



# City of San Leandro

Meeting Date: May 19, 2014

## Staff Report

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**File Number:** 14-190

**Agenda Section:** PRESENTATIONS

**Agenda Number:** 3.C.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Debbie Pollart  
Public Works Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** Staff Report for Consideration of Various Options in Adopting an Ordinance to Protect Significant and Heritage Trees in San Leandro

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### SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council review the information presented, including the draft ordinance, accept public input, and provide direction to staff.

### BACKGROUND

At the February 3, 2014 City Council meeting, several residents spoke during the Public Comment period regarding a large walnut tree that had recently been legally cut down and removed by the single-family residential property owner. The speakers requested that the City Council enact a tree protection or preservation ordinance pertaining to certain trees on private property. Later in that meeting, City Council directed the City Attorney and staff to look at ordinances from other local cities as models for a draft ordinance.

The matter of regulating trees on private property was previously discussed by the City Council. In December 1998, Councilmember Joanne Lothrop shared a tree ordinance from the City of Davis and asked for a report back on the feasibility of enacting a similar ordinance in San Leandro. At the March 1, 1999 City Council meeting, Community Development Director Steve Emslie introduced staff member Dan Nagle, and indicated that Mr. Nagle would be drafting a tree ordinance. A 'Tree Preservation Presentation' was agendaized for the April 12, 1999 City Council work session (minutes are not taken for work sessions). Per the September 27, 1999 work session staff report, further public discussion of a draft ordinance was referred to the Planning Commission (May 5, 1999); Board of Zoning Adjustments (May 20, 1999); at three public meetings held on May 22, May 25, and June 2, 1999; and at the request of homeowners' associations.

The September 1999 work session staff report provided several options for consideration (it should be noted that street trees on City property were included in this discussion, in addition

to trees on private property). For trees on private property, staff provided the following options: No changes to current policies; development of regulations that only pertain to properties zoned for commercial, industrial, or multi-family uses (specifically exclude single-family properties from any regulation); develop standards related to development sites; and develop a method to define and protect significant trees with historic, heritage, or landmark value.

The staff report noted that for an ordinance to be successful, it must have the support of the community. While most residents recognize the value of trees to the community, the majority of community input in 1999 did not support a tree preservation ordinance that would regulate tree removal on single-family lots. Thus, staff recommended that the City not proceed with developing a tree ordinance governing single-family lots.

### **Current Policy**

Title 12, Chapter 8 of the Administrative Code applies specifically to City street trees (trees in the public right-of-way), the planting thereof, removal, trimming, other maintenance, and administrative authority. With the exception of trees that were required plantings as part of a project undergoing zoning/planning approval (and which are covered as part of the project's mitigation measures or conditions of approval) there are no City policies that regulate the planting or removal of trees on private property, regardless of zoning.

### **Analysis and Policy Proposal**

Chapter 7 of the 2002 General Plan, entitled 'Historic Preservation and Community Design' notes the major role that landscaping (both in the public right-of-way and on private property) plays in how San Leandro looks and feels. This Chapter 7 of the City's General Plan provides that, "Ultimately, a greener and more attractive City can provide economic and property value benefits as well as ecological and aesthetic benefits." General Plan Policy 44.03 provides as follows: "...Encourage the preservation and proper care of mature trees throughout the City, particularly those which may have historic importance or contribute substantially to neighborhood character." *Action 44.03-A: Tree Preservation* speaks to providing incentives for property owners to maintain significant trees and reduce the burden of maintenance.

Redwood trees at Juana / Bancroft, and 647 and 651 Juana are noted as Historic Landscape Elements in the 2002 General Plan; they are identified on the City's Local Register of Historic Significance, and thus they are protected by Ordinance 74-12.

The attached draft ordinance borrows primarily from the cities of Pleasanton and Walnut Creek, with the intent to be mid-range in regulating trees on private property. The attached Exhibit 1 is a matrix of tree ordinance information from the websites of other Alameda County cities. Please note when looking at the numbers that some cities measure using *diameter*, while others use *circumference*. The circumference of a tree is measured at  $\text{Pi (3.14) x diameter}$ . Also, the height at which the measurement is taken varies from three feet above grade to four feet, six inches. When not specified, typical measurements are taken at breast height (hence the common terms *CBH*, *Circumference at Breast Height* and *DBH*, *Diameter at Breast Height*).

