



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** December 15, 2017

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**SUBJECT: PP17-072: AMENDMENTS TO TITLE 13, AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 13.32 OF TITLE 13 OF THE SAN JOSE MUNICIPAL CODE TO REVISE AND ADD PROVISIONS PERTAINING TO TREE REMOVAL CONTROLS ON PRIVATE PROPERTY, INCLUDING AMENDING SECTION 13.32.020 TO ADD DEFINITIONS OF THE TERMS “INVASIVE TREE,” “HAZARDOUS CONDITION,” AND IMMINENTLY HAZARDOUS CONDITION,” REVISE HOW HEIGHT, TREE DIAMETER AND CIRCUMFERENCE ARE MEASURED TO TRIGGER APPLICATION OF TREE REMOVAL CONTROLS, AND EXPAND THE DEFINITION OF “UNSUITABLE TREE” TO INCLUDE TREES THAT CREATE AN IMMINENTLY HAZARDOUS CONDITION, CERTAIN TREES ON LAND USE TYPES BEYOND ONE FAMILY DWELLING, AMENDING SECTIONS 13.32.090 AND 13.32.120 TO STREAMLINE THE PROCESS FOR REVIEW OF APPLICATIONS FOR REMOVAL OF ALL TREES THAT ARE NOT UNSUITABLE TREES, SO THAT A DIRECTOR’S HEARING WILL ONLY BE HELD UPON REQUEST AND ALLOWING AN APPEAL TO BE FILED ONLY WHERE A DIRECTOR’S HEARING HAS BEEN REQUESTED, AMENDING SECTIONS 13.32.041, 13.32.110 AND 13.32.130 TO CLARIFY TREE REMOVAL PERMIT REQUIREMENTS INCLUDED AS PART OF ANOTHER PLANNING PERMIT, REQUIREMENTS FOR TREE REPLACEMENT AS A CONDITION OF APPROVAL FOR TREE REMOVAL AND PROVISIONS FOR SAFEGUARDING TREES DURING CONSTRUCTION, AND MAKING OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN CHAPTER 13.32 OF TITLE 13 TO ADD AND AMEND REGULATIONS PERTAINING TO TREE REMOVAL CONTROLS**

## **RECOMMENDATION**

On December 6, 2017, the Planning Commission opened the public hearing, provided comments, took public testimony, closed the public hearing and continued the item to the December 13,

2017, meeting at staff's request. This was to allow for the elimination of the recommendation pertaining to tree proximity to overhead utility lines qualifying as an Unsuitable Tree and the inclusion of several items in the Definitions section of the Ordinance pertaining to hazardous trees.

At their meeting of December 13, 2017 the Planning Commission voted 7-0 to recommend that the City Council approve the Title 13 Ordinance amendments as recommended by staff, along with additional applicant requirement as follows:

- For single-family and duplex residential properties, require that the applicant or property owner obtain signed acknowledgements of the proposed tree removal permit request from owners of the two adjacent properties on each side of their house, the three properties across the street and any other contiguous properties to the rear. If the condition is a corner lot, require that the applicant obtain acknowledgments from the property owners of the other three remaining corners.
- For commercial properties, require that the applicant or property owner obtain signed acknowledgements of the proposed tree removal permit request from owners of the property on each side of the commercial property on the same side of the street, any property owners that are directly across the street, and any properties that are contiguous to the boundaries of the property.

## **OUTCOME**

If adopted by the City Council, the proposed Ordinance amendments would streamline the tree removal process on private property and clarify permit requirements.

## **BACKGROUND**

The Planning Commission conducted two public hearings on the proposed amendments to the Municipal Code on December 6 and December 13, 2017. The attached Staff Reports to the Planning Commission provide a full analysis, description of public outreach, and coordination conducted on the item. On December 6, 2017, the Planning Commission opened the public hearing, took public testimony, closed the public hearing and continued the item to the December 13, 2017, meeting. This was at staff's request to allow for elimination of a recommendation that trees within five (5) feet of an overhead utility line qualify as Unsuitable Trees, add definitions of "hazardous condition" and imminently hazardous condition" as well as including trees deemed by the City to be in imminently hazardous condition to be qualified as Unsuitable Trees.

At the December 13, 2017, meeting the Planning Commission reviewed staff's responses to comments and questions raised at the December 6 meeting. They also considered the recommended Ordinance revisions, including those recommended in the December 7, 2017 revised Supplemental Memorandum.

The Commission recommended that the City Council adopt an Ordinance amending Title 13 of the San José Municipal Code (Tree Removal Controls) and that the Council consider additional requirements that the applicant or the property owner get signed acknowledgements of their tree removal permit request.

## **ANALYSIS**

At the Planning Commission public hearings, staff summarized the proposed amendments to the Municipal Code, explained the context of the Council direction for the recommended changes, and responded to Commission and public comments.

### **Public Testimony**

At the December 6, 2017, Planning Commission meeting, one member of the public provided comments on replanting with more native trees, greater notification beyond a posting notice in the front yard of the property, monitoring trees up to five years, and no self-certification by the applicant in lieu of mailing notices. There were no public comments at the December 13, 2017 Planning Commission meeting.

### **Planning Commission Discussion**

At the December 13, 2017 meeting, staff responded to comments and questions raised by the Commission and a member of the public at the December 6 meeting:

- Request for a chart showing the existing ordinance and the proposed changes: Staff provided a chart for the Commission
- Related to street trees, City Arborist operations, public right-of-way, tree/utility conflicts and concern with a buyer/seller disclosure form regarding street trees: Staff noted this information was referred to DOT and the City Arborist
- Need more noticing: Staff noted there was a chart available highlighting noticing and costs
- Mailing notice process needs to remain: Staff noted this was the recommendation
- Replacement tree can be a street tree if that is missing on a property: Staff noted that this was allowed
- Flexibility in the type of replacement tree plantings and avoiding ornamental replacement trees: Staff noted this was built in to the program and was being reviewed
- Pros and cons of cost recovery for the tree removal permit program: Staff indicated that PBCE is a cost recovery Department and as such was examining streamlining and fee opportunities.
- Online applications: Staff noted that online applications is being considered as part of the new Integrated Permitting System
- Making the private tree and City street tree process easier for applicants to understand: Staff noted that further work was underway in this area including City websites updates, development of informational brochures and further staff training

- Comments from member of the public on December 6, 2017: Staff noted that it reviews tree removals with a focus to plant replacement native trees when possible, that the mailing notice process to adjoining properties and properties across the street would remain, and that the staff recommendation for three-year monitoring/replacement requirements would also remain.

Commissioner Yesney expressed concerns regarding the level of public noticing for tree removal permits and shared that the current public noticing is insufficient. Commissioner Pham shared similar concerns. Staff displayed a chart examining five tree removal permit requests with staff estimates of time spent for permit processing, the number of notices required to be mailed out and the escalating cost to an applicant if the noticing went from the current practice of adjacent properties and across the street to 100 feet, to 150 feet or to 300 feet.

The Planning Commission voted 7-0 to recommend that the City Council amend Title 13 of the San José Municipal Code (Tree Removal Controls) as recommended by staff, and that the Council consider the following additional requirements:

- For single-family and duplex residential properties, require that the applicant or property owner obtain signed acknowledgements of the proposed tree removal permit request from owners of the two adjacent properties on each side of their house, the three properties across the street and any other contiguous properties to the rear. If the condition is a corner lot, require that the applicant obtain acknowledgments from the property owners of the other three remaining corners.
- For commercial properties, require that the applicant or property owner obtain signed acknowledgements of the proposed tree removal permit request from owners of the property on each side of the commercial property on the same side of the street, any property owners that are directly across the street, and any properties that are contiguous to the boundaries of the property.

Staff is concerned that the Planning Commission's recommendation for additional requirements creates significant challenges for the applicant and the staff to administer. It would increase applicant and staff time, reducing many of the benefits of the streamlining. Complications would arise if neighboring property owners refuse to sign acknowledgments, are not available to sign acknowledgments (e.g., are out of town for an extended period), or if a property is not owner-occupied or is vacant. Currently all property noticing for proposed tree removal permits is the same – to owners and occupants of property contiguous to the parcel where the tree is to be removed, as well as properties directly across the street from such parcel. Contiguous properties having multiple owners of record or apartment complexes are also noticed. The current noticing provisions cover most of the properties in which the Planning Commission was interested. Staff ensures that this noticing is done correctly but cannot ensure that an applicant follow-up and contact their neighboring property owners as recommended by the Commission.



## **EVALUATION AND FOLLOW-UP**

If the proposed Ordinance amendments are approved by Council, Staff would monitor their implementation and report back to the Council if there are any concerns. Staff will be adding to and improving the access to tree permit and related information on the City's website, expanding online access as part of the Citywide program that is underway, developing a related brochure(s) and collaborating with the City Arborist to provide additional staff training related to trees. Staff will also be reviewing and recommending changes to the tree removal permit fees in February as part of the annual cycle of City Council review of fees.

## **POLICY ALTERNATIVES**

*Alternative 1: Do not approve the recommended changes to the Municipal Code.*

**Pros:** If the changes to the Code are not approved, the status quo will be maintained.

**Cons:** Staff will continue to have significant unrecovered costs in processing tree removal permits unless application fees were created for single family and duplex properties and fees increased to cost recovery for all other land use categories. The proposed changes to the Code are intended to implement Council direction pertaining to providing a more streamlined and cost effective tree removal permit process. If the ordinance is not adopted by Council, Council's previous direction cannot be implemented.

**Reason for not recommending:** Staff was directed by Council to examine and consider changes to the Code to further streamline the City's Tree Removal Controls permit process related to the removal of trees on private property.

## **PUBLIC OUTREACH/INTEREST**

Staff posted information about the proposed Zoning Code changes on the Planning Division's website in compliance with applicable requirements of the San José Municipal Code and State law. Staff conducted two community meetings in August 2017 and also met with stakeholder groups and individuals.

## **COORDINATION**

Preparation of this memorandum, the draft resolution, and the draft Zoning Code changes were coordinated with the City Attorney's Office.

HONORABLE MAYOR AND CITY COUNCIL

December 15, 2017

**Subject: Municipal Code Amendments for Tree Removal Controls Streamlining**

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**CEQA**

File No. PP17- 072, a Notice of Determination, has been developed by staff, is posted on the City's website as part of the public record before the Planning Commission and the City Council and is available for inspection at the Planning Department Office during regular business hours.

/s/

ROSALYNN HUGHEY, SECRETARY

Planning Commission

For questions please contact Arthur Henriques, Policy and Ordinance Technical Advisor, Planning, Building and Code Enforcement at (408) 535-6862.

Attachments: Staff Report

**To: Planning Commission**  
**From: Planning Official**  
**Date: December 7, 2017**  
**Subject: Revised Supplemental Memo for December 13 Commission meeting regarding Chapter 13.32 Ordinance Amendments (Agenda Item #5.a.)**

At the December 6 Planning Commission meeting the Commission received the Staff presentation, asked questions, provided comments, took public input and then closed the hearing and continued the item to the December 13 meeting. Staff is providing additional information in this memo to the Commission including a recommendation to consider adding a definition of trees on private property that constitute an imminent hazard. Staff has also provided responses to questions or comments raised at the December 6 meeting pertaining to the proposed ordinance amendment. A number of comments referred to street trees located in the public Right-of-Way. As these trees are not subject to the proposed Ordinance Amendment, these comments were forwarded to the DOT/City Arborist for their information. Further information will be provided at the December 13 meeting.

#### Additional Code Changes

- 1) As noted December 6, Staff recommends that the proposed tree being five feet or less from an overhead utility line text not be included as part of the Ordinance Unsuitable Tree definition in Section 13.32.020 K 2. Section 13.32.020 K 2 would then read, "On any lot, the part of the tree trunk nearest to a below-grade utility pipe or line is five (5) feet or less from the centerline of that below-grade utility pipe, or below-grade utility line."
- 2) Staff recommends that the Planning Commission add text in the Ordinance Definitions Section (13.32.020) to define "hazardous condition" and imminently hazardous condition", using the definitions of those terms found in in Sections 13.28.045 and 13.28.055 (Street Trees) as follows:

"Hazardous condition" shall mean any tree that is or appears to be (i) dead; (ii) likely to fall; (iii) seriously diseased; (iv) an obstruction or potential obstruction to pedestrian or vehicular travel in any street; (v) an obstruction or potential obstruction to any traffic signs, traffic controls, streetlights, regulatory sign, or similar type of equipment or sign; or (vi) in a condition that is detrimental to the public health, safety, or general welfare.

"Imminently hazardous condition" shall mean a hazardous condition which presents an immediate threat to the health, safety or general welfare of persons or property and/or the public which requires immediate action to abate.

If accepted, the definitions subsections would be renumbered accordingly for the City Council's review.

- 3) Staff also further recommends changes to Section 13.32.020.K. to add a new category of Unsuitable Tree as follows:

13.32.020.K.4 - " A Tree on any lot that creates an Imminently Hazardous Condition" as evidenced by a report prepared and executed by a certified arborist that is submitted to the Director documenting that the tree qualifies as a imminently hazardous tree pursuant to the definition set forth in Section 13.32.020 above.

If accepted, the section would be amended accordingly for the City Council's review.

#### Response to December 6 Comments and Questions.

Commissioners and a member of the public provided comments. There were a number of Commissioner comments related to street trees, City Arborist operations, the public right-of-way, tree/utility conflicts and a buyer/seller disclosure form regarding street trees. These comments have been forwarded to the Department of Transportation/City Arborist.

There were comments that the mailing notice process needs to remain. That is the staff recommendation. There were comments regarding replacing missing street trees. The staff recommendation is to allow an applicant to provide a replacement tree as a new street tree if one is missing. There were comments about having flexibility in the type of replacement tree plantings and to avoid ornamental replacement trees. The proposed Ordinance Amendment provides this flexibility.

There were some comments about the pros and cons of cost recovery for the tree removal permit program. It was noted that the PBCE Department is a cost recovery Department so in addition to recommending further streamlining measures for the tree removal ordinance staff would be developing cost recovery recommendations regarding the private tree removal permit program fees in early 2018.

There was a comment about online applications. Staff noted that applications for tree removal can be filled in on the City's website but then need to be printed and brought into the permit center. PBCE will be participating with the upcoming Citywide program related to online submittals. There were comments about making the private tree and City street tree process easier for applicants to understand. Staff is developing additional educational material in consultation with the City Arborist.

Chair Pham requested that staff provide a table for the next meeting comparing the existing ordinance with what is proposed. Staff will present a table at the next meeting.

There were comments about the level of public interest for tree removal permits currently vs. what is proposed. Staff noted that the ability to request a public hearing would remain and allow consideration of additional mitigation if an item were controversial.

Public comment included the recommendation to replant with native trees, to have greater notification beyond posting notice in the front yard of the property with the proposed tree removal, to monitor trees up to five years and no self-certification by the applicant in lieu of mailing. Staff indicated that native trees are considered by staff for the replanting when possible, notification would remain with a mailing notice process and the ability for someone to request a hearing, the recommendation for tree monitoring/replacement before the Commission is 3 years. Staff agrees that self-certification should not be considered and is not a recommendation before the Commission.

Please contact Art Henriques or me if there are any questions.

/s/



Steve McHarris, Planning Official  
Planning, Building and Code Enforcement



# Memorandum

**TO:** PLANNING COMMISSION

**SUBJECT: PP17-072 - ORDINANCE  
AMENDING CHAPTER 13.32 OF  
SAN JOSE MUNICIPAL CODE  
(TREE REMOVAL CONTROLS)**

**FROM:** Rosalynn Hughey

**DATE:** December 6, 2017

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## **RECOMMENDATION**

Planning staff recommends that the Planning Commission recommend that the City Council:

1. Approve an Ordinance of the City of San José amending Chapter 13.32 of Title 13 of the San José Municipal Code, pertaining to tree removal controls on private property, including amending Section 13.32.020 to add a definition of the term “invasive tree,” revise how height, tree diameter and circumference are measured to trigger application of tree removal controls, and expand the definition of “unsuitable tree” to include certain trees on land use types beyond one family dwelling, amending Sections 13.32.090 and 13.32.120 to streamline the process for review of applications for removal of all trees that are not unsuitable trees, so that a Director’s hearing will only be held upon request and allowing an appeal to be filed only where a Director’s hearing has been requested, amending Sections 13.32.041, 13.32.110 and 13.32.130 to clarify Tree Removal Permit requirements included as part of another planning permit, requirements for tree replacement as a condition of approval for tree removal and provisions for safeguarding trees during construction, and making other technical, non-substantive, or formatting changes within Chapter 13.32 of title 13 to add and amend regulations pertaining to tree removal control

## **Executive Summary**

Tree Removal Permit Streamlining has been a Planning, Building and Code Enforcement (PBCE) Department work priority item of the City Council since 2012. Tree Removal Permit Streamlining was identified as a permit process improvement item in a City Council process improvement and fee study report by Management Partners, accepted by the City Council December 12, 2016.

Recommended tree removal permit process improvements were also identified in a City-initiated Our City Forest Audit, accepted by the City Council March 21, 2017. This staff report reviews the current Tree Removal Permit ordinance and process, community outreach, current unfunded subsidy of over \$300,000 per year, and specific ordinance and process improvements recommended by staff, such as:

- Tree measurement size to meet the International Society of Arboriculture best practice standards;
- Reducing mandatory public hearings;
- Streamlining Unsuitable Tree removals;

- Clarifying replacement tree criteria;
- Addressing the current financial subsidy, primarily associated with single-family residential tree removal permits; and
- Education of the ordinance provisions and trees for staff, arborists, and the public.

Each of the above items has been under staff review for much of 2017 and are analyzed in detail within this staff report, along with specific recommendation that balance tree preservation and urban forest goals with staffing resources available to meet the multiple PBCE Department work priorities of the City Council.

### **OUTCOME**

Approval of the recommended ordinance will implement the December 16, 2016 Council direction for Tree Removal Permit streamlining, while retaining the City's ability to evaluate the proposed removal of trees and replacement tree measures for tree removals located on private property by: 1) allowing some Tree Removal Permits to be issued without a hearing; 2) extending the tree removal process that is used for one-family (single-family) properties to properties used for two-family detached residences; 3) creating a separate streamlined tree removal process for Tree Removal Permit applications for properties used for multi-family residential, commercial and industrial properties; and 4) enhance staff's ability to monitor and enforce tree removal permits and conditions of approval , including tree replacement provisions.

### **BACKGROUND**

Tree permit streamlining for single-family property owners became a City Council priority in 2009. Tree permit streamlining became a top ten City Council priority in 2012. In 2012, the City Council adopted an ordinance amending Chapter 13.32 of the San José Municipal Code (Tree Removal Controls) to streamline the Tree Removal Permit process. The 2012 ordinance included allowing the removal of nuisance (Unsuitable) Trees on single-family detached residential properties through an administrative process.

On December 12, 2016 a report prepared by NBS and Management Partners entitled: The City of San José Development Services Cost Recovery Analysis Process Improvements, Calculation of Unearned Revenues, and Refund Processing Report was presented to the City Council. That report recommended a number of measures for further streamlining. This included a recommendation to process more Tree Removal Permits administratively. Implementation was recommended to include the following actions:

- Analyze processing time impacts of permit requirement changes
- Prepare proposed ordinance changes and present to City Council
- Implement changes to Tree Removal Permitting requirements
- Communicate changes to customers and stakeholders

The City Council accepted the Report, and directed staff to bring forward recommendations through the Fiscal Year 17/18 budget process and other subsequent Council actions to implement the Report's recommendations. Further information on the report, the City Council direction and subsequent reviews are available at the following web links:



[http://sanjose.granicus.com/GeneratedAgendaViewer.php?event\\_id=591ae65d-c729-4699-a7ad-372eee6ed4b2](http://sanjose.granicus.com/GeneratedAgendaViewer.php?event_id=591ae65d-c729-4699-a7ad-372eee6ed4b2)<http://www.sanjoseca.gov/DocumentCenter/View/70897>  
<http://www.sanjoseca.gov/index.aspx?NID=5605>

Also related is the City Council review and acceptance of a report from the City Auditor related to an Our City Forest Audit on March 21, 2017. This includes that the City Administration review and formalize its' off-site tree replacement process, including documentation of tree plantings and maintenance.

The City Council authorized funding for a contract planner to prepare tree removal permit streamlining changes for City Council action. This would address the current tree permit removal process on private property to be more efficient, less costly and make better use of limited staff resources. Further details follow below.

The City of San José has more than a million trees on public and private property that constitute the City's Community Forest, and provide a sense of community pride and ownership. Trees are a part of the City's Green Vision. In 2007 San José adopted the Green Vision, a 15-year plan for economic growth, environmental sustainability, and an enhanced quality of life for the community. Because of the environmental benefits that trees provide, the City's Green Vision has a goal of planting an additional one hundred thousand (100,000) trees by 2022.

The Envision San José 2040 General Plan includes a Community Forest Goal:

**Goal MS-21 – Community Forest**

Preserve and protect existing trees and increase planting of new trees within San José to create and maintain a thriving Community Forest that contributes to the City's quality of life, its sense of community, and its economic and environmental well-being.

San José manages its Community Forest in part by regulating the removal of trees on private property. City regulations require the approval of a permit by the Director of Planning for the removal of an ordinance-size tree from private property. As defined in the San José Municipal Code, an ordinance-size tree has a circumference of 56 inches or greater when measured two feet above the ground. The City's regulations may allow the removal of trees based on the condition of the tree or on the tree's impacts to structures and utilities in some situations. Trees may be considered for removal if they are a safety hazard; dead, dying, or diseased; found to meet the City's Unsuitable Tree definition (on single-family detached residential properties); or restrict economic development and proposed improvement of a parcel. A standard condition for issuance of Tree Removal Permits is to require the planting of replacement trees, which can be street trees if none are existing fronting the parcel.

Tree Removal Permit applications for single-family detached residential properties are administered by the Planning Division of the Department of Planning, Building and Code Enforcement. The current application form for removal of live ordinance-size trees is available at:

<http://www.sanjoseca.gov/DocumentCenter/Home/View/601> . Tree removals for multi-family residential or non-residential properties are often considered through a development permit process (e.g., Site Development Permit) because the subject trees are part of the development's previously approved landscape design for trees on private property. Tree removals for street trees are administered by the City's Department of Transportation. Tree removals in City parks are administered by the City's Parks, Recreation and Neighborhood Services Department.



**ANALYSIS**

The Tree Removal Permit process has been a generally effective tool by which the City regulates the removal of trees from private properties within San José and requires the planting of an equal or greater number of new trees to maintain or increase the City’s Community Forest. However, the current Tree Removal Permit process also creates administrative and financial costs for both the City and applicants, which are a concern for single-family, duplex and other property owners.

The City processes a high volume of Tree Removal Permits each year. A snapshot of the average number of private tree permits processed for fiscal years 2014-15 and 2015-16 shows approximately 696 permits per year. This trend increased slightly in 2016-17 to 715 permits. Tree removals permits are predicated on such terms, conditions of approval and provisions as the Planning Director, or Planning Commission on appeal may deem reasonably necessary to secure the goals of the tree removal program, including conditions to ensure replacement tree planting.

More than 1,400 Tree Removal Permit applications were submitted in fiscal years 2014-15 and 2015-16 for removal of trees from single-family residential, duplex and other properties. The pace of Tree Removal Permits applications for Fiscal Year 2016-17 was slightly higher at 715 permits. There has been little interest from the public concerning the majority of Tree Removal Permit applications that the City has approved with only 1 to 2 permits per fiscal year being questioned or controversial at the Director Hearing.

Average staff processing time for Tree Removal Permits on private property range from 0.69 hours for Unsuitable Trees on single-family residential property to an average of 7.27 hours for Live Tree removals, All Other Uses, as identified in the following table. The lead time to prepare a Tree Removal Permit for public hearing typically takes three to four weeks.

***Average Annual Private Tree Removal Permits***

<b>Application</b>	<b>Average #Staff Time/ Application</b>	<b>Average Cost per Application</b>	<b>Average Fee per Application</b>	<b>Current Cost (+/-)</b>	<b>Revenue (+/-)</b>
Dead Tree SFR/Duplex	113	1.04	\$ 217	\$0	(\$24,561.68)
Dead Tree, All Other Uses	58	1.73	\$ 361	\$325	(\$2,121.06)
Unsuitable	238	0.69	\$ 144	\$0	(\$34,321.98)
Live Tree SFR/Duplex	178	4.83	\$1009	\$0	(\$179,685.66)
Live Tree All Other Uses	<u>110</u>	<u>7.27</u>	<u>\$1,519</u>	<u>\$1,000</u>	<u>(\$57,137.30)</u>
<b>Total</b>	696		\$128,850	\$426,423	(\$297,827.68)

*Note: Based on FY 2014-15 and FY 2015-16 City Amanda Permit Records*

Cost recovery varies by category. The average annual subsidy of the Tree Removal Permit Program has escalated since the above chart was originally created because the average Planning, Building and Code Enforcement Department fully burdened hourly rate the past seven years of \$154 per hour

was approved in this fiscal year's budget to rise to \$209 per hour. To minimize the costs for single-family residential and duplex property owners per prior Council direction, the City uses Department reserves to fund staffing resources at this time rather than operate the current Tree Removal Permit process as a full cost-recovery program. Property owners with other land uses pay a tree permit removal fee that is closer to cost recovery. The average annual unrecovered cost for tree permit removal permit processing this fiscal year is approximately \$300,000. The only related fee that has been raised for this fiscal year is the public hearing noticing fees.

