



## **Agenda Item No. 12.**

### **Staff Report**

**Date:** August 11, 2022

**To:** Mayor Robbins and Council Members

**From:** Richard Simonitch, Public Works Director/Town Engineer

**Subject:** Town Council discussion of Ross Municipal Code Chapter 12.24 "Planting, Alteration, Removal, or Maintenance of Trees" (Tree Protection Ordinance)

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#### **Recommendation:**

It is recommended that the Town Council receive a presentation and provide direction to staff on proposed changes, if any, to Ross Municipal Code (RMC) Chapter 12.24 "Planting, Alteration, Removal, or Maintenance of Trees" ("Tree Protection Ordinance" or "Ordinance").

#### **Background and discussion:**

The Town Council has requested a review and discussion of the Town's Tree Ordinance. To facilitate this discussion, this staff report will outline the purpose of the Tree Protection Ordinance including a discussion of how the ordinance is applied to the alteration, removal, and maintenance of trees within both public and private lands in Ross, and the criteria established by the ordinance to warrant the issuance of a Tree Alteration or Removal Permit. Finally, staff will provide some topical suggestions for possible amendments to the code, based on prior discussions with Councilmembers, the public, and staff's own experience with writing and enforcing Tree Alteration or Removal Permits (Tree Permits). Occasional reference to Fairfax and San Anselmo's tree ordinance is made for comparison to Ross' ordinance where relevant.

#### **Purpose of the Tree Protection Ordinance:**

The Town of Ross General Plan Policies 1.1, 1.2, and 1.3 emphasize the protection and maintenance of our existing tree canopy and the regulatory responsibility of the Town. The purpose of the Tree Protection Ordinance as stated in RMC 12.24.010 is:

- (1) To maintain trees in the community in a healthy and safe condition through good arboricultural practices;
- (2) To provide reasonable regulations for the maintenance and removal of trees in the public right of way;

- (3) To provide reasonable regulations for the alteration or removal of trees on privately owned parcels;
- (4) To establish and maintain appropriate diversity in tree species and age classes to provide a stable and sustainable urban forest;
- (5) To promote and maintain the aesthetic values of the community in general for the benefit of those who currently reside in Ross and as a legacy to future residents.

**Application of the Tree Protection Ordinance:**

Tree alteration and removal is regulated through the issuance of Tree Permits. Tree Permits are reviewed and approved or denied ministerially by the Public Works Director in consultation with the Town Arborist and other staff members based on criteria established by the Ordinance. In general, the alteration or removal of trees six inches in diameter or greater within the Town Right of Way or on unimproved parcels require a Tree Permit. Trees removed on improved parcels have less restrictive criteria based on the proximity of the tree to the property line. In general, for standard sized lots the permit-trigger diameter is eight inches or larger, while more remote trees on larger improved parcels the permit-trigger diameter is twelve inches or larger. Trees so removed are replaced at a ratio per a formula defined in the Ordinance or by collecting an in-lieu fee. The Ordinance provide for a modification of the replacement ratio by the Public Works Director or Town Council.

According to the Ordinance, the application for a tree permit requires a statement from the property owner about the justification for removal of the tree, including an arborist report describing the tree's species, condition, and structure. The Ordinance states that the arborist report requirement can be waived by "the Town". Similar to Ross, both Fairfax and San Anselmo tree ordinances allow the arborist report to be waived by the Public Works Director although in San Anselmo's case this appears to be a rare occurrence.

**Criteria for ministerial approval of Tree Permits:**

The permit application can be approved if one or more of the following conditions are met for alteration or removal of a tree:

1. Is necessary due to health & danger of falling, proximity to structures, utilities;
2. Is necessary to allow economic enjoyment of property (i.e., improvements)
3. Does not cause erosion or diversion of surface waters that may impact the subject or other properties.
4. Is necessary due to fire hazards.
5. Represents good forestry practices considering number of trees the site can support.

