



## MEMORANDUM

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**Date** November 26, 2024

**To** Scott Spansail, Assistant City Attorney, City of Burlingame

**From** Maria Kisyova, Project Manager  
Akoni Danielsen, Principal Project Manager

**Subject** Burlingame Tree Ordinance Update – CEQA Categorical Exemption Qualification

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### I. Introduction to Categorical Exemptions

The California Environmental Quality Act (CEQA) Guidelines contain classes or categories of projects that have been determined not to have a significant effect on the environment and are, therefore, exempt from the provisions of CEQA. CEQA Guidelines Sections 15301 – 15333 constitute the list of categorically exempt projects and contain specific criteria that must be met in order for a project to be found exempt under one or more classes.

CEQA Guidelines Section 15307 Actions by Regulatory Agencies for Protection of Natural Resources sets forth exemptions for actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.

CEQA Guidelines Section 15308 Actions by Regulatory Agencies for Protection of the Environment consist of actions taken by regulatory agencies as authorized by state or local ordinance to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.

Additionally, CEQA Guidelines Section 15300.2 includes a list of exceptions to exemptions, none of which may apply to a project in order for it to qualify for a categorical exemption (i.e., if an exception applies, a project is precluded from being found categorically exempt). The exceptions included Section 15300.2 are discussed below in Section IV of this memo.

The City of Burlingame, serving as the Lead Agency, is completing environmental review for the Tree Ordinance Update project (“project”) in compliance with CEQA, the CEQA Guidelines (California Code of Regulations Section 15000 et. seq.), and the regulations and policies of the City of Burlingame. This Memorandum describes the proposed project, provides analysis and substantial

evidence to support a determination by the City of Burlingame that the project is categorically exempt pursuant to CEQA Guidelines Sections 15307 and 15308.

## II. Background

Shortly after Burlingame's incorporation as a city in 1908, the City enacted the Burlingame Municipal Code (BMC). The BMC included provisions to protect a historic grove of trees along County Road (modern day El Camino Real). With time, the City updated rules governing both public and private trees to regulate and protect the urban forest. In 1971, the City Council created Chapter 11.04 "Protection of City Street Trees" and Chapter 11.06 "Urban Reforestation and Tree Protection" to add protections for the rest of the urban forest. Chapter 11.06 was revised in 1992 and 1998. Since then, the City's tree protection provisions in the BMC have remained unchanged. The City of Burlingame has an established Urban Forest Management Plan (UFMP) that details City rules, recommendations, and practices in managing the urban forest. The UFMP is updated regularly and the Tree Ordinance is now being updated to better align with the UFMP and present-day urban forestry practices.

Further, state law now requires ministerial review processes for Accessory Dwelling Units (ADUs) and certain minor subdivisions and housing development projects (Senate Bill [SB] 9). These ministerial processes generally preclude cities from imposing subjective development standards or requiring any kind of discretionary decision or review. Accordingly, the proposed Tree Ordinance Update establishes objective standards regarding tree protection and incorporates ministerial review for these types of projects into the City's tree removal regulations.

## III. Project Description

The proposed project is a City-initiated update to the tree protection provisions in the BMC to address inconsistencies with the City's UFMP and to align the BMC tree protection provisions with state laws requiring ministerial review for ADUs and housing projects under SB 9. The proposed project would rescind the existing Chapters 11.04 and 11.06 of the BMC, and replace them with a new Chapter 11.06. The intent of the update is to strengthen the ordinance to be more protective of trees where the City retains discretion, while also creating a ministerial process for situations where trees are required to be removed to facilitate construction of residential projects that are ministerial under state law. Generally, the proposed update would increase the size and quantity of trees needing to be planted depending on the size of the tree being removed or on the nature of a proposed development. The update would also differentiate replanting requirements between residential developments and commercial/mixed use developments. Proposed updates are detailed below by topic.

