



**CITY OF PALO ALTO
CITY COUNCIL
Special Meeting
Monday, April 01, 2024
Council Chambers & Hybrid
5:30 PM**

Agenda Item

10. SECOND READING: Ordinance of the Council of the City of Palo Alto Amending Chapter 8.04 (Street, Trees, Shrubs, and Plants) and Chapter 8.10 (Tree Preservation and Management Regulations) (FIRST READING: January 16, 2024 PASSED 5-2, Lythcott-Haims, Tanaka no)



City Council Staff Report

From: City Manager

Report Type: ACTION ITEMS

Lead Department: Public Works

Meeting Date: April 1, 2024

Report #:2403-2809

TITLE

SECOND READING: Ordinance of the Council of the City of Palo Alto Amending Chapter 8.04 (Street, Trees, Shrubs, and Plants) and Chapter 8.10 (Tree Preservation and Management Regulations) (**FIRST READING:** January 16, 2024 PASSED 5-2, Lythcott-Haims, Tanaka no)

BACKGROUND

The ordinance has been amended to reflect part B of the Council's motion. Specifically, a provision was added to Section 8.10.070 to require requests to prune trees in excess of the limits in Section 8.10.020(i) to be submitted to the urban forester fourteen days before pruning the tree with a statement explaining why pruning beyond the limits is warranted.

During passage of the tree ordinance updates in January, staff confirmed during the Council questions that based on CAO analysis of PAMC Chapter 18.09, the updated Title 8 and applicable state law, the tree ordinance would not apply to stand alone Table 1 ADU's. Staff did not recommend adding specific language to that effect at that time.

At the second reading of the tree ordinance updates, several council members expressed concern that the updated tree ordinance did not explicitly state that PAMC 18.09 Table 1 ADUs were exempt. To address this concern, the following proposed language has been added as 8.10.050 (b)(4):

The tree is proposed for removal to accommodate an ADU constructed pursuant to Section 18.09.030, or because removal is necessary to allow an ADU constructed pursuant to Section 18.09.040 to achieve the minimum standards set forth in state law.

ATTACHMENTS

Attachment A: Ordinance of the Council of the City of Palo Alto Amending Chapter 8.04 (Street, Trees, Shrubs, and Plants) and Chapter 8.10 (Tree Preservation and Management Regulations).

APPROVED BY:

Brad Eggleston, Director Public Works/City Engineer

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Amending Chapter 8.04 (Street, Trees, Shrubs, and Plants) and Chapter 8.10 (Tree Preservation and Management Regulations).

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. Chapter 8.04 (Street Trees, Shrubs, and Plants) of Title 8 (Trees and Vegetation) of the Palo Alto Municipal Code is hereby amended to read as follows (additions underlined and deletions ~~struck through~~):

**Chapter 8.04
PUBLIC TREES, SHRUBS, HEDGES, AND PLANTS**

Sections:

8.04.005 Purpose.

8.04.010 Definitions.

8.04.015 Authority of city.

8.04.020 Permit required for certain work.

8.04.030 Application for permit.

8.04.040 Issuance of permit.

8.04.050 Public nuisances.

8.04.070 Enforcement.

8.04.080 Interference with enforcement.

8.04.090 Adoption of regulations.

8.04.005 Purpose.

The purpose of this chapter is to protect and promote trees, shrubs, hedges, and plants located on public property within the city. In establishing these procedures and standards, the city recognizes that trees, shrubs, hedges, and plants are an essential part of the city's infrastructure, with benefits that include promoting the health, safety, welfare, and quality of life of the residents of the city; addressing climate change by sequestering carbon and providing a cooling effect; reducing air, water, and noise pollution; preventing soil erosion and

stormwater runoff; providing wildlife habitat; and enhancing the aesthetic environment. It is the city's intent to encourage the preservation of trees, shrubs, hedges, and plants.

8.04.010 Definitions.

For the purposes of this title, the following words shall have the meaning ascribed to them in this section:

- (a) "Person" means individuals, firms, associations and corporations, and agents, employees or representatives thereof.
- (b) "City" means the city of Palo Alto acting by and through its authorized representatives.
- (c) "Street" means and includes all land lying between the boundaries of property abutting on all public streets, boulevards, alleys, and walks.
- (d) "Parks" means and includes all parks to which names have been given by action of the city council.
- (e) "Public places" means and includes all grounds, other than streets or parks, owned by, leased to, or under the control of the city of Palo Alto.
- (f) "Tree" means and includes any woody perennial plant generally having a single main stem and commonly achieving ten feet in height.
- (g) "Shrub" means and includes any woody perennial plant generally having multiple stems and commonly less than ten feet in height.
- (h) "Hedge" means and includes any tree, shrub, or plant, when planted in a dense, continuous line or area, as to form a thicket or barrier.
- (i) "Plant" means and includes all vegetation other than trees and shrubs.
- (j) "Public trees, shrubs, hedges, and plants" means and includes any tree, shrub, hedge, or plant in any street, park, or public place in the city of Palo Alto.
- (k) "Urban forester" means public works department staff including the urban forester or their designee.
- (l) "Tree permit" means a permit issued by the urban forester for one or more of the following purposes:
 - (1) To permit removal of a public tree.
 - (2) To permit public tree care, work, or treatment.
 - (3) To permit removal of a protected tree under 8.10.050.
 - (4) To establish a tree preservation bond.
 - (5) For payment of "in-lieu" fees for required mitigation measures.

