



CITY OF EAST PALO ALTO REQUEST FOR PROPOSALS

Professional As-Needed Arborist Consulting Services

Release	Wednesday, July 13, 2022
Deadline	Friday, July 29, 2022 by 2:00 P.M.
City Contact	Jessica Caballero, Management Analyst 1960 Tate Street East Palo Alto CA 94303 Phone: 650-853-3142 Email: jcaballero@cityofepa.org
Submittal Requirements	One (1) Electronic Copy via e-mail to the City Contact

The City of East Palo Alto invites requests for proposals for professional as-needed arborist consulting services for the City's Community and Economic Development Department. The City will be available for questions Wednesday, July 27 from 9:30 AM-10:00 AM at the Zoom information provided in this solicitation.

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1. Introduction

On April 19, 2022, the East Palo Alto City Council adopted an Urban Forest Master Plan (“UFMP”) to provide a roadmap towards a shared vision for the future of the city’s tree canopy. As directed by City Council, City staff and consultants looked at all current city ordinances related to trees and concluded it is preferable to have one clear ordinance for public trees and one for private trees. As a part of that City Council direction and adoption of an updated ordinance, staff were directed to hire an on-call tree arborist to assist City staff including Public Works and the Community and Economic Development (CED) Departments to carry out the UFMP.

The City of East Palo Alto (“City”) is requesting proposals from qualified arborist consultants to primarily advise and assist the Planning Division within CED. Consultants will be asked to make recommendations to staff regarding tree removal applications and landscaping proposals based on City ordinances, General Plan policies, and best management practices. Additionally, the consultant will make recommendations on development applications, conduct site visits and inspections, attend public hearings when necessary, and provide other general on-call arborist consulting to City staff.

a. City General Information and Governance

The following sections provide general information regarding the City governance structure and financial reporting requirements:

The City of East Palo Alto, incorporated in 1983, is the newest city in San Mateo County with a population of approximately 30,545 people. East Palo Alto is one of California’s most vibrant and diverse communities located in the San Francisco Peninsula and nestled within the heart of Silicon Valley. East Palo Alto is centrally located to international travel and is a central location to major neighboring tech companies and employers. Priding itself on its unique and multi-cultural community, East Palo Alto consists of youthful, diverse, and hard-working individuals.

The City of East Palo Alto operates under a Council/Manager form of government. Its mission is to provide responsive, respectful, and efficient public services to enhance the quality of life and safety for its multi-cultural community. The City’s fiscal year begins on July 1 and ends June 30. The Community and Economic Development Department is located at 1960 Tate Street, East Palo Alto, CA 94303.

2. Scope of Services

At the direction of the Community and Economic Development Department, the Consultant Arborist will coordinate with City staff with the following tasks:

- Review plans and arborist reports/landscape unit values submitted for development proposals through Planning Applications (PA) and Building Permit plan review. Provide landscaping recommendations based on city ordinances, General Plan policies and best management practices (see applicable links to the Municipal Code under Attachments), including identifying any missing or inaccurate information and requesting additional information and/or clarifications as needed to inform the recommendation. Assist City staff in evaluating proposed tree removals and provide recommendations if the proposed removal and replacement trees meet the requirements of the city ordinances.
- Assist City Staff and applicant with recommendations for replacement trees as mitigation for the removal of trees.
- Assist City staff with clear and concise requirements to address removal of trees that have been deemed hazardous or in poor health. Provide staff with recommendation on whether the tree should be removed based on city requirements and best management practices.
- Review project plans for potential impacts to Protected Trees and Street Trees through construction-related activities and provide the necessary comments, methods of mitigation and/or recommendations to preserve the long-term health of identified trees and to support the City's goals and policies regarding tree preservation and the urban forest.
- Confirm as reasonable or dispute as unnecessary the Project Arborist's recommendation of the necessity to remove tree(s).
- When necessary, conduct site visits to verify that the tree data presented in the development proposals correspond with the existing site conditions.
- Accurately represent the City and answer questions, review plans and assist citizens in person at the public counter, on the phone or by email.
- Visit the project site to verify tree protection measures are in place prior to permit issuance.
- Perform regular site inspections to ensure the health of trees and tree protection is still in place.
- Work with city staff to implement best management practices and streamline the tree removal / protection processes for development review.
- Provide excellent customer service, remain flexible with job duties, be proactive and

take initiative with assigned projects.

- When necessary, attend public hearings
- Supplemental tasks may be assigned as needed. The professional services contract will enable the City to obtain professional and technical assistance on short notice and as-needed basis from the selected consultants. At its discretion, the City intends to select one or more firms with whom the City will contract for Proposal & Project Timeline and Contacts

a. Approach to Completing Scope of Services

- Provide the tasks and narrative of how your firm will comply with the scope of work, and what special services and products your firm possesses to meet the Community and Economic Development Department's needs.
- A description of how the firm provides the desired services and quality control to assure adequate level of service and successful project completion and management.
- A statement indicating the firm is independent, properly licensed to practice in California, and has no conflict of interest with regard to any work performed by the firm for the City.
- A statement of the firm's mission statement (if available) and ethical standards should also be included.

b. Fee Schedule

Provide a proposed fee schedule for arborist services and if there is a built-in escalation rate or when this proposed fee schedule will expire. Please note there may be necessary changes to the City's Master Fee schedule so that development applications directly support such costs, and thus proposers should be aware of what other jurisdictions are charging and that there may be a public hearing timeline that our City must follow to enact such fees.

c. References

Please provide three (3) references (contact information to include names and organizations, addresses, phone numbers, and email addresses) for comparable work for your firm and for the team members. Provide a brief description and magnitude of the services provided for each reference.

d. Consultant and Professional Services Agreement/Insurance

The term of the initial agreement is expected to be a 2-year contract, with a one-time extension

of two years that can be renewed administratively if performance is met. The initial term will begin once the contract is executed and will be dependent upon contract award at a future Council meeting. To ensure the selected consultant is able and willing to contract with the City if selected, please include a brief statement acknowledging the consultant’s willingness to accept the attached City of East Palo Alto Contractor and Professional Services Agreement (Agreement). Otherwise, the proposal should include requested changes (if any) to the Agreement. Note that this is EPA’s standard Contractor and Professional Services Agreement (Agreement) and thus changes are often not allowed or negotiated.

e. Summary of Key Dates

RFP Issued	July 13, 2022
Conference Call* – attendance is optional	July 27, 2022
Proposal Submittal Deadline	July 29, 2022 – 2 p.m.
Contract awarded by City Council	TBD: September/October 2022

f. Conference Call*

The City will be available for questions Wednesday, July 27 from 9:30 AM-10:00 AM at the Zoom webinar information provided below. *Attendance is optional. Registration is required.*

Join Zoom Meeting

<https://us06web.zoom.us/j/82703846821?pwd=TW5GWdVXUfNXUU40WitCRUNvYVBTdz09>

Webinar ID: 827 0384 6821

Passcode: 806671

Registration Link: https://us06web.zoom.us/webinar/register/WN_pT_uWCJ1Rt6SpFUt2er1vg

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g. Contacts

Inquiries concerning the RFP must be received by email and should be addressed to:

Jessica Y Caballero, Management Analyst, jcaballero@cityofepa.org

RFP submissions must be received, in full, by the City via email at or before the stated time to be considered.

3. Proposal Guidelines

a. General Guidelines

Failure to comply with the requirements set forth in this RFP may result in disqualification. Proposals and/or modifications received after the hour and date specified above will not be accepted. Submitted proposals may be withdrawn at any time prior to the submission time specified in this RFP, provided notification is received in writing before the submittal deadline. No handwritten notations or corrections will be allowed. The responding Consultant is solely responsible for all costs related to the preparation of the proposal.

The City reserves the right to reject all proposals and to waive any minor informalities or irregularities contained in any proposal. Acceptance of any proposal submitted pursuant to this RFP shall not constitute any implied intent to enter into a contract.

During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from proposers, or to allow corrections of errors or omissions. At the discretion of the City, vendors submitting proposals may be requested to make oral presentations as part of the evaluation process.

The City reserves the right to retain all proposals submitted and to use any idea(s) in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the vendor of the conditions contained in the request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the vendor selected.

Each proposal will adhere to the following order and content of sections. Proposal should be straightforward, concise and provide "layman" explanations of technical terms that are used. Emphasis should be on conforming to the RFP instructions, responding to the RFP requirements, and providing a complete and clear description of the offer. Proposals which appear unrealistic in terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the complexity and risk of this contract may be rejected.

b. Proposal Sections

The following proposal sections are to be included in the Proposer's response:

I. Letter of Transmittal

A signed letter of transmittal briefly stating the vendor's understanding of the work

to be completed, the commitment to perform the work within the time period, a statement why the vendor believes itself to be the best qualified to perform the engagement and a statement that the proposal is a best and final irrevocable offer. List all subcontractors, if any.

II. Technical

The Technical Proposal shall address all points outlined in the request for proposals (excluding any cost information, which should only be included in a separate Cost Proposal). The proposal shall be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of this request for proposals. While additional data may be presented, the following subjects must be included and shall represent the criteria against which the proposal will be evaluated:

- A. Vendor Qualifications and Experience - To qualify **the vendor must have extensive experience as an on-call professional arborist consultant**. The Proposer shall state the size of the vendor, range of service performed and include a list of all current clients.
- B. Supervisory and Staff Qualifications and Experience - Identify the principal supervisory and management staff, including managers, other supervisors, and specialists who may be assigned. Include resumes of the principal supervisory and management staff.
- C. References - Provide a list of not less than three (3) client references for whom services like those outlined in the RFP are currently being provided. For each reference listed provide the name of the organization, dates for which the service(s) are being provided, type of service(s) being provided and the name, title, address, telephone number, and e-mail address of the responsible person within the reference's organization. The City reserves the right to contact the listed references regarding the services performed by the Proposer.
- D. Proposed Methodology - The proposal should set forth a work plan, including an explanation of the services required in Section II "Scope of Work" of this request for proposal. Include:
 - a. The philosophy and approach with detail specific to each area for providing the full scope of service.
 - b. Proposer's ideas for maintaining open communication with the client.

- E. Required Skills/Credentials – The following criteria will be used in evaluating submittals received in response to this RFP:
- a. ISA Certified
 - b. Ability to read and understand architectural and construction plans
 - c. Ability to establish and maintain effective working relationships with coworkers, peers, developers, other city departments, civic organizations and citizens.
 - d. Computer skills (i.e. word processing, databases, spreadsheets, online maps).
 - e. Good communication skills (verbal and written).
 - f. Knowledge of recordkeeping and report writing.
 - g. Tree identification and diagnosis.
 - h. Knowledge of landscape design and installation (optional).
 - i. Ability to respond to emails and phone calls within one working day.

III. Fee Proposal and Cost Estimates

All-Inclusive Maximum Price - The cost proposal should contain all pricing information relative to performing the scope of work described in this request for proposals. The total all-inclusive maximum price is to contain all direct and indirect costs including all out-of-pocket expenses. The City will not be responsible for expenses incurred in preparing and submitting the technical proposal.

- a. The first page of the cost proposal shall include the following information:
 - i. Name of Vendor.
 - ii. Certification that the person signing the proposal is entitled to represent the vendor, empowered to submit the proposal, and authorized to sign a contract with the City.
- b. Manner of Payment – Describe the proposed manner of payment.

4. Selection Criteria and Evaluation Process

The City's Community and Economic Development Staff and other City staff will be responsible for the bid evaluations. This team, in accordance with the criteria listed below, will evaluate all proposals received as specified. The City team members, in applying the major criteria to the proposals, may consider additional criteria beyond those listed.

The final selection will be the vendor which, in the City's opinion, is the most responsive and responsible, meets the City's requirements in providing this service, and is in the City's best interest. The skill and ability of the entity performing the services is a key component of the selection criteria. Consultants will be objectively evaluated based on their responses to the project scope outlined in the RFP. The written proposal should clearly demonstrate how the vendor could best satisfy the requirements of City.

The City maintains the sole and exclusive right to evaluate the merits of the proposals received. The City will consider the ability, capacity, skill, character, integrity, reputation, judgment, and expertise in the award of the project. Cost will be only one factor in determining the selection, and as such, the contract might not be awarded to the lowest responsible Proposer.

The City will undertake the following evaluation process:

- The City will review and evaluate all submitted documents received in response to the RFP.
- After the submittals are evaluated and ranked, the City, at its sole discretion, may elect to interview (including a demonstration of capabilities) one or more respondents. Please note that respondents may be asked to submit additional documentation. In addition, the City reserves the right to select a proposal without conducting interviews.
- If a commitment is made, it will be to the most qualified with whom City is able to successfully negotiate the compensation and terms and conditions of all agreements.
- Once a contractor is selected, staff will make a recommendation to the City Council. Final selection of a Contractor and authority to proceed with these services shall be at the sole discretion of the City Council.

