

ORDINANCE 2017-02

AN ORDINANCE OF THE CITY OF ENCINITAS, CALIFORNIA AMENDING CHAPTER 15.02 OF THE ENCINITAS MUNICIPAL CODE – MUNICIPAL TREE ORDINANCE

WHEREAS, the City of Encinitas, California (City) has a strong interest in encouraging the protection of beautiful urban forest;

WHEREAS, the City has adopted an Urban Forest Management Program Policy C027 in 2009 to help properly plan, manage and maintain its urban forest;

WHEREAS, the City Council finds that additional protections are required to protect its urban forest and its Heritage Trees; and

WHEREAS, the City Council finds that it is necessary to amend its Municipal Code to provide for this additional protection.

NOW, THEREFORE, the City Council of the City of Encinitas hereby does ordain as follows:

SECTION ONE:

Existing Municipal Code Chapter 15.02 is hereby repealed in its entirety and new Chapter 15.02 is hereby added to the Encinitas Municipal Code as contained in Exhibit "A" (attached).

SECTION TWO:

This ordinance was introduced on April 26, 2017.

SECTION THREE: ENVIRONMENTAL FINDING

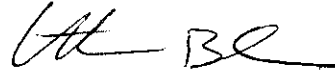
The City Council, in their independent judgment, finds that the adoption of the Municipal Code Amendments will be exempt from Environmental Review pursuant to Section 15378(b)(5) of CEQA Guidelines, as it involves an organizational or administrative activity of government that will not result in the direct or indirect physical change in the environment.

SECTION FOUR: PUBLIC NOTICE AND EFFECTIVE DATE.

This Ordinance shall take effect and be in force no sooner than thirty (30) days after its adoption by the City Council. Additionally, the City Clerk of the City of Encinitas is hereby authorized to use summary publication procedures pursuant to Government Code Section 36933 utilizing the Coast News, a newspaper of general circulation published in the City of Encinitas.

PASSED AND ADOPTED this 10th day of May, 2017 by the following vote to wit:

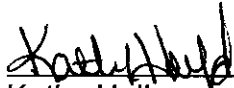
AYES: Blakespear, Boerner Horvath, Kranz, Mosca
NAYS: None
ABSTAIN: None
ABSENT: Muir



Catherine S. Blakespear, Mayor
City of Encinitas

ATTESTATION AND CERTIFICATION:

I hereby certify that this is a true and correct copy of Ordinance 2017-02 which has been published pursuant to law.



Kathy Hollywood, City Clerk

Chapter 15.02 MUNICIPAL TREE ORDINANCE

15.02.010 Purpose

A City's Urban Forest is an integral part of its character as well as its infrastructure. Properly planned, managed, and maintained, the urban forest provides significant ecological, health, and economic benefits. The purpose of this chapter is to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, management, maintenance, preservation, and, where necessary, removal of public trees and Heritage Trees. This chapter is intended to supplement the City's Policies and Administrative Procedures as outlined in the City's Urban Forestry Management Program.

15.02.020 Authority

The City Manager, or his or her designee, shall have the authority and jurisdiction to regulate the management, maintenance, planting, care, and removal of certain trees within the public right-of-way or on public property to ensure safety, protect the environment, or to preserve or enhance the aesthetics of such public sites.

15.02.030 Definitions

"Administrative Manual" means the Manual of Procedures as revised by the City Arborist that provides technical guidance to City Staff and others regarding the planting, removal, maintenance, care, and protection of trees in the City of Encinitas.

"Approved Tree Species Master List" means a listing of trees as approved by the City Council that are deemed appropriate for planting on a Citywide basis, or in limited areas as determined by the City Arborist. This listing shall consider, as appropriate, ultimate tree canopy and root growth; compatibility with nearby buildings, sidewalks, and streets; shade canopy provided; and fire resistance. It shall also include a listing of invasive or otherwise undesirable trees that the City

has determined shall not be planted within the City of Encinitas by public or private parties as part of a development plan. The approved tree species master list shall be maintained by the City Arborist and included as part of the Administrative Manual and shall be made available to the public.

“Certified Arborist” is a professional arborist who has been certified by the International Society of Arboriculture.

“City” shall mean the City of Encinitas.

“City Arborist” means that person appointed by the City Manager who shall serve as the City’s resource and shall advise the City Manager and all departments on urban forestry matters.

