

City of Capitola

Commission on the Environment Special Meeting Agenda

Wednesday, February 15, 2023 – 6:00 PM



Capitola City Hall, Council Chambers
420 Capitola Avenue, Capitola, CA 95010

Chairperson: Michelle Beritzhoff-Law

Commissioners: Anthony Lacenere, Margaux Keiser, Jason Shepardson, Peter Wilk

PLEASE NOTE THIS IS AN IN-PERSON MEETING NO REMOTE ACCESS WILL BE PROVIDED

1. Call to Order and Roll Call

Commissioners: Michelle Beritzhoff-Law, Chair, Anthony Lacenere, Margaux Keiser, Jason Shepardson, Peter Wilk

2. Oral and Written Communications

The Chair may announce and set time limits at the beginning of each agenda item. The Committee Members may not discuss Oral Communications to any significant degree but may request issues raised be placed on a future agenda.

3. Consider the minutes from the February 1, 2023, Special Commission Meeting

Recommended Action: Approve minutes.

4. General Business

A. Use of Green Building Funds

Recommended Action: Review information and discuss potential uses for Green Building Funds

5. Items for Future Agenda

6. Adjournment

Next regular Commission meeting is scheduled for February 15, 2023

Agenda and Agenda Packet Materials: The Commission on the Environment Agenda is available on the City's website: www.cityofcapitola.org/ on Friday prior to the Wednesday meeting. If you need additional information, please contact the Public Works Department at (831) 475-7300.

Americans with Disabilities Act: Disability-related aids or services are available to enable persons with a disability to participate in this meeting consistent with the Federal Americans with Disabilities Act of 1990. Assisted listening devices are available for individuals with hearing impairments at the meeting in the City Council Chambers. Should you require special accommodations to participate in the meeting due to a disability, please contact the City Clerk's office at least 24-hours in advance of the meeting at 831-475-7300. In an effort to accommodate individuals with environmental sensitivities, attendees are requested to refrain from wearing perfumes and other scented products.

City of Capitola

Commission on the Environment Meeting Minutes

Wednesday, February 1, 2023– 6:00 PM



Capitola City Hall, Council Chambers
420 Capitola Avenue, Capitola, CA 95010

Chairperson: Michelle Beritzhoff-Law

Commissioners: Anthony Lacenere, Margaux Keiser, Jason Shepardson, Peter Wilk

1. Call to Order and Roll Call

Commissioners Present: Michelle Beritzhoff-Law - Chair, Anthony Lacenere, Margaux Keiser, Jason Shepardson, Peter Wilk
City Staff Present: Jessica Kahn

Chairperson Beritzhoff-Law called the meeting to order at 6:01 pm

2. Oral and Written Communications - None

3. Consider the minutes from the January 18, 2023, regular Commission meeting

A motion to approve the minutes was made by Commissioner Shepardson and seconded by Commissioner Lacenere. Motion passed unanimously. (3-0-2)

4. General Business

A. Environmentally Sensitive Habitat Area Riparian Vegetation Planting Reimbursement Program

Chair Beritzhoff-Law and Commissioner Wilk provided background on the development of the program.

The Commission provided edits to the program implementation and documentation to Staff. This included:

- Verification of eligibility only at initial application submission
- Reimbursement for materials (plants) only
- Option request for photo documentation
- An initial one-time reimbursement per eligible property to be reassessed after program implementation

The Commission discussed how to promote the program, including City social media and flyers for distribution to eligible properties.

A motion made by Commissioner Wilk and seconded by Commissioner Keiser to recommend that the City Council approve the Environmentally Sensitive Habitat Area Riparian Vegetation Planting Reimbursement Program as amended and fund the program and promotional material with Green Building Funds. Motion passed unanimously. (5-0)

B. Commission Correspondence to City Council

The Commission considered a draft letter for submission to City Council. No action was made on this item.

5. Items for Future Agenda

The Commission requested that the following items be agendized for a future meeting:

- Amending allowable uses of Green Building Funds
- Use of Green Building Funds, including support for beach clean ups, heritage tree program, and riparian corridor signage

6. Adjournment

The meeting was adjourned at 7:30 pm to the next Regular Meeting of the Commission of the Environment on February 15, 2023.

Capitola Commission on the Environment

Agenda Report



Meeting: February 15, 2023

From: Public Works Department

Topic: Use of Green Building Funds

Recommended Action: Review information and discuss potential uses for Green Building Funds

Background: The City Council adopted the Green Building Ordinance (Ordinance 930) on May 8, 2008, to promote sustainable design and improved energy efficiency for new construction and significant additions to existing buildings. As part of the Green Building Ordinance, the City Council also authorized the creation of a Green Building Education Fund to be used exclusively for program management, training, publications, and public educational purposes.

The code section was amended by Ordinance 996 in 2014 (Attachment 1) to include additional eligible uses of these funds (including incentive programs, materials and supplies, and education and outreach efforts) in response to new statutory requirements for storm water pollution prevention and greenhouse gas reduction programs.

The current code section reads as follows:

15.18.080 Creation of green building fund.

Building permits which are required to comply with the green building regulations shall be assessed a fee equal to 0.0025 times the overall valuation of the project. Revenues collected shall be maintained by the finance department as a revolving green building fund and shall be used only for program management, training, publications, public educational purposes, incentive programs, and materials and supplies necessary to promote sustainable development, water conservation, storm water pollution prevention, and climate action planning activities.

Based on the recitals of both Ordinance 930 and Ordinance 996, the intent of the Green Building Ordinance and Fund is for the City of Capitola to “be a leader in the development of a public education and participation program in green building practices, water conservation, storm water pollution prevention, and greenhouse gas reduction measures”. Any use of Green Building Funds must meet the criteria of CMC 15.18.080 above and intent of Ordinance 996.

The current balance of the Green Building Fund is approximately \$200,000, with an estimated revenue of \$15,000 per year based on construction activity. The Commission has previously recommended that the Environmentally Sensitive Habitat Area Riparian Vegetation Planting Reimbursement Program be funded from the Green Building Fund. It is estimated if fully taken on this would expend \$40,000.

Discussion: During the February 1, 2023 special meeting, the Commission requested that potential uses of the Green Building Fund be placed on this agenda. Preliminary ideas included:

1. Support for beach clean ups
2. Heritage Trees: Regulations relating to the protection, planting, maintenance, removal, and replacement of trees in the City of Capitola are codified in Capitola Municipal Code Chapter 12.12 “Community Tree and Forest Management” (Attachment 2). Section 12.12.090 and 12.12.100 include the definition, nomination and protection of “heritage trees”.
3. Riparian Corridor Signage: The Commission noted aging of existing signage.

Other potential uses of Green Building Funds may be discussed during this item.

Report Prepared By: Jessica Kahn, Public Works Director

Attachments:

1. City Council Staff Report – Green Building Ordinance Amendment October 23, 2014
2. Capitola Municipal Code Chapter 12.12 “Community Tree and Forest Management”



CITY COUNCIL AGENDA REPORT

MEETING OF OCTOBER 23, 2014

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

SUBJECT: GREEN BUILDING ORDINANCE AMENDMENT

RECOMMENDED ACTION: Amend the Green Building Ordinance to allow the Green Building Fund to be used for storm water protection and climate action planning purposes.

BACKGROUND: The City Council adopted the Green Building Ordinance on May 8, 2008, to promote sustainable design and improved energy efficiency for new construction and significant additions to existing buildings. As part of the Green Building Ordinance, the City Council also authorized the creation of a Green Building Education Fund to be used exclusively for program management, training, publications, and public educational purposes.

The City's Green Building regulations apply to non-residential additions and/or exterior remodels totaling 1,000 square-feet or more and residential additions and/or remodels totaling 350 square-feet or more. Projects subject to the regulations are assessed a fee of 0.25% of the total building valuation.

DISCUSSION: Significant state and federal regulatory changes have occurred since adoption of the Green Building Ordinance in 2008, including new statutory requirements for storm water pollution prevention and greenhouse gas (GHG) reduction programs. These new regulations require substantial City investment to effectively implement, including program management and administration, creation of incentive programs, materials and supplies, and education and outreach efforts.

Fees collected under the Green Building Ordinance may currently be used only for expenses associated with program management and public educational materials directly related to Green Building. The Ordinance, however, does not allow expenses related to storm water pollution prevention or climate action planning activities which are not directly related to the Green Building Program. These restrictions have made it challenging to spend monies accumulated in the Green Building Fund. The Green Building Fund currently has an approximate balance of \$122,000 and on average receives approximately \$21,000 of new revenue per fiscal year, depending on building permit activity.

