on specific site circumstances. Replacement trees should have the same mature size as the trees that have been removed, unless Town staff recommends otherwise based on specific site circumstances. If there is a conflict between Arborists regarding the condition or structure of a tree, the Town Arborist's decision shall control. The Town Council or Public Works Director may reduce the number of replacement trees or the tree replacement ratio, as applicable, if the reduction will not negatively impact the environmental functions and value of the urban forest or the aesthetic values of the community.

The applicant shall complete tree replacement within sixty (60) days of tree removal, unless the Town has approved a longer time. Failure to plant required tree replacement may subject the property owner to Administrative Penalties under Chapter 9.70 until the replacement trees are planted.

(5) Alternatives to tree replacement.

(a) In lieu fees and offsite replacement. If onsite tree replacement is not feasible or desirable due to physical constraints or lack of adequate space on site, fire safety requirements, or tree canopy separation requirements, the applicant may instead make an in lieu payment to the Town for provision of off-site trees equivalent to the trunk diameter required in Section 12.24.080 (4) and related improvements, or for the addition or the replacement of trees or vegetation on public property, or if approved by the Public Works Director, the applicant may install any remaining replacement trees on other property located within the Town. The Town Council shall establish the amount of the in lieu fee by resolution.

(b) Landscape restoration or screening. The Public Works Director or the Town Council may consider other measures, both on private and/or public property, designed to mitigate loss of trees or vegetation, such as screening shrubs, native shrubs, groundcover, and related improvements, if tree replacement is not feasible.

(6) Appeal. The applicant or any interested person may appeal a staff decision on a Tree Alteration or Removal Permit 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 Tree Alteration or Removal Permit until determination by the Town Council. (Ord. 659 (part), 2015; Ord. 591 §§3, 4, 2005; Ord. 568 (part), 2002)."

SECTION 4: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5: The Town Council has determined that the ordinance is categorically exempt from the requirement for the preparation of environmental documents under the California Environmental Quality Act (CEQA). The Town Council finds the project categorically exempt under the CEQA Guidelines, which include classes of projects that the Secretary for Resources has determined not to have a significant effect on the environment and which are, therefore, exempt from the provisions of CEQA. The project is exempt under CEQA Guideline Section 15307 as an action taken to assure the maintenance, restoration, enhancement or protection of a natural resource where the regulatory process involves procedures for protection of the environment. The project is also exempt under Section 15308, as an action taken to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. The Town Council further finds that this project qualifies for an exemption under the General Rule section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The adoption of this Ordinance will result in the enhancement and protection of tree resources, and will not result in cumulative adverse environmental impacts or any other potentially significant impact described in State CEQA Guidelines section 15300.2.

SECTION 6: It is the intention of the Town Council that the text in Sections 1 to 3 be made a part of the Ross Municipal Code and that the text may be renumbered or relettered and the word "Ordinance" may be changed to "Section", "Chapter", or such other appropriate word or phrase to accomplish this intention.

SECTION 7: This Ordinance shall go into effect thirty (30) days from its adoption, and shall be posted in three public places in Town.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Ross Town Council on the 8th day of December, 2022, and was adopted at a regular meeting of the Ross Town Council on the 12th day of January, 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Beach Kuhl, Mayor

ATTEST:

Cyndie Martel, Town Clerk

ATTACHMENT 2

Chapter 12.24

PLANTING, ALTERATION, REMOVAL, OR MAINTENANCE OF TREES*

Sections:

12.24.005	Title.
12.24.010	Introduction and purpose.
12.24.020	Definitions.
12.24.030	Liability.
12.24.040	Trees in the public right-of-way.
12.24.060	Alteration or removal of trees on unimproved parcels.
12.24.070	Alteration or removal of trees on improved parcels.
12.24.080	Tree alteration or removal permits and appeals.
12.24.083	Tree alteration or removal permits to be posted.
12.24.085	Denial of incomplete or inactive applications.
12.24.090	Expiration.
12.24.100	Tree protection plan.
12.24.110	Funding.
12.24.120	Violation- Penalties.

* Prior ordinance history: Ords. 462 and 522.

12.24.005 Title. This Chapter shall be known as the Tree Protection Ordinance. (Ord. 659 (part), 2015).

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, habitat for wildlife, release oxygen, and help reduce 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 in the public right of way;
- (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. 659 (part), 2015; Ord. 568 (part), 2002).

12.24.020 Definitions. For the purpose of this chapter, the following definitions apply. Words and phrases used in this chapter that are not specifically defined in this section shall be interpreted to give them the meaning they have in common usage and to give this chapter its most reasonable application:

(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 currently a member or registered consulting arborist 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, also called Diameter at Breast Height or DBH. If there are multiple stems below 4-1/2 feet, the diameter shall be the single largest branch (stem) at 4-1/2 feet; except, if only two stems are present, then the tree is considered to be forked and diameter shall be the measurement of the smallest trunk diameter below the fork.

