

FILE NO. 060142

ORDINANCE NO.

1 [Public Works Code – sidewalk landscape permits.]

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Ordinance amending the Public Works Code by amending Sections 801, 811, and 812 to recognize sidewalk landscaping as an important contributor to the City's quality of life, to provide for fines and penalties for violating this Ordinance, and to include Arborist Technician in the list of designated employees that can enforce the Urban Forestry Ordinance, respectively; by adding Section 810B to establish a permit process for sidewalk landscape installation and removal, including permit fees and procedures to adjust fees on an annual basis; and making environmental findings.

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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~~.

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

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Section 1. Environmental Findings. 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.

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Section 2. The San Francisco Public Works Code is hereby amended by amending Section 801 to read as follows:

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SEC. 801. PURPOSE.

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The San Francisco Urban Forestry Ordinance is enacted to further the following public purposes:

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(a) To realize the optimum public benefits of trees on the City's streets and public places, including favorable modification of microclimates, abatement of air and noise pollution,

1 reduction of soil erosion and runoff, enhancement of the visual environment, and promotion of
2 community pride;

3 (b) To integrate street planting and maintenance with other urban elements and
4 amenities, including but not limited to utilities, vehicular and pedestrian traffic, and
5 enhancement of views and solar access;

6 (c) To promote efficient, cost effective management of the City's urban forest by
7 coordinating public and private efforts within a comprehensive and professional management
8 system;

9 (d) To reduce the public hazard, nuisance, and expense occasioned by improper
10 tree selection, planting, and maintenance;

11 (e) To provide for the creation of an equitable, sustained, and reliable means of
12 funding urban-forest management throughout the City;

13 (f) To create and maintain a unified urban-forest resource, enhancing the City's
14 overall character and sense of place.

15 (g) To recognize that trees are an essential part of the City's aesthetic environment
16 and that the removal of important trees should be addressed through appropriate public
17 participation and dialogue, including the California Environmental Quality Act (Public
18 Resources Code Sections 21000 et seq.).

19 (h) To recognize that green spaces are vital to San Francisco's quality of life as they
20 provide a range of environmental benefits and bring beauty to our neighborhoods and commercial
21 districts.

22 (i) To ensure that landscaping in sidewalk areas is properly constructed and maintained in
23 order to maximize environmental benefits, protect public safety, and limit conflicts with infrastructure.

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1 Section 2. The San Francisco Public Works Code is hereby amended by adding
2 Section 810B, to read as follows:

3 SEC. 810. SIDEWALK LANDSCAPE PERMITS.

4 (a) Permit for Installation or Removal of Sidewalk Landscaping. Permits to install or remove
5 sidewalk landscaping shall be subject to the rules and procedures applicable to planting and removal
6 of street trees under Section 806(b).

7 (b) Permit Decision.

8 (1) The Director of the Department, in his or her discretion, may approve, conditionally
9 approve, or disapprove the requested permit. When issuing permits, the Director may impose any
10 conditions consistent with the public health, safety, welfare, and convenience, including, but not limited
11 to, appropriate time, place, and manner restrictions and considerations to minimize neighborhood
12 impacts.

13 (2) All sidewalk landscape permits are revocable at the will of the Director. In
14 addition, when, in the judgment of the Director of Public Works, the public interest or convenience will
15 be served by the removal of the dirt, debris, materials and equipment or any portion thereof from the
16 sidewalk space, the Director shall modify, condition, or revoke the permit accordingly.

17 (c) Fees. The fee for a sidewalk landscape permit is \$ 215.00. If two, three, or four applicants
18 on the same block submit a joint application for a sidewalk landscape permit, the fee is \$ 185.00 for
19 each applicant. If five or more applicants on the same block submit a joint application for a sidewalk
20 landscape permit, the fee is \$ 160.00 for each applicant. Fees for removal of sidewalk landscaping
21 shall be the same as the fee charged for permits to remove street trees.

22 (1) Fee Review and Adjustment. Beginning with fiscal year 2007-2008, the fees that are
23 established herein shall be reviewed and adjusted each year in accordance with the procedures set
24 forth in Section 2.1.2.

1 (d) Minimum Accessibility Requirements.

2 (1) In no case shall the new sidewalk-landscape result in an unobstructed sidewalk
3 width of less than 48 inches or increase the cross-slope of the portion of the sidewalk designated as an
4 accessible path-of-travel.

5 (2) For each curbside parking space (approximately 20 feet of curb length), the design
6 shall include a minimum 48-inch wide accessible curbside parking path that is perpendicular and
7 connects the curb to the sidewalk path of travel. This path shall be: (i) located at the approximate
8 centerline of each curbside parking space; (ii) made of concrete, pavers, or brick; and (iii) set on a
9 firm base.

10 (e) The permit holder shall be responsible for maintaining the sidewalk-landscape area in a
11 condition that is safe to pedestrians and vehicular traffic and free of litter and unsightly weeds. The
12 permit holder also shall be responsible to maintain the health of plants with appropriate pruning,
13 watering, and other care.