The Attachment is the City's standard consulting services agreement. Consultants interested in proposing on this RFP should be prepared to enter into the agreement under the standard terms and should be able to provide the required insurance. If the City is unable to negotiate a satisfactory agreement, with terms and conditions the City determines, in its sole judgment, to be fair and reasonable, the City may then commence negotiations with

the next most qualified vendor in sequence, until a vendor is selected, or a determination is made to reject all submittals.

5. Submittal of Proposals

Deliverables: Submit ONE (1) electronic copy of proposal, including a statement of fee rates **by email Friday, July 29, 2:00 PM** to: Jessica Y Caballero, Management Analyst at jcaballero@cityofepa.org

The City assumes no responsibility for delays caused by delivery service. All costs incurred during submittal preparation or in any way associated with the consultant's preparations, submission, presentation, or oral interview shall be the sole responsibility of the consultant. If awarded a contract, the consultant shall maintain insurance coverage, including worker's compensation, reflecting the minimum amounts and conditions specified by the City. Consultants are liable for all errors or omissions contained in their proposals.

6. City Provided Materials

The following materials are provided (for reference only, subject to change without notification):

- a. City of East Palo Alto Contractor and Professional Services Agreement
- b. City of East Palo Alto Tree Removal Process
- c. Staff Report – Adoption of the Final Urban Forest Master Plan and Amendments to Related Tree Ordinances

7. General Conditions

Consultants are advised to become familiar with all conditions, instructions, and specifications of this solicitation. By submitting a proposal, Contractor represents and warrants that it has thoroughly examined and is familiar with work required under this solicitation, that Contractor has conducted such additional investigation as it deems necessary and convenient, that Contractor is capable of providing the services requested by the City in a manner that meets the City's objectives and specifications as outlined in this solicitation, and that Contractor has reviewed and inspected all materials submitted in response to this solicitation. Once the contractor has been selected, a failure to have read the conditions, instructions, and specifications herein shall not be cause to alter the contract or for Contractor to request additional compensation.

a. Non-Discrimination Requirement

Consultants are advised to become familiar with all conditions, instructions, and specifications of this solicitation. By submitting a proposal, Contractor represents and warrants that it has thoroughly examined and is familiar with work required under this solicitation, that Contractor has conducted such additional investigation as it deems necessary and convenient, that Contractor is capable of providing the services requested by the City in a manner that meets the City's objectives and specifications as outlined in this solicitation, and that Contractor has reviewed and inspected all materials submitted in response to this solicitation. Once the contractor has been selected, a failure to have read the conditions, instructions, and specifications herein shall not be cause to alter the contract or for Contractor to request additional compensation.

Contractor and its subsidiaries shall comply with all applicable federal, state and local laws, rules and regulations regarding nondiscrimination and non-harassment in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, sexual orientation, medical condition or physical handicap. Contractor agrees to abide by the City of East Palo Alto's Policy Against Discrimination, Harassment, and Retaliation adopted by the East Palo Alto City Council on December 21, 2004.

b. Indemnification

Contractor shall indemnify, defend (with independent counsel approved by the City), and hold harmless the City, its officers, officials, directors, employees, agents, volunteers and affiliates and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, Contractor's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Contractor's operations, or any subcontractor's operations, to be performed under this Agreement, for the fullest extent permitted by law, with the exception of the sole active negligence or willful misconduct of the City.

c. Insurance

1. Commercial General Liability Insurance: Contractor's General Liability insurance shall include contractual liability coverage. Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the Contractor's operations under this Agreement, whether such operations be by Contractor or by any sub-Contractor or by anyone

directly or indirectly employed by either of them. The amounts of such insurance shall be not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000), in aggregate or Three Million Dollars (\$3,000,000) combined single limit bodily injury and property damage for each occurrence. Contractor shall provide the City with certificates of insurance and copies of additional insured and primary coverage endorsements evidencing the insurance coverage required by this Agreement.

2. Automobile Liability Insurance: Contractor shall take out and maintain during the life of this Agreement such Automobile Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000) for each occurrence combined single limit or not less than One Million Dollars (\$1,000,000) for any one (1) person, and One Million Dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage. Contractor shall provide the City with certificates of insurance and copies of additional insured and primary coverage endorsements evidencing the insurance coverage required by this Agreement.
3. Worker's Compensation and Employer's Liability Insurance: Contractor shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement".
4. Professional Liability Insurance: Contractor shall take out and maintain during the life of this Agreement a policy of professional liability insurance, protecting it against claims arising out of the acts, errors, or omissions of Contractor pursuant to this Agreement, in the amount of not less than One Million Dollars (\$1,000,000) per claim. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
5. Broader Insurance Coverage: If Contractor maintains broader coverage and/or higher limits than the City's minimum requirements, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance shall

be called upon to protect it as a named insured.

6. Additional Insured Status: The City of East Palo Alto, its subsidiary agencies, directors, officers, employees, agents, independent contractors, and volunteers shall be named as additional insureds on any such policies of comprehensive general and automobile liability insurance.
7. Primary and Non-Contributory Coverage: Except for professional liability and worker's compensation insurance, the policies shall also contain a provision that the insurance afforded to the City, its subsidiary agencies, and their directors, officers, employees, agents, independent contractors and volunteers based on additional insured status shall be primary and non-contributory insurance to the full limits of liability of the policy, and that if the City, its subsidiary agencies and their directors, officers, employees, agents, independent contractors and volunteers have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
8. Verification of Coverage: Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause). All certificates and endorsements are to be received and approved by the City Attorney's Office at least five days before Contractor commences work to be performed pursuant to the agreement.

d. Conditions of Proposal Acceptance

This RFP does not commit the City to award a contract, to pay any costs incurred in the preparation of a proposal for this RFP, or to procure or contract for any services. The City reserves the right to: waive any minor irregularities or informalities contained within an RFP, and/or reject any or all proposals received as a result of this request, and negotiate with any qualified contractor, or to cancel the RFP in part or whole. All proposals and material submitted will become the property of the City and will not be deemed confidential or proprietary. The City reserves the right to award in whole or in part, by item or group of items, by section or geographic area, when such action serves the best interests of the City. The City and Contractor may agree to add additional areas to the contract (Attachment) by mutual agreement later. The City may elect to stop work at any time in the contract and will pay for work completed to that point on a time and material basis.

ATTACHMENT 1 - CONTRACTOR AND PROFESSIONAL SERVICES AGREEMENT

This Contractor and Professional Services Agreement ("Agreement") is made at East Palo Alto, California, dated for reference this _____ day of __, 20__, by and between the City of East Palo Alto, a municipal corporation ("City"), and [type in name], [type in the type of entity], hereinafter referred to as "Contractor", who agree as follows:

- 1. Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City professional services as specified in Exhibit A, entitled "Scope of Work."
- 2. Payment.** City shall pay Contractor for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B, entitled "Compensation." The payments specified in Exhibit B shall be the only payments to be made to Contractor for services rendered pursuant to this Agreement.
- 3. Term.** The term of this Agreement shall commence on [type in start date] and shall continue in full force and effect until [type in end date].
- 4. Facilities and Equipment.** Contractor shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.
- 5. Indemnification.** Contractor shall indemnify, defend (with independent counsel approved by the City), and hold harmless the City, its officers, officials, directors, employees, agents, volunteers and affiliates and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, Contractor's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Contractor's operations, or any subcontractor's operations, to be performed under this Agreement, for the fullest extent permitted by law, with the exception of the sole active negligence or willful misconduct of the City.

The provisions of this section shall survive the expiration or termination of this Agreement and are not limited by any provisions relating to insurance in this Agreement.

- 6. Insurance Requirements.** Contractor agrees to comply with all of the Insurance Requirements set forth in Exhibit C, entitled "Insurance Requirements for Contractor." Failure to maintain required insurance at all times shall constitute a default and material breach.

7. Accident Reports. Contractor shall immediately report (as soon as feasible, but not more than 24 hours) to the City Risk Manager any accident or other occurrence causing injury to persons or property during the performance of this Agreement. The report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses and telephone numbers of any known witnesses, (c) the date, time and description of the accident or other occurrence.

8. Conflict of Interest. Contractor warrants and represents that to the best of its knowledge, there exists no actual or potential conflict between Contractor's family, business, real property or financial interests and the services to be provided under this Agreement. Contractor shall comply with the City of East Palo Alto Conflict of Interest Code and not enter into any contract or agreement during the performance of this Agreement which will create a conflict of interest with its duties to City under this Agreement. In the event of a change in Contractor's family, business, real property or financial interests occurs during the term of this Agreement that creates an actual or potential conflict of interest, then Contractor shall disclose such conflict in writing to City.

9. Independent Contractor. Contractor is an independent contractor. Neither Contractor nor any of Contractor's officers, employees, agents or subcontractors, if any, is an employee of City by virtue of this Agreement or performance of any services pursuant to this Agreement. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Contractor accomplishes services pursuant to this Agreement.

10. Licenses, Permits, Etc. Contractor represents and warrants to City that all Contractor services shall be provided by a person or persons duly licensed by the State of California to provide the type of services to be performed under this Agreement and that Contractor has all the permits, qualifications and approvals of whatsoever nature which are legally required for Contractor to practice its profession. Contractor represents and warrants to City that it shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Contractor to practice its profession.

11. Business License. Contractor, and its subcontractors, has obtained or agrees to apply prior to performing any services under this Agreement to City's Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement. The failure to obtain such license shall be a material breach of this Agreement and grounds for termination by City. No payments

shall be made to Contractor until such business license(s) has been obtained.

12. Standard of Performance. Contractor shall provide products and perform all services required pursuant to this Agreement in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by a member of Contractor's profession currently practicing in California.

Contractor is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation applicable federal, state, and local laws and regulations, and all other contingencies or considerations.

Contractor's responsibilities under this section shall not be delegated. Contractor shall be responsible to City for acts, errors, or omissions of Contractor's subcontractors.

Contractor is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work and shall prepare plans, reports, and/or other work products in such a way that additional costs will not be incurred or, beyond a project budget approved or amended by the City Manager or his or her designee.

Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by City, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this Agreement and determining whether the Contractor is entitled to payment for such work, and not be construed as a waiver of any breach or acceptance by the City of any responsibility, professional or otherwise, for the work, and shall not relieve the Contractor of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor.

13. Force Majeure. Neither party shall be considered in default of this Agreement to the extent performances are prevented or delayed by any cause by circumstances beyond either party's reasonable control, such as war, riots, strikes, lockouts, work slow down or stoppage, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts.

In the event that the Contractor is unable to meet the completion date or schedule of services, Contractor shall inform the City Representative of the additional time required to perform the work and the City Representative may adjust the schedule.

14. Time is of the Essence. Time is of the essence in this Agreement. Any reference

to days means calendar days, unless otherwise specifically stated.

15. Personnel. Contractor agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement.

The payment made to Contractor pursuant to this Agreement shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor.

Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

16. Prevailing Wages for Public Works Projects. For public works projects, Contractor shall comply with all provisions of California laws dealing with prevailing wages, apprentices, and hours of work. Contractor shall also comply with provisions of Labor Code section 1720 as applicable. Contractor shall maintain certified payroll records evidencing such payment of prevailing wages as required by law.

17. Contractor Not Agent. Except as authorized under this Agreement or as City may authorize in a letter of authorization signed by the City Manager or his or her designee, Contractor shall have no authority, express or implied to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, under this Agreement, to bind City to any obligation whatsoever.

18. Termination or Abandonment by City. The City has the right, at any time and in its sole discretion, to immediately terminate or abandon any portion or all of the services to be provided under this Agreement by giving notice to Contractor. Upon receipt of a notice of termination, Contractor shall perform no further work except as specified in the notice. Before the date of termination, Contractor shall deliver to City all work product, whether completed or not, as of the date of termination and not otherwise previously delivered.

The City shall pay Contractor for services performed in accordance with this Agreement before the date of termination. If this contract provides for payment of a lump sum for all

services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by City and Contractor for the portion of work completed in conformance with this Agreement before the date of termination. In addition, the City will reimburse Contractor for authorized expenses incurred and not previously reimbursed. The City shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

19. Products of Consulting Services. The work product, including without limitation, all writings, work sheets, reports, recordings, drawings, files, detailed calculations and other work products, whether complete or incomplete, of Contractor resulting from services rendered pursuant to this Agreement, shall become the property of City. Contractor agrees that all copyrights which arise from creation of the work under this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Contractor makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

Documents submitted to the City in electronic format shall be formatted according to specifications provided by the City, or if not otherwise specified, in Microsoft Word, Excel, PowerPoint or other Microsoft Office format as appropriate for the particular work product or, if directed by the City Representative in Adobe Acrobat PDF format.

