



Planning & Transportation Commission

Staff Report (ID # 9478)

Report Type: Study Session **Meeting Date:** 9/12/2018

Summary Title: Palo Alto Municipal Code Title 8 Revisions

Title: Review and Provide Comments on Draft Revisions to Palo Alto Municipal Code Title 8 (Trees and Vegetation) to Address Administrative Updates and Also Introduce New Policies Related to Protected Trees.

From: Jonathan Lait

Recommendation

Staff recommends the Planning and Transportation Commission (PTC) take the following action(s):

1. Review and provide comments on proposed changes to Title 8 of Palo Alto Municipal Code related to trees and vegetation.

Report Summary

Expanding the number of protected trees as defined in Section 8.10.020 may increase time for staff review of various types of planning applications and development permits, though current street tree inventory population statistics suggest a nominal change. At present all native species combined constitute 9.52% of the street tree population of which those currently regulated are 3.87% Coast Live Oak, 2.41% Redwood, and 1.07% Valley Oak, therefore regulating all other native species adds 2.17% more trees. Trees equal or larger than thirty-six inches in diameter account for 2.55% of the street tree population. The tree population across ownership types may be represented in similar proportions to street trees, though no inventory of private properties currently exists. One primary staff position responsible for review has been reclassified to a Landscape Architect to accommodate increased complexity and manage contract or hourly reviewers so that applications and permits will be issued in a timely manner. Enforcement may become more complex or time consuming with the addition of species and individuals. Appointment of additional staff officers should allow enforcement response time and resolution to remain unchanged. Overall the most significant influence is likely to be on landscape and features outside the primary building footprint, particularly with features that interact with adjoining properties.

Background

Title 8 of Palo Alto Municipal Code contains regulations governing street trees, shrubs and plants (Chapter 8.04), weed abatement (Chapter 8.08), and tree preservation and management (Chapter 8.10). The proposed updates address new requirements prompted by state legislation, and incorporate policy adopted through City of Palo Alto documents such as the Urban Forest Master Plan. Some community members who commented on the Urban Forest Master Plan also met or corresponded with staff to provide feedback on draft revisions to Title 8.

Discussion

Authorized officers have changed since ordinances were last amended or adopted. New officers have been created, notably the position of Urban Forester whom is primarily responsible for administration of Title 8. Departments have modified assignments or require improved collaboration to meet the intent of ordinances and achieve goals outlined in various plans. Furthermore, vegetation management requirements are likely to become more stringent for utility line clearance thus expanding the application of public nuisance declaration as defined in Chapter 8.04.

Fire prevention is one impetus for weed abatement requirements defined in Chapter 8.08. More intense fires have prompted new regulations for vegetation management from the State of California. Hence, expanded authority is proposed for Palo Alto's authorized officers. Weed abatement and management regulations are also designed to combat the introduction and spread of exotic-invasive plants which may increase fire intensity or detract from native habitat.

The California Water Efficient Landscape Ordinance (WELO) prompted creation of a Landscape and Tree Technical Manual to replace the existing Tree Technical Manual. This new policy document will function in a similar fashion with the addition of landscape technical requirements so that newly installed landscape meets sustainability, water conservation, and other goals. The purposes of the manual are to provide developers clear guidelines about required submissions to obtain permits, describe design and construction principles that meet City policies, and reference best practices.

Carbon sequestration/management projects may contribute to achieving sustainability/climate action goals. City operated or sponsored projects that offer locally-sourced certified offsets require assurance of "permanence" as well as methods to correct for unintended reversals hence those trees included must be "protected" by ordinance. Protocols for carbon credits or offsets establish the legal mechanisms to qualify, though future sustainability goals of the City may include self-imposed quantified additions above a specific baseline. Development review could prioritize large stature trees to be retained or planted to add to the carbon storage bank. Electronic plan submission with geographic information and associated attribute data will allow carbon baseline and additionality calculations to be associated with individual projects or aggregated for development projects within a specified area or time.

