

1 [Public Works Code - landmark trees and penalties for violations.]

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3 **Ordinance amending the Public Works Code by amending Section 802 to modify**
4 **various definitions; amending Sections 802, 806, and 809 to redefine nuisance trees as**
5 **hazard trees; amending Sections 802 and 803 authorizing the Urban Forestry Council**
6 **to succeed to the powers and duties of the Tree Advisory Board; amending Sections**
7 **804, 807, 808, and 810 concerning landmark trees and procedures to designate,**
8 **nominate, and remove landmark trees; amending Section 811 to create civil penalties**
9 **and fines and to modify provisions on administrative penalties; and making**
10 **environmental findings.**

11 Note: Additions are *single-underline italics Times New Roman*;
12 deletions are *strikethrough italics Times New Roman*.
13 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. Environmental Findings. The Planning Department has determined that the
16 actions contemplated in this Ordinance are in compliance with the California Environmental
17 Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is
18 on file with the Clerk of the Board of Supervisors in File No. and is incorporated herein
19 by reference.

20 Section 2. The San Francisco Public Works Code is hereby amended by amending
21 Sections 802, 803, 804, 806, 807, 808, 809, 810, and 811, to read as follows:

22 SEC. 802. DEFINITIONS.

23 Unless the context specifically indicates otherwise,

24 (a) "Administrative cost" shall mean 20 percent of the Department's actual
25 replacement cost, or a minimum of \$100, whichever is greater.

1 (b) "City" shall mean the City and County of San Francisco.

2 (c) "Community Boards" of San Francisco shall mean the neighborhood
3 mediation/dispute settlement service established under the auspices of The Community Board
4 Program, Inc.

5 (d) "Department" shall mean the Department of Public Works of the City and County
6 of San Francisco.

7 (e) "Director" shall mean the Director of the Department of Public Works or the
8 Director's designee.

9 (f) "Ex officio" shall mean a current employee of any City department, or California
10 or federal agency whose appointment to the *Tree Board Urban Forestry Council* has been
11 approved by the Director *of the Department of the Environment*.

12 (g) "Injure" or "injury" shall mean any act which harms or damages a tree, including
13 but not limited to impact, cutting, carving, *painting*, transplanting, or knocking over, and
14 includes but is not limited to the following: injurious attachment of any rope, wire, nail,
15 advertising poster, or other contrivance to any street tree *as set forth in Sections 675 and 675.1 of*
16 *the Municipal Police Code*; intentionally or negligently allowing any gaseous, liquid, or solid
17 substance that is harmful to a tree to come into contact with a tree; setting fire or intentionally
18 or negligently permitting any fire to burn when such fire or the heat therefrom will injure any
19 part of any tree; pruning which in and of itself will kill or cause a tree to decline; or severing of
20 all or part of a tree.

21 (h) "In-lieu fee" shall mean a fee deposited into the Adopt-A-Tree Fund and
22 imposed by the Director. The in-lieu fee shall be equal to the replacement value of a tree(s) to
23 be removed or trees that have been destroyed *or as otherwise specified in Section 811*. In the
24 case of trees required to be planted by Section 143 of the City Planning Code, yet excused
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1 under Section 143(d) of the Planning Code, the in-lieu fee shall be equal to the City's cost to
2 plant and water a tree for two years.

3 (i) "Interested San Francisco organization" shall mean a San Francisco
4 organization or individual that has made a written request to the Department for notification of
5 proposed street tree removals in a specified neighborhood(s).

6 (j) "Landmark tree" shall mean a tree so designated pursuant to Section 810 of this
7 Article.

8 (k) "Landscape material" shall mean any tree, shrub, groundcover or other plant.

9 (l) "Maintenance" shall mean those actions necessary to promote the life, growth,
10 health, or beauty of a tree. Maintenance includes both routine and major activities. "Routine
11 maintenance" shall include adequate watering to ensure the tree's growth and sustainability;
12 weed control; removal of tree-well trash; staking; fertilizing; routine adjustment and timely
13 removal of stakes, ties, tree guards, and tree grates; bracing; and sidewalk repairs related to
14 the tree's growth or root system pursuant to Section 706 of this Code. "Major maintenance"
15 shall include structural pruning as necessary to maintain public safety and to sustain the
16 health, safety, and natural growth habit of the tree; pest and disease-management procedures
17 as needed and in a manner consistent with public health and ecological diversity; replacement
18 of dead or damaged trees. Pruning practices shall be in compliance with International Society of
19 Arboriculture Best Practices and ANSI Pruning Standards, whichever is more protective of tree
20 preservation.

