



Agenda Item #: \_\_\_\_\_

# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Montgomery and Members of the City Council

**THROUGH:** Geoff Dolan, City Manager

**FROM:** Richard Thompson, Director of Community Development  
Laurie B. Jester, Planning Manager

**DATE:** February 17, 2009

**SUBJECT:** Consideration of Planning Commission Recommendation to Approve Zoning Code Amendments to the Tree Preservation Regulations, a City Council 2008-2009 Work Plan item, to Provide More Flexibility and to Require a Tree Trimmers Permit.

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### **RECOMMENDATION:**

Staff recommends that the City Council **ACCEPT PUBLIC INPUT, DISCUSS, WAIVE FURTHER READING, INTRODUCE ORDINANCE NO. 2121, AND SCHEDULE SECOND READING AND ADOPTION** for March 4, 2009.

### **FISCAL IMPLICATION:**

There are no direct fiscal implications associated with the recommended action, however there will be minor administrative costs associated with processing the new Tree Trimmers Permit. The City Council requested staff to absorb the costs and not charge a fee for the new Tree Trimmers Permit.

### **BACKGROUND:**

The City's Tree Preservation Ordinance was originally adopted in 1993 and at that time, the Ordinance applied only to the Tree Section. The Ordinance protected most private property trees with a 12" or greater trunk diameter located in the front yard. At that time the Ordinance was implemented more as a "removal and replacement" regulation rather than a "preservation" regulation.

In 2003, the Ordinance was expanded to apply to all of the residential zones in Area Districts I and II; the Beach Area is not covered by the Tree Ordinance. With the expansion of the Tree Ordinance, planning staff began implementing the regulation as a "preservation" regulation, not a "removal and replacement" regulation as previously implemented. At a joint City Council and Planning Commission meeting the City Council confirmed that the Ordinance was intended to preserve trees, and that Staff should continue to enforce the Ordinance accordingly.

In July 2005, the City Council adopted the 2005-2007 Work Plan which included a status report on the Tree Preservation regulations, and the Council provided direction on revisions to the regulations. In March 2006 the City Council adopted Ordinance No. 2082 amending the Tree

Preservation regulations to protect streetside trees on corner lots, require new trees on lots that have no trees, increase the size of replacement trees, and require tree pruning standards. Additionally, new fees and fines for violations of the Tree Ordinance were adopted with the fines going to the newly established Tree Canopy Restoration Fund. City Council also directed staff to work with a group of interested residents to form a Tree Committee.

In April 2006 the City Council approved the formation of the Tree Committee as well as established the purpose of the Committee to work with City staff to focus on educating the public on the Tree Preservation Ordinance and to promote the protection and enhancement of the Manhattan Beach tree canopy.

In September 2007 the City Council held a special study session to discuss the Tree Ordinance, and requested that staff return with a status report. In December 2007 the Council reviewed the status report, provided direction to staff to utilize the City arborist more, and approved increased fines for tree ordinance violations. The Council also directed the Tree Committee to focus on developing a number of outreach and educational items, including a Tree Trimmers Permit.

In June 2008 the City Council adopted the 2008-2009 Work Plan and in October 2008, the Council approved a reduced fee of \$100 for a Tree Permit for the removal and replacement of dead or dying trees. One of the Work Plan items under the category of "Other Environmental Initiatives" was to provide a status report on the Tree Ordinance as follows:

"Staff will present a status report on implementing the City's tree ordinance to the City Council, as well as feedback from it's meetings with the Palo Alto Tree Specialist and the Canopy Committee held in May. City Council will provide direction for any changes to the ordinance, its implementation, or public outreach that may be necessary."

On November 18, 2008 staff presented a status report to the City Council in accordance with the Work Plan. The Council heard from various members of the public, including the Tree Committee, that the existing Tree Preservation Ordinance is too restrictive. They felt that it does not allow enough flexibility for removal and replacement of trees. Although there were strong opinions on both sides of the issue, the general consensus was that the original 1993 ordinance was too lax, and the 2003 revisions are too restrictive, and a more "middle of the road" approach would better suit the desires of the community. The Council then directed the Tree Committee to focus their efforts on public education, and they directed staff to proceed with Code Amendments to provide flexibility in the regulations and a no cost Tree Trimmers Permit.

At the November meeting the Council also formed a subcommittee (Tell, Aldinger) that met with staff to discuss revisions to the Tree Ordinance. The subcommittee felt that it was important to provide some flexibility in the regulations to allow the removal and replacement of trees in marginal health, trees that will be impacted by development, and trees that significantly damage private property, creating a liability and safety concern. The subcommittee also requested staff to address the State Solar Shade Control Act requirements in the Tree Ordinance.

The Council subcommittee also discussed developing guidelines for tree canopy management.

They suggested that guidelines should be a future work effort, that it was important to go forward with the initial revisions as soon as possible and not have the guidelines delay the other revisions. The Council subcommittee then reported back to the Council on January 6, 2009, and the Council directed staff to proceed with the revisions to the Planning Commission.

On January 28, 2009 the Planning Commission conducted a public hearing on the proposed revisions. After taking public input and discussing the proposal the Commission provided direction to staff for further revisions. The item was continued to February 11<sup>th</sup> and after conducting the continued public hearing the Planning Commission adopted Resolution No. PC 09-02 (4:0:1 Fasola absent) recommending to the City Council approval of the revisions to the Tree Ordinance.

**DISCUSSION:**

The following is a summary of the revisions to the Tree Ordinance as recommended by the Planning Commission. Exhibit A is redline, strikeout text, and Ordinance No. 2121 is attached as Exhibit B. The proposed revisions will allow more flexibility in the removal and replacement of trees as well as a Tree Trimmers Permit for protected trees.

***Tree Trimmers Permit***

The Community Development and Finance Departments, and City Attorneys office have worked with the Tree Committee to develop a Tree Trimmers Permit Application. Currently all gardeners and landscapers in the City, about 300 total, require a City business license. If they also trim protected trees they will be required to also obtain a Tree Trimmers Permit. The Permit will be valid for one year, the same as the business license. The Council previously directed that no fee be charged for the Permit. The Permit has criteria that must be met, such as requiring that the tree trimmers acknowledge that they will meet ANSI A300 pruning standards as already specified in the Tree Preservation ordinance, and that a notice will be posted near the protected trees to be trimmed. The City will provide the Tree Trimmer with a supply of large notices with the Trimmers permit information and the Tree Trimmer will be required to complete information on the job address and dates of pruning and post the notice on each job site.

Homeowners that prune their own trees do not need a permit, however they must comply with the ANSI pruning standards. Tree Trimmers and homeowners will also be informed that there are fines for violations of the ordinance. A list of permitted Tree Trimmers will be available from the Finance and Community Development Departments and posted on the City website. Links to the International Society of Arboriculture (ISA) website with the ANSI Pruning Standards are available on the City website.

***Tree Ordinance flexibility***

The proposed revisions to the Tree Ordinance will allow more flexibility in the removal and replacement of trees as directed by the City Council.

*Purpose*

The purpose section is proposed to be revised to emphasize that healthy trees should be protected, allow flexibility for removal of trees that may be inappropriate or causing damage, and balancing the preservation of healthy trees with the reasonable enjoyment of private

property. The existing language in this section that indicates that the design of residences should consider and accommodate healthy protected trees has been revised to add “as reasonably feasible”. The sentence from Section D. 7. regarding residential buildings taking priority over tree preservation has been relocated to this section. Another intent statement has been added to emphasize the goal of enhancing the future tree canopy and providing the right tree for the right location.

*Preservation of Trees During Grading and Construction Operations*

The sentence from Section D. 7. regarding residential buildings taking priority over tree preservation has been relocated to the Purpose section. The section on public right-of-way improvements includes additional information on modifying dimensions to preserve healthy trees.

*Tree Removal Permit Process*

A new section is proposed to be added to the Code to establish the process, findings, documentation requirements and criteria for the removal and replacement of trees. The criteria includes the current standards that staff uses; if the tree is dead, dying, a health or safety hazard, structurally unstable, or construction will cause significant unavoidable damage to the tree, staff will approve removal.

Additional criteria is also proposed to be added to allow more flexibility. If the tree is in marginal condition and reasonable alternatives are not available to preserve the tree, staff feels it is appropriate to remove and replace a tree. If a tree is significantly damaging public property, cracking a sidewalk, curb or gutter, or damaging a utility meter, and it can not be reasonably repaired or maintained, staff will approve removal. The Council requested that staff include similar criteria for damage to private property. This will allow trees that are significantly damaging driveways, walkways, walls or other structures, to be removed if there is a liability, health or safety concern, and the situation can not reasonably be repaired, maintained, or corrected. The applicant would be required in these situations to submit support documentation to substantiate the request. Damage to private underground utilities, such as sewers, and water lines, in itself would not be sufficient justification to approve removal and replacement of a protected tree. When reviewing a Tree Permit the Director will also consider the age, species, history and location of the tree in relationship to surrounding improvements

State laws in California protect homeowner's access to the sun for solar systems, and allows the pruning and removal of trees in certain situations where if trees are shading solar panels. There are a number of exemptions for tree that were planted prior to the installation of the solar panels and their replacement trees if those trees die, as well as trees that are protected under City ordinances. Due to these exceptions is is unlikely that trees will be removed in accordance with the State Solar requirements, however staff felt it was important to add this reference.

*Documentation and third party arborist*

Usually, when a tree permit is submitted the applicant is also required to submit a report from an ISA certified arborist or other horticultural professional, and/or historical or other

support documentation to justify the removal and replacement of the tree. The City arborist and City staff reviews the information and make a determination if the request meets the established criteria. Occasionally the applicants arborist and the City arborist will disagree. In these cases a third party ISA certified arborist could mediate the situation. The cost of this third party arborist would be shared between the applicant and the City. City staff would make the determination if this is the appropriate approach and whether or not the application would then be forwarded to the Planning Commission, and ultimately the City Council.

#### *Replacement Trees*

In response to a comment from the public on ensuring that required replacement trees are planted in a timely manner, the Commission revised this section to require that replacement trees be planted within 90 days after removal of the protected tree or prior to building permit final. This requirement will also be placed on the Tree Removal Permit when it is issued.

#### *Appeals*

Staff is adding a new Appeals section that references the current Code Section, Chapter 10.100. This Chapter indicates that decisions of the Director of Community Development are appealable to the Planning Commission, and Planning Commission decisions are appealable to the City Council.

When reviewing an appeal one of the options that the Planning Commission or City Council could consider is the appraised value of the tree. If the Commission or City Council feels it is appropriate to remove the tree an option would be to have the applicant pay the City the full appraised value of the tree, minus the cost of replacement trees. The funds paid by the applicant could then be placed in the City Tree Canopy Restoration Fund to be used by the City for tree planting, education and other tree related projects.

#### ***Planning Commission and public discussion***

At the two Planning Commission meetings there were several members of the public that commented on the proposed revisions. Several representatives from the Tree Committee e-mailed and spoke with staff and indicated at one of the meetings that they were supportive of the proposed revisions, which some of them were very involved in formulating the concepts for. Other residents indicated that there should be a broader long range vision and this has been reflected in the Purpose section. There were comments on the dead tree permit fee being too high; however the City Council recently reduced the fee to \$100. There were also concerns that a Tree Trimmers Permit fee may be required in the future and the Council directed that there should be no fee at this time. There was a comment to consider always requiring a security deposit to ensure new trees are planted, and the Commission felt this was too onerous and costly for residents. Comments were provided at the hearing and via e-mail on the pruning standards booklets and handouts. The City has purchased a large volume of the pruning booklets and a number of other educational materials which the Tree Committee has provided free to the public at a number of educational events and most are available at City Hall and posted on the City website. There was also a question regarding rear yard trees and giving some type of “credit” for their protection, which the Commission was not supportive of at this time as they felt this was not the direction provided by Council.

