

## ORDINANCE NO. 1085

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS BANOS AMENDING TITLE 10 CHAPTER 1 SECTION 10-1.01 TO 10-1.32 OF THE LOS BANOS MUNICIPAL CODE REVISING REGULATIONS REGARDING TREES, SHRUBS AND PLANTS AND MOVING AND RENUMBERING SECTION 10-1.32 "PARK CURFEW" FROM TITLE 10 TO TITLE 5 CHAPTER 5 SECTION 5-5.05 OF THE LOS BANOS MUNICIPAL CODE

The City Council of the City of Los Banos does ordain as follows:

WHEREAS, the City Council of the City of Los Banos is desirous of amending Title 10, Parks and Recreation, Chapter 1, of the Los Banos Municipal Code "Trees, Shrubs and Plants"; and

WHEREAS, amendments to Title 10, Parks and Recreation, Chapter 1, "Trees, Shrubs and Plants", provides further definition and specific standards for the proper care and maintenance of Trees, Shrubs and Plants by private entities and utility companies; and

WHEREAS, the establishment of a Heritage Tree program will further enhance and protect the Urban Forest with the community; and

WHEREAS, provisions in the Municipal Code relating to Tree Regulations need to be updated.

Section 1. Chapter 1 Sections 10-1.01 to 10-1.32 of Title 10 of the Los Banos Municipal Code is hereby repealed and amended in its entirety to read as follows:

Title 10- Parks and Recreation

Chapter 1 Trees, Shrubs and Plants

Sec. 10-1.01 Title and purpose.

- a. This chapter shall be known as the "Tree Regulations" and may be cited as such. Purpose. Title 10 is adopted to acknowledge that the City of Los Banos City Council finds that:
  - (1) Street trees are of economic, environmental, and aesthetic importance to the City.

- (2) The City requires the planting of street trees as part of subdivision developments and along major streets to enhance the character of the City.
- (3) Street Trees directly benefit the City residents by:
  - (a) Reducing erosion of the top soil by breaking the summer winds;
  - (b) Reducing air pollution by the production oxygen from carbon dioxide;
  - (c) Increasing property values;
  - (d) Maintaining the ecological balance of the area;
  - (e) Providing shade and buffering the noise and glare; and
  - (f) Providing energy conservation by the reduction of summer temperatures.
- (4) The health and safety and general welfare of the citizens will best be served by regulating the removal, severe pruning, topping and planting of street trees and encouraging the reforestation of areas in which street trees have been removed.
- (5) There is a need for a comprehensive plan for the selection and protection of Historical and Heritage Trees in the City of Los Banos.

#### Sec. 10-1.02 Definitions.

For the purpose of this chapter, the words listed in this section shall have the meaning set forth in this section.

Words used or defined in one tense or form shall include other tenses and derivative forms. Words in the singular number shall include the plural number and words in the plural number shall include the singular number. The masculine gender shall include the feminine, and the feminine gender shall include the masculine, this shall be extended to apply to partnerships, firms, and corporations or other similar entities. The words "shall" and "must" are mandatory. The word "may" is permissive. The word "person" includes individuals, firms, corporations, associations, trusts, and any other similar entities. The word "Los Banos" refers to the City of Los Banos. The word "jurisdiction" includes all public lands and rights-of-ways included within the corporate limits of the City of Los Banos.

The following terms shall have the meanings herein ascribed to them:

Arterial – Heavy traffic carrying streets of Los Banos that function to move intra-city and inter-city traffic.

Los Banos – The City of Los Banos, California.

Municipal Code – The City of Los Banos Municipal Code as compiled and amended or any subsequent code of this City.

City Arborist – The City Arborist is City Employee or Contracted Company hired by the city that is an expert in the cultivation and care of trees.

Collector Street – Streets whose primary function is to collect traffic from an area and move it to a major thoroughfare or arterial while also providing substantial service to

abutting land use.

Community Development Department- Refers to the Planning Department of the City of Los Banos.

Commission – Refers to the Parks and Recreation Commission of the City of Los Banos.

Community Forest – Those trees and shrubs located within municipal limits.

Council – Refers to the Los Banos City Council.

Director of Public Works- refers to the Director of the Public Works Department of the City of Los Banos.

Director – Refers to the Director of Public Works.

Graft Union – The place on the stem of a plant where the bud is joined to the rootstock or trunk. It is usually indicated by a slight swelling.

