

ORDINANCE NO. 2019–05

AN ORDINANCE OF THE CITY OF EL CERRITO AMENDING CHAPTER 13.28 OF THE EL CERRITO MUNICIPAL CODE, TREES AND SHRUBS

WHEREAS, the El Cerrito City Council has adopted a General Plan (1999), Urban Forest Management Plan (2007), Climate Action Plan (2013), Strategic Plan (2013), San Pablo Avenue Specific Plan (2014), Urban Greening Plan (2015), and Parks and Recreation Facilities Master Plan (2019) (collectively "Plans"), and conducted the appropriate level of environmental review for these Plans; and

WHEREAS, the General Plan calls for the City to adopt a Tree Preservation Ordinance to protect trees and minimize environmental impacts; and

WHEREAS, the General Plan identifies trees as special features and landmarks that differentiate one location from another, and create a distinct image; and

WHEREAS, the Urban Forest Management Plan describes the numerous benefits of public trees and calls for an ordinance to require selection of tree species from the City's approved tree list and in accordance with the Urban Forest Management Plan guidelines; and

WHEREAS, the Parks and Recreation Facilities Master Plan identifies trees as an important amenity and park system infrastructure element, in need of maintenance; and

WHEREAS, the Climate Action Plan calls for updating the City's Master Tree List and standardizing best management practices in order to maintain and enhance a community forest that contributes to a sustainable environment; and

WHEREAS, the San Pablo Avenue Specific Plan identifies trees as an important element to increase pedestrian activity and to create community gateways and commercial nodes; and

WHEREAS, the Urban Greening Plan focuses on using trees and other plantings to emphasize El Cerrito's identity as an environmentally oriented destination, while including considerations for ensuring suitable tree plantings and maintenance; and

WHEREAS, the amended ordinance aligns with multiple Strategic Plan goals, by deepening a sense of place and community identity, developing and rehabilitating public facilities as community focal points, ensuring the public's health and safety, and fostering environmental sustainability citywide; and

WHEREAS, the Plans collectively set forth the relationship between the long-term health of the Urban Forest and many other goals of the City, relating to economic growth, sustainability, and quality of life; and

WHEREAS, the City completed a robust public process to develop the amended Public Tree and Shrub Ordinance, working closely with the Urban Forest Committee, and soliciting community input at two public meetings; and

WHEREAS, the Urban Forest Committee recommended the City Council adopt the Public Draft of this ordinance at the May 13, 2019 public meeting; and

WHEREAS, in adopting the amended Public Tree and Shrub Ordinance, the City of El Cerrito has found the ordinance to be consistent with its General Plan and existing ordinances.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 13.28 of Title 13 of the El Cerrito Municipal Code, Trees and Shrubs, is hereby deleted in its entirety and replaced with a new Chapter 13.28 to read as follows:

13.28.010 - Title

This Chapter shall be known as the "Public Tree and Shrub Ordinance" and may be cited as such.

13.28.020 – Findings

The City of El Cerrito City Council finds and declares that the Urban Forest, including existing and future Public Trees located within the City of El Cerrito, are a valuable and distinctive natural resource. The Urban Forest of the City augments the economic base through the provision of resources, community character, and enhancement of the living environment. These resources are a major infrastructure element, offering many benefits to the city, county, and region.

El Cerrito's diverse Urban Forest is comprised of distinct public and private tree populations and categories, including natural area stands, maintained landscapes, and Street Trees, that require specific management strategies. While the City recognizes the complexity of Urban Forest management, especially in a period of changing climate, the aim and purpose of this Ordinance is the protection of Public Trees from harm attributable to inappropriate or improper management practices and actions.

Trees and shrubs benefit the community by providing the following:

- **Environmental benefits** include mitigating the effects of climate change, carbon sequestration, reducing the heat island effect, improving water quality, reducing airborne pollutants, and providing habitat for wildlife and pollinator species. Trees and greening also contribute to the City's sustainability goals, as defined in the City's Urban Forest Management Plan (2007), Climate Action Plan (2013), Urban Greening Plan (2015), and Green Infrastructure Plan, anticipated to be adopted in 2019.

