

1 [Public Works Code - special status trees and landmark trees.]

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3 **Ordinance amending the Public Works Code by amending Sections 802, 804, 807, 808,**  
4 **and 811 and adding Section 810A to address removal, maintenance, and nomination of**  
5 **special status trees as defined herein and amending Section 810 to allow the City to**  
6 **landmark any tree within its territorial limits and under City jurisdiction.**

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

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

11 Section 1. The San Francisco Public Works Code is hereby amended by amending  
12 Sections 802, 804, 807, 808, and 811, to read as follows:

13 SEC. 802. DEFINITIONS.

14 Unless the context specifically indicates otherwise,

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

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

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

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

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

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1 (f) "Ex officio" shall mean a current employee of any City department, or California  
2 or federal agency whose appointment to the Tree Board has been approved by the Director.

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

12 (h) "In-lieu fee" shall mean a fee deposited into the Adopt-A-Tree Fund and  
13 imposed by the Director. The in-lieu fee shall be equal to the replacement value of a tree(s) to  
14 be removed or trees that have been destroyed. In the case of trees required to be planted by  
15 Section 143 of the City Planning Code, yet excused under Section 143(d) of the Planning  
16 Code, the in-lieu fee shall be equal to the City's cost to plant and water a tree for two years.

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

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

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

23 (l) "Maintenance" shall mean those actions necessary to promote the life, growth,  
24 health, or beauty of a tree. Maintenance includes both routine and major activities. "Routine  
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1 maintenance" shall include adequate watering to ensure the tree's growth and sustainability;  
2 weed control; removal of tree-well trash; staking; fertilizing; routine adjustment and timely  
3 removal of stakes, ties, tree guards, and tree grates; bracing; and sidewalk repairs related to  
4 the tree's growth or root system pursuant to Section 706 of this Code. "Major maintenance"  
5 shall include structural pruning as necessary to maintain public safety and to sustain the  
6 health, safety, and natural growth habit of the tree; pest and disease-management procedures  
7 as needed and in a manner consistent with public health and ecological diversity; replacement  
8 of dead or damaged trees.

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

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

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

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

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

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

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

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

13 (u) "Special Status Tree" shall mean a tree so designated pursuant to Section 810A of this  
14 Article.

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

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

20 (x) "Tree" shall mean any large perennial plant having a woody trunk(s), branches,  
21 and leaves.

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

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

4           SEC. 804. JURISDICTION.

5           (a) Department's Jurisdiction. The Department shall have jurisdiction over the  
6 planning, planting, maintenance, and removal of trees in any street or other public right-of-way  
7 as defined in Section 244 of this Code; over any landscape material in any street median,  
8 center strip, or other landscaped portion of a public right-of-way; over trees and other  
9 landscape material in other public spaces under the jurisdiction of the Department; ~~and~~ over  
10 nuisance trees on private property only as specified in Section 809 of this Article; and over  
11 special status trees on private property as specified in Section 810A.

12           SEC. 807. DEPARTMENT OF PUBLIC WORKS URBAN FORESTRY PROGRAM;  
13 POWERS AND DUTIES.

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

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

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

4 (d) Authority over Site Development Plans. The Department shall have the authority  
5 to review and comment on site development plan applications received by the City's Central  
6 Permit Bureau that pertain to the planting, alteration, or removal of street trees. The  
7 Department shall also have the authority to review and comment on site development plan  
8 applications that pertain to the alteration or removal of landmark trees designated pursuant to  
9 Section 810(a) of this Article and special status trees pursuant to Section 810A of this Article.

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

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

18 (f) In-Lieu Planting Program. The Department shall develop and implement an In-  
19 Lieu Planting Program to offset the loss of street trees and special status trees due to removal,  
20 destruction, or death. The In-Lieu Planting Program shall also compensate for the loss of  
21 trees required to be planted by Section 143 of the Planning Code, yet excused by the Zoning  
22 Administrator pursuant to Planning Code Section 143(d). The Department may impose an in-  
23 lieu fee in accordance with a fee schedule adopted by the Director where a street tree is  
24 destroyed, removed or is excused from planting where otherwise required by Planning Code  
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1 Section 143. The Department may also assess an in-lieu fee as mitigation for violation of the  
2 requirements of this Article. In-lieu fees shall be deposited in the Adopt-A-Tree Fund.

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

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

8 (a) Injury to or Destruction of Trees Prohibited. It shall be unlawful for any person to  
9 intentionally, maliciously or through gross negligence injure or destroy a street tree, ~~or any~~  
10 tree on City property, or a special status tree. Removal of a tree under City order or removal in  
11 accordance with a permit issued pursuant to Section 806 or Section 810A of this Article is  
12 exempt from this prohibition.

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

17 (c) Construction Work: Protection of Trees Required. It shall be unlawful for any  
18 person to engage in any construction work on private or public property without first taking  
19 steps to protect street trees and special status trees from damage, including damage caused by  
20 soil compaction or contamination. All special status trees and all trees on any street or other  
21 publicly owned property near any excavation, construction, or street work shall be adequately  
22 protected.