Two e-mails were submitted the afternoon of the February 11<sup>th</sup> Planning Commission meeting. One

focused on allowing trees that are inappropriate for a location, or limiting development on a property, to be removed. Staff reviewed these comments with the Commission who felt that the proposed language was too subjective and the purpose, process, findings and criteria sections would already cover these types of situations. The other e-mailed commented on the flexibility in the proposed regulations and concerns that it would provide too much discretion and not enough administrative accountability. The Commission felt that the Council direction was to provide flexibility and balance, and the criteria provides the standards that the Director must use when considering Tree Permit applications. There is also an option for a third party arborist as a mediator as well as the appeal process to the Planning Commission and City Council.

The Planning Commission was supportive of the revisions with the discussions focusing on how much flexibility the ordinance should provide, without providing conflicting goals and still maintaining the balance of the preservation of trees and the ability to reasonably develop a property. The proposed language was reorganized to be more user-friendly. There was discussion about damage to underground utilities and structures not meeting the criteria for removal and this section was revised to indicate damage to underground utilities “in itself” would not meet the criteria for removal. Staff revised the Purpose and Tree Removal Permit Process sections of the ordinance to address these comments. The Commission also discussed whether or not an ISA certified arborist or tree trimmer should supervise the tree trimming. These options were discussed extensively by the Tree Committee who recommended that this not be required but that the ISA standards be complied with by any tree trimmer.

The Commission also commented on items that they would like the Council to consider addressing in the future. The Commission felt it was important to revisit the regulations in about a year’s time and the Ordinance provides language to address this. They also requested that trees being removed have a notice posted on the property a minimum of two days prior to the removal, which staff will incorporate into the Tree Permit application. One Commissioner felt that a public and private tree inventory would be beneficial, more trees should be required in parking lots, setbacks should be flexible to encourage tree preservation, walkstreets should have more landscaping, a list of trees specifically for Manhattan Beach should be developed and incentives should be provided for new trees throughout residential areas not just in the front yard.

**CONCLUSION:**

The proposed revisions to the Tree Preservation regulations are intended to meet the City Councils goal of preserving and enhancing the existing and future tree canopy while allowing flexibility for the removal and replacement of trees that meet certain criteria.

Staff requests that the City Council accept public input, discuss, waive further reading, introduce Ordinance No. 2121, and schedule the second reading and adoption for March 4, 2009.

**ATTACHMENTS:**

- A. Tree Ordinance redline-strike out proposed revisions
- B. Draft Ordinance No. 2121
- C. Planning Commission Resolution, minutes, staff report, attachments, and e-mails - January 28 and February 11, 2009 (excluding duplicates and February 11<sup>th</sup> minutes)

**REDLINE-STRIKEOUT TEXT**  
**TREE ORDINANCE**  
**CITY COUNCIL 2-17-09**  
**EXHIBIT A**  
**BLACK- ORIGINAL TEXT**

**RED- 2-11-09 REVISIONS RECOMMENDED BY PLANNING COMMISSION**

**10.52.120 Tree preservation and restoration in residential zones, Area Districts I and II.**

A. **Purpose.** Tree preservation is necessary for the health and welfare of the citizens of the City of Manhattan Beach in order to provide cooling shade and beauty, increase property values, minimize spread of disease to healthy trees, conserve scenic beauty, prevent erosion of topsoil, protect against flood hazards, counteract pollutants in the air, and generally maintain the climatic and ecological balance of the area.

These regulations strive to preserve and enhance the existing healthy tree canopies on individual residential properties as well as the overall neighborhood, in order to maintain the neighborhood character, while allowing flexibility for removal of existing trees that may be inappropriate for an area or causing damage. The intent is to enhance the future tree canopy of the City, striving to provide the right trees in the right location.

The intent of this section is also the reasonable retention and preservation of healthy trees while considering and balancing the reasonable enjoyment of private property. Residential buildings shall take priority over tree preservation, however alternative designs and materials, shall be considered and implemented, as feasible, with the proposed overall design of the project. The design of residences, including grading, driveways, walkways, patios, utilities and right-of-way improvements, shall consider and accommodate existing healthy protected trees, as reasonably feasible.

**Comment:** THIS SENTENCE WAS MOVED FROM SECTION D. 7.

The purpose of the Tree Trimmers Permit is to provide standards so that trees are pruned properly in order to protect the City's tree canopy and to provide residents with a list of permitted Tree Trimmers.

**B. General Requirements.**

1. Except as provided in subsection H (Exemptions), no person shall directly or indirectly remove or cause to be removed, or relocate any protected tree as herein defined, from residentially zoned properties within Area Districts I and II, without first obtaining a permit to do so in accordance with the procedures set forth in this section.
2. No person shall directly or indirectly neglect, abuse, damage, mutilate, injure or harm any protected tree as herein defined, from residentially zoned properties within Area Districts I and II.

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**C. Definitions.**

1. "Protected tree" shall include: any species of tree, (excluding deciduous fruit-bearing trees and Washingtonia species palms) the trunk of which is located at least partially within the required front yard or streetside yard (on corner lots) of a site, with a trunk diameter of twelve inches (12") or greater or multiple trunks totaling twelve inches (12") in diameter or greater at a height of four and one-half feet (4.5') from existing grade; and any replacement tree required pursuant to this section.
2. A "tree permit" is a permit required for the removal, relocation or replacement of a protected tree.
3. A "tree plan" shall mean a plot plan (scale 1/8 inch = 1 foot, minimally) with all trees on the subject property identified by location, size and species, including:
  - a. Footprint of all existing and proposed buildings and/or additions to buildings on the property;
  - b. Location of all trees within the front and streetside yards, in the adjacent public right-of-way and on adjacent properties within ten feet (10') of the subject property adjacent to the front and streetside yards;
  - c. Size (diameter and height) and species of each tree;
  - d. Location of drip line for each tree;
  - e. Designation of tree(s) to be removed, saved, relocated and/or replaced;
  - f. Proposed location, size and type of replacement tree(s);
  - g. Photos of all trees in front and streetside yards.

**D. Preservation of Trees During Grading and Construction Operations.**

1. All protected trees, as defined above, shall be preserved and protected, and may be only be removed or relocated with prior approval of a Tree Permit provided they are replaced or relocated in accordance with the provisions of this section.
2. Trees required to be retained shall be protected during demolition, grading, and construction operations by methods subject to the approval of the Community Development Director.
3. Care shall be exercised for trees to be preserved so that no damage occurs to said trees. Advisory sign(s) that identify the tree protection requirements shall be clearly posted on the site. All construction shall preserve and protect the health of trees:
  - a. Remaining in place;
  - b. Being relocated;
  - c. Planted to replace those removed;
  - d. Adjacent to the subject property.
5. Any tree which is adjacent to the subject property and may be potentially impacted by construction activity on the subject property shall be protected pursuant to the provisions of this chapter.



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6. No grading or construction, including structures, paving, and walls, that disrupts the root system on private as well as public property, shall be permitted without prior approval by the Community Development Director. As a guideline, no cutting of roots over two inches (2”) in diameter should occur within the drip line of the tree as measured at ground level. Where some root removal is necessary as approved by the City the tree crown may require thinning to prevent wind damage.

~~7.8.~~ Required public right-of-way improvements shall take priority over tree preservation, however alternative designs and materials, including but not limited to **modified dimensions**, permeable surfaces and planter areas with irrigation, shall be considered and implemented, as feasible.

~~8.9.~~ Relocation of protected trees shall only be allowed if the Community Development Director determines that the relocation will not be detrimental to the health of the tree or to other protected trees.

~~9.10.~~ No fill material shall be placed within the drip line of any tree.

~~10.11.~~ The Community Development Department may impose special measures determined necessary to preserve and protect the health of trees to remain on site.

**Comment:** SECTION D 7. WAS MOVED TO PURPOSE SECTION. Residential buildings shall take priority over tree preservation, however alternative designs and materials, shall be considered and implemented, as feasible, with the proposed overall design of the project.

**E. Tree Permit Applications - without Building Permit.**

1. Any person desiring to remove or relocate one (1) or more protected trees shall obtain a Tree Permit from the Community Development Department. A fee, as specified in the City’s Fee Resolution, shall be required for a Tree Permit.
2. Tree Permit applications shall include a Tree Plan, and written proof of neighbor notification pursuant to applicable permit instructions and may also include an arborist’s report.
3. A bond, cash deposit or other financial security, may be required to ensure required replacement trees are planted and/or that existing protected trees are properly protected, as determined to be appropriate by the Community Development Director.
4. The Community Development Director, when approving Tree Permits, shall determine the adequacy and appropriateness of the submitted plan, neighbor input, and other related information.

**F. Tree Permit - with Building Permit.**

1. Application for a Building Permit shall require a Tree Permit/Acknowledgement and Plan as defined above, if protected trees are located on the property.
2. A Tree Permit shall be required if the proposed project may impact existing trees in the front or streetside yard of the subject property even though removal is not planned.
3. A fee, as specified in the City’s Fee Resolution, shall be required for a Tree Permit.

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4. A bond, cash deposit or other financial security, may be required to ensure required replacement trees are planted and/or that existing protected trees are properly protected, as determined to be appropriate by the Community Development Director.
5. Any new residential construction project in Area Districts I and II which exceeds fifty percent (50%) valuation (total estimated cost of reconstructing the entire structure as defined by Section 10.68.030 of the Manhattan Beach Municipal Code) shall be required to plant a minimum of one (1) new thirty-six inch (36”) box tree, unless the Director of Community Development determines that it is inappropriate to require additional tree(s) on the property.

**G. Tree Removal Permit Process. A Tree Permit application is required for the removal and replacement of protected trees.**

**1. Criteria and Findings.** In making a determination to approve a Tree Removal Permit application, the Director of Community Development shall require that the following criteria be met:

- a. A finding shall be made that the application is consistent with the Purpose portion of this Section.
- b. The age, species, history, and location of the tree in relationship to other trees, and existing and proposed surrounding structures, utilities and other improvements, shall be considered.
- c. At least one of the following criteria shall be met:
  - aa. The tree is dead, or
  - bb. The tree is a health or safety hazard, or is structurally unstable, or
  - cc. The tree is dying or in marginal condition and reasonable alternatives to preserve or rejuvenate the tree have been implemented unsuccessfully or have been analyzed, and are not feasible, or
  - dd. Construction will cause significant unavoidable damage to the tree that will compromise the health of the tree, and reasonable alternatives to preserve the tree have been analyzed and are not feasible, or
  - ee. The tree is causing or will cause in the near future, significant damage to public or private property, which creates a liability, health or safety concern, and can not reasonably be repaired, maintained or corrected. Trees causing damage to sewers, water lines or other similar private underground utilities, in itself shall not be considered to meet the criteria for removal and replacement, or
  - ff. The tree is obstructing protected solar access as regulated by California State law, Solar Shade Control Act, Public Resources Code 25980-25986, and the tree can not be reasonably pruned or maintained in accordance with the State requirements.

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2. **Arborist Report and Documentation.** The Director may require the applicant to submit a report from an ISA certified arborist or other horticultural professional, and/or historical or other support documentation in order to substantiate that the required criteria and findings have been met. The City arborist and/or other City staff may review the information. All costs shall be the responsibility of the applicant.

3. **Third Party Arborist.** If the applicant's arborist or other horticultural professional is not in agreement with the findings of the City arborist or staff a third party ISA certified arborist, agreed to by the applicant and the City, may be contracted to mediate the situation. The cost of this third party arborist shall be shared between the applicant and the City.

~~H.G.~~ **Replacement Trees.** Required replacement trees shall be minimum thirty-six inch (36") box trees for each protected tree removed of an appropriate species and must be planted within ninety (90) days after the removal of the tree, or prior to issuance of a building permit final. Actual sizes, species, location, and quantities of replacement trees are subject to Community Development Director approval. The City street tree list may be used as a guideline by the Director in determining appropriate replacement tree(s). A combination of protected and replacement tree quantities shall not result in less than one (1) protected tree per lot or thirty feet (30') of site frontage. If the Director of Community Development determines that there is not adequate room on the property for replacement tree(s) due to the number of existing trees to remain, then the requirement for replacement trees may be modified or waived.

