



# Planning & Transportation Commission

## Staff Report

**From: Urban Forester**

**Lead Department: Public Works, Urban Forestry**

**Meeting Date: November 8, 2023**

**Report #: 2310-2112**

### **TITLE**

Tree Protection Ordinance Year One Review and Recommendations

### **RECOMMENDATION**

Staff is requesting feedback from the Planning and Transportation Commission on the proposed changes to Chapter 8.10 of the Palo Alto Municipal Code (PAMC) as outlined in this report and included as Attachment A, as well as feedback on the potential additional actions.

### **EXECUTIVE SUMMARY**

Implementation of the new Tree Protection Ordinance began in July 2022 and is still in progress. During the adoption of the updated Tree Protection Ordinance in June of 2022, Staff was directed by Council to review the ordinance with the Parks and Recreation Commission (PRC) and Planning and Transportation Committee (PTC) near the one-year mark. As directed by Council<sup>[1]</sup>, staff evaluated the updated ordinance over the first year and are presenting the findings to this body, requesting feedback on staff-recommended changes to the PAMC Title 8.

### **BACKGROUND**

Title 8 of Palo Alto Municipal Code (PAMC) 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 Tree Protection Ordinance updates made in 2022 focused on implementation of Council approved policies contained in the 2030 Comprehensive Plan (Natural Environment Chapter), and the Urban Forest Master Plan. Additional code updates included changes prompted by State law, specifically Executive Order B-29-15, also known as the Model Water Efficient Landscape Ordinance. Changes made to the ordinance ranged from significant policy changes, like expanding the types of protected trees and revising allowances for tree removal, to more clerical updates, like updating authorized officers and accounting for recent changes in other development-related codes.

### **ANALYSIS**

Proposed Ordinance Updates

During the first year of ordinance implementation staff noted any areas of the updated code that might warrant edits to increase clarity. Many of the proposed updates that are included in the attached Draft Updates to PAMC Chapter 8.10 center around this goal. The following areas have proposed changes to increase clarity or simplify the wording of the code:

- 8.10.020(d) – Designated Arborist – Clarification as to when the applicant chooses the arborist and when the arborist is chosen by the city
- 8.10.020(l)(4) – Protected Trees - Designated Trees – Clarification that designated trees are any trees that were planted as part of an approved project, past or current
- 8.10.040(b) – Tree Disclosure Requirements – Reorganization of the types of trees that need to be disclosed for clarity
- 8.10.050(a)(1) – Clarification on type of permits needed – tree removals outside of development on parcels other than single-family (R-1) or low density residential (RE, R-2, or RMD) require a staff level architectural review through planning, not a tree removal permit through public works
- 8.10.050(a)(2) – Clarification on details of development moratoriums imposed as conditions of tree removal permits
- 8.10.050(d)(1) – Twenty-Five Percent Rule – clarification on method used to calculate the percentage impact of protected trees on buildable area

In addition to the areas listed above requiring clarification, other areas have more substantial proposed changes. These changes are being proposed to address issues that arose during the first year of implementation. Some of the issues raised during the first year of the updated ordinance centered around the 2023 winter storm season. The series of storms the Bay Area saw last winter was very unusual. The storms included high rainfall totals in very short time spans and strong winds from non-prevailing directions with little or no time for recovery in between events. Many citizen concerns centered around the permission to remove a hazardous tree. The ability of a tree owner to remove a hazardous tree is already contained in the ordinance. Staff created a new list of FAQs<sup>[2]</sup> to try and address some of the concerns.

#### 8.10.050 Removal of Protected Trees

Several changes are proposed to 8.10.050. Under 8.10.050(a)(1), item (ii) has been separated into (ii) and (iv). The proposed (ii) and (iv) now read:

*(ii) It is a detriment to or is crowding an adjacent protected tree.*

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

This change allows (ii) to be cited as a reason for removal during a development project, while isolating the use of (iv) to removal in the absence of development only.

A new reason for removal is being proposed as 8.10.050(a)(1)(iii). This reason for removal is intended to address some of the issues that presented during the first year of ordinance implementation. Occasionally situations arise where removal and replacement of an existing

protected tree would be appropriate, yet the existing code does not allow for its removal. The proposed (iii) would address most of these situations:

*(iii) It is at risk for retrenchment or other tree decline coping processes, or is structurally incompatible with its immediate environment.*

Retrenchment in trees is defined as the process by which over-mature trees in natural settings reconfigure as they age and deteriorate. This process is sometimes called ‘natural retrenchment’. The tree may continue to grow trunk diameter while branches die and fail—reducing overall height of the tree while maintaining or increasing stability. Some specific examples of where 8.10.050(a)(1)(iii) might be applied include the following:

- A protected tree with a structure that negatively impacts its surroundings but does not qualify for removal under current code. This could be a tree that has a lopsided and unrepairable canopy that encroaches on a home but does not meet criteria as either a hazard tree or as directly damaging foundation or eaves.
- A protected tree that has entered end-of-life decline but does not qualify for removal under current code. This could be a tree species that is known to have a shorter life span in a landscape setting and may begin to drop limbs as a coping mechanism when in decline. The tree may not yet present as a hazard tree. As with all reasons listed under 8.10.50(a)(1), treatments and corrective practices must be infeasible to invoke (iii) as a reason for removal.