20. Cooperation by City. City shall, to the extent reasonable and practicable, assist and cooperate with Contractor in the performance of Contractor's services hereunder.

21. Assignment and Subcontracting. Contractor shall not subcontract, assign or transfer voluntarily or involuntarily any of its rights, duties or obligation under this Agreement without the express written consent of the City Manager or his or her designee in each instance. Any attempted or purported assignment of any right, duty or obligation under this Agreement without said consent shall be void and of no effect.

If subcontracting of work is permitted, Contractor shall pay its subcontractor within ten (10) days of receipt of payment by City for work performed by a subcontractor and billed by the Contractor. Use of the term subcontractor in any other provision of this contract shall not be construed to imply authorization for Contractor to use subcontractors for performance of any service under this Agreement.

The City is an intended beneficiary of any work performed by Contractor's subcontractor for purposes of establishing a duty of care between the subcontractor and City.

22. Successors and Assigns. All terms, conditions, and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this section is intended to affect the limitation on assignment.

23. Non-Discrimination/Fair Employment Practices.

Contractor shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination and non-harassment in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, sexual orientation, medical condition or physical handicap. Contractor agrees to abide by the City's Policy Against Discrimination, Harassment and Retaliation as set out in attached Exhibit D.

24. Official Notices. All notices or instruments required to be given or delivered by law or this Agreement shall be in writing and shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified mail, postage prepaid, addressed to:

If to City: [insert name]
[insert title]
[insert Department name]
1960 Tate Street
East Palo Alto, CA 94303

If to Contractor: [insert name]
[insert title]
[insert company name]
[insert street name and suite #, if any]
[insert city, state and zip code]

Any party may change its address for receiving notices by giving written notice of such change to the other party in accordance with this section.

Routine administrative communications shall be made pursuant to section 1 of Exhibit A.

25. Integration Clause. This Agreement, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto.

26. Severability Clause. Should any provision of this Agreement ever be deemed to be legally void or unenforceable, all remaining provisions shall survive and be enforceable.

27. Law Governing. This Agreement shall in all respects be governed by the law of the State of California without regard to its conflicts of law rules. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of San Mateo County in the State of California or in the United States District Court, Northern District of California, San Francisco/Oakland Division, California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

28. Waiver. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

29. Ambiguity. The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

30. Gender. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neutral, singular or plural, as the identifications of the person or persons, vendor or vendors, corporation or corporations may require.

31. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

32. Compliance with Laws. Contractor will comply with all statutes, regulations and ordinances in the performance of all services under this Agreement.

33. Confidentiality. Contractor shall treat all records and work product prepared or maintained by Contractor in the performance of this Agreement as confidential and shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City records on information to any third party, other than its own employees, agents or subcontractors who have a need for the City records or information for the performance of services under this Agreement. A violation by Contractor of this section shall be a material violation of this Agreement and will justify legal and/or equitable relief.

Contractor agrees and acknowledges that this confidentiality provision does not limit the

City's disclosure as required by law, pursuant to a subpoena, the California Public Records Act, or Order of the Court.

34. News and Information Release. Contractor agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from City through the City Representative.

35. Counterparts. The parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

36. Authority. The person signing this Agreement for Contractor hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Contractor.

37. Exhibits. The following exhibits are attached hereto and incorporated herein by reference:

Exhibit A, entitled "Scope of Work," including any attachments.

Exhibit B, entitled "Compensation," including any attachments.

Exhibit C, entitled "Insurance Requirements," including any attachments.

Exhibit D, entitled "Policy Against Discrimination, Harassment and Retaliation"

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year shown below the name of each of the parties.

[INSERT CONTRACTOR NAME]
[INSERT TYPE OF ENTITY]

CITY OF EAST PALO ALTO,
a municipal corporation

By: _____
[insert name]
[insert title]

By: _____
Patrick Heisinger
Interim City Manager

DATE: _____

DATE: _____

East Palo Alto Business License No.

APPROVED AS TO CONTENT:

[Insert Department Head Name]
[Insert Department Head Title]

APPROVED AS TO FORM:

Valerie J. Armento
Interim City Attorney

EXHIBIT A

SCOPE OF WORK

1. Representatives.

City Representative:

[insert name]
[insert title]
[insert Department name]
1960 Tate Street
East Palo Alto, CA 94303
[insert telephone number]
[insert facsimile number]

Contractor's Representative:

[insert name]
[insert title]
[insert company name]
[insert street name and suite #, if any]
[insert City, state and zip code]
[insert telephone number]
[insert facsimile number]

All routine administrative communications between the parties will be between the above named representatives and may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between the Contractor Representative and City's Representative.

2. Services and Schedule.

The services provided shall be as set forth in Attachment 1 of Exhibit A, attached hereto and incorporated herein by this reference and performed according to the schedule set forth therein. Contractor will complete all services by [insert date].

3. Phased Performance.

If the schedule calls for the services to be performed in phases or discrete increments, Contractor shall not proceed from one phase or increment to the next without written authorization from the City's Representative.

4. Additional Services. Additional services are those services related to the scope of Services of Contractor as set forth in Exhibit A but not anticipated at the time of execution of this Agreement ("Additional Services"). Additional Services shall be provided only when authorized by an amendment to this Agreement and approved by the City Manager, or his or her designee. City reserves the right to perform any Additional Services with its own staff or to retain other Contractors to perform said Additional Services. Any costs incurred due to the performance of Additional Services prior to the execution of an

amendment will not be reimbursed under this Agreement or an amendment.

Contractor's compensation for Additional Services shall be based on the total number of hours spent on Additional Services multiplied by the employees' appropriate billable hourly rate as established below. City, at its option, may negotiate a fixed fee for some or all Additional Services as the need arises. Where a fixed fee for Additional Services is established by mutual agreement between City and Contractor, compensation to Contractor shall not exceed the fixed fee amount.

5. Key Personnel. All of the individuals identified below are necessary for the successful prosecution of the services due to their unique expertise and depth and breadth of experience. There shall be no change in the personnel listed below, without written approval of the City Representative. Contractor recognizes that the composition of this team was instrumental in the City's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Agreement and shall be grounds for termination.

Key personnel: [INSERT LIST OF EMPLOYEES NAMES – If the project does not require assignment of specific personnel, delete "Key Personnel" section]

EXHIBIT B

COMPENSATION

1. Contractor's Compensation.

A. City agrees to pay Contractor, at the rate(s) specified below, for those services set forth in Exhibit A of this Agreement and for all authorized reimbursable expenses, for a total not to exceed [insert dollar amount in words - e.g. Two Thousand Five Hundred Fifty Dollars and 13 Cents] [insert dollar amount in number- e.g., \$2,550.13].

Contractor shall notify City in writing no later than thirty (30) days prior to the estimated date when Contractor will have billed City the maximum payment amount permitted under this Agreement, and Contractor shall provide City with an estimate of the additional compensation required to complete the project.

2. Appropriate Billable Hourly Rates for Services and Additional Services.

Contractor's billable hourly rates shall be:

[Insert Name, Title and Hourly Rate]

or

["Contractor will perform the services according to the schedule contained in Attachment [insert number] of [insert letter]."]

3. Contractor's Reimbursable Expenses.

Reimbursable Expenses shall be limited to actual reasonable expenditures of Contractor for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by City.

4. Payments to Contractor.

A. Payments to Contractor shall be made within a reasonable time after receipt of Contractor's invoice, said payments to be made in proportion to services performed. Contractor may request payment on a monthly basis. Contractor shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of City.

B. All invoices submitted by Contractor shall contain the following information:

1. Description of services billed under this invoice
2. Date of Invoice Issuance
3. Sequential Invoice Number
4. City's Purchase Order Number (if issued)
5. Social Security Number or Taxpayer Identification Number
6. Amount of this Invoice (Itemize all Reimbursable Expenses")
7. Total Billed to Date

C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to Contractor for correction. City shall not be responsible for delays in payment to Contractor resulting from Contractor's failure to comply with the invoice format described above.

5. Accounting Records of Contractor.

Contractor shall maintain for three (3) years after completion of all services hereunder, all records under this Agreement, including, but not limited to, records of Contractor's direct salary costs for all Services and Additional Services performed under this Agreement and records of Contractor's Reimbursable Expenses, in accordance with generally accepted accounting practices. Contractor shall keep such records available for audit, inspection and copying by representatives of the City's Finance Department or other government agencies during regular business hours upon twenty four (24) hours notice.

The obligations of Contractor under this section shall survive this Agreement.

6. Taxes.

Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request. Contractor hereby agrees to indemnify and defend City for any claims, losses, costs, fees, liabilities, damages or injuries suffered by City arising out of Contractor's breach of this section pursuant to the Indemnification provisions of this Agreement.

- 7. Taxpayer Identification Number.** Contractor shall provide City with an IRS Form W-9, Request for Taxpayer Identification Number and Certification, containing an original signature and any other State or local tax identification number requested by City.

EXHIBIT C

INSURANCE REQUIREMENTS

I. TYPES OF INSURANCE

- A. Commercial General Liability Insurance: Contractor's General Liability insurance shall include contractual liability coverage. Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the Contractor's operations under this Agreement, whether such operations be by Contractor or by any sub-Contractor or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000), in aggregate or Three Million Dollars (\$3,000,000) combined single limit bodily injury and property damage for each occurrence. Contractor shall provide the City with certificates of insurance and copies of additional insured and primary coverage endorsements evidencing the insurance coverage required by this Agreement.
- B. Automobile Liability Insurance: Contractor shall take out and maintain during the life of this Agreement such Automobile Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000) for each occurrence combined single limit or not less than One Million Dollars (\$1,000,000) for any one (1) person, and One Million Dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage. Contractor shall provide the City with certificates of insurance and copies of additional insured and primary coverage endorsements evidencing the insurance coverage required by this Agreement.
- C. Worker's Compensation and Employer's Liability Insurance: Contractor shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement".

- D. Professional Liability Insurance: Contractor shall take out and maintain during the life of this Agreement a policy of professional liability insurance, protecting it against claims arising out of the acts, errors, or omissions of Contractor pursuant to this Agreement, in the amount of not less than One Million Dollars (\$1,000,000) per claim. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

II. ADDITIONAL REQUIREMENTS

- A. Broader Insurance Coverage: In the event that Contractor maintains broader coverage and/or higher limits than the City's minimum requirements, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance shall be called upon to protect it as a named insured.
- B. Additional Insured Status: The City of East Palo Alto, its subsidiary agencies, directors, officers, employees, agents, independent contractors and volunteers shall be named as additional insureds on any such policies of comprehensive general and automobile liability insurance.
- C. Primary and Non-Contributory Coverage: Except for professional liability and worker's compensation insurance, the policies shall also contain a provision that the insurance afforded to the City, its subsidiary agencies, and their directors, officers, employees, agents, independent contractors and volunteers based on additional insured status shall be primary and non-contributory insurance to the full limits of liability of the policy, and that if the City, its subsidiary agencies and their directors, officers, employees, agents, independent contractors and volunteers have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. Verification of Coverage: Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause). All certificates and endorsements are to be received and approved by the City Attorney's Office at least five days before Contractor commences work to be performed pursuant to the agreement.

- E. Notice of Cancellation: Contractor shall provide thirty (30) days' notice, in writing, to the City, at 2415 University Avenue, East Palo Alto, CA 94303, of any pending change or cancellation of the policy.

- F. Deductibles or Self-Insured Retentions: Prior to the execution of this Agreement, any deductibles or self-insured retentions must be declared to and approved by City.

- G. Breach: In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

EXHIBIT D

CITY OF EAST PALO ALTO'S POLICY AGAINST DISCRIMINATION, HARASSMENT AND RETALIATION

EFFECTIVE DATE: 12/21/2004

REVISED DATE: 1/12/07

ADOPTED BY CITY COUNCIL: 12/21/2004

I. PURPOSES

The purposes of this policy are to emphasize the City's commitment to keeping its workplace free of harassment, discrimination and retaliation, to define and provide examples of the conduct that is prohibited, to summarize the respective responsibilities for preventing, reporting, investigating, and responding to violations and to give clear warning of the serious consequences that violators will face.

A copy of this policy shall be provided to all persons who are subject to it, and shall be posted on City bulletin boards in all City facilities.

II. POLICY

All of the following are prohibited by this Policy:

- Discrimination or harassment in any aspect of City employment based on any legally protected characteristic or status, including sex, gender, sexual orientation, race, color, national origin, language, ancestry, religion, age, marital status, domestic partner, physical disability, mental disability, or medical condition.
- Retaliation for opposing, filing a complaint about, or participating in an investigation of, any such harassment or discrimination.
- Aiding, abetting, inciting, compelling, or coercing or any such discrimination, harassment or retaliation, or attempting to do so.

