



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
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.	1. Grow the urban forest 2. Define responsibilities and support improved maintenance practices and protections for public and private trees 3. 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://eastpalalto.igm2.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