- **Public Health benefits** include improving air quality, supporting a healthy, active community, reducing the risk of landslides, and reducing pollutants from stormwater. In addition, healthy, well-selected and Maintained Trees improve public safety by decreasing the risks associated with Hazardous Trees.
- **Social benefits** include creating a sense of place, providing connections to the natural world, creating memorable nodes and entry points, and helping to facilitate a sense of community.
- **Economic benefits** include an increase in property values, attraction of businesses and shoppers, and contribution to the financial standing of the City. In addition, healthy, well-selected and Maintained Trees reduce potential damage to public and private infrastructure, including utilities, sidewalks, and roads, while also reducing the cost of construction and maintenance of drainage systems through increased diversion of surface waters.

Careful planning and management is needed to protect and maintain the health and integrity of the Urban Forest. Pruning, Tree removals, and plantings are periodically needed as Trees age, become infected by disease or pests, suffer damage from wind, storms or improper Tree care, or interfere with infrastructure (e.g. overhead wires, sidewalks, underground utilities). Intentional planting of the right Tree in the right place improves the likelihood of Tree survival, maximizing benefits and minimizing program costs in our Urban Forest. This Ordinance outlines the responsibilities and practices that shall be utilized to ensure the long-term health of the City's Urban Forest, balancing the complexities, benefits, challenges, and concerns related to Public Trees.

13.28.030 – Definitions

In this chapter the following terms shall have the following meaning:

- A. "ANSI A300 Standards" means the A300 standards adopted by the American National Standards Institute (ANSI) regarding Tree, Shrub and Other Woody Plant Maintenance, and all successor standards adopted by ANSI.
- B. "City" shall mean the City of El Cerrito.
- C. "City Tree List" means the list of Trees approved by the Director to be planted in Public Places.
- D. "Cut" or "Prune" shall mean to detach or separate from a Tree any limb or branch over one inch in diameter, or to remove branching structures, as designated by the ANSI A300 Standards.
- E. "Damage", "Mutilate", or "Disfigure" shall mean any action that causes injury or death to a Tree, including unsightly and injurious Pruning. This shall include practices that are not in conformance with ANSI A300 Standards. It shall include, but not be limited to, Pruning practices such as flush cutting, heading back, lion tailing, rounding, stubbing, tipping, or topping, as well as poisoning, unauthorized relocating or transplanting of a Tree, nailing or

piercing of a Tree, trenching, excavating, and compaction of soil or any work within the Protected Root Zone of a Tree.

- F. "Director" means the Public Works Director of the City of El Cerrito.
- G. "Encroachment Permit" shall mean written authorization to perform work in the public right-of-way or public street issued pursuant to Chapter 13.12 of this Code.
- H. "Maintenance" or "Maintain" when used in this chapter in reference to Trees or Shrubs, means and includes Pruning, fertilizing, irrigating, propping, cabling, treating for insects, treating for disease or injury, and any other similar acts which promote the life, growth, health, beauty or safety of such Trees or Shrubs, in accordance with ANSI A300 Standards.
- I. "Objectionable" or "Nuisance" when used in reference to Trees means all Trees which the Tree Program Manager or a qualified arborist designated by the Director or designee determines are diseased, invasive, in danger of falling over or becoming a hazard of any kind, interfere with surface or underground utilities, or whose root systems are such that they damage sidewalk, street and other pavement in the public right-of-way.
- J. "Person" shall mean any natural person, partnership, firm, corporation, governmental agency other than the City of El Cerrito, or other legal entity.
- K. "Planting Strip" means the area between the curb of the street, whether marked by cement curbing construction or not, and the abutting property line.
- L. "Public Place" shall mean any property owned or controlled by the City, including, but not limited to, parks, parkways, open space, easements, public streets, public rights-of-way, City owned property, and Planting Strips.
- M. "Public Tree(s) or Shrubs" means a Tree or Shrub located in a Public Place, or any area under ownership or control of the City, including property under the operational control of another entity by virtue of a lease, license, operating or other agreement.
- N. "Private Tree or Shrubs" means any Tree or Shrub located on private property.
- O. "Protected Root Zone" means the ground area extending a minimum of three (3') feet radially from the periphery of the tree trunk or three inches (3") for every one inch (1") diameter of tree trunk, whichever is greater, measured at four feet six inches (4'6") from the base of the tree, not to extend beyond the public right-of-way or boundaries of property owned or controlled by the City. For new development projects, the Protected Root Zone may extend beyond the public right-of-way, not to extend beyond the setback standards required for a specific project.

