

## **Chapter 12.24**

### **OAK TREE PRESERVATION**

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## **Article 1. Purpose and Definitions**

### **12.24.010 Purpose.**

A. In order to promote the public health, safety and general welfare, to enhance the beauty of Visalia and to complement and strengthen zoning, subdivision and land use standards and regulations, while at the same time recognizing individual rights to develop private property, the city council finds it necessary to establish basic standards, measures and compliance requirements for the preservation and protection of native Valley oak trees and landmark trees.

B. The provisions of this chapter are enacted to:

1. Enhance natural scenic beauty;
2. Assist in the overall goal of preservation, maintenance and regeneration of a healthy urban forest and tree cover;
3. Promote the conservation of energy resources and regulation of temperature through the provision of shade, evaporative cooling and wind break provided by trees;
4. Improve the quality of air, water, and soil resources;
5. Sustain and enhance property values;
6. Promote the well-being of the community;
7. Provide for recreational settings, wildlife habitat, and ecological balance;
8. Provide for safety through responsible and safe standards for the trimming and/or removal of oak trees;
9. Promote Visalia's unique identity. (Ord. 2007-02 § 2 (part), 2007; Ord. 9907 § 2 (part), 1999)

### **12.24.020 Definitions.**

As used in this chapter, the following terms are defined in this section:

"City Manager" means the city manager of the city or his or here designated representative.

"Crown-drip-line" means the outer perimeter of an oak tree's canopy.

"Oak tree" means Valley Oak Tree (*Quercus lobata*). "Oak tree" may also mean a "landmark tree." "Landmark tree" means any native or non-native tree recognized by city council resolution for its age, size, location, outstanding habitat value, superior beauty, historical, and/or cultural significance.

"Person" means individuals, associations, corporations, public agencies, joint ventures, partnerships, independent contractors, and other agents and employees.

"Pruning standards" means those pruning standards established by the Western Chapter of the International Society of Arboriculture dated 1995, as revised by the Society from time to time, and as amended by this chapter.

(Ord. 2021-03 § 2, 2021; Ord. 2007-02 § 2 (part), 2007; Ord. 2003-07 § 1, 2003; Ord. 9907 § 2 (part), 1999)

## **Article 2. Destruction Prohibition - Removal Permit Requirements**

### **12.24.025 Willful destruction of oak trees prohibited.**

It is unlawful for any person to willfully remove, destroy, damage, mutilate, poison, or attempt to kill an oak tree in the city, except as may be allowed pursuant to a removal permit as provided for in Section 12.24.030 of this Chapter, or as designated in a notice to prune an oak tree that satisfies of Article 3 of this Chapter. As used in this section, the term "damage" shall include the pruning of an oak tree in a manner that is inconsistent with the pruning standards as established by section 12.24.070. (Ord. 2007-02 § 2 (part), 2007)

### **12.24.030 Oak tree removal permit required.**

A. Any person desiring to destroy or remove an oak tree with a trunk diameter of eighteen (18) inches or greater at a point 4.5 feet above the root crown (also referred to as "18 inches Diameter Breast Height (D.B.H.)") on private or public property must first apply for and obtain a removal permit. Such application shall be in writing to the city clerk, who shall forward such application to the city manager of the city or their designee. The application shall contain the number, size and location of the oak trees and a brief statement of the reason of the requested action.

B. Within five calendar days of receipt of such application, the city manager or their designee shall post a notice on the subject tree, in a manner reasonably intended to inform the general public, stating that an application for removal of the tree has been filed and is pending with the city manager or their designee. Within fourteen calendar days of receipt of such application, the city manager or their designee shall inspect the premises whereon such oak trees are located, and shall issue an intended decision in writing as to whether or not the application will be approved, and if so, what mitigation shall be required as a condition to approval, consistent with Section 12.24.035 below; provided, however, that failure to render an intended decision within such period shall not be deemed approval.

C. The city manager or their designee shall not grant a removal permit unless one of three findings enumerated in Section 12.24.035 can be made based on substantial evidence and, where necessary, expert advice of a certified arborist. The applicant may submit his or her own supporting material, including a report of an independent certified arborist, for consideration by the city manager. However, the city manager or their designee shall retain the discretion for determining the weight and value to be given to such independent reports.