No net loss of canopy is one of the most important policy statements of the Urban Forest Master Plan that is also echoed in the City of Palo Alto Comprehensive Plan. This policy can be applied broadly or for decisions on an individual application for development. It will not prevent development, but may limit design options for certain aspects of projects. For example, when trees are approved for removal the policy may require replacements with desirable attributes such as native species or large canopy at maturity as well as site appropriate soil volume and water use so that canopy replacement will occur within fifteen years. Soil volume may need to serve multiple purposes including water collection and treatment to reduce pollutant discharge. Currently protected status oaks and redwoods may prompt adjustments such as a shift in the building footprint, low impact construction techniques, or compatible landscape. Additional requirements proposed will increase the complexity of achieving full utilization of the property; however, the appeals process will remain intact to assure policy is applied while respecting property rights. Numerous projects in the past have been constructed where significant trees were retained resulting in a higher value and more useful site. Policies for tree protection contributed to a net gain in overall tree canopy cover in Palo Alto from 32.8% in 1982 to 37.6% in 2010. Property values have also increased at greater rates than many nearby communities.

Environmental Review

The proposed code amendments have been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. Specifically, the proposed amendments have been determined to be exempt from further environmental review pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significantly effect on the environment. In the event Section 15061(b)(3) is found not to apply, the ordinance is also exempt under Section 15308 because it involves regulatory action for the protection of the environment.

Resource Impact

Staff time to review, inspect, and enforce requirements for planning applications or permits for development projects may increase. Increases in demands on staff will be reflected in corresponding increases in fees as well as administrative responsibilities. Code enforcement actions and permit applications to remove protected trees may likewise increase in frequency

Public Notification, Outreach & Comments

This item was noticed on September 7, 2018 in the Palo Alto Weekly.

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Attachments:

- Attachment A: Title 8 Revisions ORDINANCE 2018-09-06 (PDF)

¹ Emails may be sent directly to the PTC using the following address: planning.commission@cityofpaloalto.org

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Repealing and Restating Chapter 8.04 (Street Trees, Shrubs, and Plants); Repealing and Restating Chapter 8.08 (Weed Abatement); and Repealing Chapter 8.10 (Tree Preservation and Management Regulations) and Restating it as Chapter 8.10 (Landscape and Tree Management Regulations) of Title 8 (Trees and Vegetation) of the Palo Alto Municipal Code.

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

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

SECTION 2. Chapter 8.04 (Street Trees, Shrubs, and Plants) of Title 8 (Trees and Vegetation) of the Palo Alto Municipal Code is hereby amended by repealing in its entirety Chapter 8.04 and adopting a new Chapter 8.04 to read as follows:

**Chapter 8.04
Street Trees, Shrubs, and Plants**

Sections:

- 8.04.010 Definitions.**
- 8.04.015 Authority of city.**
- 8.04.020 Violations – Penalty - Enforcement.**
- 8.04.030 Application for permit.**
- 8.04.040 Issuance of permit.**
- 8.04.050 Public nuisances.**
- 8.04.060 Abatement of public nuisances.**
- 8.04.070 Damage to public trees.**
- 8.04.080 Interference with enforcement.**
- 8.04.090 Adoption of regulations.**

8.04.010 Definitions.

- (a) For the purposes of this chapter the following words shall have the meaning ascribed to them in this section:
 - (1) "Person" means individuals, firms, associations and corporations, and agents, employees or representatives thereof.
 - (2) "City" means the city of Palo Alto acting by and through its authorized representatives.
 - (3) "Street" means and includes all land lying between the boundaries of property abutting on all public streets, boulevards, alleys and walks.
 - (4) "Parks" means and includes all parks to which names have been given by action of

the city council.