Landscaping – Shall mean primarily the planting of vegetation of all types and shall also include as secondary accents the installation of exterior decoration, furniture, sculpture or structures, retaining walls, water features, including on-premises monument signs, and flagpoles, the preservation and enhancement of land forms and natural land features, the location and construction of aesthetically pleasing and functional approaches for structures, roadways, pedestrian ways, and enclosures, and the enhancement of the environment for human habitation by climate control, air movement, pollution control, and aesthetics.

Landscape Standards for the City of Los Banos - Policy stated in Ordinance No. 1059 Section 10-2.04 of the City of Los Banos Municipal Code.

Local Street – see Collector Street.

Parks and Recreation Operations Manager- Refers to the Parks and Recreation Operations Manager of the City of Los Banos.

Planning Director – Refers to the Director of Planning for the City of Los Banos.

Plant – Any multi-cellular organism of the kingdom Plantae characteristically containing chloroplasts, having cellulose walls, lacking power of locomotion and reproducing by seeds or spores.

Planting Easement – Refers to the portion of land made available as a public easement for the purpose of planting and maintaining City Street Trees.

Public Lands – Those lands owned by the City of Los Banos.

Public Places – Shall include all grounds owned by the City.

Public Street – Shall mean and include all roads, streets, avenues, boulevards, alleys, parkways, and other public right-of-way, or any portion thereof, of the City.

Public Trees – Those trees located on Public lands.

Owner – The word “owner” shall mean the legal owner of real property fronting on any street of the City, and any lessee of such owner.

Rights-of-ways – Those lands in the public ownership along public roads or easements.

Shrub – A low woody perennial plant usually having several major branches.

Shrubbery – An area where a number of shrubs are planted.

Street – Shall mean and include all roads, streets, avenues, boulevards, alleys, parkways, and other public rights-of-way, or any portion thereof, of the City.

Street Tree Easement-A strip of land identified on a tract map, parcel map, or other instrument for the planting of street trees.

Landscape Standards – Standards of Landscape design for the City of Los Banos.

Tree – A perennial woody plant having a main trunk and usually a distinct crown.

Recreation Commission – Those members appointed to establish policies, regulations and standards to protect the community forest in Los Banos, California.

Sec. 10-1.03 Maintenance of trees within the public right-of-way and street tree easements.

The City of Los Banos shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, squares, parkways, public right of ways, street tree easements and public grounds , as may be necessary to insure public safety or to preserve or enhance the symmetry and aesthetics of such public grounds. The City may remove or cause to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to electric power lines, gas lines, water lines or other public improvements or is infected with any injurious fungus, insect or pest.

The Public Works Director shall have the power to designate the kind or variety of trees, shrubs, and plants to be planted upon any street, park, pleasure ground, boulevard, alley, public right of way or public place in the City subject to the supervision of the City Manager; provided, however, the owners of property fronting on any street, alley, or public place may petition the Council that such trees, shrubs, or plants shall be a certain kind or variety. The decision of the City Council shall be final.

Sec. 10-1.04 Requests for permits to prune, maintain or remove trees within the public right-of-way and street tree easements.

No person shall cut, trim, prune, plant, remove, injure, or interfere with any tree, shrub, or plant upon any street, park, pleasure ground, boulevard, alley, public right of way, street tree easements or public place in the City without a permit issued by the Public Works Director. The Public Works Director is hereby authorized to grant such permit in his discretion and, where necessary, subject to the condition that the removed tree be replaced by an official tree meeting the specifications of the City. No such permit shall be valid for a longer period than thirty (30) days after its date of issuance.

a. Planting Street Trees. A Permit shall be obtained from the Director by any person proposing to plant or set out any tree on any parkway or street right-of-way that is not a part of an approved Landscape Plan, meeting current City standards.

- (1) The application required herein shall state the number of trees to be planted or set out, the location, grade, and variety of each tree, the method of planting and such other information as the Director may require.
- (2) The Director shall issue the permit upon finding that the proposed species, location and method of planning are consistent with the

requirements of this chapter and will not be injurious to the curbs, gutters and sidewalks or to the surrounding neighborhood.

