

Town of Yountville

Ordinance Number 23-524

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF YOUNTVILLE
AMENDING THE YOUNTVILLE MUNICIPAL CODE TO AMEND SECTIONS 17.128.030,
17.128.040, 17.128.050 of Chapter 17.128 AND SECTION 17.236.010 OF CHAPTER 17.236
OF TITLE 17 TO REQUIRE A PUBLIC NOTICE AND COMMENT PERIOD FOR TREE
REMOVAL PERMITS, REQUIRE ARBORIST REPORTS BE CONDUCTED BY THE TOWN
CONSULTING ARBORIST FOR TREE REMOVAL PERMIT APPLICATIONS AND DEFINE
TOWN CONSULTING ARBORIST, AND FINDING THE AMENDMENTS TO BE EXEMPT
FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

WHEREAS, On March 15, 2022, the Mayor and Town Council issued a Proclamation declaring that the climate emergency exists and committed to providing leadership and services in partnership with residents, community organizations, businesses, Napa County and regional jurisdictions to educate, mobilize, and accelerate support for comprehensive and sustained climate action to reduce harmful environmental impacts and strive to achieve a goal of net zero climate pollution.

WHEREAS, On April 18, 2023, the Mayor and Town Council issued a Proclamation declaring a Climate Emergency.

WHEREAS, On June 20, 2023, the Town Council requested an informational report with a summary and historical context of the Yountville Municipal Code (YMC) Chapter 17.128 ("Tree Preservation and Management") from the Town's Planning & Building Department;

WHEREAS, On July 18, 2023, the Town Council was provided an informational report for YMC Chapter 17.128 and was asked to conduct a discussion and provide potential direction for increased tree protection measures, which resulted in a motion directing staff to bring back amendments to the YMC requiring a public notice and comment period for all Tree Removal Permit applications and a Town Consulting Arborist to prepare all reports for such applications;

WHEREAS, The Zoning & Design Review Board (ZDRB) conducted a duly noticed public meeting held on September 12, 2023, in which the ZDRB recommended approval of the ordinance with the modification that notification to adjacent property owners within 300 feet be sent after the Town's Consulting Arborist has confirmed eligibility for removal;

WHEREAS, Notice of the Town Council public hearing was prepared and displayed in accordance with state law;

WHEREAS, The Town Council conducted a duly noticed public hearing on October 3, 2023, to receive comments and input from the public.

Now therefore, the Town Council of the Town of Yountville does ordain as follows:

SECTION 1. RECITALS: The foregoing recitals are true and correct and incorporated into the findings herein.

SECTION 2. RECORD: The Record of Proceedings ("Record") upon which the Town Council bases its decision includes, but is not limited to: (1) the staff reports, Town files and records and other documents prepared for and/or submitted to the Town relating to the proposed ordinance, (2) the evidence, facts, findings and other determinations set forth in this resolution, (3) the Town of Yountville General Plan and its certified final EIR and the Yountville Municipal Code, (4) all designs, plans, studies, data and correspondence submitted to the Town in connection with the proposed ordinance, (5) all documentary and oral evidence received at public workshops, meetings, and hearings or submitted to the Town, and (6) all other matters of common knowledge to the Town Council including, but not limited to, Town, state, and federal laws, policies, rules, regulations, reports, records and projections related to development within the Town of Yountville and its surrounding areas.

SECTION 3. CODE AMENDMENT: Section 17.128.030, *Hazard Reduction and Prevention* of Title 17 of the Yountville Municipal Code is hereby amended to read as follows:

A. The following preventative measures shall be taken to reduce hazard risks.

1. Plant trees that are not problematic and that fit the site. The International Society of Arboriculture (ISA) has developed a list to assist property owners in avoiding trees that may become a problem.
2. A healthy, vigorous tree that receives regular care is less likely to become hazardous than one that is ignored. Prevention is the best solution to the tree hazard problem.
3. The risk of hazard may be reduced by removing dead and broken branches, reducing branch end weights, by mechanically supporting weak branches from below, or by cabling and bracing.
4. In some cases, hazards may be eliminated by removing picnic tables or other items beneath a precarious tree, fencing to prevent access to such trees, or rerouting pedestrian or vehicular traffic.

B. Where a hazard can be reduced to a less than significant level or hazard, as determined by the Town Consulting Arborist or other certified arborist in a written tree report, all reasonable mitigation measures shall be taken.

Where there are two or more conflicting tree reports, the Planning Officer in consultation with the Town Consulting Arborist shall make the final determination on a hazardous rating.