- (5) "Public places" means and includes all grounds, other than streets or parks, owned by or leased to and under the control of the city of Palo Alto.
- (6) "Street tree" means and includes any woody perennial plant having a single main axis or stem commonly achieving ten feet in height and capable of being shaped and pruned to develop a branch-free trunk at least nine feet in height.
- (7) "Shrub" means and includes any woody perennial plant, normally low, several-stemmed, and capable of being shaped and pruned without injury, within the area planted.
- (8) "Hedge" means and includes any plant material, shrub or plant, when planted in a dense, continuous line or area, as to form a thicket or barrier.
- (9) "Plant" means and includes all other plant material, non-woody, annual, or perennial in nature, not necessarily hardy.
- (10) "Street trees, shrubs, or plants" means and includes any tree, shrub, or plant in any street, park or public place in the city of Palo Alto.

8.04.015 Authority of city.

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

8.04.020 Violations- Penalty- Enforcement.

- (a) Unless authorized by permit, no person shall:
 - (1) Plant, remove, top, or in any way damage, destroy, injure or mutilate a street tree.
 - (2) Fasten any sign, wire, or injurious material to any street tree.
 - (3) 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 street tree.
- (b) Violation of this section is a misdemeanor, punishable as provided in this code. Each day of violation constitutes a separate offense and may be separately punished.
- (c) Persons employed in the following designated employee positions are authorized to exercise the authority provided in Penal Code Section 836.5 and are authorized to issue citations for violations of this chapter: deputy assistant director of public works operations, public services division, managing urban forester, arborist, planning arborist, project managers in the urban forestry section, landscape architect, and code enforcement officer.

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 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) A permit shall be issued authorizing so much of the work as:
 - (1) Will not create, continue or aggravate any hazardous condition, or public nuisance;
 - (2) Will not prevent or interfere with the growth; location or planting of approved street trees;
 - (3) Is consistent with the planting plan being followed by the city.

8.04.050 Public nuisances*.

- (a) The following are, for the purposes hereof, defined to be public nuisances:
 - (1) Any dead, diseased, infested, or dying tree in any street; or on any private property so near to any street tree as to constitute a danger to street trees, or streets, or portions thereof or members of the public.
 - (2) Any tree or shrub on any private property or in any street, of a type or species apt to destroy, impair or otherwise interfere with any street improvements, sidewalks, curbs, approved street trees, gutters, sewers, other public improvements, including utility mains or services.
 - (3) Any tree limb, shrub, hedge, or plant reaching a height more than three feet above the curb grade adjacent thereto, except tree trunks 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 tree limbs, shrubs, hedges, or plants that obscure and impair the view of passing motorists, cyclists or pedestrians so as to create a safety hazard.
 - (4) Vines or climbing plants growing into or over any street tree; or any public hydrant, pole or electrolier.
 - (5) Existence of any tree within the city limits that is infested, infected or in danger of becoming infested or infected with objectionable insects, scale, fungus or growth injurious to trees.
 - (6) The existence of any branches or foliage which interfere with visibility on, or free use of, or access to, obstruct public vehicular or pedestrian travel on any portion of any street improved for vehicular or pedestrian travel.
 - (7) Hedges or dense thorny shrubs and plants on any street or part thereof.
 - (8) Shrubs and plants more ~~then~~ than two feet in height in any street, measured above top of curb grade.

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8.04.060 Abatement of public nuisances

When any public nuisance as defined herein exists, a notice may be sent ~~by ordinary United States mail~~ to the owner or tenant involved. Such notice shall describe the condition, state the work necessary to remedy the condition, and shall specify the time within which the work must be performed. If, at the end of the time specified, such work has not been performed, the city may perform such work, and the cost thereof shall constitute a charge against such owner or tenant, and such charge shall be a lien on such property.

8.04.070 Damage to ~~street~~ public trees.

Damages to any street, park, or other publicly- owned tree, caused by any act or omission by any person, whenever such act or omission is prohibited by or not authorized pursuant to this chapter, shall be charged to such person or persons.