The City will take all reasonable steps necessary to prevent such misconduct from occurring, and to remedy and punish any occurrence. Any City employee, Council member, member of any advisory body, including any Commissioner, Committee member, or Board member found having engaged in any such misconduct will be subject to disciplinary action up to and including termination or censure or removal and will be deemed to have acted outside the course and scope of his or her employment.

This policy applies to all City employees, volunteers, interns, vendors, and contractors as well as to all applicants for City positions.

The policy shall not be interpreted or applied in any manner that would be inconsistent with any applicable State or Federal law or regulation, or increase the legal liability of the City.

III. DESCRIPTION AND EXAMPLES OF PROHIBITED HARASSMENT

Harassment on the basis of sex is unlawful, and is prohibited by this policy. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- An individual's submission to such conduct is made explicitly or implicitly, a term or condition of that individual's employment; or,
- An individual's submission to or rejection of such conducts is used as the basis for an employment decision affecting that individual; or,
- The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, abusive, or offensive work environment.

Sexual harassment need not be motivated by sexual desire or gratification, and may include nonsexual conduct motivated by the violator's hostility towards the victim's gender, or towards the victim's nonconformity to gender stereotypes. Sexual harassment includes not only conduct motivated by gender, but also by pregnancy, childbirth, or a related condition. A harasser may be either male or female, and the victim may either be the same sex or the opposite sex. Even a person who is not the intended target of harassment may be harassed by it if he or she witnesses it.

Sexual harassment may be verbal, visual, or physical. For example:

- Verbal harassment may consist of derogatory, threatening, or intimidating comments, epithets, slurs or jokes; references to gender, physical appearance, attire, sexual prowess, marital status, or pregnancy; or sexual advances, propositions, or demands.
- Visual harassment may consist of displaying or circulating derogatory or offensive posters, cartoons, drawings, photographs, pin-ups, computer images, or electronic media transmissions.
- Physical harassment may consist of assault, battery, or unwelcome, unnecessary and offensive touching (kissing, hugging, patting, rubbing, pinching, brushing against), staring, leering, gesturing, whistling or making noises, impeding or blocking movement, or physical interfering with normal work or movement.

In addition to prohibiting harassment based on sex or gender, this policy also prohibits harassment based on sexual orientation, or upon any other legal protected characteristic or status, such as race, religion, creed, color, national origin, language, ancestry, physical disability, mental disability, medical condition, marital status, domestic partner, or age.

Harassment on the basis of such factors is subject to the principles applicable to sexual harassment, as stated above.

IV. REPORTING DISCRIMINATION, HARASSMENT OR RETALIATION

Any City employee, volunteer, intern, vendor, contractor, or applicant who becomes aware of any discrimination, harassment or retaliation prohibited by this policy shall report it immediately to their immediate supervisor, or higher ranking supervisor, or the Assistant City Manager. Under no circumstances shall such a report be required or expected to be made to the person who engaged in the misconduct that is subject to this report.

The responsibility to report conduct prohibited by this policy arises even if the conduct is directed toward someone else and even if the person toward whom it is directed does not want it reported.

Reports may be made orally or in writing, free of requirements as to form.

Because reports of conduct prohibited by this policy will be treated as serious charges, the making of a deliberately false report, or a report made with reckless disregard for its truth or falsity, may subject the maker to disciplinary action.

V. INVESTIGATION AND RESOLUTION

The City of East Palo Alto will investigate all reported violations of this policy. All employees, volunteers, interns, vendors and contractors, members of the City Council, or members of a City advisory body shall cooperate with any such investigation.

Any supervisor, manager department head, member of the City Council, or member of a City advisory body who receives a report of, or who becomes aware of, conduct prohibited by this policy shall promptly report it to the Personnel Officer. Upon receiving the report, the Personnel Officer shall direct any report that accuses a City Council member or appointee to the City Council for investigation and resolution. The City Council shall delegate the responsibility to conduct a prompt, full, and fair investigation to the qualified private investigator. Upon receiving a report regarding a non-City

Council member or appointee, the Personnel Officer shall conduct a prompt, full, and fair investigation, or delegate that responsibility to a qualified City employee or private investigator. The person performing the investigation shall:

- Interview the complainant, the accused, and any other person the investigator believe to have knowledge relevant to the charges;
- Gather and review any documentary, electronic, or physical evidence relevant to the charges;
- Consult with legal counsel as needed;
- Determine whether the charges can or cannot be substantiated; and
- Develop recommendations for appropriate remedial and/or disciplinary action, if any.

VI. OUTSIDE ADMINISTRATIVE AGENCIES

In addition to the remedies described in this Policy, the U.S. Equal Employment Commission and the California Department of Fair Employment and Housing provide administrative complaint and investigation processes as to harassment, discrimination or retaliation on the basis of a protected status. The toll free telephone number for such office is listed below:

California Department of Fair Employment and Housing 1.800.233.3212
U.S. Equal Employment Opportunity Commission 1.800.669.4000

ATTACHMENT 2 - TREE REMOVAL PERMIT PROCESS



CITY OF EAST PALO ALTO

PLANNING DIVISION

1960 TATE STREET, CITY OF EAST PALO ALTO, CA 94303

TEL: 650. 853. 3189 E-MAIL: PLANNING@CITYOFEPA.ORG

TREE REMOVAL PERMIT (Chapter 18.28.40)

A Tree Removal Permit is required for:

1. Any tree with a main stem or trunk that measures forty (40) inches or greater in circumference at a height of twenty-four (24) inches or two (2) feet above natural grade.
2. Any tree within a public street or public right-of-way, regardless of size.
3. Any tree that existed at the time of an approval granted under the city's subdivision or zoning ordinance and required to be preserved as part of such approval
4. Any tree required to be planted as a condition of any development approval granted by the city.
5. Any tree required to be planted as a replacement for an unlawfully removed tree.

PROCESS OVERVIEW

STEP 1: Obtain an arborist report from an International Society of Arboriculture (ISA) certified arborist. The report must cite one, or more, of the criteria listed in Section 18.28.010 of the Zoning Ordinance in order to be considered for a tree removal permit.

STEP 2: Complete and submit [Universal Planning Application](#) form, [an arborist report](#) (please see more detailed requirements for the arborist report on page 2), and [a public notification packet](#) per the attached [Handout of Community Outreach Requirements policy for Small Project](#), and [tree removal permit fees](#) (according to the City's Mater Fee Schedule).

STEP 3: Staff has 30 days to review the project. During this time a site inspection will be conducted by staff.

STEP 4: When 30-day review period ends, applicant/owner will receive notice of completeness.

STEP 5: When the permit is deemed complete, a pre-approval notice will be sent out to the adjacent neighbors for 15-day period prior to the approval.

PRE-APPROVAL OVERVIEW

Applicant/owner is e-mailed a tentative approval with a list of Conditions of Approval that must be met prior to receiving the official tree removal permit letter. These conditions are outlined below:

- List of replacement tree species, if needed.
- Bond/Deposit amount equal to the market cost of the replacement tree (s) will be submitted to the City of East Palo Alto.
- Contractor information/City Business License will need to be obtained.
- Verify if encroachment permit is necessary with Engineering Division.

FINAL APPROVAL OVERVIEW

Once applicant/owner addresses all necessary conditions of approval, they must come in, with all items out-lined above, and meet with a planner to receive the official letter of approval.

POST-INSPECTION OVERVIEW

A final inspection will need to be scheduled once all Conditions of Approval and work is complete. Once final inspection is approved and signed off by staff, applicant/owner can come in to release the bond/deposit.

PART 1

PART 2

PART 3



CITY OF EAST PALO ALTO

PLANNING DIVISION

1960 TATE STREET, CITY OF EAST PALO ALTO, CA 94303

TEL: 650. 853. 3189 E-MAIL: PLANNING@CITYOFEPA.ORG

ARBORISTS REPORT REQUIREMENTS

The application shall include a report prepared by an arborist certified by the International Society of Arboriculture (ISA). The arborist report shall include all of the following, unless otherwise approved by the Planning Manager:

- Site plan showing location of the tree (include buildings, driveway, etc.);
- Clear pictures of the tree indicating location, details signs of failure or disease;
- Description of species of the tree;
- Estimated height of the tree;
- Circumference at two (2) feet above the ground of the tree;
- Discussion of the general health of the tree;
- Discussion of the tree's risk;
- Discussion of why the tree cannot be saved, including consideration of the following techniques:
 - Discussion of risk management pruning
 - Discussion of installation of structural support system
 - Discussion of improving site conditions/cultural conditions
 - Discussion of implementing integrated pest management programs
- Description of the method to be used for removal of the tree
- Reason for removal of the tree
- Proposed replacement tree, including species, size, location.
- Bond/Deposit amount equal to the market cost of the replacement tree(s).

EMERGENCY SITUATIONS

In emergency situations caused by the hazardous or dangerous condition of a tree that poses an immediate threat to the safety of life or property, the minimum necessary actions may be taken to reduce or eliminate the hazard without going through a tree removal permit process. The person responsible for actions taken shall report to the Community Development Department within five (5) working days of that action. An arborist report by a certified arborist shall be provided to document the conditions that warrant removal of the tree, including the photographs referenced above.

*Note: An encroachment permit may be required for the emergency situation through Public Works Department.



COMMUNITY OUTREACH REQUIRMENTS HANDOUT

COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT

1960 TATE STREET, CITY OF EAST PALO ALTO, CA 94303

TEL: 650. 853. 3189 E-MAIL: PLANNING@CITYOFEPA.ORG

Community outreach is meant to provide community opportunities to engage in land use review process. Project definition and outreach requirements are outlined in this handout. For more details, a full policy can be found at [Community Outreach Policy](#).

Small Project

Typical Small Project

- Second Story Addition
- New Single-Family House
- New Guest House
- Tree Removal Permit
- Minor Variance Application
- Uses allowed through administrative use permit (AUP)

Small Project Outreach Requirements

Application Received By Planning Division



Initial Noticing: Notice of Development Proposal

Install On-site Signage per the On-Site Posting Requirements

Mailed Noticing

Website Posting by Staff

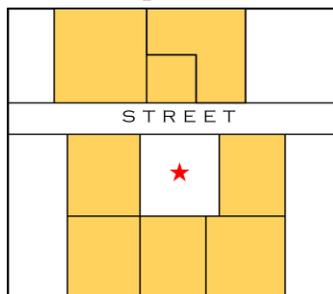


Pre-Approval Mailed Noticing (15 days prior)

What Does Applicant Need To Do?

1. **On-Site Posting.** Install a Notice of Development Proposal (info provided by project planner) sign board on the subject site. For installation details, please see the [On-Site Posting Policy](#).
2. **Public Notification Packet.** Applicant will need to provide a mailing packet for staff to mail the noticing to the owners that are the immediate neighbors of the site. The mailing packet shall include:

- Property Owners Map. See a sample below:



Immediate Neighbors

- Property Owners Labels: two (2) sets of mailing labels and one (1) copy needed.

ASSESSORS PARCEL NO.	Label: 1" x 2¾" in size on
OWNERS' FULL NAME(S)	3-column, 8½" x 11"
ADDRESS STREET #APT	sheets; such as Avery
CITY, STATE ZIP	5160 or 5960
- Stamped Envelopes. At minimum, one set of stamped (USPS Forever Stamps) business size envelopes for all required owners and/or occupants must be provided for staff use.
- Public Notice Affidavit: Download and sign the form [Public Notice Affidavit](#).

 Applicant is fully or partially responsible for

**ATTACHMENT 3 – STAFF REPORT ADOPTION OF THE FINAL URBAN FOREST MASTER
PLAN AND AMENDMENT TO RELATED TREE ORDINANCES**



EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE: April 19, 2022

TO: Honorable Mayor and Members of the City Council

VIA: Jaime M. Fontes, City Manager *Jaime M. Fontes*

BY: Amy Chen, Community & Economic Development Director
Elena Lee, Planning Manager

SUBJECT: Adoption of the Final Urban Forest Master Plan and Amendments to Related Tree Ordinances

Recommendation

1. Accept the staff report and adopt the final Urban Forest Master Plan (“UFMP”); and
2. Waive the First Reading and introduce an Ordinance amending Chapter 12.16 and Chapter 18.28 of the East Palo Alto Municipal Code and miscellaneous provisions related to trees.