21 (m) "Median strip" shall mean the dividing area in the public way between opposing
22 lanes of vehicular traffic.

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1 (n) "Notice" shall mean written notice by personal delivery or by mailing, either by
2 letter or postal card, postage prepaid to the last known address as the same appears on the
3 City's most recent assessment rolls.

4 (o) "Nuisance Hazard tree" shall mean any tree that poses a hazard to person or
5 property. A tree may be deemed a nuisance hazard if it or any part of it: (1) appears dead,
6 dangerous, or likely to fall; (2) obstructs or damages a street, ~~or~~ sidewalk, or other structure; (3)
7 harbors a serious disease or infestation threatening the health of other trees; (4) interferes
8 with vehicular or pedestrian traffic; (5) obstructs official street cleaning activities; or (6) poses
9 any other significant hazard or potential hazard, as determined by the Director.

10 (p) "Person" shall mean any individual, firm, partnership, association, corporation,
11 company, or organization of any kind.

12 (q) "Planting" shall mean putting or setting into the ground or into a container to
13 grow and irrigating until self-sufficient.

14 (r) "Removal" shall mean any intentional or negligent moving, carrying away,
15 elimination or taking away of part or all of a tree.

16 (s) "Replacement value" shall mean the actual cost to the Department of replacing
17 a tree or landscape material removed or destroyed with a comparable tree or landscape
18 material. Certain trees or landscape material, because of their size, species or historical
19 significance, cannot be replaced from available nursery stock. In such case, "replacement
20 value" shall be determined pursuant to the valuation formula adopted by the International
21 Society of Arboriculture, as amended from time to time, plus the Department's actual costs to
22 replace the tree. "Replacement value" shall include the Department's administrative costs.

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1 (t) "Sidewalk" shall mean the area between the curbing and the abutting private
2 property lot line, whether paved or unpaved, as legislated by the Board of Supervisors and as
3 reflected in the Department's official maps.

4 (u) "Street" shall mean the vehicular travel-way portion of any public street, avenue,
5 boulevard, lane, road, parkway, freeway, or other public way.

6 (v) "Street tree" shall mean any tree growing within the public right-of-way, including
7 unimproved public streets and sidewalks, and any tree growing on land under the jurisdiction
8 of the Department.

9 (w) "Tree" shall mean any large perennial plant having a woody trunk(s), branches,
10 and leaves.

11 (x) ~~"Tree Advisory Board" or "Tree Board" shall mean a board of private citizens to be
12 appointed and to perform specific duties as set forth in Section 803 of this Article.~~

13 (y)—"Urban forest" shall mean all trees on public streets and rights-of-way within the
14 borders of the City and County of San Francisco, ~~and~~ any trees growing on land subject to the
15 jurisdiction of the Department, and any other trees subject to the provisions of this Article.

16 (y) "Urban Forestry Council" shall mean the Urban Forestry Council as established under
17 the Environment Code Chapter 12.

18 SEC. 803. ~~TREE ADVISORY BOARD; ESTABLISHMENT; APPOINTMENT~~URBAN
19 FORESTRY COUNCIL; ADDITIONAL POWERS AND DUTIES.

20 (a) ~~There is hereby established an advisory board to be known as the Tree Advisory Board~~
21 ~~consisting of nine private citizens, at least three of whom shall be professionally trained and~~
22 ~~experienced in a tree related field. All members of the Tree Board shall serve without compensation.~~
23 ~~Members shall be appointed by the Director for a term of four years and shall serve at the Director's~~
24 ~~pleasure. All terms shall commence 30 days after the enactment of this Article. Members may serve~~