“City Tree” means a tree within the City’s public rights-of-way, parks, or other public places and is maintained by the City.

“Diameter at Standard Height” (DSH) means the diameter of a tree measured at fifty four (54) inches above finish grade.

“Dripline Area” means the area from the trunk of a tree to the outermost edge of the tree canopy.

“Emergency Removal” means that a tree must be immediately removed due to an imminent threat to persons or property due to disease, lack of structural integrity or stability. The tree may be removed as provided in the City’s Administrative Manual.

“Excessive Pruning” means removing more branches, stems, and roots than necessary to accomplish the desired objective. Typically no more than twenty-five (25) percent of a tree’s total number of major branches or canopy volume should be removed in a single year. Pruning in excess of twenty-five (25) percent can injure a tree and is prohibited unless approved by the City Arborist.

“Hazard” or “hazardous” means a tree, or part of a tree, that has been assessed for risk and found to be very likely to fail and cause severe consequences by causing injury, damage, or disruption.

“Heritage Tree” means a tree of community significance located in the City on public or private property designated by the City in accordance with the following criteria: that is one of the oldest and largest of its species; is of unique form or species; has historic significance due to an association with an historic building, site, street, person or event; or is a defining landmark or significant outstanding feature of a neighborhood. The designation of a Heritage Tree on private property requires the written consent of the private property owner in a form deemed sufficient by the City Attorney.

“Injury” means any damage to a tree resulting from any activity, including but not limited to excessive pruning, cutting, topping, trenching, excavating, altering the grade, paving or compaction within the Tree Protection Zone, including deliberate damage such as vandalism.

“Maintain” or “Maintenance” means pruning, spraying, fertilizing, watering, treating for disease or injury or other similar acts which promote the growth, health, beauty, and the life of trees.

“Park” means and includes any park owned, operated and/or maintained by the City of Encinitas.

“Parkway” means the strip of ground in the City right-of-way between the sidewalk and street, and may also refer to a landscaped area between the streetmost edge of a private property and the start of the City street pavement.

“Pruning” means the selective removal of plant parts to meet specific goals and objectives.

“Public Nuisance” means an individual tree or shrub on public or private property that in the opinion of the City Arborist is likely to destroy, impair or otherwise interfere with any street improvements, sidewalks, curbs, gutters, sewers, or other public improvements, including above and below ground utilities or constitutes an unacceptable risk to the public or nearby public or private property.

“Public Places” means and includes all grounds, other than streets or parks, owned by, leased to, or otherwise under the control of the City of Encinitas.

“Risk” is the combination of the likelihood of an event and the severity of the potential consequences.

“Shrub” means and includes any woody perennial plant commonly achieving a height of less than ten feet in height at maturity and usually having multiple stems.

“Street Tree” means and includes any woody perennial plant typically having a single trunk commonly achieving ten feet in height or greater at maturity and capable of being pruned to develop a branch-free trunk at least nine feet in height and that is located within City rights-of-way.

“Topping” means the reduction of tree size using internodal cuts without regard to tree health or structural integrity. Topping is not an acceptable pruning practice.

“Tree Plan” means a plan adopted by the City Council for a city street, park or other public area which establishes the species, spacing and maintenance of trees to be planted along a particular street or in a geographic area as designated by that plan.

“Tree Protection and Preservation Plan” means a plan that outlines measures to protect and preserve trees on a project. This plan shall include requirements for preconstruction; treatments during demolition and/or construction; establishment of a Tree Protection Zone; tree monitoring and inspection schedule.

“Tree Protection Zone” means the dripline area around a tree within the tree canopy or as determined by the City Arborist where no soil disturbance or other activity is permitted unless otherwise approved by the City Arborist.

“Urban Forest” means the trees and shrubs that comprise the tree canopy in the City’s rights of way, streets, parks, and under the circumstances specified in this ordinance, private property.

“Urban Forest Management Program” means the ordinances, policies and procedures as approved by the City that provide direction and goals regarding the planting, maintenance, care, and protection of trees.

