

PROPOSED HERITAGE TREE ORDINANCE BOARDS, COMMISSIONS, AND STAFF SUMMARY

Draft Ordinance (September 2009) Presented to Boards and Commissions (only contested sections listed)	Urban Forestry Board October 2009	Environmental Board November 2009	Electric Utility Commission October 2009	Planning Commission December 2009 (see draft Planning Commission ordinance)	Staff Response and Recommendations (see draft ordinance February 2010)
<p>§ 25-8-602 DEFINITIONS. (1) <u>HERITAGE TREE means a tree that has at least one stem with a diameter of 24 inches or more, measured four and one-half feet above natural grade, and is a species prescribed by rule as eligible for heritage tree designation.</u></p>	<p>We strongly urge that multi-stemmed trees be measured according to methods used in the current Tree Protection Ordinance (and also as a standard of measurement in the arboriculture industry). This method measures the largest stem's DBH, then adds to it half the DBH of the remaining stems. The draft HTO requires at least on single stem greater than 24” DBH before a tree can be considered a Heritage Tree.</p>	<p>Heritage Tree means a tree that has at least one stem with a total diameter of 24 inches or more, measured four and one-half feet above natural grade, and is a species prescribed by rule as eligible for heritage tree designation.</p>		<p>HERITAGE TREE means a tree that has at least one stem with a total diameter of 24 inches or more, measured four and one-half feet above natural grade, and is a species prescribed byrule ordinance as eligible for heritage tree designation.</p>	<p>Current staffing cannot support inclusion of multi-stemmed trees. It is estimated that this change would double the number of heritage trees. One additional FTE would be required to process these additional cases administratively.</p> <p>Alternatively, if a heritage tree is defined as requested by PC, continue to limit 25-8-643 Land Use Commission variances to heritage tree with at least one stem 30” or larger.</p> <p>Staff prefers to adopt the species list by rule (public process) based upon past practices and an established process if amendments are needed. However, inclusion of list of species in the ordinance is acceptable.</p>
<p>§ 25-8-604 DEVELOPMENT APPLICATION REQUIREMENTS. (C)For an application for preliminary plan, final plat, or site plan approval that proposes the removal of a protected tree, the city arborist must review the application and make a recommendation before the application may be administratively approved or presented to the Land Use Commission or city council. (D) <u>For an application for preliminary plan, final plat, or site plan approval that proposes the removal of a heritage tree, the applicant must file a request for a variance from 25-8-641 before the application for preliminary plan, final plat, or site plan approval may be administratively approved or presented to the Land Use Commission or City Council.</u></p>					<p>Staff recommends including building permit as an application that requires city arborist review. “Building permit” was not within Boards and Commission version. The stakeholder process identified justification for amendment.</p> <p>(C)For an application for preliminary plan, <u>final plat, building permit,</u> or site plan approval that proposes the removal of a protected tree, the city arborist must review the application and make a recommendation before the application may be administratively approved or presented to the Land Use Commission or city council. (D) <u>For an application for preliminary plan, final plat, building permit, or site plan approval that proposes the removal of a heritage tree...</u></p>