8.04.015 Authority of city.

The city of Palo Alto shall have control of all public trees, shrubs, hedges, and plants now or hereafter in any street, park or public place within the city limits, and shall have the authority to plant, care for, remove, replace, and maintain such trees, shrubs, hedges, and plants.

8.04.020 Permit required for certain work.

Unless authorized by a tree permit or other city approval, no person shall do any of the following:

- (a) Plant, prune, trim, shape, remove, top, or in any way damage, destroy, injure or mutilate a public tree, shrub, hedge, or plant. A tree permit is not required for a property owner, resident, or their agent to maintain shrubs, hedges, or plants located within the city right-of-way associated with their property.
- (b) Fasten a sign, wire, or injurious material to any public tree, shrub, hedge, or plant.
- (c) Excavate any ditch or tunnel; or place concrete or other pavement within a distance of ten feet of the center of the trunk of any public tree.

8.04.030 Application for permit.

Any person desiring to do any of the work described in Section 8.04.020 may apply for a tree permit so to do. The applicant shall state the nature of the work and the location where it will be done.

8.04.040 Issuance of permit.

A tree permit shall be issued authorizing work that meets all the following conditions:

- (a) Will not create, continue, or aggravate any hazardous condition, or public nuisance.
- (b) Will not prevent or interfere with the growth, location or planting of any approved public tree.
- (c) Is consistent with the planting plan being followed by the city.

8.04.050 Public nuisances*.

Any of the following are, for the purposes hereof, defined to be public nuisances:

- (a) Any dead, diseased, infested, or dying tree, shrub, hedge, or plant in any street or on any public or private property so near to any public tree, shrub, hedge, or plant as to constitute a danger to a public tree, shrub, hedge, or plant, or street, or portion thereof or public property.
- (b) Any tree, shrub, hedge, or plant on any private property or in any street, of a type or species that will destroy, impair, or otherwise interfere with any street improvement, sidewalk, curb, approved public tree, gutter, sewer, other public improvement, including utility mains and services, or a public tree, shrub, hedge, or plant.

(c) Any tree limb, shrub, hedge, or plant reaching a height more than three feet above the curb grade adjacent thereto, except a tree trunk having no limbs lower than nine feet above curb grade, within the thirty-five foot triangle of public or private property, measured from the projected curb lines, at the intersections of any street improved for vehicular traffic where either traffic signals, stop signs, or yield signs are not installed, or at any intersections which are determined by the chief transportation official to contain a tree limb, shrub, hedge, or plant that obscures or impairs the view of a passing motorist, cyclist or pedestrian so as to create a safety hazard.

(d) Vines or climbing plants growing into or over any public tree, shrub, hedge, or plant; or any public hydrant, pole or electrolier.

(e) Existence of any tree within the city limits that is infested or infected with objectionable insects, scale, fungus, or growths that are included in the California Department of Food and Agriculture's detection and eradication programs or that are growth injurious to trees.

(f) The existence of any branches or foliage which interfere with visibility on, free use of, access to, or obstruct public vehicular or pedestrian travel on any portion of any street improved for vehicular or pedestrian travel.

(g) Hedges or dense, thorny shrubs and plants on any street or part thereof.

(h) Shrubs and plants more than two feet in height in any tree well or planting strip between the sidewalk and curb, measured above top of curb grade.

(i) Any tree, shrub, hedge, or plant declared a public nuisance pursuant to state law and ordered removed by a court of competent jurisdiction.

* Abatement procedure - See Chapter 9.56 of this code.

8.04.070 Enforcement.

(a) Violation of any provision of this chapter is a misdemeanor, punishable as provided in this code. Each day of violation constitutes a separate offense and may be separately punished.

(b) Persons employed in the following designated employee positions are authorized to exercise the authority provided in California Penal Code Section 836.5 and are authorized to issue citations for violations of this chapter, including but not limited to leveling fines under the city's administrative penalty authority: assistant director of public works public services division, urban forester, project manager in the urban forestry section, landscape architect, and code enforcement officer.

(c) Any person who damages a public tree, through any act or omission, whenever such act or omission is prohibited by or not authorized pursuant to this chapter, may be liable civilly in a sum not to exceed ten thousand dollars per tree, or the reproduction cost of each such tree, whichever amount is higher.

