DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN 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 DANGEROUS 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 AND 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

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the City has certified

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that certain Final Program Environmental Impact Report and Supplemental Program Environmental Impact Report (Supplemental Program EIR) for the Envision San José 2040 General Plan (the "Final EIR") and addenda thereto and the City Council adopted its related Resolutions No. 76041 AND 77617 in connection therewith; and

WHEREAS, the City of San José has determined that no new effects would occur from and no new mitigation measures would be required for the adoption of this Ordinance and that adoption of this Ordinance is within the scope of and in furtherance of the Envision San José 2040 General Plan, taken together with the Final EIR, related Resolution No. 76041, and the Supplemental Final EIR and Addendum to the Final EIR under File No. 77617; and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the Final EIR, Supplemental Final EIR, related Resolutions No. 76071 and 77617 and the Addendum to the FEIR prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 13.32.020 of Chapter 13.32 of Title 13 of the San José Municipal Code is hereby amended to read in its entirety as follows:

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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 (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. "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

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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.

F. "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.

G. "Invasive Tree" means any Tree that is both non-native and able to establish on many sites within the South San Francisco Bay Area, grow quickly, and spread to the point of disrupting local plant communities or ecosystems.

H. "Live tree" means any tree that is not a dead tree.

~~F~~I. "Ordinance tree" means a tree defined in this section hereinbelow and whose removal or topping is covered by and subject to the provisions of this Chapter.

~~G~~J. "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.

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~~H~~K. "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.

L~~I~~. "Tree" means any live or dead woody perennial plant characterized by having a main stem or trunk which measures ~~fifty-six (56)~~thirty-eight (38) inches or more in circumference at a height of ~~twenty~~fifty-four (5~~2~~4) 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 ~~twenty~~fifty-four inches above natural grade slope. "Tree" shall include the plural of that term.

M~~J~~. "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 for a one-family dwelling, two family dwelling, or multi-family dwelling, t~~T~~he part of the tree trunk nearest to ~~a~~ the one-family dwelling, two-family dwelling, or multi-family dwelling including any secondary unit or garage on the same lot is five (5) feet or less from the nearest above-grade part of the~~at~~ one-family dwelling, two-family dwelling, or multi-family dwelling, including secondary unit or garage; or

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2. On any lot, t~~T~~he part of the tree trunk nearest to a below-grade utility pipe or line ~~of a one-family dwelling~~ is five (5) feet or less from the centerline of that below-grade utility pipe~~, or~~ below-grade utility line~~of a one-family dwelling~~; or

3. On a lot used for a one-family dwelling or a two-family dwelling, t~~T~~he 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.

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 creates an Imminently Hazardous Condition pursuant to the definition set forth in Section 13.32.020 above.

SECTION 2. Section 13.32.041 of Chapter 13.32 of Title 13 of the San José Municipal Code is hereby amended to read in its entirety as follows:

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 development permit or permit adjustment has been issued pursuant to Title 20 of this Code that allows the tree removal, or a tree removal permit that allows the removal of

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that Unsuitable Tree has first been issued and accepted by the applicant pursuant to the provisions of this Chapter.

SECTION 3. Section 13.32.090 of Chapter 13.32 of Title 13 of the San José Municipal Code is hereby amended to read in its entirety as follows:

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 13.32.200, subject to the provisions of Section 13.32.095.D 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~~an opportunity for the following persons to appear before and be heard by the Director on the condition of the tree and whether it should be removed~~: (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.

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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.

~~D~~G. The Director shall not act upon any tree removal permit application until the time has elapsed for requesting a hearing~~and unless the Director has first given the applicant, owners and occupants an opportunity to be heard thereon~~.

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~~E~~H. If a request for hearing is filed on or before the date specified in the notice of tentative decision, n~~N~~otice of the time and place of the hearing shall be mailed ~~at which the applicant, owners and occupants may appear before the Director and be heard on the application shall be given by mailing the same~~ to: (1) the applicant, postage prepaid at the address shown for such purposes on the application;~~,~~ ~~to~~ (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;~~,~~ ~~and to~~(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, ~~and~~ occupants and others requesting a hearing will be heard.

~~F~~I. The form of the notices shall be as prescribed by the Director.

~~I~~J. As an alternative to the tree removal 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.

SECTION 4. Section 13.32.110 of Chapter 13.32 of Title 13 of the San José Municipal Code is hereby amended to read in its entirety as follows:

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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 ~~at no cost to the City~~; 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

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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 three years after planting shall be promptly replaced. Off-site replacement shall include similar assurance of longevity of the replacement tree(s).

SECTION 5. Section 13.32.120 of Chapter 13.32 of Title 13 of the San José Municipal Code is hereby amended to read in its entirety as follows:

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 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 (10) 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

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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.

~~B~~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.

~~C~~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 (15) days nor more than thirty (30) days after the notice of appeal was accepted and filed.

~~D~~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 five (5) 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.

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~~E~~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.

SECTION 6. Section 13.32.130 of Chapter 13.32 of Title 13 of the San José Municipal Code is hereby amended to read in its entirety as follows:

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

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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. ~~Barricades~~ Fencing shall be ~~constructed~~ installed ~~around~~ outside the canopy of the ~~trunks of~~ tree~~s~~ to the dripline unless otherwise directed by the certified arborist~~as directed by the director~~ ~~so as to~~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.

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PASSED FOR PUBLICATION of title this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

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