Staff recommends the proposed Ordinance be amended as shown below in ~~strikeout~~/underline:

Revenues collected shall be maintained by the Finance Department as a revolving Green Building Education Fund and shall be used only for program management, training, publications, and public educational purposes, incentive programs, and materials and supplies necessary to promote sustainable development, water conservation, storm water pollution prevention, and climate action planning activities.

FISCAL IMPACT: The proposed amendment would not have any direct fiscal impact; however, expanding the allowable uses of the Green Building Fund would enable the City to partially fund mandated storm water pollution prevention and climate action planning activities with Green Building revenues which would reduce the General Fund impact of financing those programs.

ATTACHMENTS: (1) Proposed Green Building Ordinance Amendment

Report Prepared By: Richard Grunow
Community Development Director

Reviewed and Forwarded
By City Manager: 

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ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
AMENDING TITLE 17 OF THE CAPITOLA MUNICIPAL CODE, CHAPTER 17.10,
GREEN BUILDING REGULATIONS**

RECITALS:

WHEREAS, increases in population continually raise the demand on natural resources;
and

WHEREAS, there is a limited supply of energy, materials and services related to the construction of new buildings, both residential and non-residential; and

WHEREAS, the City of Capitola has previously committed to the finding and application of solutions to Global Climate Change, water conservation, and storm water pollution prevention; and

WHEREAS, the City of Capitola desires to be a leader in the development of a public education and participation program in green building practices, water conservation, storm water pollution prevention, and greenhouse gas reduction measures; and

WHEREAS, the Green Building Ordinance is consistent with the General Plan of the City of Capitola as expressed in the Land Use, Open Space and Conservation, Mobility, Energy Conservation Element and in the Housing Elements (specifically: Housing Opportunities (B): Opportunities for Energy Conservation), as well as in Policy 19 of the Capitola Local Coastal Program (specifically sections A, B and C); and

WHEREAS, the most effective method of public and private participation is the requirement for mandatory compliance with a responsible compliance methodology that is designed to enhance green building construction techniques, water conservation, storm water pollution prevention, and greenhouse gas reduction measures without being over-burdensome; and

WHEREAS, the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant adverse effect on the environment, the activity is not subject to CEQA (Subdivision (b)(3) of Section 15061 of the California Environmental Quality Guidelines (14 CCR 15000 et seq)).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CAPITOLA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 17.10 is hereby added to the Capitola Municipal Code to read as follows:

"Chapter 17.10
Green Building Regulations

Sections:

17.10.010	Purpose and Findings
17.10.020	Definitions
17.10.030	Standards for Compliance
17.10.040	Exceptions
17.10.050	Maintenance of Document
17.10.060	Method of Compliance
17.10.070	Exceptional Design
17.10.080	Creation of Green Building Educational Resource Fund

17.10.010 Purpose and Findings

The City finds that green building design, construction and operation can have a significant positive effect on energy and resource efficiency, waste and pollution generation, and the health and productivity of a building's occupants over the life of the building. The second purpose is to create healthy work and living environments increasing the productivity of workers and residents and visitors to the city by improving indoor air quality and lighting.

The intent of this section is to help promote the environmental sustainability of natural resources and improvement of the interior environment by efficiently redirecting the use of recyclable materials away from landfills, by introducing recycled-content and materials created with a low embodied energy materials in construction, and by reducing the energy consumption needs of structures by making use of efficient construction methods.

The City also finds that green design and construction decisions made by the City in the construction and remodeling of City buildings can result in significant cost savings to the City over the life of the buildings. The City also recognizes that it must lead by example in order to have the general populace follow suit and therefore commits itself to the practice of green building for all new and remodeling construction on City owned buildings and structures.

The City additionally finds that water conservation, storm water pollution prevention, and greenhouse gas reductions advance the City's General Plan goals to promote resource conservation, clean and healthy air and water, and overall environmental sustainability.

17.10.020 Definitions

Addition: A structure expansion that is physically connected to a previously existing building.

Interior remodel: Change or alteration in only the interior of a building that does not increase its net square footage.

New construction: A new building not physically connected to a previously existing building.

Non-habitable residential structure: A building on a residential property that is not legally habitable, such as a garage or shed.

Non-residential: Not meeting the definition of "residential".

Residential: Single-family, accessory dwelling units, or multi-family residences.

Remodel: Change or alteration in a building that does not increase its net square footage.

17.10.030 Standards for Compliance

Persons constructing a new building, adding to or substantially remodeling a building in the City of Capitola shall participate in the Capitola Green Building Program. In order to obtain a building permit for any new building, addition or substantial remodel in excess of those exempted in Section 17.10.040, each project must include elements from the program checklist equal to or exceeding the following:

TABLE 1: NON-RESIDENTIAL (COMMERCIAL) ACTIONS AND POINT REQUIREMENTS

Total points possible	75
Action	Points required to receive action:
C-1. Receipt of Building Permit*	7
C-2. Green Building Award	40

*Exceptions: These points are not required for non-residential additions and remodels totaling less than 1000 square feet, or interior-only non-residential remodels of any size.

ORDINANCE NO.

TABLE 2: RESIDENTIAL NEW CONSTRUCTION ACTIONS AND POINT REQUIREMENTS

Total Points Available	460	
Action	Points required to receive action:	
	First 350 Square Feet	Each Additional 100 Square Feet or fraction thereof
R-N-1. Receipt of building permit	10	1.5
R-N-2. Green Building Award	60	3.5

TABLE 3: RESIDENTIAL REMODEL AND ADDITION ACTION POINT REQUIREMENTS

Total Points Available	464	
Action	Points required to receive action:	
	First 350 Square Feet	Each Additional 100 Square Feet or fraction thereof
R-A/R-1. Receipt of building permit*	5	1.1
R-A/R -2. Green Building Award	35	2.5

*Exception: These points are not required for additions and/or remodels of less than 350 square feet.

17.10.040 Exceptions

The following are exempt from the provisions of this Section:

- Additions and remodels of less than three hundred fifty (350) square feet of any residential dwelling structure.
- Additions and remodels of less than one thousand (1000) square and interior remodels of any non-residential structure.
- Equipment and non-structural modifications of any residential or non-residential structure.
- Non-habitable residential structures of less than one thousand (1000) square feet.
- General maintenance of any structure.
- Historical structures where the historic fabric would be compromised.

17.10.050 Maintenance of Document

Building and planning staff shall update the Green Building Program documentation and checklist to reflect advances in green building techniques and materials and to make necessary modifications in program implementation on an annual basis.

17.10.060 Method of Compliance

The Chief Building Official and/or the Community Development Director shall maintain the following documents for the public:

- *City of Capitola: Standards for Green Building Compliance*
- *New Home Green Points Check List for Residential Buildings*
- *New Building Green Points Check List for Non-Residential Buildings*

These documents shall be to aid in the design and certification of new residential and non-residential buildings and significant remodels and additions thereto. Every applicant of a building permit not exempted by 17.10.040 (Exemptions) above shall complete and submit the

appropriate check list for their project as well along with the standard application documents. All compliance measures shall be clearly delineated on plan sets.

17.10.070 Exceptional Design

Designers and builders employing exceptional design, construction practices and/or maintenance features may have their project modified from the strict interpretation of the program if in the opinion of the Community Development Director or Building Official such features exhibit at least a 20 percent increase in points over the minimum standards for a Green Building Award as outlined in 17.10.30 Standards for Compliance above. Exceptional designs shall also be recognized by the City and eligible to receive a plaque that may be displayed on the structure.

17.10.080 Creation of Green Building Educational Resource Fund

Building permits which are required to comply with the Green Building Regulations shall be assessed a fee equal to .0025 times the overall valuation of the project. Revenues collected shall be maintained by the Finance Department as a revolving Green Building Education Fund and shall be used only for program management, training, publications, and public educational purposes, incentive programs, and materials and supplies necessary to promote sustainable development, water conservation, storm water pollution prevention, and climate action planning activities.

Section 2. Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of the Section, or any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Section or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause and phrase of this Section irrespective of the fact that one or more sections, subsections, paragraphs, sentences, clauses, or phrases be declared unconstitutional, invalid or effective. To this end, the provisions of this Section are declared to be severable.