The above criteria shall be weighed against:

1. Number, species, age, size, location of other trees in area.
2. Effect on shade or solar access, soil retention, surface water flow, wildlife habitat, historic value, scenic beauty, and/or general welfare of the Town as a whole.

**Discussion and consideration of possible amendments:**

1. The ability to waive the arborist report by “the Town” is ambiguous and could be clarified by requiring the decision to waive the report to be based on the opinion of the Town Arborist.
2. A tree referred to as being a “fire hazard” could be further defined as a tree listed on Fire Safe Marin (FSM) hazardous tree list and within X feet of a structure (30 feet is mentioned by FSM). Similar criteria could be applied to selection of replacement trees. Fairfax tree ordinance lists specific fire resistant/susceptible tree species similar to those listed by FSM, but San Anselmo does not.
3. Since the cost of removal/abatement of unhealthy or hazardous trees in the right-of-way is the responsibility of the fronting property owner (RMC 12.12.010), staff has a policy of waiving the fee for the Tree Permit and, if needed, the Encroachment Permit to promote this type of abatement and alleviate the abatement costs to the owner. Consider codifying this policy and/or other owner assistance measures related to abatement of hazardous trees and plants in the right-of-way and on private property.

**Next Steps:**

The Town Council may continue this discussion or direct staff to develop specific amendments to the Tree Protection Ordinance and present a draft Ordinance at a public hearing at a later date.

**Fiscal, resource and timeline impacts:**

Fiscal impacts would be related to providing financial assistance and/or fee waivers to owners to promote abatement of hazardous trees in the right-of-way and private property. A typical Tree Permit fee is \$296 and a typical Encroachment Permit fee is \$678. On the average, five to six trees a year require abatement in the right-of-way which equates to approximately \$6,000 in revenue loss each year.

**Environmental review (if applicable)**

This action is not subject to the California Environmental Quality Act.

**Attachments**

1. Section 12.24 of the Ross Municipal Code.
2. Tree list from Firesafe Marin.

# ATTACHMENT 1

## Chapter 12.12

### WEEDS, TREES AND VEGETATION

#### Sections:

- 12.12.010 Responsibility of owner and occupant--Permit requirement.
- 12.12.015 Maintenance of right-of-way.
- 12.12.016 Maintenance of defensible spaces on hillside lots.
- 12.12.017 Removal of diseased trees.
- 12.12.020 Procedure for abatement.
- 12.12.030 Public nuisance--Cost of abatement as lien.

12.12.010 Responsibility of owner and occupant--Permit requirement. All occupants and owners of property within the town are required to trim, remove or destroy all trees, hedges, plants, shrubs or vegetation, or parts thereof, which are growing in a manner which obstructs or impairs the free full public use of the sidewalk area or street in front of the premises of such occupant or owner. All such owners and occupants are further required to remove or destroy all positively confirmed Dutch Elm Disease-infected trees, dead and dying elm wood larger than 1 1/2 inches in diameter, all grass, weeds, shrubs, bushes, trees or vegetation growing, or which have grown and died upon property owned or occupied by such property owners and occupants and which are a fire hazard or menace to public health, safety or welfare. The following conditions shall apply:

(1) Branches of trees shall not be permitted to extend lower than seven feet above the surface of the sidewalk area or to extend lower than thirteen feet six inches above the surface of the portion of the street used for vehicular traffic, whether planted in the sidewalk area or upon private property;

(2) Flowers, shrubs and other growth, with the exception of trees, in the sidewalk area shall not be permitted to exceed eighteen inches in height;

(3) Flowers, shrubs, hedges and other growth growing upon private property abutting any such sidewalk area shall not be permitted to extend out over, across or upon any portion of the sidewalk area except at the minimum height permitted in subsection (1) hereof;

(4) Permit Requirement. Removal of trees on unimproved property shall require a permit which shall be obtained from the director of public works pursuant to Chapter 12.24;

(5) Removal and disposal at an approved dumpsite of any living elm tree or part thereof infected to any degree with the Dutch Elm Disease fungus, Ceratocystis ulmi; or any dead elm tree or dead part of any elm tree, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed. (Ord. 611 (part), 2008; Ord. 518 §1(B), (C), 1993; Ord. 467 §§1, 2, 1988; Ord. 283 §1(part), 1968).