- b. Root Pruning and Removal. No person shall root, prune, transplant or remove any tree on public property or within the City right-of-way without first filing an application and procuring a permit to do so from the Director.
- c. Tree Trimming. No person shall prune or trim, cut off or perform any work on a single occasion or cumulatively over a three year period, affecting 25% or more of the crown of any tree on public property or within the City right-of-way without first filing an application and procuring a permit to do so from the Director.
- d. No fee shall be charged for any permit issued pursuant to this subsection.
- e. Permit Issuance. The Director shall issue the permit upon finding that the proposed action is necessary to protect the curb, gutter, or sidewalk or to protect public health and safety and that the proposed action is found to be in conformance with industry standards for the care and maintenance of trees, shrubs, and plants. The Director may issue the permit if the proposed removal or trimming is found to be consistent with the purposes of this chapter. The Director may condition any permit for removal of a street tree, granted pursuant to this section, so as to require the permittee to replace the street tree.
- f. Time of performance. All work performed on street trees pursuant to a permit issued by the Director under this section shall be done within thirty (30) days from the issuance of said permit or within such longer period as the Director shall specify.
- g. This permit requirement proposed by this section is not satisfied by approval of other City departments or under City contracts.
- h. The Director may issue permits to Public Utilities not to exceed one (1) year of work undertaken by the utility pursuant to a comprehensive program if related activities are approved by the Director.

Sec. 10-1.05 Request to maintain public utilities within the public right-of-way that may require the cutting or trimming of trees.

It shall be the duty and responsibility of any public utility installing or maintaining any overhead wire or underground pipes or conduit in the vicinity of a parkway strip, to obtain permission from the Director before performing any maintenance on said wires, pipes or conduits, which would cause injury to street trees. Such public utilities shall in no way injure, cut roots, deface, prune or scar any street tree until their plans and procedures have been approved by the Director and a permit issued. The entity may file for permission from the Director by a written request. Such request shall describe the work desired to be done and it shall be within the discretion of the Director to require a written agreement upon the part of the petitioner to pay the cost thereof and to do such work in the way stipulated by the Director before the issuance of any permit under this chapter.

Sec. 10-1.06 Permits required for utility companies to prune, maintain or remove trees in the public right-of-way and street tree easements.

Any person, firm, or corporation maintaining any overhead wires or any pipes or underground conduits along or across any street, park, pleasure ground, boulevard, alley, public right-of-way or public place in the City or owning any property abutting upon any street, park, pleasure ground, boulevard, alley, public right-of-way, street tree easement or public place in the City shall obtain a permit to prune, maintain or remove a street tree within the public right-of-way. It shall be within the discretion of the Public Works Director to require a written agreement upon the part of the petitioner to pay the costs of such work and to do such work in the way stipulated by the Public Works Director before the issuance of any permit therefore.

Sec. 10-1.07 Property owner requirements to maintain private trees that may affect the public right-of-way or the community forest.

- a. Any person, firm, or corporation owning or occupying real property bordering on any street where trees have branches, limbs, trunks or other parts projecting into the public right-of-way shall prune such trees or keep them trimmed in such a manner that they will not obstruct or shade streetlights, obstruct or interfere with the passage of pedestrians on sidewalks, obstruct the vision of traffic signs or obstruct the views of any street or alley intersection.
- b. Any person owning or occupying real property bordering on any street, Park or other public property, on which there may be trees that are diseased or insect infested, shall remove, spray or treat any such trees in a manner that will not infect or damage nearby public vegetation or cause harm to the community or citizens therein.

Sec. 10-1.08 Protection of trees during building construction, repairs, or removal.

During the erection, repair, alteration, or removal of any building, house, or structure in the City no person in charge of such work shall leave any tree, shrub, or plant in any street, park, pleasure ground, boulevard, alley, public right-of-way, street tree easement or public place in the City in the vicinity of such building or structure without such good and sufficient guards or protectors as shall prevent injuries to such tree, shrub, or plant arising out of or by reason of such erection, repair, alteration, or removal.

For the purpose of safeguarding trees during construction, the following conditions shall apply:

- a. Damage to any tree during construction shall be immediately reported to the Director by any person causing such damage, the responsible

- contractor, or the owner of the site and such persons shall be required to treat the tree for such damages as specified by the Director.
- b. Oil, gasoline, chemicals and other construction materials or equipment which might be harmful to trees shall not be stored under the drip line or upslope of the tree(s).
  - c. Drains shall be installed according to City specifications so as to avoid harm to the tree due to excess watering.
  - d. Cutting and filling around the base of the tree shall be done only after consultation with the Director and then only to the extent authorized. The Director may require professional consultation, at the applicant's cost, to make appropriate determinations.
  - e. No paint thinner, paint, plaster or other liquid or solid excess or waste construction materials or waste water shall be dumped on the ground or into any grate between the drip line and the base of the tree or uphill from any tree where such substance might reach the roots through a leaching process.
  - f. Tree protection fences (minimum three (3) foot high visibility fence with metal posts at minimum every ten (10) feet) shall be installed at the drip line to prevent compaction and injury to a tree's surface roots to prevent exposing the trees to disease causing organisms.
  - g. Wherever cuts are made in the ground near the roots of a tree, appropriate measures shall be taken to prevent exposed soil from drying out and causing damage thereto. All cuts within the drip line of a tree are to be made by hand (no backhoes or graders).
  - h. Trimming cuts one (1) inch in diameter and over must be covered at the time the cuts are made with a tree seal pruning compound approved by the Director. All root pruning is to be done by hand.