Section 3. This Ordinance shall take effect and be in full force on December 1, 2014

This Ordinance was introduced on the 23rd day of October, 2014, and was passed and adopted by the City Council of the City of Capitola on the ___ day of _____, 2014, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

APPROVED: _____
Sam Storey, Mayor

ATTEST:

_____, CMC
Susan Sneddon, City Clerk

**Chapter 12.12
COMMUNITY TREE AND FOREST MANAGEMENT**

Sections:

Article I. Purpose, Goals, and Authority

[12.12.010 Purpose.](#)

[12.12.020 Goals and policies.](#)

[12.12.030 Definitions.](#)

[12.12.040 Authority and duties.](#)

Article II. Tree Planting

[12.12.050 Community forest program.](#)

[12.12.060 Description of existing canopy coverage.](#)

[12.12.070 Tree planting.](#)

[12.12.080 Environmental and socio-economic benefits of trees.](#)

Article III. Maintenance and Protection Strategy

[12.12.090 Heritage tree historic context.](#)

[12.12.100 Heritage tree list and nomination process.](#)

[12.12.110 Permit process for removal and pruning of heritage trees.](#)

[12.12.120 Harming trees unlawful.](#)

[12.12.130 Tree protection, management and maintenance.](#)

[12.12.140 License – Tree pruning business.](#)

[12.12.150 Educational programs.](#)

Article IV. Tree Removal and Replacement

[12.12.160 Permit requirements.](#)

[12.12.170 Exceptions.](#)

[12.12.180 Permit process for removal of non-heritage trees.](#)

[12.12.190 Tree replacement.](#)

[12.12.200 Removal by the city of hazardous trees on private property.](#)

[12.12.210 Emergency removal.](#)

[12.12.220 Americans with Disabilities Act compliance.](#)

Article V. Enforcement and Evaluation

[12.12.230 Enforcement.](#)

[12.12.240 Monitoring conditions of approval.](#)

[12.12.250 Citizen complaints.](#)

[12.12.260 Tree trimmers.](#)

[12.12.270 Penalty for violation.](#)

[12.12.280 Performance evaluation.](#)

Article I. Purpose, Goals, and Authority

12.12.010 Purpose.

The city council finds that protection and enhancement of existing tree cover throughout the city serves several public interests: reducing local air pollution by absorbing carbon dioxide and producing oxygen; reducing soil erosion; enhancing the visual and aesthetic qualities of the city that attract visitors and businesses and serve as a source of community image and pride; and providing habitat for birds and other wildlife.

The city council finds that trees are a valuable asset and have a positive economic effect on the city by enhancing property values and making the city a more attractive place to visit and do business. The protection and enhancement of trees helps safeguard and enhance the property values of public and private investments, and preserves and protects the unique identity and environment of Capitola. Healthy trees of the appropriate size and species, growing in the appropriate places, enhance the value and marketability of property and promote the stability of desirable neighborhoods.

In order to protect existing tree cover, increase tree cover, and enhance the natural beauty of the city, the city council, therefore, adopts this chapter in the interest of public health and safety. The purpose of this chapter is to establish regulations relating to the protection, planting, maintenance, removal, and replacement of trees, and to set forth the process for development of a comprehensive plan for the planting and maintenance of a sustained community forest within the city. (Ord. 863 § 2, 2004)

12.12.020 Goals and policies.

A. The overall goals of this chapter are to protect and increase the level of tree cover on public and private lands within the city, maintain trees in a healthy and non-hazardous condition, and promote planting of additional trees to increase tree cover (hereby referred to as canopy coverage) throughout the city.

B. It is the policy of the city to protect the locally significant, scenic and mature trees as listed in the heritage tree list to be adopted pursuant to this chapter, in order to protect the character of Capitola.

C. It is the policy of the city to encourage new tree planting on public and private property and to cultivate a flourishing community forest.

D. It is the goal of the city to maintain and enhance the tree canopy coverage existing at the time of adoption of the ordinance codified in this chapter (as determined through aerial photography taken within twelve months from adoption of the ordinance codified in this chapter), and to increase flowering tree canopy to help identify and beautify city streets and neighborhoods.

E. On individual lots, it is the goal of the city to maintain fifteen percent coverage of tree canopy, consisting of flowering, deciduous, and evergreen trees, to be enforced on an on-going basis via the design review process.

F. It is the goal of the city to establish a community tree fund to pay for tree replacement planting in suitable locations in city parks, sensitive habitat areas, or along city streets, as set forth in a “community forest program,” to be completed and adopted within three years from adoption of the ordinance codified in this chapter.

G. It is the goal of the city to develop partnerships with the owners of heritage trees to provide technical and financial help for the maintenance of such trees, as funds become available in the community tree fund.

H. It is the policy of the city to pursue grants to fund a monitoring program to evaluate the performance of this chapter, every three years after the adoption of the ordinance codified in this chapter.

I. It is the policy of the city to encourage community efforts such as the “Heritage Tree Walk,” and promote education programs to increase the awareness of trees and their benefits.

J. It is the policy of the city to help counteract carbon dioxide (CO₂) emissions by planting trees, as trees absorb CO₂ from the air, and store it in their branches, roots and trunks and then release oxygen into the

atmosphere.

K. It is the policy of the city that the regulations of this chapter regarding tree planting, maintenance, removal and replacement take into consideration the protection of view sheds and solar orientation and exposure, in relation to all affected properties. (Ord. 863 § 2, 2004)

12.12.030 Definitions.

A. "Canopy coverage" shall mean the area covered by the projection of branches and leaves of a tree over the drip-line or the outermost area of canopy.

B. "Certified arborist" shall mean an individual who has demonstrated knowledge and competency through obtainment of the current International Society of Arboriculture (ISA) Arborist Certification, and/or who is a member of the American Society of Consulting Arborists and has achieved a level of knowledge in the art and science of tree care through at least three years of experience and continued education.

C. "City" shall mean the city of Capitola situated in the county of Santa Cruz, California.

D. "Commission" shall mean the city planning commission.

E. "Community forest" shall mean all public or private trees within the city.

F. "Community forest program" shall mean a program implemented by the public works director, to guide the tree planting on public properties, streets, parks, and sensitive habitat areas. Refer to Section [12.12.050](#) for specific provisions.

G. "Community tree and forest management account" shall mean a fund or account where tree and canopy coverage in-lieu fees are deposited. This account is created for the specific function of accumulating funds to pay for replacement of trees, to provide incentives for the maintenance of heritage trees, and related canopy coverage purposes, by the public works department. This account is being established upon approval of the ordinance codified in this chapter.

H. "Council" shall mean the city council.

I. "Cutting" shall mean the removal, from a living tree, by any method, of foliage, branches or trunks, including removal of the entire tree, except for pruning allowable by Section [12.12.160](#), Permit requirements.

J. "Damage" shall mean any action undertaken which may cause the death or significant injury, or which places a tree in a hazardous condition or in an irreversible state of decline. This includes, but is not limited to, tree cutting, excessive foliar crown removal, topping/cropping, girdling, or poisoning of, or trenching, excavating or compacting.

- K. "Department" shall mean the city community development department.
- L. "Director" shall mean the community development department director of the city or designee.
- M. "Environmental and Socio-Economic Benefits of Trees" shall mean a city brochure that may be available at the community development department, including current statistical figures, results of scientific studies and of surveys to show the benefits of an urban forest.
- N. "Heritage tree" shall mean any locally significant, scenic and mature tree growing on public or private property that is listed on the city's adopted heritage tree list as set forth in Sections [12.12.090](#) through [12.12.110](#).
- O. "Heritage tree list" shall mean a list of those "heritage trees" approved by the city council to be protected for future generations. Refer to Section [12.12.100](#) for the nomination process for heritage status.
- P. "List of certified arborists, certified tree climbers and landscape contractors" shall mean a list of tree experts, contractors and landscape businesses who provide tree work service in the city that have received certification in accordance to the provisions of this chapter, and/or a city permit to operate in Capitola according to requirements as described in the community forest program.
- Q. "Owner" shall mean the legal owner of real property as shown on the most recent county assessor's roll.
- R. "Person" shall mean any individual, firm, business, partnership, association, public utility, corporation, legal entity, and/or agent, employee or representative thereof.
- S. "Planting, pruning and maintaining trees" shall mean a city brochure that may be available at the community development department, to provide specific guidelines on how and where to plant and take care of trees.
- T. "Private property" shall mean all property within the boundaries of the city, as shown on the most recent county assessor's roll to be owned by persons, firms, corporations other than the city or another public agency within the tree's root zone.
- U. "Pruning" shall mean the removal of branches or foliage in a manner and to the extent that does not jeopardize the health or longevity of a tree.
- V. "Public property" shall mean all property owned by any governmental agency, except those legally exempt from this chapter, within the boundaries of the city including those noncontiguous areas incorporated by the city.
- W. "Public street" or "streets" shall mean all roads, streets, avenues, boulevards, alleys, park ways, public rights-of-way or any portion thereof, of the city.
- X. "Recommended tree list" shall mean a list of suitable trees for Capitola, available at the community

development department to help property owners select new trees for their property. The list shall be consistent with Section 17.72.030. The list should reflect different city natural habitats and neighborhoods, and may be included into the community forest program.