The proposed ordinance amendment would maintain a mandatory hearing process for considering removal of native and non-native trees that are ordinance size on private property, or are identified as Heritage Trees or candidates for Heritage Tree status. For trees that are not Heritage Trees, candidates for Heritage Trees or Unsuitable Trees, the proposed ordinance limits the requirement for a Planning Director's Hearing only to only cases in which someone requests a hearing during the ten-day public notice period of the pending Tree Removal Permit.

Based on Council direction, staff has reviewed the current permit process, has solicited feedback, has developed recommended changes and reviewed those with other Departments, City Advisory groups, applicants, and stakeholders. Staff has devoted considerable time to soliciting comments from stakeholders and other interested parties pertaining to the range of proposed tree streamlining measures and followed up to clarify comments or questions that have risen.

### **Recommended Ordinance Changes**

Staff is recommending changes to the City regulations pertaining to the removal of private trees in order to further streamline the permit process. This includes changing the standard for tree measurement, reducing the number of mandatory public hearings and adding land uses that are eligible for consideration of Unsuitable Trees as identified below.

#### **1. Tree Size Measurement**

**Change:** The proposed changes to the Ordinance would shift the measurement for determining an Ordinance tree size from two feet above ground to four and one-half feet above ground, correspondingly reducing the size of what constitutes an Ordinance-sized tree from fifty-six (56) inches to thirty-eight (38) inches in circumference (12.1 inches in diameter).

**Analysis:** Measuring tree girth at four and one-half feet above ground is a standard practice of many local agencies, State and Federal Agencies as well as being recommended by the International Society of Arboriculture. It is sometimes referred to as measuring tree Diameter at Breast Height (DBH). The proposed change will likely increase the number of multi-trunk trees subject to the Ordinance. The proposed change in the circumference/diameter standard as the threshold for the tree removal ordinance provides a similar diameter/circumference requirement for an Ordinance-sized tree when measured at four and one-half feet above grade as a measurement at two feet above grade (based on consultation with experts in this field). This proposed diameter is similar to the twelve (12)-inch diameter standard that many other cities use as the threshold for Ordinance-sized trees, including some agencies that San José benchmarks to: such as Sunnyvale, Sacramento and San Francisco.

#### **2. Reducing Mandatory Public Hearings**

**Change:** The proposed changes to the Ordinance would require public hearings by the Planning Director for removal of live Ordinance-sized trees on private property be by request made during the public notice period for the pending Tree Removal Permit, rather than having the hearing

automatically. The public will be informed as to the staff recommendation and would be allowed to request a hearing.

Analysis: This recommendation is based on staff's experience that only a very low volume of Tree Removal Permit hearings were controversial in the past three years (averaging one to two permits per year, significantly less than 1 percent of the total number of permits). Staff is also recommending expanding the application of the Unsuitable Trees category from to duplex use properties, and in a more limited form to multi-family residential, commercial and industrial use areas.

### 3. Streamlining the Tree Removal Permit Process for "Unsuitable" Trees

Change: The proposed ordinance amendment would allow the removal of "Unsuitable Trees" from duplex, multifamily and other land use properties as follows through a streamlined administrative Tree Removal Permit process:

- a. Unsuitable Trees are defined either by species (e.g., a non-native, invasive species of tree or a species of tree prone to disease) or by placement on site (e.g., a tree planted at a location too close to a structure or utility line for a non-Heritage Ordinance size tree)
- b. The proposed ordinance amendment would maintain the allowance for requesting removal of "Unsuitable Trees" from single-family residential properties, such as those which are listed as a species that are "non-native, invasive or subject to disease" on a list previously adopted by through the City Council by Resolution
- c. The proposed ordinance amendments would expand the criteria for single-family residential use properties to request tree removal for trees that are within five feet of a secondary unit or garage subject to conditions, including tree replacement. It would add these criteria and also allow consideration of the use of the Unsuitable Tree category for duplex properties
- d. A non-Heritage Ordinance size tree that is within five (5) feet of a multi-family residential building would be eligible to be considered as an Unsuitable Tree
- e. A large tree that is within five (5) feet of the center line of an underground utility pipe or line or overhead utility line would also be eligible for the Unsuitable tree category in all land use categories subject to conditions, including appropriate tree replacement

Analysis: Allowance of the use of the Unsuitable Tree process for multi-family residential, commercial and industrial properties with other land use designations would allow other property owners to request the removal of trees that over the long-term have become incompatible with their immediate environment either because they were planted with inadequate space for their growth near buildings or utilities. The City would retain a requirement to require an equal or greater amount of replacement trees, taking into consideration the size and health of the tree being removed.

As proposed, Unsuitable Trees would be eligible for a more streamlined, administrative Tree Removal Permit process that would be accomplished over-the-counter by Planning Division staff, without the need for a public hearing. Maintaining a requirement for a discretionary Permit for these types of tree removals allows the City to continue to monitor the removal of these trees and the planting of replacement trees. Changing the process from a public hearing to an administrative approval for live tree removals not categorized as Unsuitable Trees provides more predictability, faster processing, and lowers administrative costs for the applicant and the City. Interested parties would have the ability to request that a proposed

tree removal go to a Director Hearing. On-site and/or off-site replacement plantings would continue to be made and/or a tree replacement fee would be paid as part of any permit approval. Tree replacement fees would continue to go to planting additional trees within San José, helping to maintain and expand the urban canopy.

Under the existing Title 13, Chapter 13.32 provisions, one of the findings for the removal of a live tree involves a determination that “the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.” Property owners often have to pay for an arborist report to document that this finding can be made. Unsuitable Trees, by definition, meet the findings in Title 13, thereby eliminating a need for an arborist report.

### **Planting of Replacement Trees**

Planting of replacement trees is a standard permit condition for Tree Removal Permits, Development Permits or Permit Adjustments where tree removal requests are involved. Issuance of a Tree Removal Permit, either through a standard or expedited process allows the City to maintain or potentially enhance its achievement of the City’s Community Forest Goals and Policies. The standard procedure for issuance of Tree Removal Permits is to require at least a one-to-one replacement. The proposed Administrative Permit process; by reducing financial and time costs, maintains the City’s ability to require replacement trees. This should encourage greater compliance with the City’s regulatory process for single-family residential property owners, duplex property owners as well as multi-family residential, commercial and industrial property owners to focus on planting trees in appropriate locations rather than expending resources on the permitting hearing process.

While the City’s practice has not been to specify a particular replacement tree, the City can provide some information to property owners who request guidance on the selection of a suitable tree. Typically, replacement tree planting for a tree removed from a single-family residential or other lot is conditioned in the Tree Removal Permit within sixty (60) days of permit issuance or the payment of a replacement tree fee when allowed by the City. This condition provides flexibility for applicants to plant the replacement tree or to pay an in-lieu fee, consistent with prior Council direction. A tree replacement ratio table has been utilized by Planning staff for many years. It is part of mitigation in the case of many City decisions related to proposed development projects. It has also provided guidance in the day-to-day application of the tree removal ordinance. Upon implementation of the proposed ordinance amendment, the Director will issue a Guidance document related to tree replacement standards that will formalize the practice that has been in place.

### **Planning Director Hearing**

Currently the ordinance requires live tree removal requests (except for unsuitable, dying or diseased trees) on private property to go to a noticed public hearing with the City’s Planning Director. Having a mandatory public hearing process typically adds three to four weeks to the private Tree Removal Permit process. As mentioned previously, during Fiscal Years 2014-15 through 2015-16, of the Tree Removal Permits that went to a Director Hearing, significantly less than one percent were questioned or controversial. This trend has continued since that time, supporting the recommendation to revise the Ordinance to only require a hearing if requested by a noticed party during the ten-day notice period of a pending Tree Removal Permit application. As part of the

public notice, the property owner and the public would be informed as to the City staff recommendation to the Director for either approval or denial of the requested Tree Removal Permit.

### **GENERAL PLAN CONSISTENCY**

As proposed, streamlining the Tree Removal Permit process is consistent with the General Plan Community Forest Goal and Policies to preserve and protect existing trees and to increase planting of new trees within San José to maintain a thriving Community Forest that contributes to the City's quality of life, its sense of community, and its economic and environmental well-being.

The Envision San José 2040 General Plan identifies San José's Community Forest as an environmentally beneficial asset to be maintained and enhanced by preserving large-specimen and heritage trees, especially native oaks and sycamores, and by planting a diverse array of water-conserving, non-invasive, and native tree species in locations where they can thrive. When tree preservation is not feasible, General Plan Community Forest Policies support removing existing invasive, non-native trees and replacing such trees, in number and spread of canopy, by planting new trees in locations that avoid conflicts with nearby power lines or conflicts between tree roots and developed areas. Staff's proposed ordinance is intended to continue to help implement the Goal and Policies in conformance with the General Plan.

### **Conclusion**

Consistent with City Council direction, staff is recommending changes to the Tree Removal Permit process for private property to significantly improve service delivery to property owners by reducing the processing time and costs of such applications, as identified and analyzed within this staff report.

### **Future Review of Tree Removal Permit Fees**

Staff will return to the City Council after conclusion of the Tree Removal Permit Ordinance revision process to address the current subsidy of the tree removal permit program with recommendations on the City's fees for this Program. This will be addressed in early 2018 with the Planning, Building and Code Enforcement Department's Fee schedule adjustment recommendations. Staff is also reviewing and will be returning with recommendations on how the City administers the tree replacement program in the spring of 2018. This follows City Council direction on March 21, 2017 (City Council Item 3.3).

### **PUBLIC OUTREACH/INTEREST**

Staff posted information about the proposed ordinance on the Planning Division website. Staff has met with interested stakeholders. Staff presented the proposed ordinance amendment approach at community meetings on August 1 and 10, 2017. The August 1st meeting was held at City Hall; the August 10th meeting was held at the United Methodist Church at 1200 Blossom Hill Road. Both meetings were facilitated by Planning staff. Approximately thirty-two (32) people attended the meetings. Staff has also corresponded with the public by e-mail and by telephone. Staff has also met with a number of City Advisory Committees and Commissions, including the Development Services Process Improvements Committee; the Community and Economic Development Committee; and the Neighborhoods Commission. A dedicated City web page was also established. Staff also met with the PBCE Developers and Construction Roundtable.

Members of the public commented that there are benefits in San José when trees are planted and maintained, although it may be appropriate to consider certain Tree Removal Permit streamlining

measures that reduce processing time while retaining staff oversight. Proposed changes in the ordinance address many of the public comments. The recommended changes are proposed to further simplify and streamline staff review while maintaining a discretionary permit process. Public comments include the following suggestions and observations regarding the Tree Removal Permit process.

1. Concerns with tree maintenance and monitoring after planting:

*The current three hundred dollar (\$300) tree replacement fee has been in place for many years and does not adequately cover the cost of planting an off-site replacement tree and the three-year typically acceptable monitoring time for tree maintenance. Staff is reviewing the fee and the tree replacement process per prior Council direction including improving the level of cost recovery.*

2. Reducing the tree circumference for measurement for an ordinance-size tree if raising the measurement height and also looking at what other cities do:

*The International Society of Arboriculture (ISA) and typical agency practice in the Bay Area is to measure the diameter/circumference of a tree at four and one-half feet above grade. The proposed ordinance revision to measure the circumference of the tree at four and one-half feet above grade is in keeping with the common practice. Reducing the measurement of the circumference of a tree subject to the ordinance to thirty-eight (38) inches at four and one-half feet above grade is comparable to the current standard of fifty-six (56) inches circumference measured at two feet above grade. A thirty-eight (38)-inch circumference tree equals 12.1 inches in diameter. Twelve (12) inches in diameter is a common tree permit threshold for a number of local agencies.*

3. Consider peer review of a submitted Certified Arborist report if the tree removal request is controversial:

*The Director currently has discretion to request this but it is limited to only the most unusual/controversial situations.*

4. Address new construction with adequate separation to existing trees, adequate separation to accessory buildings and secondary dwelling units (ADUs) and have Unsuitable Tree criteria apply to the other land uses:

*The Planning, Building and Code Enforcement Department has recently conducted a training session with Planning Staff to review best practice approaches to tree planting, tree spacing, tree care and permitting. Additional training is anticipated in 2018 related to the proposed ordinance changes. Staff is proposing changes in the Ordinance to address challenges with current trees being in close proximity to obstructions. In addition to proximity to a residence, the draft Ordinance proposes to also allow consideration of trees as Unsuitable if the tree is within five feet of a secondary dwelling unit or garage in a single-family residential area. The proposal would also allow two-dwelling (duplex) use properties to have the same consideration for Unsuitable Trees as single-family residential. It would also allow multi-family residential properties with trees within 5 feet of a residential building or within 5 feet of the center line of an underground utility pipe or line or overhead utility line to be considered as Unsuitable. The ordinance would also allow trees within 5 feet of the center line of an underground utility pipe or line or overhead utility line to be considered as Unsuitable for commercial, office and industrial uses*

5. Need a clear permit process on the City website: clarify and simplify the Unsuitable Trees criteria and process:

*Staff is proposing changes to the Municipal Code to clarify the permit process as has been noted. Additionally, staff is planning to improve the information on Tree Removal Permits on the City's website (including Unsuitable Trees) and improve ease of access to this information in the spring of 2018.*

6. Consider the Root System of the Tree:

*Consideration of maintaining a healthy tree canopy as well as minimizing soil disturbance and root system damage during construction is addressed as part of the certified arborist report pertaining to tree removal as well as the protection of trees to remain during construction. These items have also been reviewed in training with the Planning staff and will be part of the outreach to the community on the City's website in 2018.*

7. Expand the list of Unsuitable Trees. Refer to City of Cupertino for a good list and other cities, include invasive species as unsuitable trees:

*Staff has reviewed the private tree removal program of jurisdictions within and near Santa Clara County as well as other cities that the City typically benchmarks to, such as Sacramento and San Francisco. The list of Unsuitable trees can be expanded as needed by City Council updating the Resolution for Unsuitable Trees. Staff currently has the ability to consider invasive trees as part of the justification for the permit request. A definition for invasive trees been added in the Ordinance for further clarification. The recommended Municipal Code changes propose expansion of what constitutes an Unsuitable tree in single-family residential and duplex use properties, such as proximity to a secondary unit or a garage or proximity to a residence for a multi-family residential property.*

8. Consider a new owner tree removal request versus a long-term owner for Tree Removal Permit criteria:

*This would add further reviews to staff's permit workload in this area and create the potential perception of unequal treatment. It is not recommended to be pursued. Staff does, however, review each Tree Removal Permit request on its own merits.*

9. For multi-family residential parcels/large lots – is some percent criteria for trees possible rather than to require trees for tree replacement? Multi-family residential should not be lumped in with commercial tree removal standards, they should be treated the same as single-family residential. For a multi-family residential project with hundreds of existing trees and no room – is it fair to require the property owner to apply for and mitigate every tree removed? We need a ratio for trees required per acre. Consider credit for properties that have a lot of trees (when one or more trees need to be removed):

*The proposed amendment includes adding multi-family residential properties to be able to utilize the Unsuitable Trees category. There will also be a memo to be issued in 2018 by the Director to clarify the Director's discretion so that, in the case of a property with an existing high number of trees, the Director has some discretion to ensure reasonable replacement requirements.*

10. Noticing: Three or more trees should require a hearing:

*A single tree can create habitat for birds and other species. A neighboring property owner or occupant, upon receiving notice in the mail of a potential Tree Removal Permit can request a Director hearing so this issue would be covered as part of that process. Property owners are also*

*required to follow local, State and federal requirements for riparian habitat and bird migration. Further information will be added to the City's website in this area to assist in this effort and reviewed with Planning Staff as part of the upcoming training in this area.*

11. Owner Self-certification: problematic on enforcement, especially for single-family residential owner, need a major consequence if posting only in the front yard – if they do not post (if there is no mailing notice), posting needs to stay up for the required time period, also due to developers cutting trees on lots without permits, the entire public hearing process is important:

*Staff has heard from the community about potential concerns of having a notice on the property only and foregoing a mail notice process. Staff recommends that the current practice of mail notice to adjacent properties and those directly across the street be continued and that noticed parties have an ability by the end of the notice period to request that a publicly noticed Director Hearing be held.*

12. Add a more streamlined method for Unsuitable Trees that would be eligible for administrative approval:

*The proposed Ordinance addresses a number of methods to increase the number of staff reviews that can be processed as Unsuitable Trees. This will significantly reduce the number of Director Hearings.*

13. The City should consider collecting the tree mitigation fee or have Our City Forest (OCF) collect the tree mitigation fee online: there is also a concern that developers can receive building permits without paying the tree mitigation fee:

*Staff is reviewing the current tree replacement program following prior City Council direction. Staff will develop recommendations to the City Council in early 2018.*

14. Separate categories of tree removals: Dead, Cosmetic, Construction and Preservation:

*Staff recommends that the City retain the existing main Tree Removal Permit categories of Dead Tree, Unsuitable Tree, and Live Tree. Staff intends to accomplish additional improvements to the City's website and through other means to further inform staff, applicants and other interested parties.*

15. Planning should employ an Arborist to assess the trees or contractor to streamline the process; we need an arborist for public and private tree removal requests:

*Staff currently reviews certified arborist reports for tree removals as required by Ordinance. The City Arborist is available to Planning in limited circumstances where warranted.*

*Employing/contracting with an arborist to advise Planning staff would add to permitting costs and is not recommended.*

16. Dead trees – we need a City-wide effort to have these removed. We need education about the importance of removing dead trees:

*Staff is planning on providing further information on dead trees on the City's website and through other avenues in 2018, such as information bulletins.*

17. We should not identify large shrubs as trees – it is not a fair assessment:

*The Director has discretion to consider this request on a case by case basis.*



18. It is not fair to have the urban forest be on a cost recovery basis:

*The Planning, Building and Code Enforcement Department is a cost recovery Department. Currently staff costs for processing tree removals for primarily single-family and duplex residential properties are not being recovered. Charges for Tree Removal Permit processing in all other categories provide partial recovery of staff processing costs but are not at complete cost recovery. The public hearing noticing fees were raised by the City Council for 2017-18. No other tree permit-related fees were raised pending the Planning Commission's and City Council's review of proposed streamlining changes to the Ordinance. Once that review is completed staff will return with a separate memo for Council consideration recommending updates to the City's fee structure for Tree Removal Permits in early 2018.*

19. Planning and the Department of Transportation (DOT) need to educate the community on the process for tree removal (and tree management) – both in the public area and on private property:

*Planning will be updating the Department website to provide additional information to the community and also develop an educational brochure.*

20. There are concerns that some people have been cutting down the mitigation trees:

*The City has previously significantly increased the fines for violations of the City's tree requirements. Notification of potential violation can be made to the Planning Office or to the City's Code Enforcement Office. Code Enforcement will then investigate the alleged violation and take appropriate action.*

21. Streamlining is not helping global warming and the urban forest:

*Streamlining the tree removal process will reduce the number of Director Hearings for non-controversial tree permit removal requests while maintaining discretionary review at the staff level. Tree mitigation ratios currently used by staff are proposed to be documented with a Planning Director memo that staff has been using as a best practice for a number of years. The Director and the Planning Commission on appeal will retain discretion to adjust the tree replacement ratios as needed.*

22. Certified arborists need to have additional certification for the proper assessment of tree hazards. The City should not require how an arborist report should be written:

*The City requires submittal of a certified arborist report for live tree removals (excluding Unsuitable Trees). In very unusual circumstances as previously mentioned the Director has the ability to require peer review of a certified arborist's report.*

23. Educate planners on tree saving and protection techniques – e.g., pervious pavers, arborist techniques, the financial value of trees, improve information and accessibility on the City website about Unsuitable Trees; make it easier to find the City's Tree Ordinances on the City's website:

*As noted previously staff is planning to provide additional information about trees and tree permits on the City's website in 2018 and make it easier to access the information. Staff has held and will also be holding additional training sessions for the Planners in this area.*

24. Is there a way to transfer tree mitigation from one site to another:

*Applicants for Tree Removal Permits can request the Director to consider some level of off-site mitigation, such as a school or park and/or paying the fee for the planting of a replacement tree within the City.*

25. Building Inspectors watch for illegal tree removal on construction sites:

*Staff has discussed this with the Building Official. The Building Official has noted that Inspectors already have significant work in their areas of inspection responsibility. Staff will follow up on this with the Building Division in early 2018 so that the Inspectors are at least aware of what issues have been occurring in this area.*

26. Apply standard tree mitigation and preservation conditions of approval for construction projects:

*The Ordinance currently has conditions related to the issuance of a Tree Removal Permit, such as tree replacement. The proposed ordinance will improve the current process, such as including requiring protective fencing for existing trees approved to remain during any on-site construction. Some tree permit requirements are also identified in a certified arborist report, when required, such as protection of the tree canopy and the root zone of trees that need pruning or will otherwise remain. These certified arborist conditions are routinely applied by the staff on a case by case basis to suit the needs of each property. Additionally applicants are obligated to follow other local, State and Federal laws that may pertain, such as a pre-construction survey for nests, the protection of nests during nesting season and the avoidance of planting invasive tree species, especially in or near riparian areas.*

Additional public comments received by letter or email are attached to this report. Most of these comments have been addressed in the preceding material.

**PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Staff posted information about the proposed ordinance on a dedicated page of the Planning Division website. Informational e-mail blasts to parties on Planning's subscribers list have been sent out. Staff has corresponded with the public by e-mail and by telephone and in meetings at City Hall with interested stakeholders. Staff presented the proposed amendment approach at community meetings on August 1 and 10, 2017. Staff has also met with a number of City Advisory Committees/Commissions, including the Development Services Process Improvements Committee, the Community and Economic Development Committee and the Neighborhoods Commission. E-mail to Planning Department subscribers, City website posting and a newspaper notice is also being done for the Planning Commission and the City Council Hearings.

**COORDINATION**

Preparation of this report, the proposed ordinance revisions and the other report attachments were coordinated with the City Attorney's Office. Staff has also been in contact with the City Arborist and with Parks, Recreation and Neighborhood Services Department.

**CEQA**

Pursuant to Section 15168(c)(2) of the CEQA Guidelines, the City of San José has determined that the project described below is pursuant to or in furtherance of the Final Program Environmental Impact Report (Final Program EIR) and Supplemental Program Environmental Impact Report (Supplemental Program EIR) for the Envision San José 2040 General Plan and addenda thereto, and does not involve new significant impacts beyond those analyzed in the above EIRs. Therefore, the City of San José may take action on the project as being within the scope of both the Final and Supplemental Program EIRs.



STEVE MCHARRIS, PLANNING OFFICIAL  
Planning, Building and Code Enforcement

For questions, please contact Art Henriques, Planning Ordinance and Technical Advisor at 408-535-6862.

**Attachments:**

- Attachment A- Draft Chapter 13.32 Ordinance Amendment
- Attachment B- Determination of Consistency
- Attachment C- Public Correspondence

# CITY OF SAN JOSE MUNICIPAL CODE

## TITLE 13 – STREETS SIDEWALKS AND PUBLIC PLACES

### CHAPTER 13.32 - TREE REMOVAL CONTROLS

#### 13.32.010 - Purpose of provisions.

It is the purpose of this chapter to promote the health, safety, and welfare of the city by controlling the removal of trees in the city, as trees enhance the scenic beauty of the city, significantly reduce the erosion of topsoil, contribute to increased storm water quality, reduce flood hazards and risks of landslides, increase property values, reduce the cost of construction and maintenance of draining systems through the reduction of flow and the need to divert surface waters, contribute to energy efficiency and the reduction of urban temperatures, serve as windbreaks and are prime oxygen producers and air purification systems.

#### 13.32.020 - Definitions.

Except where the context otherwise requires, the definitions contained in this section shall govern the construction of this chapter:

- A. "Certified arborist" means an individual who has demonstrated knowledge and competency of arboriculture through the obtainment of an arborist certification from the International Society of Arboriculture, or its successor organization if that organization no longer exists, or who is a member of the American Society of Consulting Arborists, or its successor organization if that organization no longer exists.
- B. "Dead tree" means a tree that is no longer alive, has been removed beyond repair, or is in an advanced state of decline or (where an insufficient amount of live tissue, green leaves, limbs or branches exists to sustain life) and has been determined to be in such a state by a certified arborist during a non-dormant or other natural stage of the tree that would minimize the likelihood that the tree would be mistakenly identified as being in such a dead state.
- C. "Director" means the Director of Planning, Building and Code Enforcement of the City of San José or such other person designated by the City Manager to administer and enforce the provisions of this chapter.
- D. "Dripline" means the area around the base of a tree directly under the canopy cover of the tree and extending out as far as the canopy.
- E. "Invasive Tree" means any Tree that is both non-native and able to establish on many sites, grow quickly, and spread to the point of disrupting local plant communities or ecosystems.
- ~~E~~F. "Live tree" means any tree that is not a dead tree.
- ~~F~~G. "Ordinance tree" means a tree defined in this section herein below and -whose removal or topping is covered by and subject to the provisions of this chapter.
- ~~G~~H. "Remove" means eliminate, take away, uproot or destroy. For purposes of this chapter, "remove" also means taking any action that reasonably and foreseeably will lead to the death of a tree or to permanent significant damage to the health or structural integrity of a tree. Such actions can include, without limitation and by way of example, excessive pruning, cutting, girding, poisoning, or watering of a tree; the unauthorized relocation or transportation of a tree; excessive excavation,

alteration, or grading of the soil within the dripline of a tree, or excessively bruising, tearing or breaking the roots, bark, trunk or branches of a tree.