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<p>§25-8-607 APPLICABILITY TO CITY. New section.</p> <p>Not within Boards and Commission version. The stakeholder process provided justification for amendment.</p>				Specify that the ordinance pertains to all CoA departments to the same extent it pertains to citizens.	<p>Clarifying that the regulations apply to the actions of the City is acceptable to Staff.</p> <p>§25-8-607 APPLICABILITY TO CITY The requirements of this subchapter apply to land development and other actions by the City.</p>
<p>25-8-621 PERMIT REQUIRED FOR REMOVAL OF PROTECTED TREES; EXCEPTIONS. (B) (B) A person may, without a permit, remove a damaged protected tree that is a hazard to life or property if the tree is removed within seven days of being damaged. The [Watershed Protection] <u>Planning</u> and Development Review Department may extend this deadline for widespread and extensive storm damage.</p>	We recommend revising these sections to allow immediate removal of hazardous trees at critical risk of failure due to damage from storms, mechanical injury, etc. We would still expect the person removing such a tree to notify the City Arborist after such removals take place, both to improve tracking of such removals and to allow verification of the critical risk involved (including photos).	A person may, without a permit, remove a damaged protected tree that is [a] <u>an imminent</u> hazard to life and property;		Revise 25-8-621 (B) to specify "...damaged protected tree that is [a] <u>an imminent</u> hazard..."	<p>Staff recommends adoption of proposed modified language. Additional rules, within the Environmental Criteria Manual, will clarify the procedures to follow for an imminent hazard situation.</p> <p>(B) A person may, without a permit, remove a damaged protected tree that is [a]<u>an imminent</u> hazard to life or property if the tree is removed within seven days of being damaged. The [Watershed Protection] <u>Planning</u> and Development Review Department may extend this deadline for widespread and extensive storm damage.</p>
<p>25-8-621 PERMIT REQUIRED FOR REMOVAL OF PROTECTED TREES; EXCEPTIONS. new subsection(D)</p> <p>Not within Boards and Commission version. New section recommended by Electric Utility Commission; a modified version has been incorporated into staff's January 2010 draft ordinance.</p>			Add a new subsection (D) to read: (D) <u>A City Utility may without a permit, remove a Protected Tree that is an imminent hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree. The Planning and Development Review Department may request supporting evidence regarding the tree removal to verify the validity of the work. The City Utility will not be required to provide evidence regarding the tree removal to the Planning and Development Review Department in instances of widespread and extensive storm damage.</u>		<p>Staff supports language to address special circumstances in which a tree may prevent the delivery of vital utility services, with approval of the executive officer of the utility and the requirement of documentation.</p> <p>(D) <u>A utility may, without a permit, remove a protected tree that poses an immediate hazard to the safe provision of services, as determined by the executive officer of the utility, only if the hazard cannot reasonably be mitigated without removal of the tree. No later than 7 days after removal of the tree, the utility shall provide to the city arborist documentation of the hazard presented by the tree and the need for its removal.</u></p>

Acronyms

DBH – Diameter at Breast Height (industry standard for measuring trees at 4 ½ feet above grade); FTE – Full Time Employee; HTO – Heritage Tree Ordinance

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<p>§25-8-624 APPROVAL CRITERIA, (A) (2). (A) The [Watershed Protection-] Planning and Development Review Department <u>may</u> [shall] approve an application to remove a protected tree <u>only</u> after determining that the tree: (2) prevents a reasonable use of the property;</p>	<p>States that a Heritage Tree may be removed if it “prevents a reasonable use of the property”. We find this a gaping weakness that would make the HTO virtually meaningless. Instead, we propose changing the language to “prevents <i>all</i> reasonable use of the property”.</p>	<p>...prevents <u>a</u> reasonable use;</p>		<p>Revise 25-8-624 (A) (2) prevents [a] <u>all</u> reasonable use of the property;</p>	<p>Staff believes the change from “shall...after determining” to “may...only after determining” in this section addresses concerns; Staff does not recommend changing “a” to “all”. This section applies to both protected and heritage trees. This phrase has been used since the inception of the protected tree ordinance. In addition, it mimics the language used for environmental variances in 25-8-41 (B)(2) “the requirement for which a variance is requested prevents a reasonable, economic use of the entire property”.</p> <p>Changing “a” to “all” reasonable use will require a takings determination for every tree removal based on the reasonable use criteria. It is a substantially higher bar than has been in place. Staff believes changing the “shall” to “may” in the lead up to this provision makes clear that the decision is discretionary, and there is no obligation to allow removal of a tree simply because the proposed use requiring tree removal is reasonable. If there are other reasonable accommodations that will allow the tree to remain, the removal would not be allowed.</p>
<p>§25-8-624 APPROVAL CRITERIA. (A)(3) (A) The [Watershed Protection-] Planning and Development Review Department <u>may</u> [shall] approve an application to remove a protected tree <u>only</u> after determining that the tree: (3) is a hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree;</p>			<p>(3) is a hazard to life or property <u>or the safe and efficient operations of public utility services</u>, and the hazard cannot reasonably be mitigated without removing the tree;</p>		<p>Staff supports language to allow City Arborist to consider granting a removal permit request under special circumstances in which a tree may prevent the safe operation of utility services. Staff also supports consistent use of the term “imminent”, as proposed by PC in 25-8-621: (3) is [a] <u>an imminent</u> hazard to life or property <u>or the safe operation of existing public utility services</u>, and the hazard cannot reasonably be mitigated without removing the tree;</p>