(d) Injunctive relief. A civil action may be commenced to abate, enjoin, or otherwise compel the cessation of such violation.

(e) Costs. In any civil action brought pursuant to this chapter in which the city prevails, the court shall award to the city all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action, and reasonable attorney fees.

(f) The remedies and penalties provided in this section are cumulative and not exclusive.

8.04.080 Interference with enforcement.

No person shall interfere with or delay the authorized representatives of the city from the execution and enforcement of this chapter, except as provided by law.

8.04.090 Adoption of regulations.

The city may adopt regulations prescribing standards of landscaping and planting of streets, parks and public places, therein. A copy of such regulations shall be available for public inspection upon request, and all work performed in streets, parks or public places shall be performed in accordance therewith.

SECTION 2. Chapter 8.10 (Tree and Landscape Preservation Management) of Title 8 (Trees and Vegetation) of the Palo Alto Municipal Code is hereby amended to read as follows (additions underlined and deletions ~~struck through~~):

**Chapter 8.10
TREE AND LANDSCAPE PRESERVATION AND MANAGEMENT***

Sections:

8.10.010 Purpose.

8.10.020 Definitions.

8.10.030 Tree and Landscape Technical Manual.

8.10.040 Disclosure of information regarding existing trees.

8.10.050 Removal of protected trees.

8.10.055 Tree replacement.

8.10.060 No limitation of authority under Titles 16 and 18.

8.10.070 Care of protected trees.

8.10.080 Development conditions.

8.10.090 Designation of heritage trees.

8.10.092 Tree removal in wildland- urban interface area.

8.10.095 Tree removal in Hospital District Zone.

8.10.100 Enforcement.

8.10.110 Remedies for violation.

8.10.120 Fees.

8.10.130 Severability.

8.10.140 Applications, notice, and appeals.

8.10.010 Purpose.

The purpose of this chapter is to protect specified trees located on private property within the city, and establish standards for removal, maintenance, and planting of trees and landscaping. In establishing these procedures and standards, the city recognizes that trees and landscaping are an essential part of the city's infrastructure. Their benefits include promoting the health, safety, welfare, and quality of life of the residents of the city; addressing climate change by sequestering carbon and providing a cooling effect; reducing air, water, and noise pollution; preventing soil erosion and stormwater runoff; providing wildlife habitat; and enhancing the aesthetic environment. It is the city's intent to encourage both the preservation of trees and the proactive incorporation of trees and their benefits within development.

8.10.020 Definitions.

For the purposes of this chapter, terms defined in Chapter 8.04 shall have the same meanings in this chapter, and the following terms shall have the meaning ascribed to them in this section:

(a) "Basal flare" means that portion of a tree where there is a rapid increase in diameter at the confluence of the root crown~~trunk~~ and trunk~~root crown~~.

(b) "Buildable area" means that area of a parcel:

(1) Upon which, under applicable zoning regulations, a structure may be built without a variance, design enhancement exception, or home improvement exception; or

(2) Necessary for construction of primary access to structures located on or to be constructed on the parcel, where there exists no feasible means of access which would avoid protected trees. On single-family residential parcels, the portion of the parcel deemed to be the buildable area for primary access shall not exceed ten feet in width.

(c) "Building footprint" means the two-dimensional configuration of a building's perimeter boundaries as measured on a horizontal plane at ground level.

(d) "Designated arborist" means an arborist certified by the International Society of Arboriculture or another nationally recognized tree research, care, and preservation organization, selected by the urban forester for inclusion in a list of approved arborists to be hired by:

- (1) Hired by an ~~An~~ applicant at their own expense, or
- (2) Chosen by the ~~The~~ city at an applicant's expense, if a project includes a public hearing.

(e) "Development" means any work upon any property in the city which requires a subdivision, planned community zone, variance, use permit, building permit, demolition permit, or other city approval or which involves excavation, landscaping or construction within the tree protection zone ~~dripline area~~ of a protected tree or is subject to requirements of the California Model Water Efficient Landscape Ordinance (MWELO).

(f) "Director of planning and development services" means the director of planning and development services or their designee.

(g) "Director of public works" means the director of public works or their designee.

(h) "Discretionary development approval" means planned community zone, subdivision, use permit, variance, home improvement exception, design enhancement exception, architectural review board approval, or any proposal or application that requires the discretion of the authorizing person or entity.

~~(i) "Dripline area" means the area defined by the projection to the ground of the outer edge of the canopy or a circle with a radius ten times the diameter of the trunk as measured four and one half feet (fifty four inches) above natural grade, whichever is greater.~~

~~(j) "Excessive pruning" of a protected tree means any of the following:~~

- (1) Removal of more than twenty-five percent ~~one-fourth~~ of the functioning leaf, stem, or root area of a tree in any twenty-four-month period.
- (2) Removal of more than fifteen percent of the functioning root area of any Quercus (oak) species in any thirty-six-month period.
- (3) Any removal of the functioning leaf, stem, or root area of a tree so as to cause a significant decline in health, increased risk of failure, or the unbalancing of a tree.