Y. "Tree." For the purpose of this chapter, "tree" shall mean a usually tall woody plant, distinguished from a shrub by having, at maturity, comparatively greater height and characteristically, a single trunk rather than several stems, and a minimum six-inch diameter measured at forty-eight inches above existing grade or at average breast height (abh). Exception: Within the boundaries of a "biologist certified environmentally sensitive habitat area" identified pursuant to Chapter 17.64, all sizes of trees, even seedlings, are subject to this chapter and all degrees of trimming shall be defined as "cutting" and shall require a permit. A healthy sensitive habitat has young and small, medium size, large and/or old samples of each species.

Z. "Topping" shall mean the reduction of a tree's size using heading cuts that shorten limbs or branches back to stubs. Topping is not an acceptable pruning practice. Refer to Section [12.12.160\(C\)\(1\)](#) and (C)(2).

AA. "Stub" shall mean an undesirable short length of a branch remaining after a break or incorrect pruning cut is made. Refer to Section [12.12.130\(C\)\(7\)](#).

AB. "Utility" shall mean a public utility or private utility and includes any pipeline corporation, gas company, electrical corporation, telephone, telegraph or other communications corporation, water corporation, sewer system or heat corporation, or railroad and power companies, the services of which are performed for, or the commodity delivered to, the general public or any portion thereof. (Ord. 863 § 2, 2004)

12.12.040 Authority and duties.

A. Community Development Director. The community development director or designee shall be responsible for administering and enforcing this chapter. The community development director or designee shall have the following powers and duties:

1. Grant or deny applications for non-heritage tree removal permits as set forth in Section [12.12.180](#) and make recommendations on permit applications involving heritage trees that are reviewed by the planning commission;
2. Provide technical information to assist owners in maintaining heritage trees on private property;
3. Review all development and construction applications for the purpose of determining canopy coverage requirements and any development impacts on the community forest;
4. Make recommendations to the planning commission pertaining to the management of the city's community forest;
5. Help process and pursue grants to implement the community forest program;

6. Require applicants to cover the costs to prepare an independent arborist report to support the findings under Section [12.12.110](#)(D) or deny an application under this section.

B. Public Works Director. The public works director shall have the following powers and duties:

1. Abate public nuisances pursuant to Title 4 of this code;
2. Develop the community forest program in conjunction with the community development director;
3. Order the alteration or removal of hazardous trees when they are found to pose a threat to other trees or to the community, as set forth in Section [12.12.210](#); and administer tree replacement and planting per the community forest program, for the planting, siting, location and placement of all trees along the public streets or on public property of the city, and shall likewise have supervision, direction and control of the care, protection, pruning, removal, relocation and replacement thereof.

C. Planning Commission Powers and Duties. The planning commission shall have the following powers and duties:

1. Grant or deny applications for heritage tree removal permits pursuant to Section [12.12.110](#), Permit process for removal and pruning of heritage trees, of this chapter;
2. Grant or deny permit applications on appeal pursuant to Section [12.12.180](#), Permit process for removal of nonheritage trees, of this chapter;
3. Make recommendations to the city council concerning policies, programs and decisions relating to the city's urban forest, and regarding all related matters, documents, and policies; and
4. Approve nominations for heritage tree status.

D. City Council.

1. Review appeals of planning commission decisions;
2. Approve the heritage tree list, and removals of trees from the list;
3. Approve Capitola recommended tree list;
4. Approve the program and allocate funding for implementation of the community forest program. (Ord. 954 § 1, 2011; Ord. 863 § 2, 2004)

Article II. Tree Planting

12.12.050 Community forest program.

The director, with the advice and participation of the public works director, planning commission, and city council, may prepare a "community forest program" to guide tree replanting efforts throughout the city, including planting on public properties, streets, parks and sensitive habitat areas. This program would be established as a result from the collection of fees and potential grant funding.

A. Program Elements. The program shall incorporate the following elements: mapping identification of tree planting sites; prioritized planting plan and schedule; standards and lists of trees for tree selection, including the Capitola recommended tree list; guidelines for sitting, planting and pruning of trees on public property; maintenance plan; inspection requirements and specific licensing requirements for tree trimmers.

B. Program Incentives. The community forest program should provide for financial and technical incentives, and eligibility criteria, for activities such as:

1. Maintenance and problem solving for heritage trees, such as arborists' evaluations, are possible mitigations to save a heritage tree, including selective removal of roots, branches and/or special trimming;
2. Planting incentives to encourage increased canopy coverage and neighborhood identity;
3. Other incentives to encourage educational efforts similar to the heritage tree walk.

C. Program Provisions. The community forest program should include several planting and maintenance items including, but not limited to:

1. Specific city permit requirements for tree trimmers/tree climbers needed to obtain a "city permit to operate," such as relationship with or employment of a certified arborist and certified tree climber; insurance and contractor's license; low noise producing equipment; and commitment to follow provisions of city ordinance;
2. Retain a certified arborist under a city contract to perform tree evaluation and reports on heritage and nonheritage trees for a flat fee, paid for by the applicant. The contract certified arborist should be retained as soon as the ordinance codified in this chapter is effective.
3. Specific provisions for public works department staff to monitor compliance with project conditions of approval and supervise/monitor replacement trees on public property.

D. Flowering Trees. The program would encourage the planting of large and/or small flowering trees, according to different neighborhoods. Deciduous flowering trees would allow sun exposure in the winter months and provide color in the spring and other seasons. Flowering trees can create neighborhood identity. A tree expert should review the program prior to its adoption.

E. Neighborhood Entries. The program would incorporate a section regarding the selection of at least two suggested flowering trees per neighborhood, and provisions for a neighborhood entry sign with a few of those colored trees being planted around the sign to establish the neighborhood program. Property owners would be encouraged to plant similar trees on their properties with the objective of creating a special identity for their neighborhood. Suggested flowering trees would reflect specific neighborhood characteristics, such as view shed issues, character protection, and soils. The city may provide an incentive to property owners, by supplying young trees for “free” to accelerate the show of specific neighborhood colors. The approval of the selected neighborhood flowering trees shall be subject to a regularly scheduled public hearing so as to inform the residents and welcome participation. There is no obligation on the part of the resident to plant a selected tree.

F. Funding. In addition to resources of the tree and canopy replacement in-lieu fees to be deposited in the community tree and forest management account, the program would pursue potential grant funding to pay for educational efforts, monitoring and evaluation of this chapter. (Ord. 863 § 2, 2004)

12.12.060 Description of existing canopy coverage.

The canopy coverage throughout the city includes all trees on public and private properties, including street trees, parks, and habitat areas. Habitat areas include riparian corridors and monarch butterfly habitat, as identified in the general plan, local coastal program and the city’s environmentally sensitive habitats ordinance (Chapter 17.64 of this code).

On individual lots, canopy coverage shall be evaluated as part of tree removal permit or development application requests as set forth in Section [12.12.190](#). (Ord. 863 § 2, 2004)

12.12.070 Tree planting.

A. Recommended Tree List.

1. Development of the Capitola Recommended Tree List. The director, with the advice and participation of the planning commission and city council, shall prepare a “Capitola recommended tree list” to identify types and species of trees suitable and desirable for planting along streets and on private property, and determine the areas in which and conditions under which such trees shall be planted in or which may overhang the public streets or public property. The list should reflect the different city natural habitats and neighborhoods; and should encourage use of California natives and drought-tolerant species. Such determination shall be made by the planning commission, which may consult with landscape architects and arborists. The planning commission may report its findings in writing to the city council, and the council may approve the “Capitola recommended tree list,” which may be filed and available to the public from the community development department, or as part of the community forest program.

2. Purpose. The purpose of the Capitola recommended tree list is to help property owners to select new trees for their properties. The list shall include, but not be limited to, the following information: botanical and common names; suitability as a street tree; height; physical characteristics (deciduous or evergreen,

required exposure); decorative features (flowering and/or scented); and tolerances to drought, insects, diseases, saline environment, and irrigation watering. Recommended flowering trees for identified neighborhoods may also be included.