- P. "Replacement Value" means the cost of replacing a Tree or Shrub as determined by an arborist retained by the City and in accordance with industry standards.
- Q. "Shrub" means a woody plant with multiple stems, generally smaller than a Tree.
- R. "Street Trees and/or Shrubs" are herein defined as Public Trees and Shrubs located in the Planting Strip.
- S. "Tree" means a perennial woody plant, typically having a single main stem or trunk growing to a considerable height and bearing lateral branches some distance from the ground.
- T. "Tree Program Manager" means the Director's designee with responsibilities to manage the City's Urban Forest Program.
- U. "Urban Forest" shall mean the natural resource composed of all Trees and woody Shrubs on public and private property within the City limit.

13.28.040 – Purpose and Policy

The purpose of this Ordinance is to preserve and protect the health, longevity, and safety of Public Trees as an important resource as noted in Section 13.28.020, to promote the health, safety, welfare and quality of life of the residents and to enhance the appearance of the City, to clearly define responsibility for the maintenance of Public Trees and Shrubs, and to adopt best management practices and industry standards for the planting and maintenance of Public Trees and Shrubs.

It is the policy of the City to enhance a healthy Urban Forest in Public Places and to conduct a consistent and adequate program for Maintaining and preserving Trees. In addition, it is the policy of the City to encourage new Tree, Shrub, and ground cover planting in Public Places, contributing to a flourishing Urban Forest in accordance with the requirements of this Chapter.

13.28.050 – Jurisdiction

A. Public Trees and Shrubs

The City shall have authority and responsibility over all Public Trees or Shrubs, and other plantings now or hereafter located in any Public Place, and shall have the authority to plant, care for, Maintain, remove, and replace such Trees, Shrubs and other plantings. Nothing in this section shall be interpreted as prohibiting a property owner from planting Shrubs and other ground plantings in the Planting Strip (See Diagram 1) adjacent to their respective properties, as long as such planting complies with the requirements of this Chapter.

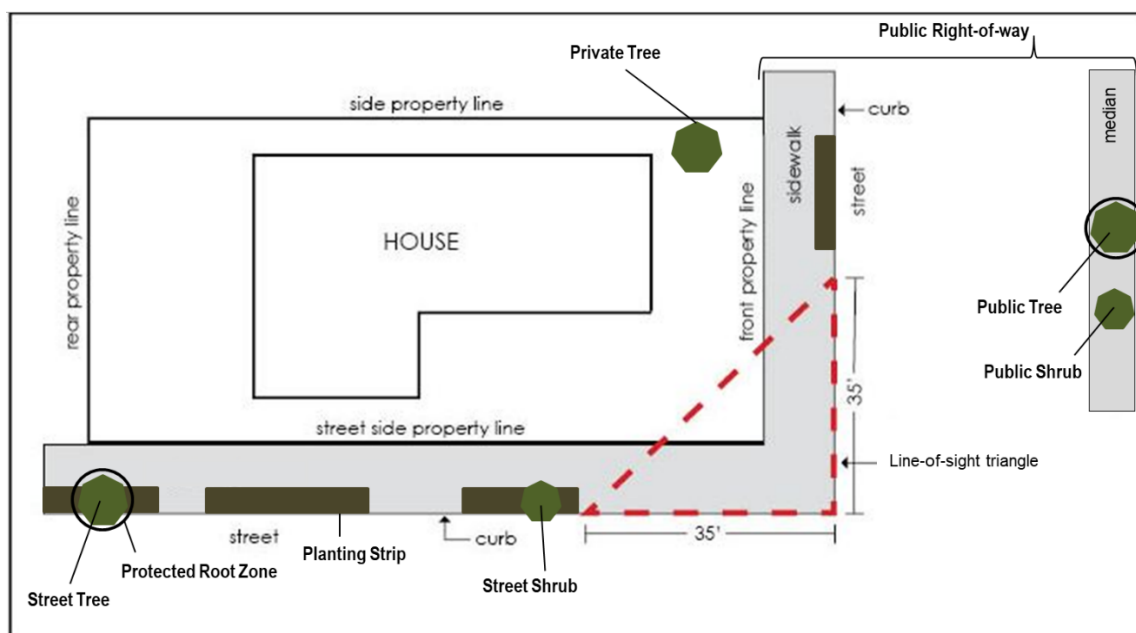
B. Street Trees and Shrubs

Unless otherwise designated in a development-related agreement or conditions of approval, the City shall have the authority and responsibility for the Pruning of all Street Trees which the City planted or required to be planted and shall also be responsible for the repair of sidewalk damages caused by such Street Trees. Property owners shall also provide care for all Street Trees and Shrubs in the adjacent Planting Strip. For the purposes of this Section, care of Street Trees and Shrubs includes watering and removing fallen leaves, fallen branches, and fruit debris, and any other similar acts which promote the life, growth, health or beauty of such Trees or Shrubs. However, property owners shall not cut, prune, remove, apply chemicals or fertilizers, or plant Street Trees without first obtaining an Encroachment Permit from the City. Residents may Prune a Tree limb that is less than one inch (1") in diameter, from an adjacent Street Tree, only as necessary for purposes of egress clearance, as long as such action meets ANSI A300 Standards and complies with all requirements of this Chapter.