~~(j)~~ (k) "Hazardous" means an imminent hazard which constitutes a high or extreme threat to the safety of persons or property as defined by American National Standards Institute A300, Part 9.

~~(k)~~ (l) "Protected" tree means any of the following:

- (1) Any locally native tree of the species Acer macrophyllum (Bigleaf Maple), Calocedrus decurrens (California Incense Cedar), Quercus agrifolia (Coast Live Oak), Quercus douglasii (Blue Oak), Quercus kelloggii (California Black Oak), or Quercus lobata (Valley Oak) which is eleven

and one-half inches in diameter (thirty-six inches in circumference) or more when measured four and one-half feet (fifty-four inches) above natural grade.

(2) Any Coast Redwood tree (species *Sequoia sempervirens*) that is eighteen inches in diameter (fifty-seven inches in circumference) or more when measured four and one-half feet (fifty-four inches) above natural grade.

(3) Any tree, ~~other larger than a~~ Coast Redwood Tree, fifteen inches in diameter (forty-seven inches in circumference) or more when measured four and one-half feet (fifty-four inches) above natural grade of any species except those invasive species described as weeds in Section 8.08.010 and those species classified as high water users by the Water Use Classification ~~water use classification~~ of Landscape Species ~~the landscape species~~ list (WUCOLS) approved by the California Department of Water Resources.

(4) Any tree designated for protection during review and approval (with the exception of a current or previously completed development project. On parcels zoned other than single-family (R-1) or low density (RE, R-2, or RMD) residential, species exempted under subsection (3) of this Section may be designated as a protected tree. ~~Coast Redwood).~~

~~—(4) Any tree designated for protection during review and approval of a development project.~~

(5) Any tree designated for carbon sequestration and storage and/or environmental mitigation purposes as identified in an agreement between the property owner and a responsible government agency or recorded as a deed restriction.

(6) Any heritage tree designated by the city council in accordance with the provisions of this chapter.

(7) Any replacement mitigation tree or other tree designated to be planted due to the conditions listed in Section 8.10.055.

~~(l)~~ (m) "Protected tree removal permit" means a permit issued to allow a person to remove a protected tree.

(m) "Right tree in the right place principles" means the set of principles that determine if a tree is located in an appropriate location for its specific species requirements and characteristics, in accordance with the factors listed in the Tree and Landscape Technical Manual.

(n) "Remove" or "removal" means:

(1) Complete removal, such as cutting to the ground or extraction, of a tree; or

(2) Taking any action foreseeably leading to the death of a tree or permanent damage to its health; including but not limited to excessive pruning, cutting, topping, girdling, poisoning, overwatering, underwatering, unauthorized relocation or transportation of a tree, or trenching, excavating, altering the grade, or paving within the tree protection zone ~~drip line area~~ of a tree.

-(o) "Retrenchment" means the process in which trees may reconfigure as they age and deteriorate, often continuing to grow in trunk diameter while branches die and fail.

(p) —"Tree Protection Zone" means the area defined by a circle with a radius ten times the diameter of the trunk when measured four and one-half feet (fifty-four inches) above natural grade.

(q) "Tree Report~~report~~" means a report prepared by a designated arborist.

(r~~p~~) "Tree and Landscape Technical Manual" means the regulations issued by the city manager to implement this chapter.

8.10.030 Tree and Landscape Technical Manual.

The city manager, through the urban forestry section, and public works and planning and development services departments, shall issue regulations necessary for implementation and enforcement of this chapter, which shall be known as the Tree and Landscape Technical Manual. In the event of a conflict between the provisions of this Title 8 and the Tree and Landscape Technical Manual, this Title 8 shall prevail. The Tree and Landscape Technical Manual will be made readily available to the public and shall include, but need not be limited to, standards and specifications regarding the following:

- (a) Protection of trees during construction.
- (b) Replacement of trees allowed to be removed pursuant to this chapter where such replacements:
 - (1) Prioritize the use of locally native species, as listed in Section 8.10.020(l)(1), consistent with Urban Forest Master Plan Goal 2: "Re-generated native woodland and riparian landscapes as the key ecological basis of the urban forest with focus on native species and habitat;"
 - (2) Include climate adaptive, drought tolerant, non-native species as needed to satisfy right tree in the right place principles; and
 - (3) Incorporate a secondary goal of net tree canopy increase on the property within fifteen years.
- (c) Maintenance of protected trees (including but not limited to pruning, irrigation, and protection from disease).
- (d) The format and content of tree reports required to be submitted to the city pursuant to this chapter.
- (e) The criteria for determining whether a tree is hazardous within the meaning of this chapter.
- (f) Landscape design, irrigation, and installation standards consistent with the city's water efficient landscape regulations.