- I "Topping" means cutting the branches of an ordinance tree in a manner that destroys the existing symmetrical appearance or natural shape of the tree and involves the removal of main lateral branches and leaving the trunk of the tree or major branches of the tree with a stub appearance.
- J "Tree" means any live or dead woody perennial plant characterized by having a main stem or trunk which measures thirty-eight (38) inches or more in circumference at a height of fifty-four (54) inches above natural grade slope. For purposes of this chapter, a multi-trunk tree shall be considered a single tree and measurement of that tree shall include the sum of the circumference of the trunks of that tree at a height of fifty-four inches above natural grade slope. "Tree" shall include the plural of that term.
- K "Unsuitable Tree" means a live tree or dead tree on a lot that is used for a one-family dwelling as defined in Section 20.200.320 a two-family dwelling as defined in Section 20.200.330 or any other land use as defined in Title 20 of the San Jose Municipal Code, where the tree is not a heritage tree as defined in Section 13.32.140, a candidate for heritage tree status, or a palm tree in the Palm Haven Conservation Area and meets at least one of the following criteria:
  - 1. On any lot used as a one-family dwelling, two-family dwelling or multi-family dwelling, the part of the tree trunk nearest to the one-family dwelling, two-family dwelling, or multi-family dwelling including any secondary unit or garage on the same lot is five feet or less from the nearest above-grade part of that one-family dwelling, two-family dwelling, or multi-family dwelling, including secondary unit or garage; or
  - 2. On any lot, the part of the tree trunk nearest to a below-grade utility pipe or line of a is five (5) feet or less from the centerline of that below-grade utility pipe, below-grade utility line or overhead utility line; or
  - 3. On a lot used for one-family dwelling or a two-family dwelling, the tree belongs to a species that has been found by the city council to be uniquely less compatible with the immediate environment because the species is invasive or non-native to the San José region or is susceptible to disease. Such tree species shall be placed on an Unsuitable Tree species list which shall be adopted by the city council by resolution, which resolution may be amended from time to time to add or delete certain tree species.

#### 13.32.030 - Removal of live tree.

It shall be unlawful for any person to remove, or cause to be removed, any live tree, as defined in Section 13.32.020, from any private parcel of land in the city unless one of the following conditions exists:

- A. Removal of the tree is required pursuant to the provisions of Chapter 13.28; or
- B. A development permit that allows the removal of the tree has been issued and accepted by the permit applicant pursuant to the provisions of Title 20 of this Municipal Code; or
- C. An amendment to a development permit that allows the removal of the tree has been issued and accepted pursuant to the provisions of Title 20 of this Municipal Code; or
- D. A tree removal permit that allows the removal of that tree has been issued and accepted pursuant to the provisions of this chapter.

#### 13.32.040 - Removal of dead tree.

It shall be unlawful for any person to remove, or cause to be removed, any dead tree, as defined in Section 13.32.020, from any private parcel of land in the city unless the following conditions exist:

- A. A report prepared and executed by a certified arborist has been submitted to the Director upon the Director's request documenting that the tree qualifies as a dead tree pursuant to the definition set forth in Section 13.32.020 above; and
- B. Only after the condition set forth in subsection A. has been satisfied, either one of the following additional conditions exists:
  - 1. A development permit adjustment that allows the removal of the dead tree has been issued and accepted by the permit applicant pursuant to the provisions of Title 20 of this Municipal Code; or
  - 2. A tree removal permit that allows the removal of the dead tree has been issued and accepted by the permit applicant pursuant to the provisions of this chapter.

#### 13.32.041 - Removal of Unsuitable Tree

It shall be unlawful for any person to remove, or cause to be removed, any Unsuitable Tree, as defined in Section 13.32.020, from any private parcel of land in the city unless a tree removal permit, development permit or permit adjustment has been issued pursuant to Title 20 of this Code that allows the removal of that Unsuitable Tree has first been issued and accepted by the applicant pursuant to the provisions of this chapter.

#### 13.32.045 - Presentation of permit on request.

- A. It shall be unlawful for any person to remove or cause to be removed a live tree or dead tree, as defined in Section 13.32.020, from any private parcel of land in the city unless the permit or a copy of the permit is maintained on the site where the tree to be removed is located.
- B. It shall be unlawful for any person to remove or cause to be removed a live tree or dead tree, as defined in Section 13.32.020, from any private parcel of land in the city unless the permit or a copy of the permit can immediately be presented upon request to the Director of Planning, Building, and Code Enforcement, police officers, and their designee.
- C. It shall be unlawful for any person to engage in any tree removal activity or allow any activity to remove the tree that is the subject of the permit to occur unless and until: (1) the permit or a copy of the permit is located on the site where the subject tree is located, and (2) the permit or a copy of the permit is readily available for presentation upon request as described in this section.

#### 13.32.047 - Posting of permit.

- A. It shall be unlawful for any person to remove or cause to be removed a live tree or dead tree, as defined in Section 13.32.020, from any private parcel of land in the city unless a copy of the permit is posted on the parcel on which the subject tree is located prior to commencement of and during any actions involving removal of the tree as follows:
  - 1. The copy of the permit shall be a minimum size of eight and one-half (8.5) by eleven (11.0) inches, posted at each public street frontage within two (2) feet from the public right-of-way, and posted in such a manner that the permit is readable from the public right-of-way; or
  - 2. If the parcel that is the subject of the permit does not have a public street frontage, a copy of the permit shall be posted at a location where the permit is readable from a common access driveway or roadway.
- B. It shall be unlawful for any person to engage in any tree removal activity or allow any activity to remove the tree that is the subject of the permit to occur unless and until the permit is posted as described in this section.

13.32.050 - Certified arborist report.

In addition to the requirement for a certified arborist report pursuant to the provisions of Section 13.32.040, the Director may require the applicant to submit a report prepared and executed by a certified arborist whenever the removal of any tree is proposed and the Director determines that he or she needs additional information documenting that any or all of the criteria for a tree removal permit clearly exist.

13.32.060 - Penalty.

Any person who unlawfully removes or has unlawfully removed a live tree or dead tree, or causes or has caused the unlawful removal of such a tree, shall be subject to any appropriate enforcement action by the city, which action may include without limitation the issuance of an administrative citation and the imposition of an administrative fine in the amount set forth in a schedule of administrative fines set forth by resolution of the city council.

13.32.070 - Permit application.

- A. Any person, unless required to do so by the provisions of Chapter 13.28, desiring to remove any live tree that is not an Unsuitable Tree from any private parcel of land in the city, as set forth in Section 13.32.030, shall file a written application on a form provided by the Director, setting forth therein, among other things, the number, type, size and location of each tree and the reason for removal of each tree.
- B. Any person, unless required to do so by the provisions of Chapter 13.28, desiring to remove any dead tree that is not an Unsuitable Tree from any private parcel of land in the city, as set forth in Section 13.32.040, shall file a written application on a form provided by the Director, setting forth therein, among other things, the number, type, size and location of each tree, the reason for removal of each tree, and the certified arborist's report assessing the condition of tree and the time frame in which the assessment occurred.
- C. Any person, unless required to do so by the provisions of Chapter 13.28, desiring to remove any Unsuitable Tree from any private parcel of land in the city, as set forth in Section 13.32.041, shall file a written application on a form provided by the Director, setting forth therein, among other things, the number, type, size and location of each Unsuitable Tree, and information clearly establishing that the tree qualifies as an Unsuitable Tree.

13.32.080 - Development permit combined.

The request for a tree removal permit pursuant to the provisions of this chapter may be included as part of an application for a development permit under the provisions of Title 20 of this Municipal Code. Where the request for a tree removal permit is included as a part of a development permit application under Title 20, the development permit may serve as the tree removal permit and be processed under the application, noticing, hearing and appeal provisions applicable to the development permit application, and no separate tree removal permit application and tree removal permit shall be required, so long as all of the substantive provisions and permit processing requirements of this chapter are met as a part of processing that development permit application.

13.32.090 - Review of permit application - General.

- A. The provisions of this section shall apply to tree removal permit applications for trees that are not Unsuitable Trees as defined in Section 13.32.020, subject to the provisions of Section 13.32.095D below.
- B. The Director shall conduct an investigation on each application for a tree removal permit accepted for filing.
- C. Each such investigation shall include the preparation by the Director of a written tentative decision on the application and the mailing of a copy of the written tentative decision to : (1) the applicant; and (2) the owners and occupants of property contiguous to the parcel upon which the tree or trees proposed to be removed is or are located or directly across a public street which abuts such parcel.
- D. The written tentative decision shall include instructions for any person desiring to request a hearing to file a request for hearing by the date specified in the tentative decision, which date shall be not less than ten (10) calendar days after the tentative decision mailing date.
- E. The applicant shall post a copy of the written tentative decision, including the hearing request instructions, on the parcel on which the subject tree is located as follows:
  - 1. The copy of the written tentative decision shall be a minimum size of eight and one-half (8.5) by eleven (11.0) inches, posted at each public street frontage within two (2) feet from the public right-of-way, and posted in such a manner that the written tentative decision is readable from the public right-of-way; or
  - 2. If the parcel that is the subject of the written tentative decision does not have a public street frontage, a copy of the written tentative decision shall be posted at a location where the permit is readable from a common access driveway or roadway.
  - 3. The applicant shall post the copy of the written tentative decision within five (5) calendar days of the date of mailing of the written tentative decision.
- F. The applicant shall provide written certification to the Director that the tentative written decision and hearing request instructions have remained posted on the subject tree for a period of at least five (5) calendar days.
- G. The Director shall not act upon any tree removal permit application until the time has elapsed for requesting a hearing .
- H. If a request for hearing is filed on or before the date specified in the notice of tentative decision, notice of the time and place of the hearing shall be mailed to: (1) the applicant, postage prepaid at the address shown for such purposes on the application; (2) such owners postage prepaid at



their last known address as the same appears upon the last equalized assessment rolls of the County of Santa Clara; (3) such occupants postage prepaid at the address of the parcel on which the said tree or trees to be removed is or are located and at the address of the parcel directly across the public street which abuts such parcel on which said tree or trees is or are located; and (4) to any other interested person who has requested hearing, as the address shown in their request for hearing. All such notices shall be mailed at least five (5) days before the date on which the applicant, owners, occupants and others requesting a hearing will be heard.

- I. The form of the notices shall be as prescribed by the Director
- J. As an alternative to the tree removal and application process, an applicant may apply for a special use permit. A special use permit application for tree removal shall follow the process set forth in Part 7 of Chapter 20.100 of title 20 of this Code.

#### 13.32.095 - Review of permit application - Administrative procedures for Unsuitable Trees.

- A. The Director shall review each application for a tree removal permit for an Unsuitable Tree accepted for filing.
- B. The Director may, in the Director's sole discretion, approve a tree removal permit for an Unsuitable Tree.
- C. The Director's decision pursuant to this section is an administrative determination and requires no hearing or notice.
- D. The action of the Director is final. If the application is denied, nothing in this section shall preclude the applicant from filing, and such applicant may file, an application for a tree removal permit for live trees or dead trees that are not Unsuitable Trees pursuant to this chapter. 13.32.100 - Permit findings.
  - A. Neither the Director nor the Planning Commission on appeal shall issue a permit for the removal of any tree, other than an Unsuitable Tree, on any private parcel of land in the city unless the Director or the commission on appeal makes at least one of the following findings:
    - 1. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010; or
    - 2. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or
    - 3. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal; or
  - B. In connection with an application to remove a dead tree, the Director or the Planning Commission on appeal shall consider whether the subject tree was in any way injured, removed or caused to be injured or removed by the applicant, in addition to the findings required to be set forth pursuant to the provisions hereinabove.

- C. The Planning Director shall not issue a permit for the removal of an Unsuitable Tree on any private parcel of land in the city unless the Director finds that the tree is an Unsuitable Tree as defined in Section 13.32.020.

13.32.110 - Action on a permit.

- A. In taking action on a tree removal permit application, the Director or the Planning Commission on appeal, if applicable, may deny the application or issue a tree removal permit for one or more trees and concurrently deny removal for one or more trees.
- B. The Director or the Planning Commission on appeal, if applicable, may make any permit that they issue subject to such terms, provisions and conditions as they may deem reasonably necessary to secure the general purposes of this chapter.
- C. The Director or the Planning Commission on appeal, if applicable, shall impose as a condition on the issuance of any permit for the removal of any tree the requirement that a suitable replacement tree or trees as determined by the Director or the Planning Commission on appeal be or cause to be provided, installed and maintained, **at no cost to the City : on-site by the permittee ;or if on-site replacement is not feasible, at another site within the City of San Jose in the manner determined by the Director or the Planning Commission on appeal.**
- D. The replacement tree requirement set forth in this section shall be roughly proportionate to the tree replacement needed to alleviate and address the burdens and other impacts created by allowing the removal of the tree or trees under the permit, except that the Director or the Planning Commission on appeal may increase by a reasonable amount the number of replacement trees to be provided, installed and maintained by the permittee, such as increasing the number and/or size of replacement trees where it is specifically found based upon evidence in the record that the permittee injured or removed or caused the injury or removal of a dead tree that is a subject of the permit without first obtaining a tree removal permit.
- E. **On-site tree replacement shall include a requirement that any on-site replacement tree that fails within a three (3) year period shall be promptly replaced. Off-site replacement shall include similar assurance for longevity of the replacement tree(s).**

13.32.120 - Appeal procedures.

- A. Action of the Director on a tree removal application under this Chapter is an administrative permit not subject to hearing unless requested in accordance with the provisions of Section 13.32.090 above. If no hearing is requested in accordance with the provisions of Section 13.32.090 above, the Director's decision shall not be subject to appeal.
- .B. Except for actions of the Director on Unsuitable Trees, any action of the Director after a hearing is held under the provisions of Section 13.32.090 above may be appealed to the Planning Commission by the applicant or by any of the property owners or occupants of the parcels of land adjacent to or across the street from the property upon which the tree or trees proposed for removal are located. The person making the appeal shall do so by filing a written notice of appeal within ten days after notice of such action is mailed to the applicant at the address shown for such purpose on his application and to such owners mentioned in Section 13.32.090 at their last known address as the same appears upon the last equalized assessment rolls of the County and to such occupants mentioned in Section 13.32.090 at the address of the parcel on which the tree or trees to be removed is or are located and

at the address of the parcel directly across the public street which abuts such parcel on which said tree or trees is or are located.

- C. Such notice of appeal shall be filed with the Director on a form furnished by the Director. The information and data required to be set forth in the form shall be as prescribed by the Director. The Director may refuse to accept any such notice of appeal unless the notice is signed and all data is set forth and shown as required by the form.
- D. When such notice of appeal has been accepted and filed by the Director, within the time provided, the Director shall, subject to the applicable rules of the Planning Commission, set a date of hearing thereon by the Planning Commission and notify the Planning Commission of such setting. Such date of hearing shall be not less than fifteen days nor more than thirty days after the notice of appeal was accepted and filed.
- E. The Director shall give notice of the hearing to the appellant or appellants, and the applicant, owners and occupants by mailing same at least **ten** days before the date set for hearing, to the appellant or appellants at the address shown for such purpose on his or their notice of appeal, and to the applicant, owners and occupants at the address to which the Director's action was mailed and said Director shall also file with the Planning Commission at its hearing on appeal the application, notice of appeal, the action appealed from, and all other things filed with the Director in connection with the application.
- F. The Planning Commission shall hear all matters on appeal de novo and shall take action within a reasonable time after conclusion of its hearing.

#### 13.32.130 - Safeguarding trees during construction.

For the purpose of safeguarding trees during construction, all of the following conditions shall apply to all such trees except for trees for which a tree removal permit has been issued or which are required to be removed pursuant to Chapter 13.28:

- A. Prior to the issuance of any approval or permit for the construction of any improvement on the building site, all trees on the site shall be inventoried by the owner or contractor as to size (including diameter/circumference), species and location on the lot and the inventory shall be submitted on a topographical map to the Director; and
- B. Damage to any tree during construction shall be immediately reported by a person causing the damage, the responsible contractor, or the owner to the Director, and the contractor and/or owner shall treat the tree for damage in the manner specified by the city arborist; and
- C. No construction equipment, vehicles or materials shall be stored, parked or standing within the tree dripline; and
- D. Drains shall be installed according to city specifications so as to avoid harm to trees due to excess watering; and
- E. Wires, signs and other similar items shall not be attached to trees; and
- F. Cutting and filling around the base of trees shall be done only after consultation with the city arborist and then only to the extent authorized by the city arborist; and
- G. No paint thinner, paint, plaster or other liquid or solid excess or waste construction materials or wastewater shall be dumped on the ground or into any grate between the dripline and the base of the tree or uphill from any tree where certain substances might reach the roots through a leaching process; and
- H. Fencing shall be installed outside the canopy of to the dripline unless otherwise directed by the certified arborist to prevent injury to trees making them susceptible to disease causing organisms; and

- I. Wherever cuts or soil disturbances are made in the ground near the roots of trees, appropriate measures shall be taken to prevent exposed soil from drying out and causing damage to tree roots as prescribed in a certified arborist report.

13.32.140 - Heritage trees.

- A. Any tree as the term "tree" is defined in Section 13.28.020 located on private property which, because of factors including but not limited to its history, girth, height, species or unique quality, has been found by the city council to have a special significance to the community shall be designated a heritage tree. Such trees shall be placed on a heritage tree list which shall be adopted by the city council by resolution, which resolution may be amended from time to time to add to or delete certain trees therefrom.
- B. Any person who unlawfully vandalizes, grievously mutilates, removes or destroys such a heritage tree shall be subject to any appropriate enforcement action by the city, including without limitation the imposition of an administrative citation with the imposition of a civil penalty in the amount set forth by resolution of the city council for each such tree so vandalized, mutilated, removed or destroyed.

13.32.150 - Failure to give or receive notice.

The failure to post, mail or deliver by personal service any notice required under this chapter or the failure of any person to receive such notice, shall not affect the validity of any proceedings or actions taken by the city or its employees, agents or contractors under this chapter.

**DETERMINATION OF CONSISTENCY WITH THE  
ENVISION SAN JOSÉ 2040 GENERAL PLAN FINAL ENVIRONMENTAL IMPACT  
REPORT AND SUPPLEMENTAL PROGRAM ENVIRONMENTAL IMPACT  
REPORT (SCH# 2009072096) AND ADDENDA THERETO**

Pursuant to Section 15168(c)(2) of the CEQA Guidelines, the City of San José has determined that the project described below is pursuant to or in furtherance of the Final Program Environmental Impact Report (Final Program EIR) and Supplemental Program Environmental Impact Report (Supplemental Program EIR) for the Envision San José 2040 General Plan and addenda thereto, and does not involve new significant impacts beyond those analyzed in the above EIRs. Therefore, the City of San José may take action on the project as being within the scope of both the Final and Supplemental Program EIRs.

**File Number and Project Name:** PP17-072, San José Tree Replacement Controls

An Ordinance to amend Title 13 of the City of San José Municipal Code, Chapter 13.32 Tree Removal Controls for trees on private property. These are:

1. Amending Chapter 13.32 of Title 13 of the San José Municipal Code, to amend the tree removal requirements for single-family residences, two-unit dwellings and other land uses to streamline permitting processes and to further implement the Community Forest Goal and Policies set forth within the Envision San José 2040 General Plan, and to make other technical, non-substantive, or formatting changes within those chapters and sections of Title 13; and
2. Approving the Determination of Consistency with the Envision San José 2040 General Plan EIR (Resolution No. 76041) and Supplemental program EIR to the Envision San José General Plan EIR (Resolution No. 77617), and addenda thereto in accordance with CEQA.

The purpose of these changes is to streamline the tree removal permitting process and to continue implementation of the Community Forest Goal and Policies set forth within the Envision San José 2040 General Plan.

**Location:** Citywide.

**Council District:** All Council Districts.

The “Envision San José 2040 General Plan,” adopted by City Council Resolution No. 76041 on November 1, 2011 and the Supplemental Program EIR entitled, “Greenhouse Gas Reduction Strategy,” adopted by City Council Resolution No. 77617 on December 15, 2015 are programmatic environmental evaluation of the General Plan under CEQA. The General Plan Program EIR and Supplemental Program EIR were prepared for the comprehensive update and revision of all elements of the City of San José General Plan, including an extension of the planning timeframe to the year 2035. The following impacts were reviewed and found to be adequately considered by the EIRs:



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|---|---|--|
| <input checked="" type="checkbox"/> Transportation            | <input checked="" type="checkbox"/> Land Use                        | <input checked="" type="checkbox"/> Noise and Vibration          |
| <input checked="" type="checkbox"/> Air Quality               | <input checked="" type="checkbox"/> Biological Resources            | <input checked="" type="checkbox"/> Geology and Soils            |
| <input checked="" type="checkbox"/> Hydrology & Water Quality | <input checked="" type="checkbox"/> Hazardous Materials and Hazards | <input checked="" type="checkbox"/> Public Facilities & Services |
| <input checked="" type="checkbox"/> Cultural Resources        | <input checked="" type="checkbox"/> Aesthetics                      | <input checked="" type="checkbox"/> Energy                       |
| <input checked="" type="checkbox"/> Population and Housing    | <input checked="" type="checkbox"/> Greenhouse Gas Emissions        | <input checked="" type="checkbox"/> Public Facilities & Services |
| <input checked="" type="checkbox"/> Cumulative Impacts        | <input checked="" type="checkbox"/> Growth Inducing Impacts         | <input checked="" type="checkbox"/> Agriculture                  |
| <input checked="" type="checkbox"/> Mineral Resources         | <input checked="" type="checkbox"/> Hazardous Materials and Hazards | <input checked="" type="checkbox"/> Public Facilities & Services |

## Background

The Envision San José 2040 General Plan (General Plan) includes a goal to “Preserve and protect existing trees and increase planting of new trees within San José to create and maintain a thriving Community Forest that contributes to the City’s quality of life, its sense of community, and its economic and environmental wellbeing.”

To further this goal of the General Plan, the City manages its Community Forest in part by regulating the removal of trees on private property. Removal of an ordinance-size tree from any private property requires a Tree Removal Permit approval by the Director of Planning. As defined in the Municipal Code, an ordinance-size tree has a circumference of 56 inches or greater when measured two feet above the ground. A Tree Removal Permit can be issued based on the condition of the tree or the tree’s interference with utilities and other structures. A standard condition for issuance of a Tree Removal Permit is replacement tree planting, either on the property or along the public street frontage.

In 2012, the City Council adopted an ordinance amendment to streamline the Tree Removal Permit process. This ordinance amendment included allowing the removal of nuisance (also called Unsuitable) trees on single-family residential properties through an administrative process and providing applicants with the flexibility of planting replacement trees on their property or paying an in-lieu fee when allowed by the City so that a replacement tree could be planted off-site.

While improving certain reviews, the Tree Removal Permit process continues to create administrative, financial, and time costs for both the City and the applicants. Based on the City Council’s direction in 2016, staff has reviewed the current Tree Removal Permit process and developed additional changes to the Municipal Code Title 13.32. These changes have been reviewed with other City Departments, City Advisory groups, customers, and stakeholders.

## Project Description

The proposed project consists of revisions to the existing Municipal Code Chapter 13.32 of Title 13—Tree Removal controls pertaining to the removal of trees on private property. These changes further align with standard industry practice for measurement of ordinance size trees.

### *Ordinance Tree Measurements*

These revisions include changes to the standard for measurement of an ordinance-sized tree from two feet above ground to four and one-half feet above ground, correspondingly reducing the size of what constitutes an ordinance-sized tree from 56 inches to 38 inches in circumference (12.1 inches in diameter). This change in circumference/diameter provides approximately the same size diameter/circumference requirements for an ordinance-sized tree when measured at four and one-half feet above grade as is currently required at a measurement of two feet above grade. Additionally, it is likely that more multi-trunk trees would be subject to a tree removal permit under the proposed provisions.

Measurement at four and one-half feet above grade is consistent with Arboricultural Industry standards and is typical practice of many local agencies. The proposed diameter of 12.1 inches is also consistent with the 12-inch diameter standard used by surrounding cities such as Sunnyvale, Sacramento, and San Francisco that the City benchmarks to define ordinance sized trees. This analysis is based on Planning discussions with the City Arborist in the Fall of 2017 and City Arborist discussions with the local Certified Arborist Association. The City Arborist reported that the local Certified Arborist Association concurred that the proposed change to increase the height of measuring the tree diameter/circumference would increase the number of trees subject to the Ordinance, especially in the area of multi-trunk trees.

### ***Unsuitable Trees***

Currently single family land use properties can utilize an Unsuitable Tree process when considering certain tree removals. This Unsuitable Tree process extends to trees that have part of a tree trunk five feet or less from a single family residence, or the tree is within five feet of the centerline of a below-grade utility pipe or utility line or if the tree is on a list of trees that the City has adopted which are considered Unsuitable.

The proposed change to the Tree Removal controls in Title 13.32 expands the application of the Unsuitable Trees category from single family to duplex use properties as well as certain application of Unsuitable Trees for multi-family, commercial and industrial use areas. Planting of replacement trees would still be required.

In the proposed ordinance update, Unsuitable Trees are further defined as those which have the nearest part of their trunks either within five (5) feet of the nearest part of a single-family residence, two-dwelling residence, accessory housing unit or garage or within five (5) feet of the center line of underground utility pipes or lines or overhead utility lines or which are listed as a species that are “non-native, invasive or subject to disease” on a list previously adopted by the City Council by Resolution.