B. Trees Discouraged from Planting. Please refer to the Capitola recommended tree list.

C. Considerations Related to Solar Orientation. The planting, and replacement of trees shall take into consideration solar orientation for the benefit of the property in question as well as adjacent properties. For more information, please refer to brochures available at the community development department regarding considerations related to solar orientation and planting locations for trees in order to maximize sun exposure in the winter and shaded areas in the summer. (Ord. 863 § 2, 2004)

12.12.080 Environmental and socio-economic benefits of trees.

Tree provisions covering planting, maintenance, and removal of trees on public and private land help to maintain maximum tree cover/canopy coverage. As tree size and canopy coverage increase the benefits derived from the urban forest increase. The benefit/cost ratio of urban trees for a community is as high as seven and nine-tenths to one, and well worth the investment. Property values of landscaped homes are five to twenty percent higher than those of non-landscaped homes (International Society of Arboriculture). A city brochure on the “Environmental and Socio-Economic Benefits of Trees” is available to provide information regarding energy conservation, air quality, prevention of water run-off, flooding and soil erosion, enhancement of community identity and well-being, and protection of city hardscape. (Ord. 863 § 2, 2004)

Article III. Maintenance and Protection Strategy

12.12.090 Heritage tree historic context.

Capitola has a rich heritage in its trees. Residents have been committed to their cultivation and preservation since the city’s inception as Camp Capitola in 1874 on lands owned by Frederick A. Hihn, on which tree removal was prohibited and an extensive tree-planting program was undertaken. Heritage trees help define the character of the city. By virtue of their historic significance, size, beauty, age or value to wildlife, heritage trees offer intrinsic benefits to the entire city as well as individual properties. (Ord. 863 § 2, 2004)

12.12.100 Heritage tree list and nomination process.

A. Definition. “Heritage tree” shall mean any locally significant, historic, scenic and/or mature tree growing on public or private property, that is listed on the city’s adopted heritage tree list as set forth in this section, that is supported by the property owner and by the city council. A heritage tree list should be adopted no longer than six months from the approval of the ordinance codified in this chapter.

B. Heritage Tree List.

1. Nomination. Nominations of trees for inclusion on the heritage tree list may be made from any person to

the community development department if it meets one or more of the following criteria. Upon receiving consent of the owner of the property on which the tree is located, the community development director submits the nominated tree(s) to the planning commission for consideration and approval.

- a. Any tree which has a trunk with a circumference of forty-four inches approximately fourteen inches in diameter or more, measured at forty-eight inches above existing grade or at average breast height (abh);
 - b. Any tree, or grove of trees, which has historical significance, including, but not limited to, those which were/are:
 - i. Planted as a commemorative,
 - ii. Planted during a particularly significant historical era, or
 - iii. Marking the spot of a historical event;
 - c. Any tree, or grove of trees, which has horticultural significance, including, but not limited to, those which are:
 - i. Unusually beautiful or distinctive,
 - ii. Old (determined by comparing the age of the tree in question with other trees of its species within the city),
 - iii. Distinctive specimen in size or structure for its species (determined by comparing the tree to average trees of its species within the city),
 - iv. A rare or unusual species for the Capitola area (to be determined by the number of similar trees of the same species within the city),
 - v. Providing a valuable wild life habitat, or
 - vi. Identified by the city council as having significant arboricultural value to the citizens of the city.
2. Property Owner Support. No tree shall be considered by the planning commission or included on the heritage tree list by the planning commission unless written property owner consent has been obtained, agreeing to the nomination and designation.
3. Approval of Heritage Trees. The planning commission shall review and approve nominations for heritage trees via a public hearing properly noticed. The main function of the public hearing is to announce the trees nominated and to educate the community regarding heritage trees.

4. Removal of Tree from Heritage Tree List. A tree or trees shall be removed from the heritage tree list upon approval of a heritage tree removal permit by the planning commission, and/or the adoption of a resolution by the city council in case a removal permit is not applicable, based on findings by a qualified arborist that:

- a. The tree is a hazard to public health and safety or to other trees as per Section [12.12.210](#) of this chapter; or
- b. The tree no longer retains or holds the values and the community interest for which it was placed upon the heritage tree list.

C. Protection of Heritage Trees. No person shall allow any condition to exist, which may be harmful to any heritage tree, including, but not limited to, any of the following conditions:

1. Existence of any tree, heritage or otherwise, within the city limits that is irretrievably infested or infected with insects, scale or disease detrimental to the health of any heritage tree;
2. Paving and/or filling up the ground area around any heritage tree so as to shut off air, light or water to its roots;
3. Piling building materials, parking equipment and/or pouring any substance, which may be detrimental to the health of any heritage tree;
4. Posting any sign, poster, notice or similar device on any heritage tree;
5. Driving metal stakes, tying ropes, wire or metal braces and similar restricting devices, into the heritage tree or their root area for any purpose other than supporting and healing the heritage tree, except if recommended by a certified arborist;
6. Causing a fire to burn near any heritage tree;
7. Excessive pruning of the tree to cause its death;
8. "Choking" trees with undergrowth (heavy ivy).

D. Incentives. It is the goal of the city to develop partnerships with owners of heritage trees and provide incentives for maintenance, such as technical and financial assistance to maintain heritage trees as funds accumulate in the community tree and forest management account. Owners of heritage trees are eligible, according to certain criteria, to apply for city financial incentives/grants from the community tree and forest management account for maintenance and preservation of heritage trees. These criteria include, but are not

limited to: having the tree listed on the adopted heritage tree list; needing the services of an arborist to address invasive root problems; needing special pruning services to clear tree branches due to utility lines; needing to diagnose disease problems, and having no code violations within the subject property; as listed in the community forest program. (Ord. 863 § 2, 2004)

12.12.110 Permit process for removal and pruning of heritage trees.

A. Permit Required. No person shall prune, trim, cut off, or perform any work, on a single occasion or cumulatively, over a three-year period, affecting twenty-five percent or more of the crown and/or the volume of foliage and branches of any heritage tree without first obtaining a permit pursuant to this section. No person shall root prune, relocate or remove any heritage tree without first obtaining a permit pursuant to this section. No permits are required for maintenance trimming.

B. Application. All persons, utilities and any department or agency located in the city shall submit a permit application, together with the appropriate fee as set forth by city council resolution, to the community development department prior to performing any work requiring a permit as set forth in this section. The permit application shall include the number, species, size, and location of each subject tree, a clear description of the work being proposed, and the reason for the requested action. An arborist report must also be submitted.

C. Process. Permits for heritage tree removal or pruning over twenty-five percent within a three-year period are discretionary and are approved by the planning commission only in accordance with CEQA and if the findings in this section can be made.

D. Findings and Conditions.

1. The tree removal is in the public interest based on one of the following:
 - a. Because of the health or condition of the tree, with respect to disease or infestation; or
 - b. For safety considerations or danger of falling on persons or property; or
 - c. In situations where a tree has caused, or has the potential to cause, unreasonable property damage.
2. Pruning, root removal, and all other feasible alternatives to removal have been applied and were not sufficient to resolve the problem.
3. Replacement trees and locations have been identified, and as a last resort in-lieu fees were paid as a condition of the permit in accordance with Section [12.12.190](#), especially subsections D and E of Section [12.12.190](#).
4. The removal of the tree would not be contrary to the purposes of this chapter or Chapter 17.64.

5. The approved pruning of heritage trees shall be conducted in the presence of a licensed certified arborist.

E. Hearing Notice. All public hearing notices for a heritage tree removal permit shall be posted in three public places, including the site, at least ten working days prior to hearing date, and shall be published in at least one local newspaper. (Ord. 954 § 2, 2011; Ord. 863 § 2, 2004)

12.12.120 Harming trees unlawful.

It is unlawful for any person to break, injure, deface, mutilate, kill or destroy any street tree (heritage or non-heritage tree) or set fire or permit any fire to burn where such fire or the heat thereof will injure any portion of any tree in any public street in the city, nor shall any person place, apply, attach or keep attached to any such tree or to the guard of stake intended for the protection thereof any wire, rope, (other than one used to support a young or broken tree) sign, paint, or any other substance, structure, thing or device of any kind whatsoever, without having first obtained a permit so to do. (Ord. 863 § 2, 2004)

12.12.130 Tree protection, management and maintenance.

A. Protection of Trees. New residential or commercial development, including driveways and parking areas, shall be sited and designed to minimize cutting of trees, especially trees that provide screening from neighboring properties or provide buffer between different uses. A plan for tree protection and preservation may be required at the time the development application is submitted.

B. Tree Planting, Pruning and Maintenance. The city may make available to the public a “planting, pruning, and maintenance brochure,” and may provide technical assistance as funds become available in the community tree and forest management account. This brochure should also include guidelines for where not to plant trees, such as under power lines, too close to the neighboring property lines, and so forth.

C. Safeguarding Trees During Construction, Demolition or Tree Removal. For the purpose of safeguarding trees during construction, demolition or tree removal, the following conditions should apply to all trees other than trees for which a removal permit has been issued:

1. Pre-construction Guidelines. Prior to the commencement of construction, demolition or tree removal, all trees on the building site should be inventoried by the owner or contractor or project arborist as to size, species and location on the lot, and the inventory should be submitted on a topographical map to the community development director. This condition may be waived by the community development director for tree removal and minor demolition.