Deleted: prior to final inspection

~~I.H.~~ **Exemptions.** Tree removals and alterations exempt from the requirements of this section are as follows:

1. Removal in case of imminent emergency caused by the hazardous or dangerous condition of a tree, requiring immediate action for the safety of life or property (e.g., a tree about to topple onto a dwelling due to heavy wind velocities) with the prior approval of the Director of Community Development or his or her designee if a subsequent application for a Tree Permit is filed within five (5) working days.
2. Removal of any tree that is determined to be a public nuisance in accordance with Section 7.32.070, with prior approval of the Directors of Community Development and Public Works or his or her designee if a subsequent application for a Tree Permit is filed within five (5) working days.
3. Removal of deciduous fruit-bearing trees, *Washingtonia robusta*, or *Washingtonia filifera*.
4. Public Utility actions, under the jurisdiction of the Public Utilities Commission of the State of California, as may be necessary to comply with their safety regulations, or to maintain the safe operation of the facilities.

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5. Cutting of tree branches and roots extending across property lines into adjacent property, to the extent that the pruning complies with the American National Standards Institute (ANSI A300) standards and does not damage or potentially damage the health and structure of the tree(s).
6. Cutting of tree branches and roots to the extent that the pruning complies with the American National Standards Institute (ANSI A300) requirements and does not damage or potentially damage the health and structure of the tree(s).

J. Tree Trimmers Permit.

1. Permit requirements-

Any person pruning any private property protected tree in the City of Manhattan Beach must have a Tree Trimmers Permit. Residents are responsible for hiring City licensed Tree Trimmers. Residents pruning their own trees are exempt from obtaining a Tree Trimmers Permit but must still comply with the ANSI A300 standards.

2. Standards-

a. All Tree Trimmers and Residents-

Protected trees must be pruned in accordance with ANSI A300 pruning standards, which include, but are not limited to, the following standards:

- i. Generally no more than 25% of living foliage should be removed annually, and
- ii. Topping of trees is generally prohibited.

b. All Tree Trimmers-

The following standards must also be met when pruning protected trees.

- i. A notice provided by the City shall be posted on the site, in accordance with the requirements stated in the Tree Trimmers Permit.
- ii. The State of California may require contractor's to have one of the following licenses if the total cost of the job exceeds a dollar value established by the State:
  - aa. C27- Landscaping Contractor, or
  - bb. C61- Limited Specialty Classification and D49 Tree Service.

**K. Effective date--Appeals.** Unless appealed in accordance with Chapter 10.100, a Tree Permit decision shall become effective after expiration of the time limits for appeal set forth in Section 10.100.030.

**L. I. Non-liability of City.** Nothing in this section shall be deemed to impose any liability for damages or a duty of care and maintenance upon the City or upon any of its officers or employees. The person in possession of any private property shall have a duty to keep the trees upon the property and under his control in a safe and healthy condition.

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**M. J. Violation/Penalties.** Violation of this chapter shall be punishable as a misdemeanor or an infraction subject to the discretion of the City Prosecutor with the following additional penalties:

1. **Suspension, Revocation and Restoration.** In addition to any other penalties allowed by this Code, the Director of Community Development may suspend any Tree Permit. The Planning Commission or City Council may suspend the Tree Permit for a Discretionary Project upon a finding at a public hearing that a violation of conditions of approval has occurred.
2. **Stop Work Orders.** Whenever any construction or work is being performed contrary to the provisions of this section or condition of approval of the applicable discretionary project the Director of Community Development may issue a written notice to the responsible party to stop work on the project on which the violation has occurred or upon which the danger exists. The notice shall state the nature of the violation and the risk to the trees. No work shall be allowed until the violation has been rectified and approved by the Director of Community Development.
3. **After-the-Fact Permit Fees.** The standard permit fee shall be doubled for tree removals or other work requiring a Tree Permit pursuant to this section when commenced prior to issuance of said permit.

**N. K. Administrative Fines.** The Director of Community Development may impose a fine against any person who is in violation of any provision of this section. Such fine shall be a range as specified in the City Fee Resolution. The proceeds of all administrative fines imposed under this section shall be placed in a "Tree Canopy Restoration Fund" to be used solely for the replacement and maintenance of trees in the public right-of-way or on public property within the City.

1. Any person upon whom a fine is considered to be imposed pursuant to this section shall be entitled to a written notice of the pending decision of the imposition of the fine within ten (10) calendar days of the decision of the imposition of the fine. The notice shall state the amount of the fine, the reason for the proposed imposition of the fine and the authority for imposing the fine. The notice shall also state that the person upon whom the fine is proposed to be imposed has a right to request a hearing to protest the proposed decision of imposition of the fine and the time and method by which a hearing may be requested.
2. Any person upon whom a fine authorized by this section is proposed to be imposed may request, in writing, a hearing to protest the proposed fine. The request must be filed with the City Clerk within ten (10) calendar days from the mailing date of the notice of the proposed fine. The failure to timely file a written request for a hearing shall constitute a waiver of the right to a hearing.
3. Upon timely receipt of a request for a hearing, the City shall, within ten (10) calendar days of receipt of such a request hold a hearing to be presided over by the Director of Community

**REDLINE-STRIKEOUT TEXT**  
**TREE ORDINANCE**  
**CITY COUNCIL 2-17-09**  
**EXHIBIT A**  
**BLACK- ORIGINAL TEXT**

**RED- 2-11-09 REVISIONS RECOMMENDED BY PLANNING COMMISSION**

Development or his or her designee. This presiding officer shall determine the procedure and rules for the conduct of the hearing. The ruling of the presiding officer, notwithstanding any other provision of this Code shall be final.

4. If the Director determines that a fine is due, and the fine imposed by this section is not paid within fifteen (15) calendar days of its becoming due and payable the City may file a lien in the amount of the fine plus interest at the legal rate, which may be recorded on any property owned by the individual subject to the fine which is located in the City of Manhattan Beach.

5. In the event that a civil action is filed regarding any provision of this subsection K the City shall be entitled to attorney fees if it prevails.

(Ord. No. 1884, Enacted August 19, 1993; § 2, Ord. 2045, eff. May 6, 2003, as amended by § 2, Ord. 2082, eff. March 21, 2006)

ORDINANCE NO. 2121

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
MANHATTAN BEACH APPROVING AMENDMENTS TO THE CITY  
ZONING CODE (SECTION 10.52.120) TO REVISE THE TREE  
PRESERVATION REGULATIONS

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES  
HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach, California does hereby  
find, determine and declare as follows:

WHEREAS, The City's Tree Preservation Ordinance was originally adopted August 19,  
1993 (Ordinance No. 1884), and is included as Section 10.52.120 of the Zoning Code, and the  
Ordinance originally applied only to the Tree Section, generally bounded by Rosecrans Avenue,  
Blanche Road, Valley Drive and Sepulveda Boulevard, and;

WHEREAS, May 6, 2003, the Ordinance was expanded (Ordinance No. 2045) to apply  
to all of the residential zones in Area Districts I and II; the Beach Area is not covered by the Tree  
Ordinance, and;

WHEREAS, On June 24, 2005, the City Council held a special session and developed  
the 2005-2007 Work Plan, which included an item to study possible revisions to the Tree Ordinance,  
and;.

WHEREAS, On July 5, 2005, the City Council amended and formally adopted the 2005-  
2007 Work Plan, and;

WHEREAS, On July 26, 2005 the City Council and Planning Commission held a joint  
Work Plan meeting, and provided direction to revise the Tree Ordinance as one of the top priorities for  
the Community Development Department, and;

WHEREAS, On March 21, 2006 the City Council adopted Ordinance No. 2082  
amending the Tree Preservation regulations to protect streetside trees on corner lots, require new trees  
on lots that have no trees, increase the size of replacement trees, and require tree pruning standards.  
Additionally, new fees and fines for violations of the Tree Ordinance were adopted with the fines going  
to the newly established Tree Canopy Restoration Fund, and the concept of a residents' Tree  
Committee was approved. The Tree Committee was formally approved April 18, 2009, and;

WHEREAS, On September 18, 2007 the City Council held a special study session to  
discuss the Tree Ordinance, and requested that staff return with a status report, and;

WHEREAS, On December 4, 2007 the Council reviewed a status report, provided  
direction to staff to utilize the City arborist more, and adopted Resolution No. 6117 increasing fines for  
tree ordinance violations. The Tree Committee made a presentation, and the Council directed them to  
focus on developing a number of outreach and educational items, including a Tree Trimmers Permit,  
and;

WHEREAS, On June 17, 2008 the City Council adopted the 2008-2009 Work Plan,  
which includes providing a status report on the Tree Ordinance , and;

WHEREAS, On October 21, 2008, the Council adopted Resolution No. 6163 approving  
a reduced fee of \$100 for a Tree Permit for the removal and replacement of dead or dying trees, and;

WHEREAS, On November 18, 2008 staff presented a status report to the City Council  
in accordance with the 2008-2009 Work Plan. The Tree Committee was directed to focus their efforts on  
public education, and staff to proceed with Code Amendments to provide flexibility in the Tree  
Preservation regulations and provide a no cost Tree Trimmers Permit and license, and;

WHEREAS, Pursuant to applicable law, the Planning Commission of the City of Manhattan Beach conducted a public hearing on January 28, 2009, on the proposed Code Amendments related to revisions to the Tree Preservation regulation. The hearing was conducted and continued to February 11, 2009 after accepting public input and discussing the item, provided direction to staff for revisions to the Ordinance, the Planning Commission adopted Resolution No. PC 09-02, recommending to the City Council revisions to the Tree Preservation regulations, and;

WHEREAS, pursuant to applicable law, the City Council of the City of Manhattan Beach conducted a public meeting on February 17, 2009, on the proposed Code Amendments related to revisions to the Tree Preservation regulation, and after accepting public input and discussing the item, introduced Ordinance No. 2121, for revisions to the Tree Preservation regulations, and the second reading a adoption was scheduled for March 4, 2009, and;

WHEREAS, the public meeting was noticed pursuant to applicable law, testimony was invited and received, and;

WHEREAS, The applicant for the subject project is the City of Manhattan Beach, and;

WHEREAS, Pursuant to the California Environmental Quality Act (CEQA) and the Manhattan Beach CEQA Guidelines, the subject Amendments are exempt in that they are covered by the general rule that CEQA [Section 15061 (3)] only applies to projects which have the potential for causing a significant effect on the environment, and since it can be seen with certainty that there is no possibly that the activity will have a significant effect on the environment, the activity is not subject to CEQA, and;

WHEREAS, The proposed amendments have been prepared in accordance with the provisions of Title 7, Division 1, Chapter 4, Section No. 65853, et seq., of the State of California Government Code, and;

WHEREAS, The City Council finds that the project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code, and;

The City Council made the following findings with regard to the proposed changes:

1. The proposed amendments are consistent with the City of Manhattan Beach General Plan.

Goal LU-2: Encourage the provision and retention of private landscaped open space.

Policy LU-2.3: Protect existing mature trees throughout the City, and encourage their replacement with specimen trees whenever they are lost or removed.

Goal LU-3: Achieve a strong, positive community aesthetic.

Goal CR-4: Preserve the existing landscape resources in the City, and encourage the provision of additional landscaping.

Policy CR-4.1: Protect existing mature trees throughout the City and encourage their replacement with specimen trees whenever they are lost or removed.

Policy CR-4.3: Recognize that landscaping, and particularly trees, provide valuable protection against air pollution, noise, soil erosion, excessive heat, and water runoff, and that they promote a healthy environment.

Policy CR-4.4: Review the tree ordinance to consider its application citywide and to determine the need to strengthen tree preservation criteria.

Policy CR-4.5: Discourage the reduction of landscaped open space and especially the removal of trees from public and private land.