D. Upon determination that one of the three findings enumerated in Section 12.24.035 can be met and a removal permit may be granted, the city manager or their designee shall establish mitigation requirements in a manner consistent with the policy to be developed and implemented pursuant to Section 12.24.037. No mitigation shall be required for oak trees removed pursuant to subsections A. or C. of section 12.24.035, unless the city manager or their designee determines that the applicant's negligence or willful conduct contributed to the decline of the health of the oak tree. The mitigation requirements established by the city manager or their designee shall attach to the permit as conditions, and shall be enforceable as a lien against the applicant's real property. In no event shall the availability of mitigation measures, or the willingness of the applicant to agree to such measures, be a factor in determining whether removal of the tree is warranted.

(Ord. 2021- 03 § 2, 2021; Ord. 2007-02 § 2 (part), 2007; Ord. 9907 § 2 (part), 1999)

#### **12.24.035 Removal standards.**

No removal permit shall be granted pursuant to section 12.24.030 of this Chapter unless the city manager determines that substantial evidence supports one of the following three findings:

A. The general health of the oak tree warrants removal. A removal permit may be granted based on the health of the tree only if one of the following tests can be satisfied:

1. The oak tree is in danger of falling or is deemed to be structurally unsound, according to generally accepted arboricultural standards, and is in proximity to existing or proposed structures; or
2. The oak tree is a host for plant, pest, or disease endangering other species of trees or plants with infection or infestations.
3. Protection of pre-existing improvements that have been interfered with by the oak tree, or otherwise allow the reasonable enjoyment of private property.
4. The oak tree is causing damage to a dwelling, building or structure, including foundational support for same, and/or damaging the essential utilities servicing the dwelling, building or structure. A professional evaluation by a certified arborist, licensed plumber, landscape architect or structural engineer detailing the damage being caused shall be required as part of the application for removal permit identified in Section 12.24.030.

B. Removal of the oak tree is necessary to allow construction of new improvements or the repair or protection of pre-existing improvements that have been interfered with by the oak tree, or otherwise allow the reasonable enjoyment of private property. The city manager shall apply the following factors in determining the necessity of removal of an oak tree for purposes of this subsection:

1. The size and age of the oak tree to be removed, and its historic, aesthetic or cultural value; a larger, older and more historically, aesthetically, or culturally valuable tree may be removed only if each of the other factors weigh heavily in favor of removal.
2. The necessity of the removal of the oak tree for new construction or expansion of existing improvements.
3. The lack of any reasonable alternative to the proposed improvement that does not require removal of the oak tree. The availability of funds from the Oak Tree Maintenance Fund to assist the property owner in repairing or reconfiguring improvements in a manner to save an oak tree should be taken into account in determining whether reasonable alternatives to removal exist such that a permit on this grounds should not be granted.

C. Urban forestry or land management practices warrant removal of the oak tree. An oak tree may be removed based on urban forestry or land management practices if one of the following conditions exist:

1. Removal of the oak tree will substantially benefit the topography of the land and the soil retention, water retention, and diversion or increased flow of surface waters.
2. Removal of the oak tree will not be detrimental to the general public because the number, species, size, and location of existing trees in the area offset the removal of the oak tree, and the removal will not have an adverse effect on shade areas, air pollution, historic values, scenic beauty, and the general welfare of the city as a whole.
3. Removal of the oak tree is consistent with good urban forestry practices such as, but not limited to, the number of healthy trees the subject parcel of land will support.

4. The property owner proposing to remove the tree can establish by adequate proof that the subject tree did not exist prior to the current owner's purchase of the property; this provision shall only apply to trees with a DBH of six (6) inches or less.

