



## Title 17 – Zoning

### Article V

#### Resource Conservation

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Chapter 17.96	Tree Removal .....	17.96-1

**Revisions:**

The following revisions have been made to Article V of Title 17:

Date of Adoption	Ordinance Number	Subject	Section	Page Number



Chapter 17.94 Wind Energy Conversion Systems

Sections:

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**Draft Zoning Code Changes:**

*This chapter maintains adopted zoning regulations for wind energy conversion systems as previously listed in Chapter 17.30. No substantial changes have been made. Definitions have been moved to Chapter 17.98 (Glossary).*

**17.94.010 Purpose**

The purpose of this chapter is to regulate the placement of wind energy conversion systems (WECS) so that the public health, safety and general welfare will not be jeopardized and to insure that the future placement of WECS will be effective and efficient.

**17.94.020 Regulations**

Wind energy conversion systems are permitted in all zoning districts subject to the following requirements:

- A. **Use Permit Required.** A use permit is required for all WECS subject to the requirements of Chapter 17.12.130 (Conditional Use Permit).
- B. **Documentation Required.** All use permit applications for wind energy conversion systems shall include the following information:
  - 1. Name and address of the applicant;
  - 2. Evidence that the applicant is the owner of the premises involved or that the applicant has written permission of the owner to make such an application;
  - 3. A plot plan and development plan drawn in sufficient detail to clearly describe:
    - i. A property line and physical dimensions of the proposed site,
    - ii. Location, approximate dimensions and types of major existing structures and uses of the site,
    - iii. Location and elevation of the proposed WECS,
    - iv. Location of all aboveground utility lines and other WECS on-site or within one radius of the total height of the proposed WECS,
    - v. Location and size of structures or trees above thirty-five feet within a five-hundred-foot radius of the proposed WECS. For purposes of this

requirement, electrical transmission and distribution lines, antennae and slender or open-lattice towers are not considered structures,

- vi. Location of all transmission facilities proposed for installation, and
- vii. Location of all road and other service structures proposed as part of the installation including any easements for servicing and dismantling.

**C. Compliance with Uniform Building Code required for all WECS.**

1. Building permit applications shall be accompanied by drawings of the structural components of the wind energy conversion system including support structures, tower, base and footings. Drawings and any necessary calculations shall be certified in writing by a California registered professional engineer that the system complies with the Uniform Building Code;
2. Where the structural components or installation vary from the standard design or specification, the proposed modifications shall be certified by a California registered professional engineer for compliance with the seismic and structural design requirements of the Uniform Building Code.

**D. Compliance with National Electrical Code required for all WECS.**

1. Building permit applications shall be accompanied by a line drawing identifying the electrical components of the wind system to be installed in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. The application shall include a statement from a California registered professional engineer indicating that the electrical system conforms with standard engineering practices and complies with the National Electrical Code;
2. Where the electrical components of an installation vary from the standard design or specifications, the proposed modifications shall be reviewed and certified by a California registered professional engineer for compliance with the requirements of the National Electrical Code and standard engineering practices.

**E. Rotor Safety.** Each wind energy conversion system must be equipped with both manual and automatic control to limit the rotational speed of the blade below the design limits of the rotor. The application must include a statement by a California registered professional engineer certifying that the rotor and overspeed controls have been designed and fabricated for the proposed use in accordance with standard engineering practices. The engineer should also certify the structural compatibility of the proposed tower with proposed rotor.

**F. Performance Standards.**

1. Wind energy conversion systems shall be designed to prevent the intrusion of exterior noise levels beyond the following prescribed levels. Proper design shall include but not be limited to, setbacks, shielding, automatic shut-off, and sound insulation. Exterior noise levels attributable to any WECS shall not exceed a daily community noise equivalent level (CNEL) of fifty db as measured at/or beyond adjacent property lines within residential zoning districts or a CNEL of sixty db within all other zoning districts. The applicant shall include an acoustical report

prepared by a practicing acoustical engineer (registered with the state office of noise control) or other qualified professional, certifying that the proposed WECS, including all mechanical hardware, will not exceed the prescribed CNEL during its full range of operation. Any noise abatement plan included in the acoustical report shall also indicate the expected final CNEL after required mitigation measures have been implemented.