SECTION 2. The City Council of the City of Manhattan Beach hereby amends Section 10.52.120 of Title 10, of the Manhattan Beach Municipal Code, entitled Tree preservation and restoration in residential zones, Area Districts I and II as follows:

SECTION 3. The City Council of the City of Manhattan Beach hereby modifies Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by amending Section 10.52.120 A. (Purpose) as follows:

SECTION 4. The City Council of the City of Manhattan Beach hereby modifies Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by deleting Section 10.52.120 D. 7. as follows:

D. Preservation of Trees During Grading and Construction Operations.

~~7. Residential buildings shall take priority over tree preservation, however alternative designs and materials, shall be considered and implemented, as feasible, with the proposed overall design of the project.~~

SECTION 5. The City Council of the City of Manhattan Beach hereby modifies Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by modifying Section 10.52.120 D. 8. as follows:

D. Preservation of Trees During Grading and Construction Operations.

7. Required public right-of-way improvements shall take priority over tree preservation, however alternative designs and materials, including but not limited to modified dimensions, permeable surfaces and planter areas with irrigation, shall be considered and implemented, as feasible.

SECTION 6. The City Council of the City of Manhattan Beach hereby modifies Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by adding Section 10.52.120 G. (Tree Removal Permit Process) as follows:

G. Tree Removal Permit Process. A Tree Permit application is required for the removal and replacement of protected trees.

1. Criteria and Findings. In making a determination to approve a Tree Removal Permit application, the Director of Community Development shall require that the following criteria be met:

- a. A finding shall be made that the application is consistent with the Purpose portion of this Section.
- b. The age, species, history, and location of the tree in relationship to other trees, and existing and proposed surrounding structures, utilities and other improvements, shall be considered.
- c. At least one of the following criteria shall be met:
  - aa. The tree is dead, or
  - bb. The tree is a health or safety hazard, or is structurally unstable, or
  - cc. The tree is dying or in marginal condition and reasonable alternatives to preserve or rejuvenate the tree have been implemented unsuccessfully or have been analyzed, and are not feasible, or
  - dd. Construction will cause significant unavoidable damage to the tree that will compromise the health of the tree, and reasonable alternatives to preserve the tree have been analyzed and are not feasible, or
  - ee. The tree is causing or will cause in the near future, significant damage to public or private property, which creates a liability, health or safety concern, and can not reasonably be repaired, maintained or corrected. Trees causing damage to sewers, water lines or other similar private underground utilities, in itself shall not be considered to meet the criteria for removal and replacement, or
  - ff. The tree is obstructing protected solar access as regulated by California State law, Solar Shade Control Act, Public Resources Code 25980-25986, and the tree can not be reasonably pruned or maintained in accordance with the State requirements.

2. Arborist Report and Documentation. The Director may require the applicant to submit a report from an ISA certified arborist or other horticultural professional, and/or historical or other support documentation

in order to substantiate that the required criteria and findings have been met. The City arborist and/or other City staff may review the information. All costs shall be the responsibility of the applicant.

3. Third Party Arborist. If the applicant's arborist or other horticultural professional is not in agreement with the findings of the City arborist or staff a third party ISA certified arborist, agreed to by the applicant and the City, may be contracted to mediate the situation. The cost of this third party arborist shall be shared between the applicant and the City.

SECTION 7. The City Council of the City of Manhattan Beach hereby modifies Section 10.52.120(Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by modifying Section 10.52.120 G. as follows:

G. Replacement Trees. Required replacement trees shall be minimum thirty-six inch (36") box trees for each protected tree removed of an appropriate species and must be planted within ninety (90) days after the removal of the tree, or prior to issuance of a building permit final. Actual sizes, species, location, and quantities of replacement trees are subject to Community Development Director approval. The City street tree list may be used as a guideline by the Director in determining appropriate replacement tree(s). A combination of protected and replacement tree quantities shall not result in less than one (1) protected tree per lot or thirty feet (30') of site frontage. If the Director of Community Development determines that there is not adequate room on the property for replacement tree(s) due to the number of existing trees to remain, then the requirement for replacement trees may be modified or waived.

SECTION 8. The City Council of the City of Manhattan Beach hereby modifies Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by adding Section 10.52.120 J. (Tree Trimmers Permit) as follows:

J. Tree Trimmers Permit.

1. Permit requirements-

Any person pruning any private property protected tree in the City of Manhattan Beach must have a Tree Trimmers Permit. Residents are responsible for hiring City licensed Tree Trimmers. Residents pruning their own trees are exempt from obtaining a Tree Trimmers Permit but must still comply with the ANSI A300 standards.

2. Standards-

a. All Tree Trimmers and Residents-

Protected trees must be pruned in accordance with ANSI A300 pruning standards, which include, but are not limited to, the following standards;

- i. Generally no more than 25% of living foliage should be removed annually, and
- ii. Topping of trees is generally prohibited.

b. All Tree Trimmers-

The following standards must also be met when pruning protected trees.

- i. A notice provided by the City shall be posted on the site, in accordance with the requirements stated in the Tree Trimmers Permit.
- ii. The State of California may require contractor's to have one of the following licenses if the total cost of the job exceeds a dollar value established by the State:
  - aa. C27- Landscaping Contractor, or
  - bb. C61- Limited Specialty Classification and D49 Tree Service.

SECTION 9. The City Council of the City of Manhattan Beach hereby modifies Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by adding Section 10.52.120 K. (Effective date-Appeals) as follows:

K. Effective date--Appeals. Unless appealed in accordance with Chapter 10.100, a Tree Permit decision shall become effective after expiration of the time limits for appeal set forth in Section 10.100.030.

SECTION 10. All other provisions of the City of Manhattan Beach Municipal Code shall remain unchanged and continue in full force and effect.

SECTION 11. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other resolution of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 12. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be unconstitutional or otherwise invalid, by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this resolution. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portion be declared unconstitutional or otherwise invalid.

SECTION 13. A staff review of the proposed amendments is hereby directed to occur approximately twelve (12) months after the effective date of the City Council approved Ordinance.

SECTION 14. This ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 15. The City Clerk shall certify to the passage and adoption of this ordinance shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council of said City in the minutes of the meeting of said Council at which the same is passed and adopted; and shall within fifteen (15) days after the passage and adoption thereof cause the same to be published once in a weekly newspaper of general circulation, printed, published and circulated within the City of Manhattan Beach, California and which is hereby designated for that purpose.

PASSED, APPROVED AND ADOPTED this 4<sup>th</sup> day of March, 2009.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Mayor of the City of Manhattan Beach, California

ATTEST:

\_\_\_\_\_  
City Clerk

**RESOLUTION NO. PC 09-02**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH RECOMMENDING APPROVAL OF AMENDMENTS TO THE CITY ZONING CODE (SECTION 10.52.120) TO REVISE THE TREE PRESERVATION REGULATIONS**

**THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** The Planning Commission of the City of Manhattan Beach hereby makes the following findings:

- A. The City's Tree Preservation Ordinance was originally adopted August 19, 1993 (Ordinance No. 1884), and is included as Section 10.52.120 of the Zoning Code, and the Ordinance originally applied only to the Tree Section, generally bounded by Rosecrans Avenue, Blanche Road, Valley Drive and Sepulveda Boulevard.
- B. On May 6, 2003, the Ordinance was expanded (Ordinance No. 2045) to apply to all of the residential zones in Area Districts I and II; the Beach Area is not covered by the Tree Ordinance.
- C. On June 24, 2005, the City Council held a special session and developed the 2005-2007 Work Plan, which included an item to study possible revisions to the Tree Ordinance.
- D. On July 5, 2005, the City Council amended and formally adopted the 2005-2007 Work Plan.
- E. On July 26, 2005 the City Council and Planning Commission held a joint Work Plan meeting, and provided direction to revise the Tree Ordinance as one of the top priorities for the Community Development Department.
- F. On March 21, 2006 the City Council adopted Ordinance No. 2082 amending the Tree Preservation regulations to protect streetside trees on corner lots, require new trees on lots that have no trees, increase the size of replacement trees, and require tree pruning standards. Additionally, new fees and fines for violations of the Tree Ordinance were adopted with the fines going to the newly established Tree Canopy Restoration Fund, and the concept of a residents' Tree Committee was approved. The Tree Committee was formally approved April 18, 2009.
- G. On September 18, 2007 the City Council held a special study session to discuss the Tree Ordinance, and requested that staff return with a status report.
- H. On December 4, 2007 the Council reviewed a status report, provided direction to staff to utilize the City arborist more, and adopted Resolution No. 6117 increasing fines for tree ordinance violations. The Tree Committee made a presentation, and the Council directed them to focus on developing a number of outreach and educational items, including a Tree Trimmers Permit.

- I. On June 17, 2008 the City Council adopted the 2008-2009 Work Plan, which includes providing a status report on the Tree Ordinance.
- J. On October 21, 2008, the Council adopted Resolution No. 6163 approving a reduced fee of \$100 for a Tree Permit for the removal and replacement of dead or dying trees.
- K. On November 18, 2008 staff presented a status report to the City Council in accordance with the 2008-2009 Work Plan. The Tree Committee was directed to focus their efforts on public education, and staff to proceed with Code Amendments to provide flexibility in the Tree Preservation regulations and provide a no cost Tree Trimmers Permit and license.
- L. Pursuant to applicable law, the Planning Commission of the City of Manhattan Beach conducted a public hearing on January 28, 2009, on the proposed Code Amendments related to revisions to the Tree Preservation regulation. The hearing was conducted and continued to February 11, 2009.
- M. The January 28<sup>th</sup> public hearing was advertised pursuant to applicable law, and testimony was invited and received at both public hearings. Public noticing included an ad published on January 8, 2009 in a newspaper of general circulation (Beach Reporter).
- N. The applicant for the subject project is the City of Manhattan Beach.
- O. Pursuant to the California Environmental Quality Act (CEQA) and the Manhattan Beach CEQA Guidelines, the subject Amendments are exempt in that they are covered by the general rule that CEQA [Section 15061 (3)] only applies to projects which have the potential for causing a significant effect on the environment, and since it can be seen with certainty that there is no possibility that the activity will have a significant effect on the environment, the activity is not subject to CEQA.
- P. The proposed amendments have been prepared in accordance with the provisions of Title 7, Division 1, Chapter 4, Section No. 65853, et seq., of the State of California Government Code.
- Q. The Planning Commission finds that the project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- R. The Planning Commission made the following findings with regard to the proposed changes:
  - 1. The proposed amendments are consistent with the City of Manhattan Beach General Plan.

**Goal LU-2: Encourage the provision and retention of private landscaped open space.**

Policy LU-2.3: Protect existing mature trees throughout the City, and encourage their replacement with specimen trees whenever they are lost or removed.

**Goal LU-3: Achieve a strong, positive community aesthetic.**

**Goal CR-4: Preserve the existing landscape resources in the City, and encourage the provision of additional landscaping.**

Policy CR-4.1: Protect existing mature trees throughout the City and encourage their replacement with specimen trees whenever they are lost or removed.

Policy CR-4.3: Recognize that landscaping, and particularly trees, provide valuable protection against air pollution, noise, soil erosion, excessive heat, and water runoff, and that they promote a healthy environment.

Policy CR-4.4: Review the tree ordinance to consider its application citywide and to determine the need to strengthen tree preservation criteria.

Policy CR-4.5: Discourage the reduction of landscaped open space and especially the removal of trees from public and private land.

**SECTION 2.** NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Manhattan Beach hereby recommends **APPROVAL** of the proposed amendments to the Manhattan Beach Municipal Code (Section 10.52.120-Tree preservation and restoration in residential zones, Area Districts I and II) as follows:

**SECTION 3.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by amending Section 10.52.120 A. (Purpose) as follows:

**A. Purpose.** Tree preservation is necessary for the health and welfare of the citizens of the City of Manhattan Beach in order to provide cooling shade and beauty, increase property values, minimize spread of disease to healthy trees, conserve scenic beauty, prevent erosion of topsoil, protect against flood hazards, counteract pollutants in the air, and generally maintain the climatic and ecological balance of the area.

These regulations strive to preserve and enhance the existing healthy tree canopies on individual residential properties as well as the overall neighborhood, in order to maintain the neighborhood character, while allowing flexibility for removal of existing trees that may be inappropriate for an area or causing damage. The intent is to enhance the future tree canopy of the City, striving to provide the right trees in the right location.