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§25-8-624 APPROVAL CRITERIA. (A)(4) (A) The [Watershed Protection-] Planning and Development Review Department <u>may</u> [shall] approve an application to remove a protected tree <u>only</u> after determining that the tree: (4) is dying or dead;	We object to the word “dying” here. In a sense, we could consider every living thing to be “dying”. We believe the other criteria provided will allow removal of a tree that is truly close to death without this measure.	...is dead (delete <u>dying</u>)		In 25-8-624 (A) (4), delete reference to "dying or" in "dying or dead."	Staff supports removing the term dying. (A) The [Watershed Protection-] Planning and Development Review Department <u>may</u> [shall] approve an application to remove a protected tree <u>only</u> after determining that the tree: (4) is [dying or] dead;
§25-8-624 APPROVAL CRITERIA. (A)(6) (A) The [Watershed Protection-] Planning and Development Review Department <u>may</u> [shall] approve an application to remove a protected tree <u>only</u> after determining that the tree: (6) for a tree located on public property or a public street or easement: (b) prevents the construction of utility or drainage facilities that may not feasibly be rerouted.			(6) for a tree located on public property or a public street or easement: (b) prevents the construction and <u>maintenance</u> of utility or drainage facilities that may not feasibly be rerouted.		Staff supports language to allow City Arborist to consider granting a removal permit request under special circumstances in which a tree may prevent the safe operation of utility services. (6) for a tree located on public property or a public street or easement: (b) prevents the <u>maintenance or</u> construction of utility or drainage facilities that may not feasibly be rerouted.
§25-8-624 APPROVAL CRITERIA. (C)(4) New provision (not within Boards and Commission version); the stakeholder process identified justification for amendment.					Staff supports adding subsection (4) in the protected tree division to be consistent with the identical provision in section 25-8-646(E) for heritage trees. (4) <u>The body considering the variance, waiver, exemption, modification or alternative compliance will consider the benefit of preserving the protected tree in determining whether to grant or deny the request for a variance, waiver, exemption, modification or alternative compliance from another City Code provision.</u>
§25-8-624 APPROVAL CRITERIA. (C)(5) New provision (not within Boards and Commission version); the stakeholder process identified justification for amendment.					In response to input from engineers, staff supports adding this subsection. (5) <u>This subsection does not require an applicant to request a variance, waiver, exemption, modification, or alternative compliance if the director determines that to do so would endanger the public health and safety.</u>