(4) “Fire hazard” means a tree that has been designated for removal in writing by the local fire authority, or the tree is identified as any tree of the species known as acacia trees, bamboo, arborvitae, California bay, bishop pine, cedars, Coulter pine, cypress, Douglas fir, eucalyptus species (blue gum and red gum), false cypress, gray pine, junipers, knobcone pine, larch trees, Monterey pine, Scots pine, spruces, Torrey pine, and yew.

(45) “Improved parcel,” means any parcel in Ross which has a structure on it suitable for human habitation.

(56) “Native tree,” means a tree native to those lands that now constitute the town of Ross.

(67) “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'

(78) "Project arborist," means a certified or registered consulting arborist retained by the applicant to report on and oversee the protection of trees on a site subject to a tree protection plan.

(89) "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"); and any tree planted as a replacement tree for a tree removed pursuant to this chapter or planted within a required yard setback area pursuant to a landscape plan approved by the town council.

(910) "Remove," means the cutting down of a tree or the relocation of a tree in a manner not in accordance with accepted arboricultural practices.

(4011) "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.

(412) "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.

(4213) "Tree appraisal," means a monetary valuation of a tree prepared by a certified or registered consulting arborist according to the most recent edition of the "Guide for Plant Appraisal" published by the Council of Tree & Landscape Appraisers.

(4314) "Unimproved parcel," means any parcel in Ross which does not have a structure on it suitable for human habitation. (Ord. 659 (part), 2015; 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 Trees in the public right-of-way. The pruning, maintenance, and removal of all trees greater than six inches (6") in diameter located in the right-of-way shall be subject to the following provisions:

(1) All work performed 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 must have on their staff a certified arborist or other qualified person approved by the Town Manager or his or her designee. 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) A Tree Alteration or Removal Permit is required to alter or remove a tree, pursuant to Section 12.24.080.

(4) For utility line clearing work, the Town Manager or his or her designee 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.

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

(6) In the event of an emergency, when such tree poses an imminent threat to life or property, a peace officer or firefighter acting in their official capacity may approve tree alteration or removal in the absence of approval by the Public Works Director under Section 12.24.080.

(7) In the event of noncompliance with subsection (2) of this section, the Town Manager or his or her designee may hire at the applicant's expense a certified arborist or other qualified person to oversee tree work. (Ord. 686 (part), 2018; Ord. 659 (part), 2015).

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 six inches (6") in diameter or greater on an unimproved parcel in Ross without first obtaining a Tree Alteration or Removal Permit from the Public Works Director.

(2) Any person desiring to alter or remove a tree on an unimproved parcel must file for a Tree Alteration or Removal 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, a peace officer or firefighter acting in their official capacity may approve tree alteration or removal in the absence of the Public Works Director under Section 12.24.080. The Public Works Director shall be promptly notified of the nature of the emergency and action taken.

(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. 686 (part), 2018; Ord. 659 (part), 2015; 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 Tree Alteration or Removal 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, a peace officer or firefighter in their official capacity may exempt a property owner from a Tree Alteration or Removal Permit requirement in the absence of the Public Works Director. The Public Works Director shall be promptly notified of the nature of the emergency and action taken.

(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. 686 (part), 2018; Ord. 659 (part), 2015; Ord. 568 (part), 2002).

12.24.080 Tree Alteration or Removal Permits and appeals. The Public Works Director shall review and approve, conditionally approve, or deny a Tree Alteration or Removal Permit application if no other entitlements are required. The Public Works Director shall give written notice to the applicant of his or her decision on the application within 30 days. The Public Works Director may refer an application directly to the Town Council for consideration.

(1) Application. An application for a Tree Alteration or Removal Permit shall be filed with the Public Works Department on forms prescribed by the Public Works Department, along with any plans or additional information required and the fee as established by a resolution of the Town Council. The Tree Alteration or Removal Permit application fee may be waived by the Public Works Director if the tree is determined to be a fire hazard, or if the tree is located in the public right-of-way. The application must include evidence supporting the findings required by this chapter and the following information:

- (a) The address of the property on which trees are proposed to be removed;
- (b) The name and mailing address of the legal owner of the property;
- (c) The species and diameter of each tree proposed to be removed;
- (d) Justification for the removal of each tree proposed to be removed including a certified arborist's report describing the tree's condition and structure, unless waived by the ~~town~~ Public Works Director;
- (e) Proposed replacement trees and their locations;
- (f) 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 Public Works Director. Each tree proposed to be altered or removed must also be physically marked on site;
- (g) The name of the contractor designated to do the tree work and a copy of their current Town of Ross business license;
- (h) The signature of the legal owner of the parcel;