The intent of this section is also the reasonable retention and preservation of healthy trees while considering and balancing the reasonable enjoyment of private property. Residential buildings shall take priority over tree preservation, however alternative designs and materials, shall be considered and implemented, as feasible, with the proposed overall design of the project. The design of residences, including grading, driveways, walkways, patios, utilities and right-of-way improvements, shall consider and accommodate existing healthy protected trees, as reasonably feasible.

The purpose of the Tree Trimmers Permit is to provide standards so that trees are pruned properly in order to protect the City's tree canopy and to provide residents with a list of permitted Tree Trimmers.

**SECTION 4.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by deleting Section 10.52.120 D. 7. as follows:

**D. Preservation of Trees During Grading and Construction Operations.**

~~7. Residential buildings shall take priority over tree preservation, however alternative designs and materials, shall be considered and implemented, as feasible, with the proposed overall design of the project.~~

**SECTION 5.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by modifying Section 10.52.120 D. 8. as follows:

**D. Preservation of Trees During Grading and Construction Operations.**

7. Required public right-of-way improvements shall take priority over tree preservation, however alternative designs and materials, including but not limited to modified dimensions, permeable surfaces and planter areas with irrigation, shall be considered and implemented, as feasible.

**SECTION 6.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by adding Section 10.52.120 G. (Tree Removal Permit Process) as follows:

**G. Tree Removal Permit Process.** A Tree Permit application is required for the removal and replacement of protected trees.

1. **Criteria and Findings.** In making a determination to approve a Tree Removal Permit application, the Director of Community Development shall require that the following criteria be met:

- a. A finding shall be made that the application is consistent with the Purpose portion of this Section.
- b. The age, species, history, and location of the tree in relationship to other trees, and existing and proposed surrounding structures, utilities and other improvements, shall be considered.
- c. At least one of the following criteria shall be met:
  - aa. The tree is dead, or
  - bb. The tree is a health or safety hazard, or is structurally unstable, or
  - cc. The tree is dying or in marginal condition and reasonable alternatives to preserve or rejuvenate the tree have been implemented unsuccessfully or have been analyzed, and are not feasible, or
  - dd. Construction will cause significant unavoidable damage to the tree that will compromise the health of the tree, and reasonable alternatives to preserve the tree have been analyzed and are not feasible, or
  - ee. The tree is causing or will cause in the near future, significant damage to public or private property, which creates a liability, health or safety concern, and can not reasonably be repaired, maintained or corrected. Trees causing damage to

- sewers, water lines or other similar private underground utilities, in itself shall not be considered to meet the criteria for removal and replacement, or
- ff. The tree is obstructing protected solar access as regulated by California State law, Solar Shade Control Act, Public Resources Code 25980-25986, and the tree can not be reasonably pruned or maintained in accordance with the State requirements.

**2. Arborist Report and Documentation.** The Director may require the applicant to submit a report from an ISA certified arborist or other horticultural professional, and/or historical or other support documentation in order to substantiate that the required criteria and findings have been met. The City arborist and/or other City staff may review the information. All costs shall be the responsibility of the applicant.

**3. Third Party Arborist.** If the applicant's arborist or other horticultural professional is not in agreement with the findings of the City arborist or staff a third party ISA certified arborist, agreed to by the applicant and the City, may be contracted to mediate the situation. The cost of this third party arborist shall be shared between the applicant and the City.

**SECTION 7.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by modifying Section 10.52.120 G. as follows:

**G. Replacement Trees.** Required replacement trees shall be minimum thirty-six inch (36") box trees for each protected tree removed of an appropriate species and must be planted within ninety (90) days after the removal of the tree, or prior to issuance of a building permit final. Actual sizes, species, location, and quantities of replacement trees are subject to Community Development Director approval. The City street tree list may be used as a guideline by the Director in determining appropriate replacement tree(s). A combination of protected and replacement tree quantities shall not result in less than one (1) protected tree per lot or thirty feet (30') of site frontage. If the Director of Community Development determines that there is not adequate room on the property for replacement tree(s) due to the number of existing trees to remain, then the requirement for replacement trees may be modified or waived.

**SECTION 8.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by adding Section 10.52.120 J. (Tree Trimmers Permit) as follows:

J. Tree Trimmers Permit.

1. Permit requirements-

Any person pruning any private property protected tree in the City of Manhattan Beach must have a Tree Trimmers Permit. Residents are responsible for hiring City licensed Tree Trimmers. Residents pruning their own trees are exempt from obtaining a Tree Trimmers Permit but must still comply with the ANSI A300 standards.

2. Standards-

a. All Tree Trimmers and Residents-

Protected trees must be pruned in accordance with ANSI A300 pruning standards, which include, but are not limited to, the following standards;



- i. Generally no more than 25% of living foliage should be removed annually, and
- ii. Topping of trees is generally prohibited.

b. All Tree Trimmers-

The following standards must also be met when pruning protected trees.

- i. A notice provided by the City shall be posted on the site, in accordance with the requirements stated in the Tree Trimmers Permit.
- ii. The State of California may require contractor's to have one of the following licenses if the total cost of the job exceeds a dollar value established by the State:
  - aa. C27- Landscaping Contractor, or
  - bb. C61- Limited Specialty Classification and D49 Tree Service.

**SECTION 9.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by adding Section 10.52.120 K. (Effective date-Appeals) as follows:

**K. Effective date--Appeals.** Unless appealed in accordance with Chapter 10.100, a Tree Permit decision shall become effective after expiration of the time limits for appeal set forth in Section 10.100.030.

**SECTION 10.** A staff review of the proposed amendments is hereby directed to occur approximately twelve (12) months after the effective date of the City Council approved Ordinance.

**SECTION 11.** Pursuant to Government Code Section 66499.37, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.

**SECTION 12.** If any sentence, clause, or phrase of this resolution is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this resolution. The Planning Commission hereby declares that it would have passed this resolution and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

**SECTION 13.** Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other resolution of the City, to the extent that they are inconsistent with this resolution, and no further, are hereby repealed.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of February 11, 2009 and that said Resolution was adopted by the following vote:

**AYES: PARALUSZ, SEVILLE-JONES,  
LESSER, CHAIRMAN  
POWELL,**

**NOES:**

**ABSTAIN:**

**ABSENT: FASOLA**

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**Richard Thompson**  
Secretary to the Planning Commission

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**Sarah Boeschen**  
Recording Secretary

**CITY OF MANHATTAN BEACH  
PLANNING COMMISSION  
MINUTES OF REGULAR MEETING  
JANUARY 28, 2009**

The Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 28th day of January, 2009 at the hour of 6:35 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

**A. ROLL CALL**

Present: Fasola, Paralusz, Powell, Seville-Jones and Chair Lesser  
Absent: None  
Staff Present: Richard Thompson, Community Development Director  
Laurie Jester, Planning Manager  
Recording Secretary: Sarah Boeschen

**B. APPROVAL OF MINUTES – January 14, 2008**

Commissioner Paralusz requested that line 8 of paragraph 4 on page 2 of the January 14 minutes be revised to read: “He commented that the only change to the establishment would be that they would operate under the different type of alcohol license.”

Chairman Lesser requested that the last paragraph of page 2 of the minutes be revised to read: “Chairman Lesser said he agreed the project met each of the necessary legal findings, ~~that~~ the applicant is a good member of the community, and he has no objections to the project.”

A motion was MADE and SECONDED (Powell/Fasola) to **APPROVE** the minutes of January 14, 2009, as amended.

AYES: Fasola, Paralusz, Powell, Seville-Jones and Chair Lesser  
NOES: None.  
ABSENT: None.  
ABSTAIN: None.

**C. AUDIENCE PARTICIPATION**

None.

**D. PUBLIC HEARINGS**

**01/28/09-1 City Council 2008-2009 Work Plan Item: Zoning Code Amendment to the Tree Preservation Regulations (Section 10.52.120 of the Zoning Code) and Related Code Sections, to Revise the Tree Preservation Regulations, to Provide More Flexibility and to Require a Tree Trimmers Permit**

Planning Manager Jester summarized the staff report. She commented that the City’s original Tree Ordinance was adopted in 1993. She commented that the Ordinance originally applied only to the Tree Section and was expanded in 2003 to apply to all residential areas in Area Districts I and II. She stated that in 2006 the Ordinance was revised to protect street side trees on corner lots; to require new trees on lots with no existing trees; to increase the size required for replacement trees; to require that tree pruning standards be met; and to increase fees and fines. She indicated that the Council shortly thereafter formed a Tree Committee of residents to provide public education on the benefit of trees, and the Council then provided direction to

the Tree Committee which included initiation a Tree Trimmers Permit. She commented that the Council directed staff to proceed with drafting Code amendments to provide flexibility in the regulations and to develop a Tree Trimmers Permit. She commented that there were concerns expressed from the residents and the City Council that the original 1993 Ordinance was too lax and then became too restrictive when it was revised. She said that the goal is to protect the neighborhood character and the existing tree canopy; however, there are situations where it is in the best interest to have flexibility to remove and replace trees that are inappropriate for a certain location.

Planning Manager Jester indicated that a City Council Subcommittee considered revisions to allow for more flexibility in permitting removal and replacement of trees that are in marginal health; trees that will be impacted by development; and trees that significantly damage private property creating a liability and safety concern. She commented that there are State regulations with provisions for trees to be trimmed or removed if they are shading solar panels. She indicated that the Subcommittee also considered developing tree canopy management guidelines in the future.

Planning Manager Jester stated that staff has worked with the Finance Department, Tree Committee and City Attorney in preparing an application for a tree trimmers license. She commented that the license would be issued along with a business license. She said that homeowners would not need a permit but would be required to hire licensed tree trimmers. She indicated that licensed tree trimmers would need to comply with the ANSI A300 standards in pruning protected trees. She said that some of the requirements that are included in the standards include not removing over 25 percent of the living foliage annually and not topping trees. She indicated that the permit would be valid for a year. She indicated that a notice would be posted to indicate that a tree is being pruned and would include contact information. She commented that a list of licensed tree trimmers would be available at City Hall or on the City's website, and that a fee would not be charged for the permit.

Planning Manager Jester said that the proposed revisions to the Tree Ordinance include adding language in the purpose section regarding protecting healthy trees, providing flexibility in removing trees that are causing damage, and balancing the tree preservation with the enjoyment of private property. She commented that language is also proposed to be added on page 4 of the draft Resolution to allow for retaining a third party arborist in situations where there is a disagreement regarding removal of a tree. She indicated that the City can hire a third party arborist as a mediator at staff's discretion if the City's arborist and an arborist hired by an applicant disagree. She indicated that the cost of providing for a third party arborist would be shared by the applicant and the City. She said that language is also proposed to be added to reference the appeal code section which specifies that the decision of the Community Development Director is appealable to the Planning Commission and the decision of the Commission is appealable to the City Council. She indicated that the criteria section is proposed to include language that a tree can be removed and replaced if it has died; if it creates a health or safety concern; if it is structurally unstable; if it is in dying or marginal condition which results in no reasonable alternatives for preservation; if construction causes it to have significant unavoidable damage; and if it is causing significant damage to public or private property creating a liability, health, or safety concern. She pointed out that it is proposed that underground structures being damaged would not meet the criteria for removal of a tree, which the Council felt was important to include. She also pointed out that the State regulations require compliance with the Solar Shade Control Act; however, a tree would need to be removed in order to comply with the regulations only in rare instances.

In response to a question from Chairman Lesser, Planning Manager Jester commented that staff receives many requests from property owners to remove trees because they are damaging sewer lines. She indicated that tree roots do cause damage to the City's original old clay sewer pipes. She said that because of the large number of requests, the City Council did not feel it was appropriate to allow everyone who has roots intruding into their sewer lines to have their tree removed.

In response to a question from Chairman Lesser, Planning Manager Jester indicated that the Tree Committee felt it was important to post a notice to inform neighbors that a tree is being trimmed and for the tree trimmer's information trimmer to be easily accessible.