C. Private Trees and Shrubs

Except as otherwise provided in this Code, Trees and Shrubs on private property are the responsibility of the property owners to keep, remove, and maintain as deemed appropriate by the property owner in accordance with all applicable laws. However, if a tree protection plan has been approved as a part of a City-approved development project, the tree protection plan shall be implemented by the property owner to the satisfaction of the Community Development Director, or his/her designee.

Diagram 1:



13.28.060 Planting of Public Trees and Shrubs

- A. Any Person can request that the City plant a Tree in a specific Public Place by contacting the Tree Program Manager. A Person may also plant Trees on Planting Strips themselves after receiving written authorization from the City in the form of an Encroachment Permit and in accordance with ANSI A300 Standards.
- B. The placement of any Tree in any Public Place shall be approved by the City as to not interfere with any public or private utility, including, but not limited to, water, sewer, electrical and natural gas infrastructure. Placement shall not impede the visibility of traffic safety devices.
- C. It is unlawful to plant any Tree in any Public Place or Public Street, including but not limited to a Planting Strip, without first obtaining an Encroachment Permit.
- D. The City Tree List shall guide the planting of Trees in any Public Place. All Trees planted in a Public Place shall be approved by the Tree Program Manager to ensure suitability with the proposed location.
- E. No permit or prior approval from the City is required for the planting of Shrubs, plants and ground cover in the Planting Strip, as long as the item to be planted complies with all requirements of this Chapter.
- F. When planting Trees and Shrubs in Public Places, the City shall evaluate the use of native species and drought tolerant plants, where possible.

13.28.070 - Pruning and Removing Trees and Shrubs in Public Places, Including Street Trees and Shrubs

- A. The City may Prune or remove any Tree, Shrub, or other vegetation in any Public Place, including but not limited to a Planting Strip, if it is determined to be Objectionable or a Nuisance by the Tree Program Manager.
- B. In the event that the Tree Program Manager determines a Public Tree or Shrub has become Objectionable or a Nuisance because of the actions of the adjacent property owner, or her/his tenants, the City may require the adjacent property owner to Prune or remove the Tree, Shrub or other vegetation, or take other appropriate action after being issued an Encroachment Permit. Failure to complete the required work within fifteen days shall be a violation of this Chapter. Additionally, if the adjacent property owner fails to complete the required work within fifteen (15) days, the City may perform the work and charge the property owner for the cost of such work. The City shall send an invoice of the costs to the property owner, and if such costs are not paid within thirty (30) days, the City may record a nuisance abatement lien or special assessment on the property pursuant to the procedures set forth in Chapter 8.34 of this Code.

- C. Any Person may submit a request for the City to Prune or remove a Public Tree, and this request shall be considered and prioritized for action based on public safety, Tree health, and other criteria maintained by the Director. Residents may Prune a Tree limb that is less than one inch (1") in diameter, from an adjacent Street Tree, only as necessary for egress clearance, as long as such action meets ANSI A300 Standards and complies with all requirements of this Chapter.
- D. The City may authorize the Pruning or removal of a Public Tree by a Person, at the Person's own expense, if the removal or Pruning meets the established criteria but has been deemed a lower priority for action by the City. The City's authorization of such action by a Person is conditioned upon the Person obtaining an Encroachment Permit, and may be subject to appropriate mitigation measures, in accordance with the Public Tree Program standard operating procedures established by the Director from time to time. The removal of a Street Tree that does not meet the established criteria for removal, may be authorized by the City, but shall require appropriate mitigation measures, in accordance with the Public Tree Program standard operating procedures established by the Director from time to time. The City may charge fees to cover the costs associated with permitting, removal of an existing Tree, planting, and the establishment of a new Tree.
- E. The Director shall establish and maintain criteria and procedures for consideration of requests for Pruning and removal of Public Trees and Shrubs including maintenance requirements and applicable mitigation measures.