(2) Criteria for approval. A Tree Alteration or Removal Permit may be issued only if one or more of the following considerations are met:

- (a) The alteration or removal is necessary due to the condition of the tree with respect to its general health, damage, disease, danger of falling, proximity or damage to existing structures, or interference with utility services;
- (b) The alteration or removal is necessary to allow the economic enjoyment of the property, such as construction of improvements;
- (c) 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;
- (d) The alteration or removal is necessary due to the tree being identified as a fire hazard;

(e) The alteration or removal represents good forestry practices such as, but not limited to, consideration of the number of healthy trees the site will support;

(3) Additional criteria. Criteria for approval of a Tree Alteration or Removal Permit will be weighed against:

- (a) The number, species, age, size, and location of existing trees in the area;
- (b) The effect of the requested alteration or removal on shade areas or solar access;
- (c) The effect of the requested alteration or removal on soil retention, water retention, and diversion or increased flow of surface water;
- (d) The effect of the requested alteration or removal on wildlife or creek habitat;
- (e) The effect of the requested alteration or removal on historic value;
- (f) The effect of the requested alteration or removal on scenic beauty;
- (g) The effect of the requested alteration or removal on the general welfare of the town as a whole.

(4) Replacement tree. Unless otherwise specified by the Public Works Director or Town Council, replacement trees shall be required at the following ratios:

(a) A tree in good or excellent condition and structure shall be replaced on a one-to-one trunk diameter basis. (Example: 1 21" dbh tree in good or excellent condition must be replaced with new trees totaling 21" trunk diameter);

(b) A tree in fair or marginal condition or structure shall be replaced on a three-to-one trunk diameter basis. (Example: a 21" dbh tree in fair or marginal condition must be replaced with new trees totaling 7" trunk diameter);

(c) A tree in poor condition or creating a hazard to a building and/or structure, or is identified as a fire hazard, shall be replaced with 2 inches replacement trunk diameter.

Inches of replacement tree may be translated into standard nursery planting sizes using the following formulas:

24" box replacement tree = 2 inch replacement trunk diameter

36" box replacement tree = 3 inch replacement trunk diameter

48" box replacement tree = 4 inch replacement trunk diameter

If native species are removed, replacement trees shall be of a species native to those lands that now constitute the Town of Ross, or a non-native species approved by town staff based on specific site circumstances. Replacement trees should have the same mature size as the trees that have been removed, unless town staff recommends otherwise based on specific site circumstances. In any case, the replacement tree shall not be identified as a fire hazard. If there is a conflict between arborists regarding the condition or structure of a tree, the town arborist's decision shall control. The Town Council or Public Works Director may reduce the number of replacement trees or the tree replacement ratio, as applicable, if the reduction will not negatively impact the environmental functions and value of the urban forest or the aesthetic values of the community.

The applicant shall complete tree replacement within sixty (60) days of tree removal, unless the Town has approved a longer time. Failure to plant required tree replacement may subject the property owner to Administrative Penalties under Chapter 9.70 until the replacement trees are planted.

(5) Alternatives to tree replacement.

(a) In lieu fees and offsite replacement. If onsite tree replacement is not feasible or desirable due to physical constraints or lack of adequate space on site, fire safety requirements, or tree canopy separation requirements, the applicant may instead make an in lieu payment to the Town for provision of off-site trees equivalent to the trunk diameter required in Section 12.24.080(4) and related improvements, or for the addition or the replacement of trees or vegetation on public property, or if approved by the Public Works Director, the applicant may install any remaining replacement trees on other property located within the Town. The Town Council shall establish the amount of the in lieu fee by resolution.

(b) Landscape restoration or screening. The Public Works Director or the Town Council may consider other measures, both on private and/or public property, designed to mitigate loss of trees or vegetation, such as screening shrubs, native shrubs, groundcover and related improvements, if tree replacement is not feasible. In any case, the replacement vegetation shall not include a tree that is identified as a fire hazard.

(6) Appeal. The applicant or any interested person may appeal a staff decision on a Tree Alteration or Removal Permit 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 Tree Alteration or Removal Permit until determination by the Town Council. (Ord. 686 (part), 2018; Ord. 659 (part), 2015; Ord. 591 §§3, 4, 2005; Ord. 568 (part), 2002).

12.24.083 Tree alteration or removal permits to be posted. During the full course of any activity associated with tree removal, relocation, or alteration requiring a Tree Alteration or

Removal Permit, the property owner and tree contractor shall ensure that a copy of the Tree Alteration or Removal Permit and current tree contractor business license is posted on the subject property. The Tree Alteration or Removal Permit shall be posted adjacent to the main entry drive and must be clearly visible from the right-of-way. Failure to post the Tree Alteration or Removal Permit and business license as required herein may result in the issuance of a stop work order. (Ord. 686 (part), 2018; Ord. 659 (part), 2015; Ord. 591 §5, 2005).