14 (f) Waiver of Requirements. The Director, in his or her discretion, may waive any of the
15 substantive requirements for a sidewalk landscape permit. The Director may issue a waiver only after
16 holding a public hearing on the waiver request and issuing a written decision concerning whether the
17 waiver will be granted, conditionally granted, or denied. When issuing such waivers, the Director may
18 impose any conditions consistent with the public health, safety, welfare, and convenience.

19 (g) Regulations. In addition to the requirements set forth in this Section, the Director, after a
20 public hearing, may adopt such orders, policies, regulations, rules, or standard plans and
21 specifications as he or she deems necessary in order to preserve and maintain the public health, safety,
22 welfare, and convenience. Such orders, policies, regulations, or rules may include, but are not limited
23 to, permit application materials, planting guidelines, planting locations, materials, key design
24 dimensions for planting areas, site conditions, replanting, landscape design modifications, and
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1 accessibility of sidewalks and streets. When such orders, policies, regulations or rules will affect the
2 operations and enforcement of the Department of Parking and Traffic or the Municipal Railway, the
3 Director shall consult with and provide an opportunity to comment to the General Manager of the
4 Municipal Transportation Agency prior to adoption of such orders, policies, regulations, or rules.

5 Section 3. The San Francisco Public Works Code is hereby amended by amending
6 Sections 811 and 812 as follows:

7 SEC. 811. PENALTIES FOR VIOLATION OF ORDINANCE.

8 (a) Criminal Penalties. Violation of any of the provisions of Sections 806, 808, 810
9 (f)(1), ~~and 810A(b)~~, and 810B of this Article shall be chargeable as an infraction or a
10 misdemeanor. Every violation determined to be an infraction is punishable by a fine of \$200
11 for a first violation and \$400 for each additional violation within one year. Every violation
12 determined to be a misdemeanor is punishable by a fine not exceeding \$1,000 and/or
13 imprisonment in the County Jail for a period not to exceed six months, for each offense.

14 (b) Civil Penalties and Fees.

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

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

5 (c) Administrative Penalties.

6 (1) In addition to the penalties set forth in Subsections (a) and (b) above, the
7 Director may require any person who removes, injures, or destroys a tree in violation of the
8 provisions of this Article to pay a sum of money equal to the tree's replacement value or the
9 diminishment of the tree's value as set forth in the current edition of the Guide for Plant
10 Appraisal (Council of Tree and Landscape Appraisers). Further, in addition to the penalties set
11 forth in Subsections (a) and (b) above, the Director may require any person who removes, fails to
12 maintain, injures, or destroys sidewalk landscaping or the associated design improvements in violation
13 of the provisions of Section 810B to pay a sum of money equal to the replacement value of the affected
14 landscape material and associated design improvements or the diminishment of the value of the
15 landscape material as set forth in the current edition of the Guide for Plant Appraisal (Council of Tree
16 and Landscape Appraisers). In no case shall the administrative penalty be less than \$500 per
17 violation. When one or more additional violations occur within one year of the first violation,
18 the Director may assess a responsible party double the tree's replacement value or the
19 diminishment of the tree's value. Depending on the nature and seriousness of the
20 misconduct, including unpermitted removal of or damage to a landmark or significant tree; the
21 unpermitted removal of or damage to sidewalk landscaping installed pursuant to a permit issued under
22 Section 810B; the number of violations; the persistence of the misconduct; the length of time
23 over which the misconduct occurred; or the wilfulness of the defendant's misconduct, the
24 Director may assess additional penalties in excess of the amounts specified above. In
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1 addition to the administrative penalty assessed pursuant to this Section, the Director may
2 assess enforcement costs to cover the reasonable costs incurred in enforcing the
3 administrative penalty, including reasonable attorneys' fees. Any and all amounts paid or
4 collected pursuant to this subsection, with the exception of enforcement costs, shall be
5 deposited into the Adopt-A-Tree Fund.

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

16 SEC. 812. ENFORCEMENT OF ORDINANCE; DESIGNATED EMPLOYEES.

17 The classes of employees of the City and County of San Francisco set forth
18 below shall have the duty of enforcing the provisions of this Article including, but not limited to,
19 the unauthorized removal, injury or destruction of street trees or landmark trees:

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21	Classification No.	Class Title
22	3418	Gardener Supervisor
23	3422	Park Section Supervisor
24	3426	Urban Forester

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- 1 3434 Arborist Technician
- 2 3436 Tree Topper Supervisor I
- 3 5170 Superintendent, Street Environmental Services
- 4 5173 Assistant Superintendent, Street Environmental
- 5 Services
- 6 7281 Street Cleaning Supervisor II
- 7 8280 Environmental Control Officer

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

By: _____
John D. Malamut
Deputy City Attorney