Sec. 10-1.09 The designation and protection of heritage trees.

- a. Any tree as the term tree is defined in section 10-1.02 located on private property which, because of factors including but not limited to its history, girth, height, species or unique quality, has been found by the Parks and Recreation Commission to have a special significance to the community shall be given a temporary Heritage Tree distinction until the City Council finds it to be true. Such trees shall be placed on a Heritage Tree list which shall be adopted by the City Council by resolution, which resolution may be amended from time to time to add to or delete certain trees therefrom.
- b. Any person who unlawfully vandalizes, grievously mutilates, removes or destroys such a Heritage Tree shall be subject to any appropriate enforcement action by the City, including without limitation the imposition of an administrative citation with the imposition of a civil penalty in the amount set forth by resolution of the City Council for such tree so vandalized, mutilated, removed or destroyed.
- c. The City, in consideration of the Public Significance attributed to the trees designated Heritage Trees, shall have their routine maintenance

performed at the public's expense. The Public Works Director, with the consultation of the City Arborist, shall determine the frequency and extent of the maintenance to be performed. Nothing in this article would prevent the property owner with the appropriate permit to conduct routine and preventative maintenance, pruning and other measures consistent with the approved permit. Removal of Heritage Trees would require City Council approval prior to granting a City permit to remove a Heritage Tree.

Sec. 10-1.10 Interference with City employees while conducting tree planting or maintenance.

No person shall interfere with the Public Works Director or persons acting under his authority while engaged in planting, mulching, pruning, trimming, spraying, treating, or removing any tree, shrub, or plant in any street, park, pleasure ground, boulevard, alley, public right-of-way, street tree easement or public place in the City or in the removal of any stone, cement, or other substance from about the trunk of any tree, shrub, or plant in any such street, park, pleasure ground, boulevard, alley, public right-of-way, street tree easement or public place.

Sec. 10-1.11 The placement of deleterious substances on or around trees in the public right-of-way.

No person shall cause, authorize, or procure any brine water, oil, liquid, dye, or other substance deleterious to tree life to lie, leak, pour, flow, or drip upon or into the soil about the base of any tree, shrub, or plant in any street, park, pleasure ground, boulevard, alley, public right of way, street tree easement or public place in the City or onto any sidewalk, road, or pavement within the City at a point from which such substance may be lying upon or flowing, dripping, or seeping into such soil to injure such tree, shrub, or plant or to otherwise harm or kill any such tree, shrub, or plant.

Sec. 10-1.12 Impeding free access of water to trees in the public right-of-way.

No person without the approval of the Public Works Director shall place or maintain any stone, cement, or other substance so that it shall impede the free access of water or air to the roots of any tree, shrub, or plant in any street, park, pleasure ground, boulevard, alley, public right-of-way, street tree easement or public place in the City.

Sec. 10-1.13 The attachment of wires, ropes, signs, and other devices to public trees.

No person, without the permission of the City Manager and Public Works Director, shall attach or keep attached to any tree, shrub, or plant in any street, park, pleasure ground, boulevard, alley, public right-of-way, street tree easement

or other public place in the City, or to the guard or stake intended for the protection thereof, any wire, rope, sign, or other device whatsoever.

Sec. 10-1.14 Building construction necessitating trimming or removal: Permits required: Conditions: Payment of costs.

When the erection, repair, alteration, or removal of any building, house, or structure necessitates the trimming, pruning, or removal of any tree, shrub, or plant on any street, park, pleasure ground, alley, public right-of-way, street tree easement or other public place in the City, except any trimming, pruning, or removal required by the construction of a residential driveway, it shall be within the discretion of the Public Works Director to refuse permission to do such work. Applications for permits to trim, prune, or remove any tree or plant on any of such places for such reasons shall be filed with the Public Works Director at least three (3) business days prior to the time of doing such work. The Public Works Director may stipulate the conditions upon which any trimming, pruning, or removal may be done and may require the applicant to enter into an agreement whereby the applicant shall agree to pay all costs incurred for any inspections, labor, equipment, or services deemed necessary by the Public Works Director.

