REGULAR

NUMBER: 201.4

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 2 OF TITLE X OF THE MILPITAS MUNICIPAL CODE, "TREE AND PLANTING," TO ESTABLISH A HERITAGE TREE PROGRAM.

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of November 1, 2005, upon motion by Councilmember Polanski and was adopted (second reading) by the City Council at its meeting of November 15, 2005, upon motion by Councilmember _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:	(5)	Mayor Esteves, Vice Mayor Gomez, and Councilmembers Polanski, Livengood and Giordano
NOES:	(0)	None
ABSTAIN:	(0)	None
ABSENT:	(0)	None

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose Esteves, Mayor

APPROVED AS TO FORM:

_____
Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

Section 1

Chapter 2 of Title X of the Milpitas Municipal Code, "Tree and Planting," is hereby amended to read as follows:

*Note to Chapter 2

* Prior history: Ords. 201, 201.1, 201.2 and 201.3

Section 1 Title and Purpose

X-2-1.01 Title

This Chapter shall be known as the "Tree and Planting Ordinance of the City of Milpitas." (Ord. 201.3 (part), 10/3/00)

X-2-1.02 Purpose

The City recognizes substantial economic, environmental and aesthetic importance of the trees and plantings within the community. It shall be the City's policy to utilize applicable techniques, methods and procedures required to preserve, when feasible, all trees and plantings on City property, and all protected plantings of significant size, age, and/or benefit to the community at large.
It is in the best interests of the citizens and public that a comprehensive plan be developed to regulate the planting and maintenance of trees and other plantings in or adjacent to streets and within easements, in rights-of-way and other public places within the City and where appropriate, private property to provide for orderly development and protection of public facilities, and to regulate the removal of trees that contribute significantly to the value of land, preservation of resources and quality of life in the City. (Ord. 201.3 (part), 10/3/00)

Section 2 Definitions

*Note to Section 2

For the purpose of this Chapter, certain words or phrases are defined. (Ord. 201.3 (part), 10/3/00)

X-2-2.01

(Reserved by Ordinance 201.3 (part), 10/3/00)

X-2-2.02

(Reserved by Ordinance 201.3 (part), 10/3/00)

X-2-2.03

(Reserved by Ordinance 201.3 (part), 10/3/00)

X-2-2.04

(Reserved by Ordinance 201.3 (part), 10/3/00)

X-2-2.05

(Reserved by Ordinance 201.3 (part), 10/3/00)

X-2-2.06

"Approved Street Tree" shall mean any tree hereafter planted within any street right-of-way or easement adjacent thereto which conforms to the approved Street Tree List and which is planted in accordance with this Chapter. "Approved Street Tree" shall also mean any existing tree within the right-of-way or easement adjacent thereto which conforms to the established species and location in any given area, and which was planted as a required street tree under the provisions of any improvement agreement, or as otherwise approved by the Community Services Director, or any tree of the approved species and in an acceptable location which was or may be planted as a replacement. (Ord. 201.3 (part), 10/3/00)

X-2-2.07

"Unapproved Street Tree" shall mean any tree planted within street right-of-way or easements or in proximity thereto, or on adjoining property, which does not qualify as an approved street tree. (Ord. 201.3 (part), 10/3/00)

X-2-2.08

"Other Plantings" shall mean any shrubs, grass or ground cover planted within street right-of-way or easements or in proximity thereto, or on adjoining property. (Ord. 201.3 (part), 10/3/00)

X-2-2.09

(Reserved by Ordinance 201.3, 10/3/00)

X-2-2.10

"Heritage Tree Program" shall mean a program established in accordance with the provisions of this Chapter to recognize and designate individual trees or groves of trees to promote appreciation of the trees and their benefit to the community, and to nurture and protect the trees as part of the city's heritage.

X-2-2.11

"Tree trimming" shall refer to the removal of plant parts to control growth and enhance performance or function in the landscape by developing and preserving tree structure and health. The removal of water sprouts, sucker growth, and hanging limbs constituting less than ten percent (10%) of the tree canopy is not considered tree trimming according to the provisions of this chapter. (Ord. 201.3 (part), 10/3/00)

Section 3 Responsibilities

X-2-3.01 City Manager

The City Manager shall be responsible for administering and enforcing the provisions of this Chapter. He or she shall undertake such maintenance and planting programs and controls as may be required to carry out the provisions of this Chapter consistent with facilities and resources available. He or she may designate certain representatives to administer any portion of this Chapter. (Ord. 201.3 (part), 10/3/00)