2. A WECS shall not be installed in any location along the major axis of an existing microwave communications link where the operation of the WECS is likely to produce an unacceptable level of electromagnetic interference unless the applicant provides sufficient evidence indicating that the degree of interference will not disrupt the communications link. The WECS shall be located in accordance with guidelines of the Federal Aviation Administration.
- G. **Signs.** At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage and that rotor may start without notice.
  - H. **Height.** The maximum allowable hub height is one hundred feet from the ground and in no case shall the lowest reach of the rotor be less than twenty feet from the ground. Tower climbing apparatus shall be no lower than twelve feet from the ground and shall be equipped with an anti-climbing device approved by the public services department.
  - I. **Wind Access.** The proposed site of a WECS shall have sufficient access to unimpeded air flow for adequate operation of the WECS in accordance with the manufacturer's recommendations. The WECS shall be set back a minimum of two rotor diameters from all property lines unless it can be demonstrated that a lesser setback can protect the wind access of the downwind properties. Calculations for these setbacks may include streets, flood control channels and transmission line and railroad rights-of-way. Contiguous property owners and planned developments may construct a WECS for their use in common. If property held by more than one single owner is used to meet the setback requirement, there shall be an easement recorded on the affected properties after prior review and approval by the City Attorney.
  - J. **Design Considerations.** All electric lines serving the WECS shall be installed underground. No towers with guy wire supports and no lattice-type towers are allowed on lots less than one acre. Guyed towers shall be located within a six-foot fence of sufficient radius to enclose all guy cables.
  - K. **Utility Notification (For Those WECS Which Will be Interconnected to a Utility Grid).** No wind turbine shall be installed until written notice has been given to the utility company and a copy filed with the City public services department.
  - L. **Maintenance.** The tower and generating unit shall be kept in good repair. The WECS shall be deemed abandoned if not in continuous use except for maintenance and repairs for a period exceeding six months and shall be removed.

### 17.94.030 Revocation

The City Council may revoke any use permit subject to the procedures established in Chapter 17.16.070 (Permit Revocation or Modification) in any case where the conditions of the granting of such use permit or the requirements of this chapter have not been complied with.



**Chapter 17.96 Tree Removal**

**Sections:**

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**Draft Zoning Code Changes:**

*This chapter maintains adopted zoning regulations for tree removal as previously listed in Chapter 17.64. No substantial changes have been made. Definitions have been moved to Chapter 17.98 (Glossary of Terms).*

**17.96.010 Purpose and Intent**

The City values its natural features as an integral part of the city life. The purpose of this chapter is to ensure that certain species of trees and/or trees of a significant size are treated as important natural features in the city. In general, healthy protected trees shall not be cut down, removed or destroyed. In a situation where a protected tree(s) are located on sites where development is proposed, protected trees are to be given a high priority throughout the development process with a public hearing and special findings required to remove a protected tree(s).

This chapter does not apply to trees in City parks and open space, the unauthorized removal or damage to which is strictly prohibited pursuant to Chapter 12.16 of this Municipal Code.

**17.96.020 Applicability**

Requirements in this chapter apply to protected trees as defined in the Chapter 17.98 (Glossary of Terms). As outlined herein, a Tree Removal Permit is required prior to removal of protected trees within the City of Pinole.

**17.96.030 Pruning of a Protected Tree**

The pruning of any protected tree shall be performed only when it enhances its structural strength, health, general appearance or for safety reasons. Any pruning must be either completed by a certified/consulting arborist, or by the owner of protected tree who is following a plan created by a certified/consulting arborist.