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1 ~~successive terms without limitation. At least one member shall be selected from a list of persons~~
2 ~~nominated by the Director, one from a list nominated by the Mayor, and one from a list nominated by~~
3 ~~the Board of Supervisors. At least one Department representative shall serve as an ex officio nonvoting~~
4 ~~member of the Tree Board. Any City agency, State agency, or federal agency may request of the~~
5 ~~Director an appointment to the Tree Board as an ex officio nonvoting member.~~

6 ~~(b) — The Tree Board shall meet at least six times a year and shall establish its own operating~~
7 ~~procedures which, at a minimum, shall meet the public notice, meeting, voting, agenda and other~~
8 ~~procedural requirements of Section 3.500 of the San Francisco Charter.~~

9 ~~(c) —~~The ~~Tree Board~~ Urban Forestry Council shall serve in an advisory capacity to the
10 Director or his designee on matters relating to this Article and to tree management in the City.
11 The responsibilities of the ~~Tree Board~~ Urban Forestry Council may include but shall not be
12 limited to the following:

- 13 (1) Studying the problems and determining the needs of the City concerning
14 its street tree planting and maintenance programs, and advising the Director in this regard;
- 15 (2) Preparing for the Director an annual report detailing the state of the urban
16 forest;
- 17 (3) Recommending to the Director appropriate species of trees to be planted
18 on City streets or other areas under the Department's jurisdiction;
- 19 (4) Working with the Community Boards of San Francisco in developing
20 guidelines, standards, and procedures for the mediation of conflicts between property owners
21 over the protection of views, solar access, planting/removal of trees, and other tree-related
22 issues;
- 23 (5) Working with the Director concerning the maintenance of an Urban
24 Forestry Management Plan;

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1 (6) Developing and recommending criteria for establishing "landmark" status
2 for trees under the jurisdiction of the Department;

3 (7) Recommending to the Director information to be distributed to the public
4 concerning the selection, planting, and maintenance of trees throughout the City; and

5 (8) Recommending to the Director desirable City tree programs and
6 activities, including legislation and funding mechanisms.

7 (b) The Urban Forestry Council shall perform such other duties assigned to it under the
8 Municipal Codes.

9 SEC. 804. JURISDICTION.

10 (a) Department's Jurisdiction. The Department shall have jurisdiction over the
11 planning, planting, maintenance, and removal of trees in any street or other public right-of-way
12 as defined in Section 244 of this Code; over any landscape material in any street median,
13 center strip, or other landscaped portion of a public right-of-way; over trees and other
14 landscape material in other public spaces under the jurisdiction of the Department; *and* over
15 nuisance hazard trees on private property only as specified in Section 809 of this Article; and
16 over landmark trees on private property only as specified in Section 810.

17 SEC. 806. PLANTING AND REMOVAL OF STREET TREES.

18 (a) Planting and Removal by the Department.

19 (1) Planting. The Department may determine to plant a new tree(s) in a
20 sidewalk or public right-of- way. When the Department determines to plant a new street
21 tree(s), the Department will undertake maintenance responsibility for such new street tree and
22 shall send a courtesy notice to the abutting property owner prior to planting such new tree.
23 Any objections to the proposed work must be submitted to the Director in writing and
24 postmarked within 30 days after notice by the Director. The Director shall consider such
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1 objections and may hold a hearing, in the Director's discretion. The Director's decision on the
2 matter shall be final and nonappealable.

3 (2) Removal of Street Trees. No street tree shall be cut down or removed by
4 the Department unless:

5 (A) The Department gives 30 days' prior written notice to the owner of the
6 property abutting the affected tree; and

7 (B) Thirty days prior to the removal date, the Department notifies all
8 interested San Francisco organizations and owners and, to the extent practical, occupants of
9 properties that are on or across from the block face where the affected tree is located. In
10 addition, 30 days prior to the removal date, the Department shall post a notice on the affected
11 tree.

12 (3) Appeal of Tree Removal.

13 (A) If within 30 days after the giving of notice for street tree removal, as
14 specified in Subsection (a)(2), or if within 15 days after the giving of notice for removal of a
15 *nuisance hazard* street tree, as specified in Subsection (a)(4), any person files with the
16 Department written objections to the removal, the Director shall hold a hearing to consider
17 public testimony concerning the proposed tree removal. Written notice of the date, time and
18 place of the hearing shall be posted on the affected tree, provided in a newspaper of general
19 circulation, and sent to the objecting party, the owner of the property abutting the affected
20 tree, and all interested San Francisco organizations, not less than seven days prior thereto.