X-2-3.02 Approved Street Tree List

The Public Works Department shall prepare an "Approved Street Tree List" containing the botanical and common names of all trees hereafter authorized to be planted in streets or easements adjacent thereto. Said list shall be on file in the Public Works Department and may be revised from time to time by the Public Works Department to include other suitable trees, trees to be planted for evaluation purposes only, or to exclude trees deemed to be unsuitable. All trees hereafter planted in any street or easement adjacent thereto or which may encroach upon such street right-of-way shall conform to the Approved Street Tree List, except as may be specifically approved under Subsection 4.01-1. (Ord. 201.3 (part), 10/3/00)

Section 4 Permits Required

X-2-4.01 Planting Permits

It shall be unlawful for any person to plant or cause to be planted any tree in any public right-of-way without first obtaining a written permit from the Public Works Department, except as provided in Subsection 4.01-1. Said permit shall specify the location and variety of trees or plants to be planted.
4.01-1 Street trees or other plantings which are required to be planted by a subdivider or developer in accordance with plans and specifications approved by the City, may be planted without a permit, provided however, that such trees and plantings shall conform to such plans and specifications and shall be planted under the supervision of the Public Works Department. (Ord. 201.3 (part), 10/3/00)

X-2-4.02 Permit Required for Removal

It shall be unlawful for any person other than City personnel in the performance of their duties to remove any street tree, protected tree or heritage planting without first applying for a permit from the Public Works Department. The Public Works Department may determine that a tree authorized for removal be replaced by the permittee through the compensation methods described in Section X-2-9.01, subsections (a) and (b). (Ord. 201.3 (part), 10/3/00)

X-2-4.03 Permit Required for Trimming

It shall be unlawful for any person, other than City personnel, to trim any approved street tree without first obtaining a permit from the Public Works Department. The permit shall be issued when the Public Works Department finds that the trimming is necessary and that the proposed method is satisfactory. A permit is not required for removing sucker growth, watersprouts, minor limbs causing obstructions, or for the removal of less than ten percent (10%) of the tree canopy. (Ord. 201.3 (part), 10/3/00)

X-2-4.04

(Reserved by Ordinance 201.3, 10/3/00)

Section 5 Maintenance

X-2-5.01 Care and Maintenance Facilities

The Public Works Department shall initiate and administer a program to provide for the planting, maintenance, care, removal, and replacement of official street trees, consistent with resources available.
5.01-1 The City may require the property owner to remove, trim, prune, spray, stake, and otherwise maintain street trees, as may be deemed necessary and feasible. The property owner shall water and may fertilize street trees adjacent to his property, provided however, the City may perform necessary care in selected non-residential areas, along undeveloped property, or in planting areas separated from adjoining property by a fence required as a condition of development. All costs incurred by the City shall be reimbursed by the property owner. (Ord. 201.3 (part), 10/3/00)

X-2-5.02 Removal of Trees or Plantings in Public Right-of-Way

The City may remove any other planting which constitutes a hazard or may endanger the health, well-being, or property of the public or which constitutes an obstruction to the vision of traffic. Said removal shall not be made, however, without prior notice to the property owner and an opportunity to be heard as provided for in Section X-2-8.02, unless the Public Works Department determines in his or her sole discretion that removing said tree or planting is immediately necessary for the protection of the public peace, health or safety. (Ord. 201.3 (part), 10/3/00)

X-2-5.03 Trees Replacement

The City may replace an approved street tree or other planting, which has died or may have been removed for any reason, or plant additional street trees deemed appropriate consistent with available resources. (Ord. 201.3 (part), 10/3/00)

X-2-5.04 Maintenance of Unapproved Street Tree or Other Planting

The City will not be responsible for maintaining unapproved street trees or other plantings in or adjacent to or overhanging any street. Maintenance of such other planting shall be the responsibility of the property owner, provided, however, the City may prune, trim, or remove such other plantings if the property owner refuses to maintain the plantings himself or herself, in accordance with Section X-2-8.02. (Ord. 201.3 (part), 10/3/00)

X-2-5.05

(Reserved by Ordinance 201.3, 10/3/00)

X-2-5.06 Abuse or Mutilation

It shall be unlawful for any person to break, destroy, or mutilate any approved street tree, or tree stake, or any public tree, shrub or plant in any public place including parks, or to set fire or permit any fire to cause damage to any portion of any street tree or other public planting; or to attach or place any rope or wire (other than one used to support a young or broken tree), sign, poster or other device on any street tree; or to permit or allow any gaseous, liquid or solid substance which is harmful to such tree to come in contact with any portion of any street tree; or to place or maintain any concrete or other solid substance or impervious membrane so as to impede free access of water or air to the roots. No solid paving or impervious membranes shall be placed closer than twenty-four inches (24") from the edge of any approved street tree. (Ord. 201.3 (part), 10/3/00)

Section 6 Other Plantings and Improvements

X-2-6.01 Responsibility for Other Plantings

The person owning or occupying the adjacent property shall be responsible for planting and maintenance and care of any plantings other than approved street trees in any area in the street between the curb and right-of-way or easement (including, but not limited to weeding, trimming, spraying and watering).
6.01-1 Exception: The City shall maintain those planting areas within the street, which are developed and landscaped as a public improvement. (Ord. 201.3 (part), 10/3/00)

X-2-6.02 Regulations for Other Plantings

The property owner may plant in planting strips and easements various plantings such as lawn, ivy, various perennials or annuals, or shrubs not to exceed two feet (2') in height and which will not interfere with the functioning of any curb, gutter, sidewalk, water meter, fire hydrant, or other public facility, and will not interfere with or impair the growth of any approved street tree, and will not constitute a public nuisance as described in Section 8.02 of this Chapter.