(Ord. 2021-03 § 2, 2021; Ord. 2007-02 § 2 (part), 2007)

#### **12.24.037 Mitigation requirements.**

In recognition and furtherance of the purposes of this Chapter, as enumerated in Section 12.24.010, it is the policy of the City of Visalia that property owners who are granted a permit to remove an oak tree pursuant to Subparagraph B. of section 12.24.035 offset the loss of the oak tree by either replacing the oak tree removed with new oak trees on the same property (in-kind mitigation) or by paying mitigation fees intended to be used for the establishment of new oak trees on other property or on public property for the benefit of the general public (in-lieu mitigation). In furtherance of this policy, the city manager shall develop an Oak Tree Mitigation Policy establishing in-kind and in-lieu mitigation measures to be required for oak tree removals. The Oak Tree Mitigation Policy, and any subsequent amendment thereto, shall be submitted to the city council for approval by resolution. (Ord. 2007-02 § 2 (part), 2007)

#### **12.24.040 Notice of action and appeals.**

A. Notice of the city manager's intended decision on a permit application submitted pursuant to section 12.24.030 shall be given by personal delivery or first class mail to the applicant and to any person filing a written request with the city manager for notice of all permit approvals under this ordinance. Further, notice of the intended decision shall be posted on the subject tree in a manner reasonably intend to inform the general public of the decision, and the right to appeal.

B. Any person aggrieved or affected by the city manager's intended decision, or any member of the city council, may appeal the intended decision to the city council by filing a written notice of appeal with the city clerk within ten business days, excluding weekends and holidays, after the delivery or mailing of the notice. Any such notice of appeal shall be accompanied by an appeal fee in the amount specified by the city council.

C. If no appeal is filed within such time, the city manager shall promptly implement the intended decision by denying or issuing the permit, with or without conditions. An appeal automatically stay execution of the implementation of the intended decision until the appeal has been considered and decided by the city council. (A member of the city council shall be exempt from the requirement of an appeal fee).

D. The city clerk shall place all such appeals on the agenda of the next regular council meeting and shall give notice to the applicant and/or appellant. The city council shall consider and decide all issues raised in the appeal, and the decision of the council shall be final. (Ord. 2007-02 § 2 (part), 2007; Ord. 9907 § 2 (part), 1999)

#### **12.24.050 Emergencies.**

A. In the case of emergency caused by the dangerous condition of an oak tree requiring immediate action for the protection of life or property, a tree may be cut down in whole or in part on the order of the city manager or any on-duty public works or public safety personnel.

B. Public utilities subject to the jurisdiction of the Public Utilities Commission of the state of California may also take such action as may be necessary to maintain a safe operation for their facilities. (Ord. 2007-02 § 2 (part), 2007; Ord. 9907 § 2 (part), 1999)

### **Article 3. Pruning Standards and Requirements**

#### **12.24.060 Pruning notice required**



A. Except in cases of emergencies as described in Section 12.24.050, no person shall prune or cause to be pruned any oak tree with a trunk diameter of ten (10) inches or greater at a point 4.5 feet above the root crown (also referred to as "10 inches Diameter Breast Height (D.B.H.)") within the city without first submitting a completed oak tree intent to prune notice with the city manager, as provided herein.

B. The notice shall be delivered to the city manager prior to the start of the work to be performed.

C. The notice shall be in a form as provided by the city manager and shall include the following information:

1. The name, address and telephone number of the property owner.
2. The name, address and telephone number of the person(s) intending to prune the tree.
3. The date(s) of the pruning.
4. A description of the tree(s) to be pruned including the approximate size and location of the tree with sufficient specificity to enable the city manager to precisely locate and identify the subject tree(s).
5. If the work is to be performed in any public right-of-way, proof of insurance coverage for general liability, property damage, and workers' compensation in case of injury or damage to person or property.
6. Proof of the possession of a valid city business license.

D. A copy of the notice must be in the possession of the person pruning the oak tree at all times during the course of the work being performed.

(Ord. 2021-03 § 2, 2021; Ord. 2007-02 § 2 (part), 2007; Ord. 9907 § 2 (part), 1999)

#### **12.24.070 I.S.A. pruning standards.**

That certain document known and designated as ANSI A300 Pruning Standards and the International Society of Arboriculture Best Management Practices for Tree Pruning, as amended from time to time, is adopted by the council of the city as the standards for pruning trees located within the city to all intents and purposes and to the same effect as if each and every section, paragraph, subparagraph, word, phrase, clause or illustration contained therein were fully set forth herein except for the deletion of any provisions as provided for in the chapter. A copy of such standards shall be on file with the city clerk and shall be available for purchase in the office of the city clerk. (Ord. 2007-02 § 2 (part), 2007; Ord. 9907 § 2 (part), 1999)