21 (B) The Director shall issue his or her written decision and order on the
22 objections after the public hearing specified above.

23 (C) The Director's decision shall be final and nonappealable.

24 (4) Removal of *Nuisance Hazard* Street Trees.

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1 (A) No *nuisance hazard* street tree shall be cut down or removed by the
2 Department unless:

3 (i) The Department gives 15 days' prior written notice to the owner of the
4 property abutting the affected tree; and

5 (ii) Fifteen days prior to the removal date, the Department notifies all
6 interested San Francisco organizations and owners and, to the extent practical, occupants of
7 properties that are on or across the block face where the affected tree is located. In addition,
8 15 days prior to the removal date, the Department shall post a notice on the affected tree.

9 (B) *Nuisance Hazard* street tree shall have the same meaning as
10 "*nuisancehazard* tree" in Section 802(o) except that a *nuisance hazard* street tree is located
11 within the public right-of-way and is the maintenance responsibility of the Department.

12 (5) Emergency Removal. In the case of manifest danger and immediate
13 necessity, as determined by the Director, the Department may remove any street tree
14 immediately. After such emergency removal, the Department shall make a reasonable effort
15 to notify owners and, to the extent practical, occupants of properties that are on or across
16 from the block face where the affected tree was removed and interested San Francisco
17 organizations of the necessity for such action.

18 (b) Planting and Removal by Persons Other Than the Department.

19 (1) Planting and Removal Permits. It shall be unlawful for any person to plant
20 or to remove any street tree without a valid permit for such work issued by the Department. All
21 permits for the planting or removal of street trees issued by the Director for residential
22 properties shall be recorded on the Report of Residential Building Records in accordance with
23 Section 351 of the Housing Code. All work associated with a street tree permit must be
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1 completed within six months of issuance, unless an extension has been granted by the
2 Department.

3 (2) Planting. An abutting property owner who desires a permit to plant a
4 street tree shall apply to the Department on the designated form. If approved by the Director,
5 a permit to plant the specified species of tree(s) shall be issued to the applicant. There shall
6 be no administrative fee imposed for a permit to plant a street tree unrelated to property
7 development. The Director's decision on a street tree planting permit shall be final and
8 appealable to the Board of Appeals.

9 (3) Removal.

10 (A) An abutting property owner who desires a permit to remove a street tree
11 shall apply to the Department on the designated form. Such application must be accompanied
12 by an administrative fee in accordance with a fee schedule adopted by the Director. The
13 Department may grant or deny the permit. If the Department grants a tree removal permit, it
14 may require that another street tree be planted in the place of the removed tree or impose an
15 in-lieu fee.

16 (B) In addition, 10 days prior to the removal date, the Department shall post a
17 notice on the affected tree. If within 10 days after the giving of such notice any person files
18 with the Department written objections to the removal, the Director shall hold a hearing prior to
19 removing the tree. Written notice of the date, time and place of the hearing shall be posted on
20 the affected tree and sent to the objecting party not less than seven days prior thereto.

21 (C) The Director shall issue his or her written decision and order on the
22 objections after the public hearing specified above.

23 (D) The Director's decision shall be final and appealable to the Board of
24 Appeals.

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1 (c) Planting and Removal City Agencies, Commissions, or Departments. If a City
2 agency, commission, or department other than the Department of Public Works desires to
3 plant or remove a street tree, such agency, commission, or department shall be subject to the
4 provisions of Subsection (b); provided, however, that for purposes of street tree removal, the
5 notice and procedures for Director's hearings set forth in Subsections (a)(2) and (a)(3)(A) and
6 (B) shall apply.

7 SEC. 807. DEPARTMENT OF PUBLIC WORKS URBAN FORESTRY PROGRAM;
8 POWERS AND DUTIES.

9 (a) Arterial Planting Program. The Department shall continue its program of
10 appropriate street tree planting along major traffic routes and commercial streets throughout
11 the City.