## Discretionary Projects

The update to BMC Chapter 11.06 would also address situations where the City retains discretion whether to allow for removal of tree(s). The update to BMC Chapter 11.06 would require protective actions for trees that are retained, retention of a project arborist for large developments<sup>1</sup> or those significantly impacting a mature tree to be retained<sup>2</sup>, and submission of arborist reports. Specifically, larger developments would require tree replacement or reforestation plans and/or payment of an in-lieu fee for trees that are removed but not replanted or reforested. BMC 11.06.010 currently allows tree removal to occur for “the economic enjoyment” of property. The project proposes to redefine the rationale for tree removal as: “the tree must be removed to use the property for any City authorized or permitted use under Title 25 (the Zoning Ordinance) for the zoning district in which the property is located, and the use could not be made of the property unless the tree is removed.”

Additionally, the current discretionary tree removal process requires an applicant to apply for both a tree removal permit and a development permit, which are processed separately. The update to BMC Chapter 11.06 would simplify this process by requiring that a development application also include all related tree removal permits so that the approval authority for the development project would also take action on the tree permit through their review of the project. Those tree removal permits would become part of the Planning Commission development permit approvals for the project. Any approvals for tree removal permits, as well as requirements for tree protection and tree planting (based on recommendations from the City Arborist), would be incorporated into the approved development permit as part of the project approval process. Appeals to the tree removal due to proposed development would be heard by the Planning Commission as part of design review processes.

## Tree Removal Criteria

The proposed update to BMC Chapter 11.06 would codify past department practice by identifying which tree removal approvals may be appealed, and which body or bodies within the City administration would have authority to consider appeal proceedings.

The proposed update to BMC Chapter 11.06 would update the discretionary tree removal criteria to allow the decision maker to weigh a variety of factors when determining whether approval is appropriate. The update includes, but is not limited to consideration of root and infrastructure conflict, whether there are reasonable alternative means to avoid removal, species desirability and environmental benefits to tree retention.

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<sup>1</sup> Large developments are considered projects with more than two dwellings or those with designated commercial use.

<sup>2</sup> Work significantly impacting a mature tree refers to construction activity that would occur within the natural dripline of the subject tree.

## Definitions

The update to BMC Chapter 11.06 would update various definitions. Notably, the definition of a “protected tree” would be updated as shown in Table 1.

**Table 1. Definition of “Protected Tree”**

Existing Ordinance	Updated Ordinance
(1) Any tree with a circumference of 48 inches or more when measured 54 inches above natural grade; or	(1) Any City-owned or maintained tree; or
(2) A tree or stand of trees so designated by the City Council based upon findings that it is unique and of importance to the public due to its unusual appearance, location, historical significance or other factor; or	(2) Any private tree with a circumference of 44 inches or more when measured 54 inches above natural grade; or
(3) A stand of trees in which the director has determined each tree is dependent upon the others for survival	(3) A designated Heritage Tree or Heritage Grove, or any other tree or stand of trees or species of tree, so designated by the Beautification Commission, City Council, or Director based upon findings that it is unique and of importance to the public due to its unusual appearance, location, historical significance or other factor; or  (4) A stand of private trees in which the Director or designee has determined each tree is dependent upon the others for survival; or  (5) Replacement trees, regardless of size, that were required to be planted as replacements for authorized and unauthorized protected private tree removals; or  (6) Reforestation trees required to be planted for a development or redevelopment project pursuant to 11.06.100 of the updated BMC

## Public Notices

Currently, public notice is required for private protected tree removals within 100 feet of the subject property. For tree removals subject to a discretionary process, the proposed update to BMC Chapter 11.06 would allow the Parks and Recreation Director to expand the notification area and require physical and/or electronic postings and notifications dependent upon the impact the tree has on a neighborhood. The new public notice requirement would require notice of tree removals of City trees that are at least 14 inches in diameter at standard height (DSH).<sup>3</sup>

<sup>3</sup> Diameter at standard height refers to the level measurement of the trunk diameter measured at 54 inches above soil grade.

## Tree Planting Requirements

### Replacement and Reforestation Requirements

The existing ordinance establishes reforestation plan requirements for single-family or duplex and apartments or condominiums. The project would maintain these requirements, and would add requirements for mixed-use and commercial/industrial projects where there are none now. Changes are summarized in Table 2 below.