For those cities that do regulate on private property (as shown in Exhibit 1), the attached Exhibit 2 is a simplified comparison chart. The axis on the left represents the regulated

diameter, without consideration of the variation in the height at which it's measured . (Cities that utilize a circumference metric were converted to diameter for the purpose of this representation). Staff notes that the smaller the tree, the more restrictive the ordinance (i.e., a permit is required for a smaller-sized tree). This comparison shows that amongst Alameda County cities that do regulate tree removal on private property, the figures presented in the draft ordinance put San Leandro on the less-restrictive end of the spectrum.

### **Fiscal Impacts**

Staff is not anticipating any impacts to the City's budget with adoption of a tree preservation ordinance.

If an ordinance is ultimately adopted by the City Council, a fee could be required for consideration of a permit to remove trees on private property. The fee would cover a portion of staff's time in reviewing the request, performing a site visit, reviewing the arborist report and preparing a final determination. Staff is not recommending a 100% cost recovery fee, as this would likely make it onerous on the property owner, who in addition to paying for the permit, could also have to pay for the preparation of an arborist report.

### **ATTACHMENTS**

- Draft Tree Preservation Ordinance
- Exhibit 1 - Matrix of tree ordinance information from the websites of other Alameda County cities
- Exhibit 2 - Chart comparing regulated tree diameters of Alameda County cities

**PREPARED BY:** Debbie Pollart, Public Works Director, Public Works Department

## Chapter X. **PRESERVATION OF TREES ON PRIVATE PROPERTY**

### **X-X-XXX Purpose and intent.**

The City of San Leandro lies in the East Bay along the San Francisco Bay shoreline, extending east to the hills. It has been historically dotted with large majestic oaks, which fed many of the native people, as well as coastal redwoods, ash, locust, and walnut trees. Much of the land was home to orchards of fruit trees that many people relied upon for food and income. During the development of the City, most of the original trees were cut down until only a few remained. It is now recognized that the preservation of many of the original trees enhances the natural scenic beauty, sustains long-term property values, which in turn encourages quality development, maintains the original ecology, retains the original tempering effect of extreme temperatures, creates the identity and quality of the City to visitors and increases the oxygen output of the area which is needed to combat air pollution. For these reasons, the City finds that, in order to promote the public health, safety and general welfare of the City, while at the same time recognizing individual rights to develop private property in a manner which will not be prejudicial to the public interest, it is necessary to enact regulations controlling the removal of and the preservation of trees within the City. This Chapter does not apply to street trees or trees in public rights of way the unauthorized removal or damage to which is strictly prohibited pursuant to Chapter 5-2 of this Code.

### **X-X-XXX Definitions.**

Unless the context otherwise requires, the definitions contained in this section shall govern the construction of this Chapter:

- (a) “Protected Tree” shall mean any of the following:
  - (1) Any live woody plant having a single perennial stem of eighteen (18) inches or more in diameter;
  - (2) Any multi-stemmed perennial plant having an aggregate circumference of forty (40) inches or more measured four and one-half (4½) feet above the natural grade;
  - (3) Any tree of particular historical significance specifically designated by official action;
  - (4) Any tree which is part of a Grove.
- (b) “Director” shall mean the Public Works Director or his or her designee.
- (c) “City Manager” shall mean the City Manager or his or her designee.
- (d) “Topping” shall mean heading back of the crown and/or creating large stubs without regard to form.
- (e) “Grove” shall mean three (3) or more trees of any size which are part of an integral cover with stems having an aggregate circumference of forty (40) inches or more measured four and one-half (4½) feet above the natural grade.

(f) “Certified or consulting arborist” shall mean an arborist who is registered with the International Society of Arboriculture and approved by the Director.

(g) “Applicant” shall mean the owner of improved property submitting an application to remove a Protected Tree(s) located upon said property. Only the property owner or his or her representative may apply to remove a Protected Tree(s) or appeal the Director’s decision.