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<p>§ 25-8-626 EFFECTIVE DATE AND EXPIRATION OF APPROVAL. (A) Approval of an application to remove a protected tree is effective <u>immediately</u>.[- (1) on the third day after it is granted; or (2) immediately, if the application was approved under Subsection 25-8-624(A) (3),(4),or (5) (Approval Criteria).]</p> <p>Modified wording not within Boards and Commissions version; the stakeholder process identified justification for amendment within (B)(1): (B) An approval to remove a protected tree expires: (1) one year after its effective date;</p>	<p>We would remove the change to make approved permits effective immediately. We support retaining the current three-day delay between approval of a permit to remove a Heritage Tree and its effective date. This would help to avoid accidental removals of the wrong trees.</p>	<p><read as it was originally stated></p>			<p>Staff supports the September 2009 draft for (A) Under (A), the permitting process assesses the tree conditions and is an open process. There does not appear to be a reason for a delay in effectiveness of the permit once granted:</p> <p>(A) Approval of an application to remove a protected tree is effective <u>immediately</u>.[- (1) on the third day after it is granted; or (2) immediately, if the application was approved under Subsection 25-8-624(A) (3),(4),or (5) (Approval Criteria).]</p> <p>Staff supports adding language to subsection (B)(1) in the protected tree division requiring mitigation conditions remain in effect to be consistent with the parallel provision in section 25-8-648 (B)(1) for heritage trees. (B) An approval to remove a protected tree expires: (1) one year after its effective date, <u>provided that the mitigation conditions in the permit remain in effect until the conditions are met</u>;</p>
<p>§ 25-8-641 REMOVAL PROHIBITED. (D) (D) A person may, without a variance, remove a damaged heritage tree that is a hazard to life or property if the tree is removed within seven days of being damaged. The director may extend this deadline for widespread and extensive storm damage.</p>	<p>We recommend revising these sections to allow immediate removal of hazardous trees at critical risk of failure due to damage from storms, mechanical injury, etc. We would still expect the person removing such a tree to notify the City Arborist after such removals take place, both to improve tracking of such removals and to allow verification of the critical risk involved (including photos).</p>				<p>Staff recommends modified language to be consistent with the changes suggested by PC in 25-8-621 (B). Additional rules, within the Environmental Criteria Manual, will clarify the procedures to follow for an imminent hazard situation. (D) A person may, without a permit, remove a damaged heritage tree that is [a]<u>an imminent</u> hazard to life or property if the tree is removed within seven days of being damaged.</p>

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<p>§ 25-8-641 REMOVAL PROHIBITED. new subsection (E)</p> <p>Not within Boards and Commission version. New section recommended by Electric Utility Commission; a modified version has been incorporated into staff's January 2010 draft ordinance.</p>			(E) A City Utility may, without a variance, remove a heritage tree that is an imminent hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree. The Planning and Development Review Department may request supporting evidence regarding the tree removal to verify the validity of the work. The City utility will not be required to provide evidence regarding the tree removal to the Planning and Development Review Department in instances of widespread and extensive storm damage.		<p>Staff supports language to address special circumstances in which a tree may prevent the delivery of vital utility services, with approval of the executive officer of the utility and the requirement of documentation.</p> <p><u>(E) A utility may, without a permit, remove a heritage tree that poses an immediate hazard to the safe provision of services, as determined by the executive officer of the utility, only if the hazard cannot reasonably be mitigated without removal of the tree. No later than 7 days after removal of the tree, the utility shall provide to the city arborist documentation of the hazard presented by the tree and the need for its removal.</u></p>
<p>§ 25-8-642 ADMINISTRATIVE VARIANCE. (A)(1) (A) The director of the Planning and Development Review Department may grant a variance from Section 25-8-641 (<i>Removal Prohibited</i>) to allow removal of a heritage tree only after determining, based on the city arborist's recommendation, that the heritage tree: (1) is dying or dead;</p>	<p>We object to the word “dying” here. In a sense, we could consider every living thing to be “dying”. We believe the other criteria provided will allow removal of a tree that is truly close to death without this measure.</p>	<p>Delete <u>dying</u>;</p>		<p>In 25-8-642 (A) (1), delete reference to "dying or" in "dying or dead."</p>	<p>Staff supports removing the term dying. (A) The director of the Planning and Development Review Department may grant a variance from Section 25-8-641 (<i>Removal Prohibited</i>) to allow removal of a heritage tree only after determining, based on the city arborist's recommendation, that the heritage tree: (1) is [dying or] dead;</p>