12.12.015 Maintenance of right-of-way. (a) All occupants and owners of property within the town are required to maintain the section of right-of-way from the property line to the edge of the road pavement.

(b) Maintenance shall include removal of leaves and weeds which shall be disposed of away from the site. All landscaping shall be approved by the director of public works. Maintenance of all landscaping shall be the responsibility of the property owners. (Ord. 545, 1999).

12.12.016 Maintenance of defensible spaces on hillside lots. All occupants and owners of property located on hillside areas having a slope of thirty percent or greater or partially or wholly within Hazard Zones 3 or 4 shall create and maintain defensible spaces around each building and structure in accordance with the vegetation clearance requirements prescribed in California Public Resource Code 4291 and California Government Code 51182. (Ord. 611 (part), 2008).

12.12.017 Removal of diseased trees. The director of public works shall order, in cases where trees are being killed by disease or pests, the removal of dead or dying trees necessary to prevent spread of pests and disease. The director shall thereafter notify the property owner in writing to promptly remove and properly dispose of the infested or infected trees within fifteen days of notification. All wood shall be properly disposed of away from the site. The director depending on the situation, may allow the wood to be used as firewood if such wood is (1) completely covered with clear plastic with no openings, (2) sealed at the ground with soil and (3) held away from contact with wood by a frame, to prevent the spread of emerging adult pests. (Ord. 550, 1999).

12.12.020 Procedure for abatement. Whenever the owner or occupant of any property in the town fails to trim, remove or destroy trees, hedges, plants, grass, weeds, shrubs, bushes or vegetation, that are obstructing the sidewalk area or street, or are a fire hazard or menace, or are elm trees that have Dutch Elm Disease or diseased elm wood larger than one and one-half inches in diameter, or to maintain the right-of-way as provided in Section 12.12.015, or to remove diseased dead or dying trees as provided in Section 12.12.017, it shall be the duty of the director of public works to give written notice of such failure to comply with the provision of this chapter to the owner, or to the occupant if there by any and to post such notice conspicuously on the property. The notice shall briefly describe the work to be done and shall refer to this chapter and shall contain notification that unless the work shall be done within ten days after the service or posting of the notice the director of public works will do same, and that the costs and expenses thereof will be charged and made a lien against the property.

If the work is not done within ten days after the service or posting of the notice, it shall be the duty of the director of public works forthwith to proceed to do the same and put the property in the condition required by this chapter. The director of public works shall keep a record of the notice, and record of the work done and the cost of same. (Ord. 559(part), 2001: Ord. 518 §I(D), 1993; Ord. 283 §1(part), 1968).

12.12.030 Public nuisance--Cost of abatement as lien. A violation of the provision of this chapter is declared to be a public nuisance subject to civil penalties as provided in Section 9.04.150 of this code, and abatement.

The cost of abatement shall be made a lien on the property involved and collected as other town taxes, all as provided in Section 9.04.160 of this code. (Ord. 559(part), 2001: Ord. 283 §1(part), 1968).

## ATTACHMENT 2

# Fire-Resistant Plants Common to Marin County, CA



Fire-resistant landscaping requires careful plant selection, placement, spacing, and maintenance to help resist the spread of fire to your home. Fire-resistant plants are usually easier to maintain and more naturally resistant to igniting from flames and embers. These plants are NOT "fireproof" and all require irrigation and frequent maintenance to resist ignition.

## FIRE-RESISTANT PLANT CHARACTERISTICS

- Tend to have leaves, not needles.
- Leaves tend to be supple, moist and easily crushed.
- Trees tend to be clean, not bushy, and have little deadwood.
- Shrubs are low-growing (2' or lower) with minimal buildup of dead material.