Land use categories other than single-family or two-dwelling units would also be eligible for consideration for Unsuitable Trees as defined above. Replacement trees would continue to be required.

### ***Process Improvements***

Currently, all Tree Removal Permits for live trees other than live trees on single-family residential lots are decided through a public hearing process at a Director’s Hearing. Other tree removals including dying, dead, or diseased trees, and on single-family residential lots only, Unsuitable Trees, may be decided administratively at the Planning Director’s discretion (without a public hearing). The proposed revisions to Chapter 13.32 Tree Removal controls streamlines the process such that requests for a public hearing for removal of a live Ordinance-sized tree should be made during the public notice period. This recommendation is based on staff’s experience of a very low volume of tree removal permit hearings that were controversial over past three years (averaging one to two controversial permits per year, significantly less than one (1) percent of the total number of permits).

This process improvement facilitates staff’s discretionary review of tree removal requests. The Director of Planning will continue to review and make decisions on individual tree removal permit requests. A mailing notice of the pending tree removal decision (for permit applications not meeting the Unsuitable Trees definition) will be sent to applicants and parties adjacent to and across from the street for the tree under review. These informed parties continue to have the ability to: 1) request a public hearing at the Planning Director level, and 2) appeal the Planning Director’s decision to the Planning Commission.

Conditions of approval will be applied to each tree removal permit whether a hearing is held or not. These conditions include measures such as requirements for tree replacement, protection of trees during nesting

and breeding seasons, and pre-construction nesting bird surveys prior to removal of the trees. The tree removal permit will continue to be reviewed and signed by the Director of Planning.

## **Regulatory Framework**

### *Federal Endangered Species Act and California Endangered Species Act*

The Federal Endangered Species Act and California Endangered Species Act protect listed wildlife species from harm or “take,” which can include habitat modification or degradation that directly results in death or injury to a listed wildlife species. The long-term purpose of these laws are to ultimately restore listed wildlife species numbers to where they are no longer threatened or endangered.

### *Federal Migratory Bird Treaty Act*

The Federal Migratory Bird Treaty Act (FMBTA: 16 U.S.C., sec. 703, Supp. I, 1989) is part of a coordinated effort between the United States, Canada, Mexico, Japan, and Russia to help protect migratory birds in this part of the world. It prohibits killing, taking, selling, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs.

### *State Fish and Game Code*

Birds of prey, such as owls and hawks, are protected in California under provisions of the State Fish and Game Code, Section 3503.5 (1992), which states that it is “unlawful to take, possess, or destroy any birds in the order falconiformes or strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.” Construction disturbance during the breeding season can result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered a “taking” by the California Department of Fish and Wildlife (CDFW).

### *Santa Clara Valley Habitat Plan/Natural Community Conservation Plan*

The Santa Clara Valley Habitat Plan (Habitat Plan) is a conservation program intended to promote the recovery of endangered species and enhance ecological diversity and function, while accommodating planned growth in approximately 500,000 acres of southern Santa Clara County. The Habitat Plan is a regional partnership between six Local Partners (the County of Santa Clara, Santa Clara Valley Transportation Authority, Santa Clara Valley Water District, and the cities of San José, Gilroy, and Morgan Hill) and two Wildlife Agencies (the California Department of Fish and Wildlife [CDFW] and the United States Fish and Wildlife Service [USFWS]).

### *Other City Policies & Regulations*

Tree Removal Ordinance: The City of San José maintains the urban landscape in part by promoting the health, safety, and welfare of the City by controlling the removal of ordinance trees on private property (San José Municipal Code Section 13.32).

The proposed changes to the Ordinance are to Municipal Code chapters and sections of Section 13.32 and chapters and sections of Title 13.

Riparian Corridor Protection and Bird-Safe Design [Policy 6-34]: The City’s Policy 6-34 sets guidelines on how areas along natural streams should be treated and establishes development guidelines for general site design, as well as guidance for the design of buildings, landscaping, and public recreation facilities related



to their interface with riparian corridors. The riparian policy indicates that “all buildings, structures, impervious surfaces, outdoor activity areas, and ornamental landscaped areas should be separated at a minimum of 100 feet from the edge of the riparian corridor (or top of bank, whichever is greater).” This Policy allows exceptions based on adjacent land uses and existing setbacks, and other factors. These setbacks are typically determined on a case-by-case basis. The City’s 1999 Riparian Corridor Study provides related guidance, such as the use of plant species native to central California and appropriate to a riparian habitat corridor, retaining remnant riparian species (such as sycamore and valley oak trees) that exist outside of the mapped riparian corridor. The Study also recommends prohibition of non-native plant species within the mapped riparian corridor and prohibition of invasive plant species within 100 feet of a riparian corridor. Appendix B in the Study lists vegetation suitable and unsuitable within a mapped riparian corridor and within 100 feet outside of a riparian corridor.

Heritage Trees: Heritage trees are defined as trees that due to factors such as history, girth, height, species, or unique quality, have been found by the City Council to have a special significance to the community and are designated a heritage tree. The heritage tree list adopted by the city council by resolution can be amended from time to time. There are currently over 200 trees on the City’s Heritage Tree List. Upon designation by City Council, Heritage Trees are further protected from harmful illegal pruning or removal. Violation can result in a citation and fine of up to \$10,000, which can increase for repeated violations up to \$30,000. Under the City’s Municipal Code Section 13.68 any pruning of Heritage Trees shall be done in consultation with the City Arborist to ensure that the work done on or around the tree will not endanger its health, structure, or life. Under the City’s Tree Removal Ordinance, specific criteria or findings must be made before a permit for removal of a live or dead Heritage Tree could be granted.

The proposed changes to the Ordinance does not alter the City’s Heritage Tree Program. Protection of Heritage Trees will continue through the discretionary tree removal permit process.

General Plan Policies on Community or Urban Forest: General Plan policies that guide community forest are identified below:

***Policy MS-21.4***

*Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to effectively preserve it.*

***Policy MS-21.5***

*As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse affect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.*

***Policy MS-21.6***

*As a condition of new development, require, where appropriate, the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies, or guidelines.*

***Policy MS-21.8***

*For Capital Improvement Plan or other public development projects, or through the entitlement process for private development projects, require landscaping including the planting of new trees to achieve the following goals:*

- 1. Avoid conflicts with nearby power lines.*
- 2. Avoid potential conflicts between tree roots and developed areas.*
- 3. Avoid use of invasive, non-native trees.*
- 4. Remove existing invasive, non-native trees.*
- 5. Incorporate native trees into urban plantings in order to provide food and cover for native wildlife species.*
- 6. Plant native oak trees and native sycamores on sites which have adequately sized landscape areas and which historically supported these species.*

***Policy MS-21.9***

*Where urban development occurs adjacent to natural plant communities (e.g., oak woodland, riparian forest), landscape plantings should incorporate tree species native to the area and propagated from local sources (generally from within 5-10 miles and preferably from within the same watershed).*

***Policy MS-21.10***

*Prohibit London plane trees from being planted in the Coyote Planning Area, which is located near the most significant stands of sycamore alluvial woodland in the City. Planting of this species is discouraged elsewhere, particularly near riparian areas. Prohibit holly-leaved oaks from being planted in areas containing stands of native oaks or in proximity to native oak woodland habitat.*

**Conformance with Regulatory Framework**

Trees proposed for removal on private property could provide nesting habitat for birds, including migratory birds and raptors. Nesting birds are among the species protected under provisions of the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503, 3503.5, and 2800. Tree removal could disturb a nesting bird or raptor. In conformance with the California State Fish and Game Code, the provisions of the Migratory Bird Treaty Act, and General Plan policies ER-5.1 and ER-5.2, tree removal permits will include measures to avoid and/or reduce impacts to nesting birds. Potential standard measures may include the following:

- Requirements for pre-construction nesting bird surveys prior to the start of any tree removal activities, if tree removal is proposed to commence during the nesting season (February 1 to August 31) in order to avoid impacts to potential nesting birds. These surveys shall be completed by a qualified biologist no more than 14 days before construction begins. During this survey, the biologist or ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests.
- If an active nest is found in an area that will be disturbed by the tree removal, the ornithologist shall designate an adequate buffer zone to be established around the nest, in consultation with the CDFW.
- The applicant shall submit a report to the City's Supervising Environmental Planner indicating the results of the pre-construction survey and any designated buffer zones to the satisfaction of the Director of Planning, prior to the issuance of a Tree Removal Permit.

Implementation of General Plan policies and conformance to state and federal laws protecting nesting birds would reduce potential impacts to special-status species nesting on trees to a less than significant level.

Similarly, during the discretionary review process, the proposed tree removal will comply with the principles and conditions within the Santa Clara Valley Habitat Conservation Plan and the City's Riparian Corridor Protection and Bird-Safe Design Policy and the Riparian Corridor Policy Study. Specifically, trails through woodland or riparian habitat will avoid tree removal or substantial pruning as far as possible. Unhealthy, exotic tree species, or trees unlikely to reach maturity due to site conditions will be targeted for removal. The addition of non-native plant species within mapped riparian corridors will be avoided as well as within 100 feet of a riparian corridor as shown on approved plans.

### **General Plan Consistency Analysis**

Pursuant to CEQA Guidelines Section 15168(c)(2), the proposed changes to the Tree Removal controls [Title 13.32] is within the scope of the Envision San José 2040 General Plan and the associated General Plan Program EIR and Supplemental EIR, and addenda thereto.

Envision San José 2040 General Plan EIR analyzes policies that address the effects of development on the urban or community forests. Policies and actions (MS-21.4 to MS-21.6 and MS-21.8 to MS-21.10) that reduce or avoid adverse impacts to the urban forest are identified in the General Plan and enumerated above in Regulatory Framework.

The urban forest is an important biological resource within the City and is comprised of all the native and non-native trees on private and public property. Direct impacts due to loss of trees could occur to the urban forest due to developmental growth within the City. It can also occur when trees are planted too close to buildings or utilities, become mature and then these trees must be removed before damage to buildings or utilities occurs. This can cause the temporary loss of mature trees, which is not a short-term loss due to the length of time required for trees to mature. Development can also lead to indirect impacts to the urban forest when trees do not adapt to changed conditions, such as the addition of pavement covering roots or limiting water reaching the roots or construction activity related to new buildings or additions.

The City responds to the direct and indirect loss of mature trees by maintaining discretionary removal of ordinance size trees in all land use categories. Additionally, trees less than ordinance size also require a tree removal permit, development permit or permit adjustment for any tree removal on multi-family, commercial or industrial use properties.

Tree removal through this Ordinance and proposed updates continues to require tree replacement on-site or payment of an in-lieu fee to Our City Forest to compensate for the loss of trees on-site. The City requires the planting of replacement trees, typically at a rate of 1:1 on single family use properties and greater than 1:1 on other properties, especially in the case of native trees. Through this discretionary process, the City pursues all reasonable measures to preserve trees, and in situations where preservation is not feasible, use appropriate tree replacement to maintain the urban forest.

In accordance with existing City practice and the Municipal Code, trees removal during future development of would be replaced at the ratios shown in Table 4.4-1. The species of trees to be planted shall be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement at the development permit phase.

**Table 4.4-1: Tree Replacement Ratios**

<b>Tree Replacement Ratios</b>				
<b>Circumference of Tree to be Removed</b>	<b>Type of Tree to be Removed</b>			<b>Minimum Size of Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	<b>Orchard</b>	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon

x:x = tree replacement to tree loss ratio

**Note:** Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

A 38-inch tree equals 12.1 inches in diameter

A 24-inch box tree = two 15-gallon trees

Single Family and Two-dwelling properties may be mitigated at a 1:1 ratio

Proposed revisions to the City’s tree removal controls will maintain the City’s discretionary review process and retain the requirement for tree replacement. Additionally, tree replacement is also permitted within the public right-of-way under circumstances when there is available space along the property street frontage. To encourage rejuvenation and maintain the urban forest, the City also allows replacement trees at a school or park facility if there is restricted space on the private property. Replacement trees will also be required to be replanted if they fail within the first three years of planting (a typical standard for tree establishment). The City will continue to review all Ordinance sized live tree removal requests on private properties. The City will also continue to require more than 1:1 replacement of native trees that are proposed to be removed. Trees less than Ordinance size will also continue to be reviewed in Multifamily, Commercial, and Industrial use areas. For Multi-Family, Commercial and Industrial properties, a permit is required for removal of trees of any size.

The proposed process improvement strengthens the City’s urban forest policies in certain areas, such as making the review and tree replacement process more efficient for trees that are in proximity to occupied buildings or utility lines in multi-family, commercial or industrial areas. Tree removal or modifications to all trees on public property (e.g., street trees within a park strip or the area between the curb and sidewalk) are handled by the City Arborist (Department of Transportation).

Private development projects require landscaping including the planting of new trees that should avoid conflict with utilities, other tree roots, avoid or remove invasive, non-native trees, and provide native trees that are properly sized through the planning entitlement process. When private development is proposed next to oak woodlands, riparian areas; landscape should include tree species native to the area and propagated generally from within 5-10 miles of the same watershed. Private development proposed along riparian corridors should avoid planting non-native plant species to the riparian eco-system.



Specifically, the Coyote Planning Area is located near the most significant stands of sycamore alluvial woodland in the City. The City will continue to prohibit London plane trees in the Coyote Planning Area and other riparian areas in the City.

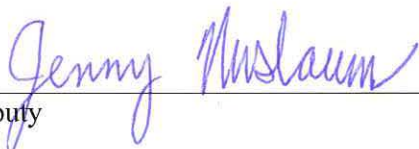
**Conclusion**

The proposed modifications within the Ordinance continue to support established as well as new plantings of trees in the urban forest. The proposed revisions maintain a discretionary staff review process for Ordinance-sized trees in better keeping with Arboriculture industry standards and best practices of local agencies. The proposed modifications aligns measurements standards with current industry practices and introduces efficiencies in the permit processing.

The Director of Planning will continue to review and approve all tree removal permits. Based on the City's requirements for tree removal, equal or greater tree replacement will continue to be required. A greater than 1:1 replacement would be required especially for the loss of any native trees. Trees less than ordinance size would continue to require a tree removal permit, development permit or permit adjustment for any tree removal on multi-family, commercial or industrial use properties. All federal, State and local laws related to tree protection and protection of species utilizing mature trees (such as during the nesting and breeding season) will be observed by applicants and the City. The City would continue to allow, when practical difficulties arise, replacement planting off-site or payment of an in lieu tree replacement fee.

As discussed in the analysis above, the proposed updates to Municipal Code Title 13.32 are consistent with the intent, policies, and actions addressed within the Envision San José 2040 General Plan and the related environmental impacts addressed in the Envision San José 2040 General Plan EIR adopted by City Council Resolution No. 76041 on November 1, 2011 and the Supplemental Program EIR entitled, "Greenhouse Gas Reduction Strategy," adopted by City Council Resolution No. 77617 on December 15, 2015, and all addenda thereto.

Rosalynn Hughey, Interim Director  
Planning, Building and Code Enforcement

  
Deputy

11/27/2017  
Date

Arthur Henriques  
Policy and Ordinance Technical Advisor

Jenny Nusbaum, AICP  
Principal Environmental Planner

# Private Tree Permit Streamlining

City of San Jose

Community Meeting

801 N. 1st Street  
City Hall wing Room 120

August 1, 2017

## COMMENT CARD

Mackenzie

MISSOURI

Santa Clara Valley

Audubon Society

Your feedback is important to the success of this project. We are interested in your thoughts about this project. **Thank You!**

### 1) Comments or questions

- Do not increase the grade height measurement without reducing circumference requirement, especially for native species
- Retain the process for native species
  - ↳ coast live oak, valley oak, sycamore, California buckeye, big leaf maple, all California native oaks, blue atlas and deodar cedar
- Retain the process when 3+ trees are proposed for removal at one site.
- do not allow for self-certification.

### 2) Contact Information (optional)

- streamline the process (no permit) for invasive species

Mackenzie SCVAS@gmail.com

8/01

Name: \_\_\_\_\_  
Phone #: \_\_\_\_\_  
Email: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_

*Please return this card to the sign in table*

**Los Gatos**

requires a permit for:

- All trees which have a 12” or greater diameter on developed residential property. (37” circumference at 4.5 feet)
- All trees which have an 8 inch or greater diameter (25” C) on developed Hillside residential property
- Protected species which have an 8 inch or greater diameter (25” C) located on any developed residential property:

- a. Blue Oak (*Quercus douglasii*)
- b. Black Oak (*Quercus kelloggii*)
- c. California Buckeye (*Aesculus californica*)
- d. Pacific Madrone (*Arbutus menziesii*)

- All trees which have a 4 inch or greater diameter (12.5” C) on vacant or non-residential property
- All trees which have a 4 inch or greater diameter (12.5” C) when removal relates to any development review
- Any tree that was required to be planted or retained by the terms and conditions of a development approval, building permit, tree removal permit or code enforcement action.

**Palo Alto**

Requires a permit for:

Individual species of trees that are protected are all Coast Live Oaks, Valley Oaks (greater than 36” C), and Coast Redwood (greater than 50” C) (measured at 4.5 feet)

**Mountain View**

Requires a permit for:

- Any tree with a circumference of 48" (measured at 54” above natural grade)
- Three species of trees: *Quercus* (oak), *Sequoia* (redwood) or *Cedrus* (cedar) with a circumference of 12” D (37" C) (measured at 54” above natural grade)

**Cupertino**

Requires a permit for:

Specimen Trees of the species listed below with either a minimum single trunk diameter of 12 inches (38” C) or a minimum multi-trunk diameter of 24 inches (75” C) measured 4.5 feet above ground level:

<i>Aesculus californica</i>	California Buckeye
<i>Acer macrophyllum</i>	Big Leaf Maple
<i>Cedrus atlantica 'Glauca'</i>	Blue Atlas Cedar
<i>Cedrus deodara</i>	Deodar Cedar
<i>Platanus racemosa</i>	Western Sycamore
<i>Quercus</i>	Native Oak trees, including the following:
<i>Quercus agrifolia</i>	Coast Live Oak
<i>Quercus douglasii</i>	Blue Oak
<i>Quercus kelloggii</i>	California Black Oak
<i>Quercus lobata</i>	Valley Oak
<i>Quercus wislizenii</i>	Interior Live Oak
<i>Umbellularia californica</i>	California Bay Laurel



8/01



# Private Tree Permit Streamlining

City of San Jose

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Community Meeting

Almaden Hills United Methodist Church  
1200 Blossom Hill Rd., San Jose, CA

August 10, 2017

## COMMENT CARD

Your feedback is important to the success of this project. We are interested in your thoughts about this project. **Thank You!**

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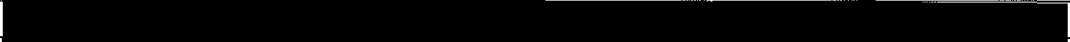
### 1) Comments or questions

I need information on parking strip tree removal.

---

### 2) Contact Information (optional)

Name: MARY ANNE SALMON

Phone #: 

Email: bella 

Mailing Address: \_\_\_\_\_

Please return this card to the sign in table

# Private Tree Permit Streamlining

City of San Jose

Community Meeting

Almaden Hills United Methodist Church  
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August 10, 2017

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### 1) Comments or questions

As a long-time resident, I grew up in San Jose, went to school here, work here. I love the urban canopy of San Jose and value every tree that makes up that canopy. As a certified arborist, I've personally seen many trees removed for no other reason than people not wanting it or wanting to develop the space. ~~It shouldn't be easier for people to remove trees, it should be more difficult. With that said, if a tree is causing significant damage or was planted in a problematic space (sometimes as a volunteer tree) there should be ways to remove those trees. Planning should have their own arborist or contract through Our City Forest to have someone educated and qualified to assess tree risk & removal needs. Don't approve a removal permit before mitigation has been paid and receipt proven. Measuring dbh at 4.5ft works as long as the circumference is adjusted. Also it's important to factor species individually for size expectations.~~ It shouldn't be easier for people to remove trees, it should be more difficult. With that said, if a tree is causing significant damage or was planted in a problematic space (sometimes as a volunteer tree) there should be ways to remove those trees. Planning should have their own arborist or contract through Our City Forest to have someone educated and qualified to assess tree risk & removal needs. Don't approve a removal permit before mitigation has been paid and receipt proven. Measuring dbh at 4.5ft works as long as the circumference is adjusted. Also it's important to factor species individually for size expectations.

### 2) Contact Information (optional)

Name: Riley Knight

Phone #: [REDACTED]

Email: [REDACTED]

Mailing Address: [REDACTED]

Please return this card to the sign in table

# Private Tree Permit Streamlining

City of San Jose

Community Meeting

Almaden Hills United Methodist Church  
1200 Blossom Hill Rd., San Jose, CA

August 10, 2017

## COMMENT CARD

Your feedback is important to the success of this project. We are interested in your thoughts about this project. **Thank You!**

### 1) Comments or questions

- Thank you for working to streamline the process
1. Please consider that the City's "Multi family" designation includes single family homeowners in CIDs (Common Interest Development). Your current fee structure seems to give preferential treatment to single-family designated homeowners and duplexes. You are penalizing us small homeowners with shared driveways simply because the City calls us multi family. We are not wealthy property owners collecting rents from multiple families! Please keep the fees and rules for homeowners consistent for all homeowners and stop the penalty bias toward those of us who could not afford to buy a single home, we share driveways and trees in order to be able to afford our single homes on which we pay property taxes on the square feet of our lots - we should not be treated differently than owners not labeled "multi family."
  2. Please streamline the process for us small owners in "multi family." We do hire arborists, that costs money. We do trim and maintain to keep our trees healthy. But we cannot remove unsuitable trees w/o a very costly permit process, but our "single family" neighbors can.
  3. Get an arborist in planning, or give this whole tree permit business to DOT.
  4. Please add more species of undesirable to the list - there are invasive species proliferating due to planning not allowing removal on multi family, commercial, industrial sites.

### 2) Contact Information (optional)

Name: Nina Merrill  
Phone #: [REDACTED]  
Email: [REDACTED]  
Mailing Address: \_\_\_\_\_

Please return this card to the sign in table

# Private Tree Permit Streamlining

City of San Jose

Community Meeting

Almaden Hills United Methodist Church  
1200 Blossom Hill Rd., San Jose, CA

August 10, 2017

## COMMENT CARD

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### 1) Comments or questions

- 1) Expand scope of re-engineering process to include BOT, Planning, Parks, arbor
- 2) Objective →
  - Reduce cost of Compliance by reduce redundancy
  - Reduce cost of administration
  - Reduce non standard practices + escalate process
  - Partner with buildy permit to integrate integration + evidence on buildy permit
  - arborist

### 2) Contact Information (optional)

Name: Hydra MacLure  
Phone #: [REDACTED]  
Email: [REDACTED]  
Mailing Address: [REDACTED]

Please return this card to the sign in table

# Private Tree Permit Streamlining

City of San Jose

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Community Meeting

Almaden Hills United Methodist Church  
1200 Blossom Hill Rd., San Jose, CA

August 10, 2017

## COMMENT CARD

Your feedback is important to the success of this project. We are interested in your thoughts about this project. **Thank You!**

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### 1) Comments or questions

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- ① Hire an arborist for city
- \* Arborist can't have a vested interest in the tree one way or another (if private)
- Site visit is a must - building inspector?
- No self certification
- Keep noticing people
- Bond for mitigating tree placement

---

### 2) Contact Information (optional)

Name: \_\_\_\_\_  
Phone #: \_\_\_\_\_  
Email: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_

*Please return this card to the sign in table*



# Private Tree Permit Streamlining

City of San Jose

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## Community Meeting

Almaden Hills United Methodist Church  
1200 Blossom Hill Rd., San Jose, CA

August 10, 2017

## COMMENT CARD

Your feedback is important to the success of this project. We are interested in your thoughts about this project. **Thank You!**

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### 1) Comments or questions

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Hello,

My name is Carlos and I'm a resident of San Jose. I am here in support of ordinance size trees, creating more space for ordinance size trees and preventing the removal of potentially great trees. As society moves towards environmental awareness and sustainability, it gives our natural creativity the chance to apply modern technology toward bringing ourselves closer to our natural habitats and surroundings. Let's not miss the opportunity of creating a sustainable urban culture by regressing to the urban concrete and asphalt island that is known for drawing away our precious water sources and drawing in heat. Trees can channel rain into ground water and reverse global warming. When given ample time to grow trees can make a neighborhood look well established, maintained, and past the test of time.

---

### 2) Contact Information (optional)

Name: Carlos Naranjo

Phone #: (950) 264-2054

Email: \_\_\_\_\_

Mailing Ad \_\_\_\_\_

Please return this card to the sign in table

# Private Tree Permit Streamlining

City of San Jose

Community Meeting

Almaden Hills United Methodist Church  
1200 Blossom Hill Rd., San Jose, CA

August 10, 2017

## COMMENT CARD

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### 1) Comments or questions

As HOA president for condos w/ 800 trees in 12 acres, would like to make following suggestions:

1. Provide online process to apply for removal permit
2. Include multi-family residences in unsuitable tree removal, especially dead/diseased (can show pictures) <sup>exception for permit</sup> should be <sup>easy/fast</sup>
3. Provide arborist on city staff so that our arborists get consistent instructions from knowledgeable staff
4. Consider standards for tree dense neighborhoods (cannot always find room to replace trees which are 30 years old) and shouldn't be penalized for already having many trees.