Sec. 10-1.15 Traffic visibility obstructions due to over grown foliage.

- a. Inspections. The Public Works Director may inspect any tree, shrub, or plant upon any street, park, pleasure ground, boulevard, alley, public right-of-way, street tree easement or public place in the City or on any private property, which tree, shrub, or plant overhangs or projects into any street, park, pleasure ground, boulevard, alley, or public place in the City, to determine whether the same, or any part thereof, is in such condition as to constitute a hazard or an impediment to the progress or vision of anyone traveling on such street, park, pleasure ground, boulevard, alley, public right-of-way, street tree easement or public place.
- b. Trimming or removal: Notices of intent. The Public Works Director may cause the same or such parts thereof, as are hazardous or an impediment to be trimmed or removed so as to remedy such condition. However, no such tree, shrub, or plant standing on any private property shall be cut down or removed unless ten (10) days' notice in writing of such intention shall be given by the Public Works Director to the owner, occupant, or agent of the property upon which such described condition exists.
- c. Trimming or removal: Objections. If the owner, occupant, or agent of such private property, within seven (7) days after the receipt of such notice, files his objection to such removal with the Public Works Director, such tree, shrub, or plant shall not be cut down or removed unless the Public Works Director shall give such owner, occupant, or agent a reasonable opportunity to be heard in support of such objection.

- d. Trimming or removal: Objections: Overruling. If such objection shall not be sustained, the Public Works Director shall thereafter approve in writing the cutting down or removal of such hazardous tree, plant, or shrub.
- e. Liability. The provisions of this section shall not be deemed to impose any liability upon the City or its officers or employees nor relieve the owner of any private property from the duty to keep any tree, shrub, or plant upon his property or under his control in such a condition as to prevent it from constituting a hazard or an impediment to travel or vision upon any street, park, pleasure ground, boulevard, alley, public right of way, street tree easement or public place within the City.

Sec. 10-1.16 Public nuisances on public or private property: Declaration.

All trees or shrubs growing in the City, which trees or shrubs are infested or infected with parasites or insect pests and which, unless exterminated, may spread to and injure or destroy the trees and shrubs of an entire community or neighborhood, are hereby declared to be public nuisances.

Sec. 10-1.17 Public nuisances on public or private property: Abatement: Duty of property owners.

It shall be the duty of each and every owner of real property upon which such a nuisance exists, as set forth in Section 10-1.16 of this chapter, to abate, or cause the nuisance to be abated, without delay, by the extermination of such parasites or insect pests from all such infested trees or shrubs growing on such property. The duty of abating such public nuisances and exterminating such parasites and insect pests infecting trees or shrubs on or near the boundary line of adjoining private properties shall be upon the respective owners of such trees or shrubs; as such ownership is determined by the provisions of Sections 833 and 834 of the Civil Code of the State.

Sec. 10-1.18 Public nuisances on public or private property: Abatement by property owners: Methods.

Such nuisances, as set forth in Section 10-1.16 of this chapter, shall be abated by spraying the infected trees or shrubs with an insecticide or fungicide or by other treatment, as the particular case may require, so as to completely exterminate such parasites or insect pests from the trees or shrubs affected; provided, however, whenever any tree or shrub is found to be in such bad condition from the infection of parasites or insect pests that, in the opinion of the Public Works Director, it is impossible to save the tree or shrub, the owner of the land on which such tree or shrub is growing shall completely destroy the same by removal.

Sec. 10-1.19 Public nuisances on private property: Abatement by owners: Notices to abate.

Whenever the Public Works Director shall find any trees or shrubs growing upon private property, which trees or shrubs are so infected or infested with parasites or insect pests that, unless they are exterminated, they may spread to and injure or destroy other trees or shrubs in the neighborhood, the Public Works Director shall give notice to the owner that unless such nuisance is abated without delay by the extermination of such parasites or insect pests, the exterminating work will be done by the City, and the expense thereof shall be assessed upon the lots and lands from which such parasites or insect pests are exterminated.

Sec. 10-1.20 Public nuisances on private property: Abatement by owners: Notices to abate: Form.