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§ 25-8-642 ADMINISTRATIVE VARIANCE. (A) (2) (A) The director of the Planning and Development Review Department may grant a variance from Section 25-8-641 (<i>Removal Prohibited</i>) to allow removal of a heritage tree only after determining, based on the city arborist’s recommendation, that the heritage tree: (2) is a hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree;			(A) The director of the Planning and Development Review Department may grant a variance from Section 25-8-641 (Removal Prohibited) to allow the removal of a heritage tree only after determining, based on the city arborist's recommendation, that the heritage tree: (2) is a hazard to life or property <u>or the safe and efficient operations of public utility services</u> , and the hazard cannot reasonably be mitigated without removing the tree;		Staff supports language to allow City Arborist to consider granting a removal permit request under special circumstances in which a tree may prevent the safe operation of utility services. Staff supports consistent use of the term “imminent”, as proposed by PC in 25-8-621 (2) is [a] <u>an imminent</u> hazard to life or property <u>or the safe operation of existing public utility services</u> , and the hazard cannot reasonably be mitigated without removing the tree;
§ 25-8-642 ADMINISTRATIVE VARIANCE. (C) (C) The director of the Planning and Development Review Department may grant a variance from Section 25-8-641 (<i>Removal Prohibited</i>) to allow removal of a heritage tree associated with a subdivision, site plan, or building permit application submitted to the City only after determining, based on the city arborist’s recommendation, that under the development plan submitted, removal of the heritage tree will result in the protection of the maximum number of trees on the site.	We would strike this section entirely. Though preserving a large number of trees is a worthy goal, we do not believe it outweighs the benefits of saving our largest trees (see my initial comments above). This ordinance is designed to preserve Heritage Trees; preserving smaller trees should be accomplished elsewhere.	Delete entire paragraph		Delete 25-8-642 (C)	Staff agrees with deleting this subsection, recommends using the idea reflected in this subsection as an additional finding required for an administrative variance in 25-8-642 (D)(2) and land use commission variance in 25-8-643 (A)(2). [(C) The director of the Planning and Development Review Department may grant a variance from Section 25-8-641 (<i>Removal Prohibited</i>) to allow removal of a heritage tree associated with a subdivision, site plan, or building permit application submitted to the City only after determining, based on the city arborist’s recommendation, that under the development plan submitted, removal of the heritage tree will result in the protection of the maximum number of trees on the site.]

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<p>§ 25-8-642 ADMINISTRATIVE VARIANCE. (D) (D) The director of the Planning and Development Review Department may grant a variance from Section 25-8-641 (<i>Removal Prohibited</i>) to allow removal of a heritage tree that is less than 30 inches in diameter measured four and one-half feet above natural grade only after determining, based on the city arborist’s recommendation...</p> <p>Additional text not within Boards and Commissions version. Stakeholder process identified justification for amendment.</p>				<p>The review process for 25-8-642 (D) should be amended to state that the director may grant a variance from Sec. 25-8-641 to allow removal of a heritage tree ... only <u>after receiving a recommendation from the Urban Forestry Board</u> and after determining, based on the city arborist's recommendation...</p>	<p>Current staffing cannot support this recommendation. One additional FTE would be required to support the anticipated number of cases for UFB hearings. To take all “administrative” variances to UFB would virtually give the UFB authority to grant or deny as it would be difficult for the city arborist to decide contrary to the recommendation.</p> <p>Staff supports clarifying the size of trees which qualify for administrative variances. (D) The director of the Planning and Development Review Department may grant a variance from Section 25-8-641 (<i>Removal Prohibited</i>) to allow removal of a heritage tree that [is less than] <u>does not have at least one stem that is 30 inches in diameter or larger</u> measured four and one-half feet above natural grade only after determining, based on the city arborist’s recommendation, ...</p>
<p>§ 25-8-642 ADMINISTRATIVE VARIANCE. (D)(1) and (2) ...based on the city arborist’s recommendation, that the heritage tree meets the criteria in Section 25-8-624 (A) (<i>Approval Criteria</i>) and that: (1) removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property; and (2) the applicant has applied for and been denied a variance, waiver, exemption, modification, or alternative compliance from another City Code provision which would eliminate the need to remove the heritage tree, as required in Section 25-8-646 (<i>Variance Prerequisites</i>).</p>	<p>UFB: As it is currently written, it is not clear if “the method chosen by the applicant” refers to the type and placement of structures on the lot, the equipment used in construction, or some other method. We support the idea of requiring developers to consider alternate methods before deciding to remove a Heritage Tree, but we do not feel the current language clearly meets that goal.</p>				<p>Staff recommends adding language taken from deleted subsection (C) above to more closely align the language with that used for environmental land use commission variances in 25-8-41(2). ...based on the city arborist’s recommendation, that the heritage tree meets the criteria in Section 25-8-624 (A) (<i>Approval Criteria</i>) and that: [(1) removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property; and] (1) [(2)] the applicant has applied for and been denied a variance, waiver, exemption, modification, or alternative compliance from another City Code provision which would eliminate the need to remove the heritage tree, as required in Section 25-8-646 (<i>Variance Prerequisites</i>)[-]; and <u>(2) removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property, unless removal of the heritage tree will result in superior overall tree preservation on the site</u></p>