SECTION 4. CODE AMENDMENT: Section 17.128.040, *Permit Required* of Title 17 of the Yountville Municipal Code is hereby amended to read as follows:

- A. **Applicability.** Except as provided in subsection B of this section, no person may destroy or remove any of the following protected trees from any private property without first obtaining a tree removal permit, in accordance with this chapter:
1. A heritage tree identified in the Heritage Tree Survey;
 2. Any native oak tree with a trunk that measures 10 inches diameter at breast height (DBH) (equal to 31 inches in circumference) or more;
 3. Any tree with a trunk that measures 12 inches DBH (equal to 38 inches in circumference) or more or a multi-stemmed perennial plant having an aggregate DBH of 20 inches (equal to 63 inches in circumference) or more;
 4. A tree shown to be preserved on an approved development entitlement or specifically required by the Town Council or Zoning and Design Review Board to be retained as a condition of approval of an entitlement; or
 5. A tree required to be planted as a replacement tree.
- B. **Exceptions.** A tree removal permit is not required under subsection A if:
1. Prior to removal, the Town Consulting Arborist concludes, with an arborist report paid for by the property owner if deemed necessary by the Planning Officer, that the tree is dead and the Planning Officer approves the removal.
 2. The removal of the tree was specifically approved as part of a previously approved development entitlement.
 3. The work to be performed is routine maintenance necessary for the health of the tree or protection of property; provided, however, that non-routine maintenance shall be subject to fines and penalties as provided in this code.
 4. Prior to removal, the Planning Officer determines that the tree constitutes a hazard or threat to the public health and safety or property in the vicinity in cases where one or more of the following apply:
 - i. The tree (or trees) in question is dying, diseased or has been substantially damaged and will likely in the near term threaten the health and safety of persons or property improvements in the immediate vicinity and such disease or

threat is verified in writing by a licensed tree surgeon or certified arborist. Prior history of poor maintenance affecting the health of the tree may invalidate grounds for removal of an unhealthy tree; or

ii. The tree (or trees) in question is classified as a pyrophyte, including Monterey Pine, Bishop Pine, Acacia, and Eucalyptus species; or

iii. Tree removal or alteration is by a public agency or public utility to provide for the routine maintenance of public land or public utilities; or

iv. Tree removal or alteration is by a homeowner or a homeowner's association when it can be demonstrated that the tree is causing damage to a utility that cannot be relocated and mitigation measures are not feasible.

SECTION 5. CODE AMENDMENT: Section 17.128.050, *Permit Application* of Title 17 of the Yountville Municipal Code is hereby amended to read as follows:

Applications for tree removal permits shall be submitted to the Town on forms provided by the Planning & Building Department. There shall be a fee for this permit as established by resolution of the Town Council as a part of the Town's Master Fee Schedule. The fee shall cover the full costs to the Town to process the application including, without limitation, the costs of the Town Consulting Arborist. Upon completion of the application and submittal of all supporting documents and fees, the Planning & Building Department shall send notice to all property owners within 300 feet of the subject property and adhere to a 10-day comment period before issuing a Tree Removal Permit.

- A. An application for tree removal permit shall be required for all protected trees.
- B. Applications shall be submitted to the Planning & Building Department and shall be accompanied by the following information.
 - 1. When combined with a larger development application, a preliminary site plan and grading plan showing the number, size, type, and location of tree(s) to be removed and trees to be preserved, and the location of all existing and proposed improvements on the property. The plan shall include the approximate driplines of all trees on-site and trees located on adjacent properties with canopies overhanging the project site.
 - 2. When not combined with a larger development application, a site plan showing the number, size, type, and location of the tree(s) to be removed and all existing improvements on the property.
 - 3. The property owner's name, address, and telephone number.

4. The name, address, phone number, and business license number of the company or individual to remove the tree(s).
 5. Specific reasons for requesting removal of the tree(s).
- C. The Town Consulting Arborist shall prepare an arborist report for review and use by the Planning & Building Department in reviewing the application and making decisions and findings pursuant to Section 17.128.060.
- D. Application for and granting of a permit may be jointly considered with an application for any other development entitlement which may be required.

SECTION 6. CODE AMENDMENT: Section 17.236.010, *Definitions* of Title 17 of the Yountville Municipal Code is hereby amended to add the following definition in alphabetical order:

“Town Consulting Arborist” means a certified arborist employed or retained by the Town to conduct tree reports, review third-party tree reports, or otherwise administer Yountville Municipal Code Chapter 17.128.

SECTION 7. ZONING AMENDMENT FINDINGS: The Town Council hereby makes the following findings as required by YMC Section 17.184.060 with respect to the Zoning Ordinance amendment at issue based on the evidence contained in the Record which is herein incorporated by reference:

1. The proposed amendment(s) would further the goals, objectives, policies and programs and is consistent with the intent of the General Plan;

Yountville has existing policies and programs aimed at tree preservation and management. The proposed Ordinance is consistent with the General Plan objectives, policies, and implementation programs of the Open Space + Conservation Element. The following goals and policies are furthered by the proposed text amendments.