A new reason for removal is also being proposed under 8.10.050(b)(2). This involves the inclusion of the “25% Rule” to residential projects. This rule allows the removal of a protected tree if the tree protection zone of the tree occupies 25% or more of the parcels buildable area. Historically this reason has been used on residential projects and was intended to be available to future projects. This change is intended to recognize this and to correct the oversight.

Clarification to the language defining the “25% rule” has also been added, both in the proposed new location of 8.10.050(b)(2) and the existing location of 8.10.050(d)(1). The changes center around how the impact to the buildable area is calculated. The proposed changes to both codes now read:

*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 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.*

The last new reason for removal being proposed is under 8.10.050(d)(3). This is intended to address concerns first raised by Stanford University staff during the review of the Tree

Ordinance in May and June of 2022. The concern presented was that the ordinance as proposed in 2022 did not allow for discretion regarding tree removal and replacement on larger projects that were subject to the regular planning approval process.

During the 2022 ordinance review process, staff believed that a reading of the existing Title 18 code included the needed discretion surrounding protection and removal of trees on these larger projects. Further review of the code over the last year has determined that discretion regarding the protection and removal of trees on these types of projects is not explicitly granted under Title 18. To resolve this, staff is proposing to add the following reason for removal under 8.10.050(d)(3):

*(3) Discretionary development approval determines that the final project would result in either net tree canopy increase on the property within fifteen years, or replacement of trees, shrubs, and plants 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," and climate adaptive, drought tolerant, non-native species, and right tree in the right place principles.*

This addition seeks to include the specific type of discretion that was already being applied to larger commercial projects under both versions of the Tree Protection Ordinance.

The final proposed change seeks to address the issue of exemptions to excessive pruning requirements. Some horticultural and arboricultural practices may exceed the maximum pruning limits outlined in 8.10.020(j). These may include trees that have been grown and maintained as a hedge, trees that are being purposefully reduced on a regular basis to fit a growing space, or trees subject to specific cultural practices such as pollarding or espalier training. The exemption language as proposed would be located under 8.10.070(c):

*(c) Any requests to exceed the limits for pruning set forth in Section 8.10.020(j)(1) or (2) 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(j)(1) or (2) shall take place without the approval of the urban forester.*

Potential Additional Actions

While staff has presented potential updates to Chapter 8.10 intended to address issues encountered during the first year of ordinance implementation, there are other actions that could be considered. These options are being presented as potential additional actions in response to concerns raised during the 2023 storm season, during the June 19, 2023 City Council study session on Tree Ordinance Implementation<sup>[3]</sup>, and through feedback on the City's housing element from the State Housing and Community Development department.

Exemptions for Certain Housing Projects

The State Housing and Community Development department commented on the City’s housing element in its August 3, 2023 letter noting a need for further analysis related to, among other regulations, the impact of the City’s tree protection ordinance on housing. Specifically, the City’s updated housing element must analyze the tree ordinance as a potential constraint on a variety of housing types. While the City has previously taken measures to address concerns regarding ADUs and the contemplated changes referenced in this report would address single-family homes and some commercial mixed-use projects, more work may be needed to ensure the City’s tree policies are not a constraint to qualifying housing accountability projects.

Accordingly, staff is exploring the appropriateness of additional regulations that would seek to balance the local and state interests for more housing production with City’s desire to preserve and support tree health and expand the tree canopy. Some initial concepts staff is considering would apply to projects with four or more units with at least two-thirds of the project floor area dedicated toward housing. If a tree protected by the City’s ordinance would require a redesign of the project that triggers one or more of the following, the tree or trees would be approved for removal, including:

- A redesign to accommodate the tree costs two times the replacement cost of the tree (existing provision) or more than 5% of the total project valuation (down from 10% applicable to other projects) whichever is greater;
- A redesign that requires a greater parking reduction than authorized by the code; or
- A redesign that requires a density reduction of 5% or greater.

Staff continues to evaluate the need for these additional regulations in the context of the other contemplated modifications and welcomes the PTC’s initial feedback.