8.10.040 Disclosure of information regarding existing trees.

(a) Any application for development or demolition shall be accompanied by a statement by a designated arborist which discloses whether any protected trees exist on the property which is the subject of the application, and describing each such tree, its species, size, tree protection zone~~dripline area~~, and location. This requirement shall be met by including the information on plans submitted in connection with the application.

(1) Notwithstanding subsection (a), applications involving only the development of an Accessory Dwelling Unit that conforms to Section 18.09.030, Table 1, require only a statement disclosing whether any protected trees are located on the property which is the subject of the application. This statement may be completed by the applicant.

(b) In addition, the location and species of ~~any~~ all other tree which is four inches in diameter (e.g., thirteen inches in circumference) or more when measured four and one-half feet (fifty-four inches) above natural grade shall be shown on the plans if the tree is:

(1) On the property or trees on the property and in the adjacent public right-of-way, and is which are within thirty feet of the building footprint proposed for development, or

(2) Located and trees located on adjacent property within thirty feet of the proposed building footprint, or

(1)(3) Close enough that its canopy overhangs with canopies overhanging the project site, shall be shown on the plans, identified by species.

(c) The director of public works or urban forester may require submittal of such other information as is necessary to further the purposes of this chapter including but not limited to photographs.

(d) Disclosure of information regarding private protected trees pursuant to this section shall not be required when the development for which the approval or permit is sought does not involve any change in an existing building footprint nor any grading, trenching, paving, or any change in landscaping which could alter water availability to established plants, hedges, shrubs, or trees.

(e) The urban forester or the designated arborist for a project shall add identified protected trees into the city's tree inventory database, and in coordination with the planning and development services departments, into city parcel reports.

(f) Knowingly or negligently providing false or misleading information in response to this disclosure requirement shall constitute a violation of this chapter.

8.10.050 Removal of protected trees.

It shall be a violation of this chapter for anyone to remove or cause to be removed a protected tree, except pursuant to a protected tree removal permit issued under Section 8.10.140 consistent with the following:

(a) In the absence of proposed development:

(1) A protected tree shall not be removed unless the urban forester grants a protected tree removal permit, or on parcels zoned other than single-family (R-1) or low density residential (RE, R-2, or RMD), the director of planning and development services authorizes the removal through staff level architectural review pursuant to Section 18.76.020(b)(3), having determined, on the basis of a tree report prepared by a designated arborist and other relevant information, that treatments or corrective practices are not feasible, and that the tree should be removed because any of the following apply:

(i) It is dead, is hazardous, or constitutes a public nuisance under Section 8.04.050 of this code.

(ii) It is a detriment to or is crowding an adjacent protected tree, ~~or is impacting the foundation or eaves of a residence or any covered parking required under Title 18.~~

(iii) It is at risk for retrenchment or other tree decline coping processes or does not conform with right tree in the right place principles.

(iv) It is impacting the foundation or eaves of a residence, or any covered parking required under Title 18 of this code.

(2) In the event a protected tree is removed pursuant to a protected tree removal permit granted under this subsection (a), a temporary moratorium on development of the subject property may be issued by the urban forester for up to twenty-four months or by, the director of planning and development services, in consultation with the urban forester, for up to ~~may issue a temporary moratorium on development of the subject property not to exceed thirty-six months, from the date the tree removal occurred. Completion of required~~ For any moratorium less than thirty-six months, the urban forester shall determine appropriate mitigation measures included in ~~for the tree removal permit does not remove or shorten any such moratorium. A moratorium may be terminated early with approval of the urban forester or director of planning, and development services, as applicable, and may require additional mitigation~~ measures, are incorporated into any future development approvals for the property. Mitigation measures included in the protected tree removal permit and any additional mitigation measures required to shorten a moratorium as determined by the urban forester shall be imposed as a condition of any subsequent permits for development on the subject property.

(b) In the case of any development on a single-family (R-1) or low density (RE, R-2, or RMD) residential zoned parcel, other than in connection with a subdivision, a protected tree shall not be removed unless determined by the urban forester, on the basis of a tree report prepared by a designated arborist and other relevant information, that any of the following apply:

(1) The tree is so close to the proposed development that construction would result in the death of the tree, and there is no financially feasible design alternative that would permit preservation of the tree, where financially feasible means an alternative that preserves the tree unless retaining the tree would increase project cost by more than twice the reproduction cost of the tree or ten percent of the given project valuation, whichever is greater.

(2) Retention of one or more trees would result in reduction of the otherwise-permissible buildable area of the lot by more than twenty-five percent, and there is no financially feasible design alternative that would allow for preservation of the tree(s). For the purposes of this subsection (a)(2), a financially feasible design alternative means a design alternative that preserves the tree(s) and would not increase the project cost by more than twice the reproduction cost of the tree(s) or ten percent of the given project valuation, whichever is greater. All tree protection zones impacting buildable area are included in the reduction of buildable area calculation.