13.28.080 – Mutilation or Destruction of Public Trees Prohibited

Cutting, Pruning, planting, or removing any Public Tree, Shrub, or plant in any Public Place, including but not limited to a Planting Strip, shall be done in compliance with this chapter. The following acts are prohibited under this Chapter unless otherwise exempt:

- A. To Damage, Disfigure, or Mutilate a Public Tree.
- B. To Cut, Prune, plant, or remove a Tree in a Public Place without first obtaining authorization from the City in the form of an Encroachment Permit.
- C. To Damage the roots of any Public Tree by grading, clearing or grubbing, stockpiling materials, changing soil grade, excavating, trenching, or adding any impervious materials (e.g. concrete, asphalt, other hard surfaced homogenous materials, such as bricks and stones, which are mortared together, or plastic sheeting) within the public-rights-of-way or Protected Root Zone, except when authorized by the City under an Encroachment Permit and/or Building Permit, as appropriate. This includes placing any pervious materials (e.g. bricks, stones, landscaping cloth, mulch) or plantings within the Protected Root Zone of any Public Tree.

- D. Applying or attaching any rope, chain, cable, or wire, other than materials customarily used to support young or broken Trees or Shrubs.
- E. Applying or attaching a sign or poster, or any other object, by piercing or otherwise causing Damage to the Tree or Shrub.
- F. Applying any gaseous, liquid or solid substance that may cause harm or death to any Public Tree or Shrub, including herbicides or pesticides.

13.28.090 Private Trees

Property owners are encouraged to utilize the City Tree List when planting Trees, Shrubs, vines or ground cover on private property. However, planting certain Tree species on private property is explicitly prohibited elsewhere in this Code. When planting and caring for Trees on private property, property owners should also reference Chapter 10.90 of the El Cerrito Municipal Code – Obstruction of Views by Trees on Private Property.

13.28.100 – Protecting Trees During Construction

During any construction project, including, but not limited to, the erection, repair, alteration or removal of any private or public building, house structure, or other private or public facility or utility, the Person in charge of such work shall protect any Tree, Shrub or plant identified for protection in the development approval process and any other Public Trees and Shrubs with good and sufficient guards, protectors, or fences in conformance with ANSI A300 Standards, as well as any other specific conditions established by the development approval process. The purpose of this requirement is to prevent injury to said Tree(s), Shrub(s) or plant(s) arising out of said erection, repair, alteration or removal as required by the City.

In the event that a Person completing a construction project is not able to conform with ANSI A300 standards and will adversely impact the long-term health of a Public Tree, the development approval process shall require mitigation, in accordance with the standard operating procedures established by the Director. Mitigation may include the planting of a replacement Tree(s) by the City at the Person's own expense. The City may charge fees to cover the costs associated with permitting, removal of an existing Tree, planting, and the establishment of a new Tree.

13.28.110 - Obstructing Right-of-Way Prohibited

- A. Any private Tree, Shrub, or plant which is determined by the Tree Program Manager to obscure the sightlines of pedestrians or vehicle operators in the public right-of-way, or to otherwise endanger the security or usefulness of any public street, sewer, utility, or sidewalk, may be declared to be a public nuisance.
- B. All Private Trees, Shrubs or plants located adjacent to any Public Street, sidewalk or walkway shall be kept Pruned so that no part thereof shall extend

over the street at a height of less than fourteen (14) feet or over a public walkway at a height of less than seven (7) feet. No thorn-bearing plant and no barbed wire fence shall be placed or permitted to remain along the boundary of any sidewalk or public path within the city. A violation of this section may be declared to be a public nuisance by the Tree Program Manager.

- C. Upon determination by the Director or Tree Program Manager that any Private Tree, Shrub or plant constitutes a public nuisance, the City may abate the nuisance pursuant to the procedures established in Chapter 8.34 of this code or may pursue any other available legal remedy in this Code or California law to have the nuisance abated.

13.28.120 –Interference

No Person shall interfere with any City employee or City contractor acting under this Chapter.

13.28.130 – Appeals

Any action or determination by the Tree Program Manager may be appealed to and considered by the Director. To be effective, an appeal must be in writing and must be filed within fifteen (15) days after the date of the decision of the Tree Program Manager. The written appeal shall clearly specify the reasons for which an appeal is requested and may include any evidence or documentation supporting the appeal. The appeal investigation will be conducted solely on the basis of the submission of written arguments and evidence, except that the Director may elect to receive oral testimony in his or her sole discretion. The Director may also elect to conduct on-site inspections to develop findings. Within fifteen (15) days of submission of the appeal, the Director shall render his/her decision, which may affirm, revise or modify the Tree Program Manager's decision. The decision of the Director may also be appealed in writing to the City Manager within five (5) business days of the decision. The decision of the City Manager shall be in writing and shall be final.