12 (b) Neighborhood Planting Program. The Department shall continue to encourage
13 and support neighborhood planting programs. Support may include, but need not be limited
14 to, provision of trees and materials, sidewalk cutting and removal, planting labor, technical
15 advice, and organizational assistance. The Department is hereby authorized to donate such
16 funds, materials and labor to neighborhood planting programs as are deemed by the Director
17 to be in the public interest and in the interest of the promotion of the urban forest.

18 (c) Public Education. The Department shall undertake an on-going program of
19 public outreach and education in order to promote public understanding of the City's urban
20 forest and public adherence to the standards and procedures established under this Article.

21 (d) Authority over Site Development Plans.

22 (1) The Department shall have the authority to review and comment on site
23 development plan applications received by the City's Central Permit Bureau that pertain to the
24 planting, alteration, or removal of street trees. The Department shall also have the authority to
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1 review and comment on site development plan applications that pertain to the alteration or
2 removal of landmark trees designated pursuant to Section 810(a) of this Article.

3 (2) If the Zoning Administrator modifies or waives the requirements of
4 Planning Code Section 143 pursuant to Planning Code Section 143(d), the Department may
5 impose an in-lieu fee of the property owner so excused. Further, if a property owner is
6 required to plant a street tree pursuant to Planning Code Section 143, the Department can
7 require that the property owner maintain such tree or replace any such tree that subsequently
8 dies or is removed by any person, or pay an in-lieu fee.

9 (e) Adopt-A-Tree Fund. Pursuant to Section 10.117-77 of the Administrative Code,
10 the Department shall maintain an Adopt-A-Tree Fund to enhance the urban forestry program.

11 (f) In-Lieu Planting Program. The Department shall develop and implement an In-
12 Lieu Planting Program to offset the loss of street trees *and landmark trees* due to removal,
13 destruction, or death. The In-Lieu Planting Program shall also compensate for the loss of
14 trees required to be planted by Section 143 of the Planning Code, yet excused by the Zoning
15 Administrator pursuant to Planning Code Section 143(d). The Department may impose an in-
16 lieu fee in accordance with a fee schedule adopted by the Director where a street tree is
17 destroyed, removed or is excused from planting where otherwise required by Planning Code
18 Section 143. The Department may also assess an in-lieu fee *or such other penalty as set forth in*
19 *Section 811* as mitigation for violation of the requirements of this Article. *As set forth in Section*
20 *811, in-lieu fees shall be deposited in the Adopt-A-Tree Fund.*

21 (g) Tree Adoption Program. The Department shall develop and implement a tree
22 adoption program to allow persons to donate money for the purpose of tree planting and
23 maintenance. Money donated to the City and County for the purpose of tree planting and
24 maintenance shall be deposited into the Adopt-A-Tree Fund.

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1 SEC. 808. PROTECTION OF TREES AND LANDSCAPE MATERIAL.

2 (a) Injury to or Destruction of Trees Prohibited. It shall be unlawful for any person to
3 intentionally, maliciously or through gross negligence injure or destroy a street tree, ~~or any~~
4 tree on City property, or a landmark tree. Removal of a tree under City order or removal in
5 accordance with a permit issued pursuant to Section 806 or Section 810 of this Article is
6 exempt from this prohibition.

7 (b) Injury to or Destruction of Landscape Materials Prohibited. It shall be unlawful
8 for any person to intentionally, maliciously or through gross negligence injure or destroy any
9 landscape material in any street median, center strip, or other landscaped portion of a public
10 right-of-way under the City's jurisdiction, except as authorized by the Department.

11 (c) Construction Work: Protection of Trees Required. It shall be unlawful for any
12 person to engage in any construction work on private or public property without first taking
13 steps to protect street trees and landmark trees from damage, including damage caused by soil
14 compaction or contamination. All landmark trees and all trees on any street or other publicly
15 owned property ~~near~~ within a distance of ten feet of any excavation, construction, or street work
16 shall be adequately protected.

17 SEC. 809. NUISANCE HAZARD TREES; ABATEMENT.

18 (a) Notice to Property Owner(s). Upon a finding by the Director that a tree on private
19 property or a street tree for which a property owner is responsible is a "nuisance hazard tree" as
20 defined herein, the Director shall notice to the property owner(s) which describes the condition
21 creating the nuisance hazard, the actions required to be taken to abate the nuisance hazard, and
22 the date by which compliance must be completed. Required action may include replacement
23 or removal of the tree. In cases of extreme danger, as determined by the Director, the Director
24 may require immediate compliance.