Changes to the Definition of Protected Trees

Staff could explore proposing changes to the definition of protected trees. This could potentially involve one or more of the following options:

- Elimination of one or more specific protected native species
- Increasing the diameter threshold for protected native species (currently 11.5”)
- Increasing the diameter threshold for coastal redwood (currently 18”)
- Increasing the diameter threshold for all other species (currently 15”)

Depending on the changes proposed, the total number of protected trees would decrease in differing amounts based on changes in protected species or protected diameters. Under the current ordinance, the definition of a Protected Tree includes the following:

Specific native species protected at 11.5” diameter at breast height (DBH):

- Acer macrophyllum (Bigleaf Maple)
  - Calocedrus decurrens (Incense Cedar)
  - Quercus agrifolia (Coast Live Oak)\*

- Quercus douglasii (Blue Oak)
- Quercus kelloggii (California Black Oak)
- Quercus lobata (Valley Oak)\*
- Species protected at 18" DBH:
  - Sequoia sempervirens (Coast Redwood)\*
- Protected Mature Trees at 15" DBH:
  - includes all species not listed above except:
    - Invasive species per Cal-IPC
    - High Water Users per WUCOLS (Excluding Redwood)
- Other protected tree categories:
  - Any tree designated for protection during review and approval of a development project
  - Any tree designated for carbon sequestration and storage and/or for environmental mitigation purposes
  - Any replacement mitigation tree or other tree designated to be planted due to the conditions listed in this ordinance

\* species protected prior to July 21, 2022

Using a dataset of almost 10,500 private trees as a representative sample, staff used an average of several calculation methods contained in the 2017 California Urban Forest Study by Greg McPherson<sup>[4]</sup>, to estimate species and size distribution for our entire private tree urban forest. If changes to the definition of protected trees are explored, estimates of the impact to the total number of protected trees can be made using our existing sample data set. Totals shown in the table below represent the estimate of total protected trees under the current ordinance.

**Total Urban Forest Tree Estimates**

Total Trees Estimate (excluding WUI area) 600,000

**All Private Proposed Protected trees based on total trees #**

Species	Count	%
COAST LIVE OAK => 11.5 DBH	35,580	5.93%
VALLEY OAK => 11.5 DBH	5,640	0.94%
REDWOOD => 18" DBH	40,500	6.75%
BIG LEAF MAPLE => 11.5" DBH	60	0.01%
INCENSE CEDAR => 11.5" DBH	1,860	0.31%
BLUE OAK => 11.5" DBH	240	0.04%

CA BLACK OAK => 11.5" DBH	60	0.01%
ALL OTHERS => 15" (Minus CalIPC/WULCOS)	140,160	23.36%
<b>New Protected Tree Total</b>	<b>224,100</b>	<b>37.35%</b>
<i>Old Protected Tree Total</i>	<i>81,720</i>	<i>13.62%</i>

Changes to Allowable Reasons for Removal

Staff could explore more substantial changes or additions to the allowable reasons for removal. While staff believes the proposed changes included in Attachment A address many of the concerns raised by both staff and the public in the wake of this past winter’s storms, additional changes could be considered.

**FISCAL/RESOURCE IMPACT**

The proposed changes to Chapter 8.10 should have no additional impact on staff resources.

**STAKEHOLDER ENGAGEMENT**

Public outreach regarding the updated ordinance has been ongoing since the adoption of the updated ordinance in June of 2022. The majority of public outreach has been conducted by City staff and the City’s urban forestry non-profit partner Canopy. Below is a list of outreach efforts that have been completed or are currently in progress.

- City Urban Forestry webpages have been updated to reflect new ordinance.
  - New Tree Ordinance Information page created and expanded.
- New Tree FAQs<sup>[5]</sup> created to address many questions about the tree ordinance and storm related tree issues.
- Creation of a new general trees email address ([trees@cityofpaloalto.org](mailto:trees@cityofpaloalto.org)) to simplify contacting the Urban Forestry Section.
- Canopy webpages updated to mirror new information info on City web pages.
- Canopy tree walk flyers updated to highlight Tree ordinance updates.
- Canopy Tree-news has released 3 Issues (June 2022, January 223, April 2023) that speak about the updated tree ordinance.
  - Tree news issues reach approximately 4500 subscribers.
- An email distribution list of arborists, tree care companies and Urban Forestry advocates has been compiled by city staff and informational updates are being sent periodically. These updates have been added to the Tree Ordinance Information webpage as PDFs<sup>[6]</sup>. Staff is in the process of translating these updates into Spanish language versions as well. Anyone can be added to the list by email request sent to [trees@cityofpaloalto.org](mailto:trees@cityofpaloalto.org)

The following outreach components are still in development and will be put in place in the coming months.

- A direct mailed Postcard is to all Palo Alto residents providing information about the updated TPO.