~~(1)(3) The tree could be removed due to the conditions listed in Section 8.10.050(a)(1)(i), (ii) or (iii) – (2) The tree could be removed due to the conditions listed in Section 8.10.050(a)(1) and treatments or corrective practices are not feasible.~~

~~(2)(4) The tree is proposed for removal to accommodate an ADU constructed pursuant to Section 18.09.030, or because removal is necessary to allow an ADU constructed pursuant to Section 18.09.040 to achieve the minimum standards set forth in state law.~~

(c) In the case of development involving a proposed subdivision of land into two or more parcels, a protected tree shall not be removed unless determined by the urban forester, on the basis of a tree report prepared by a designated arborist and other relevant information, that either of the following apply:

(1) Removal is unavoidable due to restricted access to the property or deemed necessary to repair a geologic hazard (landslide, repairs, etc.), in which case only the protected tree or trees necessary to allow access to the property or repair the geologic hazard may be removed.

(2) The tree could be removed due to the conditions listed in subsection (a)(1)(i), (ii), or (iii) and treatments or corrective practices are not feasible.

(d) In the case of development requiring planning approval under Title 18, and not included under subsections (b) or (c), a protected tree shall not be removed unless determined by the urban forester, on the basis of a tree report prepared by a designated arborist and other relevant information, that ~~any~~ either of the following apply:

(1) Retention of ~~one or more trees~~ the tree would result in reduction of the otherwise-permissible buildable area of the lot by more than twenty-five percent, and there is no financially feasible design alternative that would permit preservation of the tree(s), where financially feasible means an alternative that preserves the tree(s) unless retaining the tree(s) would increase project cost by more than twice the reproduction cost of the tree or ten percent of the given project valuation, whichever is greater. All tree protection zones impacting buildable area are included in the reduction of buildable area calculation.

(2) The tree should be removed because it is dead, hazardous, or constitutes a public nuisance under Section 8.04.050. In such cases, the ~~tree protection zone~~ drip-line area of the removed tree, or an equivalent area on the site, shall be preserved for mitigation purposes from development of any structure.

(3) Discretionary development review determines that the final project follows right tree in the right place principles and would result in a net tree canopy increase on the property within fifteen years, and replacement of trees, shrubs, and plants either:

- (i) Is consistent with Urban Forest Master Plan Goal 2: "Re-generated native woodland and riparian landscapes as the key ecological basis of the urban forest with focus on native species and habitat," or
- (ii) Uses climate adaptive, drought tolerant species.

—(e) In any circumstance other than those described in subsections (a), (b), (c), or (d), a protected tree shall not be removed unless determined by the urban forester, on the basis of a tree report prepared by a designated arborist and other relevant information, that the tree is dead, is hazardous, or constitutes a public nuisance under Section 8.04.050.

8.10.055 Tree replacement.

(a) In the event a protected tree is removed pursuant to Section 8.10.050(a)(1)(i), mitigation for the removed tree, replacement tree ratio, in lieu fees, or a combination thereof shall be determined by the urban forester, based on factors including but not limited to the species, size, location, and specific reason for removal of the protected tree, in accordance with the standards and specifications in the Tree and Landscape Technical Manual.

(b) In the event a protected tree is removed pursuant to Section 8.10.050(a)(1)(ii), (iii) or (iv), (b), (c), (d), or (e), the tree removed shall be replaced in accordance with the standards and specifications in the Tree and Landscape Technical Manual, including but not limited to prioritization of locally native species, satisfaction of right tree in the right place principles, and incorporation of a secondary goal of net tree canopy increase on the property within fifteen years. The urban forester shall approve the number, species, size, and location of replacement trees.

8.10.060 No limitation of authority under Titles 16 and 18.

Nothing in this chapter limits or modifies the existing authority of the city under Title 18 to require trees, shrubs, hedges, and other plants not covered by this chapter to be identified, retained, protected, and/or planted as conditions of the approval of development. In the event of conflict between provisions of this chapter and conditions of any permit or other approval granted pursuant to Title 16 or Title 18, the more protective requirements shall prevail.

8.10.070 Care of protected trees.

(a) All owners of property containing protected trees shall follow the maintenance standards in the Tree and Landscape Technical Manual, including avoiding any action foreseeably leading to the death of a tree or permanent damage to its health; including but not limited to excessive pruning, cutting, topping, girdling, poisoning, overwatering, underwatering, unauthorized relocation or transportation of a tree, or trenching, excavating, altering the grade, or paving within the tree protection zone~~drip-line area~~ of a tree.

(b) At least seven days prior to pruning a protected tree, other than that required to remove a dead, diseased, or broken branch or branches, the property owner or their designee shall prominently post a notice on the property, in one or more locations readily visible to the public, that includes standards for pruning and a description of the tree including tree species, size, location, the date of work, and a contact phone number. The form for such notice will be available on the city's website as a printable document. Protected trees less than five years old are exempt from this provision.