13.28.140 – Penalty for Violation

- A. Any violation of this Chapter is subject to an administrative penalty as set forth in Chapter 1.14 of this Code. Any violation of this Chapter may also be punished as a misdemeanor, pursuant to Chapter 1.09 of this Code.
- B. In addition to the penalties provided for in Section 13.28.140(A), any Person who unlawfully Damages, kills or otherwise causes Mutilation of a Public Tree in violation of this Chapter shall pay a penalty that shall include an amount equal to twice the amount of the Replacement Value of the Tree. Trees that are Mutilated, killed, or removed without authorization/permit are assumed to be in "good" condition unless proven otherwise. An arborist retained by the City shall estimate the Replacement Value of the removed, killed, or Damaged Tree(s) in accordance with industry standards. The penalty shall also include the City's costs incurred in performing the appraisal and the

costs to irrigate and maintain the new Tree for a three year establishment period. The City shall provide notice of the amount of the penalty to the responsible Person, and the Person shall have thirty (30) days to pay the penalty. Thereafter, the penalty shall be a debt owed to the City. If the Public Tree was Damaged or Mutilated by the adjacent property owner, or its tenants, contractors or agents, in the event that the penalty is not timely paid, the City may record the unpaid amount of the penalty as a lien or special assessment on the property adjacent to the Damaged or Mutilated tree.

13.28.150 – Enforcement

The Director shall be responsible for the enforcement of this chapter and may impose any of the penalties identified herein or available through otherwise applicable law. The City Attorney is hereby authorized to pursue any available legal remedy, including instituting civil or criminal proceedings, to enforce this chapter.

13.28.160 – Performance Evaluation

The Tree Program Manager shall collect and maintain records and data necessary to objectively evaluate whether progress is being made toward the intent, purpose and objectives of this chapter.

13.28.170 – Liability

Nothing contained in this Section shall be interpreted to impose any liability upon the City, its officers, employees, or agents, nor to relieve the owner of any private property from the duty to keep any Tree, Shrub or plant located upon the adjacent Planting Strip or upon the owner's private property from becoming a hazard or public nuisance.

13.28.180 – Administrative Responsibilities

The Director or designee shall, by use of City employees or private contractors, have the authority to plant, Maintain and otherwise care for, or if necessary remove trees in any Public Place. The responsibilities of the Director or designee under this Chapter shall include but not be limited to, the following:

1. Maintain Public Trees and Shrubs.
2. Make determination of Tree and Shrub removals in Public Places.
3. Inspect the planting, Maintenance, and removal of all Trees in Public Places.
4. Maintain a list of approved Trees in Public Places and the public right-of-way, respectively.
5. Establish criteria and standard operating procedures for consideration of requests for Pruning, planting, and removal of Public Trees and Shrubs.

6. Evaluate and administer permits as allowed and provided under this section.
7. Provide a specific and final determination with regard to definitions and disputes under this Chapter.

SECTION 2. If any Section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

SECTION 3. The proposed amendments to the Municipal Code are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15308, which exempts actions taken by regulatory agencies to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. The Ordinance is an action taken by a regulatory agency to preserve and protect trees within the City, and to regulate the removal of trees.

SECTION 4. This Ordinance shall take effect and be enforced thirty (30) days after the date of its adoption, and prior to the expiration of fifteen (15) days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

First read at a regular meeting of the City Council on the 18th day of June 2019, and passed by the following vote:

AYES:	Mayor Pardue-Okimoto; Councilmembers Abelson, Fadelli, and Lyman
NOES:	None
ABSENT:	Councilmember Quinto
ABSTAIN:	None

Adopted and ordered published at a regular meeting of the City Council held on the 16 day of July 2019, and passed by the following vote:

AYES:	Mayor Pardue-Okimoto; Councilmembers Abelson, Fadelli, Lyman and Quinto
NOES:	None
ABSENT:	None
ABSTAIN:	None

APPROVED:

Rochelle Pardue-Okimoto, Mayor

ATTEST:

Holly M. Charléty, City Clerk

ORDINANCE CERTIFICATION

I, Holly M. Charléty, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2019–05 of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the 16 day of July, 2019; and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this 17 day of July, 2019.

Holly M. Charléty, City Clerk