2. The property owner, contractor or project arborist shall be required to erect protective barricades around the dripline of all trees to be retained on the site to provide protection during construction. These barricades must be in place prior to the start of any construction or demolition activities. Under certain conditions where soil compaction is probable, fences may also be required around a tree or grouping of trees.

3. Earth surfaces within the dripline of any tree should not be changed or compacted. All equipment, construction material, and soil storage shall be kept beyond the dripline of trees.
4. Wires, signs and other similar items should not be attached to trees.
5. Cutting and filling around the base of trees should be done only after consultation with a certified arborist. Wherever cuts are made in the ground near the roots of trees, appropriate measures shall be taken to prevent exposed soil from drying out and causing damage to tree roots.
6. Pruning cuts shall conform to ANSI arboricultural standards and should not cut into the branch bark ridge or collar, or leave a stub. Please refer to the "Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices (Pruning)" published by the American National Standards Institute, Inc. (ANSI) for pruning practices. In cases of conflict between pruning standards, the standards in this chapter shall apply.
7. Damage to any tree during construction, demolition or tree removal should be immediately reported by the person causing the damage, the responsible contractor or the property owner to the community development director, and the contractor and/or owner should treat the tree for damage in the manner specified by the city's contract arborist, and/or public works director.
8. The property owner is responsible for care of all trees that are to remain on the site.
9. Failure to protect or maintain trees on construction/demolition sites is a violation of this code and grounds for suspension of the building permit.

D. Safeguarding Trees that are Required to be Planted as a Condition of Tree Removal Permit Approval.

1. Trees required to be kept on a building site and trees required to be planted as a condition of tree removal permit approval shall be maintained according to accepted arboricultural practices. If the tree dies the applicant shall be required to replace the tree as many times as necessary.
2. At no time shall these trees be moved without the issuance of a valid permit.
3. Nothing contained in this section shall be deemed to replace or revoke any requirements for the safeguarding of trees found elsewhere in this code or in the ordinances and procedures of the city. (Ord. 863 § 2, 2004)

12.12.140 License – Tree pruning business.

Any tree service company employed by an owner or public utility to carry out any act for which a permit is required under Section [12.12.110](#) or Section [12.12.180](#) shall comply with the city's tree pruning guidelines, obtain a city operation permit, a clearance from the community development director, and shall include the services of

certified arborist, a certified tree climber/trimmer, proof of contractor's license and insurance. Refer to list of city approved tree pruning businesses, tree trimmers, licensed contractors and certified arborists. Property owners pruning their own trees shall also comply with the provision of this chapter. (Ord. 863 § 2, 2004)

12.12.150 Educational programs.

The community development director may make available to interested persons, copies of:

- A. The community forest management ordinance;
- B. Summary handouts regarding the ordinance;
- C. The "Capitola recommended tree planting list;"
- D. The "Capitola heritage tree list;"
- E. The "Heritage Tree Walk" brochure;
- F. The community forest program;
- G. Pamphlets describing where, when, how and what tree to plant, listing the various choices for size, architectural, structural, leaf and bark color, and other elements of the trees;
- H. The city's "list of certified arborists, tree trimmers, and licensed contractors;"
- I. The "Planting, Pruning and Maintaining Trees" brochure; and
- J. The "Environmental and Socio-Economic Benefits of Trees" brochure. (Ord. 863 § 2, 2004)

Article IV. Tree Removal and Replacement

12.12.160 Permit requirements.

A. Permit Required. Except as herein provided, no person may, in the city, cause the cutting or intentional killing of any tree within the city unless a tree removal permit has been obtained and has been prominently displayed in the area of the cutting for the time provided in this chapter. As part of any development application considered by it, the planning commission, or the community development director, may allow tree removal or pruning, as applicable. All trees within environmentally sensitive habitat areas shall require a tree removal permit, and issuance of such permits for tree removals, pruning, cutting and trimming shall be consistent with Chapter 17.64, the environmentally sensitive habitats ordinance. Any tree removal or pruning activity must be specifically allowed in the permit. Refer to Section [12.12.110](#) for permit process for removal and pruning of heritage trees.

B. Pruning Allowable without Permit.

1. Non-heritage trees located on lots used solely as a single-family residence or duplex and not located within environmentally sensitive habitat areas may be pruned as follows:

- a. One-fourth or not more than twenty-five percent of the tree's height;
- b. One-fourth or not more than twenty-five percent of the volume of its foliage and branches;
- c. Within environmentally sensitive habitat areas as described in Chapter 17.64, Environmentally Sensitive Habitat Areas, all degrees of pruning shall be defined as "cutting" and shall require a permit.

2. The foregoing measurements are based on the largest size ever obtained by the existing tree. If that size cannot be precisely determined, then the community development director's best estimate of largest size shall be utilized. In the later case, the community development director would utilize average tree size information from standard landscape books, such as the Sunset Book and take into consideration local soil and other circumstances to make the final decision.

3. Pruning of trees should be done only as needed, but not more often than every two years, to ensure pruning is not causing a hardship for the tree.

C. Topping/Heading Cuts Prohibited. Topping, heading cuts to public and private trees is prohibited. Topping/heading cuts are often done to reduce a tree's size by shortening of limbs or branches back to a predetermined crown limit. It can result in indiscriminate cutting back of major limbs to stubs or to lateral branches that are not large enough to assume the terminal/leader role. It weakens the tree structure, causes inappropriate and rapid growth, and may result in reduced vigor, disease, decay, decline, or sudden death of the tree.

1. Alternative to Topping/Heading. There are times when a tree must be reduced in height or spread. Pruning methods approved by the International Society of Arboriculture such as "crown reduction" is recommended in these instances. "Crown reduction" is the selective removal or reduction of major limbs to proper lateral branches to decrease height and spread. "Thinning cuts," "drop-crotch pruning" and "end weight reduction" are used to reduce the length and weight on the ends of branches. These pruning methods result in healthier more natural appearing trees, where new branches will not be hanging and attached only to the outside of the tree trunk but will structurally grow from the tree itself.

2. Providing Clearance for Utility Lines. There are recommended techniques for line clearance by the ISA, such as "directional pruning." This method includes the removal of branches with proper cuts to direct the growth of the crown and limbs away from and around conductors. If a branch must be shortened, it should be cut back to a significant lateral that is large enough to assume the terminal role or the "leader" role. A rule of thumb for this is to cut back to a lateral that is at least one-third the diameter of the limb being removed, so the lateral can take over the structural role of the central or lateral leader. For more

information refer to brochures from the International Society of Arboriculture available at the community development department.

D. Permit – Public Utility or Agency. Any person doing business as a public utility subject to the jurisdiction of the Public Utilities Commission of the state and constituted public agency authorized to provide and providing utility service, shall apply for an annual permit for trimming and/or other tree related work; such permit shall include specific guidelines and conditions reflecting requirements in this chapter, permitting such person to trim, brace, remove or perform such other acts with respect to trees growing adjacent to the public streets of the city or which grow upon private property, to the extent that they encroach upon such public streets as may be necessary to comply with the safety regulations of said commission and as may be necessary to maintain the safe operations of its business, as well as be in compliance with the provisions of this chapter. (Ord. 863 § 2, 2004)

12.12.170 Exceptions.

Fruit-bearing trees are exempted from the provisions of this chapter, with exception of large and mature fruit trees that could fit the definition of a heritage tree. (Ord. 863 § 2, 2004)

12.12.180 Permit process for removal of non-heritage trees.

A. Application. All persons, utilities and any department or agency located in the city shall submit a permit application, together with the appropriate fee as set forth by city council resolution, to the community development department prior to performing any work requiring a permit as set forth in this section. The permit application shall include the number, species, size, and location of each subject tree, description of replacement trees, location and schedule of planting, and the reason for the requested action. An arborist report may be required, and if approved, notice of the tree removal shall be posted on site and at City Hall ten working days prior to the removal.

B. Process. Permits for non-heritage tree removal or pruning are ministerial and are approved by the community development director or designee. A staff in the public works department can approve the removal of a non-heritage tree only if the findings of subsections (C)(1) through (C)(4) of this section can be made. If these finding cannot be made, the application shall be transferred to the planning staff for further review and canopy coverage evaluation. The city may require the applicant to pay for services of an arborist under contract to the city, to provide recommendations and/or a written evaluation or report regarding the tree. Then, based on the city's evaluation or report, the director would make a decision as to whether or not the tree should be removed. The community development director shall make all findings listed below prior to a tree removal determination. The director may require planning commission review and approval of the permit.

C. Findings.

1. The tree removal is in the public interest based on one of the following:

- a. Because of the health or condition of the tree, with respect to disease infestation, or danger of falling;
- b. Safety considerations; or
- c. In situations where a tree has caused, or has the potential to cause, unreasonable property damage and/or interference with existing utility services.