In response to a question by Chairman Lesser, Planning Manager Jester stated that any disagreements would be attempted to be mediated at the staff level and brought before the Commission and City Council as appropriate.

In response to a question from Commissioner Paralusz, Planning Manager Jester commented that property owners would be permitted to prune their own trees but would still be responsible for complying with the ANSI A300 standards, which is included in the language of section 5(J) of the draft Resolution. She indicated that any tree trimmer that is hired by a resident must be licensed. She said that the language of the second sentence of Section 5(J) could be clarified to state that residents must hire someone who is licensed when they do not prune their own trees. She said that there is a link on the City's website to a website with the ANSI A300 standards. She said that the standards are included in a book that can be purchased.

In response to a question from Commissioner Paralusz, Planning Manager Jester said that the City Council did not wish to pursue the possibility of establishing a credit system to allow for consideration of removing trees in a front yard when there are several trees in the back yard.

In response to a question from Commissioner Powell, Planning Manager Jester indicated that the main focus of the Tree Committee is to provide education to residents regarding trees. She commented that the Committee has organized seminars and tree pruning demonstrations. She indicated that the Business License Department has given preliminary information on the proposed revisions to 300 gardeners and landscapers who currently have business licenses in the City, and further information will be sent when the new standards are adopted.

In response to a question from Commissioner Powell, Planning Manager Jester indicated that one 36-inch box tree is required as a minimum size for replacement of any protected tree that is removed. She commented that the size required for replacement depends on the situation.

Commissioner Powell suggested that the City's website be placed at the bottom of the notice that is posted for trees that are being pruned in order to allow anyone who wants further information regarding the ANSI A300 standards.

In response to a question from Commissioner Seville-Jones, Planning Manager Jester indicated that staff felt the tree trimmer's license should be valid for a year and be renewed at the same time as a business license.

In response to a question from Commissioner Seville-Jones, Planning Manager Jester said that the Tree Committee considered including a requirement that any tree trimmer who is licensed in the City must have a certified arborist on staff. She commented that the initial proposal was to only permit certified arborists to prune trees. She indicated that the Tree Committee received input from the community and removed the requirement because they felt that the main concern was simply that trees are pruned properly. She commented that the Committee recommended and agreed to the requirements as proposed.

In response to a question from Commissioner Seville-Jones, Planning Manager Jester pointed out that the language regarding the State requirement that a State contractors license is required to perform any work over \$500.00 is separate from being certified as to the ANSI A300 standards.

Commissioner Seville-Jones asked how the determination is made whether tree trimmers are knowledgeable in trimming trees if there is no requirement for the City that they have received a State license. She also commented that a noticing period of 24 hours prior to trimming a tree seems very short.

Planning Manager Jester commented that scheduling jobs makes it difficult for tree trimmers to always know well in advance before trimming a tree.

In response to a question from Commissioner Seville-Jones, Planning Manager Jester indicated that it was decided not to allow notice signs to be posted directly on trees in order to prevent any possible harm to the tree.

In response to a question from Commissioner Seville-Jones, Planning Manager Jester indicated that notice is not required to be posted before a tree is removed, and such notice is not currently required by the Code.

In response to a question from Commissioner Seville-Jones, Planning Manager Jester stated that part of the residential property report that is prepared when a property is purchased includes a statement identifying existing protected trees on the site.

In response to a question from Commissioner Fasola, Planning Manager Jester commented that an opinion from a third party arborist would allow for an additional professional opinion to be considered in resolving a dispute regarding removal of a tree. She pointed out that trees are complicated living organisms, and different people have different experience and expertise regarding different types of trees.

In response to a question from Commissioner Fasola, Planning Manager Jester indicated that the first Tree Ordinance for the City was enacted in 1993. She commented that street trees within the City are covered by a different Code section and are regulated by Public Works. She said that there is a list of street trees that are specified as appropriate according to the width of the parkway and the location in town.

Commissioner Fasola commented that a long term goal of the City is to increase the tree canopy, which appears inconsistent with the separate goal of increasing building area. He said that he imagines the Tree Ordinance was originally developed in 1993 as a result of the impact from the construction of the first large three story homes in the City in the middle and late 1980s. He asked about the practicality of preserving trees while allowing for the construction of larger homes, and the focus should possibly be in addressing street trees.

Planning Manager Jester commented that staff's intent by indicating that new construction shall take precedence to preserving trees is that property owners can build within the allowable building envelope and not require that a structure be pushed back beyond the required setbacks in order to save an existing tree. She said, however, that it is not the intent of the Tree Ordinance that a property owner can build as large of a structure as they wish and trees are secondary to the construction. She pointed out that the Mansionization regulations have addressed concerns regarding the size of homes.

### **Audience Participation**

**Marsha Hopwood** said that she is not clear if the intent of the Ordinance is to maintain the existing canopy of mature trees or to provide for a larger number of younger trees that will become mature and add to the tree canopy in the future. She pointed out that preserving trees is not the same as preserving historic buildings, as they are subject to aging and are in an urban environment. She indicated that she would like for consideration to be given to providing for trees that are more appropriate to the environment. She commented that she would like for people to be encouraged to plant new trees. She said that she has two liquidamber trees which have very extensive root systems that extend through her entire back yard. She stated that she does not feel that a fee should be charged to remove a dead tree.

**Gary Osterhout** indicated that the ANSI A300 standards are not a voluminous document, and the portion relating to pruning is only a 13 page document. He commented that "Best Management Practices Tree Pruning" is an additional book put out by the International Society of Arboriculture which interprets the ANSI A300 standards, although it is directed more toward

professionals in the industry rather than residents. He stated that the important aspects of regulating tree trimming are to prevent the topping trees as well as preventing the removal of over 25 percent of a tree's living foliage. He indicated that the City's website is included on the tree trimmers permit and could also be placed on the notice. He commented that it is important that the process of approving the Ordinance not be delayed. He indicated that Manhattan Beach was one of many cities that enacted Tree Ordinances at about the same time in 1993.

**Patrick McBride** commented that his understanding is that the proposed revisions to the Ordinance are intended to provide some flexibility into the current regulations. He asked regarding the method of appraising trees, which would appear to be very subjective. He commented that a fair Ordinance should establish a minimum standard that would be equal for all property owners. He indicated that the Ordinance currently places the largest burden on the property owners that are contributing the most to the community. He said that the Ordinance is devoted to the front view rather than the health of the planet and community which should be the priority. He said that the idea is to teach people to incorporate trees that are appropriate for the location and will not create a problem in the future.

**Karol Wahlberg** said that the members of the Tree Committee feel the proposed recommendations are a substantial improvement to the existing Ordinance. She commented that she feels it is unfortunate that requirements for larger setback requirements were not included as part of the Mansionization Ordinance in order to push for more open space and greenery. She indicated, however, that the proposed revisions do help to put some controls in place. She commented that the members of the Committee felt it was very important for a plan to be in place for public as well as private property in the City.

**Gerry O'Connor** stated that the proposed revisions are an additional incremental small step in a bigger view of better managing trees in the community. He said that the intention of the Tree Committee was to ensure that appropriate trees are placed at the appropriate location. He commented that he hopes the City will continue to work on an ongoing basis to improve the language of the Ordinance to arrive at a better tree management plan for the City. He pointed out that topping a tree creates more of a safety hazard, as it results in new growth on the tree that is not structurally sound and has a higher risk of falling and causing damage. He said that once a tree is topped, it then which must be trimmed more often.

Chairman Lesser closed the public hearing.

### **Discussion**

In response to a question from Commissioner Powell, Director Thompson said that the amendments would be formally reviewed by staff one year after they are approved and a report provided to the Commissioners.

Commissioner Powell stated that the existing Ordinance is unreasonable and inflexible, and the proposed revisions help to provide more flexibility for trees to be removed. He indicated that the new standards would also provide that any homeowner who prunes their own trees is responsible for complying with the ANSI A300 standards or that they must hire a licensed tree trimmer.

In response to a question from Commissioner Powell, Director Thompson pointed out that waiving the \$100.00 fee for removal of a tree that has died is the responsibility of the City Council. He stated that the City Council recently lowered the fee to \$100.00.

Commissioner Powell commented that he would support requiring notice when a tree is to be removed for at least 72 hours or a week to allow anyone an opportunity to contact the City with any concerns. He commented that trees do have a life cycle, and there should be a balance of younger trees and mature trees. He commented that many people were upset that the previous Ordinance was inflexible and unreasonable, and he would be in favor of adopting the proposed

Resolution.

Commissioner Fasola said that he generally is not in favor of ordinances that regulate what can be done on private property. He indicated that does not like the idea of being required to pay a fee to remove a tree. He commented that the City is attempting to increase density which is in conflict with preserving existing trees. He said that a typical lot with a 20 foot front yard and 15 foot back yard does not allow much area to accommodate large trees. He commented that he does not like that a property owner with an existing home would be need approval to remove a tree while another property owner who is rebuilding their home is able to remove a perfectly healthy tree. He commented that a property owner who plants a number of large trees has a greater risk because it may become more difficult for them to maintain their yard as they wish. He stated, however, that he is in favor of the proposed revisions relaxing the requirements from the existing Ordinance. He stated that he would like for the City to develop a character on streets by planting additional street trees. He indicated that he feels the only opportunity for providing larger trees is in the public parkways.

Commissioner Paralusz commended the City Council and staff in responding to the concerns expressed by the residents that the current Ordinance is too restrictive. She said that the proposal is a good first step, and she would like for it to provide additional flexibility. She commented that there are certain types of trees that are not appropriate for a particular area, and she would like for additional consideration to be given in the future as to which trees are protected. She stated that she does like having the third party arborist incorporated into the appeal procedure. She suggested adding language under Section 4 G(3) of the draft Resolution to state: “The tree is structurally unstable but does not present a present health or safety hazard.” She said that she also would support requiring that notice be posted when a tree is to be removed since noticing would be required to be posted when a tree is pruned.

Director Thompson suggested combining the language of Section 4 G(2) and (3).

Commissioner Paralusz commented that she would like further input as to the reasoning for not allowing trees that interfere with sewer lines to be removed.

Director Thompson stated that staff has a long history with residents complaining regarding trees interfering with sewer lines. He indicated that tree roots clogging sewer lines is a complaint that is heard so often that it was felt it cannot be the sole justification for removing a tree. He pointed out that there are provisions in the draft Resolution to address the issue of tree roots causing surface damage.

Chairman Lesser commented that he had 17 ficus trees in the front yard of a property that he previously owned that were planted before they moved in which were ill suited for their location and were beginning to lift up the driveway and the foundation and approaching the sewer lines. He indicated that he also had an investment property where a eucalyptus tree that uplifted the pipes and the tree eventually had to be removed. He commented that he would support removing the express exemption of the second sentence of Section 4 (G)(6) which states: “Trees causing damage to sewers, water pipes, or other similar private underground utilities or structures, generally shall not be considered to meet the criteria for removal and replacement.” He stated that he understands the concerns of staff that many property owners would seek to use tree roots invading into underground water pipes as justification for removing a tree. He commented, however, that he is sympathetic to property owners who are suffering significant damage from tree roots and are told that they are not permitted to remove the trees. He indicated that the punitive nature of the current Ordinance actually discourages people from planting trees if they know that later they may be prohibited from removing it.

Commissioner Paralusz indicated that trees damaging sewer lines can result in a significant expense to homeowners, and the trees would most likely ultimately need to be removed in any event. She commented that she also would be in favor of removing the language as suggested by Chairman Lesser.



Director Thompson commented that he would support leaving in the exemption in Section 4 (G)(6). He said that staff felt it was important to highlight the exemption in the language because staff wanted to provide clarification that damage to sewer lines cannot be the sole justification for removal of a tree.

Commissioner Seville-Jones pointed out that the tree ordinances of many other cities include similar provisions. She said that it could be argued that almost any tree is likely to cause damage to a water line and should be replaced if such an exemption is not clarified.