12.24.085 Denial of incomplete or inactive applications. Consistent with state law, the Public Works Director 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. 686 (part), 2018; 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 Tree Alteration or Removal Permit approval to expire without further notice. (Ord. 686 (part), 2018; 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 on sites where Significant or Protected trees may be impacted. The tree protection plan shall include a certified arborist's report on existing conditions as well as a plan for tree protection during construction.

(1) 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 Permit and Hazard Zone Use Permits. Tree protection plans may be required for Subdivision, Variances, Demolition Permits, Design Review, Grading and/or Building Permit reviews at the discretion of the Public Works Director or Town Council, as applicable.

(2) Submittal Requirements.

(a) 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 identify or cite any plans reviewed, and clearly describe and evaluate in writing all Significant and Protected 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. The project arborist shall list key points during construction where he or she will perform site inspections to verify tree protection, and submit short summary reports to the Town for review after these. Applicant shall provide a fee for review of such reports and summaries to be determined by the Town.

(b) 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. Site-specific tree protection measures shall be provided as part of the arborist's report which shall be printed on plans and available on site throughout construction.

(3) 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 Alteration or Removal Permit shall be subject to those penalties provided in Section 12.24.130.

(4) Tree Protection Plan Requirements. At the discretion of the Town Council or building and planning staff, as applicable, approved projects shall be subject to project design and construction requirements including, but not limited to, sub-sections (a) through (j), 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 Public Works Director in consultation with the town arborist.

(a) 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.

(b) 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.

(c) 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 as much as possible.

(d) 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.

(e) 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.

(f) Compaction of the soil within the non-intrusion zone of Significant and/or Protected trees shall be avoided. Use of bridging/protective materials such as layered mulch, trench plates, plywood or rubber mats is encouraged within non-intrusion zones.

(g) 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 to minimize their impact on Significant and/or Protected trees.

(h) 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 and/or Protected tree.

(i) Oil, gas, paint, cement, 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.

(j) Construction materials shall not be stored within the non-intrusion zone of a Significant and/or Protected tree. On-site parking shall be kept outside non-intrusion zones.

(5) 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, request modification to 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 of the Tree Protection Plan or conditions of approval established by the Town Council shall be considered a violation of the provisions of this chapter and shall be cause for the denial of a Building Permit, a stop work order, or denial of a project final, and/or the application of those penalties provided in Section 12.24.120.

(6) Tree protection financial security. The Town Council, building or planning staff may require a financial instrument such as an irrevocable letter of credit to be provided, or a bond to be deposited, for an amount not to exceed the greater of the appraised value of a Significant or Protected tree or the in lieu fee per tree as described in Section 12.24.080 prior to issuance of any permit or discretionary approval that has the potential to damage or remove Protected or Significant trees not authorized by a Tree Alteration or Removal Permit. The irrevocable letter of credit or bond may be required to be in place for a maximum period of 2 years after construction is complete unless a longer period of time is required due to a staff determination that possible damage has occurred to one or more Significant or Protected trees. The letter of credit or bond will be released upon successful completion of the project and certification by an arborist and verification by Town staff that the tree protection plan was followed and the trees have not sustained damage or were not improperly removed during the construction and completion of the project. The Town may, at the Town's discretion, require a portion of, or the full irrevocable letter of credit or bond amount to be used to replace Significant and Protected trees that are damaged or destroyed. (Ord. 686 (part), 2018; Ord. 659 (part), 2015; 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, replanting and improving the trees of the town and otherwise implementing the provisions of this chapter. (Ord. 659 (part), 2015; Ord. 568 (part), 2002).

12.24.120 Violations – Penalties.

(1) 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.

(2) 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 may be held liable for compensation to the town in the amount of one thousand dollars (\$1,000) per day for each such action and 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. In addition, such person shall be responsible to undertake pruning and other remedial action the town determines reasonably necessary to protect public safety and property, and to help the tree survive the tree alteration. If the natural habit of growth of the tree is destroyed, the town may require the violator to remove the altered tree and install a replacement tree. Tree replacement criteria shall be consistent with section 12.24.080(4). As an alternative, 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 may be liable to the Town in an amount equal to the appraised value of the tree.

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 may 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.

(3) Forfeiture of Business License. In addition to those penalties described in section 12.24.120 (2), 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. An application for a Tree Alteration or Removal Permit shall be accompanied by an application fee as shall be established by the Town Council by resolution. (Ord. 686 (part), 2018; Ord. 659 (part), 2015; Ord. 568 (part), 2002).