### 2) Contact Information (optional)

Name: Marcie Martin

Phone #: [REDACTED]

Email: [REDACTED]

Mailing Address: [REDACTED]

Please return this card to the sign in table

# Private Tree Permit Streamlining

City of San Jose

Community Meeting

Almaden Hills United Methodist Church  
1200 Blossom Hill Rd., San Jose, CA

August 10, 2017

## COMMENT CARD

Your feedback is important to the success of this project. We are interested in your thoughts about this project. **Thank You!**

### 1) Comments or questions

- ① Homeowner pays for the arborist to decide if his/her tree should be removed?  
Seriously!! We had a situation where a family wanted to remove a heritage oak and the family's arborist said the tree was getting "sick", but since it involved a new construction permit on the Santa Teresa Hills, the city arborist got involved and said the tree ~~of~~ would live another 100 years. Guess whose opinion won out - a heritage oak destroyed for a pitcher.
- ② Simply and enforce mitigation (replacement tree) for City Forest.

### 2) Contact Information (optional)

Name: \_\_\_\_\_

Phone #: \_\_\_\_\_

Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

③ Here or contract as needed you own arborist. Same for the county.

Elaine  
Baker

Please return this card to the sign in table



## Henriques, Arthur

---

**From:** Patrick Pizzo [REDACTED]  
**Sent:** Monday, July 31, 2017 1:45 PM  
**To:** Henriques, Arthur  
**Cc:** Renae@ourcityforest.org  
**Subject:** URGENT! Private tree removal community meetings Aug.1st & Aug. 10th

I want the following statement placed in the public record.

I think the suggested policy, ease of having a large, ordinance size tree on private property removed, is a bad one; and the suggested justification of "to save staff time" a poor incentive. Trees sequester carbon (i.e., reduce atmospheric carbon dioxide) and provide oxygen in the process. The size, number and distribution of our trees, our City forest, determine to a large degree, our quality of life of this Valley. The decision to affect this resource at the whim of a private individual, with no real review, is ludicrous. An arborist is paid by the hour to prune and remove trees so what do you think his/her position would be? Let's not empower a homeowner that doesn't like to rake leaves to negatively affect the ambiance of the neighborhood and reduce wildlife habitat for our birds, bees and other critters. The last mayor, Chuck Reed, recognized the importance of trees and sought to increase tree density across this City. Do we now have a mayor that does not support this perspective? I understand that the new GreenPrint will rid City Policy makers of the constraint imposed by the Charter that suggest 3.5 acres of City Park per 1,000 residents. They will either remove it in whole or reduce the requirement to about 1.0 acre of active City Park per 1,000 residents; a major strike to the nature of our City. Undoubtedly a smaller park-footprint will reduce the number of staff required to maintain this footprint and save the City funds. But it also would change the nature of the South Valley and the quality of life of its residents. Let me suggest that one way to improve the City's financial situation would be to gain productivity of existing City Staff rather than reduce individual workload. If PRNS were able to contract much of the park-maintenance work on a competitive-bidding basis, rather than on a prevailing wage basis, especially where not required by the State or other agency, our City funds would go further and the solution to empower homeowners to remove mature and established trees would not be on the table.

Patrick P. Pizzo  
District 10  
1555 Oak Canyon Drive  
San Jose, CA. 95120

On Jul 31, 2017, at 12:30 PM, Renae McCollum <[renae@ourcityforest.org](mailto:renae@ourcityforest.org)> wrote:

Greetings!

City of San José is working on changing current laws and policies that would likely make it easier ("streamlining") to remove **large, ordinance size trees on private property**.

Our City Forest received notice late last week regarding two meetings the City is holding to gather community input. These are scheduled for Tuesday, August 1st (City Hall @ Wing Room 120), and Thursday, August 10th, (Almaden Hills United Methodist Church @ 1200 Blossom Hill Rd) - both from 6:30 to 7:30 PM.

First, I want to stress that written letters and emails to Planning are just as valuable as verbal input at these meetings. So, if you cannot attend either meeting, you can simply send an email with your comments to [Arthur.Henriques@sanjoseca.gov](mailto:Arthur.Henriques@sanjoseca.gov). Please copy OCF ([rberry@ourcityforest.org](mailto:rberry@ourcityforest.org)).

In brief, OCF was advised late last week by Planning that they would like to propose elimination of the noticing process for about 95% of the tree removal permit requests concerning ordinance size trees on private property. This would mean that if someone applied to remove a large tree near you, you would not be notified, and there would be no opportunity to protest the removal as current law allows. The reason for this, according to Planning, is to save staff time.

We feel that there are smarter ways to save staff time that would not result in jeopardizing and partially destroying one of the City's most valuable assets - its urban forest. We also believe that *more, not less*, needs to be done to protect trees on both private and public property, especially because even current laws and policies are being side-stepped time and time again. We consistently receive complaints that residents are not being properly noticed, that no City staff are inspecting the trees, that self-serving arborist reports are written by the same companies that are paid to remove the trees, and many other breaches of law and policy. It is currently just too easy to get a mature tree removed on private property in San José.

In addition, we are concerned that this item is being rushed, rather than receiving the due diligence and extensive public review such a significant matter, with potentially devastating impacts, deserves.

The City has shared with us that residents don't seem to care about these tree removals. It is our hope that they are wrong.

Please attend one of these two meetings if you are able, and put in a few words about strengthening, rather than weakening, the City's protection of our mature trees. If unable to attend, please send an email to the address above and copy OCF. It is always a good idea to copy your councilmember. Let me know if you need help with identifying your councilmember and getting the correct email address.

Collectively, we are the voice of our urban forest, and we must rise up together to protect it.

Thank you,  
Rhonda

**Rhonda Berry**  
President & CEO



[www.ourcityforest.org](http://www.ourcityforest.org)  
1590 Las Plumas Ave.  
San Jose, CA 95133  
[408-799-9502](tel:408-799-9502)



## Henriques, Arthur

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**From:** Janet Arango [REDACTED]  
**Sent:** Monday, July 31, 2017 2:46 PM  
**To:** Henriques, Arthur  
**Cc:** Rhonda Berry; District 6; Catherine Foster; Renae McCollum  
**Subject:** RE: URGENT! Private tree removal community meetings Aug.1st & Aug. 10th

Hello Arthur,

I am **opposed** to the City of San Jose changing current laws and policies that would likely make it easier ("streamlining") to remove **large, ordinance size trees on private property**.

Thank you for your careful consideration of this matter.

Respectfully,

Janet Arango  
1934 Crestmont Dr.  
San Jose, CA 95124

**From:** Renae McCollum [mailto:renae@ourcityforest.org]  
**Sent:** Monday, July 31, 2017 12:31 PM  
**To:** Renae McCollum; Catherine Foster  
**Cc:** Rhonda Berry  
**Subject:** URGENT! Private tree removal community meetings Aug.1st & Aug. 10th

### EXTERNAL MAIL

Greetings!

City of San José is working on changing current laws and policies that would likely make it easier ("streamlining") to remove **large, ordinance size trees on private property**.

Our City Forest received notice late last week regarding two meetings the City is holding to gather community input. These are scheduled for Tuesday, August 1st (City Hall @ Wing Room 120), and Thursday, August 10th, (Almaden Hills United Methodist Church @ 1200 Blossom Hill Rd) - both from 6:30 to 7:30 PM.

First, I want to stress that written letters and emails to Planning are just as valuable as verbal input at these meetings. So, if you cannot attend either meeting, you can simply send an email with your comments to [Arthur.Henriques@sanjoseca.gov](mailto:Arthur.Henriques@sanjoseca.gov). Please copy OCF ([rberry@ourcityforest.org](mailto:rberry@ourcityforest.org)).

In brief, OCF was advised late last week by Planning that they would like to propose elimination of the noticing process for about 95% of the tree removal permit requests concerning ordinance size trees on private property. This would mean that if someone applied to remove a large tree near you, you would not be notified, and there would be no opportunity to protest the removal as current law allows. The reason for this, according to Planning, is to save staff time.

## Henriques, Arthur

---

**From:** Emily Bondor <[REDACTED]>  
**Sent:** Monday, July 31, 2017 9:55 PM  
**To:** Henriques, Arthur  
**Cc:** Rhonda Berry  
**Subject:** Limiting ease of removing mature trees

Hello,

I am a former member of Our City Forest. I have just heard about laws being considered that would make cutting down mature trees in San Jose exceedingly easy.

Our City's Forest feels that there are smarter ways to save staff time that would not result in jeopardizing and partially destroying one of the City's most valuable assets - its urban forest. We also believe that *more, not less*, needs to be done to protect trees on both private and public property, especially because even current laws and policies are being side-stepped time and time again. We consistently receive complaints that residents are not being properly noticed, that no City staff are inspecting the trees, that self-serving arborist reports are written by the same companies that are paid to remove the trees, and many other breaches of law and policy. It is currently just too easy to get a mature tree removed on private property in San José.

In addition, we are concerned that this item is being rushed, rather than receiving the due diligence and extensive public review such a significant matter, with potentially devastating impacts, deserves.

The City has shared with us that residents don't seem to care about these tree removals. It is our hope that they are wrong.

I cannot attend the meeting but I hope that this email helps sway decisions being made about such a valuable shared resource.

Thank you,  
Emily Bondor

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Sent from my Iphone, Pardon the typos!

Emily Bondor  
Santa Cruz Bee Company  
[www.sabee.co](http://www.sabee.co)

## Henriques, Arthur

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**From:** Richard Stewart <[REDACTED]>  
**Sent:** Monday, July 31, 2017 3:31 PM  
**To:** Henriques, Arthur  
**Cc:** Melanie Berringer; Peralez, Raul  
**Subject:** SanJose's Trees

Arthur,

In the past two years I've noticed many more trees being removed in this city on private residential property and are not being replaced.

Please do what you can to keep our city trees from being diminished.  
Let's see more trees, not less.

Regards,

Richard Stewart  
[REDACTED]

Sent from my iPhone

## Henriques, Arthur

---

**From:** Gerold Kaminski <[REDACTED]>  
**Sent:** Monday, July 31, 2017 7:24 PM  
**To:** Henriques, Arthur  
**Cc:** rberry@ourcityforest.org  
**Subject:** Private Tree Removal

Dear Sirs,  
Just our thoughts:

We had two large trees removed with a permit years ago.  
The trees were causing house foundation, driveway, and sidewalk damage along with falling limbs.

It took eight months of E-mails back and forth, plus an arborist report with no resolution.  
It seemed the individual in planning was instructed to not issue a permit for removal, no matter what.  
Finally the city arborist came by, looked at the trees, and issued the permits.  
We were required to plant two trees for each one removed. No problem.

We believe it was far too difficult to obtain the removal permits for trees that were causing damage and were not appropriate for the location.

Thank you for your attention, Jerry and Ginny Kaminski

## Henriques, Arthur

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**From:** kelly lanspa <[REDACTED]>  
**Sent:** Tuesday, August 01, 2017 10:56 AM  
**To:** Henriques, Arthur; Rhonda Berry; District 10; District 10  
**Subject:** Streamlining to remove large, ordinance size trees on private property- VOTE NO

Hello,

As a resident of San Jose and Almaden Valley, I am deeply disturbed that the city is considering loosening the restrictions on large ordinance trees on private property. San Jose already has one of the lowest amount of parks and outdoor green areas of a city of its size in the US. Trees are incredibly valuable to the beauty, health and over all well-being of our community. With the rampant development and remodels, Trees need our protection from developers and homeowners that are more concerned with \$\$\$ than with their neighbors and the San Jose community.

I urge to to vote no on this and focu on strengthening, rather than weakening, the City's protection of our mature trees.  
Kelly Lanspa

## Henriques, Arthur

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**From:** Richard Stewart [REDACTED]  
**Sent:** Monday, July 31, 2017 3:28 PM  
**To:** Henriques, Arthur  
**Subject:** SanJose's Trees

Arthur,

In the past two years I've noticed many more trees being removed in this city on private residential property and are not being replaced.

Please do what you can to keep our city trees from being diminished.  
Let's see more trees, not less.

Regards,

Richard Stewart  
[REDACTED]

Brie for replace

Sent from my iPhone



## Henriques, Arthur

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**From:** Sharon Schuetze [REDACTED]  
**Sent:** Tuesday, August 02, 2017, 6:14 PM  
**To:** Henriques, Arthur  
**Cc:** Rhonda Berry; Renae McCollum  
**Subject:** Tree Removal on Private Property

I am writing you regarding the City of San Jose's consideration of changing laws and policies which would make it easier to remove large, ordinance size trees on private property. I am unable to attend the meeting for community input, hence this email.

I understand that you would like to propose elimination of the noticing process for approximately 95% of tree removal permit requests regarding ordinance size trees on private property. This would mean that there would be no notice to the surrounding neighborhood denying their right to protest the removal of the tree as current law allows. The City believes that residents don't seem to care about these tree removals. I respectfully disagree! I know that I am not alone in my appreciation of the grandeur of old, mature trees. They not only add to the beauty of the surrounding neighborhood, but they also remove pollutants from the air and provide habitat for wildlife. Mature trees - even on private property - need to be protected and the public needs to be made aware of its possible removal. If this law is passed, you are denying public input regarding tree removal. I respectfully request that you do not allow this law to pass. Do not destroy one of San Jose's most valuable assets - it's urban forest.

Very truly yours,

Sharon Schuetze

## Henriques, Arthur

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**From:** Sarah Viaggi [REDACTED]  
**Sent:** Wednesday, August 02, 2017 7:32 AM  
**To:** Henriques, Arthur  
**Cc:** 'Rhonda Berry'; District9  
**Subject:** Notification for tree removal

Hello,

I'd like to add my recommendation to NOT reduce the steps required to remove a tree. Currently there needs to be a sign posted to the tree in question for neighbors and whoever to have an opportunity to object and/or comment on a tree removal. I'd like, in fact, to see more regulations enforced. I feel the City of San Jose does not do enough to protect the meager amount of trees we do have.

I'd like to point out what happened in the Thousand Oaks neighborhood as an example. There was a big kerfuffle about removing one of the signature oaks on Thousand Oaks Drive. (I happen to live in a nearby neighborhood and saw the discussion on Nextdoor.) I therefore made a point of checking out what all the discussion was about. I drove down Thousand Oaks Drive from Branham Lane and saw nothing to fuss about. Then I turned my car around and drove from the opposite direction. Wow! That tree turned out to be one of the major reasons why Thousand Oaks is called Thousand Oaks. It is a beautiful, stately, old oak that deserves recognition. (BTW, the owner rescinded his request to remove it. It still stands.)

I know you can find other ways to conserve precious resources. I know this department has many other concerns. I know not many citizens will take the time to notice that their world is turning into a parking lot (until it's too late.) I feel that San Jose could be beautiful and I feel we should do everything in our power to make it so.

Keep smiling, Sarah Viaggi

[REDACTED]

## Henriques, Arthur

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**From:** arnoldy carol <carnoldy@att.net>  
**Sent:** Wednesday, August 02, 2017 10:22 AM  
**To:** Henriques, Arthur  
**Cc:** Berry Rhonda  
**Subject:** tree removal permits

It has come to my attention that there are plans afoot to change existing laws about tree removal on private property.

The existing laws shouldn't be changed - they should be enforced.

Cutting down mature trees doesn't help our environment. More and more land is being built on with taller and larger buildings every day. The trees are what help keep carbon dioxide out of the air. The ones we have are rapidly getting outnumbered by San Jose's hunger for growth.

The "Capitol of Silicon Valley" was once known as "The Garden City". Good thoughtful legislation can keep both names current.

Sincerely,  
Carol Arnoldy  
San Jose 95125

## Henriques, Arthur

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**From:** Sarah Nunley <[REDACTED]>  
**Sent:** Wednesday, August 02, 2017 10:01 AM  
**To:** Henriques, Arthur  
**Subject:** Tree process improvement

Dear Arthur- I love trees, however the current replacement process is too restrictive. I encourage you to make necessary changes to reduce regulation and to improve the service to San Jose residents.

I had 12 Liquid Amber STREET trees on my property and needed to replace them for safety reasons. I use a walker and a wheelchair and could not navigate my way across my property with the spiky ball hell that those trees create. Last year Russel Hanson allowed me to REPLACE 6 of the 12 which helped a bit but I still have the same safety issue from these awful trees. I have had to make numerous applications and go through two protest hearings to try and replace these trees but still to this day I have not been allowed and I am currently waiting on another decision by Russel to REPLACE the remaining 6 safety hazard Liquid Amber Trees.

Whatever you do, please allow citizens to replace their liquid amber trees with better species with an over the counter permit. Liquid Amber trees pose a serious safety risk and reduce basic access for disabled people.

In general, when crafting your new process, I hope that you will grant people REPLACEMENT permits over the counter. Perhaps you could require that people add street trees (if they are missing) as a requirement for getting their permit. Also in special cases like if they want to replace a large redwood tree with a small bush- then perhaps that might need a closer look. Perhaps you might require equivalent mature coverage replacements. Maybe one large oak tree is equivalent to three smaller redbud trees for example. You could require people to replace a large tree with multiple smaller species. Whenever possible require people to add street trees.

Thank you for your consideration and good luck with your process improvement project.

Sarah Nunley [REDACTED]

## Henriques, Arthur

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**From:** Sarah Nunley [REDACTED]  
**Sent:** Wednesday, August 02, 2017 6:46 PM  
**To:** Henriques, Arthur  
**Subject:** Re: Tree process improvement

Yes- My example situation was regarding street trees (I do realize however that you guys don't manage the street trees). It is very confusing to us common residents that street trees are handled by a different department however. It would be nice if the two processes were more in sync. For example when we bought our house, I called the city and asked if I could replace the liquid amber trees and I was told that it was an over the counter permit because they are an "undesirable" tree. I was pointed to that application form online. At the time it was not made clear to me that this process did NOT include street trees. So I was quite surprised to be denied my application, and redirected to a different department which required a community hearing and two + years of ridiculous red tape and now still to this day, I still have six spiky ball hell trees blocking my access to and from my house and causing me constant stress living in an unsafe environment.

Though my story was specifically about street trees, in generally I would plead for you to continue issuing over the counter permits for undesirable trees such as Liquid Amber trees on private properties. Please don't change that part of your current process. Liquid Amber trees are a serious safety hazard for disabled people.

Regarding my other suggestion about requiring people to plant street trees if they want a permit to replace a private property tree, I hope that you and the street tree department can work together on that process because there is a really big opportunity to improve our streets if you do that. People in general want to do the right thing and many times they don't even know that they should have street trees. If they are missing them, they should be required by the city at every opportunity. They only cost a few hundred bucks and if they need assistance it is available through Our City Forest so there is no excuse. I think any time a permit is pulled for anything- it should just be automatic- If google maps shows a missing street tree, it should be required to final on their permit. I think that getting an over the counter tree replacement permit is a perfect opportunity to also require missing street trees be added. I hope this clarifies my suggestion.

Also- I think that the urgent need for San Jose to infill and build up to create higher density housing and accommodate growth will inevitably push out large, beautiful, mature trees. It is very sad but necessary. Attrition of large trees and reduction of our city canopy is going to happen. As large trees are removed for development, I think they should be replaced elsewhere however. You can't put a massive redwood tree in a tiny back yard, but you can put it in a public park. Perhaps you could charge a fee for each large tree removal that would go toward large trees in public parks or maybe create something like a "carbon credit" but make it a "tree credit" program. Require developers or home owners who want to remove extremely large trees to buy tree credits or plant a lot of new trees in their neighborhood or park in order to relocate the canopy to a more appropriate location or spread it out with smaller trees. Imagine Someone wants to take down a massive oak and you give them the over the counter permit but you say that they must plant 20 smaller trees to replace it. If they can't put them on their property, they have the option to put them on the street with their neighbors approval or in a park with city approval. If they don't want to deal with that, they can just pay the large fee that buys them the necessary "tree credits". The bigger the tree, the higher the credit. People will then be empowered to solve the street tree problem in their own neighborhoods.

People who want to illegally remove or kill a tree are going to do it. The people who want to do the right thing are going to get a permit. Those people will gladly participate in improving our city canopy and will bring lots of creative ideas and plant lots of trees if the city had a "tree credit" type program. We don't need to waste hours of peoples time with horrible unproductive protest meetings and inspections. We can either choose to be a pro growth city and make change easy and efficient by empowering citizens to bring solutions to problems such as the inevitable attrition of our city canopy through a "tree credit" type program, or we can be an ANTI-growth city with constant red tape and time wasting processes. I urge you to strive for the first. Pro-growth. Empowering citizens to solve problems. Efficient.

Sincerely,

Sarah Nunley (4 [REDACTED])

**From:** "Henriques, Arthur" <arthur.henriques@sanjoseca.gov>  
**To:** Sarah Nunley <nunleyinc@yahoo.com>  
**Sent:** Wednesday, August 2, 2017 5:32 PM  
**Subject:** RE: Tree process improvement

Thanks for your comments. This will be part of the public record as the review process moves forward. To clarify, it sounds like you are commenting on both trees on private property and street trees. Is that correct?

Art Henriques  
Policy and Ordinance Technical Advisor  
City of San José Planning, Building and Code Enforcement  
200 East Santa Clara Street - 3rd Floor Tower  
San José, CA 95113  
(408) 535-6862  
[arthur.henriques@sanjoseca.gov](mailto:arthur.henriques@sanjoseca.gov)

**From:** Sarah Nunley [REDACTED]  
**Sent:** Wednesday, August 02, 2017 10:01 AM  
**To:** Henriques, Arthur <arthur.henriques@sanjoseca.gov>  
**Subject:** Tree process improvement

Dear Arthur- I love trees, however the current replacement process is too restrictive. I encourage you to make necessary changes to reduce regulation and to improve the service to San Jose residents.

I had 12 Liquid Amber STREET trees on my property and needed to replace them for safety reasons. I use a walker and a wheelchair and could not navigate my way across my property with the spiky ball hell that those trees create. Last year Russel Hanson allowed me to REPLACE 6 of the 12 which helped a bit but I still have the same safety issue from these awful trees. I have had to make numerous applications and go through two protest hearings to try and replace these trees but still to this day I have not been allowed and I am currently waiting on another decision by Russel to REPLACE the remaining 6 safety hazard Liquid Amber Trees.

Whatever you do, please allow citizens to replace their liquid amber trees with better species with an over the counter permit. Liquid Amber trees pose a serious safety risk and reduce basic access for disabled people.

In general, when crafting your new process, I hope that you will grant people REPLACEMENT permits over the counter. Perhaps you could require that people add street trees (if they are missing) as a requirement for getting their permit. Also in special cases like if they want to replace a large redwood tree with a small bush- then perhaps that might need a closer look. Perhaps you might require equivalent mature coverage replacements. Maybe one large oak tree is equivalent to three smaller redbud trees for example. You could require people to replace a large tree with multiple smaller species. Whenever possible require people to add street trees.

Thank you for your consideration and good luck with your process improvement project.

Sarah Nunley ([REDACTED])

**Henriques, Arthur**

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**From:** Judith Boes <[REDACTED]>  
**Sent:** Wednesday, August 02, 2017 10:12 AM  
**To:** Henriques, Arthur; District9  
**Subject:** Private Tree Removal Permit Process

I am very concerned about the policy that the city is proposing on "Private Tree Removal Permit Process". I am very much against this process as the city is trying to get away with not spending the time an employee has to spend to get input of this very important part of our city.

I have been raised in this valley all my life, my parents owned an apricot, prune and walnut orchard in San Jose which was very important to this valley. Please do not let this process be passed. Many residence in San Jose want to eliminate there parking strip trees so that they do not have to take care of them. We cannot let this happen. Trees are very important part of our life. I urge a NO VOTE on this.

Judith A. Boes

## Henriques, Arthur

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**From:** Caroline Alemany <[REDACTED]>  
**Sent:** Wednesday, August 02, 2017 11:00 PM  
**To:** Henriques, Arthur  
**Subject:** Tree removal ordinance

Dear Art,

Please do not allow this ordinance to change! If you were to allow trees to be removed that are 56 inches in circumference or more, you are destroying our city's legacy.

This is the Valley of Hearts Delight, and our urban forest is almost all that we have left to give to our children, and to ourselves.

This is not something that can be undone; once a mature tree has been killed, you cannot bring it back to life. Please do not allow this to happen!

Best,

Caroline

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Caroline Alemany | (650) 497-7101  
Stanford University | Technology Consulting Group



## Henriques, Arthur

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**From:** dodie <[REDACTED]>  
**Sent:** Thursday, August 03, 2017 1:54 PM  
**To:** Henriques, Arthur  
**Subject:** Tree Permits

Please vote for the faster process.

I have lived with a oversized tree next to my fence for years. Finally it will be removed. I have waited for over 10 years or more. It has been overgrown and a fire hazard being a palm. Now the fronds are and have been in the electric lines, this year they arched and shot of sparks in the high wires. lucky the wind stopped. It Is full of rodents and now the liquid sap growth is waiting for hot sun to set it on fire. Yes, a few years ago a palm shot flames out from the sun hitting it just right. It burned out a huge roof of one house, burned holes all over other homes putting their roofs to need fire damage repair. I have houses next door that have huge roots growing clear across my lawn into my flower beds killing my plants. these same tree roots are now cracking under the cement floor of the residence where they are living. These trees and others have been here since 1956 most of them are overgrown, half dead and if you look closely have splits and disease in them and dripping sap all over. The city trees drop very dangerous seed balls which I have fallen on and others have broken bones because they are all over the sidewalks and streets. Just walk in this neighborhood and check out the trees.