**Table 2. Reforestation Plan Requirements**

<b>Development Type</b>	<b>Reforestation Plan Requirements</b>
<b>Existing Requirements</b>	
Single-family or duplex	One landscape tree for every 1,000 square feet of lot coverage or habitable space
Apartments or condominiums	One landscape tree for every 2,000 square feet of lot coverage
<b>Proposed Requirements</b>	
One- and two-unit dwellings	One landscape tree per 1,000 square feet of habitable space
Multi-unit dwellings / mixed-use buildings	One landscape tree per 2,000 square feet of structural lot coverage and/or one landscape tree per 2,000 square feet of paving
Commercial / industrial	One landscape tree per 5,000 square feet of structural lot coverage and/or one landscape tree per 5,000 square feet of paving

Consistent with the existing code, lot coverage and habitable space includes both existing and new construction. The Director shall determine the number of existing trees which are of an acceptable size, species, and location to be counted toward this requirement.

### Removal of Protected Trees

#### *Existing Replacement Requirements*

The existing ordinance includes the following tree replacement guidelines for removal of protected trees (based on the existing definition of private trees shown in Table 1):

- Replacement shall be three 15-gallon size, one 24-inch box size, or one 36-inch box size landscape tree(s) for each tree removed as determined below.
- Any tree removed without a valid permit shall be replaced by two 24-inch box size, or two 36-inch box size landscape trees for each tree so removed as determined below.
- Replacement of a tree be waived by the director if a sufficient number of trees exists on the property to meet all other requirements of the Urban Reforestation and Tree Protection ordinance.
- Size and number of the replacement tree(s) shall be determined by the director and shall be based on the species, location and value of the tree(s) removed.

- If replacement trees cannot be planted on the property, payment of equal value shall be made to the city. Such payments shall be deposited in the tree planting fund to be drawn upon for public tree planting.

*Proposed Replacement Requirements*

The update to BMC Chapter 11.06 proposes to refine the guidelines for removal of protected trees (based on the updated definition of private trees shown in Table 1) to differentiate between one- or two-unit dwellings and all other types of development. The tree replacement plan would be required of both ministerial and discretionary projects.

A tree replacement plan for private protected trees located on lots that include one- or two-unit dwellings must comply with the specifications in Table 3.

**Table 3. Replacement for Private Protected Trees on Lots with One- or Two-Unit Dwellings**

Trunk Diameter	Replacement Tree
14 to 29	One 24-inch box or two 15-gallon boxes
>30 to 45 inches	One 36-inch box or two 24-inch boxes or four 15-gallon boxes
>45 inches	Two 36-inch boxes or three 24-inch boxes

A tree replacement plan for private protected trees located on other lots (e.g., multi-unit dwellings, mixed-use buildings, commercial/industrial) must provide for replacement of trees at a ratio of one-inch DSH of tree replaced for each inch DSH of tree removed (1:1 ratio). The equivalent sizes to be used whenever new trees are planted (either on-site or off-site) pursuant to a tree replacement plan are shown in Table 4.

**Table 4. Replacement Equivalency for Private Protected Trees on Other Lots**

DSH Equivalent	Replacement Landscape Tree Container Size
One Inch	15-gallon container
Two Inch	24-inch box
Three Inch	36-inch box
Four Inch	48-inch box
Five Inch	60-inch box

Where the current ordinance requires any tree removed without a valid permit to be replaced by two 24-inch box size or two 36-inch box size trees, the update to BMC Chapter 11.06 would include fines and penalties that can be levied (including criminal prosecution) for trees removed without a valid permit.

The update to BMC Chapter 11.06 would change the requirements for trees with a diameter of 29 inches or less. As shown in Table 3, the replacement requirements for 29-inch trees would be one 24-inch or two 15-gallon trees, whereas the current requirements require one 24-inch, three 15-gallon, or one 36-inch tree. The City evaluated its replacement requirements and determined that replacement of smaller trees (i.e., those 29 inches or less) are most appropriately replaced with a similarly-sized 24-inch tree or two 15-gallon trees).

The update would further set more onerous replacement requirements for trees with a diameter of 30 inches or more. The current ordinance requires the same replacement ratio regardless of the size of the tree to be removed. Finally, the update would introduce requirements for non-residential development, and would also include stricter penalties for trees removed without a valid permit. Thus, the proposed requirements would ultimately result in more trees planted than would be required under the current ordinance.