#### **12.24.080 Copies of standards on file.**

Reference is made to three copies of said standards filed in the office of the city clerk of the city which are now so filed for full particulars of said pruning standards. (Ord. 9907 § 2 (part), 1999)

#### **12.24.090 Enforcement.**

Except as otherwise provided herein, the provisions of this chapter shall be administered and enforced by the director in his or her capacity as enforcement officer. In the enforcement of this chapter such enforcement officer and his or her deputies may enter upon private or public property to examine any oak tree, and may issue citations for any violations of this chapter. (Ord. 9907 § 2 (part), 1999)

#### **12.24.100 Public assistance for property owners.**

A. If the city manager determines that a property owner, who has submitted a notice of intent to prune or remove an oak tree, cannot properly prune or remove his or her oak tree without the

assistance of a professional tree trimmer, and that said property owner cannot afford to hire a professional tree trimmer because he or she does not have the financial resources to pay for such services, the city manager may provide financial assistance to said property owner for the purpose of pruning or removal of the tree or trees, if all the following conditions are met and funds are available:

1. The property owner uses the property where the tree(s) is located as his or her principal place of residence;
2. The aggregate gross income of all persons eighteen (18) years of age or older residing on the property does not exceed the minimum amount as may be set from time to time, by resolution of the city council, pursuant to this subdivision; and
3. The city manager determines that it is necessary to prune or remove the tree to remove hazardous conditions, remove disease, rot, pests, other harmful conditions, or promote healthy growth of the tree(s).

B. Such financial assistance may include, but not be limited to, low interest loans, work done by the city with the cost borne in part or in whole by the property owner, work done by the city with the cost borne by the city to be repaid by the property owner upon such terms as the city and property owner shall agree, or any combination thereof.

(Ord. 2021-03 § 2, 2021; Ord. 2007-02 § 2 (part), 2007; Ord. 9907 § 2 (part), 1999)

#### **12.24.110 Oak maintenance fund.**

For purposes of providing such financial assistance as described in Section 12.24.100, and for accomplishing the oak tree mitigation goals as described in the Oak Tree Mitigation Policy developed pursuant to Section 12.24.037, it is established the "oak maintenance fund" which shall be funded either in part or in whole by those portions of fines which may be assessed by the courts, or through the administrative penalty process, known as "civil penalty assessments" for violations of this chapter, and by mitigation fee payments ordered pursuant to the Oak Tree Mitigation Policy established pursuant to Section 12.24.037. The Oak Tree Maintenance Fund shall be managed as described in the Oak Tree Mitigation Policy. (Ord. 2007-02 § 2 (part), 2007; Ord. 9907 §2 (part), 1999)

### **Article 4. Development proposals; protection of oak trees**

#### **12.24.120 Encroachment into drip-line of oak trees during construction.**

A. With respect to any application for a building or development permit, all encroachment by permanent structures into the crown drip-line of a Valley Oak is prohibited unless approved by the City Manager or his/her designee. If encroachment into the crown drip line is approved, the city shall require special construction techniques to be employed, as determined by the city manager.

B. The existing ground surface within crown-drip-line (measured horizontally) of the trunk of any oak tree shall not be cut, filled, compacted or paved without the consent of the city manager. Tree wells may be used when advisable. Excavation adjacent to any oak tree shall not be permitted where material damage to the root system will result.

C. The city council shall, by resolution adopt guidelines for commercial, industrial, and residential development and construction on property within the city, and city-initiated projects, where any oak tree is located. Such guidelines adopted pursuant to this subsection shall be made a part of this subsection and shall be enforced as hereinafter set forth. (Ord. 2007-02 § 2 (part), 2007; Ord. 2003-07 § 2, 2003; Res. 2003-61 (part), 2003; Ord. 9907 § 2 (part), 1999)

#### **12.24.130 Building permits.**

A. When any building permit, grading permit, or development permit is applied for pursuant to the city code and a proposed structure or construction project would require the destruction, removal, or

pruning of an oak tree, or encroachment into the crown-drip-line of an oak tree, said permit shall not issue until the city manager has confirmed that all requirements of this chapter, including the obtaining of a removal or pruning permit or the imposition of encroachment conditions, can be met. In no event shall any disturbance of the premises, disturbance of the oak trees, or encroachment into the crown-drip-line be allowed until all requirements of the chapter are met and a building permit with appropriate conditions and oak tree removal permit are issued. The issuance of a building permit notwithstanding this section shall in no event serve as a defense to a violation of any provision of this Chapter.