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 3. Chapter 8.08 (Weed Abatement) of Title 8 (Trees and Vegetation) of the Palo Alto Municipal Code is hereby amended by repealing in its entirety Chapter 8.08 and adopting a new Chapter 8.08 to read as follows:

Chapter 8.08 Street Trees, Shrubs, and Plants

Sections:

- 8.08.010 Weeds as public nuisance.**
- 8.08.020 Resolution declaring nuisance.**
- 8.08.030 Form and publication of notice.**
- 8.08.040 Hearing - Power of council.**
- 8.08.050 Order to abate nuisance.**
- 8.08.060 Account and report of cost.**
- 8.08.070 Notice of report.**
- 8.08.080 Hearing on cost assessment.**
- 8.08.090 Collection on tax roll.**

8.08.010 Weeds as public nuisance.

- (a) No owner, agent, lessee or other person occupying or having charge or control of any building, lot or premises within the city shall permit weeds to remain upon the premises, or public sidewalks, or encroach into any parkland (including any weeds encroaching over fences), or streets, or alleys between the premises and the center line of any public street or alley.
- (b) The word "weeds" as used in this chapter, means all weeds growing upon streets, alleys, sidewalks, or private property in the city and includes any of the following:
 - (1) Weeds which bear or may bear seeds of a downy or wingy nature;
 - (2) Weeds and indigenous grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;
 - (3) Plants, shrubs, and trees determined by the Fire Marshall to constitute a fire menace due to their species, proximity to ignition sources, and high potential to endanger nearby buildings;
 - (~~3~~4) Weeds which are otherwise noxious or dangerous;
 - (5) Exotic and invasive plants having high potential to invade adjacent properties and high ecological impacts in the region as defined by the California Invasive Plant Council;
 - (~~4~~6) Poison oak and poison ivy when the conditions of growth are such as to constitute a menace to the public health;
 - (~~5~~7) Accumulations of garden refuse, cuttings and other combustible trash.
- (c) Every property owner shall remove or destroy such weeds from his property, and in the abutting half of any street or alley between the lot lines as extended.

8.08.020 Resolution declaring nuisance.

Whenever any such weeds are growing upon any private property or properties or in any street or alley within the city, the council shall pass a resolution declaring the same to be a public nuisance and order the fire chief to give notice of the passage of such resolution as herein provided, and stating therein that, unless such nuisance is abated without delay by the destruction or removal of such weeds, the work of abating such nuisance will be done by the city authorities, and the expense thereof assessed upon the lots and lands from which, and/or in the front and rear of which, such weeds shall have been destroyed or removed. Such resolution shall fix the time and place for hearing any objections to the proposed destruction or removal of such weeds.

8.08.030 Form and publication of notice.

- (a) ~~Such~~ The Fire Chief or Urban Forester shall cause to be published a public notice shall ~~be~~ substantially in the following form:

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NOTICE TO DESTROY WEEDS

NOTICE IS HEREBY GIVEN that on _____, 20 __, pursuant to the provisions of Section [8.08.020](#) of the Palo Alto Municipal Code, the City Council passed a resolution declaring that all weeds growing upon any private property or in any public street or alley, as defined in Section [8.08.010](#) of the Palo Alto Municipal Code, constitute a public nuisance, which nuisance must be abated by the destruction or removal thereof.

NOTICE IS FURTHER GIVEN that property owners shall without delay remove all such weeds from their property, and the abutting half of the street in front and alleys, if any, behind such property, and between the lot lines thereof as extended, or such weeds will be destroyed or moved and such nuisance abated by the city authorities, in which case the cost of such destruction or removal will be assessed upon the lots and lands from which, or from the front or rear of which, such weeds shall have been destroyed or removed; and such cost will constitute a lien upon such lots or lands until paid, and will be collected upon the next tax roll upon which general municipal taxes are collected. All property owners having any objections to the proposed destruction or removal of such weeds are hereby notified to attend a meeting of the Council of said city, to be held in the Council Chamber of the City Hall in said city on _____, 20 __, at seven p.m., when and where their objections will be heard and given due consideration.

