

## [Public Works Code – Tree removal permit fee.]

**Ordinance amending Public Works Code Sections 802 and 806 to establish a minimum in-lieu fee when tree planting requirements are waived or for the removal or destruction of trees subject to Article 16 (the Urban Forestry Ordinance); to establish fees for removal of such trees based on the number of trees proposed for removal; and to provide for an annual adjustment of said fees; and making environmental findings.**

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

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

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

Section 2. The San Francisco Public Works Code is hereby amended by amending Sections 802 and 806, to read as follows:

## SEC. 802. DEFINITIONS.

Unless the context specifically indicates otherwise,

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

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

(c) "Community Boards" of San Francisco shall mean the neighborhood

mediation/dispute settlement service established under the auspices of The Community Board Program, Inc.

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

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

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

(g) "Injure" or "injury" shall mean any act which harms or damages a tree, including but not limited to impact, cutting, carving, painting, transplanting, or knocking over, and includes but is not limited to the following: injurious attachment of any rope, wire, nail, advertising poster, or other contrivance to any subject to the provisions of this Article; intentionally or negligently allowing any gaseous, liquid, or solid substance that is harmful to a tree to come into contact with a tree; setting fire or intentionally or negligently permitting any fire to burn when such fire or the heat therefrom will injure any part of any tree; pruning which in and of itself will kill or cause a tree to decline; or severing of all or part of a tree.

(h) "In-lieu fee" shall mean a fee deposited into the Adopt-A-Tree Fund and imposed by the Director. The in-lieu fee shall be equal to the replacement value of a tree(s) to be removed or trees that have been destroyed or as otherwise specified in Section 811. In the case of trees required to be planted by Section 143 of the City Planning Code, yet excused under Section 143(d) of the Planning Code, the in-lieu fee shall be equal to the City's cost to plant and water a tree for ~~two~~three years. The minimum in lieu fee shall be \$1,489.00. Beginning with fiscal year 2007-2008, this fee shall be reviewed and adjusted each year in accordance with the procedures set forth in Public Works Code Section 2.1.2.

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

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

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

(I) "Maintenance" shall mean those actions necessary to promote the life, growth,

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

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

(o) "Hazard tree" shall mean any tree that poses an imminent hazard to person or property. The Director may determine that a tree is a hazard if it or any part of it: (1) appears dead, dangerous, or likely to fall, even after proper maintenance activities are performed to eliminate dead or dangerous parts; (2) obstructs or damages a street, sidewalk, or other existing structure; (3) harbors a serious disease or infestation threatening the health of other trees; (4) interferes with vehicular or pedestrian traffic; or (5) poses any other significant hazard or potential hazard, as determined by the Director; provided, however, that feasible measures have been applied to abate any such hazard, such as applicable maintenance activities listed in Section 802(l) of this Article. The Director's determination shall be in writing.

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

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

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

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

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

(u) "Significant Tree" shall mean a tree so defined in Section 810A of this Article.

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

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

(x) "Tree" shall mean any large perennial plant having a woody trunk(s), branches, and leaves. Trees also shall include palm trees.

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

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

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

(a) Planting and Removal by the Department.

(1) Planting. The Department may determine to plant a new tree(s) in a sidewalk or public right-of-way. When the Department determines to plant a new street tree(s), the Department will undertake maintenance responsibility for such new street tree and shall send a courtesy notice to the abutting property owner prior to planting such new tree.

Any objections to the proposed work must be submitted to the Director in writing and postmarked within 30 days after notice by the Director. The Director shall consider such

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, to the extent practical, all owners and occupants  
9       of 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       hazard street tree, as specified in Subsection (a)(4), any person files with the Department  
16       written objections to the removal, the Director shall hold a hearing to consider public testimony  
17       concerning the proposed tree removal. Written notice of the date, time and place of the  
18       hearing shall be posted on the affected tree, provided in a newspaper of general circulation,  
19       and sent to the objecting party, the owner of the property abutting the affected tree, and all  
20       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 appealable to the Board of  
24       Appeals.

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(4) Removal of Hazard Street Trees.

(A) No hazard street tree shall be cut down or removed by the Department

unless:

(i) The Department gives 15 days' prior written notice to the owner of the  
tree; and

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

(B) Hazard street tree shall have the same meaning as "hazard tree" in

Section 802(o) except that a hazard street tree is located within the public right-of-way and is the maintenance responsibility of the Department.

(5) Emergency Removal. In the case of manifest danger and immediate

necessity, as determined by the Director, the Department may remove any street tree

immediately. After such emergency removal, the Department shall provide notice of the

necessity for such action to the owner of the property abutting the affected tree, all interested San Francisco organizations and, to the extent practical, all owners and occupants of properties that are on or across from the block face where the affected tree was removed.

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

(1) Planting and Removal Permits. It shall be unlawful for any person to plant any street tree without a valid permit for such work issued by the Department. All planting or removal of street trees issued by the Director for residential shall be recorded on the Report of Residential Building Records in accordance with the Housing Code. All work associated with a street tree permit must be

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 by*  
12 *an administrative fee in accordance with a fee schedule adopted by the Director.* The Department  
13 may grant or deny the permit in accordance with the following procedures and requirements. If  
14 the Department grants a tree removal permit, it shall require that another street tree be  
15 planted in the place of the removed tree or impose an in-lieu fee unless it makes written  
16 findings detailing the basis for waiving this requirement.

17 (i) *The fee for a permit to remove 1-3 street trees shall be \$499.00267.00; the fee*  
18 *for a permit to remove 4-9 street trees shall be \$602.00360.00; and the fee to remove 10 or more*  
19 *street trees shall be \$821.00565.00.*

20 (ii) *Additional Fees. In instances where administration or processing of any*  
21 *application is or will exceed the fee amount established pursuant to subsection (i), the Director, in his*  
22 *or her discretion, may require an applicant or permittee to pay a sum in excess of the subject fee*  
23 *amounts. This additional sum shall be sufficient to recover actual costs that the Department incurs and*  
24 *shall be charged on a time and materials basis. The Director also may charge for any time and*

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1        materials costs that other agencies, boards, commissions, or departments of the City, including the City  
2        Attorney's Office, incur in connection with the processing or administration of a particular application.  
3        Whenever additional fees are or will be charged, the Director, upon request of the applicant or  
4        permittee, shall provide in writing the basis for the additional fees or an estimate of the additional fees  
5        to be charged.

6                (iii)      Fee Review and Adjustment. Beginning with fiscal year 2007-2008, the fees that  
7        are established herein shall be reviewed and adjusted each year in accordance with the procedures set  
8        forth in Public Works Code Section 2.1.2.

9                (B)      Thirty days prior to the removal date, the Department shall give notice to all  
10      interested San Francisco organizations and, to the extent practicable, the owners and  
11      occupants of properties that are on or across from the block face or adjacent to where the  
12      affected tree is located. In addition, 30 days prior to the removal date, the Department shall  
13      post a notice on the affected tree. If within 30 days after the giving of such notice any person  
14      files with the Department written objections to the removal, the Director shall hold a hearing  
15      prior to removing the tree. Written notice of the date, time and place of the hearing shall be  
16      posted on the affected tree and sent to the objecting party and all interested San Francisco  
17      organizations not less than seven days prior thereto.

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

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

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

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

7 By: John D. Malamut  
8 Deputy City Attorney  
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