(h) “Significant impact” shall mean an unreasonable interference with the normal and intended use of the property. In determining whether there is a significant impact, the typical longevity of the subject Tree species, as well as the size of the Tree relative to the property, shall be considered. Normal maintenance, including, but not limited to, pruning, and leaf removal and minor damage to paving or foundation shall not be considered when making a determination of significant impact.

(i) A “Tree Appraisal”, when required, shall be done in accordance with the then-current edition of the “Guide for Plant Appraisal” by the Council of Tree and Landscape Appraisers under the auspices of the International Society of Arboriculture and the current edition of the Western Chapter of the International Society of Arboriculture’s Species Classification and Group Assessment. This appraisal shall be performed by either a registered consulting arborist, board certified master arborist or certified arborist, as determined by the Director. The appraisal shall be done at the applicant’s sole expense, and the appraiser shall be subject to the City’s approval, which approval it shall not unreasonably withhold.

#### **X-X-XXX Permit—Required.**

(a) No person shall remove, destroy or disfigure, any Protected Tree growing within the City without a permit except as provided in this Chapter.

(b) Normal maintenance pruning of Protected Trees shall not require a permit but shall in all cases be performed by a licensed contractor in conformance with the guidelines of the International Society of Arboriculture, Best Management Practices, Tree Pruning, current edition. Pruning which, in the opinion of the Director, varies from these guidelines shall be subject to fines and penalties as provided in **Section X-X-XXX**.

#### **X-X-XXX Permit—Procedure.**

(a) An Applicant desiring to remove any Protected Tree in the City shall make application to the Director. Said application shall contain the number, species, size and location of Protected Trees to be removed and a brief statement of the reason for removal as well as any other pertinent information the Director may require. The application shall be accompanied by a Tree Appraisal, specific to the Protected Trees requested for removal and/or potentially impacted by on-site construction. The permit, if granted, shall entitle the Applicant to remove only those Protected Trees designated by permit. If the applicant is a homeowners’ association or other association of property owners or an agent thereof, the applicant shall deliver a written notice by mail to personal delivery to all association members who own property within five hundred (500) feet of any Protected Tree to be removed. The notice shall identify the Protected Tree(s) which are proposed to be removed.

(b) The Director shall visit and inspect the property, the Protected Tree(s) in question, and the surrounding area, and shall ascertain the following:

(1) The condition of the Protected Tree with respect to disease, general health, damage, public nuisance, danger of falling, proximity to existing or proposed structures, interference with utility service and whether or not the Protected Tree acts as host for a plant which is parasitic to another species of tree which is in danger of being exterminated by the parasite;

(2) Whether the Protected Tree has a significant impact on the property;

(3) The necessity to remove any Protected Tree in order to construct any proposed improvements to allow for the economic enjoyment of the property;

(4) The number of existing trees in the neighborhood or area on improved property and the effect removal would have upon the public health, safety, general welfare of residents and upon the property value and beauty of the area;

(5) The topography of the land upon which the Protected Tree(s) are situated and the effect of removal thereof upon erosion, soil retention and diversion or flow of surface waters;

(6) Good forestry practices, i.e., the number of healthy trees that a given parcel of land will support.

(c) The Director may refer any application to any City department or commission for review and recommendation.

**X-X-XXX Action by Director—Findings.**

(a) The Director shall issue a permit to remove a Protected Tree if it is determined that one of the following conditions exists:

(1) The Protected Tree is in such a dangerous or hazardous condition as to threaten or endanger the safety of people, structures, other property or other Protected Trees;

(2) The Protected Tree has a significant impact on the property;

(3) The Protected Tree is dead, dying or diseased and good forestry practices cannot be reasonably undertaken to preserve the Protected Tree; or

(4) Where the Protected Tree in question is not diseased or hazardous, the removal of the Protected Tree is consistent with the purpose and intent of this Chapter and in keeping with the health, safety and general welfare of the community.

(b) The Director shall notify the applicant in writing of the determination giving the reason for the application's approval or denial.

(c) In granting a permit, the Director may attach reasonable conditions, which may include planting of replacement trees elsewhere on the property to ensure compliance with the intent and

purpose of this Chapter. When a permit is denied, the Director shall state in writing the reasons for said denial based on the above standards.

(d) Unless appealed as provided in **Section X-X-XXX**, the decision of the Director shall become effective 20 days after being issued.