Date _____, 1920

Fire Chief or Urban Forester
City of Palo Alto

- (b) Such notice shall be published at least twice in a newspaper published and circulated in said city, the first publication of which shall be at least ten days prior to the time fixed by the council for hearing objections.

8.08.040 Hearing - Power of council.

At the time stated in the notice, the council shall hear and consider any and all objections to the proposed destruction or removal of such weeds, and may continue the hearing from time to time. The council, by motion or resolution, shall allow or overrule any or all objections, if any, after which the council shall thereupon be deemed to have acquired jurisdiction to proceed and perform the work of destruction and removal of such weeds.

8.08.050 Order to abate nuisance.

The council shall by resolution order the fire chief or urban forester to abate such nuisance, or cause the same to be abated, by having the weeds referred to destroyed or removed, and the fire chief or urban forester and his deputies, assistants, employees, contracting agents or other representatives are hereby expressly authorized to enter upon private property for that purpose.

Any property owner shall have the right to destroy or remove such weeds himself, or have the same destroyed or removed at his own expense; provided that such weeds shall have been removed prior to the arrival of the fire chief or urban forester or his authorized representatives to remove them.

8.08.060 Account and report of cost.

The fire chief or urban forester shall keep an account of the cost of abating such nuisance and embody such account in a report and assessment list to the city council, which shall be filed with the clerk. Such report shall refer to each separate lot or parcel of land by description sufficient to identify such lot or parcel, together with the expense proposed to be assessed against each separate lot or parcel of land.

8.08.070 Notice of report.

The city clerk shall post a copy of such report and assessment list on the bulletin board near the entrance door at the City Hall, together with a notice of the filing thereof and of the time and place when and where it will be submitted to the city council for hearing and confirmation, notifying property owners that they may appear at such time and place, and object to any matter contained therein. A like notice shall also be published twice in a newspaper of general circulation, published and circulated within the city. The posting and first publication of said notice shall be made and completed at least ten days before the time such report shall have been submitted to the city council. Such notice, as so posted and published, shall be substantially in the following form:

NOTICE OF HEARING ON REPORT AND ASSESSMENT FOR WEED ABATEMENT

NOTICE IS HEREBY GIVEN that on _____, 20___, the Fire Chief or Urban Forester of the City of Palo Alto filed with the City Clerk of said city a report and assessment on abatement of weeds within said city, a copy of which is posted on the bulletin board at the entrance to the City Hall.

NOTICE IS FURTHER GIVEN that on _____, 20___, at the hour of seven p.m., in the Council Chambers of said City Hall, said report and assessment list will be presented to the City Council of said City for consideration and confirmation, and that any and all persons interested, having any objections to said report and assessment list, or to any matter or thing contained therein, may appear at said time and place and be heard.

Date _____, 20_____

City Clerk of the City of Palo Alto

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8.08.080 Hearing on cost assessment.

- (a) At the time and place fixed for receiving and considering such report the city council shall hear the same together with any objections which may be raised by any of the property owners liable to be assessed for the work of abating such nuisance, and the fire chief or urban forester shall attend such meeting with his record thereof, and upon such hearing, the council may make such modifications in the proposed assessments therefor as it may deem necessary, after which such report and assessment list shall be confirmed by resolution.
- (b) The amount of the cost of abating such nuisance upon, or in the front or rear of, the various lots or parcels of land respectively referred to in such report, shall constitute special assessments against such respective lots or parcels of land, and after thus made and confirmed, shall constitute a lien on such property for the amount of such assessments, until paid.

8.08.090 Collection on tax roll.

On or before the first day of September of each year, the amounts of such assessments against the respective parcels of land shall be entered on the next tax roll which general city taxes are to be collected. Thereafter, such amounts shall be collected at the same time, and in the same manner, as general city taxes are collected, and shall be subject to the same interest and penalties, and the same procedure and sale in case of delinquencies. All laws applicable to the levy, collection and enforcement of city taxes are hereby made applicable to such assessments.