The notice required by the provisions of Section 10-1.19 of this chapter shall be substantially in the following form:

Notice to Destroy Tree Pests

Notice is hereby given, pursuant to the provisions of Chapter 1 of Title 10 of the Los Banos Municipal Code, that certain trees and shrubs on property assessed to you in the City of Los Banos are infested or infected with parasites or insect pests which should be exterminated by spraying them with a chemical solution to be designated by the Public Works Director of the City of Los Banos, or by trimming such trees and shrubs, or by otherwise exterminating such parasites or insect pests, as directed by the Public Works Director; otherwise such parasites or pests may spread to and injure or destroy other trees or shrubs in the neighborhood, and that such condition constitutes a public nuisance. You are hereby notified to exterminate such parasites or insect pests without delay; otherwise the work of exterminating them and abating such nuisance will be done by the undersigned, in which case the expense thereof will be assessed upon your property and will constitute a lien thereupon until paid, and, unless paid as provided in said Chapter 1 of Title 10, will be placed upon the next tax roll upon which general City taxes are collected and collected in the manner and form and under the applicable provisions of the tax laws. You are further notified to appear before the City Council of the City of Los Banos at its meeting on....., 20....., at 7:00 p.m. in the Council Chambers in the City Hall, Los Banos, California, and show cause, if any you have, why such nuisance should not be found to exist and the same ordered abated, as provided in said Chapter 1 of Title 10.

Dated....., 20.....

.....  
Public Works Director of the City of Los Banos

Sec. 10-1.21 Public nuisances on private property: Abatement by owners: Notices to abate: Service and posting.

The Public Works Director shall mail a copy of the notice required by the provisions of Section 10-1.19 of this chapter, with all blanks properly filled, to each and every owner of real property, on which such a nuisance exists, whose name and address appear on the last equalized assessment roll. If the name and address of such owner do not appear on the assessment roll or are not otherwise known to the Public Works Director he shall cause a copy of the notice to be conspicuously posted on the property affected. The notices so posted shall be substantially the same as the notices served by mail. The mailing or posting of such notices shall be done and completed at least ten (10) days before the time fixed for the hearing set forth in the notice. The failure of any property owner to receive such notice shall not deprive the City Council from proceedings nor affect in any manner the validity of any of the proceedings taken, or to be taken, or of any assessment levied pursuant to the provisions of this chapter.

Sec. 10-1.22 Public nuisances on private property: Abatement by owners: Notices to abate: Affidavits.

Upon giving the notice as set forth in Section 10-1.21 of this chapter, the Public Works Director shall make and file with the City Clerk his affidavit stating the existence of the nuisance and that in each and every case the owner of real property having trees or shrubs thereon infected with parasites or insect pests was notified by mail or by posting the notices required by the provisions of this chapter. A copy of the form of notice so mailed or posted shall be annexed to the affidavit, together with a list of all properties on which such infested trees or shrubs have been declared to be a nuisance.

Sec. 10-1.23 Public nuisances on private property: Abatement by City: Council orders.

The Public Works Director shall attend the hearing set by the Council pursuant to the provisions of Section 10-1.20 of this chapter and report on any other matters desired by the Council concerning such nuisances. Thereupon, if satisfied that such nuisances exist, the Council shall by resolution find such nuisances to exist and order the Public Works Director to proceed with the work of abating the nuisances pursuant to the provisions of this chapter.

Sec. 10-1.24 Public nuisances on private property: Abatement by owners: Methods.

Any owner of real property on which any trees or shrubs are infected or infested may cause such parasites or insect pests to be exterminated; provided, however, in all such cases the work shall be done to the satisfaction of the Public Works

Director and shall be undertaken prior to the time his assistants arrive to do the work.

Sec. 10-1.25 Public nuisances on private property: Abatement by City: Reports of costs.

When the work ordered by the Council pursuant to the provisions of Section 10-1.23 of this chapter is done by the Public Works Director, he shall keep an account of the costs of abating such nuisances upon each separate lot or parcel of land and shall embody such account in a report and assessment list to the Council which he shall file with the City Clerk. Such report and assessment list shall refer to each separate lot or parcel of land by a description sufficient to identify it and shall state separately the cost of exterminating such parasites or insect pests on each lot or parcel of land.

Sec. 10-1.26 Public nuisances on private property: Abatement by City: Reports of costs: Notices.