**X-X-XXX Significant impact—Administrative hearing.**

(a) Where the Applicant applies to remove a Protected Tree on grounds that it has a significant impact on the property, the Director shall conduct a hearing. The hearing shall be set not less than 15 days and not more than 60 days from the date the application is filed.

(b) The Director shall send notice of the hearing to all property owners and residents within 300 feet.

(c) At the hearing, the applicant and any interested party shall be given the opportunity to be heard concerning the preservation or removal of the Protected Tree.

(d) After considering all relevant evidence, the Director shall issue a written decision to preserve or remove the Protected Tree.

(e) The Director shall send a copy of the written decision to the applicant and neighboring property owners and residents within 300 feet of the Protected Tree.

(f) Unless appealed as provided in **Section X-X-XXX**, the decision of the Director shall become effective 20 days after being issued.

**X-X-XXX Appeal.**

(a) The Director's decision may be appealed only by the Applicant. Such appeal must be submitted in writing to the City Clerk within twenty (20) days of the decision, and shall briefly state facts and the grounds of the appeal and be signed by the Applicant filing the appeal.

(b) Any appeal shall be heard by the City Manager within 60 days after the City's receipt of appeal, to hear such testimony by any department of the City, the applicant who filed the appeal, or any interested party.

(c) The City Clerk shall set a date for hearing before the City Manager and shall notify all interested parties. The Director shall submit a report to the City Manager, along with any departmental recommendations.

(d) The City Manager shall conduct a hearing on the appeal and make written findings of fact upholding, reversing or modifying the Director's decision. Following the hearing of any such appeal, the City Manager may affirm, reverse or modify the action of the Director and may take any action thereon which would have been authorized in the first instance. The action of the City Manager on any such appeal shall be final and conclusive.

**X-X-XXX Emergency action.**

A person may remove or prune a Protected Tree without a permit if there is an emergency caused by a Protected Tree being in a hazardous or dangerous condition requiring immediate action for

the safety of structures or human life. In such event, the Director shall be notified at the earliest opportunity in order to confirm the emergency situation. If the Director determines that the situation was not an emergency requiring immediate action, the person removing or damaging the Protected Tree shall be subject to fines and penalties set forth in **Section X-X-XXX**.

#### **X-X-XXX Protection of existing trees.**

All persons shall comply with the following precautions:

- (a) Prior to the commencement of construction, install a sturdy fence at the dripline of any Protected Tree which will be affected by the construction and prohibit any storage of construction materials or other materials inside the fence. The dripline shall not be altered in any way so as to increase the encroachment of the construction.
- (b) Prohibit excavation, grading, drainage and leveling within the dripline of the Protected Tree unless approved by the Director.
- (c) Prohibit disposal or depositing of oil, gasoline, chemicals or other harmful materials within the dripline or in drainage channels, swales or areas that may lead to the dripline of any Protected Tree.
- (d) Prohibit the attachment of wires, signs and ropes to any Protected Tree.
- (e) Design utility services and irrigation lines to be located outside of the dripline of Any Protected Tree when feasible.
- (f) Retain the services of a certified or consulting arborist for periodic monitoring of the project site and the health of those trees to be preserved. The certified or consulting arborist shall be present whenever activities occur which pose a potential threat to the health of the trees to be preserved.
- (g) The Director shall be notified of any damage that occurs to a Protected Tree during construction so that proper treatment may be administered.

#### **X-X-XXX Public utilities.**

- (a) Any public utility installing or maintaining any overhead wires or underground pipes or conduits in the vicinity of a Protected Tree shall obtain permission from the Director before performing any work, including pruning, which may cause injury to the Protected Tree.
- (b) The Director shall inspect said pruning work to ensure that appropriate pruning practices are followed. The public utility shall follow pruning practices conforming to the International Society of Arboriculture pruning standards to promote the well-being of the tree. Topping shall not be permitted unless specifically approved by the Director. The Director shall stop any tree pruning performed by a utility if said practices are not being followed.

#### **X-X-XXX Insurance requirements.**



Any person engaged in the business of pruning Protected Trees within the City shall be a California licensed contractor and shall carry public liability and property damage insurance as determined by the City Attorney.