Alignment with City Council Strategic Plan

This recommendation is primarily aligned with:

Priority No. 1: Enhance Public Safety and Emergency Preparedness

Priority No. 4: Improve Public Facilities and Infrastructure

Priority No. 6: Create a Healthy and Safe Community

Background

In August 2018, the City Council authorized the City Manager to enter into an agreement with Cal Fire to accept the 2017-2018 Urban & Community Forestry California Climate Investment Grant: “From Gray to Green: An Urban Forest Master Plan for East Palo Alto” (also known as the CalFire Grant), which included up to \$280,680 to develop the first Urban Forest Master Plan (UFMP) and to update the Tree Protection Ordinance, along with \$50,000 dedicated to planting 100 trees in the community with Canopy considered the lead partner for this effort.

In January 2020, City Manager was authorized by City Council to identify the Aquatic Science Center as the primary agency with San Francisco Estuary Institute (“SFEI”) to administer the CalFire grant goals, objectives and completing deliverables. SFEI along with Hort Science Bartlett Consulting and Canopy, have partnered with the City of East Palo Alto for the CalFire

Grant. This team has been developing a 40-year UFMP through community outreach with various groups and establishing an UFMP Steering Committee to create a shared vision and a list of goals, access current statuses and benefits of trees and strategize an action plan. SFEI is the lead consultant on this project assisting City staff with the development of the UFMP and these proposed ordinance revisions. Canopy is primarily in charge of planting the 100 trees in the community but also conducting training and outreach on the UFMP efforts.

On May 7, 2021, oversight and management of the UFMP project, including grant management of the CalFire grant, was transferred from Michelle Daher in Public Works to the City's Community and Economic Development (CED) Director, Amy Chen. The Public Works Department will continue to lead current activities related to the maintenance of street trees. Where needed, CED staff will work together with Public Works especially upon implementation of the revised code provisions.

On May 24, 2021 and June 15, 2021, the Planning Commission and City Council, respectively, received an introductory presentation on the UFMP and the anticipated timeline.

CalFire recently received legislative approval to extend grants issued in 2017 and 2018 from March 30, 2022 to March 30, 2023, due to challenges brought on by the COVID-19 pandemic. Staff made the request to extend the CalFire Grant deadline to March 30, 2023 and CalFire approved this request. Contracts with SFEI and Canopy have been extended to ensure the grant requirements are met. Although there is more time to focus on the UFMP project, City staff and the consultant team felt it important to keep up the momentum of work done on the project thus far.

On November 16, 2021, City staff and consultants presented to City Council a progress report on the CalFire Grant and sought direction on the final UFMP based on a draft version submitted with the staff report. The City Council provided direction on recommendations to be included in the UFMP and directed staff to return to Council with draft revisions to tree-related ordinances, specifically in Chapters 12.16 and 18.28 of the East Palo Alto Municipal Code. A summary of this meeting is further discussed in the analysis section below.

On April 11, 2022, City staff and consultants presented the UFMP and an ordinance amending Chapter 12.16 and Chapter 18.28 of the East Palo Alto Municipal Code and miscellaneous provisions related to trees to the Planning Commission. The Planning Commission unanimously accepted the staff report and recommended City Council adopt the UFMP. The Planning Commission suggested a change to the Development Code in Chapter 18.28 to require all private tree removal permits to be heard by the Planning Commission. This item will be further discussed in the analysis section below.

The purpose of this staff report is to seek Council approval of the final UFMP and seek approval to adopt proposed changes to the Municipal Code to support the goals and objectives of the East Palo Alto Urban Forest Master Plan.

Analysis

The Urban Forest Master Plan

An urban forest master plan is a roadmap towards a shared vision for the future of the city's tree canopy. Funded by the CalFire Grant described above, the City has drafted an Urban

Forest Master Plan to evaluate and plan for the City's trees.

The plan has two goals and three objectives:

GOALS	OBJECTIVES
<ol style="list-style-type: none">1. Grow a healthy, extensive, vibrant, and diverse urban forest to provide 20% canopy cover by 2062 and 30% by 2122.2. Connect with an engaged and informed community to provide stewardship of the urban forest.	<ol style="list-style-type: none">1. Grow the urban forest2. Define responsibilities and support improved maintenance practices and protections for public and private trees3. Connect with the community around tree stewardship

The initial development of the UFMP started with several focus group meetings with key community stakeholders including Anamatangi Polynesian Voices, El Comite, Youth United for Community Action, the Senior Advisory Committee, the Ravenswood business community, and local churches. City staff and consultants conducted a public survey, and to boost participation, respondents were entered into a raffle drawing for gift cards. In total, 208 completed surveys were received. A UFMP community steering committee was formed and a representative from the Planning Commission (Commissioner Fisk) and City Council (Councilmember Lopez) participated in this committee to help develop the initial UFMP.

The UFMP includes three sections:

- 1) Introduction and Context,
- 2) Current Status, and
- 3) Plan for the Future.

Please see the November 16, 2021 City Council agenda report for more detail on the sections of the UFMP¹. City staff and the consultants have further refined sections of the UFMP in accordance with feedback received from City Council to prepare the attached version to present for final adoption. The adopted UFMP is a primary deliverable of the CalFire Grant. It is key for City Council to accept this staff report and adopt the final Urban Forest Master Plan which will be published online and must be submitted to CalFire.

Summary and Follow up to November 16, 2021 City Council Meeting

At the November 16, 2021 City Council meeting, City staff and consultants presented an overview of the City's current urban forest program and who is responsible for planting, maintenance, and removal of public trees, and review of applications to remove private protected trees. This work is accomplished by a combination of City staff in the Planning and Public Works departments, Canopy staff and volunteers and contracted tree care services. City staff and the consultants suggested the future program should include more public engagement around tree care and protection issues and suggested clarifying some of the details in the tree ordinances to help make implementation procedures clearer for both the public and City staff. City Council agreed the City should take more responsibility for

¹ November 16, 2021 City Council meeting, agenda item 9.1:
http://eastpalocalto.igam2.com/Citizens/Detail_LegiFile.aspx?Frame=None&MeetingID=1431&MediaPosition=15434.576&ID=1963&CssClass=

maintaining public trees, rather than having private property owners take on responsibilities.

Please see attached summary of the questions and discussion items from the November 16, 2021 City Council meeting. The main concern was whether City staff can manage the increased workload and the scope of the overall staffing and budget implications of the recommendations of the UFMP. City staff and the consultants developed a matrix of all the roles and responsibilities to begin to evaluate the needs for additional resources. The primary needs identified include expanding contracted services to accommodate a proactive grid pruning approach, to record tree care activities in a tree inventory, and to provide support during removal permit review. These changes should be scoped with the City's existing contractor or in a new RFP. Additional time spent on review of tree removals and the issuance of tree removal permits associated with development will take an unknown amount of additional staff time, depending on the degree to which they are needed. A new investment in community engagement and outreach around trees also is recommended if resources allow.

Updates to City Tree-Related Ordinances

Recommendations from the Plan can be implemented in part through changes to the City's tree regulations and related staff procedures. Changes are intended to improve some internal processes, make requirements clearer and easier to implement, encourage more tree planting, and build in more opportunity for public input.

The following needs were identified for changes:

- **Public Trees** – Current public tree ordinances lack standard components, including specifying responsibilities and standards. Additionally, grid or cycle pruning public trees will allow more trees to be pruned for fewer dollars spent while proactively pruning trees to American National Standards Institute A300 standards, in alignment with recommendations of the UFMP.
- **Private Trees** – Recommended revisions pertaining to private trees would match the Development Code with best management practices. Recommendations including removing the exemption for development-related tree removals to allow the City to track and report on the impact of development on the urban forest. An expanded permit approval hearing process will increase public visibility. Additionally, adding a shading requirement for parking lots would encourage expansion of urban tree canopy cover.

As directed by City Council, City staff and consultants looked at all current city ordinances related to trees and concluded it is preferable to have one clear ordinance for public trees and one for private trees, and propose the following changes:

- **Public trees** – Key revisions to Chapter 12.16 and deletion of Section 13.24.410 (Street Trees) so that Chapter 12.16 now encompasses street trees and refocuses on all trees on public property and in the public right-of-way, including setting a policy to enact a proactive maintenance program.
- **Within the Development Code**
 - **Private trees** – Current Chapter 18.28 focuses on landscaping and trees. The proposed ordinance changes focus to streamlining the tree removal permit application process for trees on private property and requiring tree removal permits for development projects.
 - **Parking lots** – Revisions to Section 18.30.090 enhance tree planting

requirements in parking lots.

These changes were reviewed in a public community meeting held on March 30, 2022. Further synopsis of the public community meeting is described below. All residents and homeowners in the city were notified of the meeting via a postcard mailer and invited to attend the Planning Commission meeting on April 11, 2022.

Summary and Follow up to April 11, 2022 Planning Commission Meeting

At the April 11, 2022 Planning Commission meeting, City staff and consultants presented the UFMP and the proposed ordinance changes. The conversation centered primarily around three topics:

- **Parking lot shading** – In order to expand tree canopy in the city, staff and consultants recommended an addition to the parking lot design standards in 18.30.090 to require 50% tree canopy cover over new parking lots within 15 years of development permit approval. The Planning Commission questioned if the new provisions requiring shading over 50% of parking lot areas was too much. Discussion centered on how private development projects can ensure 50% cover within 15 years of permit approval. The Planning Commission accepted this change.
- **Protected trees** – The consultants presented a diagram showing the current ordinance, for both public and private trees, where a tree's circumference should be measured at 40 inches above ground. If the tree has a circumference of 24 inches or greater, this tree would be considered a protected tree. The consultants further explained that the current practice in East Palo Alto is to measure at 24 inches above grade and trees with a circumference of 40 inches or greater are considered protected. City staff and the consultants suggest changing the ordinance so that the measurements are taken at 54 inches above grade (industry standard height) and trees with a diameter of 8 inches (equivalent to circumference of 25 inches) are considered protected. This change will set a standard measurement that other cities also follow. With staff and community education, applying this change in practice will result in more trees protected. The Planning Commission accepted this change.
- **Tree removal permit application process** – Currently tree removal permits for private trees are processed and approved administratively by the Director of the Community and Economic Development Department or delegated to the Planning Manager. Tree removal permits may be applied for through the Universal Planning Application process. City staff reviews the tree removal application for completeness and works with the applicant to post all notices including an initial 300-foot radius pre-decision mailer and on-site noticing (posted on the tree being considered for removal). Once the review is complete, staff issues the decision and removal permit, usually within 4 weeks if everything is submitted properly by the applicant. Decisions also follow noticing requirements, consistent with the Municipal Code and the Community Outreach Policy. There is ongoing communication with the applicant to confirm all posting and mailings occur, and to confirm tree replacement as well as requesting a financial deposit (averaging \$200-\$350 to cover the cost of each replacement tree, but not the cost of planting). This deposit is returned afterwards once staff confirms that all replacement trees were planted and there are no deficiencies in the replanting. Applicants also pay a permit fee as set by the Comprehensive Fee Schedule, which is currently \$356 each for the first two trees and \$762 for three or more trees.

Originally, to increase awareness and transparency to the public about tree removal permit applications, City staff and the consultants recommended adding a step to allow the public to request a Director's Hearing to discuss the permit approval or denial decision and provide public comment. Decisions made at the Director's Hearing would then be appealable to the Planning Commission. A Director's Hearing can be scheduled more flexibly than a Commission hearing and is a process already included in the Municipal Code. An example is Temporary Use Permits, which are efficiently heard at Director's Hearings and require published notices prior to the public hearings. If a Director's Hearing is not requested within 15 days of the staff decision being posted via a notice, then the permit is deemed effective. Per the current Comprehensive Fee Schedule, an appeal to the Planning Commission would cost \$7,979. Requesting a Director's Hearing is expected to cost \$1,847. The Planning Commission recommendation regarding Chapter 18.28 is to require all private tree removal applications to be heard by the Planning Commission to increase public transparency.

If the Planning Commission reviews all private tree removal applications, staff would still complete the initial review and noticing mentioned above. Involving the Planning Commission hearing noticing and newspaper advertisement requires a lead time of 15 days and would be an added cost in the process. Preparation for the Planning Commission public hearing would add an additional 3-4 weeks because it would occur after the initial review, doubling the initial process timeline and potentially the cost of the tree removal permit.

Of 12 cities surveyed, a majority only require director review and approval for tree removal permits and decisions are appealable to some sort of public review body like a commission. If the modified recommendation were accepted by Council, East Palo Alto will be the only City surveyed that requires tree removal permit applications to go to the Planning Commission directly. See attachment 4 for details.

Over the past several years, on average the City processes few permits each year:

- 2017 tree removal permits: 20
- 2018 tree removal permit: 9
- 2019 tree removal permit: 21
- 2020 tree removal permits: 13
- 2021 tree removal permits: 8
- 2022 tree removal permits: 4 so far

On average, half of those permits filed are after the tree has already been removed, and the community engagement process associated with this project highlighted a strong perception that the current ordinance is not widely followed. Thus, there is concern with requiring tree removal applications to go to Planning Commission that compliance with filing a removal application before cutting the tree down could be reduced even further, and more people will illegally remove trees due to the extended timeline and increased cost associated with following the correct process. This would be opposite the intended effect of increasing public awareness and the purpose of the UFMP to increase tree canopy.