B. In the event a permit to destroy or remove an oak tree is issued in order to enable the applicant to carry out some project of development or improvement of the property, such permit shall be valid and effective only in connection with the actual accomplishment of such project.

C. In the event conditions related to removal or pruning of oak trees, or encroachment into the crown-drip-line, are attached to a building, grading or development permit, a minimum \$10,000 deposit (or amount deemed necessary by the city manager) shall be posted and maintained to ensure compliance with such conditions. The deposit shall be posted in a form approved by the City Attorney prior to any grading or movement of heavy equipment onto the site or issuance of any permits. Each violation of any condition regarding tree preservation shall result in forfeiture of a portion or the entirety of the deposit, at the discretion of the city manager. No deposit shall be required where the potential impacts to oak trees, and the required conditions to avoid such impacts, although present, are minimal. (Ord. 2007-02 § 2 (part), 2007; Ord. 9907 § 2 (part), 1999)

#### **12.24.140 Willful destruction of oak trees.**

It is unlawful for any person to willfully destroy, mutilate, poison, or attempt to kill an oak tree in the city. Exceptions to this section are to be found in Section 12.24.050 which provides for emergency destruction, removal, or pruning of an oak tree. (Ord. 9907 § 2 (part), 1999)

#### **12.24.150 City projects.**

City-initiated projects should comply with standards referred to in Section 12.24.120. (Ord. 2007-02 § 2 (part), 2007; Ord. 9907 § 2 (part), 1999)

### **Article 5. Enforcement**

#### **12.24.155 Enforcement.**

Except as otherwise provided herein, the provisions of this chapter shall be administered and enforced by the city manager in his or her capacity as enforcement officer. In the enforcement of this chapter such enforcement officer and his or her deputies may enter upon private or public property to examine any oak tree, and may issue citations for any violations of this chapter. (Ord. 2007-02 § 2 (part), 2007)

#### **12.24.160 Nuisances.**

A. It is declared a public nuisance for any person owning, leasing, occupying or having charge of any premises in the city which has one or more oak trees located thereon to intentionally, negligently accidentally, or otherwise maintain said premises in such a manner so as to cause harm to and of said oak trees, by reason of any of the following conditions:

1. Water saturation or deprivation;
2. Nailing, screwing, stapling, bolting, or otherwise attaching boards, fences, signs, placards, posters, or other material which might cause injury to the oak tree;
3. Neglect in the pruning or trimming of overgrown, diseased, decaying, dead, or rotting limbs, branches and foliage.



B. In addition to enforcing provisions of this code that constitute a public nuisance through criminal citations, civil action or administrative enforcement, the city manager may enforce against and abate any and all nuisances declared pursuant to this section in a manner consistent with applicable provisions of the Visalia Municipal Code pertaining to the procedure for abatement of nuisances, or absent such provisions, in a manner consistent with the laws of the State of California pertaining to abatement of nuisances. (Ord. 2007-02 § 2 (part), 2007; Ord. 9907 § 2 (part), 1999)

#### **12.24.170 Abatement.**

All premises or oak trees declared to be such public nuisances and ordered to be abated may be abated by watering, conditioning the soil, constructing berms, pruning or trimming, or removing offending materials affixed to the tree which might cause injury to said tree, pursuant to the procedures set forth in this code. (Ord. 9907 § 2 (part), 1999)

#### **12.24.180 Notice of hearing to abate.**

A. Within thirty (30) days of the passage of said resolution, the city clerk shall cause to be conspicuously posted on the premises, where the oak tree(s) are located, a certified copy of the resolution of the city council, which said notices shall be titled: "NOTICE OF HEARING" in letters of not less than one inch in height and shall be substantially in the following form:

NOTICE OF HEARING

TO ABATE NUISANCE

Notice is hereby given that on the \_\_\_\_day of \_\_\_, \_\_\_, the City Council of the City of Visalia passed a resolution declaring that certain Oak Tree(s) located or standing upon that certain lot, piece or parcel of land, situated in the City of Visalia, State of California, known and designated as, in said City, and more particularly described as Lot No., Tract No., or name of subdivision in said City, constitutes a public nuisance and must be abated by the rehabilitation of such premises by the watering, pruning, trimming, or other methods; otherwise said nuisance will be abated by the municipal authorities of the City, in which case the cost of such rehabilitation, watering, pruning or trimming will be assessed upon the land on which said Oak Tree(s) is or are located and such cost will constitute a lien upon such land until paid. (Reference is hereby made to said resolution for further particulars.)