1 (b) Director of Public Works To Abate *Nuisance Hazard* if Owner Fails To Do So. If
2 the responsible property owner does not undertake in a timely manner the abatement action,
3 as required by said notice, the Director may perform necessary work to abate the
4 *nuisancehazard*. The cost of such abatement, including labor, equipment, materials, inspection
5 services, and administrative costs, shall be an obligation owing by the responsible property
6 owner(s) to the City.

7 (c) Method of Enforcement and Collection of Lien. The Department shall send
8 notice of assessment of costs to the responsible property owner. Such notice shall include a
9 statement that payment is due within 60 days of the mailing date of the notice. If a responsible
10 property owner fails timely to remit payment, the Department shall send a second notice of
11 payment due. Such second notice shall include a statement that failure timely to remit
12 payment in full to the City within 30 days of the mailing of the second notice shall cause the
13 Director to institute lien proceedings pursuant to Sections 706.4-706.7 of this Code.
14 Enforcement and collection of liens for costs associated with *nuisancehazard* tree abatement
15 shall be in accordance with Sections 706.4-706.7 of this Code, except that all monies received
16 in payment of such liens, *with the exception of enforcement costs*, shall be credited to the Adopt-
17 A-Tree Fund.

18 SEC. 810. LANDMARK TREES.

19 (a) Designation. With the advice of the *Tree Board Urban Forestry Council*, and
20 following a public hearing, the Director shall adopt criteria for the designation of landmark
21 trees, which criteria shall include consideration of the age, size, shape, species, location,
22 historical association, visual quality, or other contribution to the City's character. Upon the
23 recommendation of the *Urban Forestry Council and the* Director, the Board of Supervisors may
24 designate as a "landmark tree" any *street tree or any tree on property under the jurisdiction of the*
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1 ~~Department~~ within the territorial limits of the City and County of San Francisco that meetings the
2 criteria adopted by the Urban Forestry Council and the Director, or may rescind such
3 designations. ~~Any person seeking to have a tree designated as a landmark must pay all costs related~~
4 ~~to the Board of Supervisors hearing.~~

5 (b) Advise the Zoning Administrator. Upon request by the Zoning Administrator, the
6 Director and Urban Forestry Council shall advise the Zoning Administrator regarding landmark
7 trees on a proposed construction site. The Department and Urban Forestry Council shall
8 propose measures to protect landmark trees on a construction site against damage to trunk,
9 roots, and branches.

10 (c) Removal; Special Permit Required. Except in the case of manifest danger and
11 immediate necessity, landmark trees shall be removed only after the following: (1) the Director's
12 issuance of a recommendation and an accompanying resolution to the Board of Supervisors and (2)
13 ~~upon~~ a determination of the Board of Supervisors following a public hearing. The Director shall
14 hold a public hearing on removal of the landmark tree prior to issuance of his or her recommendation
15 to the Board of Supervisors. The Director, in consultation with the Urban Forestry Council, shall
16 issue criteria governing ~~such~~ determinations to remove landmark trees. If the Board of
17 Supervisors determines that removal of a landmark tree is necessary or permissible, it may
18 impose such reasonable conditions on the permit for removal as it deems necessary to
19 compensate for the loss of the tree, including but not limited to the replacement value of the
20 tree, ~~and~~ administrative costs, ~~or~~ and contribution to the Adopt-A-Tree Fund. Any person
21 seeking permission to remove a landmark tree must pay all costs related to the Director's
22 hearing and Board of Supervisors hearing.

23 (d) Emergency Removal. In the case of manifest danger and immediate necessity, as
24 determined by the Director, the Director may remove or require the responsible owner(s) to remove a
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1 landmark tree immediately. After such emergency removal, the Director shall notify the Board of
2 Supervisors and the Urban Forestry Council and make a reasonable effort to notify interested
3 organizations and others requesting notice of the necessity for such action. If the Department incurs
4 any costs related to an emergency removal, said costs, including labor, equipment, materials,
5 inspection services, and administrative costs, shall be an obligation owing by the responsible owner(s)
6 to the City. Removal of a landmark tree pursuant to this Subsection is not subject to Subsection (f)
7 below.