- *General Plan Goal OS-5: Protect and preserve trees, native vegetation, riparian habitat, and sensitive natural communities that provide ecological, economic, and aesthetic benefit.*

o OS-5.1a: Tree Management. Continue to regulate the removal, cutting, and other activities detrimental to trees, and require replanting of replacement trees as feasible.

- *General Plan Goal QL-1: Maintain a high quality of life in Yountville.*

o QL-1.1: Preserve and enhance the quality of life in Yountville by prioritizing the needs and desires of the residents in governmental decision-making and delivery of services.

Because the amendment will require public notice with a 10-day comment period to review Tree Removal applications, the amendment allows for more input from residents prior to decisions made on an administrative level.

Additionally, the adoption of an Ordinance that would require a Public Notice with a 10-day comment period and require the use of a Town consulting arborist for Tree Removal Permit applications would help strengthen existing processes and procedures outlined in the Yountville Municipal Code.

The proposed ordinance amendments are also consistent with the General Plan Sustainability Theme.

2. The proposed amendment(s) would not be detrimental to the public interest, health, safety, convenience, or welfare of the Town;

The proposed amendments would not be detrimental to the public interest, health, safety, convenience, or welfare of the Town because the Town seeks to preserve and enhance the environmental setting, unique characteristics, and aesthetic quality of the Town of Yountville.

3. For amendments involving a zoning or land use map amendment, the site is physically suitable, including consideration of physical constraints, access, compatibility with surrounding land uses, and provision of utilities, for the requested or potential land uses.

The proposed amendments would not impact Zoning or Land Use Maps.

SECTION 8. CEQA: Staff considers the Zoning Ordinance to be exempt pursuant to CEQA Guidelines section 15061(b)(3) (no potential for causing a significant effect on the environment). To the extent the Ordinance is a project subject to the requirements of CEQA, it is categorically exempt pursuant to CEQA Guidelines sections 15307 (actions by regulatory agencies for the protection of natural resources) and 15308 (actions by regulatory agencies for the protection of the environment); based on the following:

CEQA Guidelines Section 15061(b)(3) exempts projects from environmental review where it can be seen with certainty there is no possibility the activity in question may have a significant effect on the environment. The proposed Zoning Ordinance text amendments at issue herein require the Town to issue a Public Notice and allow for a 10-day comment period and require the use of the Town's consulting arborist for Tree Removal Permit applications in all zoning districts. No increase in tree removal activity would occur because of the text amendments. It is likely that if any change occurs, it will be that of fewer tree removal approvals due to a Town consulting arborist implementing the Town's desires for tree protection and mitigation over removal.

CEQA Guidelines Section 15307 exempts projects undertaken by regulatory agencies, such as the Town of Yountville, to assure the maintenance, restoration, or enhancement of a natural

resource(s) where the regulatory process involves procedures for the protection of the environment. The amendments at issue herein represent an action of the Town, consistent with the policies of the Town's General Plan, to maintain and protect natural resources. Specifically, the amendments aim to strengthen the existing regulatory process by incorporating a 10-day comment period and protection of natural resources by ensuring arborist reports accompanying Tree Removal Permit applications are conducted by an unbiased party.

CEQA Guidelines Section 15308 exempts projects undertaken by regulatory agencies, such as the Town of Yountville, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for the protection of the environment. The Zoning Ordinance text amendments at issue herein represent an action of the Town, consistent with the policies of the Town's General Plan, to protect the environment. Specifically, the amendments aim to reduce the margin of error in the applicability of exceptions to the Tree Removal Permitting process.

The Town Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Within 15 days from the date of passage of this ordinance, the Town Clerk shall post a copy of the ordinance in accordance with California Government Code in at least three public places in the Town.

SECTION 9. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases or portions might be declared invalid or unconstitutional.

SECTION 10. EFFECTIVE DATE: This Ordinance shall take effect and be enforced within thirty (30) days from and after the date of its adoption by the Town Council at a second reading and shall be posted and published in accordance with the California Government Code.

SECTION 11. INCONSISTENT PROVISIONS: Any provision of the Yountville Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Ordinance.

SECTION 12. CERTIFICATION: The Town Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Within 15 days from the date of passage of this ordinance, the Town Clerk shall post a copy of the ordinance in accordance with California Government Code in at least three public places in the Town.

INTRODUCED by the Town Council at a regular meeting held on the 3rd day of October 2023.

PASSED AND ADOPTED by the Town Council at a regular meeting held on the ____ day of _____ 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Margie Mohler, Mayor

ATTEST:

Eddy Gomez, Town Clerk

APPROVED AS TO FORM:

Gary Bell, Town Attorney