Chairman Lesser said that a resident should be permitted to remove a tree if they are able to present a report from a structural engineer or provide other proof that is satisfactory to the Director that there has been damage. He said that the concern that people have raised regarding the existing Ordinance is that it does not allow them to address a tree that is ill suited for a particular location.

Director Thompson commented that staff's main concern is regarding people requesting to remove a tree because of damage to sewer lines.

Director Thompson suggested that item 6 language be revised to read: "Trees causing damage to sewers, water pipes, or other similar private underground utilities ~~or structures~~ generally in itself shall not be considered to meet the criteria for removal and replacement."

The Commissioners agreed to change the language of item 6 to state: "The tree is causing or ~~is likely to~~ will cause in the near future, significant damage to public or private property, which creates a liability, health or safety concern, and cannot reasonably be repaired, maintained or corrected. Trees causing minor damage to sewers, water pipes or other similar private underground utilities ~~or structures~~, generally shall not be considered to meet the criteria for removal and replacement."

Commissioner Fasola commented that he would support removing the second sentence and allowing the homeowners to argue their case as to whether the damage from the sewer lines is justification for removing a tree. He indicated, however, that he would be willing to support the language as suggested.

Director Thompson pointed out that it is often very difficult to determine which tree is actually damaging the sewer lines. He also pointed out that replacing a tree that has caused damage to sewer lines does not guarantee that the problem will not occur again in the future.

Commissioner Seville-Jones said that she would like for notice to be placed on a large colored sign for a week prior to a tree being trimmed. She commented that she is troubled that the Ordinance does not require a tree trimmer be trained with respect to the ANSI A300 standards. She said that she would support the revisions as proposed but would suggest the possibility of requiring a licensed arborist to be on the staff of the tree trimming entity. She also suggested that the limit for requiring a licensed tree trimmer not be limited to jobs over \$500.00, as any tree needs to be protected regardless of the extent of the pruning. She suggested that the requirements be included in the Ordinance that trees are not to be topped and that not over 25 percent of the live foliage may be removed. She commented that she would support requiring that notice be posted on a large colored sign for least a week before a tree is to be removed.

Planning Manager Jester pointed out that the adjacent neighbors are provided notice of an application for a tree to be removed, as their signatures are required as part of the permit application in order to demonstrate that they have been informed.

Commissioner Seville-Jones commented that in many cases neighbors may wish to attempt to persuade a property owner against removal of a tree that adds to the character of a neighborhood. She indicated that she would support requiring that notice be placed on a tree that it is scheduled to be removed.

Director Thompson indicated that staff feels sufficient notice is currently given to the neighbors when a tree is proposed to be removed.

Commissioner Powell pointed out that posting a notice of removal also would allow neighbors to be aware and take precautions such as moving their car if there is a concern regarding branches falling. He said that he feels posting a notice regarding a tree being removed should be required.

Commissioner Seville-Jones commented that on public property there is more of a reason for posting a notice and informing the public of a tree being removed.

Director Thompson indicated that such notice is provided currently when a tree is removed on public property.

Commissioner Seville-Jones suggested that Section 4 (G)(5) be revised to state: “Construction will cause significant unavoidable damage to the tree that will compromise the health ~~and/or safety~~ of the tree, such that it will die or become a health or safety hazard . . .”

Commissioner Fasola suggested that the language be revised instead to state: “Construction will cause significant unavoidable damage to the tree that will compromise the health ~~and/or safety~~ of the tree . . .”

Commissioner Seville-Jones indicated that she has a concern that Section 5(J)(3)(a) does not specify the time periods required for posting of the notice, and she is not sure of the mechanism of enforcement if a tree trimmer does not comply with the noticing requirement specified in the permit.

Director Thompson suggested that language be added to Section 5(J)(3)(a) to read: “A notice provided by the City shall be posted on the site as specified in the application.”

Commissioner Seville-Jones commented that she would like for further discussion in the future regarding adding flexibility in the building setback requirements in order to allow people to attempt to build around existing trees.

Commissioner Fasola indicated that changing the setbacks in order to allow a property owner to enjoy a tree would not be fair to the neighboring property owners who would then have a structure encroaching closer towards their property.

Chairman Lesser said that the proposed revisions help to provide a balance in providing additional flexibility rather than a strict prohibition of removing trees. He commented that residents have felt the existing Ordinance was too punitive and discourages people from planting trees, which is contrary to the intent of the Ordinance. He indicated that the proposed revisions are a balance of the property rights of individuals against the best interests of the community, and the community has made a choice to seek to encourage the preservation of trees. He indicated that his main concerns have been addressed by the proposal to change the language regarding tree roots damaging underground utilities.

In response to a question from Commissioner Seville-Jones, Chairman Lesser commented that many but not all tree trimming operations have a licensed arborist on staff. He said that he would have a concern with overregulating the companies that can trim trees in the City provided they meet the required ANSI A300 standards. He pointed out that in many companies the arborist is not the person who trims the trees and may only be a consultant or manager.

Commissioner Fasola suggested that possibly the number of companies that are permitted to trim trees can be limited to those that can demonstrate that they have a state license; however, he is not certain about a requirement that they have a licensed arborist on staff.

Planning Manager Jester pointed out that there is an International Society of Arboriculture

(ISA) certification as a certified tree worker which does provide a qualification in the ANSI A300 standards.

Director Thompson pointed out that a requirement that a certified arborist be on the staff of a tree trimming operation was originally suggested, but the Tree Committee later recommended changing the requirement. He indicated that he is not sure of the implications of requiring that trees be trimmed only by companies with a certified arborist or tree worker on staff, and staff can look into the issue further if there is consensus by the Commission.

Commissioner Seville-Jones commented that she would not want to overly restrict the number of operators who can trim trees; however, she would want to be certain that the intent of having qualified people trim trees is accomplished. She would suggest that trimmers listed on that website indicate that they are not necessarily trained in the ANSI A300 standards or are an arborist.

Chairman Lesser commented that the more important role of the amendments is to ensure that the ANSI A300 standards are met.

At 9:10 p.m., a five-minute recess was held.

Director Thompson indicated that he had a concern that members of the Commission and City Council did not feel they had authority in the Culligan application to approve removal of an existing tree in order to accommodate the applicants' new home. He said that providing flexibility in the Ordinance would allow for the Commission and City Council to have discretion to approve such applications on appeal if they felt it were appropriate. He suggested adding wording under section 4(G) to add a criteria to receive a permit for removal and replacement of a tree if the tree will cause a significant change to the design of a home.

Commissioner Fasola commented that he would like for language to indicate that the Commission may use its discretion in such cases.

Planning Director Thompson stated that the argument of the applicant in the Colligan case was that the tree was causing them to redesign their project to such a great extent that the design became inferior. He said that he forwarded the Colligan application to the Commission because he did not feel that he had the discretion to approve the request, as the language in the Ordinance indicated that existing trees take precedence over the design of homes.

In response to a question from Chairman Lesser, Director Thompson said that the subcommittee regarding the revised Ordinance has not had an opportunity to consider such language.

Commissioner Seville-Jones asked whether the issue raised by Director Thompson should be addressed with the wording of 10.52.120 (d)(7) of the current Code which states: "Residential buildings shall take priority over tree preservation. However, alternative designs and materials shall be considered and implemented as feasible with the proposed overall design of the project." She indicated that the question in the case of the Colligans' application was whether it was feasible to redesign their home in order to accommodate the tree.

Chairman Lesser commented that he did not feel that the Colligans had presented alternatives in order to demonstrate whether other designs could be feasible.

Planning Manager Jester commented that her understanding is that the Colligans did not feel that alternative designs were acceptable, and therefore they were not feasible.

Director Thompson commented that the language would clarify that staff and the Commission has the discretion to allow removal and replacement of a tree in such circumstances.

Commissioner Powell indicated that he is in favor of allowing flexibility for property owners

but would be concerned that such language as suggested by Director Thompson would allow any developer to argue that a tree should be removed because it would interfere with their design which could result in the City's tree canopy being severely impacted.

Chairman Lesser stated that he is concerned that the language proposed by Director Thompson is a broad exemption to the Ordinance, and he would welcome more public comment. He said that some residents may be upset by a last minute addition of such an exemption without further public notice.

Commissioner Powell said that he agrees with the comments of Chairman Lesser and would support continuing the item to allow additional consideration by staff and public input.

Chairman Lesser reopened the public hearing.

### **Action**

A motion was MADE and SECONDED (Powell/Paralusz) to **REOPEN** the public hearing and **CONTINUE** Zoning Code Amendment to the Tree Preservation Regulations (Section 10.52.120 of the Zoning Code) and Related Code Sections, to Revise the Tree Preservation Regulations, to Provide More Flexibility and to Require a Tree Trimmers Permit, to the meeting of February 11, 2009.

AYES: Fasola, Paralusz, Powell, Seville-Jones and Chair Lesser

NOES: None.

ABSENT: None.

ABSTAIN: None.

### **E. BUSINESS ITEMS**

None.

### **F. DIRECTORS ITEMS**

None.

### **G. PLANNING COMMISSION ITEMS**

Commissioner Paralusz invited any interested members of the public to attend the Housing Element Workshop at the Police and Fire Facility on January 29, 2009 at 6:30 p.m.

### **H. TENTATIVE AGENDA January 29, 2009 Housing Element Workshop**

**I. ADJOURNMENT**

The meeting was adjourned at 9:30 p.m. to Wednesday, January 29, 2009, at the Police Fire Facility, 1400 Highland Avenue

SARAH BOESCHEN  
Recording Secretary

ATTEST:

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RICHARD THOMPSON  
Community Development Director

**CITY OF MANHATTAN BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT**

**TO:** Planning Commission

**THROUGH:** Richard Thompson, Director of Community Development

**FROM:** Laurie B. Jester, Planning Manager

**DATE:** February 11, 2009

**SUBJECT:** City Council 2008-2009 Work Plan item: Zoning Code Amendment to the Tree Preservation regulations (Section 10.52.120 of the Zoning Code) and related Code sections, to revise the Tree Preservation Regulations to provide more flexibility and to require a Tree Trimmers Permit.

**RECOMMENDATION**

Staff recommends that the Planning Commission **CONDUCT** the **CONTINUED PUBLIC HEARING, DISCUSS**, and **ADOPT DRAFT RESOLUTION PC 09-02** for revisions to the Zoning Code related to the Tree Preservation Ordinance.

**BACKGROUND**

On January 28, 2009 the Planning Commission conducted a public hearing on the proposed revisions to the City's Tree Preservation Ordinance. After taking public input and discussing the proposal the Commission provided direction to staff for further revisions to the regulations. This report and attachments provide those revisions. A complete project background is provided in the January 28<sup>th</sup> staff report.

**DISCUSSION**

*Tree Ordinance flexibility*

The following is a summary of further revisions to the Tree Ordinance as discussed and directed by the Planning Commission on January 28<sup>th</sup>. In Attachment A the black text is the current Code language, the red text are the revisions reviewed on January 28<sup>th</sup>, and the green text are the proposed revisions based on Planning Commission direction from the last meeting. The proposed revisions will allow more flexibility in the removal and replacement of trees.

*Purpose*

The purpose section is proposed to be revised to emphasize that healthy trees should be protected, allow flexibility for removal of trees that may be inappropriate or causing damage, and balancing the preservation of healthy trees with the reasonable enjoyment of private property. The existing language in this section that indicates that the design of residences should consider and accommodate healthy protected trees has been revised to add "as reasonably feasible". The sentence from Section D. 7. regarding residential buildings taking priority over tree preservation has been relocated to this section. Another intent statement has

been added to emphasize the goal of enhancing the future tree canopy and providing the right tree for the right location.

#### *Preservation of Trees During Grading and Construction Operations*

The sentence from Section D. 7. regarding residential buildings taking priority over tree preservation has been relocated to the Purpose section. The section on public right-of-way improvements includes additional information on modifying dimensions to preserve healthy trees.