Upon further review of the suggested ordinance changes, City staff recommend the City Council do not change anything in the current tree ordinances as it relates to the tree

removal permit process. The revised ordinance establishes a review and public outreach process intended to clarify the process and require public noticing, which staff will implement immediately. To still aid in increased transparency and to help track the effectiveness of these tree ordinance updates, City staff may provide a periodic report to Planning Commission on the number of tree removal permits that are processed and approved. This approach is the best balance considering staff workload, costs to the applicant, and the public transparency of tree removal permits.

There were some minor corrections to the ordinance text that Planning Commission included as a part of its motion when approving the UFMP and the tree related ordinance changes. These minor corrections are included in the ordinance attached to this staff report for Council consideration.

Next Steps

City staff and the consultants want to emphasize that although the UFMP is the main deliverable required of the CalFire grant and Planning Commission was unanimously supportive of finalizing that report, the approval of these tree related ordinance changes is critical to making the recommendations of the UFMP effective. More specifically, key recommendations are the ordinance changes around the parking lot shade being increased to 50%, standardizing the protected tree definition measurement, defining and updating public tree maintenance practices, and requiring tree removals associated with development projects to submit tree removal permit applications.

If City Council introduces the Ordinance at this meeting, the Ordinance may be adopted at the next City Council meeting on May 3 and would typically take effect 30 days thereafter. City staff suggests this Ordinance not take effect until October 1, 2022 to allow time in both CED and PW to set up procurements and make necessary changes to the City's Master Fee schedule, which will follow its own public hearing timeline.

Public feedback has suggested that delayed implementation will lead to additional tree removals before changes take effect. The City's Code Enforcement team are working to deploy additional overtime shifts this spring to avoid tree removals without permits. The current ordinance protects trees of approximately the same size, meaning there will not be a large number of trees that gain protection when the changes go into effect.

The Ordinance would apply to both public and private trees, and tree removal permits could still be submitted under the current code requirements and procedures. As noted above, adoption of these ordinance changes will require the City to review and update internal procedures and processes.

Staff will return to City Council with recommendations on future staffing or outside consultant contracts, for example to hire an on-call tree arborist to assist both Public Works and the Planning Division.

Fiscal Impact

There are no fiscal impacts associated with the items discussed in this staff report. Staff will

return with recommendations for adequate staffing and potential procurements for an on-call arborist to support the implementation of the UFMP and the tree ordinances. If there are any changes to the tree removal permit fees and a consultant is hired to provide arborist services, monetary impacts will be addressed through a separate City Council action and will eventually fall in line with the annual Master Fee schedule update. At this time, there are no impacts on the City's general fund or staffing. Preparation of the UFMP and the ordinance updates were covered by the CalFire Grant.

Public Notice

The public was provided notice via publication in the Palo Alto Daily News on April 8, 2022, and by posting the agenda on the City's official bulletin board outside City Hall and making the agenda and report available online at <http://eastpalalto.iqm2.com/Citizens/Default.aspx>.

Public Input

On March 30, 2022 a virtual public community meeting was held to discuss the UFMP and potential ordinance updates. The public meeting was posted on the City website, promoted through the City's email newsletter (4,400 recipients). Postcards were mailed to all City of East Palo Alto residents and landlords, totaling to nearly 8,000 postcards were mailed out in early March 2022.

A total of 8 community stakeholders participated and the following key topics were discussed:

- How the changes to the ordinance are actually going to strengthen the tree protection ordinances
- Applicability and timing of noticing for development permits
- Reviewing which trees are protected and how to actually match current practice with the current ordinance so that measurements are taken properly

Environmental

The action being considered does not constitute a "Project" within the meaning of the California Environmental Quality Act (CEQA), pursuant to CEQA Guideline section 15378 (b)(5), in that it is a government administrative activity that will not result in direct or indirect changes in the environment.

Attachments

1. Ordinances
2. East Palo Alto Urban Forest Master Plan, draft
3. Key Discussion Points from the November 2021 City Council meeting
4. Benchmarking Summary of Approvals Appeals and Fees

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF EAST PALO ALTO

REVISING CHAPTERS 12.16 AND 18.28 OF THE EAST PALO
ALTO MUNICIPAL CODE RELATING TO TREES, MAKING
CONFORMING AMENDMENTS TO SEVERAL OTHER SECTIONS
AND REPEALING SECTION 13.24.410

THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO DOES ORDAIN AS
FOLLOWS:

SECTION 1. CHAPTER 12.16 REVISED.

Chapter 12.16 of the East Palo Alto Municipal Code is revised in its entirety as set forth in Attachment A.

SECTION 2. CHAPTER 18.28 REVISED.

Chapter 18.28 of the East Palo Alto Municipal Code is revised in its entirety as set forth in Attachment B.

SECTION 3. SECTION 18.08.010 AMENDED.

Section 18.08.010, under “D” Definitions, the definition of Department and the definition of Director, respectively, are revised to read:

Department. The Community and Economic Development Department responsible for administering the Development Code.

Director. The Director of the Community and Economic Development Department of the City of East Palo Alto, or authorized designee(s).

SECTION 4. SECTION 18.30.090 AMENDED

Subsection D.4. of Section 18.30.090 is amended and a new Subsection D. 6. is added to Section 18.30.090 to read:

D.4. **Parking lot shade.** At least 50% of a paved parking lot shall be shaded with tree canopies within 15 years of obtaining a building permit or certificate of occupancy. Plantings shall comply with the following specifications:

- a. Landscaping fronting a street shall include a minimum of one tree for every 30 feet of frontage. Trees shall be a minimum of 15 gallons in size and six feet in height at the time of planting and shall be of a fast growing variety capable of providing maximum shade coverage.
- b. Tree well dimensions shall be a minimum of 6' X 6'. Irregular tree well design may be allowed if a minimum of 36 square feet of surface area is provided and a minimum of 85 cubic feet of rootable soil volume is incorporated into the tree well planting. Deviations from this standard are subject to approval by the Director.
- c. Trees should be planted in the center of the tree well. For irregular tree wells, trees should be planted in equal distances from curbs.
- d. Two feet of vehicle overhang into a planter area is allowed, provided the planter has a minimum width of four feet and trees are aligned with the parking strip.
- e. Structural soil systems for trees in parking lots or hardscape areas should be used to increase the volume of rootable soil, the eventual size of the canopy, and the amount of shade the tree provides.
- f. Continuous planting islands are encouraged to allow for multiple tree plantings and increased rootable soil volume. These islands could be designed to incorporate surface water runoff treatment measures such as bio-swales. To increase the amount of planting area available for shade trees, planter fingers connected to continuous planting islands are recommended.
- g. If more than 10 trees are required, a mix of tree species or cultivars shall be provided. If 20-40 trees are required, no more than 50% of the trees may be of the same type. If more than 40 trees are required, no more than 25% of the trees may be of the same type
- h. Native climate-adapted species are recommended.
- i. Parking lot lighting should not conflict with required shade tree locations or growth. Light standards no greater than 16 feet in height are preferred. Buildings located close to streets must reduce potential conflicts between trees and free-standing signs.
- j. If the installation of required trees is not feasible due to conditions such as soil contamination, groundwater levels or utility easements, an in-lieu fee or an alternative tree planting program may be approved, as set forth in Chapter 18.28.

D.6. Permanent irrigation system and maintenance. All planting areas shall be planted to maximize benefits and minimize hazards. Trees shall be provided with permanent irrigation, monitored and regularly maintained.

SECTION 5. SECTIONS 18.104.010, 18.104.020 and 18.104.030 AMENDED.

Sections 18.104.010, 18,104, 020 and 18.104.030 are revised to read:

18.104.010 - Purpose and Intent

The purpose of this chapter is to describe the authority and responsibilities of the City Council, Planning Commission, Director of Community and Economic Development and the Planning Division in the administration of the Development Code.

18.104.020 - Planning Agency and Advisory Agency

The Planning Division staff function as the Planning Agency, when so required by provisions of the Government Code. The Planning Commission is the Advisory Agency, in compliance with Government Code Section 65101.

18.104.030 – Director of Community and Economic Development

A. **Appointment.** The Director of Community and Economic Development shall be appointed by the City Manager.

B. **Duties and Authority.** The Director shall:

1. Have the responsibility to perform all of the functions designated by state law;
2. Perform the duties and functions prescribed in the Development Code, Government Code Section 65901 et seq., and the California Environmental Quality Act (CEQA).
3. Have the authority to defer action on an application and refer the request to the Commission for consideration and final action;
4. Perform other responsibilities assigned by the City Manager, Commission or Council; and
5. Delegate the responsibilities of the Director to Department staff under the supervision of the Director.

C. **Imposition of Conditions.** In making decisions on applications, the Director may impose conditions the Director deems reasonable and necessary to implement the General Plan, any applicable specific plans, the Municipal Code, and to further the public health, safety and general welfare of the community.

SECTION 6. TABLE 7-1 REVIEW AUTHORITY AMENDED

Table 7-1 Review Authority is amended to include Tree Removal Permit, as set forth in Attachment C.

SECTION 7. SECTION 13.24.410 REPEALED.

Section 13.24.410 of the East Palo Alto Municipal Code is hereby repealed.

SECTION 8. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This Ordinance is not subject to CEQA because it is not a “project” which would have a direct physical change or a reasonably foreseeable indirect physical change on the environment pursuant to California Environmental Quality Act ("CEQA") Guidelines section 15378. Even if it were a project subject to CEQA review, this project would be exempt from CEQA Guideline Section 15378 (regulatory actions), Section 15061(b)(3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning). The Council therefore directs that the Planning Division may file a Notice of Exemption with the San Mateo County Clerk.

SECTION 9. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

SECTION 10. EFFECTIVE DATE.

This Ordinance shall take effect and be in full force and effect as of October 1, 2022.

SECTION 11. PUBLICATION.

The City Clerk is hereby directed to cause publication of this Ordinance as required by Government Code Section 36933.

This Ordinance was introduced at the _____ meeting of the City Council of the City of East Palo Alto.

PASSED AND ADOPTED this ____ day of _____, 2022 by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Ruben Abrica, Mayor

ATTEST:

APPROVED AS TO FORM:

James Colin, Acting City Clerk

Valerie J. Armento, Interim City Attorney

Attachment A

Chapter 12.16

Trees on Public Property and In the Public Right-of-Way

12.16.010 Title and Purpose

A. This chapter may be referred to as the “Trees on Public Property and Street Tree Ordinance”.

B. The City of East Palo Alto recognizes the importance of trees and the benefits they provide. The purpose of this chapter is to manage city tree resources by regulating the planting, maintenance, and removal of trees in public places. The provisions of this chapter are enacted to carry out the goals, policies, regulations, and standards set forth in the City of East Palo Alto Urban Forest Master Plan and are necessary to ensure the City will realize the benefits of healthy, stable, and sustainable public tree resources.

C. An additional purpose of this chapter is to implement the Urban Forest Master Plan to:

1. Establish and maintain maximum canopy cover in the public right-of-way within the city through programmed tree planting, maintenance, preservation, and removal.
2. Maintain species and genetic diversity to stabilize the urban forest as a buffer against pest and disease outbreaks and minimize decline in canopy cover.
3. Implement ANSI A-300 tree maintenance practices such as regular inspections and structural pruning at time of planting to increase tree value and associated benefits and protect the tree resource by regulating activities that will harm trees.

12.16.020 Definitions

“ANSI A-300 Standards” means the accredited industry standards and practices for managing trees and other woody plants.

“Appraisal of tree value” means an unbiased estimate of the tree's worth performed in accordance with the current edition of the *Guide for Plant Appraisal* by the Council of Tree and Landscape Appraisers.

“Certified Arborist” means an arborist certified by the International Society of Arboriculture and approved by the director.

“Diameter” means diameter at standard height (DSH), or trunk diameter measured at 54” above grade.

“Director” means the public works director or designee.

“Dripline” means the area directly located under the outer circumference of the tree branches or with a radius of ten times the diameter of the trunk as measured at 54 inches above grade (DSH), whichever is greater.

“Excessive pruning” means the removal of functioning leaf, stem, or root area of a tree in any thirty-six (36) month period such as to cause a significant decline in health, increased risk of failure, or the unbalancing of a tree.

“Master Plan” means the City of East Palo Alto Urban Forest Master Plan, which sets forth the policies and guidelines for planting and maintenance programs for the care and protection of trees.