15.02.040 City Arborist

The City Manager shall designate a City Arborist, who shall serve as the City’s expert and shall advise the City Manager and all departments on urban forestry matters. In addition to the authority granted in this ordinance, the City Arborist shall have the authority to bring disagreements or conflicts related to the City’s tree responsibilities to the City Manager, who shall direct the issue to the relevant City Commission, Committee, and/or the City Council for resolution as he or she deems appropriate. The City Arborist shall have the authority to formulate and publish a master tree list and tree plan subject to City Council approval. The City Manager may fill the City Arborist position through assignment to existing staff, new recruitment, or contract, consistent with approved budget and personnel guidelines. The City Arborist shall also serve as staff liaison to the Urban Forest Advisory Commission. The City Arborist shall serve at the pleasure of the City Manager or her or his designee exclusively.

15.02.050 Urban Forest Advisory Committee

The City Council, or a subcommittee designated by the Council, in consultation with the City Arborist, shall establish an Urban Forest Advisory Committee (UFAC) consisting of no less than five members and composed predominantly of community members with relevant expertise. The City Arborist shall serve as the City Staff liaison to the UFAC. Terms, meeting times, and other responsibilities shall be as determined by the City Manager or his or her designee. Committee meetings shall be open to the public. The UFAC shall review and provide comments on City plans and policies related to urban forestry, including updates to the various aspects of the City’s Urban Forest Management Program and Administrative Manual, and, shall among other things:

- a. Review and provide comments on Tree Plans prior to consideration by the City Council.

- b. Review and provide comments on the Approved Tree Species Master List prior to consideration by the City Council.
- c. Review and provide comments to the City Arborist on proposed City Tree removals except in the case of emergency removals.
- d. Advise City Staff regarding programs of public outreach and education in order to promote public understanding of the City's urban forest, including programs to celebrate and promote Arbor Day.
- e. Review and consider Heritage Tree applications in consultation with the City Arborist, and shall make recommendations to the Planning Commission.
- f. Review and provide comments to the City Arborist on proposed changes to the City's Urban Forest Management Program.

15.02.060 Species, Cultivars, and Varieties

All trees to be planted in City rights-of-way, parks, or other public spaces shall conform to approved tree palettes identified in adopted City and Community Master Plans, General Plans, Specific Plans, and Tree Plans, and as reflected in the Approved Tree Species Master List contained in the Urban Forest Management Program. Exceptions may be granted subject to recommendation by the UFAC and the review and approval of the City Arborist. The initial Approved Tree Species Master List shall be reviewed and approved by the City Council. Minor revisions may be made by the City Arborist following review by the UFAC.

15.02.070 Maintenance and Preservation

All City Trees shall be maintained in accordance with the City's Urban Forest Management Program, which will be reviewed periodically by the UFAC. The City shall consider the long-term sustainability of the tree canopy in various areas of the City and pro-actively maintain and/or remove trees in a manner that promotes the long term sustainability and enhancement of the City's Urban Forest. The City will use best practices to protect existing trees from the impacts of development and maintenance projects.

15.02.80 Pruning and Maintenance of City Trees and Heritage Trees

Pruning of City Trees and Heritage Trees must conform to the pruning practices specified in the Administrative Manual. Pruning of Heritage Trees other than minor maintenance pruning must be approved by the City Arborist.

Any spraying or application of pesticides will be in accordance with the City's Integrated Pest Management Program.

Tree topping of any City Tree or Heritage Tree shall be prohibited, unless authorized by the City Manager in writing after consultation with the City Arborist.

All woody and leaf materials resulting from the pruning operation must be properly recycled.

15.02.090 Removal of City Trees or Heritage Trees

Unless authorized by the City Arborist, no person shall remove any City Tree or Heritage Tree. In addition to the requirements in this section, removals of a Heritage Tree require a public hearing before the Planning Commission. If a complete Heritage Tree application has been received by the Planning Commission but not yet acted upon, no removal shall take place until the application for Heritage Tree status has been considered by the Commission. Except in cases of emergency as determined by the City Manager or his or her designee, a public notification shall be required prior to the planned removal of any City Tree or Heritage Tree with a diameter greater than six (6) inches measured at fifty four (54) inches above finish grade (DSH). Such notification shall at a minimum consist of placing two signs no less than 12 inches wide by 18 inches high and visible from at least two directions in the immediate vicinity of each City Tree or Heritage Tree to be removed no less than fourteen (14) calendar days prior to the scheduled removal. The notification shall include the reason for the proposed removal and shall include a link to further information on a City website, including how to appeal the proposed action. Unless preserved as required by Section 15.02.100, any City Tree or Heritage Tree removed shall have its stump removed to a depth at least sixteen (16) inches below the adjacent

ground level, or as determined by the City Arborist. If appropriate as determined by the City Arborist, a minimum of one replacement tree of a type, size, and location shall be planted.