SECTION 4. Chapter 8.10 (Tree Preservation and Management Regulations) of Title 8 (Trees and Vegetation) of the Palo Alto Municipal Code hereby amended by repealing in its entirety Chapter 8.10 and adopting a new Chapter 8.10 to read as follows:

Chapter 8.10
Landscape and Tree Preservation and Management Regulations

Sections:

- 8.10.010 Purpose.**
- 8.10.020 Definitions.**
- 8.10.030 ~~Tree Technical Manual~~ Landscape and tree technical manual.**
- 8.10.040 Disclosure of information regarding existing trees.**
- 8.10.050 Prohibited acts.**
- 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.**
- 8.10.095 Tree removal in HD Zone.**
- 8.10.100 Responsibility for enforcement.**
- 8.10.110 Enforcement - Remedies for Violation.**

8.10.120 Fees.

8.10.130 Severability.

8.10.140 Appeals.

8.10.010 Purpose.

The purpose of this chapter is to promote the health, safety, welfare, and quality of life of the residents of the city through the protection of specified trees located on private property within the city, and the establishment of standards for removal, maintenance, and planting of landscaping and trees. In establishing these procedures and standards, it is the city's intent to encourage the preservation of trees.

8.10.020 Definitions.

For the purposes of this chapter, the following definitions shall apply:

- (a) "Basal flare" means that portion of a tree where there is a rapid increase in diameter at the confluence of the trunk and rootcrown.
- (b) "Building 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 building area under this paragraph (b)(2) shall not exceed ten feet in width.
- (c) "Building footprint" means the two-dimensional configuration of an existing building's perimeter boundaries as measured on a horizontal plane at ground level.
- (d) "Hazardous" means an imminent hazard which constitutes a ~~or high or extreme~~ threat to the safety of persons or property as defined by American National Standards Institute A300, Part 9.
- (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 dripline area of a protected tree or is subject to requirements of the California Water Efficient Landscape Ordinance.
- (f) "Director" means the director of ~~planning and community environment~~ public works or his or her designee.
- (g) "Discretionary development approval" means planned community zone, subdivision, use permit, variance, home improvement exception, design enhancement exception, or architectural review board approval.
- (h) "Dripline area" means the outer edge of the canopy or area within X distance from the perimeter of the trunk of the tree at four and one half feet (fifty four inches) above natural grade where X equals a distance 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.

- (i) "Excessive pruning means removal of more than one-fourth of the functioning leaf and stem area of a tree in any ~~twelve~~thirty six-month period, or removal of foliage so as to cause a significant decline in health or increase to the risk of failure, or the unbalancing of a tree.
- (j) "Protected" tree means:
 - (1) Any locally native tree of the a species as listed in the Urban Forest Master Plan ~~Quercus agrifolia (Coast Live 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, except Redwood; and
 - (2) Any 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; and
 - (3) Any tree larger than thirty six inches in diameter of any species except those exotic and invasive species described as weeds in 8.08.010 and those species classified as high water users by the water use classification of landscape species list approved by the California Department of Water Resources; and
 - (4) Any tree designated for protection during review and approval of a development project; and
 - (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; and
 - (~~36~~) A heritage tree designated by the city council in accordance with the provisions of this chapter.
- (k) "Remove" means any of the following:
 - (1) Complete removal, such as cutting to the ground or extraction, of a tree.
 - (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, girdling, poisoning, overwatering, reduced watering due to a landscape change, unauthorized relocation or transportation of a tree, or trenching, excavating, altering the grade, or paving within the dripline area of a tree.
- (l) "Tree" means any woody plant which has a trunk four inches or more in diameter at four and one-half feet above natural grade level capable of achieving a height of ten feet or more, and a species that typically has a single stem.
- (m) "Tree report" means a report prepared by an arborist certified by the International Society of Arboriculture or another nationally recognized tree research, care, and preservation organization.
- (n) "~~Tree Technical Manual~~Landscape and tree technical manual" means the regulations issued by the city manager to implement this chapter.