## Tree Replacement Fund

### On-site or Off-Site Replacement or Reforestation

The existing ordinance does not include specifications between on-site and off-site tree replacement requirements. The proposed update to BMC Chapter 11.06 requires that a tree replacement or reforestation plan that includes on-site or off-site replacement must specify where the trees shall be planted. The plan must also specify how the trees shall be monitored and maintained. Off-site plantings within 300 feet of the project site would be considered at the Director's discretion.

### In-Lieu Fee and Tree Replacement Fund

The existing ordinance does not include a funding mechanism. The proposed update to BMC Chapter 11.06 would introduce in-lieu fees as an option, for both ministerial and discretionary projects, where trees cannot be replaced on-site or off-site within the neighborhood. The fund would be used primarily for citywide tree planting and preservation programs but would be available for City Council-directed programs consistent with this purpose. The amount of the in-lieu fee would be \$325 per inch of tree diameter at standard height for that tree. This amount is based on the labor and material costs of planting and would be included in the update to the Master Fee Schedule adopted by City Council concurrent with the update to BMC Chapter 11.06.

### Credit for Existing Landscape Trees

The proposed update to BMC Chapter 11.06 would allow a replacement credit for preservation of trees on the same lot, as long as those trees are viable long-term and meet the definition of landscape tree.

## IV. Environmental Review

The purpose of this section is to assess the project's eligibility for a Categorical Exemption from CEQA under Guidelines Sections 15307 and 15308, and document whether any of the exceptions listed in CEQA Guidelines Section 15300.2 apply to the proposed updates to BMC Chapter 11.06.

### Section 15307 – Actions by Regulatory Agencies for Protection of Natural Resources

CEQA Guidelines Section 15307 relates to actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of a natural resource. As presented above in Section III Project Description, the City proposes updates to BMC Chapter 11.06 with the intent of protecting existing trees, a natural resource, and enhancing the existing urban forest. The proposed updates to BMC Chapter 11.06 would involve the following updated provisions to protect trees:

- **Expanded Definition of Protected Tree:** The definition of a protected tree would be expanded to include 1) any City-owned or maintained tree, 2) any private tree with a circumference of 44 inches or more when measured 54 inches above natural grade, as opposed to the current definition of 48 inches, 3) any replacement tree for private tree removals, and 4) any replacement tree for development projects. By expanding the definition of a protected tree, the proposed update would serve to increase protections for the urban forest.
- **Expanded Notice Requirements:** The proposed update to BMC Chapter 11.06 would include language allowing the Parks and Recreation Director to expand the notification area and require physical and/or electronic postings and notifications dependent upon the impact the tree has on a neighborhood. The new public notice requirement would require notice of tree removals of City trees that are at least 14 inches in diameter at standard height. Expanded noticing would serve to increase protections for the urban forest.
- **Increased Replacement and Reforestation Requirements:** The proposed update to BMC Chapter 11.06 would increase replacement requirements for one- and two-unit dwellings and multi-unit dwellings/mixed-use buildings. As shown in Table 3, replacement requirements would increase as the size of the tree to be removed increases, whereas the current ordinance requires three 15-gallon, one 24-inch box, or one 36-inch box per tree to be removed, regardless of size. Although the current ordinance allows replacement of 29-inch or smaller trees with either one, two, or three trees (i.e. one 24-inch tree or three 15-inch trees or one 36-inch tree) and the proposed update to BMC Chapter 11.06 instead allows replacement of those trees with one or two trees (one 24-inch or two 15-inch trees), the update also proposes higher replacement requirements for trees with a diameter of 30 inches or more and would result in greater tree replacement overall. In addition, the updated ordinance would increase replacement requirements for



commercial/industrial projects, and would have stricter penalties for trees removed without a valid permit. Increasing the replacement and reforestation requirements would serve to enhance the existing urban forest.

- **Establish Replacement Fund:** The existing BMC Chapter 11.06 does not include a funding mechanism. The proposed update to BMC Chapter 11.06 would introduce in-lieu fees as an option where trees cannot be replaced on-site or off-site within the neighborhood. The fund would be used primarily for citywide tree planting and preservation programs, which would serve to enhance the existing urban forest.