The Public Works Director shall post a copy of the report and assessment list required by the provisions of Section 10-1.25 of this chapter near the entrance door to the City Hall, together with a notice of filing the same and of the time and place when and where it will be submitted to the Council for hearing and confirmation at least ten (10) days before the day fixed therein. The Public Works Director shall also mail or post copies of such notice to all the owners of property on which such nuisance was abated in the manner, for the time, and with like effect, and file with the City Clerk an affidavit thereof as set forth in Sections 10-1.21 and 10-1.22 of this chapter. Such notices shall be substantially in the following form:

Notice of Filing Report and Assessment List For Exterminating Tree Pests and of Hearing Thereon

Notice is hereby given that the Public Works Director of the City of Los Banos has filed with the City Clerk of said City a report and assessment list covering the cost of exterminating parasites and insect pests from trees and shrubs growing on private property in said City, a copy of which is posted near the entrance door to the City Hall. Your property is assessed therein in the sum of \$.....

Notice is further given that on the..... Day of....., 20....., at 7:00 p.m. in the Council Chambers in said City Hall said report and assessment list will be presented to the City Council of said City for consideration and confirmation, and any and all persons interested having any objections to said report and assessment list, or to any other matter contained therein or relating thereto, may appear at said time and place and be heard. Notice is further given that you may pay said assessment at the office of the City Clerk at any time before 5:00 p.m., August 31, 20....., and, if not paid before that

time, it will be entered against your property on the City tax roll.

Dated ....., 20.....

.....  
Public Works Director of the City of Los Banos

Sec. 10-1.27 Public nuisances on private property: Abatement by City: Reports of costs: Hearings.

The owners and all other persons interested in any work done pursuant to the provisions of Section 10-1.23 of this chapter, or in the assessment made for such work, who feel aggrieved by any act or determination of the Public Works Director in relation thereto, or who claim that the work was not performed in a good and workmanlike manner, or who claim that any portion of the work, for any reason, was omitted or illegally included, or who have any objections to the correctness of the assessment or other act or determination or proceeding of the Public Works Director, may appear before the Council at the time and place set forth in the notice required by the provisions of Section 10-1.26 of this chapter and be heard. Following such hearing the Council may remedy and correct any error and revise and correct any of the acts or determinations of the Public Works Director relating to such work, and may amend, alter, modify, or correct the assessment in such manner as to the Council shall seem just, and may require the work to be completed according to its directions. All the decisions and determinations of the Council following such hearing shall be final and conclusive. The assessment, when confirmed, shall become and remain a lien upon the properties stated therein until paid.

Sec. 10-1.28 Public nuisances on private property: Abatement by City: Assessments for costs: Payment.

Any property owner may, at any time prior to 5:00 p.m. of August 31, following the doing of the work pursuant to the provisions of Section 10-1.23 of this chapter, pay the amount assessed against his property at the office of the Public Works Director, and the lien thereof against the property affected shall be released.

Sec. 10-1.29 Public nuisances on private property: Abatement by City: Assessments for costs: Collection with taxes.

After August 31 following the completion of the work pursuant to the provisions of Section 10-1.23 of this chapter the Chief Financial Officer shall enter and extend the amounts of the assessments made for such work and remaining unpaid against the respective lots or parcels of land on the City tax roll, and the Tax Collector shall include the sums on the bills for such taxes. Thereafter such amounts shall be collected at the same time and in the same manner as general

City taxes are collected and shall be subject to the same penalties and the same procedure and sale in the event of delinquency. All laws applicable to the levy, collection, and enforcement of City taxes shall be applicable to such special assessments.

Sec. 10-1.30 City of Los Banos Standards of Landscape Design and implementation.

The Public Works Director shall prepare and recommend, and the City Council shall adopt by resolution a comprehensive plan for the planting and maintaining of trees within public streets of the City, which plan shall be designated as the Standards of Landscape Design. Said plan shall include those public streets identified in Section 10-1.02 which, in the Commission's judgment, bear a relationship to the purposes of this chapter. The plan shall be so prepared that all appropriate public streets may be included in the plan. The plan shall consist of a written statement, maps, and such detailed designs as may be appropriate, setting forth or depicting the following:

- a. The specific types of trees to be planted and maintained, including their desirable spacing and location;
- b. The identification of those existing trees which should be retained;
- c. The identification of those trees which may constitute a hazard or public nuisance, and which may require substantial maintenance or removal.

Sec. 10-1.31 City of Los Banos master list of approved street trees for planting in the public right-of-way and street tree easements.