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8.10.030 Landscape and Tree Technical Manual.

The city manager, through the departments of public works, and planning and community environment, shall issue regulations necessary for implementation of this chapter, which shall be known as the Landscape and Tree Technical Manual. The Landscape and Tree Technical Manual will be made readily available to the public and shall include, but need not be limited to, standards and specifications regarding:

- (a) Protection of trees during construction;
- (b) Replacement of trees allowed to be removed pursuant to this chapter;
- (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 ~~dangerous~~ 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 discretionary development approval, or for a building or demolition permit where no discretionary development approval is required, shall be accompanied by a statement by the property owner or authorized agent 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, dripline area, and location. This requirement shall be met by including the information on plans submitted in connection with the application.
- (b) In addition, the location of all other trees on the site and in the adjacent public right of way which are within thirty feet of the area proposed for development, and trees located on adjacent property within thirty feet or with canopies overhanging the project site, shall be shown on the plans, identified by species.
- (c) The director 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 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 building footprint nor any grading or paving, nor change in landscaping which could alter water availability to established plants or trees.
- (e) Knowingly or negligently providing false or misleading information in response to this disclosure requirement shall constitute a violation of this chapter.

8.10.050 Prohibited acts.

It shall be a violation of this chapter for anyone to remove or cause to be removed a protected tree, except as allowed in this section:

- (a) In the absence of development, protected trees shall not be removed unless determined by the director of ~~planning and community environment~~public works or urban forester, on the basis of a tree report prepared by a certified arborist for the applicant and other relevant information, that the tree should be removed because it is dead, is hazardous, is a detriment to or crowding an adjacent protected tree, is impacting the foundation or eaves of a primary residence, or constitutes a nuisance under Section 8.04.050(2) of this code; and that treatments or corrective practices are not reasonable.
- (b) In the case of development on a single-family residential lot, other than in connection with a subdivision, protected trees shall not be removed unless determined by the director of Public Works or Urban Forester that:
- ~~(1) Protected trees shall not be removed unless the trunk or basal flare of the protected tree is touching or within the building footprint, or the director of planning and community environment has determined, on the basis of a tree report prepared by a certified arborist for the applicant and other relevant information, that the tree should be removed because it is dead, is hazardous, is a detriment to or crowding an adjacent protected tree, or constitutes a nuisance under Section 8.04.050(2) of this code.~~
 - (2) the tree is so close to the building area that construction would result in the death of the tree, or
 - (3) the tree should be removed pursuant to subdivision (a).
 - ~~(2) If no building footprint exists, protected trees shall not be removed unless the trunk of the tree is located in the building area, or the director of planning and community environment has determined, on the basis of a tree report prepared by a certified arborist for the applicant and other relevant information, that the tree should be removed because it is dead, is hazardous, is a detriment to or crowding an adjacent protected tree, or constitutes a nuisance under Section 8.04.050(2) of this code.~~
 - ~~(3) If removal is allowed because the tree trunk is located in the building footprint, or the trunk or basal flare is in the building area, or because the director of planning and community environment has determined that the tree is so close to the building area that construction would result in the death of the tree, the tree removed shall be replaced in accordance with the standards in the *Tree Technical Manual*.~~
- (c) ~~In connection with~~ In the case of development involving a proposed subdivision of land into two or more parcels, no protected tree shall be removed unless determined by the director of Public Works or Urban Forester that:
- (1) removal is unavoidable due to restricted access to the property or deemed necessary to repair a geologic hazard (landslide, repairs, etc.), or-
 - (2) the tree should be removed pursuant to subdivision (a).The tree removed shall be replaced in accordance with the standards in the *Tree Technical Manual*. Tree preservation and protection measures for any lot that is created by a proposed subdivision of land shall comply with the regulations of this chapter.
- (d) In the case of development requiring a project approval under Chapter 18.76 (Permits

and Approvals), removal of a protected tree may be permitted if retention of the tree would result in reduction of the otherwise-permissible building area of the lot by more than twenty-five percent, except that no protected tree shall be removed solely to accommodate an accessory structure or accessory dwelling unit.