6.02-1 Exception: No person shall plant or cause to be planted any planting in any area of the public street developed and landscaped as a public improvement and maintained by the City. (Ord. 201.3 (part), 10/3/00)

Section 7 Tree Protection and Heritage Tree Program

X-2-7.01 Existing Trees Protected

It shall be unlawful to remove existing trees within the City except in accordance with Subsection X-2-4.02.

7.01-1 Trees protected in this Section are:

(a) All trees which have a fifty-six-inch (56") or greater circumference of any trunk measured 4½ feet from the ground and are located on developed residential property.

(b) All trees which have a thirty-seven-inch (37") or greater circumference of any trunk measured 4½ feet from the ground measured and are located on developed commercial or industrial property.

(c) All trees which have a thirty-seven-inch (37") or greater circumference of any trunk measured 4½ feet from the ground, when removal relates to any transaction for which zoning approval or subdivision approval is required.

(d) Any tree that existed at the time of a zoning or subdivision approval and was a specific subject of such approval or otherwise covered by subsection (b) above.

(e) All trees which have a thirty-seven-inch (37") or greater circumference of any trunk measured 4½ feet from the ground and are located on a vacant lot, undeveloped or underdeveloped property.

(f) All heritage trees or groves of trees as defined in Section X-2-2.10.

7.01-2 Measurement of circumference for the purpose of applying Subsection 2-7.01-1 shall be made with a taut tape, four feet six inches above the ground. (Ord. 201.3 (part), 10/3/00)

7.01-3

(a) Heritage tree designation may be applied by resolution of the City Council to individual trees or a grove of trees of any size or species within the City of Milpitas that are distinctive, of special historical value or significant community benefit.

(b) A tree or grove of trees may be designated as a heritage tree or heritage tree grove upon a finding that it is unique and of importance to the community due to any of the following factors:

1. It is an outstanding specimen or grove of a desirable species.
2. It is one of the largest or oldest trees or grove of trees in Milpitas.
3. The tree or grove of trees possesses distinctive form, size, age, location and/or historical significance.

(c) A heritage tree designation may be requested by any person and with the written consent of the property owner.

Section 8 Enforcement

X-2-8.01 Abatement by Trimming on Public Right-of-Way

The Public Works Department shall be empowered to authorize trimming of any approved street tree, unapproved street tree, or other planting in the public right-of-way or easement without prior notice to the property owner, if the Public Works Department determines in his sole discretion that the approved street tree, unapproved street tree, or other planting constitutes an immediate hazard to the public peace, health or safety and that trimming said tree or other planting is immediately necessary for the protection of the public peace, health or safety. All incurred costs to be recovered in accordance with X-2-8.02. (Ord. 201.3 (part), 10/3/00)

X-2-8.02 Public Nuisance on Private or Public Property

Any approved street tree, unapproved street tree, or other planting growing on public or private property which interferes with the use of or which endangers any public sewer, sidewalk, approved street tree, street or other facility or which impairs traffic visibility or which is maintained in violation of the provisions of this Chapter, may be declared a public nuisance by the Public Works Department and may be abated in accordance with the provisions of Title V, Chapter 500. (Ord. 201.3 (part), 10/3/00)

Section 9 Replacement or Compensation

Notwithstanding any provision of Title V, Chapter 500, in lieu of pursuing the City's remedies for unlawfully removing or causing damage to any City street tree or heritage planting, in violation of this Chapter, the City may allow a person to do the following, at the discretion of the Public Works Department

(a) Replace the unlawfully removed tree with one or more trees which, in the opinion of the Public Works Department, will provide comparable economic, aesthetic, or environmental value at the site: or

(b) Reimburse the City the value of the removed or damaged tree as determined by an arborist certified by the International Society of Arboriculture utilizing the current edition of the "Guide for Plant Appraisal, International Society of Arboriculture." Funds shall be deposited in the Tree Replacement Fund; or

(c) A combination of the above terms as determined by the Public Works Department. (Ord. 201.3 (part), 10/3/00)

Section 2. **PUBLICATION AND EFFECTIVE DATE.**

Pursuant to the provisions of Government Code Section 36933, a Summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting.

Section 3. **SEVERABILITY**

In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.