Please speed up this process the trees in residents yards are so overgrown and dropping branches and dead ones. the roots are taking over yards and foundations and sidewalks. Thanks Goodness PG&E is removing the palm in the wires ... Hopefully before another storm.

Resident in San Jose since 1957... same home since 1960

Dorothy And Robert Rheuark

## Henriques, Arthur

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**From:** Courtney Richardson <[REDACTED]>  
**Sent:** Thursday, August 03, 2017 2:08 PM  
**Subject:** Opposed to the New Tree Removal Ordinance

Dear Planning,

I recently heard about your efforts to streamline the removal of large trees, without the due process that is currently in effect. I think this is a terrible idea. Trees are SHARED property, and should not be removed at all, let alone without the consent of the community. Removing trees will result in decreased health and air quality, traffic, flooding, and all-around climate of the city.

San Jose NEEDS trees. Anyone who walks outside on a hot day on a tree-less street knows this.

Replacing big trees with newly planted 15 gallon trees is hardly a solution. The big trees are where ALL of the benefits come from. San Jose will reap horrible health and living consequences without our urban canopy. PLEASE keep these big trees. PLEASE keep the due process for removing a large tree alive, there are better ways to save money and staff time then to remove every large tree that gets a complaint. You will be killing your urban forest with this ordinance!!

Thank you for listening and your time.

Sincerely,  
Courtney Richardson, a tax-paying concerned citizen of San Jose

## Henriques, Arthur

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**From:** Katie Swenson [REDACTED]  
**Sent:** Friday, August 17, 2017 8:16 AM  
**To:** Henriques, Arthur  
**Subject:** tree removal process feedback

Hello,

I am a neighbor on Creek Dr, 95125. I wholly support streamlining the tree removal process. I even support removing it altogether. What people want to do with their trees on private property is their business. As for the street trees, remove that too. Many of those trees are non-native anyhow.

It took 2 different City employees 4 different trips, plus those processing paperwork, just to remove a dying Tulip tree in front of our house, that the City planted! Of course I had to pay to have it removed. Then, I had to plant another one, all while the city has to be called out several times a year to clear our sewer drain because of tree roots!

I won't even go into how my sidewalk was painted up and I was told to pay over \$1000 to fix it, even though it was all within the City's code.

It's maddening that this process exists to begin with, much less it's going to take you good people much effort to "streamline".

Thank you for your hard work!  
Katie Swenson

## Henriques, Arthur

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**From:** anne Andrews [REDACTED]  
**Sent:** Friday, August 04, 2017 9:57 AM  
**To:** Henriques, Arthur  
**Cc:** Rhonda Berry; District 6  
**Subject:** Private Tree Removal - Proposed Law/Policy Change

To Whom It May Concern,

I am writing to express my opinion regarding the proposed change of current laws and policies that would likely make it easier to remove large, ordinance size trees on private property.

**I strongly object to this proposed change.** As someone living in a densely populated area, I feel it is extremely important that I continue to be notified of any tree removal plans by my neighbors. This is important to me as a home owner, but also important to me as a resident of San Jose where the need to preserve the urban forest be taken seriously.

Thank you for your consideration.

Anne Andrews  
San Jose, CA

## Henriques, Arthur

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**From:** Marilyn Connell [REDACTED]  
**Sent:** Tuesday, August 08, 2017 12:25 PM  
**To:** Henriques, Arthur  
**Cc:** rberry@ourcityforest.org; Jones, Chappie  
**Subject:** Proposed change to tree removal noticing

To whom it may concern,

The tree care and removal process in San Jose should receive MORE attention, not less.

As a resident of West San Jose in a neighborhood containing a monoculture of large trees lining all streets in this neighborhood that were most likely planted when this neighborhood was built, I have witnessed a disturbingly random approach to tree maintenance and removal.

The shade provided by these old trees makes walking through the neighborhood much more enjoyable not to mention the environmental aspects of having a healthy tree canopy. Driving down a tree lined street is a far cry from new development that is completely barren.

You cannot make old trees.

It takes one day to destroy something that took decades to make.

Going forward, as our climate continues to warm, the devastating effects of removing carbon absorbing, cooling trees from the built environment should not be overlooked.

The perception that residents do not care is not a valid excuse for not being forward thinking about the future urban environment. Communication with residents can go a long way to educate and inform.

**I am opposed to “streamlining” the tree removal process in favor of easier tree removal. Barring safety concerns, this valuable resource should be protected.**

Thank you for your time,  
Marilynn Connell

## Henriques, Arthur

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**From:** Lisa Garcia [REDACTED]  
**Sent:** Wednesday, August 09, 2017 5:35 PM  
**To:** Henriques, Arthur  
**Subject:** Don't chop mature trees please

Hello

Our neighbors were allowed to remove a 100+ walnut tree to make way for a remodel. The birds and wildlife that lived in that tree were all displaced and has changed what we loved about Willow Glen. This is not progress but shortsightedness.

Thank you  
Lisa Smith  
Wilcox Way

## Henriques, Arthur

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**From:** viktorija <[REDACTED]>  
**Sent:** Wednesday, August 09, 2017 6:32 PM  
**To:** Henriques, Arthur  
**Subject:** Save our Urban Forest

Dear Mr. Henriques~

Please don't make it any easier to remove large, established trees on private properties; their benefit far outweighs any perceived negativity. The urban heat island becomes more prevalent each year as more surfaces in our cities are paved, our population swells and more cars clog our streets; established trees are critical in negating these effects.

To make the removal of these natural resources easier is to compromise the health of our population and delivers a devastating blow to the greater good of our local environment. Please support our large established trees and keep our urban forest safe.

Thank you very much.

~Viktorija Gleason



**Henriques, Arthur**

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**From:** chagenmaier <[REDACTED]>  
**Sent:** Thursday, August 10, 2017 9:43 AM  
**To:** Henriques, Arthur  
**Subject:** Tree removal restrictions

I believe the city should act as a steward for all the trees in San Jose. There should be constraints property owners and tenants right to remove trees. Any tree above a certain size, say 8 inches in diameter, front or back yard, should not be cut down without a permit until the property owner has held that property as least 6 years.

Too often I have seen new owners cut down or mangle healthy trees and a few years later sell the house, leaving the neighborhood short of foilage that will take a good 10 years to replace, if ever.

I have cut down 7 trees on my lot in 29 years. Disease crippled 3 of them. I have planted 6 trees and have more shade than I ever had and more foilage than anyone on my block.

Chuck Hagenmaier

Sent from my MetroPCS 4G LTE Android device

## Henriques, Arthur

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**From:** catherine lydon <[REDACTED]>  
**Sent:** Thursday, August 10, 2017 10:15 AM  
**To:** Henriques, Arthur; McHarris, Steve  
**Cc:** Bobbie Wood; L. Sweeney; Hansen, Russell; Davis, Dev  
**Subject:** City of San Jose Municipal Code re: Tree Protections  
**Attachments:** Letter\_re\_San\_Jose\_Tree\_Protections\_20170808.doc.pdf

Dear Art,

Thank you again for meeting with us last month. Per our discussion, I have attached a letter outlining the experiences of our neighborhood regarding tree removals on private property, and our feedback regarding the proposed changes to the Municipal Code.

Thank you, also, for your responses to the current tree issues in our neighborhood--timely examples of the importance and relevance of protecting our trees for the benefit of our city.

Kind regards,

Catherine

Catherine Lydon Tilli

Art Henriques  
Planning Department  
City of San Jose  
200 East Santa Clara St.  
San Jose, CA 95113

August 8, 2017

Dear Art,

Thank you for meeting with me and my neighbors on July 21 to discuss our experience regarding the disappearing tree canopy in San Jose, and hear our concerns regarding the proposed changes to the Municipal Code regarding private property tree removal requests. Per our discussion, I am sending this letter to summarize the experiences of my neighborhood regarding tree removals, and to communicate our feedback regarding the proposed changes to our city's current ordinances.

Whereas the existing city ordinances extoll the virtues of having a healthy canopy for our fine city, describing in detail how to preserve the health, environment, and economic benefits our mature "ordinance sized" trees provide, the proposed changes eliminate all of that wording along with the critical ordinances which serve to preserve our trees. By proposing to remove both this important wording and the related ordinances, **the City of San Jose is turning its back on our urban forest, and on the residents whose lives are sustained by that forest**—not to mention, the future of the city itself as global warming causes temperatures in major cities to rise by 14.4 degrees Fahrenheit by 2100.

**My neighbors and I therefore urge the Planning Department, and the City of San Jose, to strengthen tree protections, not weaken them.** In our (unfortunately) extensive experience regarding tree removals, the current, more comprehensive tree protection ordinances are not being fully enforced, and the results have been drastic for the canopy of our street. We have been contacted by members of other neighborhoods who heard about our attempts to save trees on our street and wish to do the same in their own neighborhoods; we are not alone in our care and concern.

Our neighborhood has, so far, lost eight, perfectly healthy, ordinance-sized trees, in the past four years alone—that's just one street! We have attended four Planning Director hearings and witnessed developers and private property owners knowingly misrepresent facts, on record, regarding their removal requests. We have contacted code enforcement as trees were being removed illegally, and been told that there was nothing they could do to help us. Our experience regarding required notifications for tree removal requests has revealed inconsistencies within the Planning Department regarding notification of tree removal plans to the public, as required by the ordinances.

In our first experience regarding private property tree removals, our neighborhood interacted with a developer—who claimed to be a resident—who purchased three properties on our street. At the first property, he illegally removed a tree on a Sunday. At the second, he left the tree off of his building plans, and if it were not for the neighborhood contacting Planning, he would have removed it, as well; instead, he was required to build around it. At the third property, this same developer left a redwood

tree off of his plans and later stated at the hearing that, although he claimed to live there, he “didn’t see the tree.” After building this last house (which he never occupied), he thanked our neighborhood for forcing him to save the trees because it was “the most beautiful house he had built” – and he was right.

In another recent tree removal situation, the property owner also claimed to be a resident of our street, for various purposes including the purpose of submitting a tree removal request. When the tree removal notice for this majestic California Redwood was posted, several neighbors e-mailed the Planner to protest the removal, and requested updates regarding the permit, on several occasions.

Later, the Planner involved asked the property owner to notify residents of the upcoming hearing-- instead of, per code requirements, the Planner contacting the list of concerned residents who had been inquiring with her for months as to updates. Needless to say, the neighborhood was not, in fact, formally notified of the hearing -- other than receiving a text message from the property owner requesting a meeting “before the hearing,” without stating any details. When we inquired with the Planner about the hearing that was alluded to, we were finally told that a hearing was scheduled approximately 36 hours later; we were fortunate to have the hearing rescheduled.

However, in that same tree removal case, we discovered an e-mail chain, the night before the public hearing last April, which suggested that the Planning Department had informed the property owner in December 2013 that if she would provide building plans showing the tree in the footprint of the plans, Planning would approve her plans—and this was despite the fact that concerned residents had informed Planning in spring 2013 that the property owner intended to cut down the redwood in question, and the neighborhood objected. **Why have a public hearing, if there was no intention to consider the input from the public?**

The decision at the Planning Directors meeting led to the third and last mature tree removed from within the lot, despite the neighborhood’s overwhelming objection, and pleas to have the property owner provide building plans that preserved the tree, and for the City to adhere to the Municipal Code requiring an arborist report from a licensed arborist specifically qualified to perform risk assessment.

Additionally, on the day the above-mentioned redwood tree was cut down, the property owner also removed a healthy street tree from the same address, which the neighborhood learned of only after the fact, since this removal was done without the owner posting a notice for the required number of days.

In other words, the property owner clear-cut the lot, as she had informed her next-door neighbor she planned to do, from the beginning. Yet at the public hearing, this property owner claimed to have attempted to design around this final remaining tree, despite all evidence to the contrary: her clear intentions not to do so as voiced to her next-door neighbor; her neighbors’ familiarity with the builder she claimed to have consulted (he built two homes on our street, including my own); and the public record showing she already had Planning’s approval for the tree removal, years ago.

**The above are but a few examples of tree removal cases, yet they clearly illustrate the need for more oversight and enforcement regarding tree removal requests—not less.** They demonstrate many of the issues that arise when there is no onsite inspection of a property by City officials, when decisions are made based on reports from arborists with obvious conflicts of interest, and when property owners – who are likely not arborists themselves – are entrusted with “self-certifying” information regarding the trees on their property.

As we discussed, our neighborhood feels that trees are critical, shared assets which are much too important to leave their fate in the hands of those with a financial incentive to ensure their removal without proper oversight. Naturally, there will be times when the safe and reasonable course of action will be to remove a tree. However, the assessment as to whether or not a tree is healthy should be made by a certified arborist without a financial incentive to sway the assessment.

Furthermore, the City needs to be adequately informed regarding all data pertaining to trees which may be removed by new development, in order to make intelligent decisions that will impact the environmental and economic future of the city we hold dear—instead of making decisions without accurate information, or in many cases, without any information concerning the trees involved, at all.

Surely, we – residents, property owners, and constituents in our city – deserve to have our city officials adequately informed regarding decisions that directly impact our own lives—our health, safety, property values, and the environment in which we choose to raise our families.

As we stated during our meeting, as well as in many e-mails to Planning, and at public hearings regarding tree removal requests: *we are not opposed to new development, or to another property owner desiring improvement of their home and land.* However, we fully expect that our City perform the honorable duty of protecting the economic value and quality of life for all of our citizens equally. That entails fully enforcing the current Municipal Code, including those pertaining to tree protections, and ensuring there is no conflict of interest when making decisions that affect neighborhoods, and by extension, the entire city.

**Adherence to regulations and allowing for public participation are critical for the functioning of our democratic institutions, and we urge the City of San Jose to uphold its stated commitment, to have a transparent and honest government.**

**Therefore, we respectfully request that our City's Municipal Code:**

- Continue to require, and for City employees to adhere to, public notifications regarding private property tree removals;
- Require arborist inspections from an arborist without a conflict of interest (as many Bay Area cities do, requiring the applicant to pay for such arborist services, so it is not at any additional cost to the City);
- Enhance safeguards for trees deemed desirable for preservation when construction is underway;
- Increase requirements for onsite inspections by arborists employed by the city and by Planning Department employees charged with verifying information about development plans; and
- Continue to include wording in the Municipal Code which clearly establishes a culture that values the preservation of our mature trees and the critical role they play in our city and our environment.

**Given that our City is interested in “streamlining” its processes and eliminating excess expenses, we respectfully suggest that the City focus on increasing revenue and streamlining processes by:**

- Pursuing the plan to make more services available online;
- Reducing the number of Planning employees required to review tree removals by empowering relevant employees, with management supervision, to be on the forefront of proactively enforcing our Municipal Code – for example, by educating applicants regarding our City’s tree protections;
- Promoting a culture that values our urban forest (for example: to enforce requirements to build around trees, if possible, by challenging applicants to do so; enforce the protection of trees during construction; and require arborist reports from arborists without a conflict of interest – arborists paid for, but not chosen by, the applicant, as other Bay Area cities do);
- Charging an application fee for submitting a private property removal request, as ALL other Bay Area cities do (usually between \$200-\$300 per tree, but as much as \$750 per tree, in some places);
- Imposing stricter penalties for illegal tree removals, such as larger fines and the possibility of jail time, as other Bay Area and other major California cities do;
- Considering the requirement of bonds to ensure the proper care of replacement trees, in the event a tree is approved for removal, as other cities do;
- Performing an air quality assessment study when multiple trees are proposed for removal, and requiring the applicant to cover these costs, other cities do.

If the City of San Jose truly values our urban forest, as we residents and property owners do, we urge the Planning Department to take seriously the above, actual experiences of San Jose residents when facing private property tree removal requests, and consider our recommendations to add revenue and streamline your processes without sacrificing our precious urban forest.

Thank you again for your time.

Sincerely,

Catherine Lydon Tilli

Catherine Lydon Tilli

San Jose, CA 95125

Art Henriques  
Planning Department  
City of San Jose  
200 East Santa Clara St.  
San Jose, CA 95113

August 8, 2017

Dear Art,

Thank you for meeting with me and my neighbors on July 21 to discuss our experience regarding the disappearing tree canopy in San Jose, and hear our concerns regarding the proposed changes to the Municipal Code regarding private property tree removal requests. Per our discussion, I am sending this letter to summarize the experiences of my neighborhood regarding tree removals, and to communicate our feedback regarding the proposed changes to our city's current ordinances.

Whereas the existing city ordinances extoll the virtues of having a healthy canopy for our fine city, describing in detail how to preserve the health, environment, and economic benefits our mature "ordinance sized" trees provide, the proposed changes eliminate all of that wording along with the critical ordinances which serve to preserve our trees. By proposing to remove both this important wording and the related ordinances, **the City of San Jose is turning its back on our urban forest, and on the residents whose lives are sustained by that forest**—not to mention, the future of the city itself as global warming causes temperatures in major cities to rise by 14.4 degrees Fahrenheit by 2100.

**My neighbors and I therefore urge the Planning Department, and the City of San Jose, to strengthen tree protections, not weaken them.** In our (unfortunately) extensive experience regarding tree removals, the current, more comprehensive tree protection ordinances are not being fully enforced, and the results have been drastic for the canopy of our street. We have been contacted by members of other neighborhoods who heard about our attempts to save trees on our street and wish to do the same in their own neighborhoods; we are not alone in our care and concern.

Our neighborhood has, so far, lost eight, perfectly healthy, ordinance-sized trees, in the past four years alone—that's just one street! We have attended four Planning Director hearings and witnessed developers and private property owners knowingly misrepresent facts, on record, regarding their removal requests. We have contacted code enforcement as trees were being removed illegally, and been told that there was nothing they could do to help us. Our experience regarding required notifications for tree removal requests has revealed inconsistencies within the Planning Department regarding notification of tree removal plans to the public, as required by the ordinances.

In our first experience regarding private property tree removals, our neighborhood interacted with a developer—who claimed to be a resident—who purchased three properties on our street. At the first property, he illegally removed a tree on a Sunday. At the second, he left the tree off of his building plans, and if it were not for the neighborhood contacting Planning, he would have removed it, as well; instead, he was required to build around it. At the third property, this same developer left a redwood

tree off of his plans and later stated at the hearing that, although he claimed to live there, he “didn’t see the tree.” After building this last house (which he never occupied), he thanked our neighborhood for forcing him to save the trees because it was “the most beautiful house he had built” – and he was right.

In another recent tree removal situation, the property owner also claimed to be a resident of our street, for various purposes including the purpose of submitting a tree removal request. When the tree removal notice for this majestic California Redwood was posted, several neighbors e-mailed the Planner to protest the removal, and requested updates regarding the permit, on several occasions.

Later, the Planner involved asked the property owner to notify residents of the upcoming hearing-- instead of, per code requirements, the Planner contacting the list of concerned residents who had been inquiring with her for months as to updates. Needless to say, the neighborhood was not, in fact, formally notified of the hearing -- other than receiving a text message from the property owner requesting a meeting “before the hearing,” without stating any details. When we inquired with the Planner about the hearing that was alluded to, we were finally told that a hearing was scheduled approximately 36 hours later; we were fortunate to have the hearing rescheduled.

However, in that same tree removal case, we discovered an e-mail chain, the night before the public hearing last April, which suggested that the Planning Department had informed the property owner in December 2013 that if she would provide building plans showing the tree in the footprint of the plans, Planning would approve her plans—and this was despite the fact that concerned residents had informed Planning in spring 2013 that the property owner intended to cut down the redwood in question, and the neighborhood objected. **Why have a public hearing, if there was no intention to consider the input from the public?**

The decision at the Planning Directors meeting led to the third and last mature tree removed from within the lot, despite the neighborhood’s overwhelming objection, and pleas to have the property owner provide building plans that preserved the tree, and for the City to adhere to the Municipal Code requiring an arborist report from a licensed arborist specifically qualified to perform risk assessment.

Additionally, on the day the above-mentioned redwood tree was cut down, the property owner also removed a healthy street tree from the same address, which the neighborhood learned of only after the fact, since this removal was done without the owner posting a notice for the required number of days.

In other words, the property owner clear-cut the lot, as she had informed her next-door neighbor she planned to do, from the beginning. Yet at the public hearing, this property owner claimed to have attempted to design around this final remaining tree, despite all evidence to the contrary: her clear intentions not to do so as voiced to her next-door neighbor; her neighbors’ familiarity with the builder she claimed to have consulted (he built two homes on our street, including my own); and the public record showing she already had Planning’s approval for the tree removal, years ago.

**The above are but a few examples of tree removal cases, yet they clearly illustrate the need for more oversight and enforcement regarding tree removal requests—not less.** They demonstrate many of the issues that arise when there is no onsite inspection of a property by City officials, when decisions are made based on reports from arborists with obvious conflicts of interest, and when property owners – who are likely not arborists themselves – are entrusted with “self-certifying” information regarding the trees on their property.



As we discussed, our neighborhood feels that trees are critical, shared assets which are much too important to leave their fate in the hands of those with a financial incentive to ensure their removal without proper oversight. Naturally, there will be times when the safe and reasonable course of action will be to remove a tree. However, the assessment as to whether or not a tree is healthy should be made by a certified arborist without a financial incentive to sway the assessment.

Furthermore, the City needs to be adequately informed regarding all data pertaining to trees which may be removed by new development, in order to make intelligent decisions that will impact the environmental and economic future of the city we hold dear—instead of making decisions without accurate information, or in many cases, without any information concerning the trees involved, at all.

Surely, we – residents, property owners, and constituents in our city – deserve to have our city officials adequately informed regarding decisions that directly impact our own lives—our health, safety, property values, and the environment in which we choose to raise our families.

As we stated during our meeting, as well as in many e-mails to Planning, and at public hearings regarding tree removal requests: *we are not opposed to new development*, or to another property owner desiring improvement of their home and land. However, we fully expect that our City perform the honorable duty of protecting the economic value and quality of life for all of our citizens equally. That entails fully enforcing the current Municipal Code, including those pertaining to tree protections, and ensuring there is no conflict of interest when making decisions that affect neighborhoods, and by extension, the entire city.

**Adherence to regulations and allowing for public participation are critical for the functioning of our democratic institutions, and we urge the City of San Jose to uphold its stated commitment, to have a transparent and honest government.**

**Therefore, we respectfully request that our City's Municipal Code:**

- Continue to require, and for City employees to adhere to, public notifications regarding private property tree removals;
- Require arborist inspections from an arborist without a conflict of interest (as many Bay Area cities do, requiring the applicant to pay for such arborist services, so it is not at any additional cost to the City);
- Enhance safeguards for trees deemed desirable for preservation when construction is underway;
- Increase requirements for onsite inspections by arborists employed by the city and by Planning Department employees charged with verifying information about development plans; and
- Continue to include wording in the Municipal Code which clearly establishes a culture that values the preservation of our mature trees and the critical role they play in our city and our environment.

Given that our City is interested in “streamlining” its processes and eliminating excess expenses, we respectfully suggest that the City focus on increasing revenue and streamlining processes by:

- Pursuing the plan to make more services available online;
- Reducing the number of Planning employees required to review tree removals by empowering relevant employees, with management supervision, to be on the forefront of proactively enforcing our Municipal Code – for example, by educating applicants regarding our City’s tree protections;
- Promoting a culture that values our urban forest (for example: to enforce requirements to build around trees, if possible, by challenging applicants to do so; enforce the protection of trees during construction; and require arborist reports from arborists without a conflict of interest – arborists paid for, but not chosen by, the applicant, as other Bay Area cities do);
- Charging an application fee for submitting a private property removal request, as ALL other Bay Area cities do (usually between \$200-\$300 per tree, but as much as \$750 per tree, in some places);
- Imposing stricter penalties for illegal tree removals, such as larger fines and the possibility of jail time, as other Bay Area and other major California cities do;
- Considering the requirement of bonds to ensure the proper care of replacement trees, in the event a tree is approved for removal, as other cities do;
- Performing an air quality assessment study when multiple trees are proposed for removal, and requiring the applicant to cover these costs, other cities do.

If the City of San Jose truly values our urban forest, as we residents and property owners do, we urge the Planning Department to take seriously the above, actual experiences of San Jose residents when facing private property tree removal requests, and consider our recommendations to add revenue and streamline your processes without sacrificing our precious urban forest.

Thank you again for your time.

Sincerely,

Catherine Lydon Tilli

## Henriques, Arthur

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**From:** Busara Melrose [REDACTED]  
**Sent:** Thursday, August 10, 2017 10:41 AM  
**To:** Henriques, Arthur  
**Cc:** Rhonda Berry  
**Subject:** Let Neighbors Speak for the Trees!

Hello Mr. Enriquez,

I have heard that there is a possibility that the Planning Department could get rid of the important process of posting tree removals to notify neighbors and give them a chance to appeal.

It is very important that neighbors are given a chance to weigh in or appeal the removal of trees from their neighborhoods. The benefits of trees cross property lines, bolstering the property values of neighbors and quality of life for all residents, not just the property owners. Many tree reports are not issued by impartial, objective consulting arborists, but rather by companies that perform removal services. .