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<p>§ 25-8-643 LAND USE COMMISSION VARIANCE. (A) (A) The Land Use Commission may grant a variance from Section 25-8-641 (<i>Removal Prohibited</i>) to allow removal of a heritage tree that is 30 inches or larger in diameter measured four and one-half feet above natural grade only after determining, based on the city arborist’s recommendation...</p>					<p>Not within Boards and Commissions version. Stakeholder process identified justification for amendment. Staff supports clarifying the size of trees which qualify for land use commission variances. (A) The Land Use Commission may grant a variance from Section 25-8-641 (<i>Removal Prohibited</i>) to allow removal of a heritage tree that [is less than] <u>has at least one stem that is</u> 30 inches in diameter <u>or larger</u> measured four and one-half feet above natural grade only after determining, based on the city arborist’s recommendation, ...</p>
<p>§ 25-8-643 LAND USE COMMISSION VARIANCE (A)(1) and (2) ...based on the city arborist’s recommendation, that the heritage tree meets the criteria in Section 25-8-624 (A) (<i>Approval Criteria</i>), and that: (1)removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property; and (2) the applicant has applied for and been denied a variance, waiver, exemption, modification, or alternative compliance from another City Code provision which would eliminate the need to remove the heritage tree, as required in Section 25-8-646 (<i>Variance Prerequisites</i>).</p>					<p>Staff recommends adding language taken from deleted 25-8-642(C) to more closely align the language with that used for environmental land use commission variances in 25-8-41(2). ...based on the city arborist’s recommendation, that the heritage tree meets the criteria in Section 25-8-624 (A) (<i>Approval Criteria</i>) and that: [(1) removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property; and] (1) [(2)] the applicant has applied for and been denied a variance, waiver, exemption, modification, or alternative compliance from another City Code provision which would eliminate the need to remove the heritage tree, as required in Section 25-8-646 (<i>Variance Prerequisites</i>)[-]; and <u>and</u> (2) removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property, <u>unless removal of the heritage tree will result in superior overall tree preservation on the site.</u></p>
<p>§ 25-8-646 VARIANCE PREREQUISITE new subsection (F) Not within Boards and Commission version. The stakeholder process identified justification for amendment.</p>					<p>In response to engineering concerns, staff supports adding this subsection. (F) <u>This subsection does not require an applicant to request a variance, waiver, exemption, modification, or alternative compliance if the director determines that to do so would endanger the public health and safety.</u></p>

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