(e) Tree replacement.

(1) In the event a protected tree is removed pursuant to subdivisions (b), (c), or (d), the tree removed shall be replaced in accordance with the standards in the *Landscape and Tree Technical Manual* and such replacements shall result in no net loss or increase of tree canopy within 15 years.

(2) In the event a protected tree is removed pursuant to subdivision (a), except in the cases of crowding an adjacent protected tree or impacting the foundation or eaves of a primary residence, the dripline area of the removed tree, or an equivalent area on the site, shall be preserved from development of any structure unless removal would have been permitted under subdivisions (b), (c), or (d), and tree replacement is required.

~~In all circumstances other than those described in paragraphs (a), (b) and (c) of this section, protected trees shall not be removed unless one of the following applies:~~

~~(1) The director of planning and community environment has determined, on the basis of a tree report prepared by a certified arborist for the applicant and other relevant information, that the tree should be removed because it is dead, dangerous or constitutes a nuisance under Section 8.04.050(2). In such cases, the dripline area of the removed tree, or an equivalent area on the site, shall be preserved from development of any structure unless removal would have been permitted under paragraph (2), and tree replacement in accordance with the standards in the *Tree Technical Manual* shall be required.~~

~~(2) Removal is permitted as part of project approval under Chapter 18.76 (Permits and Approvals) of this code, because retention of the tree would result in reduction of the otherwise-permissible building area by more than twenty-five percent. In such a case, the approval shall be conditioned upon replacement in accordance with the standards in the *Tree Technical Manual*.~~

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 (Zoning Ordinance) to require trees 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 Landscape and Tree Technical Manual.

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

8.10.080 Development conditions.

- (a) Discretionary development approvals for property containing protected, regulated/ publicly- owned, or designated trees will include appropriate conditions providing for the protection of such trees during construction and for maintenance of the trees thereafter. Trees may be designated for protection that are significant visually or historically, provide screening between properties, or are a native species that is 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 unique and 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 ~~and planning and community environment.~~
- (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.

8.10.095 Tree removal in HD Zone.

Tree removal and relocation in the 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 Responsibility for enforcement

The following designated employee positions may enforce the provisions of this chapter by the issuance of citations: urban forester, landscape architect, project managers in the urban forestry

section, chief building official, assistant building official, and code enforcement officer, ~~planning arborist.~~

Section 8.10.110 Enforcement - 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 during development, the city may 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, 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 director of ~~planning and community and by the director of public works, if replacement is to occur on public property.~~ The replacement ratio shall be in accordance with the standards set forth in the Landscape and Tree Technical Manual, and shall be at a greater ratio (at least twice prescribed) than that required where tree removal is permitted pursuant to the provisions of this chapter.

(2) If a violation occurs in the absence of development, 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 may issue a temporary moratorium on development of the subject property, not to exceed ~~eighteen~~ five years ~~months~~ 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 director shall be imposed as a condition of any subsequent permits for development on the subject property.

(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 an amount not to exceed five thousand dollars per violation.

(2) Where the violation has resulted in removal of a tree, the civil penalty shall be in an amount not to exceed five thousand dollars per tree unlawfully removed, or the replacement value of each such tree, whichever amount is higher. Such amount shall be payable to the city. Replacement value for the purposes of this section shall be determined utilizing the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers. Damage to a tree protected or regulated by this chapter shall also constitute a violation with the same civil penalties except that repair value shall be used.

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

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 Appeals.

Any person seeking the director's approval to remove a protected tree pursuant to the ordinance codified in this chapter who is aggrieved by a decision of the director may appeal such decision in accordance with the procedures set forth in Chapter 18.78 (Appeals).

SECTION 5. 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 6. 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.

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SECTION 7. This ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Deputy City Attorney

City Manager

Director of

Director of Administrative
Services