(c) Any requests to exceed the limits for pruning set forth in Section 8.10.020(i) shall be submitted to the urban forester by the property owner or their designee at least fourteen days prior to pruning a protected tree. Each request shall be accompanied by a statement explaining why exceedance of the limits is warranted. No pruning that exceeds the limits set forth in Section 8.10.020(i) shall take place without the approval of the urban forester.

(ed) The standards for protection of trees during construction contained in the Tree and Landscape Technical Manual shall be followed during any development on property containing trees.

(de) The urban forester shall add identified protected trees into the city's tree inventory database and, in coordination with the planning and development services departments, into city parcel reports.

8.10.080 Development conditions.

(a) Development approvals for property containing protected public trees shall include appropriate conditions as set forth in the Tree and Landscape Technical Manual, providing for the protection of such trees during construction and for maintenance of such trees thereafter. Trees may be designated for protection that are significant visually or historically, provide screening, or are healthy and important to the nearby ecosystem.

(b) It shall be a violation of this chapter for any property owner or agent of the owner to fail to comply with any development approval or building permit condition concerning preservation, protection, and maintenance of any tree, including but not limited to protected trees.

8.10.090 Designation of heritage trees.

(a) Upon nomination by any person and with the written consent of the property owner(s), the city council may designate a tree or trees as a heritage tree.

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

- (1) It is an outstanding specimen of a desirable species.
- (2) It is one of the largest or oldest trees in Palo Alto.
- (3) It possesses distinctive form, size, age, location, and/or historical significance.

(c) After council approval of a heritage tree designation, the city clerk shall notify the property owner(s) in writing. A listing of trees so designated, including the specific locations thereof, shall be kept by the departments of public works.

(d) Once designated, a heritage tree shall be considered protected and subject to the provisions of this chapter unless removed from the list of heritage trees by action of the city council. The city council may remove a tree from the list upon its own motion or upon written request by the property owner. Request for such action must originate in the same manner as nomination for heritage tree designation.

8.10.092 Tree removal in wildland-urban interface area.

Tree removal and relocation in the wildland-urban interface (WUI) area, as defined in Section 15.04.190, shall be subject to the provisions in Chapter 15.04. To the extent Chapter 15.04 is inconsistent with this chapter, Chapter 15.04 shall control.

8.10.095 Tree removal in Hospital District Zone.

Tree removal and relocation in the Hospital District (HD) shall be subject to the provisions in Section 18.36.070. To the extent Section 18.36.070 is inconsistent with this chapter, Section 18.36.070 shall control.

8.10.100 Enforcement.

(a) Violation of this chapter is a misdemeanor, punishable as provided in this code. Each day of violation constitutes a separate offense and may be separately punished.

(b) Persons employed in the following designated employee positions are authorized to exercise the authority provided in California Penal Code Section 836.5 and are authorized to issue citations for violations of this chapter, including but not limited to leveling fines under the city's administrative penalty authority: assistant director of public works public services division, urban forester, project manager in the urban forestry section, landscape architect, and code enforcement officer.

8.10.110 Remedies for violation.

In addition to all other remedies set forth in this code or otherwise provided by law, the following remedies shall be available to the city for violation of this chapter:

(a) Stop Work - Temporary Moratorium.

(1) If a violation occurs in the absence of proposed development pursuant to Section 8.10.050(a)(1), or while an application for a building permit or discretionary development approval for the lot upon which the tree is located is pending, the director of planning and development services in consultation with the urban forester shall issue a temporary moratorium on development of the subject property, not to exceed five years from the date the violation occurred. The purpose of the moratorium is to provide the city an opportunity to study and determine appropriate mitigation measures for the tree removal, and to ensure

measures are incorporated into any future development approvals for the property. Mitigation measures as determined by the urban forester shall be imposed as a condition of any subsequent permits for development on the subject property.

(2) If a violation occurs during development pursuant to Section 8.10.050(b), (c), (d), or (e), the city shall issue a stop work order suspending and prohibiting further activity on the property pursuant to the grading, demolition, and/or building permit(s) (including construction, inspection, and issuance of certificates of occupancy) until a mitigation plan has been filed with and approved by the director of planning and development services in consultation with the urban forester, agreed to in writing by the property owner(s), and either implemented or guaranteed by the posting of adequate security. The mitigation plan shall include measures for protection or repair of any remaining trees on the property, and shall provide for replacement of each tree removed on the property or at locations approved by the urban forester. The replacement ratio shall be in accordance with the standards set forth in the Tree and Landscape Technical Manual, and shall be at least twice the prescribed ratio required where tree removal is permitted pursuant to the provisions of this chapter.

(b) Civil penalties.