- Taller shrubs are clean, not bushy or twiggy.
- Sap is water-like and typically does not have a strong odor.
- Most fire-resistant trees are broad-leaf deciduous (lose their leaves), but some thick-leaf evergreens may also be fire-resistant.
- Most have low surface-area to volume ratios.
- Learn more at [www.firesafemarin.org/plants](http://www.firesafemarin.org/plants)

**FORM:** C - Cover (groundcovers) G - Grass H - Hedge or Screen P - Perennial S - Shrub T - Tree V - Vine

Species	Common Name(s)	Form	Species	Common Name(s)	Form
Acer spp.	Maple	T,H	Fragaria vesca	Wood Strawberry	C
Achillea millefolium	Yarrow	P	Fraxinus spp.	Ash	T
Achillea tomentosa	Woolly Yarrow	P, C	Grindelia stricta, camporum	Coastal Wild Gum	P
Aeonium spp.	Aeonium	P	Hemerocallis hybrids	Daylily	P
Agapanthus spp.	Lily-of-the-Nile	P	Hesperaloe parviflora	Red Yucca	P
Agave spp.	Agave	P	Heuchera maxima	Island Alum Root	P
Ajuga reptans	Carpet Bugle	C	Heuchera micrantha	Coral Bells	P
Aloe spp.	Aloe	P	Iris douglasiana	Douglas Iris	P
Aquilegia formosa	Western Columbine	P	Iris macrosiphon	Ground Iris	P
Arbutus unedo	Strawberry Tree	T	Iris spp.	Iris	P
Armeria maritima	Common Thrift	C	Kniphofia uvaria	Red Hot Poker (Torch Lily)	P
Asarum caudatum	Wild Ginger	P	Lampranthus spp.	Bush Ice Plant	C
Berberis aquifolium var. repens	Creeping Mahonia	S	Lantana montevidensis	Lantana	S
Bergenia spp.	Bergenia	P	Lavandula spp.	Lavender	S
Brugmansia spp.	Angel's Trumpet	S	Lavatera assurgentiflora	Malva Rose (Tree Mallow)	S
Carpenteria californica	Bush Anemone	S	Iberis sempervirens	Evergreen Candytuft	C
Centaurea cineraria	Dusty Miller	P	Liriope gigantea	Giant Turf Lily	C
Cerastium tomentosum	Snow-in-Summer	C	Lonicera hispidula	Pink Honeysuckle	V
Ceratonia siliqua	Carob	T	Lupinus spp.	Lupine	P
Cercis occidentalis	Western Redbud	T	Macadamia hybrids	Macadamia Nut	T
Cercocarpus betuloides	Mountain Ironwood	T	Metrosideros excelsus	New Zlnd Christmas Tree	T
Citrus species	Citrus	T	Mimulus spp.	Monkey Flower	P, S
Clinopodium [Satureja] douglasii	Yerba Buena	P	Monardella villosa	Coyote Mint	P
Coleonema aka "Diosma"	Breath of Heaven	S	Nolina spp.	Nolina (related to Yucca)	S
Convulvus cneorum	Bush Morning Glory	S	Oenothera berlandieri	Mexican Evening Primrose	P
Coprosma kirkii	Creeping Coprosma	C	Pelargonium peltatum	Ivy Geranium	C
Coreopsis spp.	Coreopsis	S	Penstemon spp.	Beard Tongue	P
Cotyledon spp.	Cotyledon	P	Phyla nodiflora	Common Lippia	C
Crassula spp.	Crassula	P	Pistacia chinensis	Chinese Pistache	T
Delosperma "Alba"	White Trailing Iceplant	C	Polystichum munitum	Sword Fern	P
Dicentra formosa	Western Bleeding Heart	P	Portulacaria afra "Variegata"	Elephant's Foot	P
Dietes bicolor	African Iris	P	Potentilla neumanniana	Alpine Cinquefoil	C
Dietes vegeta	Fortnight Lily	P	Prunus lyonii	Catalina Cherry	S
Drosanthemum sp.	Rosea Ice Plant	C	Punica granatum	Pomegranate	S
Dudleya	Dudleya or Cliff Lettuce	P	Ranunculus californica	Buttercup	P
Echeveria spp.	Hen and Chicks	P	Rhapiolepis spp.	India Hawthorn	S
Eouymus Fortunei coloratus	Winter Creeper	C	Rhododendron (Azalea) spp.	Rhododendrons & Azaleas	S
Erigeron glaucus	Beach Aster	C	Rhus integrifolia	Lemonade Berry	S
Eriogonum spp.	Wild Buckwheat	P	Rhus lancea	African Sumac	T
Eriophyllum confertiflorum	Golden Yarrow	P	Romneya coulteri	Matilija Poppy	P
Eriophyllum stachaeifolium	Lizardtail	P	Rosa banksiae	Lady Banks' Rose	V
Erysimum capitatum	Foothill Wallflower	P	Santolina chamaecyparissus	Lavender Cotton	S, C
Erysimum linifolium	Wallflower	P	Santolina virens	Green Lavender Cotton	C
Escallonia spp.	Escallonia	S	Sedum sp.	Stonecrop	C
Eschscholzia spp.	California Poppy	P	Senecio serpens, mandralisce, vitalis	Blue chalksticks	C
Fagus spp.	Beech	T	Sidalcea malviflora	Checkerbloom	P
Feijoa sellowiana	Pineapple Guava	T	Simmondsia chinensis	Jojoba	S
Festuca rubra	Creeping Red Fescue	G, C	Sisyrinchium bellum	Blue-eyed Grass	P
Fragaria chiloensis	Beach Strawberry	C	Sisyrinchium californicum	Yellow-eyed Grass	P