**17.96.040 Protected Tree Removal Permit Application****A. Time of application.**

1. Any person desiring to cut down, destroy or remove one or more protected trees on any undeveloped, vacant property or land under development that requires a building permit in the City, shall file an application for a tree removal permit application with the Community Development Director. If the protected tree removal does not involve development, the application shall be filed not less than ten days prior to the time desired for the physical removal of the protected tree.
2. If the protected tree removal does involve development, the applicant shall file the application concurrently with the first application for approval of the development. The applicant is strongly encouraged to review the proposed development with the Community Development Director to determine which protected trees could be preserved before design drawings are begun.

**B. Content of Application.**

1. The application shall contain the precise number, species, size and location of the protected tree(s) to be cut down, destroyed or removed and a statement of the reason for removal, the signature of the property owner authorizing such removal, the signature of the person actually performing the work if different than the property owner and if known at the time of the application, as well as any other pertinent information the Community Development Director may require. The applicant shall submit five copies of drawing and a fee prescribed by City Council resolution to cover the cost of investigation and processing.
2. If the tree removal involves development, the applicant shall provide a tree survey plan specifying the precise location and dripline of all existing trees (protected trees and non- protected trees) on the property.
3. Unless the reason for the proposed removal of the protected tree(s) is evident, (i.e. the protected tree is clearly dying) the applicant shall also submit a certified or consulting arborist's report, which shall include an evaluation of the protected tree(s) to be removed as well as any appropriate recommendations concerning the preservation of any surviving protected tree(s) on the property. The appraisal shall be done at the applicant's sole expense, and the appraiser shall be subject to the City's approval, which approval it shall not unreasonably withhold.

**17.96.050 Removal of Protected Tree(s) Due to the Health of the Tree****A. Review by City Planner.** The Community Development Director shall grant the permit if he or she makes either of the following findings:

1. The condition of the protected tree(s) with respect to disease, species, form, general health, damage, public nuisance, danger of falling, proximity to existing structures, interference with utility services, or damage to existing sidewalks and driveways warrants its (their) removal and such condition cannot reasonably be remedied through less drastic means.

2. The protected tree(s) acts as a host for a parasitic plant or insect which may endanger other protected tree(s) in the area and cannot reasonably be controlled through less drastic means.
- B. **Conditions of Approval.** Whenever any protected tree removal permit is granted, the City Planner shall impose such conditions as may be necessary to safeguard the public safety and the intent of this chapter. A protected tree removal permit shall become null and void if the privileges granted thereunder have not been utilized within one (1) year from the effective date thereof. The conditions will be in addition to those set forth in Section 17.96.060C.
  - C. **Notice of the Decision.** The decision of the Community Development Director shall be mailed to the applicant within ten working days.
  - D. **Notification to Planning Commission.** After approving an application for protected tree removal permit, the Community Development Director shall advise the Planning Commission of his or her decision at their next regular meeting.
  - E. **Appeals.** Any person may appeal the actions of the Community Development Director to the Planning Commission by filing an appeal with the City Clerk pursuant to the procedures set forth for a public hearing as provided in Section 17.10.070.

#### 17.96.060 Protected Tree(s) Removal Permit – As Part of a Development

The protected tree(s) removal permit applications for protected trees sought to be removed for development shall be considered by the body given the authority to render the initial decision of said discretionary development approval. In the event a protected tree is to be removed as a consequence of a building permit issuance, the hearing body shall be the planning commission.