“Public right-of-way” means any property dedicated to public use including but not limited to streets from property line to property line, alleys, easements, dedicated bike paths or open spaces.

“Public tree” means a tree within a public park, trail, or other property owned by the city and dedicated to public use.

“Remove” means (a) complete removal, such as cutting the tree to the ground, or (b) taking any action that would lead to the death of a tree or permanent damage to its health, including excessive pruning, girdling, cutting of tree roots, poisoning, over-watering, under-watering, trenching, excavating, altering the grade, paving within the dripline.

“Street tree” means any city-owned tree located within the public right-of-way or easement.

“Tree canopy cover” means a measurement of the total area of a tree’s branches, stems, and leaves when viewed from above.

12.16.030 Authority, Responsibilities and Duties

A. The Director has the responsibility to implement and authority to make decisions and judgments to enforce the provisions of this chapter. Duties include but are not limited to:

1. Developing a comprehensive municipal tree care operations plan, including pruning, planting, and removal of public trees.

2. Developing recordkeeping protocols for all tree maintenance activities and maintaining a database reflecting the current tree inventory and accurate status of the tree resources.
3. Implementing a monitoring program to evaluate and ensure the goals of the Master Plan are met.
4. Reviewing and revising the master plan in conjunction with the annual municipal tree care budget, subject to city council approval.
5. Seeking funding from state, federal, or other granting agencies for public tree restocking and maintenance.
6. Creating a tree fund for monies collected from fines, penalties, and in-lieu payments for tree planting and establishment, and to offset maintenance services.
7. Conducting tree planting projects and education programs to encourage community participation and involvement in the city's urban forest.

B. Property owners and members of the public have the responsibility to notify the director if any problems occur regarding any street tree or if any public tree maintenance services are required.

12.16.040 Policies and Procedures

A. Recommended Street Tree List. The director shall adopt a list of trees prepared by a Certified Arborist recommended for planting in the right-of-way.

B. Street Tree Inventory. A street tree inventory shall be maintained and reside in a data management system integrated with the city's GIS and shall be fully accessible to staff. Included in the inventory are information regarding trees (species, DSH, height, canopy spread, age or estimate, health and condition); sites (GIS location, planting site specifications, vacant planting site, soil type, location of underground utilities, and water availability); cultural practices (by date of action including planting, pruning, cabling, pest control, fertilization, removal, branch or whole tree failure, priority maintenance needs); and costs (material and equipment use, and personnel hours for each cultural practice).

C. Maintenance Schedule. Street trees shall be maintained on a block/grid pruning schedule assessing and prioritizing trees according to the degree of pedestrian and vehicular traffic and species growth rate.

12.16.050 Tree Planting in Public Right-of-Way

A. Trees are required to be planted in the public right-of-way for all development, redevelopment, infill and similar projects.

B. Standards. The following standards for tree planting shall apply:

1. All trees selected for planting shall conform to the American Association of Standards, ANSI Z60.1 Specifications for Acceptance of Nursery Trees at the Time of Delivery. Tree planting shall follow the most current edition of ANSI A-300 Tree Planting, including post-planting pruning, and early tree care. Trees shall comply with the standards and recommendations set forth in the master plan related to species diversity. A maximum of twenty percent (20%) of one general and ten percent (10%) of any species may be used to meet planting requirements within the city.

2. Tree species must be appropriate for the site, keeping in mind “right tree right place” principles. Trees shall be selected for function and purpose as outlined in the master plan to shade public sidewalks, parking lots and neighborhood streets, mitigate stormwater runoff and prevent soil erosion, facilitate flood protection, create a visual barrier and filter particulate matter along heavy traffic thoroughfares, and create habitat for wildlife.

3. Trees shall be situated to maximize benefits and to minimize hazard, nuisance, hardscape damage and maintenance costs.

4. All newly planted street trees shall be scheduled for monitoring, structural pruning, and irrigation as needed during the first three (3) years of establishment.

5. All tree planting shall be recorded in a tree inventory database. The database should include date of planting and scheduled work such as monitoring, structural pruning, stake removal and irrigating as required. Suitable planting sites shall be maintained in the database for future planting.

C. Installation Requirements.

1. One specified minimum gallon size tree must be installed for every twenty-five (25) feet of property frontage.

2. Trees shall be a minimum 15-gallon size with the planting of at least one 24-inch box tree for every three 15-gallon trees planted, or one 24-inch box tree per twenty-five (25) feet of lineal footage, whichever results in a greater number of plantings.

3. Placement of all plantings in new or infill developments shall be located consistent with these requirements:

a. Twenty (20) feet from the curb returns at street intersections.

- b. Ten (10) feet from light standard power poles.
- c. Ten (10) feet from fire hydrants.
- d. Five (5) feet from water and sewer lines.
- e. Five (5) feet from service walks, driveways, buildings, walls and permanent structure.

D. Street tree planting requirements for new development shall comply with the standards set forth in Chapter 18.28. Shade tree planting specifications for tree canopy cover in parking lots shall comply with the standards set forth in Chapter 18.30.

12.16.060 Tree Pruning

A. Street tree pruning. Street tree pruning is the responsibility of the public works department and performed by certified arborists. A permit is required for authorization to prune a city street tree. Any unauthorized pruning is unlawful.

B. The following maintenance standards for pruning street trees apply:

1. All street tree pruning shall be performed in compliance with the most current edition of ANSI A300 – Pruning, which includes pruning young trees to develop lowest branching structure above roadway vehicular traffic, and crown cleaning, crown thinning, crown raising, crown restoration, crown reduction and utility line pruning in semi-mature and mature trees.

2. All street trees shall be programmed on a block pruning or grid schedule assessing and prioritizing trees according to the degree of pedestrian and vehicular traffic and species growth rate. Inspections shall be conducted prior to pruning to prioritize streets with the most pedestrian traffic and vehicular traffic and to assess trees in areas with the greatest pruning needs by species.

3. Except for pruning for utility line or traffic light clearance, or to abate a public nuisance, excessive pruning is prohibited.

4. All tree pruning shall be recorded in the tree inventory database noting date of activity, work performed, tree health status, and future maintenance needs. All contractors are required to provide work records upon completion of work.

12.16.070 Criteria for Tree Removal

A. Public tree removals are the responsibility of the public works department and shall be performed at the direction of a certified arborists. Any tree within the public right-of-way or on public property, regardless of size, is a protected tree.

B. The director may remove or cause the removal of any public tree found to be dead, damaged beyond repair, having a compromised root system that cannot adequately support the tree, causing storm drain or sanitary sewer stoppages which cannot be remedied, causing structural damage that cannot be mitigated by pruning limbs or roots, or hazardous to the public safety or welfare.

C. A tree may be removed when it interferes with proposed development, repair, alteration, or improvement of a site and preservation of the tree would be considered a taking of real property, so long as the proper permit is obtained. Tree removal, if approved, may only occur once building permits are issued.

D. A tree may be removed when removal is requested by a utility, public transportation agency, or other governmental agency due to a health or safety risk resulting from the tree's interference with existing or planned public infrastructure and preservation of the tree would add unreasonable cost to the project.

E. No liability shall be imposed upon the city or upon any of its officers or employees for damages related to an unsafe tree to relieve the owner or occupant of any private property from the duty to keep in safe condition any trees upon the property or adjacent to or overhanging the public right-of-way.

12.16.080 Permit Required

A. When a private project or entity other than the city seeks to remove a public tree from the right-of-way or a public place, or a private property owner seeks to have trees in the right-of-way pruned out of cycle at the owner's expense, a permit is required. A permit also is required to prune branches or roots of a street tree or public tree.

B. An application for a tree removal permit shall be made to the director on the form provided. The application shall be accompanied by a fee as set forth in the master fee schedule and shall provide a justification for the action to be taken. The director shall conduct an inspection and determine whether to approve or deny the application.

C. If the application is approved, the property owner must follow all noticing requirements. The issuance of the permit may be reconsidered by the director or appealed to the city manager. If no request for reconsideration or appeal is filed, the work may be performed as approved and in compliance with all requirements to provide proper and sufficient measures to mitigate against any hazards or nuisances. The property owner is responsible for any damages, necessary repairs or needed replacements. Unauthorized removal is unlawful.

12.16.090 Notices

A. For Removal. All public tree removals, except those that are part of a capital improvement project approved by the City Council, must be noticed for a period of fifteen (15) days on a list made publicly available and with a dated notice attached to the tree. Trees determined by the city to be an imminent risk to public safety may be removed without noticing.

B. For Pruning. Notice must be given to the property owner at least three (3) working days prior to scheduled street tree pruning. The notice may require no parking at the curb adjacent to the tree to provide for equipment access.

12.16.100 Reconsideration and Appeals

A. Reconsideration. Reconsideration of the decision to approve or deny a removal permit may be requested by any member of the public on the basis of the criteria used to make the determination. Request for a hearing to publicly review the decision must be submitted in writing to the director within fifteen (15) days after notice of the decision is provided. Notice of the reconsideration decision will be mailed to the applicant, the owners and occupants of all adjacent properties, and any person requesting notice of the decision. The decision shall become final fifteen (15) days after the notice is mailed.

B. Appeal. The decision of the director may be appealed within fifteen (15) days of the notice of decision to the city manager, who shall review the record and make a decision. Decisions of the city manager shall be final.

12.16.110 Replacement of Trees or In-Lieu Fee

A. If the city allows a tree to be removed, replacement tree(s) of an equivalent value must be planted or an in-lieu fee must be paid. Replacement tree(s) planted on-site are a priority. More than one replacement tree may be required to accomplish the goal of replacing the lost canopy.

B. If replacement on a one-to-one basis cannot be fully accomplished in the immediate vicinity of the removed tree(s), staff may authorize payment of in-lieu fees. The value of the removed tree(s) shall be calculated in compliance with the most recent edition of the *Guide for Plant Appraisal* by the Council of Tree and Landscape Appraisers.

C. Tree planting replacement requirements for the removal of a street tree shall be based on canopy size, measured as the average distance across the canopy in four cardinal directions.

D. The replacement standard shall be as follows:

Street tree canopy size	Replacement tree size
4'-9'	Two (2) 24" box
10'-27'	Three (3) 24" box
28'-40'	Four (4) 24" box
40'-56'	Six (6) 24" box
56'-60'+	Two (2) 24" box & Two (2) 36" box & Two (2) 48" box

12.26.120 Enforcement

A. The director is charged with the responsibility for the enforcement of this chapter and may serve notice upon any person violating any provision of this chapter. Violators shall be subject to the provisions set forth in Chapter 1.12 and Chapter 1.14.

B. A person who intentionally removes or destroys a street tree or a public tree without a tree removal permit, or who negligently causes the removal or destruction a street tree or public tree, shall be required to replace the removed tree and pay the value of the removed tree(s), calculated in compliance with the most recent edition of the *Guide for Plant Appraisal* by the Council of Tree and Landscape Appraisers, as well as a tree maintenance fee for five (5) years.

C. If the director determines on-site replacement trees are not suitable, the director shall determine the cost of the mitigation needed to remedy the effects of the removal or destruction based upon the value of the unlawfully removed or destroyed tree(s) in compliance with the current version of the *Guide for Plant Appraisal* by the Council of Tree and Landscape Appraisers, and the cost of planting replacement trees elsewhere. This amount shall be in addition to any other assessed fees or penalties. This amount shall be in addition to any other assessed fees or penalties.

Attachment B

Chapter 18.28 Trees on Private Property

18.28.10 Purpose

- A. Preserve trees on private property for the health, safety, and welfare of the community while recognizing individual rights to develop and maintain private property;
- B. Utilize trees to create scenic beauty and wildlife habitat, attract visitors and businesses and serve as a source of community pride;
- C. Mitigate storm water runoff, prevent erosion of topsoil, protect against flood hazards, and counteract pollutants in the air;
- D. Reach climate goals by shading structures and outdoor places, cooling sidewalks, reduce impacts from increasing temperatures and decreasing wind velocities while improving public health outcomes for residents; and

18.28.020 Definitions

ANSI A-300 Standards. Accredited industry standards and practices for managing trees and other woody plants.

Applicant. Owner of the property to be developed who submits an application to remove a protected tree located on the subject property, or the private property owner applying to remove a protected tree.

Appraisal of Tree Value. An unbiased estimate of the tree's worth performed in accordance with the current edition of the *Guide for Plant Appraisal* by the Council of Tree and Landscape Appraisers.

Certified Arborist. An arborist certified by the International Society of Arboriculture and approved by the Director.

Diameter. Diameter at standard height (DSH), or trunk diameter measured at 54" above grade.

Dripline. Area directly located under the outer circumference of the tree branches or with a radius of ten times the diameter of the trunk as measured at 54 inches above grade (DSH), whichever is greater.