Learn more about fire-resistant and fire-prone plants, defensible space, home hardening, and wildfire preparedness at [www.firesafemarin.org](http://www.firesafemarin.org)



Species	Common Name(s)	Form
Sisyrinchium spp.	Blue-Eyed Grasses	P
Solanum jasminoides	Potato Vine	V
Solanum xanti	Purple Nightshade	S
Stachys byzantina	Lamb's Ears	P
Strelitzia reginae	Bird of Paradise	P, S
Symphiotrichum [Aster] chilensis	Wild Aster	P
Symphoricarpos mollis	Creeping Snowberry	V
Tecomaria capensis	Cape Honeysuckle	V
Thymus praecox arcticus	Creeping Thyme	C
Toxicoscordion [Zigadenus] fremontii	Star Lily	P
Trachelospermum jasminoides	Star Jasmine	S
Triteleia [Brodiaea] laxa	Grass Nut	P
Tulbaghia violacea	Society Garlic	P
Vaccinium corymbosum	Blueberry	S
Verbena peruviana	Perennial Verbena	C
Yucca spp.	Yucca	S
Zauschneria californica	California Fuchsia	P
Acer ginnala	Amur Maple	H
Arbutus unedo	Strawberry Tree	H
Berberis spp.	Barberry	H
Buxus spp.	Boxwood	H
Camellia spp.	Camelia	H
Carissa grandiflora	Natal Plum	H
Ceratonia siliqua	Carob	H
Citrus spp.	Citrus	H
Cocculus laurifolius	laurel-leaved snail tree	H
Cornus stolonifera	Red-osier Dogwood	H
Cornus mas	Cornelian Cherry, Sorbet	H
Crateagus phaenopyrum	Washington Thorn	H
Dodonaea viscosa	Hopbush	H
Elaeagnus angustifolia	Russian Olive	H
Elaeagnus pungens	Silverberry	H
Eriobotrya japonica	Loquat	H
Escallonia rubra	Escallonia	H
Eugenia spp.	Eugenia	H
Euonymus spp.	Euonymus	H
Hibiscus rosa-sinensis	Tropical Hibiscus	H
Hibiscus syriacus	Rose of Sharon	H
Ligustrum spp.	Privet	H
Lonchocarpus	Honeysuckle Bush	H
Malus spp.	Apple	H
Myrica californica	Pacific Wax Myrtle	H
Photinia x fraseri	Photinia	H
Pittosporum crassifolium	Karo	H
Pittosporum eugenioides	Lemonwood	H
Pittosporum tobira	Mock Orange Pittosporum	H
Pittosporum undulatum	Victorian Box	H
Plumbago auriculata	Cape Plumbago	H
Plalocarpus gracilior	Fern Pine	H
Prunus caroliniana	Cherry Laurel	H
Prunus ilicifolia	Hollyleaf Cherry	H
Prunus laurocerasus	English Laurel	H
Pyrus kawakamii	Evergreen Pear	H
Rhamnus spp.	Buckthorn	H
Rhododendron spp.	Rhododendron/Azalea	H
Vaccinium spp.	Blueberry	H
Viburnum tinus	Viburnum	H
Xylosma congestum	Xylosma	H