- A. **Notice and hearing.** A public hearing shall be required on that portion of a protected tree(s) removal application requesting removal of any protected tree(s) notice of the hearing shall be given in the manner specified in Section 17.10.050 of this code. This notice may be consolidated with any notice of public hearing required in conjunction with other aspects of the development approval.
- B. **Findings.** In approving any protected tree(s) removal permit, the reviewing body, through its site and landscaping plan review, shall endeavor to preserve all protected tree(s) to the extent possible. The reviewing body may approve a protected tree removal permit for the removal of a protected tree(s) only if it finds that the burden to the applicant in preserving the protected tree(s) greatly outweighs the benefit to the public and that preserving the protected tree(s) would severely reduce the scale or feasibility of the development. In making the foregoing determinations, the reviewing body shall consider such factors as the following:
  1. The species, size, age, condition and value of the protected tree.
  2. Whether the protected tree has particular historical or heritage value.
  3. The visibility and value of the protected tree to the neighborhood and the public.
  4. The contribution of the protected tree to the character of the site and the neighborhood.

5. Whether the development provides a public benefit.
6. The extent of hardship to the applicant in constructing the development using a different design, size or on-site location.
7. Whether measures short of removing the protected tree can be employed consistent with the development.

**C. Conditions.**

1. In approving the protected tree(s) removal permit, the reviewing body may impose conditions for the purpose of protecting any protected tree(s) which are to remain or to otherwise ensure compliance with the intent and purpose of this chapter. The conditions will be in addition to those set forth in Sections 17.96.080.B and 17.96.070.A.
  2. If the reviewing body approves the removal of any protected tree(s), the reviewing body may require as a condition of approval that the applicant either:
    - i. Plant trees as part of the development over and above the landscaping that would otherwise be required at a value equal to the value of the protected tree(s) that will be removed; or
    - ii. Pay an in-lieu fee to the City in an amount equal to the value of the protected tree(s) that will be removed.
    - iii. The Planning Commission may impose any other condition they determine appropriate for the tree removal request.
  3. As used in division a., the Community Development Director shall determine the amount of "landscaping that would otherwise be required" based on the standards stipulated in the Zoning Code. The value of the protected tree(s) that will be removed shall be determined by the value of each protected tree(s) to be removed as shown on the appraisal provided with the application pursuant to this Section 17.96.050.B. Any in-lieu fees collected by the City pursuant to this section shall be used only for the installation or replacement of trees in City parks or open space or other areas of benefit to the City.
  4. A copy of the decision and findings shall be mailed by the secretary of the decision-making body acting on the application to the applicant and to such other persons as shall so request in writing. A copy shall also be kept on file in the Community Development Department.
- D.** Removal authorized. Approval of the protected tree(s) removal plan indicating which, if any, protected tree(s) can be removed shall be used by the community development director to issue a protected tree(s) removal permit for the purpose of this chapter. The tree removal permit, if granted, shall entitle the applicant to remove only the protected tree(s) stated in the plan.
- E.** Appeal. Any person may appeal the actions of the Planning Commission to the City Council by filing an appeal with the City Clerk pursuant to the procedures set forth for a public hearing as provided in Section 17.40.030.C.

**17.96.070 Preservation of Existing Protected Trees During Development**

- A. General Requirements. In addition to the conditions stipulated in the tree removal permit, the following must regulations must be met as standard conditions of approval:
1. Prior to and during any demolition, grading or construction, all protected trees within a development area shall be protected by a six foot high chain link (or other material approved by the community development director) fence installed around the outside of the dripline of each tree.
  2. No oils, gas, chemicals, liquid waste, solid waste, heavy construction machinery or other construction materials shall be stored or allowed to stand within the dripline of any tree.
  3. No equipment washout will be allowed to occur within the dripline of any tree.
  4. No signs or wires, except those needed for support of the tree, shall be attached to any tree.
- B. Damage to a protected tree. If any damage occurs to a protected tree during construction, the owner, developer, contractor, or any agent thereof shall immediately notify the Community Development Director so that professional methods of treatment accepted by the community development director may be administered. The repair of the damage shall be at the expense of the responsible party and shall be by professional standards, approved by the Community development director. Failure to comply will result in a stop work order.
- C. The Community Development Director may require a certified/consulting arborist be retained by the developer to be on-site at such times during development as the community development director determines appropriate.