15.02.100 Preservation of Stumps for Artistic Purposes

Individuals, groups, City appointees or elected officials requesting to preserve a stump or trunk for artistic purposes must make a request to the City Arborist. The City Arborist will evaluate the stump or trunk for suitability to ensure that it is structurally sound, free of rot, disease or insect infestation and will not adversely impact City or private infrastructure, persons or property. If the City Arborist finds that a stump or trunk is a suitable candidate, the City Arborist will forward the application to the City Commission on the Arts. If an application has been received by the City Arborist, the decision on removal or other disposition shall be delayed pending a decision of the Commission on the Arts to either reject the application or forward it to the City Council for final determination.

15.02.110 Protection of Trees

Every effort should be made to protect trees during construction. If construction activity or the movement of equipment is to take place within the drip-line area of any City Tree or Heritage Tree, a fenced Tree Protection Zone shall be established by the City Arborist, except that the fenced area shall not include private property. No person shall store any equipment, store any solid or liquid waste materials, or any other liquids which may be injurious to a tree, nor excavate any ditches, tunnels, trenches or drive within the Tree Protection Zone. Should a construction project on private property involve digging, excavating or trenching within the Tree Protection Zone, a Tree Protection and Preservation Plan must be prepared by the property owner and approved by the City Arborist.

Nothing in this chapter prevents a private property owner from the ability to develop his/her property.

15.02.120 Approval Required

Unless performed pursuant to a City Maintenance Plan, or as part of an approved development, any work performed in the City's rights-of-way, parks, or other public areas shall require the written approval of the City Arborist before committing any of the following acts:

- a. Removing, cutting, pruning, breaking, injuring, defacing, or in any other way interfering with any tree, or any part thereof, either above or below the ground.
- b. Planting any tree or shrub not identified on the Approved Tree Species Master Tree or Council-Adopted Tree Plan (if applicable).
- c. Spraying (or otherwise applying) any chemical on any tree or shrub.
- d. Securing any rope, wire, sign, or other device on or about such tree or shrub.
- e. Removing or injuring any guard or device intended to assist in the growth and health of a tree or shrub.
- f. Closing or obstructing the base or branch of a tree or shrub that may limit the ability of the tree or shrub to grow or absorb water or nutrients.

Nothing in this chapter shall preclude a property owner from maintaining the parkway in front of his/her property as may be required by law.

15.02.130 Nuisance Abatement

Any tree, shrub, or part thereof in the City that interferes with the use of any public street, park, or public place, or is unsafe and constitutes a risk to the life, health, safety, or property of the public, or constitutes a center of infection for disease or insects that may endanger the health and life of other trees or shrubs shall be declared a public nuisance by the City Arborist and the owner thereof shall be required to correct or remove it. The property shall be posted with a minimum of two signs no less than 12 inches wide by 18 inches high and visible from at least two directions in the immediate vicinity of the nuisance, giving notice of the required abatement, and the owner shall be notified in writing via

certified mail by the City Arborist or his or her designee of the existence of such public nuisance and be given 30 days for its correction or removal. If not corrected or removed within the time allowed, the City Arborist shall cause said nuisance to be corrected or removed at once and initiate action necessary to defray all cost resulting therefrom.

Any tree or shrub on a City parkway not planted with an approved City of Encinitas encroachment permit, nor conforming to the Approved Tree Species Master List (at the time of the planting) may be considered to be a nuisance, and may be required to be pruned or removed at the expense of the individual or entity that caused said planting.

15.02.140 Violations and Penalties

Violations of this chapter shall be punishable as provided by Chapter 1.08 of the Encinitas Municipal Code. Each day of violation constitutes a separate offense. Nothing in this section shall limit the City's ability to seek restitution for damage to City Trees or shrubs or Heritage Trees in accordance with valuation methodologies as outlined in the City's Urban Forest Administrative Manual and additional penalties as established by law in the State of California.

15.02.150 Severability

If any one portion or section of this ordinance shall be determined to be invalid, the remaining portions or sections shall remain in full force and effect.