**X-X-XXX Fines and penalties.**

(a) Any person who unlawfully removes or destroys a Protected Tree shall pay a civil penalty in the amount of the appraised value of the tree. If there is inadequate plant material to properly appraise the tree, the penalty shall be \$5,000.00. Any person who unlawfully disfigures a Protected Tree whether through vandalism, improper pruning or other actions, shall pay a civil penalty commensurate with the damage; the amount shall be determined by the Director in accordance with the “Guide for Plant Appraisal” under the auspices of the International Society of Arboriculture. The collection of the penalties may be enforced by civil action brought in the name of the City by the City Attorney.

(b) The cost of replacement plant material may be considered as partial payment of any penalty under this Chapter.

(c) Any person violating the provisions of this Chapter shall be guilty of a misdemeanor or infraction and shall be fined or imprisoned as provided in Section 1-12-200 of this Code.

**X-X-XXX Additional provisions.**

The provisions of this Chapter shall supplement but not supplant other provisions of this Code relating to the preservation of trees.

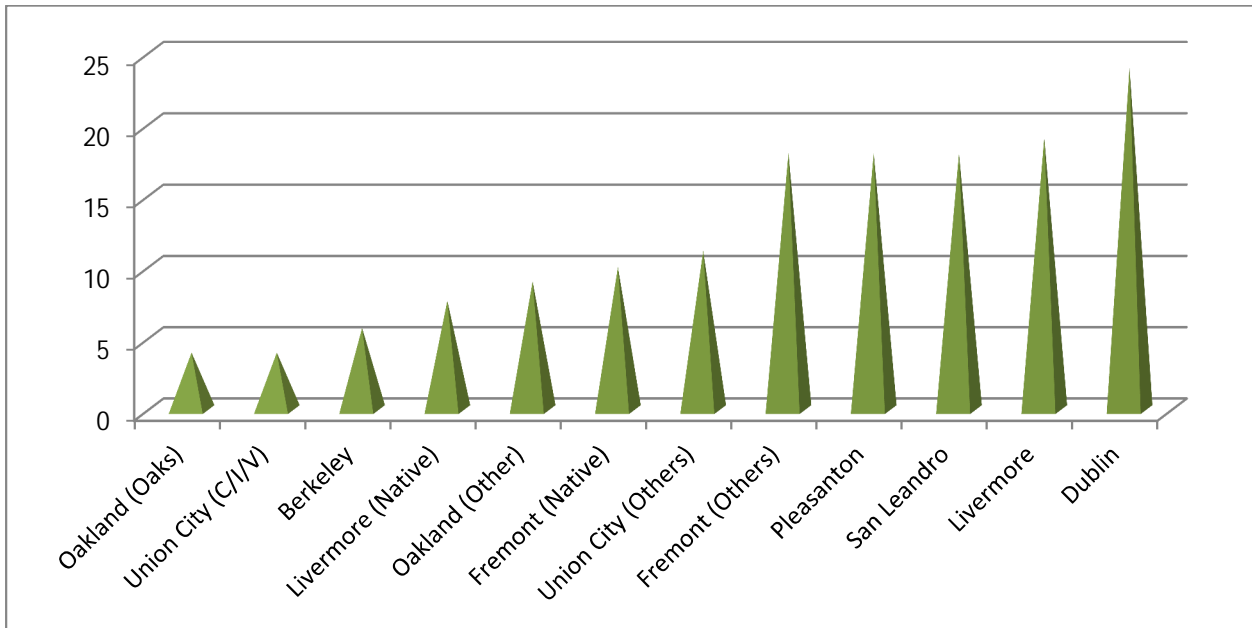
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**Exhibit 1 – Matrix of tree ordinance information from the websites of other Alameda County cities**