8 (e) Removal on City-owned Property; Special Approval Required.

9 (1) Removal of a landmark tree(s) on City property under the jurisdiction of any City
10 agency, commission, or department shall be subject to the rules and procedures governing removal of
11 trees under the jurisdiction of the subject agency, commission, or department if the subject agency,
12 commission, or department after a public hearing, has adopted rules and procedures for tree removal
13 that incorporates a process for public notice prior to removal of the tree. Such rules and procedures
14 also shall address removal of a landmark tree that qualifies as hazard tree as defined in Section 802(o)
15 or as defined by the agency, commission, or department.

16 (2) If tree removal rules and procedures have not been adopted in accordance with
17 Subsection (1) above, the agency, commission, or department shall follow similar rules and procedures
18 for removal of street trees as set forth in Section 806(c) and for removal of hazard trees as set forth in
19 this Article.

20 (3) If a landmark tree(s) has been designated as part of a local historic or cultural
21 landmark in accordance with Article 10 of the Planning Code, removal of such tree shall be subject to
22 the procedures set forth in the Planning Code Article 10 designation in addition to the requirements of
23 this Subsection (c). In the case of a conflict between this Subsection and the Article 10 designation, the
24 more restrictive provisions shall apply.

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1 (4) Emergency Removal. In the case of manifest danger and immediate necessity, as
2 determined by the director, general manager, president, or chair of the subject agency, commission, or
3 department, the subject agency, commission, or department may remove a landmark tree within its
4 jurisdiction immediately. After such emergency removal, the subject agency, department, or
5 commission shall notify the Board of Supervisors, Urban Forestry Council, and Department of Public
6 Works and make a reasonable effort to notify interested organizations and others requesting notice of
7 the necessity for such action. Removal of a landmark tree pursuant to this Subsection is not subject to
8 Subsection (f) below.

9 (5) This Subsection (e) shall not supercede the Charter jurisdiction that has been
10 granted to any City agency, commission, or department.

11 (f) As part of any City determination that authorizes removal of a landmark tree, the City
12 entity or entities making such determination shall consider the following factors related to the tree:

13 (1) Size, age, and species;

14 (2) Visual characteristics, including the tree's form and whether it is a prominent
15 landscape feature;

16 (3) Cultural or historic characteristics, including whether the tree has significant
17 ethnic appreciation or historical association or whether the tree was part of a historic planting
18 program that defines neighborhood character;

19 (4) Ecological characteristics, including whether the tree provides important
20 wildlife habitat, is part of a group of interdependent trees, provides erosion control, or acts as a wind
21 or sound barrier; and

22 (5) Locational characteristics, including whether the tree is in a high traffic area or
23 low tree density area, provides shade or other benefits to multiple properties, and is visually accessible
24 from the public right-of-way.

1 (g) Nomination of a Tree as a Landmark Tree. Any interested party may nominate a tree for
2 landmark tree status.

3 (1) Nominations shall be made in writing to the Urban Forestry Council. The
4 written request shall include the basis for the nomination, which may address one or more of the
5 factors listed above in Subsection (f); the lot, assessor's block, and street address of the subject
6 property; one or more pictures of the tree; any other information that the interested party believes
7 would be pertinent to the nomination; and payment to cover the cost of the Urban Forestry Council
8 hearing.

9 (2) The Urban Forestry Council shall hold a hearing on the nomination request and
10 determine whether the tree qualifies as a landmark tree. If the Urban Forestry Council determines that
11 the subject tree qualifies as a landmark tree, it shall adopt written findings that specify the basis for its
12 decision and shall forward said decision to the Departments of Public Works. The Urban Forestry
13 Council shall forward to the applicant for the nomination and the affected property owner a written
14 record of its decision to approve or reject the nomination. If the Urban Forestry Council rejects the
15 nomination, the Council shall not accept a new request for the subject tree for three years from the date
16 of its decision.

17 (3) If the Urban Forestry Council determines that a tree qualifies as a landmark
18 tree, said tree shall proceed through the landmark tree designation process set forth in Section 810(a).