## Fire-Prone Plants



Some plants are particularly susceptible to fire: they may ignite readily and burn intensely, and should be removed or aggressively maintained if present near a home, road, or driveway. You may be required to remove some or all of these species depending on local fire codes if present within 100' of structures.

### FIRE-PRONE PLANT CHARACTERISTICS

- Often blade-leaf or needle-leaf evergreens, or grasses.
- Often have stiff, woody, small or fine, lacey leaves.
- Leaves and wood often contain volatile waxes, fats, terpenes or oils (crushed leaves will have strong odors).
- Sap is usually gummy, resinous, and may have a strong odor.
- Usually contain plentiful fine, twiggy, dry, or dead materials.
- May have pubescent (hair covered) leaves.
- May have loose or papery bark.
- Usually flame (not smolder) when ignited with a match.

This is a list of some common fire-prone plants in Marin. It's important to remember that other plants may share these characteristics, and ALL PLANTS can burn if poorly maintained. Many California natives are fire-prone, and some depend on fire to reproduce. Native trees should be maintained free of dead material, with no limbs within 6'-10' of the ground, and clear of shrubs beneath the canopy. Other fire-prone natives should be maintained in isolated stands more than 30' from structures.

Species	Common Name(s)
Abies spp.	Firs
Acacia spp.	Acacia species
Adenostoma fasciculatum	Chamise, Greasewood
Arctostaphylos spp.	Manzanita (some twiggy)
Artemisia californica	Coastal Sagebrush
Baccharis spp.	Coyote Brush
Bamboo	Bamboo (all tribes)
Cedrus spp.	Cedars
Chamaecyparis spp.	False Cypress
Chrysopsis chrysophylla	Chinquapin, Giant
Cortaderia jubata	Jubata Grass
Cortaderia selloana	Pampas Grass
Cupressus spp.	Cypress
Cytisus scoparius	Scotch Broom
Erigonum fasciculatum	California Buckwheat
Eucalyptus spp.	Eucalyptus
Genista monspessulana	French Broom
Juniperus spp.	Junipers
Larix spp.	Larch
Notholithocarpus densiflorus	Tan Oak, Tanbark Oak
Palms	Palm (with dry fronds)
Pennisetum spp.	Fountain Grass
Picea spp.	Spruces
Pickeringia montana	Chaparral Pea
Pinus spp.	Pines
Pseudotsuga menziesii	Douglas-Fir
Quercus spp.	Scrub Oak (brushy oaks)
Rosmarinus officinalis	Rosemary
Salvia mellifera	Black Sage
Spartium junceum	Spanish Broom
Taxus spp.	Yew
Thuja spp.	Arborvitae
Tsuga spp.	Hemlock
Ulex europea	Gorse
Umbellularia californica	California Bay
Vaccinium ovatum	Evergreen Huckleberry

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