In sum, the project would adopt regulatory procedures to assure the maintenance, restoration, and enhancement of the City's existing urban forest, thus protecting natural resources. Accordingly, the project qualifies for exemption under Guidelines Section 15307.

### Section 15308 – Actions by Regulatory Agencies for Protection of the Environment

CEQA Guidelines Section 15308 relates to actions taken by regulatory agencies as authorized by state or local ordinance to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Per the Guidelines, construction activities and relaxation of standards allowing environmental degradation do not qualify for exemption under 15308.

The project proposes to update the City's existing Tree Ordinance with stronger replacement and noticing requirements and codify current City practices. The project is aimed at protecting existing trees and enhancing the existing urban forest. As noted above in the discussion of Guidelines Section 15307, the proposed update to BMC Chapter 11.06 would serve to protect trees (and the environment generally) by 1) expanding the definition of a protected tree, 2) expanding the notice requirements for removal of protected trees, 3) Increasing or adding replacement and reforestation requirements, and establishing a tree replacement fund.

Finally, the updates to BMC Chapter 11.06 acknowledge that there are certain development projects (e.g., ADUs or other ministerial housing projects) where the City could not preclude tree removal. The provisions governing ministerial projects are not a "relaxation of standards" allowing environmental degradation which would preclude reliance on Guidelines Section 15308; instead, those provisions implement and are consistent with state law requirements.

In sum, the project would adopt procedures that assure the maintenance, restoration, enhancement, or protection of the environment and would thus qualify for exemption under Guidelines Section 15308.

### Section 15300.2 – Exceptions

CEQA Guidelines Section 15300.2 sets the following exceptions:

- (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.
- (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
- (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.
- (d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.
- (e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.
- (f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

Exception 15300.2(a) only applies to Class 3, 4, 5, 6, and 11 exemptions. The proposed update to BMC Chapter 11.06 is categorically exempt under Class 7 and 8; therefore, this exception is not applicable to the project under CEQA Guidelines Section 15300.2(a). As noted in the proposed ordinance, trees that are designated, precisely mapped, and officially adopted by the City are protected by Chapter 11.06.

The proposed update to BMC Chapter 11.06 would not contribute to cumulative impacts related to tree removals, as there are no other programmatic actions being considered by the City that would also involve changes to the City's tree protection policies. The proposed update to BMC Chapter 11.06 does not propose or allow for any specific development. Once adopted, the ordinance would include higher tree replacement ratios for future development projects throughout the City, as described in detail in Section II. Additionally, the definition of a protected tree would be modified to include any private tree with a circumference of 44 inches or more when measured 54 inches above natural grade as opposed to the current definition of 48 inches. These changes would be environmentally beneficial. As such, the proposed update to BMC Chapter 11.06 would not result in a cumulatively considerable impact, and no exception to the exemption would apply under 15300.2(b).

The proposed update to BMC Chapter 11.06 would not cause a significant effect due to unusual circumstances. It is intended to and will promote tree replacement and reforestation. The project would not cause a substantial adverse change in the significance of a historical resource as it does not address or otherwise regulate development or its impacts to historical resources. Thus, no exception to the exemption applies under 15300.2(c) or 15300.2(f).

There are no state scenic highways within the City of Burlingame. As such, the provisions of BMC Chapter 11.06 do not apply to trees within state highway right-of-way. Since the project is not focused on a particular site and would not result in specific development, it would not be located on a site included on any list pursuant to Section 65962.5 of the Government Code. Thus, no exception to the exemption applies under 15300.2(d) or 15300.2(e).

For the reasons described above, none of the exceptions under CEQA Guidelines Section 15300.2 apply to the project, and the proposed update to BMC Chapter 11.06 would not be disqualified for a categorical exemption.

## V. Conclusion

As documented in Section IV. Environmental Review, none of the exceptions contained in CEQA Guidelines Section 15300.2 apply to the project and the project meets the criteria in CEQA Guidelines Section 15307 and 15308. The project, therefore, qualifies as exempt from the provisions of CEQA under Classes 7 and 8 of the CEQA Guidelines.