**17.96.080 Guarantees for Protected Trees Remaining Within Development Area**

- A. Application. The requirements of this section apply to any development whereby a protected tree will remain within the development area, whether or not a tree removal permit has been issued to remove other protected trees.
- B. Guarantee Period.
1. Upon issuance of the first City permit, which authorizes work on the site, the applicant shall guarantee the health of all protected tree(s) to be preserved on the site. The health of all protected trees required to remain on or in the vicinity of the site shall be guaranteed from the date the guarantee is first filed with the Community Development Director until three years after the final inspection of the development or issuance of the certificate of occupancy, if any, whichever is later.
  2. The guarantee shall include the applicant's agreement to replace any protected tree, which is to be saved, but that dies during the guarantee period with a tree of the same species as close in size as is reasonably possible within such time and in such manner as is determined by the Community Development Director.

- C. Determination of loss/damage of protected tree. Upon determination by the Community Development Director that a protected tree has died through the fault of the applicant as determined under Section 17.96.080.B, pay to the City a civil penalty levied by the Community Development Director for such protected tree in accordance with the requirements of Section 17.96.090. If any person performs any work within the dripline of a protected tree which is not permitted by this chapter or otherwise damages a protected tree in a manner which is not permitted by this chapter or a protected tree permit, that person shall guarantee the health of that protected tree for a period of five years.

#### **17.96.090 Penalties**

- A. **Criminal Penalties.** Any person, including but not limited to the property owner, the person performing the work and/or any other responsible person, who violates any requirement of this chapter or any condition imposed upon any permit issued hereunder shall be guilty of a misdemeanor. Criminal penalties may be issued pursuant to Chapter 1.12 of this Pinole Municipal Code.
- B. **Civil Penalties.**
1. For each protected tree that dies through the fault of the applicant, the community development director shall levy a civil penalty not to exceed fifty dollars for each inch of circumference of the protected tree's stem, measured four and a half feet above the natural grade. A protected tree shall be presumed to have died through the fault of the applicant unless the applicant can prove that the protected tree died for reasons beyond the applicant's control.
  2. In addition to such penalty, whenever the cost of replacing a protected tree for which a civil penalty is levied is less than the appraised value of the tree included with the permit application, the applicant shall also pay to the City the difference between that appraised value and the cost of the replacement tree. The applicant's verified receipt for the cost of the replacement tree shall be conclusive proof of that cost. If the applicant chooses not to submit such a receipt within ten days following replacement of tree, then the community development director shall determine the value of the replacement tree.
  3. The Community Development Director shall be responsible for making any necessary factual determination under this section and shall put such determination in writing and mail it to the applicant.
  4. Whenever the applicant disagrees with the determination of the community development director under this section, he or she may file a written request with the community development director for appeal of his or her decision. Such request must be filed within ten days after the City has mailed to the applicant a written notice of the community development director's initial determination.
- C. **Appeal of Civil Penalty.**
1. Any person may appeal the actions of the community development director to the planning commission by filing an appeal with the City Clerk pursuant, to the

procedures set forth for a public hearing as provided in Section 17.40.030.A and (b). And thereafter appeal to the City Council as provided in Section 17.40.030.C.

2. The penalties collected pursuant to this section shall be used, in the following order of preference and at the direction of the community development director: to provide additional trees on the applicant's property; to upgrade street trees on peripheral streets; to beautify public places in the area of the applicant's property; or to provide landscaping on City property.
- D. **Filing.** All penalties shall be filed in the Community Development Director's office with copies of receipts sent to City Finance Department final inspections shall be made by the City Planner.
- E. **Cumulative Remedies.** The foregoing remedies shall be deemed non-exclusive, cumulative and in addition to any other remedy the City may have at law or in equity, including but not limited to injunctive relief to prevent violations of this chapter. The City reserves to itself in its discretion the ability to permit an applicant to replace any protected tree illegally removed with a new tree of equal or greater size or value in lieu of or in addition to any penalties.