Our community forests are a natural resource that require public input and responsible oversight to stay healthy. **As a reminder, trees increase in value over time and save municipal tax dollars by providing myriad benefits. So cutting corners with trees is not a good way to save money and resources.**

I am wondering if this appeal process has become obsolete because planners handling these cases simply refer to the arborist reports condoning the removal and do not have the ability to really conduct a hearing and make a judgment call beyond the expert opinion already provided. Perhaps the city arborist or his assistant don't have time to conduct these? Does planning have an experienced arborist on staff that can assist with tree related issues and disputes?

**Perhaps the process could be revised in a different way to strengthen weak spots and net time and tax dollars could still be saved.**

Busara Firestone

## Henriques, Arthur

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**From:** Gabrielle Trudeau [REDACTED]  
**Sent:** Thursday, August 10, 2017 1:55 PM  
**To:** Henriques, Arthur  
**Subject:** Private Tree Removal Permits Should Still Be Required!

Hello,

I am a resident of San Jose in Santa Clara County and I would like for the permitting process that currently exists for private tree removal to remain for the following reasons:

1. Trees are what keep the air clean in our city. Facilitating their removal also facilitates air pollution.
2. The only reason for the removal of this process is to make your administration's job easier which is not okay. If your administration has to file a few more papers to prevent the removal of oxygen (trees) then I am okay with it. Frankly this proposal makes your administration seem lazy. I am not okay with my tax money being used for something other than hard work. I work hard, so should your administration.
3. This is not the direction trees need to be viewed in. There is already so much lack of education as to the benefits that trees provide that your proposal is only exacerbating this ignorance by making trees a nuisance. Trees help regulate city temperatures by reducing the temp up to 10 degrees cooler per tree because of the shade they provide. Thus helping reduce heating and cooling costs for home owners. They make streets safer for pedestrians and cars because cars drive slower on streets that are lined with trees. They also reduce burglary because trees make people spend time outside under their shelter and therefore more community members are outside to help guard the streets.
4. It is the responsibility of the local government to keep its residents safe and healthy, however removing this ordinance will do the opposite plus go against your responsibilities as a local government.

Please do not go through with removing the tree removal application process simply because it saves time. Time is something trees need to get that big in the first place. Time is all we can give back to trees in exchange for so much.

Reconsidering this action will safeguard your government from committing future foolish decisions regarding trees; so please consider your legacy in times when safeguarding our resources (trees) is the most important thing for all communities.

Sincerely,

--

Gabrielle Trudeau  
UNAREP, Assistant Director  
408.603.9993  
[ulistac.org](http://ulistac.org)

[REDACTED]

## Henriques, Arthur

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**From:** Briana Horta <briana.horta@sanjoseca.gov>  
**Sent:** Thursday, August 10, 2017 2:53 PM  
**To:** Henriques, Arthur  
**Subject:** Keep Tree Removal Permits!!!

Hi There,

My name is Briana and I am a resident of San Jose in Santa Clara County and I would like for the permitting process that currently exists for private tree removal to remain for the following reasons:

- Residing in downtown where a lot of traffic passes by means more pollution and trees are what keep the air clean in our city. Facilitating their removal also facilitates air pollution.
- The only reason for the removal of this process is to make your administration's job easier which is not okay. If your administration has to file a few more papers to prevent the removal of oxygen (trees) then I am okay with it.
- This is not the direction trees need to be viewed in. There is already so much lack of education as to the benefits that trees provide that your proposal is only exacerbating this ignorance by making trees a nuisance. Trees help regulate city temperatures by reducing the temp up to 10 degrees cooler per tree because of the shade they provide. Thus helping reduce heating and cooling costs for home owners. They make streets safer for pedestrians and cars because cars drive slower on streets that are lined with trees. They also reduce burglary because trees make people spend time outside under their shelter and therefore more community members are outside to help guard the streets.
- It is the responsibility of the local government to keep its residents safe and healthy, however removing this ordinance will do the opposite plus go against your responsibilities as a local government.

Please do not go through with removing the tree removal application process simply because it saves time. Time is all we can give back to trees in exchange for so much.

Best Regards,  
Briana Horta

## Henriques, Arthur

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**From:** K O [REDACTED]  
**Sent:** Thursday, August 10, 2017 5:44 PM  
**To:** Henriques, Arthur  
**Cc:** Rhonda Berry  
**Subject:** Re: proposed changes to streamline the removal of trees

Dear Mr. Henriques,

Please do not change the current laws regarding the removal of trees on private property. Streamlining the process would rashly destroy trees that take decades to replace. The problem is that an abrupt increase in the removal of trees may adversely affect property values as well as lessen the availability of trees to remove harmful pollutants.

Thank you for your consideration.

Sincerely,

Larry Okamura

Get [Outlook for Android](#)

## Henriques, Arthur

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**From:** vera cordova <[REDACTED]>  
**Sent:** Thursday, August 10, 2017 7:07 PM  
**To:** Henriques, Arthur; District7  
**Subject:** Keep the ordinance laws strict to protect trees

Dear Arthur Henriquez, Tan Nguyen, and City Council,

My name is Vera Cordova and I am a San Jose resident. About the proposed changes to city ordinance regarding the removal of large trees on private property. I feel that there are smarter ways to save staff time that would not result in jeopardizing and partially destroying one of the City's most valuable assets - **its urban forest**. I also believe that *more, not less*, needs to be done to protect trees on both private and public property, especially because even current laws and policies are being side-stepped time and time again. We consistently receive complaints that residents are not being properly noticed, that no City staff are inspecting the trees, that self-serving arborist reports are written by the same companies that are paid to remove the trees, and many other breaches of law and policy. It is currently just too easy to get a mature tree removed on private property in San José.

In addition, we are concerned that this item is being rushed, rather than receiving the due diligence and extensive public review such a significant matter, with potentially devastating impacts, deserves.

The City has shared with us that residents don't seem to care about these tree removals. It is my hope that they are wrong.

Collectively, we are the voice of our urban forest, and we must rise up together to protect it.

Thank you,  
Vera Cordova



## Henriques, Arthur

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**From:** Daiva Trudeau [REDACTED]  
**Sent:** Thursday, August 10, 2017 7:38 PM  
**To:** Henriques, Arthur; district7@sanjoseca.go  
**Subject:** Keep Ordinance for Tree Removal

Dear Arthur Henriquez, Tan Nguyen, and City Council,

My name is Daiva Trudeau and I am a San Jose resident. About the proposed changes to city ordinance regarding the removal of large trees on private property. I feel that there are smarter ways to save staff time that would not result in jeopardizing and partially destroying one of the City's most valuable assets - **its urban forest**. I also believe that *more, not less*, needs to be done to protect trees on both private and public property, especially because even current laws and policies are being side-stepped time and time again. We consistently receive complaints that residents are not being properly noticed, that no City staff are inspecting the trees, that self-serving arborist reports are written by the same companies that are paid to remove the trees, and many other breaches of law and policy. It is currently just too easy to get a mature tree removed on private property in San José.

In addition, we are concerned that this item is being rushed, rather than receiving the due diligence and extensive public review such a significant matter, with potentially devastating impacts, deserves.

The City has shared with us that residents don't seem to care about these tree removals. It is my hope that they are wrong.

Collectively, we are the voice of our urban forest, and we must rise up together to protect it.

Thank you,  
Daiva Trudeau  
[REDACTED]

## Henriques, Arthur

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**From:** Lisa Wilson [REDACTED]  
**Sent:** Thursday, August 10, 2017 8:16 PM  
**To:** Henriques, Arthur  
**Subject:** No Tree Removal!! Please help preserve our urban forest

**Importance:** High

Hello!

The urban forest is very important to keeping San Jose beautiful and healthy! It is important that we value trees and how they help the environment and improve our quality of life. PLEASE do not make it easier for people to remove trees from their property! I ask this for myself and for future generations living here in San Jose.

Sincerely, Lisa Wilson

## Henriques, Arthur

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**From:** Dexter, Michele  
**Sent:** Tuesday, August 15, 2017 7:59 PM  
**To:** Henriques, Arthur  
**Subject:** message from NextDoor

Hi Art – below is a message our office received via NextDoor. Please include it in your project comments.

Thank you,

*Michele Dexter*

Council Liaison  
Office of Councilmember Johnny Khamis  
San Jose City Hall - District 10  
200 E Santa Clara Street - 18th Floor / San Jose, CA 95113  
Direct: 408-535-4978 Main: 408-535-4910  
[michele.dexter@sanjoseca.gov](mailto:michele.dexter@sanjoseca.gov) [www.sjd10.com](http://www.sjd10.com)

### Inbox » Re: Tree Permit Streamlining Community Meeting

Conversation between you and Catherine D. from Carson

- Catherine D. Hi Michelle, My husband and I are currently going through a VERY STRESSFUL situation with the Tree and Sidewalk Office as well as with our assigned tree inspector, Tom Valenzuela, from that office!!!
- 
- The SJ Tree and Sidewalk approved our request to remove our dead maple tree in the sidewalk adjacent to our house, instructed us to find/purchase a 15gal Sweet Bay tree, plant it in the ground then make an appt for Tom to come to our for an inspection and to get all this done by their deadline of 9/9/2017.
- 
- After my 1ea phone call + 5ea emails sent to Tom/his office, we finally were told today we could get an Eastern Redbud tree instead. It is difficult to find an Eastern Redbud tree in the local nurseries at this time of the year because "it's not in season" according to one of the nurseries...more frustration now!
- 
- Below are our complaints for why we are SORRY we ever contacted the SJ Tree and Sidewalk Office!
- 1) After 4ea emails to Tom (1.5wks of waiting for his response), we finally received an email response back from him today for assistance on why we have to get a 15gal Sweet Bay tree. Why the long response delay? Is this standard procedure for him or anyone from his office to take for responding to my emails?!?
- 2) It took 2mos before we received a letter sent to our home informing us of when someone will come out to our home to inspect our dead maple tree.
- 3) It took another month for an inspector to come over and get his assessment of our tree.
- 4) Why not give us a list of trees for us to choose from since we have to PAY for it anyways instead of dictating to us 1ea approved tree at a time with several emails in-between before coming to an agreement?!?
- 5) Why dictate to us what size tree we needed to get? Who's forking out the \$\$ for this 15gal tree...us or them? We have 5ea family members living under one roof with only my husband's pay to live on. Without knowing each homeowner's financial status, how can the Tree and Sidewalk Office be given the right to tell us how much \$\$ to spend a tree THEY want us to purchase? Is this right for them to do? Where's our right to have our say in all this? Are they going to pay for our other bills that

we have to take \$\$ from just to pay for a "15 GALLON" tree that's not of our original choice but from a list (if ever one can be provided to homeowners)?!?

- 
- SUMMARY:
- \*\*\*Why can't homeowners be given an approved tree listing to pick/purchase from in the very beginning so we can have a voice in all this too?
- \*\*\*Why tell homeowners what size tree to purchase? Let us make that decision based on what's affordable to us.
- \*\*\*If it takes the Tree and Sidewalk Office staff a few days/weeks time to get back to everybody's calls/emails, then why bother dictating a deadline to homeowners to get their tree(s) removed, replacement tree(s) found/purchased/planted, make an appt/wait for a tree inspector to come out to give approval of our planting job and all this needs to be completed by our assigned deadline date? Being given deadlines to deal with at work, having our families and/or disabled person(s) to care for plus our homes to maintain, we already have enough daily/weekly/monthly stress of our own to deal so do we really need another deadline by the SJ Tree and Sidewalk Office too just to get a tree planted? We don't think so!
- 
- Now that you have heard about our stressful situation, can my husband/I just plant a bush of our choice instead of a tree or maybe not plant anything at all? My health is not in excellent state so having this mind-blowing/stressful issue to deal with within the last few months has just escalated my health to being worse now thanks to Tom Valenzuela, his office and all the rules/regulations from the City of San Jose just to remove/plant a new tree in!!!
- 
- Upset Homeowners,
- Ben/Catherine DelaRosa
- 408-858-5904

## Henriques, Arthur

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**From:** Dexter, Michele  
**Sent:** Tuesday, August 15, 2017 8:16 PM  
**To:** Henriques, Arthur  
**Subject:** FW: Streamlining to remove large, ordinance size trees on private property- VOTE NO

Hi Art,

Here is an email received re: tree permit streamlining.

Best Regards,

*Michele Dexter*

Council Liaison  
Office of Councilmember Johnny Khamis  
San Jose City Hall - District 10  
200 E Santa Clara Street - 18th Floor / San Jose, CA 95113  
Direct: 408-535-4978 Main: 408-535-4910  
[michele.dexter@sanjoseca.gov](mailto:michele.dexter@sanjoseca.gov) [www.sjd10.com](http://www.sjd10.com)

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**From:** kelly lanspa [mailto:████████████████████]  
**Sent:** Tuesday, August 01, 2017 10:56 AM  
**To:** Henriques, Arthur <arthur.henriques@sanjoseca.gov>; Rhonda Berry <rberry@ourcityforest.org>; District 10 <District10@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>  
**Subject:** Streamlining to remove large, ordinance size trees on private property- VOTE NO

Hello,

As a resident of San Jose and Almaden Valley, I am deeply disturbed that the city is considering loosening the restrictions on large ordinance trees on private property. San Jose already has one of the lowest amount of parks and outdoor green areas of a city of its size in the US. Trees are incredibly valuable to the beauty, health and over all well-being of our community. With the rampant development and remodels, Trees need our protection from developers and homeowners that are more concerned with \$\$\$ than with their neighbors and the San Jose community.

I urge to to vote no on this and focu on strengthening, rather than weakening, the City's protection of our mature trees.

Kelly Lanspa

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████████████████████  
████████████████████

## Henriques, Arthur

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**From:** Dexter, Michele  
**Sent:** Tuesday, August 15, 2017 8:25 PM  
**To:** Henriques, Arthur  
**Subject:** FW: Private-tree removal community meetings Aug.1st & Aug. 10th

Hi Art – this is the last email we received on the permit streamlining issue.

Best Regards,

*Michele Dexter*

Council Liaison  
Office of Councilmember Johnny Khamis  
San Jose City Hall - District 10  
200 E Santa Clara Street - 18th Floor / San Jose, CA 95113  
Direct: 408-535-4978 Main: 408-535-4910  
[michele.dexter@sanjoseca.gov](mailto:michele.dexter@sanjoseca.gov) [www.sjd10.com](http://www.sjd10.com)

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**From:** Doris Livezey [mailto: [REDACTED]]  
**Sent:** Monday, July 31, 2017 10:50 AM  
**To:** Livezey, Doris [REDACTED]  
**Subject:** FW: Private-tree removal community meetings Aug.1st & Aug. 10th

I have been a member of Our City Forest for the past 18 years, planting and advocating for the existence of our city trees, I am saddened to learn that the City of San José is working on changing current laws and policies that would likely make it easier ("streamlining") to remove **large, ordinance size trees on private property**.

This would mean that if someone applied to remove a large tree neighbors would not be notified, and there would be no opportunity to protest the removal as current law allows. The reason for this, according to Planning, is to save staff time.

There are smarter ways to save staff time that would not result in jeopardizing and partially destroying one of the City's most valuable assets - its urban forest. I believe that *more, not less*, needs to be done to protect trees on both private and public property, especially because even current laws and policies are being side-stepped time and time again. Residents are not being properly noticed; it is currently just too easy to get a mature tree removed on private property in San José.

It seems that this item is being rushed, rather than receiving the due diligence and extensive public review such a significant matter, with potentially devastating impacts, deserves.

Trees make our community; please advocate for more trees not fewer.

Thank you,

Doris Livezey  
[REDACTED]

**DRAFT 10202017**

**PROJECT DESCRIPTION: TREE REMOVAL CONTROLS PROPOSED AMENDMENTS**

**ORDINANCE TO AMEND TITLE 13 OF THE SAN JOSÉ MUNICIPAL CODE AMENDING CHAPTER 13.32 (TREE REMOVAL CONTROLS) TO AMEND THE TREE REMOVAL REQUIREMENTS FOR SINGLE-FAMILY RESIDENCES, TWO-UNIT DWELLINGS AND OTHER LAND USES IN ORDER TO STREAMLINE PERMITTING PROCESSES AND TO FURTHER IMPLEMENT THE COMMUNITY FOREST GOAL AND POLICIES SET FORTH WITHIN THE ENVISION SAN JOSÉ 2040 GENERAL PLAN, TO MODIFY REQUIREMENTS FOR TREE REMOVAL AND CERTAIN OTHER PERMITS, AND TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN THOSE CHAPTERS AND SECTIONS OF TITLE 13**

**AND A RESOLUTION SETTING FORTH THE SPECIFICS RELATED TO TREE MITIGATION AND RELATED MATTERS. FILE NO. PP17-042.**



CEQA

Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the Envision San José 2040 General Plan Program approved previously. The environmental impacts of this project were addressed by the Final Program EIR entitled, "Envision San José 2040 General Plan," adopted by City Council Resolution No. 76041 on November 1, 2011, the Supplemental EIR entitled, "Envision San José 2040 General Plan Supplemental Environmental Impact Report," adopted by City Council Resolution No. 77617 on December 15, 2015, and addenda thereto. The project does not involve new significant effects beyond those analyzed in this Final EIR. Therefore, the City of San José may take action on the project as being within the scope of the Final EIR, File No. PP12-098 and the Final Supplemental Program Environmental Impact Report, File PP15-060.

*update  
to include  
2016 changes*

## COMMUNITY MEETING COMMENTS

### Private Tree Permit Streamlining

Tuesday, August 1, 2017

6:30 p.m. to 7:30 p.m.

Wing Room 120

San Jose City Hall, San Jose, CA

**Meeting Purpose:** Staff provided an introduction to this Council-directed review. Updates related to this process are on the City's website (<http://www.sanjoseca.gov/index.aspx?NID=5605>). Any proposed changes to City Ordinances would need to go to public hearings at the City's Planning Commission and the City Council later in the year.

- **Concerns with Tree watering maintenance after planting**
  - Funding not sufficient for 3-year maintenance
  - Some riparian sites have a 5-year maintenance requirement with questionable maintenance
  - Not enough volunteers to care for the trees being planted
- **Monitoring Needed**
  - Some trees that are lost are not being replaced
  - Increase staff review on the projects beyond Single Family Residential & Duplex use properties
- **Measuring tree circumference**
  - Adjust the number lower if measuring at 4.5 ft. above grade (vs. at 2 ft.)
  - Consider the circumference that other cities use
  - Consult with the City Arborist on these items
- **Standardize Arborist Report Ratings for Trees**
  - Consider peer review of Arborist report, if the request is controversial
- **Address building new construction with adequate separation to existing trees**
  - Accessory buildings
  - Accessory dwelling units (ADUs)

- Need a clear permit process
- **Unsuitable Trees**
  - Consider the Root System
    - Expand the list of Unsuitable Trees
    - Refer to City of Cupertino as a good list and other cities
    - Include invasive species as unsuitable trees
- **Consider a new owner tree removal request vs. a long-term owner for tree removal permit criteria**
- **Noticing:** Three or more trees should require a hearing
- **Owner Self-certification:** problematic on enforcement, especially for Single Family Residential owner
- **Need a major consequence if posting only in the front yard – if they do not post (if there is no mailing notice)**
  - Posting needs to stay up for the required time period
- **Having problem re-subscribing to the City’s RSS feed (for email notices of permit requests)**

**For more information, please contact:**

Department of City Planning  
Project Manager: Arthur Henriques  
(408) 535-6862  
[arthur.henriques@sanjoseca.gov](mailto:arthur.henriques@sanjoseca.gov)

## COMMUNITY MEETING COMMENTS

### Private Tree Permit Streamlining

Tuesday, August 10, 2017

6:30 p.m. to 7:30 p.m.

Almaden Hills United Methodist Church  
1200 Blossom Hill Rd., San Jose, CA

**Meeting Purpose:** Staff provided an introduction to this Council-directed review. Updates related to this process are provided on the City's website (<http://www.sanjoseca.gov/index.aspx?NID=5605>). Any proposed changes to City Ordinances would need to go to public hearings at the City's Planning Commission and the City Council later in the year.

Summary of community comments/feedback:

- **City should consider collecting the tree mitigation fee or have Our City Forest (OCF) collect the tree mitigation fee online**
- **Concern that developers can receive building permits without paying the tree mitigation fee**
- **Due to developers clear cutting trees on lots the entire public hearing process is important**
- **Need a ratio for trees required per acre**
- **Consider credit for properties that have a lot of trees (when one or more trees need to be removed)?**
- **Separate categories of tree removals**
  - **Dead**
  - **Cosmetic**
  - **Construction**
  - **Preservation**
- **Planning should employ an Arborist to assess the trees or contract with OCF or equivalent to streamline the process**
- **Dead trees – need City-wide effort to have these removed. Need education about importance of removing dead trees**
- **Multi-family should not be lumped in with commercial tree removal standards, they should be treated the same as single-family**



- Have unsuitable tree criteria apply to the other land uses
- Should not identify large shrubs as trees – not a fair assessment
- Need a tree department with an arborist for public and private trees
- Not fair to have the urban forest be on a cost recovery basis
- Planning & the Department of Transportation (DOT) need to educate the community on the process for tree removal (& tree management) – both in the public area & on private property
- City website: Clarify and simplify the Unsuitable Trees criteria & process
- Concern that some people are cutting down the mitigation trees
- Streamlining not helping Global warming & the urban forest
- Certified Arborists need to have additional certification for the proper assessment of tree hazards (*City should not require how an arborist report should be written*)
- Multi-family project with hundreds of existing trees & no room – is it fair to require the property owner apply for and mitigate every tree removed?
- For multi-family parcels/large lots – is a percent criteria for trees possible rather than require tree for tree replacement?
- Educate planners on tree saving (& protection) techniques – e.g., pervious pavers, arborist techniques
- Educate people about the financial value of trees
- Improve information & accessibility (*on City website*) about palm trees & other unsuitable trees
- Make it easier to find the City's Tree Ordinance on the City's website
- Way to transfer tree mitigation from one site to another?
- Can Building Inspectors watch for illegal tree removal on construction sites?
- Apply standard tree mitigation & preservation conditions of approval for construction projects

**For more information, please contact:**

Department of City Planning  
 Project Manager: Arthur Henriques  
 (408) 535-6862  
[arthur.henriques@sanjoseca.gov](mailto:arthur.henriques@sanjoseca.gov)

The following  
items were  
received after  
packets were  
distributed.

## Henriques, Arthur

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**From:** I sweeney <[REDACTED]>  
**Sent:** Wednesday, December 06, 2017 4:27 PM  
**To:** Henriques, Arthur; Bobbie Wood  
**Cc:** Catherine Lydon Tilli  
**Subject:** Re: proposed tree ordinance revisions coming up for Planning Commission and City Council review

Hello Art,

Thanks for the information. I have a question on the proposed changes - I see that the city has added language to have the resident/applicant post the director's finding on the tree (13.32.090 D,E,F) to allow for protests. How does the city verify that the owner has in fact posted this on the tree? As in the case with our neighbor, she posted, took a picture, and then removed the posting all in a matter of minutes.

I'm okay with having director's hearings only with contested removals, as long as there is actually fair notice.

Also, I would also like to make sure that planning takes into account the actual value of the tree as it adds to the property as opposed to just the maximum amount of land to cover according to the FAR formula when determining the amount of economic hardship that occurs when trying to build (the need to balance both - it there great financial harm in building a 3800 square foot home compared to building a 3600 square foot home with a large, beautiful established tree).

Thanks again for your detailed work on the tree process,

Linda

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**From:** "Henriques, Arthur" <arthur.henriques@sanjoseca.gov>  
**To:** Bobbie Wood <[REDACTED]>  
**Cc:** Catherine Lydon Tilli <ms[REDACTED]>; I s[REDACTED]  
**Sent:** Tuesday, December 5, 2017 12:29 PM  
**Subject:** RE: proposed tree ordinance revisions coming up for Planning Commission and City Council review

Thanks for your comments Bobbi. There has been quite a bit of staff discussion about how to handle smaller properties. The fines option will continue for some situations. There are trees that can be planted as replacement that look good but don't get as wide at maturity or have as invasive a root system to minimize future problems that need to be further explored with staff and applicants. The option will remain for applicants to plant a street tree (if none exist in front of a property) or pay the tree replacement fee so that a tree can be planted off-site, such as in a City park. We are exploring better ways to handle this and also coordinate with the City Arborist.

The City Arborist recently conducted a training session with the staff about proper care and management of trees. We are planning another training session in early 2018. I would also like to have a session with Code Enforcement in 2018 to talk about what is working and what is not in this area. The Department will be looking at going to City Council in 2018 with a review and recommendations on the City's fees for tree permits, including the off-site tree replacement fee. Site visits will continue to be a challenge given the high permits case load that the planners typically carry but it certainly is a good item to discuss. The City Council did approve additional funding for Planning this fiscal year which resulting in a number of additional planners being hired this fall.

Art Henriques  
Policy and Ordinance Technical Advisor



**DETERMINATION OF CONSISTENCY WITH THE  
ENVISION SAN JOSÉ 2040 GENERAL PLAN FINAL ENVIRONMENTAL IMPACT  
REPORT AND SUPPLEMENTAL PROGRAM ENVIRONMENTAL IMPACT  
REPORT (SCH# 2009072096) AND ADDENDA THERETO**

Pursuant to Section 15168(c)(2) of the CEQA Guidelines, the City of San José has determined that the project described below is pursuant to or in furtherance of the Final Program Environmental Impact Report (Final Program EIR) and Supplemental Program Environmental Impact Report (Supplemental Program EIR) for the Envision San José 2040 General Plan and addenda thereto, and does not involve new significant impacts beyond those analyzed in the above EIRs. Therefore, the City of San José may take action on the project as being within the scope of both the Final and Supplemental Program EIRs.