<b>Jurisdiction</b>	<b>Private Property Trees Regulated?</b>	<b>Applications</b>	<b>Exceptions</b>	<b>Required Permit Fee; Arborist Report</b>
Ala. County	No	NA		
Alameda	No	NA		
Albany	No	NA		
Berkeley	Yes	<ul style="list-style-type: none"> <li>▪ Any single stem Coast Live Oak tree &gt;18" <i>circumference</i></li> <li>▪ Multi-stemmed Coast Live Oak tree with aggregate <i>circumference</i> &gt;26" at 4' above ground</li> </ul>	None. Moratorium in place precludes removal of noted trees.	
Dublin	Yes	<ul style="list-style-type: none"> <li>▪ Any oak, bay, cypress, maple, redwood, buckeye and sycamore tree &gt;24" in <i>diameter</i> @ 4.5' above grade;</li> <li>▪ Any tree required to be preserved as part of an approved Development Plan, Plan, Zoning Permit, Use Permit, Site Development Review or Subdivision Map; or</li> <li>▪ Any tree required to be planted as a replacement for an unlawfully removed tree.</li> </ul>		\$25 permit fee, plus deposit to cover staff costs; arborist report required.
Emeryville	No	NA		
Fremont	Yes	<ul style="list-style-type: none"> <li>▪ Any tree required/preserved through previous development approval;</li> <li>▪ &gt;6" <i>diameter</i> for underdeveloped/vacant land;</li> <li>▪ &gt;10" <i>diameter</i> if native to Fremont</li> <li>▪ &gt;18" <i>diameter</i></li> <li>▪ All measured 4.5' above grade</li> </ul>	Not applicable for non-single family home lot; side or rear yards; if residential lot is < 10,000 s.f.	No fee; arborist report not required
Hayward	No	NA	No permit required unless trees installed as part of approved development	

Jurisdiction	Private Property Trees Regulated?	Applications	Exceptions	Required Permit Fee; Arborist Report
Livermore	Yes	<ul style="list-style-type: none"> <li>▪ &gt;60" <i>circumference</i> tree;</li> <li>▪ Any California native &gt;24" <i>circumference</i>;</li> <li>▪ Any tree &gt;24" <i>circumference</i> on occupied commercial, industrial, institutional, mixed-use or multi-family residential;</li> <li>▪ &gt;18" <i>circumference</i> for un/under-developed properties;</li> <li>▪ Any tree required of planning approval;</li> <li>▪ Any tree deemed 'ancestral' by City Council;</li> <li>▪ Any tree on City's Ancestral Tree List;</li> <li>▪ Any tree deemed required mitigation for illegally removed tree</li> </ul>	Trees damaged by natural disaster/event; removal deemed necessary by Fire Department for active firefighting; licensed nursery business.	No fee; Arborist report required.
Newark	No	NA		
Oakland	Yes	<ul style="list-style-type: none"> <li>▪ Coast Live Oaks &gt;4" <i>diameter</i> @ 54" above grade</li> <li>▪ All trees that are &gt;9" <i>diameter</i></li> </ul>	Eucalyptus and Monterey pines are not protected.	\$250 fee; arborist report not required.
Piedmont	No	NA		
Pleasanton	Yes	<ul style="list-style-type: none"> <li>▪ Any single-trunked tree &gt;55" <i>circumference</i> @ 4.5' above grade;</li> <li>▪ Any multi-trunked tree &gt;55" <i>circumference</i> @ 4.5' above grade;</li> <li>▪ Any tree 35'+ in height;</li> <li>▪ Any tree of historical significance specifically designated</li> </ul>		No fee; arborist report may be required.
Union City	Yes	<ul style="list-style-type: none"> <li>▪ &gt;35" <i>circumference</i> trunk;</li> <li>▪ &gt;70" <i>circumference</i> multi-trunk;</li> <li>▪ &gt;12" <i>circumference</i> when removal related to planning approval;</li> <li>▪ Required tree from zoning approval;</li> <li>▪ &gt;12" <i>circumference</i> on vacant or undeveloped property</li> <li>▪ All trees with &gt;12" <i>circumference</i> on commercial, industrial or office properties.</li> </ul> <p>All measurements from 3' above ground.</p>	Orchard trees part of a farming operation	No fee; arborist report not required, but may be requested by staff.

**Exhibit 2 – Chart comparing regulated tree diameters of Alameda County cities**





# City of San Leandro

Meeting Date: May 19, 2014

## Minute Order - Council

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**File Number:** 14-205

**Agenda Section:** PRESENTATIONS

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Debbie Pollart  
Public Works Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** MOTION Providing Direction to Staff Regarding an Ordinance to Protect Significant and Heritage Trees in San Leandro

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