2. All possible and feasible alternatives to tree removal have been evaluated, including, but not limited to undergrounding of utilities, selective root cutting, trimming and relocation.

3. The type, size and schedule for planting replacement trees is specified and shall be concurrent with the tree removal or prior to it, in accordance with Section [12.12.190](#)(F) and (G).

4. The removal of the tree would not be contrary to the purposes of this chapter and Chapter 17.64.

5. Replacement trees in a ratio of two to one as needed to ensure that with replacement trees a canopy coverage of at least fifteen percent will result, and location(s) for tree replanting are selected, and/or as a last resort, in-lieu fees have been paid as a condition of the permit in accordance with Section [12.12.190](#). Replacement trees and/or in-lieu fees are not required if post-removal tree canopy coverage on the site or parcel will be thirty percent or more.

D. Canopy Coverage Review. On individual lots, it is the goal of the city to maintain a fifteen percent coverage of tree canopy, consisting of flowering, deciduous trees and evergreen trees. Canopy coverage goals shall be evaluated as part of: (a) tree removal requests for trees that are not found to be diseased, infested, or hazardous; (b) as part of review of development applications on vacant properties; and (c) as part of tree replacement requirements that cannot be met on site. Tree removal requests may be approved for trees that do not meet the findings in relation to canopy coverage as stated in Section [12.12.180](#)(C)(5), if it is determined that the site canopy coverage goal will be maintained or exceeded with removal of the tree. Replacement trees and/or in-lieu fees are not required if post-removal tree canopy coverage on the site or parcel will be thirty percent or more. If other city regulations such as the 41st Avenue Design Guidelines establish a different and/or higher tree-planting standard than the requirement of fifteen percent canopy coverage, the higher standard shall apply.

E. Effective Date of Permit. The decision of the community development director shall be final unless appealed to the planning commission by the permit applicant or any other aggrieved person pursuant to this section. Unless appealed, the permit shall take effect ten working days after it is issued, except where the tenth day occurs on a Saturday, Sunday or holiday, in which case the effective date shall be extended to the next following business day. All work performed on any trees, including designated heritage trees pursuant to a permit as provided in this section shall be completed within forty-five days from the effective date of the permit, or within such longer period as the director may specify, and in case of replacement trees work shall be completed in

accordance with Section [12.12.190\(F\)](#).

F. Appeals. Any person aggrieved by any act or determination, contained, provided or granted in this chapter shall have the right to appeal the director's decision within ten working days from approval or denial, to the planning commission, and the planning commission's decision to the city council of the city, whose decision, after public hearing on said matter, shall be final.

All appeals must be in writing, state the reasons therefore, and must be made within ten working days of permit approval and delivered to the office of the city clerk. Community development director decisions are appealable to the planning commission. Planning commission decisions are appealable to the city council. However, the city council, at its sole discretion, may determine whether to hear or not to hear any such appeal. If the council decides not to hear or consider the appeal, the planning commission decision shall be final. All appeal hearings shall be de novo. Any tree related permit which has been issued and which has been appealed shall, during any appeal period, be suspended. (Ord. 863 § 2, 2004)

12.12.190 Tree replacement.

A. Tree Replacement Ratio. An approval for tree removal under this chapter shall be conditioned upon the applicant planting, at some other location on the subject property, replacement trees to compensate for the removed tree(s) on a ratio of at least two trees or more for each one tree removed, as determined by the director. Replacement trees and/or in-lieu fees are not required if post-removal tree canopy coverage on the site or parcel will be thirty percent or more. Native trees grown from locally or regionally collected stock are preferred, in the case where a native tree is not appropriate as determined by the community development director, a non-invasive exotic tree may be planted.

B. Tree Replacement Size to be Planted On Site. The community development director and/or his or her designee shall approve the type and size of replacement trees. Generally, twenty-four-inch box or larger trees should replace trees located upon properties zoned or used in whole or in part for commercial purposes. Fifteen gallon or larger trees should replace those located upon residential properties. Size of tree could vary per recommendation of a certified arborist and acceptance by the community development director and/or designee. For replacement selection, the applicant should refer to Section 17.72.030, and/or to the community forest program. Trees to be planted on public property or on sensitive habitat zone shall be based on the community forest program guidelines and performance standards developed pursuant to Section [12.12.050](#), Community forest program. Replacement of canopy coverage calculations can be determined on the basis of the size of the subject trees removed, or based on standard landscape guides, such as the Sunset Book.

C. Replacement of Canopy Coverage Related to Development Applications. New construction and major remodels of residential and commercial structures shall trigger a canopy coverage review. The goal of the city is to reach and maintain at least fifteen percent tree coverage per lot on an on-going basis. Project conditions of approval shall require planting or replacement of all or part of the trees necessary to meet the city goal per discretion of the community development director and/or the planning commission as applicable. Planting and

replacement should be done within the same lot, possibly in different locations. As a last resort, should tree planting on site not be possible due to existing, nonself-imposed hardship and/or topographic conditions, a variation of this requirement may be considered with the payment of in-lieu fees.

Nonsell-imposed hardship shall mean the unusual form or shape of a lot, existing rock outcroppings on the property, or other topographic feature desired to be protected, or any site physical circumstance that does not allow the applicant to enjoy the same privileges as neighbors have by planting a tree, and/or a circumstance which negatively affects adjacent properties. Circumstances may also include needed sun exposure, visibility of business signs, and other such fundamental reasons that would not justify the planting of a replacement tree on site. If the trees are found to be diseased, infested or hazardous, then canopy coverage replacement is not activated. Replacement trees and/or in-lieu fees are not required if post-removal tree canopy coverage on the site or parcel will be thirty percent or more.

D. In-Lieu Fees for Trees and Canopy Coverage Replacement. An approval for tree removal under this chapter is conditioned upon the applicant planting, at some location on the subject property, replacement trees and canopy coverage, or as a last resort if all other locations on site are found infeasible, pay in-lieu fees to compensate for the planting and maintenance of those trees by the public works director somewhere else off site.

E. In-Lieu Fee Structure. The applicant shall pay the in-lieu fees in effect at the time as established by city council resolution. In-lieu fees would include a deposit and be based on a cost recovery system for the planting and maintenance of trees and canopy percentage to be planted and/or replaced. The cost recovery system is to be approved by the public works director and/or be based on the tree guide published by the International Society of Arboriculture. The fees shall be deposited in the community tree and forest management account administered by the public works director.

In-lieu fees shall be established by city resolution and include the following:

1. For tree replacements off site; and
2. For canopy coverage replacements in relation to healthy trees removed or to conditions on new development applications.

F. Time Limits for Replacement. Permits for tree removal shall not be issued until five hundred dollars have been deposited with the city to secure the applicant's obligation of planting the replacement tree, unless the director receives proof that the replacement tree has been planted prior to tree removal or will be planted at the same time as tree removal. If the replacement tree is not planted as required, the city may utilize the money for the expenses (including, but not limited to, staff time) in effecting the planting of the replacement trees.

G. Maintenance of Replacement Trees. Whenever a permit has been issued on the basis that the applicant will be planting a replacement tree, the applicant must agree to maintain those trees, and to refrain from destroying

such trees regardless of the size of the tree. If the tree dies, the applicant shall be required to replace the tree as many times as necessary.

H. Tree Removal and Replacement Fees. The applicant shall pay a permit fee for tree removals and in-lieu fees as applicable, and set forth in the city council fee resolution. The fees would include a deposit and would recover all staff costs for processing, planting, and maintaining trees to replace lost canopy coverage. (Ord. 954 § 3, 2011; Ord. 863 § 2, 2004)

12.12.200 Removal by the city of hazardous trees on private property.

A. Declaration of Public Nuisance. Based on recommendations of the community development director or the public works director, the city council by resolution may declare tree (heritage and non-heritage tree) to be a public nuisance to be abated as set forth in this section if it is found that any tree growing on private property, when infested by any insect or infected by reason of such infestation or infection, endangers the life or growth or healthful existence of other trees within the city not so infested or infected, or any trees determined to be a danger to persons or property.

B. Notice to Abate Public Nuisance. After the passage of such resolution, the community development director shall cause to be conspicuously posted on the property upon which such public nuisance is alleged to exist, not less than ten working days prior to abatement, not less than three notices headed "notice to abate public nuisance," such heading to be in letters not less than one inch in height and substantially in the following form:

NOTICE TO ABATE PUBLIC NUISANCE

Notice is hereby given that on the _____ day of _____, 20____, the City Council of the City of Capitola passed a resolution declaring that certain (trees) located upon (description of property) are infested with insects, infected with disease, or a clear and present danger to persons or property, and that the same constitute a public nuisance which must be abated by the removal of the same, otherwise they will be removed and the nuisance abated by the City, in which case the cost of such removal shall be assessed upon the property from which such (trees, or other plants) are removed, and such cost will constitute a lien upon such property until paid. Reference is hereby made to said resolution for further particulars.