- Utility bill insert and email highlighting new ordinance information.
- Informational ads in local printed and electronic press.
- Live webinar sessions targeted at local arborists and tree care companies to review new ordinance requirements. These will be recorded and posted to the city website.

Based on feedback received at the October 24<sup>th</sup> Parks and Recreation Commission meeting, staff plan to explore the possibility of adding the following additional outreach components.

- Webinars, workshops, or Utility inserts focused on how to prepare trees for storm season and how to care for them after storms.
- Inclusion of more tree related information and resources into the city's regular informational postings on electronic media.

## ENVIRONMENTAL REVIEW

This proposed update to the Tree Protection Ordinance is not subject to the California Environmental Quality Act.

## ATTACHMENTS

Attachment A: Chapter 8.10 of PAMC - Draft Proposed Changes 10.17.23 (redline)

## AUTHOR/TITLE:

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<sup>[1]</sup> Action Minutes from June 6, 2022 Council Meeting:

<https://cityofpaloalto.primegov.com/Public/CompiledDocument?meetingTemplateId=12239&compileOutputType=1>

<sup>[2]</sup> Palo Alto Urban Forestry FAQs: <https://www.cityofpaloalto.org/Departments/Public-Works/Public-Services/Palo-Altos-Urban-Forest/Frequently-Asked-Questions>

<sup>[3]</sup> June 19, 2023 City Council Agenda: <https://cityofpaloalto.primegov.com/Portal/Meeting?meetingTemplateId=1170>

<sup>[4]</sup> McPherson G.E., 2017. The structure, function, and value of urban forests in California communities. Urban Forestry & Urban Greening 28 (2017) 43-53:

[https://www.fs.usda.gov/psw/publications/mcpherson/psw\\_2017\\_mcpherson005.pdf](https://www.fs.usda.gov/psw/publications/mcpherson/psw_2017_mcpherson005.pdf)

<sup>[5]</sup> New Urban Forestry Trees Frequently Asked Questions:

<https://www.cityofpaloalto.org/Departments/Public-Works/Public-Services/Palo-Altos-Urban-Forest/Frequently-Asked-Questions>

<sup>[6]</sup> Example of a Tree Ordinance Information Update:

<https://www.cityofpaloalto.org/files/assets/public/public-works/tree-section/new-folder/palo-alto-treeordinance-information-updates-1-protected-trees.pdf>

DRAFT PROPOSED UPDATES TO PAMC CHAPTER 8.10

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 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 ~~trunk and~~ root crown ~~and trunk~~.

(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 Aan applicant at their own expense, or

(2) Chosen by Tthe 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 dripline area of a protected tree or is subject to requirements of the California Model Water Efficient Landscape Ordinance (MWEL0).

(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" or "tree protection zone" means the area defined by a circle extending 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 one-fourth (twenty-five percent) 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.

(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.

(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 ~~larger than~~ 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 ~~w~~Water ~~u~~Use ~~e~~Classification of ~~the~~ Landscape ~~s~~Species (WUCOLS) list approved by the California Department of Water Resources (with the exception of Coast Redwood).

(4) Any tree designated for protection during review and approval 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 Section 8.10.020(1)(3) may be protected as a designated tree.

(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 under the conditions listed in Section 8.10.055.

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

(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 dripline area of a tree.

(o) "Tree report" means a report prepared by a designated arborist.

(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, 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 and species of all any other trees which is four inches in diameter (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 and/or in the adjacent public right-of-way, which are and is within thirty feet of the building footprint proposed for development, or

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

(3) Close enough with that its canopies overhangsing 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 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 issues permission for 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 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 is structurally incompatible with its immediate environment.

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

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

(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 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.

~~(32)~~ The tree could be removed due to the conditions listed in Section 8.10.050(a)(i), (ii) or (iii) and treatments or corrective practices are not feasible.

(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 either of the following apply:

(1) Retention of ~~one or more~~ the 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 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 nuisance under Section 8.04.050. In such cases, the dripline 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 approval determines that the final project would result in either net tree canopy increase on the property within fifteen years, or replacement of

trees, shrubs, and plants consistent with Urban Forest Master Plan Goal 1.1.1, "Preserve and enhance native woodland and riparian landscapes as the key ecological basis of the urban forest with focus on native species and habitat," and climate adaptive, drought tolerant, non-native species, and right tree in the right place principles.

(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 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 the excavating, altering the grade, or paving within the dripline 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(j)(1) or (2) 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(j)(1) or (2) 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 be assessed 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 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 appeal the director of planning and development service's decision in accordance with the procedures set forth in Chapter 18.78.

**Item 2**

Attachment A Chapter

8.10 of PAMC - Draft

Proposed Changes -

Redline 10.17.23

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