The Parks and Recreation Department with the assistance of the Director of Public Works shall prepare, recommend and maintain a master street tree list enumerating the species of shade and ornamental trees permitted to be planted on public property. The master street tree list shall be submitted to the Parks and Recreation Commission which shall make a final recommendation to the City Council. The City Council shall adopt this by a resolution. A master list of trees that are suitable for implementing the, City of Los Banos Landscape Standards, and for the planting of trees within all other public streets not included in the comprehensive plan. The master list shall be prepared and adopted within three (3) months after the adoption of the ordinance codified in this section. In preparing and amending the master list, the Director shall consult with persons who, by reason of training and experience, have expertise in the selection, planning, planting, and maintenance of trees that are well suited to local climatic and soil conditions. Upon its adoption, the list shall be known as the master list of trees, and shall be placed on file in the office of the City Clerk and the offices of the Director of Public Works, and the Director of Planning, and shall thereafter be the official master list. Revisions or changes to the master list may be made in the same manner described hereinabove for the preparation, adoption, and filing of the original master list. The Master Street Tree List may be reviewed annually by the Director of Public Works and the Parks and Recreation Commission.

Sec. 10-1.32 Conformance.

All trees hereinafter planted within a public street within the City shall conform as to type, species, spacing, and location as prescribed by the comprehensive street tree plan, if applicable, or by the master list of trees. Projects requiring approval of the City Planning Department or City Planning Commission under provisions of site plan review as prescribed by the City's Zoning Ordinance shall conform to the requirements of this section.

Sec. 10-1.33 Liability.

Nothing contained in the ordinance codified in Sections 10-1.01 through 10-1.35 shall be deemed to impose any liability upon the City, its officers or employees, nor to relieve any private property owner from the duty to avoid violating any of the applicable provisions of the ordinance codified in Sections 10-1.01, 10-1.01.05 and 10-1.26 through 10-1.31.

Sec. 10-1.34 Enforcement.

The Director of Public Works is hereby charged with the responsibility for the enforcement of the ordinance codified in Sections 10-1.01 through 10-1.35, and may serve notice to any person in violation thereof or institute legal proceedings as may be required, and the City Attorney is hereby authorized to institute appropriate proceedings to that end.

Sec. 10-1.35 Trees in new developments.

- a. Residential subdivisions. Developers of residential dwelling units shall be required to plant two (2) street trees per every lot, and where this is not possible due to lot configuration, a separate location within the subdivision may be designated to allow compliance or an in-lieu fee established by resolution paid by the developer to fulfill this requirement approved by the Director of Public Works, (four (4) trees where space permits on corner lots) prior to the final inspection.
- b. Commercial and industrial developments shall comply with the standards set forth in the City of Los Banos Landscape Standards.
- c. A tree inspection fee is required for all residential and commercial developments. The fees shall be determined by City Council resolution.
- d. Tree mixture. Landscape plans shall encourage a mixture of tree types.
- e. Planting of trees. Planting of trees in the City shall be in accordance with standards recommended by the City of Los Banos Landscape Standards.
- f. Tree maintenance. Trees shall be maintained in good health, and shall not be trimmed or pruned to reduce the natural height or overall crown of the tree except as necessary for the health of the tree and public safety in accordance with accepted arboricultural practices, or as may otherwise be approved by the City of Los Banos Parks Department. Dead or seriously

diseased trees shall be replaced with comparable and compatible specimen from the City approved tree list.

- g. Landscape for Commercial Projects shall be subject to annual inspections. Commercial Developments shall enter into an agreement with the City at the time of development that the landscape shall be maintained in substantial conformance with the approved landscape plan as determined by the Director of Public Works. It shall be the responsibility of the Public Works Director to enforce the agreement.

Section 2. Section 10-1.32 of Chapter 1 of Title 10 of the Los Banos Municipal Code is hereby renumbered and added in its entirety to Chapter 5 of Title 5 as Section 5-5.05 as follows:

Sec. 5-5.05 Park curfew.

It is unlawful for any person to be or remain in any City park between the hours of 10:00 p.m. and 6:00 a.m. of the following day, without having received a permit so to do from the Parks and Recreation Department.

Section 3. To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

Section 4. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

Section 5. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Faria and seconded by Council Member Sousa on the 15<sup>th</sup> day of October, 2008.

Passed on the 5<sup>th</sup> day of November, 2008 by the following vote:

AYES: Council Members Brooks, Faria, Sousa, Villalta, Mayor Jones  
NOES: None  
ABSENT: None

APPROVED:

/s/ Tommy Jones  
Tommy Jones, Mayor

ATTEST:

/s/ Lucille L. Mallonee  
Lucille L. Mallonee, City Clerk