19 **SEC. 811. PENALTIES FOR VIOLATION OF ORDINANCE.**

20 (a) Criminal Penalties. Violation of any of the provisions of Sections 806, 808, and
21 810(c) of this Article shall be chargeable as an infraction or a misdemeanor. Every violation
22 determined to be an infraction is punishable by a fine of \$200 for a first violation and \$400 for
23 each additional violation within one year. Every violation determined to be a misdemeanor is
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1 punishable by a fine not exceeding \$1,000 and/or imprisonment in the County Jail for a period
2 not to exceed six months, for each offense.

3 (b) ~~Administrative~~ Civil Penalties and Fees.

4 (1) The Director may call upon the City Attorney to maintain an action for
5 injunction to restrain or summary abatement to cause the correction or abatement of the violation of
6 this Article, and for assessment and recovery of a civil penalty and reasonable attorney's fees for such
7 violation.

8 (2) Any person who violates this Article may be liable for a civil penalty, not to
9 exceed \$500 for each day such violation is committed or permitted to continue, which penalty shall be
10 assessed and recovered in a civil action brought in the name of the people of the City by the City
11 Attorney in any court of competent jurisdiction. In assessing the amount of the civil penalty, the court
12 may consider any one or more of the relevant circumstances presented by any of the parties to the case,
13 including, but not limited to, the following: the nature and seriousness of the misconduct, the number of
14 violations, the persistence of the misconduct, the length of time over which the misconduct occurred;
15 and the wilfulness of the defendant's misconduct. The City Attorney also may seek recovery of the
16 attorneys' fees and costs incurred in bringing a civil action pursuant to this Section.

17 (c) Administrative Penalties.

18 (1) In addition to the penalties set forth in Subsections (a) and (b) above, the
19 Director may require any person who removes, damages, or destroys a tree in violation of the
20 provisions of this Article ~~shall to~~ pay a sum of money equal to the tree's replacement value or
21 the diminishment of the tree's value as set forth in the current edition of the Guide for Plant
22 Appraisal (Council of Tree and Landscape Appraisers). In no case shall the administrative penalty be
23 less than \$500 per violation. When one or more additional violations occur within one year of the first
24 violation, the Director may assess a responsible party double the tree's replacement value or the
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1 diminishment of the tree's value. Depending on the nature and seriousness of the misconduct, including
2 unpermitted removal of or damage to a landmark or significant tree; the number of violations; the
3 persistence of the misconduct; the length of time over which the misconduct occurred; or the wilfulness
4 of the defendant's misconduct, the Director may assess additional penalties in excess of the amounts
5 specified above. In addition to the administrative penalty assessed pursuant to this Section, the
6 Director may assess enforcement costs to cover the reasonable costs incurred in enforcing the
7 administrative penalty, including reasonable attorneys' fees. Any and all amounts paid or
8 collected pursuant to this subsection, with the exception of enforcement costs, shall be deposited
9 into the Adopt-A-Tree Fund.

10 (2) The Department shall send notice of the assessment of administrative
11 *civil* penalties to the responsible ~~property owner~~ party. Such notice shall include a statement
12 that payment is due within 60 days of the mailing date of the notice. If a responsible property
13 owner fails timely to remit payment, the Department shall send a second notice of payment
14 due. Such second notice shall include a statement that failure timely to remit payment in full to
15 the City within 30 days of the mailing of the second notice shall cause the Director to institute
16 lien proceedings pursuant to Sections 706.4 - 706.7 of this Code. Enforcement and collection
17 of liens for costs associated with ~~nuisance~~ hazard tree abatement shall be in accordance with
18 Sections 706.4 - 706.7 of this Code, except that all monies received in payment of such liens
19 with the exception of enforcement costs, shall be credited to the Adopt-a-Tree Fund.

20 Section 3. This section is uncodified. The powers and duties of the Tree Advisory
21 Board, set forth in Public Works Code Section 803, pursuant to the Board of Supervisors
22 Ordinance No. 165-95, Clerk of the Board of Supervisors File No. _____, are transferred to
23 the Urban Forestry Council pursuant to this Ordinance, and the Tree Advisory Board is hereby
24 dissolved.

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APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
John D. Malamut
Deputy City Attorney