B. The city clerk shall cause to be served upon the owner of each of the oak tree(s) declared to be a public nuisance and sought to be rehabilitated by watering, pruning or trimming one copy of said notice and a certified copy of the resolution of the city council, in accordance with these provisions.

C. Said notices and resolutions must be posted and served as aforesaid, at least thirty (30) days before the time fixed for the hearing before the city council and proof of posting and service of such notices and resolutions shall be made by affidavit which shall be filed with the city council. (Ord. 9907 § 2 (part), 1999)

#### **12.24.190 Form of proper service of notice.**

Proper service of said notice and resolution shall be by personal service upon the person owning the property as such person's name and address appears on the last equalized assessment roll, if he is found within the city limits, or if he is not to be found within the city limits, by depositing a copy of said notice and resolution in the U.S. post office properly enclosed in a sealed envelope and with the posting thereon fully prepaid. Said mail shall be registered or certified and addressed to said owner at the last known address of said owner. The service is complete at the time of deposit. (Ord. 9907 § 2 (part), 1999)

#### **12.24.200 Hearing by city council.**

A. At the time stated in the notices, the city council shall hear and consider all objections or protests, shall receive testimony and other evidence from owners, witnesses and parties interested relative to such alleged public nuisance and as to rehabilitation of such premises by the watering, pruning or trimming, or by other abatement thereof, and may continue the hearing from time to time.

B. Upon the conclusion of said hearing, the city council shall allow or overrule any or all of said protests. If the city council finds that good and sufficient cause does exist why said premises should be rehabilitated, or oak tree(s) should be watered pruned, trimmed, or treated, the city council shall prepare and file a report of such findings with the city clerk.

C. Following said public hearing, the city council may by resolution order the director to abate said nuisance, after a period of thirty (30) days, by having the oak tree(s) watered, pruned, trimmed, treated, or the nuisance otherwise abated, and the director and his or her authorized representatives are hereby expressly authorized to enter upon private property for that purpose. (Ord. 9907 § 2 (part), 1999)

#### **12.24.210 Service on owner of resolution to abate.**

A copy of said resolution ordering the director to abate said nuisance shall be served upon the owner of said property in accordance with the provisions of this chapter and shall contain a detailed list of needed corrections. Any property owner shall have the right to have any such oak tree(s) watered, pruned, trimmed, treated, or the nuisance otherwise abated at his or her own expense, provided the same is completed prior to the expiration of the time set forth in said resolution. (Ord. 9907 § 2 (part), 1999)

#### **12.24.220 Record of cost for abatement.**

The director shall keep an account of the cost (including incidental expenses) of abating such nuisance on each separate lot, or parcel of land where the work has been done and shall render an itemized report in writing to the city council showing the cost of watering, pruning, trimming, or treating said oak tree(s), and incidental expenses, on each separate lot or parcel of land; provided, that before said report is submitted to the city council, a copy of the same shall be posted for at least five days upon the premises or property upon which such oak tree(s) are situated, or the nuisance committed, together with a notice of the time when said report shall be submitted to the city council for confirmation; and a copy of said report and notice shall be served upon the owner of said property, in accordance with the provisions of this chapter at least five days prior to submitting the same to the council; proof of said posting and service shall be made by affidavit and filed with city clerk. The term "incidental expenses" shall include, but not be limited to the expenses and costs of the city in the preparation of notices, specifications and contracts, and in inspecting the work, and the costs of printing and mailing required hereunder. (Ord. 9907 § 2 (part), 1999)