23 SEC. 810. LANDMARK TREES.

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

10 (b) Advise the Zoning Administrator. Upon request by the Zoning Administrator, the  
11 Director shall advise the Zoning Administrator regarding landmark trees on a proposed  
12 construction site. The Department shall propose measures to protect landmark trees on a  
13 construction site against damage to trunk, roots, and branches.

14 (c) Removal; Special Permit Required. Except in the case of manifest danger and  
15 immediate necessity, landmark trees shall be removed only upon a determination of the Board  
16 of Supervisors following a public hearing. The Director shall issue criteria governing such  
17 determinations. If the Board of Supervisors determines that removal of a landmark tree is  
18 necessary or permissible, it may impose such reasonable conditions on the permit for removal  
19 as it deems necessary to compensate for the loss of the tree, including but not limited to the  
20 replacement value of the tree, and administrative costs, or contribution to the Adopt-A-Tree  
21 Fund. Any person seeking permission to remove a landmark tree must pay all costs related to  
22 the Board of Supervisors hearing.

23 SEC. 811. PENALTIES FOR VIOLATION OF ORDINANCE.

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

7 (b) Administrative Civil Penalties.

8 (1) In addition to the penalties set forth in Subsection (a) above, any person who  
9 removes, damages, or destroys a tree in violation of the provisions of this Article shall pay a  
10 sum of money equal to the tree's replacement value or the diminishment of the tree's value.  
11 Any and all amounts paid or collected pursuant to this subsection shall be deposited into the  
12 Adopt-A-Tree Fund.

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

23 Section 2. The San Francisco Public Works Code is hereby amended by adding  
24 Section 810A, to read as follows:  
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1           SEC. 810A. SPECIAL STATUS TREES.

2           (a) Definition. For purposes of this Section, a special status tree shall be a tree on  
3 privately-owned property or City-owned property within the City and County of San Francisco that  
4 satisfies at least one of the following criteria: (1) a diameter at breast height (DBH) in excess of twelve  
5 (12) inches, (2) a height in excess of twenty (20) feet, or (3) a canopy in excess of fifteen (15) feet. A  
6 special status tree shall not be a landmark tree or street tree as defined in this Article; however, the  
7 Director may deem a special status tree a nuisance tree if such tree satisfies the provisions of Section  
8 802(o).

9           (b) Removal on Privately-Owned; Permit Required.

10          (1) Removal of a special status tree(s) on privately-owned property shall be subject to the  
11 rules and procedures governing permits for removal of street trees as set forth in Section 806(b).

12          (2) If removal of a special status tree is proposed as part of any activity related to any  
13 permit or authorization under the Building Code or Planning Code, then the City department or  
14 commission with jurisdiction over the permit or authorization shall specifically address the proposed  
15 removal as part of its decision on the permit or authorization. Prior to any such decision, the affected  
16 department or commission shall consult with the Department's Urban Forester. Failure of an  
17 applicant to identify a special status tree that may be affected by a permit issuance or authorization  
18 specified above shall result in suspension or denial of the permit or authorization until the applicant or  
19 permittee complies with this Section.

20          (3) If removal of a special status tree is part of a permit or authorization from a department  
21 or commission other than the Department of Public Works, appeal of such permit or authorization shall  
22 be in accordance with the provisions governing appeal of the subject permit or authorization.

23          (4) If the Director deems a special status tree qualifies as a nuisance tree, this Article's  
24 provisions applicable to removal of a nuisance tree shall apply.

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

9           (c) Removal on City Property.

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

17           (2) If tree removal rules and procedures have not been adopted in accordance with  
18 Subsection (1) above, the agency, department, or commission shall follow similar rules and procedures  
19 for removal of street trees as set forth in Section 806(c) and for removal of nuisance trees as set forth in  
20 this Article; provided, however, that this Subsection shall not supercede the Charter jurisdiction that  
21 has been granted to any City agency, commission, or department.

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

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

10 (d) As part of any City decision that authorizes removal of a special status tree, the City  
11 agency, department, or commission making such decision shall consider the following factors related to  
12 the tree:

13 (1) Size, age, and species;

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

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

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

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

1           (e) Nomination of a Tree as a Special Status Tree. Even though a tree does not meet the  
2 requirements for a special status tree as set forth in Section 810A(a), any property owner may nominate  
3 a tree on his or her property as a special status tree.

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

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

17           (3) If the Urban Forest Council determines that a tree qualifies as a special status tree, said  
18 tree shall be subject to the provisions of this Section 810A.

19           (4) A property owner may request rescission of the Urban Forest Council's decision that a  
20 tree qualifies as a special status tree in accordance with this Subsection (e). A rescission request shall  
21 be in writing and satisfy all the requirement for a nomination request as specified above in Subsection  
22 (1). The Urban Forest Council shall hold a hearing on the rescission request and make a  
23 determination following the same procedures as set forth in Subsection (2). The Urban Forest  
24 Council's decision on the rescission request shall be final and appealable to the Board of Appeals.

1 Should an appeal be filed, the Urban Forest Council shall forward the Board of Appeals' final decision  
2 to the Departments of Public Works and City Planning for their records. If the City's final decision is  
3 to reject the request for rescission, the Council shall not accept a new request for the subject tree for  
4 three years from the date of the City's final decision.

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

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9 By: \_\_\_\_\_  
10 John D. Malamut  
11 Deputy City Attorney

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