Any person objecting to the proposed removal, as aforesaid, is hereby notified to attend the meeting of said City Council to be held in the Council Chambers in City Hall at (time) on the _____ day of _____, 20____.

C. Nothing contained in this section shall be deemed to impose any liability upon the city, its officers or employees, nor to relieve the owner of any private property from the duty to keep any tree upon his or her property or under his or her control in such a condition as to prevent it from constituting a public nuisance as defined in this section. (Ord. 863 § 2, 2004)

12.12.210 Emergency removal.

In the event of an emergency whereby immediate action is required because of disease or because of imminent danger to life or property, a non-heritage and a heritage tree may be pruned, altered or removed by order of the public works director or by order of the police chief. The person ordering the pruning, alteration or removal shall file a report listing findings to justify the tree removal as follows:

A. Removal Findings for Heritage Trees. That the emergency removal of the heritage tree is in the public interest because of the health condition of the tree with respect to disease, infestation, or danger of falling on persons or property; that other feasible and safe alternatives to removal have already been explored or applied and would not or did not resolve the problem; that replacement trees and locations have been identified and scheduled for planting. The report shall also include photos and tree documentation for heritage trees and trees in the sensitive habitat areas.

B. Removal Findings for Non-Heritage Trees. That the emergency removal of non-heritage trees is in the public interest because of the health conditions of the tree with respect to disease, infestation or danger of falling on persons or property; that other feasible and safe alternatives have been evaluated and that replacement trees and locations have been identified and scheduled for planting.

C. The report shall be filed within five days from removal with the community development director. The community development director shall forward copies of the report to the planning commission and council for their information. (Ord. 863 § 2, 2004)

12.12.220 Americans with Disabilities Act compliance.

The removal and replacement of any trees, including heritage trees, shall be in compliance with the Americans with Disabilities Act regulations, such as for path of access and cross slope. This would avoid creating barriers to disabled access. (Ord. 863 § 2, 2004)

Article V. Enforcement and Evaluation**12.12.230 Enforcement.**

The community development director is hereby charged with the responsibility for the enforcement of the ordinance codified in this chapter as soon as it is adopted, and may serve notice to any person in violation thereof or institute legal proceedings as may be required, and the city attorney is hereby authorized to institute appropriate proceedings to that tend. (Ord. 863 § 2, 2004)

12.12.240 Monitoring conditions of approval.

The community development director and/or designee, with the help of the public works department, shall enforce conditions of approval, monitor replacement tree planting and maintenance to ensure the city regulations are being implemented.

A. Conditions of Approval for Sick and Hazardous Trees. In general the staff member who issues tree permits for sick or hazardous trees will monitor planting and enforce conditions related to those replacement trees planted in the public property.

B. Conditions of Approval for Healthy and Heritage Trees. The community development department staff will monitor planting and enforce conditions related to healthy trees, heritage trees, and for replacement trees planted on private property that were part of a removal permit issued by the public works department staff. (Ord. 863 § 2, 2004)

12.12.250 Citizen complaints.

The public works department will respond to citizen complaints regarding dangerous, diseased, and hazardous trees. The community development department will respond to complaints related to illegal removal, harm or excessive pruning and similar problems occurring to healthy trees and heritage trees. When such complaint calls are received during the weekends by the police department, a police officer would inspect the site, order a stop work notice, and report to the community development department staff on the first working day of the week. In case of an emergency situation the officer would follow provisions as stated in Section [12.12.210](#). (Ord. 863 § 2, 2004)

12.12.260 Tree trimmers.

Tree trimmers are required to perform according to city regulations as set forth in this chapter and in the community forest program. Violation of these regulations is reason for revocation of the city permit to operate within Capitola, and removal from the city list of certified tree trimmers and arborists. (Ord. 863 § 2, 2004)

12.12.270 Penalty for violation.

A. Criminal Penalty. Any person alone, or through an agent, employee or representative, who violates any provision of this chapter shall be guilty of a separate offense for each act constituting a violation of this chapter. Persons criminally liable for a violation of this chapter include, but are not limited to, a property owner, an arborist, a tree trimming business, or contractor who perform work or cause work to be performed in violation of this chapter. The city attorney shall have the discretion to prosecute any violation of this chapter as either a misdemeanor or an infraction punishable by a fine in the maximum amount authorized by the California Penal Code for misdemeanors and infractions.

B. Civil Penalty. As an alternative to criminally prosecuting violations of this chapter, the city may seek civil penalties as herein below set forth.

1. Non-Heritage Tree Violations.

- a. The violation of any provision contained in this chapter is declared to be unlawful and shall constitute a public nuisance, subject to the penalties as prescribed in this chapter. Such penalties may be assessed also against a certified arborist, property owner, or contractor who performed work in

violation of this section. In addition thereto, any person unlawfully removing, destroying or damaging any protected tree shall be penalized as follows:

i. Replacing the unlawfully removed tree with one or more new trees which, in the opinion of the community development director or planning commission, will provide equivalent aesthetic quality in terms of size, height, location, appearance, age and other characteristics of the unlawfully removed tree. Such trees shall be located on site where the tree was removed;

ii. Where similar replacement trees will not provide reasonably equivalent aesthetic quality because of the size, height, location, appearance, age and other characteristics of the unlawfully removed or damaged tree at the discretion of the community development director or planning commission, the community development director shall calculate the value of the removed tree in accordance with the latest edition of the Guide for Establishing Values of Trees and Other Plants, as prepared by the Council of Tree and Landscape Appraisers. Upon the determination of such value, the community development director may require either a cash payment to the city, and/or the planting of replacement trees as designated by the community development director, or any combination thereof, in accordance with the following:

(A) Cash payment for any portion or all of the value of the removed tree in accordance with this section, and

(B) The replacement of removed trees, the retail costs of such trees, as shown by documentary evidence satisfactory to the community development director, shall be offset against the value of the removed or damaged tree, but no credit shall be given for transportation, installation, maintenance and other costs incidental to the planting and care of the replacement trees;

iii. Where a violation(s) of this section has previously occurred with the same property owner, agent, certified arborist or contractor, or advance knowledge of the requirements of this section have been provided to the property owner, agent certified arborist or contractor, the community development director or planning commission, at their discretion, shall require payment of a double penalty fee pursuant to subsection (B)(1);

iv. All applications and permit fees paid to the city shall be forfeited.

b. In addition to the civil penalty herein above prescribed, the city shall also recover the cost of staff time, attorney fees and court proceedings incurred in connection with the violation.

2. For Heritage Trees. A penalty pursuant to subsection (B)(1) shall be charged. In addition to the penalty herein prescribed, the city shall also recover the cost of staff time, attorney fees and court proceedings

incurred in connection with the violation.

C. Restitution. As an alternative, or in addition to criminal or civil penalties the city may require restitution of any person unlawfully removing, destroying or damaging any trees as prohibited in this chapter as follows:

1. Replace the unlawfully removed tree with one or more trees that, in the opinion of the community development director, will provide equivalent aesthetic quality and other values in terms of size, height, location, appearance, age and other characteristics of the unlawfully removed tree. Such trees may be required to be located either on or off site where the tree was removed.

2. Where similar replacement trees cannot be planted on site, in lieu fees shall be paid into the community tree fund to compensate for the planting and maintenance of the tree and the canopy coverage removed.

D. Disqualification. In the event a violation is committed by or under the direction of a certified arborist, a "permitted" tree trimmer or other contractor included in the city's list, he or she will be removed from the city's list for a minimum of one year. A person or company may petition to be relisted. The community development director may grant the petition if he or she concludes that the petitioner will follow this chapter's regulations in the future. (Ord. 954 § 4, 2011; Ord. 863 § 2, 2004)

12.12.280 Performance evaluation.

The community development director may collect and maintain all records and data necessary to objectively evaluate whether progress is being made toward the stated goals of this chapter. Evaluation methods may include, and may not be limited to:

A. Aerial photos taken periodically to develop citywide base maps for canopy coverage evaluation, sensitive habitat zones area evaluation, parks and street/transportation corridor landscaping;

B. An annual summary and analysis of the tree removal and replacement trees planted on lots evaluated, may be prepared by the director at the direction of the planning commission, and may include, but not be limited to the:

1. Canopy coverage removed,
2. Canopy coverage replaced,
3. Flowering trees replaced,
4. Large trees planted, and
5. The amount of in-lieu fees collected over a one to three-year period as specified by the commission. (Ord. 863 § 2, 2004)