#### **12.24.230 Hearing and proceedings.**

At the date and time fixed for receiving and considering said report the city council shall hear and pass upon the report of the director, together with any objection or protests which may be raised by any of the owners of property liable to be assessed for the work of abating such nuisance any other interest persons. Thereupon, the city council may make such revision, correction or modification in the report as it may deem just, after which by resolution the report, as submitted, or as revised, corrected or modified, shall be confirmed; provided that said hearing or consideration may be continued from time to time. The decision of the city council on all protests and objections which may be made, shall be final and conclusive. (Ord. 9907 § 2 (part), 1999)

#### **12.24.240 Assignment of costs against property--Lien.**

The amount of the costs of abating such nuisance upon any lot or parcel of land, as confirmed by the city council, shall constitute a special assessment against the respective lot or parcel of land, and

as thus keep a lien on said property for the amount of such assessment. After the confirmation of said report, a copy shall be turned over to the assessor and the tax collector of the county of Tulare, acting on behalf of the city, whereupon it shall be the duty of said assessor and tax collector to add the amounts of the respective assessments to the next regular bills of taxes levied against the said respective lots and parcels for land for municipal purposes, and thereafter said amounts shall be collected at the same time and in the same manner as other municipal taxes are collected, and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency as provided for other municipal taxes. (Ord. 9907 § 2 (part), 1999)

#### **12.24.250 Authority.**

Any and all nuisances declared and abated hereunder shall be processed pursuant to the authority set forth in Sections 38771 et seq., of the Government Code of the state of California, in the manner described herein above. (Ord. 9907 § 2 (part), 1999)

#### **12.24.260 Penalties.**

A. Unless otherwise noted herein, a violation of any provision of this Chapter shall constitute a misdemeanor.

B. Any violation of any provision of Sections 12.24.060 and 12.24.070 shall be deemed an infraction and be punishable upon conviction as hereinafter set forth.

C. Any person convicted of a misdemeanor under this chapter shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) and/or six months in the county jail. Each day that a violation continues shall be regarded as a separate offense.

D. Any person convicted of an infraction of this chapter shall be punished by a fine not to exceed five hundred dollars (\$500.00). Each day the violation continues shall be regarded as a new and separate offense.

E. Upon a person being convicted of any violation under this chapter, the court shall, in addition to, or in lieu of, the above penalties, or any other penalty provided and imposed under this chapter, order the defendant to pay a civil penalty assessment to the City of Visalia to be used in the manner described in the Oak Tree Maintenance Fund, as described in Section 12.24.110 herein, which Civil Penalty is designed as restitution to compensate the city and the community for the loss or diminution of economic, aesthetic, environmental, and property values resulting from the loss of any oak tree or portion thereof, and for the city's costs and attorney's fees in prosecuting the matter. In cases of unpermitted removal of an oak tree in violation of Section 12.24.025, such civil penalty shall be calculated by doubling the in-lieu mitigation amount as indicated in the Oak Tree Mitigation Policy implemented pursuant to Section 12.24.037, which would have been imposed for the specific tree had a permit been obtained. In cases of purposeful damage to an oak tree in violation of Section 12.24.025, the civil penalty imposed shall be calculated by multiplying one half times the in-lieu mitigation amount as indicated in the Oak Tree Mitigation Policy implemented pursuant to Section 12.24.037, which would have been imposed for the specific tree had a removal permit been obtained.

F. Any violation of any provision of this chapter may result in the immediate suspension of any permit previously issued for the construction and/or development of property upon which said violation occurred, until compliance with all mitigation measures required by this ordinance is demonstrated to the satisfaction of the city manager.

(Ord. 2007-02 § 2 (part), 2007; Ord. 9907 § 2 (part), 1999)

#### **12.24.270 Severability.**

A. If any section, subsection, paragraph, sentence, clause, or phrase of this chapter is held to be unconstitutional or invalid or ineffective by any court or tribunal of competent jurisdiction, such

decision shall not affect the validity or effectiveness of the remaining portions of this chapter, or any part thereof.

B. If the application of any provision of this chapter or any person, property, or circumstance is found to be unconstitutional or invalid or ineffective in whole or in part by any court or tribunal of competent jurisdiction, the effect of such decision shall be limited to the person, property, or circumstance immediately involved in the controversy, and the application of any such provision to other persons, properties or circumstances shall not be affected. (Ord. 2007-02 § 2 (part), 2007; Ord. 9907 § 2 (part), 1999)