(1) As part of a civil action brought by the city, a court may assess against any person who commits, allows, or maintains a violation of any provision of this chapter a civil penalty in the following amount:

(i) Ten thousand dollars per tree, or twice the reproduction cost of each tree, whichever amount is higher, for the complete removal of a tree, as defined in Section 8.10.020(n)(1).

(ii) Ten thousand dollars per tree, or the reproduction cost of each tree, whichever amount is higher, for any of the actions set forth in Section 8.10.020(n)(2).

(iii) Ten thousand dollars per tree, or twice the repair cost of each tree, whichever amount is higher, for damage to a tree protected or regulated by this chapter which can be rehabilitated.

(2) Penalties shall be payable to the city.

(3) Reproduction or repair cost for the purposes of this chapter shall be determined utilizing the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers.

(c) Administrative penalties. Persons listed in Section 8.10.100(b) may issue citations for violations of this chapter that level fines under the city's administrative penalty authority.

(d) Injunctive relief. A civil action may be commenced to abate, enjoin, or otherwise compel the cessation of such violation.

(e) Costs. In any civil action brought pursuant to this chapter in which the city prevails, the court shall award to the city all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action, and reasonable attorney fees.

(f) The remedies and penalties provided in this section are cumulative and not exclusive.

8.10.120 Fees.

Tree reports required to be submitted to the city for review and evaluation pursuant to this chapter shall be accompanied by the fee prescribed therefor in the municipal fee schedule.

8.10.130 Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

8.10.140 Applications, notice, and appeals.

(a) Applications.

(1) All applications for removal of a protected tree pursuant to Section 8.10.050 shall be filed in accordance with this section and any applicable provisions of Chapter 18.77. Applications for removal of protected trees on non-residential zoned properties will follow review guidelines set forth in Section 8.10.050(d) and Section 18.76.020 and will follow the process set forth in Section 18.77.070.

(2) The application form shall be prescribed by the urban forester and shall contain a list of information that must be submitted in order for the application to be deemed complete.

(3) Each application must be signed by all owners of the real property containing the protected tree, or an agent of the owner of record of the real property on which the protected tree occurs, when duly authorized by the owner in writing.

(4) No application shall be deemed received until all fees for the application as set forth in the municipal fees schedule have been paid, and all documents specified as part of the application in this chapter or on the application form have been filed.

(5) Protected tree removal permits shall automatically expire after twelve months, unless otherwise provided in the permit, from the date of issuance of the permit if within such twelve-month period, the proposed tree has not been removed.

(b) Notice.

(1) All applications for removal of a protected tree pursuant to Section 8.10.050 shall give notice in accordance with this section, the Tree and Landscape Technical Manual, and any applicable provisions of Chapter 18.77.

(2) After submittal of an application to remove a protected tree, notice shall be given consistent with subsection (b)(4) and shall include the date of the proposed removal and the basis for the application.

(3) Upon determination of a protected tree removal application, notice shall be given consistent with subsection (b)(4) and shall include a description of the decision and how to appeal it.

(4) Notices required pursuant to this section shall include the address of the property, a description of the protected tree, including species, size, and location, and urban forestry contact information, and shall be given as follows:

(i) In writing to all owners and residents of property within 300 feet of the exterior boundary of the property containing the protected tree, and to all principal urban forestry partner organizations.

(ii) By posting on the property, in one or more locations visible to the public.

(iii) By posting on the city's website.

(c) Appeals.

(1) Any person applying to remove a protected tree in the absence of proposed development pursuant to Section 8.10.050(a), and any owner or resident of property within 600 feet of the exterior boundary of the property containing the protected tree, may request a public hearing by the director of public works to review the urban forester's decision, and may appeal the director of public works' determination to the city council. Any such request or appeal shall be filed with the public works department in a manner prescribed by the urban forester.

(2) Any person applying to remove a protected tree pursuant to Section 8.10.050(b), (c), (d), or (e), and any owner or resident of property within 600 feet of the exterior boundary of the property containing the protected tree may request a hearing by ~~appeal~~ the director of planning and development services to review the decision. The request for a hearing shall be filed with the planning division in in a manner prescribed by the director of planning and development services. An appeal of the director of planning and development services determination shall be conducted in accordance with the procedures set forth in Chapter 18.78.

(3) All appeals must be filed within fourteen days of posting of notice on the property pursuant to subsection (b)(4)(ii).

SECTION 3. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. The Council finds that this ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Section 15061 of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment. Alternatively, the ordinance is also exempt

under CEQA Guidelines Section 15308 because it involves regulatory action for the protection of the environment.

SECTION 5. This ordinance shall be effective on the thirty-first day after the date of its adoption. However, this ordinance shall not apply to any projects that have submitted a complete application as of the ordinance’s effective date. In addition, until such time as a list of designated arborists is established by the Urban Forester, the term “designated arborist” shall mean any arborist certified by the International Society of Arboriculture or another nationally recognized tree research, care, and preservation organization.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Public Works