Excessive Pruning. Removal of functioning leaf, stem, or root area of a tree in any thirty-six (36) month period such as to cause a significant decline in health, increased risk of failure, or the unbalancing of a tree.

Master Plan. City of East Palo Alto Urban Forest Master Plan, which sets forth the policies and guidelines for planting and maintenance programs for the care and protection of its trees.

Protected Tree. Any tree on private property having a main stem or trunk of 8” or greater in diameter at a height of 54” above grade (DSH); any tree required to be preserved as a condition of a development approval; any tree required to be planted as a condition of a development approval.

Remove. Complete removal, such as cutting the tree to the ground, or taking any action that would lead to the death of a tree or permanent damage to its health, including excessive pruning, girdling, cutting of tree roots, poisoning, over-watering, under-watering, trenching, excavating, altering the grade, paving within the dripline or unauthorized relocation or transportation.

Tree Canopy Cover. Measurement of the total area of a tree’s branches, stems, and leaves when viewed from above.

18.28.030 Authority, Responsibilities and Duties

A. **Director.** The Director has the responsibility to implement and authority to make decisions and judgments to enforce the provisions of this chapter. Duties include but are not limited to implementing tree protection policies for trees on private property and throughout the development process, accepting and reviewing applications from any person requesting to remove one or more trees on any private property, and approving or denying applications involving trees based on criteria set forth in this chapter, with appropriate conditions.

B. **Property Owner.** Every owner of real property within the City, and every person responsible for removing or damaging a tree, regardless of whether the person is engaged in a tree removal business, is subject to the regulations in this chapter.

18.28.040 Tree Planting

A. **ANSI.** All trees selected for planting shall conform to the American Association of Standards, ANSI Z60.1 Specifications for Acceptance of Nursery Trees at the Time of Delivery. Tree planting shall follow the current edition of ANSI A-300 Tree Planting, including post-planting pruning, and early tree care. Newly planted trees should be provided regular maintenance, including irrigation and pruning as needed, during the first five years.

B. **Species.** Tree species must be appropriate for the site, keeping in mind “right tree right place” principles. Trees shall be selected for function and purpose as outlined in the Master Plan. Tree should be situated to maximize benefits and to minimize hazards, nuisances and hardscape damage.

C. **New Single-Family Subdivisions.** In all new single-family residential subdivisions there shall be a minimum of two trees on each parcel. This tree requirement is in addition to the 150 square feet of permanent private open space required for each parcel.

D. **Multiple-Family Residential Subdivisions and Non-Residential Subdivisions.** There shall be a goal of 20% canopy cover over the site within 15 years of final building permit issuance. This requirement is in addition to landscaping required within parking lots and trees installed along the street frontage.

18.28.050 Pruning

No permit is required for pruning a private protected tree. Private protected tree pruning should be performed in compliance with the most current edition of ANSI A300 – Pruning, which includes pruning young trees to develop lowest branching structure above homes or nearby structures, and crown cleaning, crown thinning, crown raising, crown restoration, crown reduction and utility line pruning in semi-mature and mature trees. Excessive pruning, topping, vandalizing, mutilating, or destroying a protected tree is prohibited.

18.28.060 Permit Required

A. **Tree Removal Permit.** No person shall remove, destroy or disfigure any protected tree within the city without a permit. If the tree removal is part of a development application, a separate Tree Removal Permit is required, but the Tree Removal Permit will be considered as part of the development application. A Certified Arborist report as noted below, is required.

B. **Application.** An application for a Tree Removal Permit shall be made to the Director on the form provided. The application shall be accompanied by a fee as set forth in the master fee schedule. The application shall contain the number and location of each

tree to be removed, the type and approximate size of the tree, the reason for removal, and any additional information required by the Director. The application shall include a tree report by a Certified Arborist report. Any expense associated with the preparation of the tree report shall be the responsibility of the applicant. The Director may refer the application or report to another department, or person for an additional report or recommendation.

C. **Tree Protection Plan.** All development projects shall submit an Arborist Report and Tree Protection Plan.

1. The report by the Certified Arborist shall specify the following:
 - a. The location of trunk and dripline, size, health, and species of all trees on site with a diameter of 6” or greater.
 - b. The reason for removal for any tree proposed to be removed.
 - c. Recommendations for tree protection measures.
 - d. An appraisal of the condition and replacement value of all affected trees. The appraisal shall be performed in accordance with the current edition of the *Guide for Plant Appraisal* Council of Tree and Landscape Appraisers.
2. If an application for a development permit includes tree removal, the report by the Certified Arborist also shall include a planting plan detailing the number of tree replacements, species and irrigation system. Prior to acceptance of improvements, a final tree report by a Certified Arborist shall be submitted to the Director. The report shall assess the health and condition of the trees retained and protected during development and any changes in physical condition.

D. **Owner Responsibility.** If the removal request is approved, the property owner may perform the work as approved and must comply with all requirements to provide proper and sufficient measures to mitigate against any hazards or nuisances. The property owner is responsible for any damages, necessary repairs or needed replacements. No liability shall be imposed upon the City or upon any of its officers or employees for damages related to an unsafe tree to relieve the owner or occupant of any private property from the duty to keep in safe condition any trees upon the property or adjacent to or overhanging the public right-of-way.

E. **Emergency.** If the condition of a tree presents an immediate hazard to life or property, as defined by ANSI A300, it may be removed without a permit on order of the City Manager, Building Official, or the Director; an after-the-event permit will be required.

F. **Public Utilities.** Public utilities subject to the jurisdiction of the State Public Utilities Commission may, without a permit, take actions necessary to comply with the

safety regulations of the Commission and as may be necessary to maintain safe operation of facilities. Where possible, trees shall be preserved.

G. **Financial Security.** A check, or an alternative form of payment if approved by the City shall be provided to the City for the appraised value of the trees impacted by development and the value of replacement trees as mitigation for the removal of trees, as well as the cost of staff time. The financial security shall be refunded upon the receipt of a final arborist report certifying preservation or proof of replacement, or payment of an in-lieu impact fee.

18.28.070 Criteria for Tree Removal

A Protected Tree may be removed under the following circumstances:

A. The tree is dead, expected to die within 5 years, or poses a high or extreme risk (as defined by International Society of Arboriculture Best Management Practice (A300 part 9), or is classified as invasive by the California Invasive Plant Council (Cal-IPC, 2017). Where an arborist report indicates that a tree fits this category, fees may be waived.

B. The tree is structurally unsound and cannot be corrected or the risk cannot be significantly reduced by traditional pruning, cabling, or bracing or is causing visible damage to property, which cannot be corrected without destroying the tree canopy or root system.

C. The tree is causing visible damage to property which cannot be corrected without destroying the tree canopy or root system.

D. The tree interferes with proposed development, repair, alteration, or improvement of a site and preservation would stop the implementation of a well-integrated and thoughtful design that enhances the property and neighborhood while meaningfully furthering the goals set forth in the General Plan and the project will incorporate replacement trees.

E. Removal is requested by a utility, public transportation agency, or other governmental agency due to a health or safety risk resulting from the tree's interference with existing or planned public infrastructure and preservation of the tree would add unreasonable cost to the project.

18.28.080 Replacement of Trees or In-Lieu Fee

If the city allows a tree to be removed, either replacement tree(s) of an equivalent value must be planted or an in-lieu fee must be paid.

A. **Replacement.** Trees shall be replaced on a one-to-one basis; however, more than one replacement tree may be required to accomplish the goal of replacing the lost canopy. Replacement tree(s) planted on-site are a priority.

B. **In-Lieu.** If replacement cannot be fully accomplished on-site, staff may authorize payment of in-lieu fees. The value of the removed tree(s) for in-lieu fee payment shall be calculated in compliance with the latest edition of the *Guide for Plant Appraisal* by the Council of Tree and Landscape Appraisers.

18.28.090 Tree Removal Review Process.

A. **Tree Removal Application and Noticing.** The property owner shall notify adjacent property owners and tenants, if any, of the intent to remove a protected tree. Upon submittal of the application, notice is required to be posted. Once the decision is final, a second notice is required to be posted at least 48 hours prior to removal. The notification shall be in a written form, dated and posted on the tree or in another visible location within close proximity to the tree that is clearly visible to adjacent owners and tenants.

B. **Review Process.** Tree removal permit applications shall be reviewed and decided upon by the Director within 30 days of a complete application being submitted. Notice of the decision will be mailed to the applicant, the owners and occupants of all adjacent properties, and any person requesting notice of the decision. The decision shall become final 15 days after the notice is mailed. The decision of the Director may be appealed within 15 days of the notice of decision by filing an appeal in writing. Appeals shall be to the Planning Commission and conducted consistent with the provisions of Chapter 18.106. The decision of the Planning Commission is final.

18.28.110 Enforcement

A. **Violations.** Violation of a provision contained in this chapter is unlawful and a public nuisance. The Director may serve notice upon any person violating any provision of this chapter. Violators shall be subject to the provisions set forth in Chapter 1.118.

B. **Replacement.** Intentional or negligent removal or destruction of a protected tree without a Tree Removal Permit shall require replacing on-site each unlawfully removed/destroyed tree with two or three new trees, or a greater number of new trees, as the Director may determine to be necessary to ensure the replacement of the lost canopy and to provide an aesthetic quality reasonably equivalent to the unlawfully

removed/destroyed tree within 10 to 15 years. The size, species, and condition of the replacement trees shall be subject to approval by the Director. All replacement trees shall be maintained by the property owner under a five-year maintenance agreement with the City.

C. **Value.** If the Director determines that on-site replacement trees will not provide sufficient reasonably equivalent canopy cover and aesthetic quality, the Director shall determine the cost of the mitigation needed to remedy the effects of the unlawful removal/destruction based upon the value of the tree(s) in compliance with the latest edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers, and the cost of planting replacement trees elsewhere. The established value of the tree(s) shall be the civil penalty assessed, in addition to the penalty prescribed by law for the commission of the offense. Such an amount shall be payable to the City.

D. **Business License Revocation.** A violation of any provision by a person of a tree removal, landscaping, construction, or other business in the City shall constitute grounds for revocation of the Business License issued to the person or business.

Attachment C

Table 7-1 Review Authority				
Type of Action	Applicable Code Citation	Role of Review Authority⁽¹⁾⁽²⁾		
		Director	Commission	Council
A. Administrative Permits and Actions				
Administrative Use Permits	Ch. 18.86	Decision	Appeal	Appeal
Development Code Interpretations	Ch. 18.12	Decision	Appeal	Appeal
Joint/Off-Site Parking Plans	Ch. 18.36	Decision	Appeal	Appeal
Minor Variances	Ch. 18.90	Decision	Appeal	Appeal
Reasonable Accommodations	Ch. 18.94	Decision	Appeal	Appeal
Sign Permits/Comprehensive Sign Programs	Ch. 18.38	See Table 7-2 (Site Plan and Design Review Authorities) ⁽³⁾		
Site Plan and Design Reviews	Ch. 18.86	See Table 7-2 (Site Plan and Design Review Authorities) ⁽³⁾		
Temporary Use Permits	Ch. 18.94	Decision	Appeal	Appeal
Tree Removal Permits	Ch. 18.28	Decision	Appeal	N/A
Zoning Clearances	Ch. 18.84	Issuance	Appeal	Appeal
B. Quasi-Judicial Permits and Actions				
Conditional Use Permits	Ch. 18.86		Decision	Appeal
Planned Development Permits	Ch. 18.92		Recommend	Decision
Variances	Ch. 18.90		Decision	Appeal
Density Bonus for Affordable Housing	Ch. 18.42		Recommend	Decision
C. Legislative Actions				
Development Agreements and Amendments	Ch. 18.116		Recommend	Decision
Development Code Text/Zoning Map Amendments	Ch. 18.108		Recommend	Decision
General Plan Text/Map Amendments	Ch. 18.108		Recommend	Decision
D. Subdivision Maps and Other Approvals				
Tentative Maps, Final and Parcel Maps		See Table 5-1		
Lot Line Adjustments, Mergers, and Approvals		See Table 5-1		

Notes:

1. "Decision" means the Review Authority makes the final decision on the matter; "Appeal" means the Review Authority may consider and decide upon appeals of the decision of a lower decision-making body; "Issuance" means the Review Authority may consider and grant the request; "Recommend" means the Review Authority should provide preliminary review and forward input to the decision-making Review Authority for consideration.
2. Any Review Authority may defer action and refer the request to the next higher Review Authority level for consideration and final action. In cases where the Council is specified as the Review Authority, the Council is the final level of review.
3. Responsibility for Site Plan and Design Review, as well as the review of Sign Permits and Comprehensive Sign Programs is shared by the Department staff, the Director, and the Commission. The specific Review Authority for these actions is further specified in Table 7-2.