**File Number and Project Name:** PP17-072, San José Tree Replacement Controls

An Ordinance to amend Title 13 of the City of San José Municipal Code, Chapter 13.32 Tree Removal Controls for trees on private property. These are:

1. Amending Chapter 13.32 of Title 13 of the San José Municipal Code, to amend the tree removal requirements for single-family residences, two-unit dwellings and other land uses to streamline permitting processes and to further implement the Community Forest Goal and Policies set forth within the Envision San José 2040 General Plan, and to make other technical, non-substantive, or formatting changes within those chapters and sections of Title 13; and
2. Approving the Determination of Consistency with the Envision San José 2040 General Plan EIR (Resolution No. 76041) and Supplemental program EIR to the Envision San José General Plan EIR (Resolution No. 77617), and addenda thereto in accordance with CEQA.

The purpose of these changes is to streamline the tree removal permitting process and to continue implementation of the Community Forest Goal and Policies set forth within the Envision San José 2040 General Plan.

**Location:** Citywide.

**Council District:** All Council Districts.

The “Envision San José 2040 General Plan,” adopted by City Council Resolution No. 76041 on November 1, 2011 and the Supplemental Program EIR entitled, “Greenhouse Gas Reduction Strategy,” adopted by City Council Resolution No. 77617 on December 15, 2015 are programmatic environmental evaluation of the General Plan under CEQA. The General Plan Program EIR and Supplemental Program EIR were prepared for the comprehensive update and revision of all elements of the City of San José General Plan, including an extension of the planning timeframe to the year 2035. The following impacts were reviewed and found to be adequately considered by the EIRs:

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Transportation            | <input checked="" type="checkbox"/> Land Use                        | <input checked="" type="checkbox"/> Noise and Vibration          |
| <input checked="" type="checkbox"/> Air Quality               | <input checked="" type="checkbox"/> Biological Resources            | <input checked="" type="checkbox"/> Geology and Soils            |
| <input checked="" type="checkbox"/> Hydrology & Water Quality | <input checked="" type="checkbox"/> Hazardous Materials and Hazards | <input checked="" type="checkbox"/> Public Facilities & Services |
| <input checked="" type="checkbox"/> Cultural Resources        | <input checked="" type="checkbox"/> Aesthetics                      | <input checked="" type="checkbox"/> Energy                       |
| <input checked="" type="checkbox"/> Population and Housing    | <input checked="" type="checkbox"/> Greenhouse Gas Emissions        | <input checked="" type="checkbox"/> Public Facilities & Services |
| <input checked="" type="checkbox"/> Cumulative Impacts        | <input checked="" type="checkbox"/> Growth Inducing Impacts         | <input checked="" type="checkbox"/> Agriculture                  |
| <input checked="" type="checkbox"/> Mineral Resources         | <input checked="" type="checkbox"/> Hazardous Materials and Hazards | <input checked="" type="checkbox"/> Public Facilities & Services |

## Background

The Envision San José 2040 General Plan (General Plan) includes a goal to “Preserve and protect existing trees and increase planting of new trees within San José to create and maintain a thriving Community Forest that contributes to the City’s quality of life, its sense of community, and its economic and environmental wellbeing.”

To further this goal of the General Plan, the City manages its Community Forest in part by regulating the removal of trees on private property. Removal of an ordinance-size tree from any private property requires a Tree Removal Permit approval by the Director of Planning. As defined in the Municipal Code, an ordinance-size tree has a circumference of 56 inches or greater when measured two feet above the ground. A Tree Removal Permit can be issued based on the condition of the tree or the tree’s interference with utilities and other structures. A standard condition for issuance of a Tree Removal Permit is replacement tree planting, either on the property or along the public street frontage.

In 2012, the City Council adopted an ordinance amendment to streamline the Tree Removal Permit process. This ordinance amendment included allowing the removal of nuisance (also called Unsuitable) trees on single-family residential properties through an administrative process and providing applicants with the flexibility of planting replacement trees on their property or paying an in-lieu fee when allowed by the City so that a replacement tree could be planted off-site.

While improving certain reviews, the Tree Removal Permit process continues to create administrative, financial, and time costs for both the City and the applicants. Based on the City Council’s direction in 2016, staff has reviewed the current Tree Removal Permit process and developed additional changes to the Municipal Code Title 13.32. These changes have been reviewed with other City Departments, City Advisory groups, customers, and stakeholders.

## Project Description

The proposed project consists of revisions to the existing Municipal Code Chapter 13.32 of Title 13—Tree Removal controls pertaining to the removal of trees on private property. These changes further align with standard industry practice for measurement of ordinance size trees.

### *Ordinance Tree Measurements*

These revisions include changes to the standard for measurement of an ordinance-sized tree from two feet above ground to four and one-half feet above ground, correspondingly changing the size of what constitutes an ordinance-sized tree from 56 inches to 38 inches in circumference (12.1 inches in diameter). This change in circumference/diameter provides approximately the same size diameter/circumference requirements for an ordinance-sized tree when measured at four and one-half feet above grade as is currently required at a measurement of two feet above grade. Additionally, it is likely that more multi-trunk trees would be subject to a tree removal permit under the proposed provisions.



Measurement at four and one-half feet above grade is consistent with Arboricultural Industry standards and is typical practice of many local agencies. The proposed diameter of 12.1 inches is also consistent with the 12-inch diameter standard used by surrounding cities such as Sunnyvale, Sacramento, and San Francisco that the City benchmarks to define ordinance sized trees. This analysis is based on Planning discussions with the City Arborist in the fall of 2017 and City Arborist discussions with the local Certified Arborist Association. The City Arborist reported that the local Certified Arborist Association concurred that the proposed change to increase the height of measuring the tree diameter/circumference would increase the number of trees subject to the Ordinance, especially in the area of multi-trunk trees.

### ***Unsuitable Trees***

Currently, single-family land uses can utilize an Unsuitable Tree process when considering certain tree removals. These are trees that are non-native, invasive or subject to disease. Examples include Eucalyptus, Liquid Amber, Pine and Tree of Heaven. The list of Unsuitable Trees is adopted by the City Council by Resolution and is subject to revision. The Unsuitable Tree process also extends to trees that have part of a tree trunk five feet or less from a single-family residence, or the tree is within five feet of the centerline of a below-grade utility pipe or utility line.

Proposed changes to the Tree Removal controls in Title 13.32 would expand the application of the Unsuitable Trees category from single family to include two-dwelling residential (duplex) use as well as certain application of Unsuitable Trees for multi-family residential, and all other use areas. Planting of replacement trees would still be required as a condition of approval for all tree removals. The Unsuitable Tree definition is proposed to also be utilized by two-dwelling (duplex) properties. In the proposed ordinance update, Unsuitable Trees are further defined as those which have the nearest part of their trunks either within five (5) feet of the nearest part of a single-family residence, two-dwelling residence, secondary unit or garage or multi-family residence or within five (5) feet of the center line of underground utility pipes or lines in all land use areas.

### ***Process Improvements***

Currently, all Tree Removal Permits (other than those categorized as Unsuitable) on single-family residential lots are decided through a public hearing process at a Director's Hearing. Other tree removal permits include dying, dead, or diseased trees. On single-family residential lots only, Unsuitable Trees may be decided administratively at the Planning Director's discretion (without a public hearing). The proposed revisions to Chapter 13.32 Tree Removal Controls, streamline the process such that requests for a public hearing for removal of a Ordinance-sized tree (other than an Unsuitable Tree) should be made during the public notice period. This recommendation is based on staff's experience of a very low volume of tree removal permit hearings that were controversial over past three years (averaging one to two controversial permits per year, significantly less than one (1) percent of the total number of permits).

This process improvement facilitates staff's discretionary review of tree removal requests. Staff will also be better able to respond to imminently hazardous trees upon evidence of a satisfactory report from a certified arborist without the need for noticing adjacent property owners and those across the street. The Director of Planning will continue to review and make decisions on individual tree removal permit requests. A mailing notice of the pending tree removal decision (for permit applications not meeting the Unsuitable Trees definition) will be sent to applicants and parties adjacent to and across from the street for the tree under review. These informed parties continue to have the ability to: 1) request a public hearing at the Planning Director level, and 2) appeal the Planning Director's decision to the Planning Commission.

Conditions of approval will be applied to each tree removal permit whether a hearing is held or not. These conditions include measures such as requirements for tree replacement, protection of trees during nesting

and breeding seasons, and pre-construction nesting bird surveys prior to removal of the trees. The tree removal permit will continue to be reviewed and signed by the Director of Planning.

## **Regulatory Framework**

### *Federal Endangered Species Act and California Endangered Species Act*

The Federal Endangered Species Act and California Endangered Species Act protect listed wildlife species from harm or “take,” which can include habitat modification or degradation that directly results in death or injury to a listed wildlife species. The long-term purpose of these laws are to ultimately restore listed wildlife species numbers to where they are no longer threatened or endangered.

### *Federal Migratory Bird Treaty Act*

The Federal Migratory Bird Treaty Act (FMBTA: 16 U.S.C., sec. 703, Supp. I, 1989) is part of a coordinated effort between the United States, Canada, Mexico, Japan, and Russia to help protect migratory birds in this part of the world. It prohibits killing, taking, selling, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs.

### *State Fish and Game Code*

Birds of prey, such as owls and hawks, are protected in California under provisions of the State Fish and Game Code, Section 3503.5 (1992), which states that it is “unlawful to take, possess, or destroy any birds in the order falconiformes or strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.” Construction disturbance during the breeding season can result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered a “taking” by the California Department of Fish and Wildlife (CDFW).

### *Santa Clara Valley Habitat Plan/Natural Community Conservation Plan*

The Santa Clara Valley Habitat Plan (Habitat Plan) is a conservation program intended to promote the recovery of endangered species and enhance ecological diversity and function, while accommodating planned growth in approximately 500,000 acres of southern Santa Clara County. The Habitat Plan is a regional partnership between six Local Partners (the County of Santa Clara, Santa Clara Valley Transportation Authority, Santa Clara Valley Water District, and the cities of San José, Gilroy, and Morgan Hill) and two Wildlife Agencies (the California Department of Fish and Wildlife [CDFW] and the United States Fish and Wildlife Service [USFWS]).

### *Other City Policies & Regulations*

**Tree Removal Ordinance:** The City of San José maintains the urban landscape in part by promoting the health, safety, and welfare of the City by controlling the removal of ordinance trees on private property (San José Municipal Code Section 13.32).

The proposed changes to the Ordinance are to Municipal Code chapters and sections of Section 13.32 and chapters and sections of Title 13.

**Riparian Corridor Protection and Bird-Safe Design [Policy 6-34]:** The City’s Policy 6-34 sets guidelines on how areas along natural streams should be treated and establishes development guidelines for general site design, as well as guidance for the design of buildings, landscaping, and public recreation facilities

related to their interface with riparian corridors. The riparian policy indicates that “all buildings, structures, impervious surfaces, outdoor activity areas, and ornamental landscaped areas should be separated at a minimum of 100 feet from the edge of the riparian corridor (or top of bank, whichever is greater).” This Policy allows exceptions based on adjacent land uses and existing setbacks, and other factors. These setbacks are typically determined on a case-by-case basis. The City’s 1999 Riparian Corridor Study provides related guidance, such as the use of plant species native to central California and appropriate to a riparian habitat corridor, retaining remnant riparian species (such as sycamore and valley oak trees) that exist outside of the mapped riparian corridor. The Study also recommends prohibition of non-native plant species within the mapped riparian corridor and prohibition of invasive plant species within 100 feet of a riparian corridor. Appendix B in the Study lists vegetation suitable and unsuitable within a mapped riparian corridor and within 100 feet outside of a riparian corridor.

Heritage Trees: Heritage trees are defined as trees that due to factors such as history, girth, height, species, or unique quality, have been found by the City Council to have a special significance to the community and are designated a heritage tree. The heritage tree list adopted by the city council by resolution can be amended from time to time. There are currently over 200 trees on the City’s Heritage Tree List. Upon designation by City Council, Heritage Trees are further protected from harmful illegal pruning or removal. Violation can result in a citation and fine of up to \$10,000, which can increase for repeated violations up to \$30,000. Under the City’s Municipal Code Section 13.68 any pruning of Heritage Trees shall be done in consultation with the City Arborist to ensure that the work done on or around the tree will not endanger its health, structure, or life. Under the City’s Tree Removal Ordinance, specific criteria or findings must be made before a permit for removal of a live or dead Heritage Tree could be granted.

The proposed changes to the Ordinance does not alter the City’s Heritage Tree Program. Protection of Heritage Trees will continue through the discretionary tree removal permit process.

General Plan Policies on Community or Urban Forest: General Plan policies that guide community forest are identified below:

***Policy MS-21.4***

*Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to effectively preserve it.*

***Policy MS-21.5***

*As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse affect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.*

***Policy MS-21.6***

*As a condition of new development, require, where appropriate, the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies, or guidelines.*

***Policy MS-21.8***

*For Capital Improvement Plan or other public development projects, or through the entitlement process for private development projects, require landscaping including the planting of new trees to achieve the following goals:*

- 1. Avoid conflicts with nearby power lines.*
- 2. Avoid potential conflicts between tree roots and developed areas.*
- 3. Avoid use of invasive, non-native trees.*
- 4. Remove existing invasive, non-native trees.*
- 5. Incorporate native trees into urban plantings in order to provide food and cover for native wildlife species.*
- 6. Plant native oak trees and native sycamores on sites which have adequately sized landscape areas and which historically supported these species.*

***Policy MS-21.9***

*Where urban development occurs adjacent to natural plant communities (e.g., oak woodland, riparian forest), landscape plantings should incorporate tree species native to the area and propagated from local sources (generally from within 5-10 miles and preferably from within the same watershed).*

***Policy MS-21.10***

*Prohibit London plane trees from being planted in the Coyote Planning Area, which is located near the most significant stands of sycamore alluvial woodland in the City. Planting of this species is discouraged elsewhere, particularly near riparian areas. Prohibit holly-leaved oaks from being planted in areas containing stands of native oaks or in proximity to native oak woodland habitat.*

**Conformance with Regulatory Framework**

Trees proposed for removal on private property could provide nesting habitat for birds, including migratory birds and raptors. Nesting birds are among the species protected under provisions of the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503, 3503.5, and 2800. Tree removal could disturb a nesting bird or raptor. In conformance with the California State Fish and Game Code, the provisions of the Migratory Bird Treaty Act, and General Plan policies ER-5.1 and ER-5.2, tree removal permits will include measures to avoid and/or reduce impacts to nesting birds. Potential standard measures may include the following:

- Requirements for pre-construction nesting bird surveys prior to the start of any tree removal activities, if tree removal is proposed to commence during the nesting season (February 1 to August 31) in order to avoid impacts to potential nesting birds. These surveys shall be completed by a qualified biologist no more than 14 days before construction begins. During this survey, the biologist or ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests.
- If an active nest is found in an area that will be disturbed by the tree removal, the ornithologist shall designate an adequate buffer zone to be established around the nest, in consultation with the CDFW.
- The applicant shall submit a report to the City's Supervising Environmental Planner indicating the results of the pre-construction survey and any designated buffer zones to the satisfaction of the Director of Planning, prior to the issuance of a Tree Removal Permit.



Implementation of General Plan policies and conformance to state and federal laws protecting nesting birds would reduce potential impacts to special-status species nesting on trees to a less than significant level.

Similarly, during the discretionary review process, the proposed tree removal will comply with the principles and conditions within the Santa Clara Valley Habitat Conservation Plan and the City's Riparian Corridor Protection and Bird-Safe Design Policy and the Riparian Corridor Policy Study. Specifically, trails through woodland or riparian habitat will avoid tree removal or substantial pruning as far as possible. Unhealthy, exotic tree species, or trees unlikely to reach maturity due to site conditions will be targeted for removal. The addition of non-native plant species within mapped riparian corridors will be avoided as well as within 100 feet of a riparian corridor as shown on approved plans.

### **General Plan Consistency Analysis**

Pursuant to CEQA Guidelines Section 15168(c)(2), the proposed changes to the Tree Removal controls [Title 13.32] is within the scope of the Envision San José 2040 General Plan and the associated General Plan Program EIR and Supplemental EIR, and addenda thereto.

Envision San José 2040 General Plan EIR analyzes policies that address the effects of development on the urban or community forests. Policies and actions (MS-21.4 to MS-21.6 and MS-21.8 to MS-21.10) that reduce or avoid adverse impacts to the urban forest are identified in the General Plan and enumerated above in Regulatory Framework.

The urban forest is an important biological resource within the City and is comprised of all the native and non-native trees on private and public property. Direct impacts due to loss of trees could occur to the urban forest due to developmental growth within the City. It can also occur when trees are planted too close to buildings or utilities, become mature and then these trees must be removed before damage to buildings or utilities occurs. This can cause the temporary loss of mature trees, which is not a short-term loss due to the length of time required for trees to mature. Development can also lead to indirect impacts to the urban forest when trees do not adapt to changed conditions, such as the addition of pavement covering roots or limiting water reaching the roots or construction activity related to new buildings or additions.

The City responds to the direct and indirect loss of mature trees by maintaining discretionary removal of ordinance size trees in all land use categories. Additionally, trees less than ordinance size also require a tree removal permit, development permit or permit adjustment for removal on any multi-family residential, commercial or industrial use properties. Trees that represent an imminent hazard to people or property would be able to be processed more quickly by staff upon acceptance of a satisfactory certified arborist report attesting to the imminent hazard.

Tree removal through this Ordinance and proposed updates continues to require tree replacement on-site or payment of an in-lieu fee to Our City Forest to compensate for the loss of trees on-site. The City requires the planting of replacement trees, typically at a rate of 1:1 on single family use properties and greater than 1:1 on other properties, especially in the case of native trees. Through this discretionary process, the City pursues all reasonable measures to preserve trees, and in situations where preservation is not feasible, use appropriate tree replacement to maintain the urban forest.

In accordance with existing City practice and the Municipal Code, trees removal during future development of would be replaced at the ratios shown in Table 4.4-1. The species of trees to be planted shall be



determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement at the development permit phase.

**Table 4.4-1: Tree Replacement Ratios**

<b>Tree Replacement Ratios</b>				
<b>Circumference of Tree to be Removed</b>	<b>Type of Tree to be Removed</b>			<b>Minimum Size of Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	<b>Orchard</b>	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon

x:x = tree replacement to tree loss ratio

**Note:** Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.

A 38-inch tree equals 12.1 inches in diameter

A 24-inch box tree = two 15-gallon trees

Single Family and Two-dwelling properties may be mitigated at a 1:1 ratio

Proposed revisions to the City’s tree removal controls will maintain the City’s discretionary review process and retain the requirement for tree replacement. Additionally, tree replacement is also permitted within the public right-of-way under circumstances when there is available space along the property street frontage. To encourage rejuvenation and maintain the urban forest, the City also allows replacement trees at a school or park facility if there is restricted space on the private property. Replacement trees will also be required to be replanted if they fail within the first three years of planting (a typical standard for tree establishment). The City will continue to review all ordinance sized tree removal requests on private properties. The City will also continue to require more than 1:1 replacement of native trees that are proposed to be removed. Trees less than ordinance size will also continue to be reviewed in multifamily residential, commercial, and industrial use areas.

The proposed process improvement strengthens the City’s urban forest policies in certain areas, such as making the review and tree replacement process more efficient for trees that are in proximity to residential structures or underground utility lines in all land use areas. Tree removal or modifications to all trees on public property (e.g., street trees within a park strip or the area between the curb and sidewalk) are handled by the City Arborist (Department of Transportation).

Private development projects require landscaping including the planting of new trees that should avoid conflict with utilities, other tree roots, avoid or remove invasive, non-native trees, and provide native trees that are properly sized through the planning entitlement process. When private development is proposed next to oak woodlands, riparian areas; landscape should include tree species native to the area and propagated

generally from within 5-10 miles of the same watershed. Private development proposed along riparian corridors should avoid planting non-native plant species to the riparian eco-system.

Specifically, the Coyote Planning Area is located near the most significant stands of sycamore alluvial woodland in the City. The City will continue to prohibit London plane trees in the Coyote Planning Area and other riparian areas in the City.

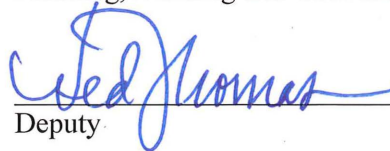
### Conclusion

The proposed modifications within the Ordinance continue to support established as well as new plantings of trees in the urban forest. Trees that represent an imminent hazard to people or property could be processed more quickly by staff with a certified arborist report. Trees that are Unsuitable (non-native, invasive or subject to disease) could be removed and replaced with healthy, more appropriate tree species leading to an overall improved urban forest. The proposed revisions maintain a discretionary staff review process for Ordinance-sized trees in better keeping with Arboriculture industry standards and best practices of local agencies. The proposed modifications aligns measurements standards with current industry practices and introduces efficiencies in the permit processing.

The Director of Planning will continue to review and approve all tree removal permits. Based on the City's requirements for tree removal, equal or greater tree replacement will continue to be required. A greater than 1:1 replacement would be required especially for the loss of any native trees. Trees less than ordinance size would continue to require a tree removal permit, development permit or permit adjustment for any tree removal on multi-family, commercial or industrial use properties. Federal, State and local laws related to tree protection and protection of species utilizing mature trees (such as during the nesting and breeding season) will be observed by applicants and the City. The City would continue to allow, when practical difficulties arise, replacement planting off-site or payment of a tree replacement fee.

As discussed in the analysis above, the proposed updates to Municipal Code Title 13.32 are consistent with the intent, policies, and actions addressed within the Envision San José 2040 General Plan and the related environmental impacts addressed in the Envision San José 2040 General Plan EIR adopted by City Council Resolution No. 76041 on November 1, 2011 and the Supplemental Program EIR entitled, "Greenhouse Gas Reduction Strategy," adopted by City Council Resolution No. 77617 on December 15, 2015, and all addenda thereto.

Rosalynn Hughey, Interim Director  
Planning, Building and Code Enforcement

  
Deputy

12/8/2017  
Date

Arthur Henriques  
Policy and Ordinance Technical Advisor

Meenaxi Panakkal  
Planner IV

The following  
items were  
received after  
packets were  
distributed.

**City of San Jose Private Tree Removal Comparison of Existing to Proposed Ordinance 12072017**

<i>Jurisdiction</i>	<i>Significant or Protected Tree Definition (Single &amp; Multi-trunk Private trees)</i>	<i>Removal Permit*</i>	<i>Arborist Report</i>	<i>Emergency Process</i>	<i>Noticed Hearing</i>	<i>Appeal</i>	<i>Heritage Tree &amp; City Council Declares</i>	<i>Exempt Trees</i>	<i>Decision Criteria</i>	<i>Denial Criteria</i>	<i>Mitigation/Tree Replacement</i>	<i>Notes</i>
San Jose Existing	17.7 inch diameter/56 inch circumference @ 2 ft. ht. Any size tree in Multi-Family, Com, Industrial - Permit Adjustment if not Ord. sized tree	Planning Get form online then take to Permit Ctr.	Yes Except Unsuitable	Yes Planning or City Arborist for Heritage	Planning Director Adjacent properties or greater	Planning Commission	Yes	Unsuitable (Single Family Residential properties only) If within 5 ft. of a residence If within 5 ft. of a below grade utility If on City list of Unsuitable Trees	Safety hazard Dead, dying or diseased Unsuitable or restricts econ dev. & proposed improvement of a parcel	Does not meet criteria	15-gal SFR/Duplex* Other land uses, check w Plg Can pay tree replacement fee in some cases	Director hearing required for live tree removal (other than Unsuitable) Start at Permit Center, goes to Planning on the Goes to 3rd Floor if live tree removal
San Jose Proposed	12.1 inch diameter/38 inch circumference @ 4.5 ft. Any size tree in Multi-Family, Com, Industrial - Permit Adjustment if not an Ordinance sized tree	Planning Apply & Pay Online, can also mail or bring to the Permit Ctr.***	Yes Except Unsuitable	Yes Planning or City Arborist for Heritage	Planning Director Hearing only if request filed during notice period** Adjacent properties	Planning Commission	Yes	Unsuitable for SFR & Two-Dwelling (Duplex) properties: If within 5 ft. of a residence, secondary unit or garage If within 5 ft. of a below grade utility If on City list of Unsuitable Trees  Unsuitable for Other Land Uses w Tree Permit/Dev. Permit/Permit Adjustment: If within 5 ft. of a residential building (Multi-family only) If within 5 ft. of below grade utility (All land uses) Unsuitable if deemed an imminently hazardous condition (All land uses)	Safety hazard Dead, dying or diseased Unsuitable or restricts econ dev. & proposed improvement of a parcel	Does not meet criteria	15-gal SFR/Duplex* Other land uses, check w Plg Can pay tree replacement fee in some cases	Director hearing required for live tree removal <b>only</b> if request filed (other than Unsuitable) Mail in or bring application to the Permit Center*** Goes to 3rd Floor if live tree removal

*Related Notes*

- \* Permit software tracks tree replacement fees paid by project address
- \* Permit software will track time for permit, notify the Planning PM if no receipt received for tree replacement fee
- \*\* Notice period is ten days from mailing date, if the applicant requests replacement tree payment that needs to be in the application & hearing notice
- \*\*\* Online application and payment process to be part of the planned Citywide program