#### *Criteria*

This new section has been reorganized for further clarification. A new sentence has been added to indicate that when reviewing a Tree Permit the Director shall also consider the age, species, history and location of the tree in relationship to surrounding improvements.. Criteria 2 and 3 were combined so health, safety and structural stability criteria are all one item. Criteria 5 was modified to indicate that if the tree “will” cause in the “near” future significant damage it may be removed. Trees causing “minor” damage to private underground utilities generally would not meet the criteria for removal.

The Commission also requested that there be a requirement to post a notice on trees that have been approved to be removed for a minimum of one week prior to the removal. Staff will incorporate this standard into the Tree Permit Application process, not into the Code so there is flexibility to modify the requirement without amending the Code.

#### *Third party arborist and appeals*

No changes were made to these sections.

#### ***Tree Trimmers License***

This section has been reorganized to clearly indicate the permit requirement, and standards required for all tree trimmers and residents, and for just tree trimmers. The ANSI A300 standards that state that generally no more than 25% of living foliage should be removed and that topping is generally prohibited was added. The posting requirements for the tree trimming notice will be included in the Tree Trimmers Permit application, which requires 24 hours posting prior to the trimming and maintaining the sign on site for 2 weeks after the pruning. Placing the requirements in the permit and not the Code provides more flexibility if changes are needed.

The State contractors licensing requirements have been revised so it is clear that it is a State not City requirement to have a contractors license. The dollar amount of the job that requires a State license, currently \$500, was deleted as the State requirements could change in the future. Staff also looked into the State requirements for the C27 Landscaping Contractor and C61/D49 Tree Service requirements. The C27 license requires knowledge, training, experience and skills to pass two written exams, one on law and business and a trade test that includes a portion on landscape maintenance. Additionally, 4 years of experience in landscape contracting is required. The D49 license also requires knowledge, training, experience and skills to pass one written exam on law and business and 4 years of experience in the tree service industry, including pruning trees, is required.

Attachment C is a copy of the draft Tree Trimmers Permit Application which have been revised to be consistent with the Ordinance revisions. Attachment D is a reduced size of the draft Tree Trimmers Permit sign that will be posted on the site where the tree is being pruned, and this has also been revised to be consistent with the Ordinance as well as the City website information has been added.

***Public comments***

A number of residents provided comments on the proposed revisions. Representatives from the Tree Committee e-mailed and spoke with staff and indicated at the meeting that they were supportive of the proposed revised, which they were very involved in formulating the concepts for. Other residents indicated that there should be a broader long range vision and this has been reflected in the Purpose section. There were comments on the dead tree permit fee, which the City Council recently reduced to \$100. There were comments on the ANSI A300 standards and the ISA pruning booklets. The City has purchased a large volume of the ISA booklets and a number of other educational materials which the Tree Committee has provided free to the public at a number of educational events and most are available at City Hall and posted on the City website. There was a question on how a tree appraisal is performed. The process is similar in any other type of appraisal, it is a detailed appraisal of the value of a tree prepared by a certified arborist

**CONCLUSION:**

Staff requests that the Commission conduct the public hearing, review and adopt the attached draft Resolution recommending to the City Council approval of the proposed amendments to the Tree Ordinance.

Attachments:

- A. Redline strikeout revisions of Tree Preservation Code- 10.52.120
- B. Draft Resolution No. PC 09-02
- C. Tree trimmers Permit
- D. Tree Trimmers sign
- E. Planning Commission staff report- January 28, 2009 (excluding attachments)



**REDLINE-STRIKEOUT TEXT**  
**TREE ORDINANCE**  
**PLANNING COMMISSION 2-11-09**  
**EXHIBIT A**  
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**10.52.120 Tree preservation and restoration in residential zones, Area Districts I and II.**

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A. **Purpose.** Tree preservation is necessary for the health and welfare of the citizens of the City of Manhattan Beach in order to provide cooling shade and beauty, increase property values, minimize spread of disease to healthy trees, conserve scenic beauty, prevent erosion of topsoil, protect against flood hazards, counteract pollutants in the air, and generally maintain the climatic and ecological balance of the area.

These regulations strive to preserve and enhance the existing healthy tree canopies on individual residential properties as well as the overall neighborhood, in order to maintain the neighborhood character, while allowing flexibility for removal of existing trees that may be inappropriate for an area or causing damage. The design of residences, including grading, driveways, walkways, patios, utilities and right-of-way improvements, shall consider and accommodate existing healthy protected trees, as reasonably feasible. Residential buildings shall take priority over tree preservation, however alternative designs and materials, shall be considered and implemented, as feasible, with the proposed overall design of the project. The intent of this section is the reasonable retention and preservation of healthy trees while considering and balancing the reasonable enjoyment of private property. The intent is also to enhance the future tree canopy of the City, striving to provide the right trees in the right location.

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The purpose of the Tree Trimmers Permit is to provide standards so that trees are pruned properly in order to protect the City's tree canopy and to provide residents with a list of permitted Tree Trimmers.

**B. General Requirements.**

1. Except as provided in subsection H (Exemptions), no person shall directly or indirectly remove or cause to be removed, or relocate any protected tree as herein defined, from residentially zoned properties within Area Districts I and II, without first obtaining a permit to do so in accordance with the procedures set forth in this section.
2. No person shall directly or indirectly neglect, abuse, damage, mutilate, injure or harm any protected tree as herein defined, from residentially zoned properties within Area Districts I and II.

**C. Definitions.**

1. "Protected tree" shall include: any species of tree, (excluding deciduous fruit-bearing trees and Washingtonia species palms) the trunk of which is located at least partially within the required front yard or streetside yard (on corner lots) of a site, with a trunk diameter of twelve inches (12") or greater or multiple trunks totaling twelve inches (12") in diameter or greater at a height of four and one-half feet (4.5') from existing grade; and any replacement tree required pursuant to this section.
2. A "tree permit" is a permit required for the removal, relocation or replacement of a protected tree.

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3. A “tree plan” shall mean a plot plan (scale 1/8 inch = 1 foot, minimally) with all trees on the subject property identified by location, size and species, including:
- a. Footprint of all existing and proposed buildings and/or additions to buildings on the property;
  - b. Location of all trees within the front and streetside yards, in the adjacent public right-of-way and on adjacent properties within ten feet (10') of the subject property adjacent to the front and streetside yards;
  - c. Size (diameter and height) and species of each tree;
  - d. Location of drip line for each tree;
  - e. Designation of tree(s) to be removed, saved, relocated and/or replaced;
  - f. Proposed location, size and type of replacement tree(s);
  - g. Photos of all trees in front and streetside yards.

**D. Preservation of Trees During Grading and Construction Operations.**

1. All protected trees, as defined above, shall be preserved and protected, and may be only be removed or relocated with prior approval of a Tree Permit provided they are replaced or relocated in accordance with the provisions of this section.
2. Trees required to be retained shall be protected during demolition, grading, and construction operations by methods subject to the approval of the Community Development Director.
3. Care shall be exercised for trees to be preserved so that no damage occurs to said trees. Advisory sign(s) that identify the tree protection requirements shall be clearly posted on the site. All construction shall preserve and protect the health of trees:
- a. Remaining in place;
  - b. Being relocated;
  - c. Planted to replace those removed;
  - d. Adjacent to the subject property.
5. Any tree which is adjacent to the subject property and may be potentially impacted by construction activity on the subject property shall be protected pursuant to the provisions of this chapter.
6. No grading or construction, including structures, paving, and walls, that disrupts the root system on private as well as public property, shall be permitted without prior approval by the Community Development Director. As a guideline, no cutting of roots over two inches (2”) in diameter should occur within the drip line of the tree as measured at ground level. Where some root removal is necessary as approved by the City the tree crown may require thinning to prevent wind damage.
- ~~7. 8.~~ Required public right-of-way improvements shall take priority over tree preservation, however alternative designs and materials, including but not limited to modified dimensions, permeable surfaces and planter areas with irrigation, shall be considered and implemented, as feasible.
- ~~8. 9.~~ Relocation of protected trees shall only be allowed if the Community Development Director determines that the relocation will not be detrimental to the health of the tree or to other protected trees.
- ~~9. 10.~~ No fill material shall be placed within the drip line of any tree.
- ~~10. 11.~~ The Community Development Department may impose special measures determined necessary to preserve and protect the health of trees to remain on site.

**Comment:** SECTION D 7. WAS MOVED TO PURPOSE SECTION. Residential buildings shall take priority over tree preservation, however alternative designs and materials, shall be considered and implemented, as feasible, with the proposed overall design of the project.

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**E. Tree Permit Applications - without Building Permit.**

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1. Any person desiring to remove or relocate one (1) or more protected trees shall obtain a Tree Permit from the Community Development Department. A fee, as specified in the City's Fee Resolution, shall be required for a Tree Permit.
2. Tree Permit applications shall include a Tree Plan, and written proof of neighbor notification pursuant to applicable permit instructions and may also include an arborist's report.
3. A bond, cash deposit or other financial security, may be required to ensure required replacement trees are planted and/or that existing protected trees are properly protected, as determined to be appropriate by the Community Development Director.
4. The Community Development Director, when approving Tree Permits, shall determine the adequacy and appropriateness of the submitted plan, neighbor input, and other related information.

**F. Tree Permit - with Building Permit.**

1. Application for a Building Permit shall require a Tree Permit/Acknowledgement and Plan as defined above, if protected trees are located on the property.
2. A Tree Permit shall be required if the proposed project may impact existing trees in the front or streetside yard of the subject property even though removal is not planned.
3. A fee, as specified in the City's Fee Resolution, shall be required for a Tree Permit.
4. A bond, cash deposit or other financial security, may be required to ensure required replacement trees are planted and/or that existing protected trees are properly protected, as determined to be appropriate by the Community Development Director.
5. Any new residential construction project in Area Districts I and II which exceeds fifty percent (50%) valuation (total estimated cost of reconstructing the entire structure as defined by Section 10.68.030 of the Manhattan Beach Municipal Code) shall be required to plant a minimum of one (1) new thirty-six inch (36") box tree, unless the Director of Community Development determines that it is inappropriate to require additional tree(s) on the property.

**G. Tree Permit Criteria.** When reviewing a Tree Permit application, the Director of Community Development shall make a finding that the application is consistent with the Purpose portion of this Section. The Director shall also consider the age, species, history, and location of the tree in relationship to other trees, and existing and proposed surrounding structures, utilities and other improvements. Additionally, the following criteria shall be met in order to remove and replace a protected tree.

1. The tree is dead, or
2. The tree is a health or safety hazard, or is structurally unstable, or
3. The tree is dying or in marginal condition and reasonable alternatives to preserve or rejuvenate the tree have been implemented unsuccessfully or have been analyzed, and are not feasible, or
4. Construction will cause significant unavoidable damage to the tree that will compromise the health of the tree, and reasonable alternatives to preserve the tree have been analyzed and are not feasible, or
5. The tree is causing or will cause in the near future, significant damage to public or private property, which creates a liability, health or safety concern, and can not reasonably be repaired, maintained or corrected. Trees causing minor damage to sewers, water lines or other similar private underground utilities, generally shall not be considered to meet the criteria for removal and replacement, or

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6. The tree is obstructing protected solar access as regulated by California State law, Solar Shade Control Act, Public Resources Code 25980-25986, and the tree can not be reasonably pruned or maintained in accordance with the State requirements.

The Director of Community Development may require the applicant to submit a report from an ISA certified arborist or other horticultural professional, and/or historical or other support documentation in order to substantiate that the required criteria has been met. The City arborist and/or other City staff may review the information. All costs shall be the responsibility of the applicant. If the applicant's arborist or other horticultural professional is not in agreement with the findings of the City arborist or staff a third party ISA certified arborist, agreed to by the applicant and the City, may be contracted to mediate the situation. The cost of this third party arborist shall be shared between the applicant and the City.

**H ~~G~~. Replacement Trees.** Required replacement trees shall be minimum thirty-six inch (36") box trees for each protected tree removed of an appropriate species and must be planted prior to final inspection. Actual sizes, species, location, and quantities of replacement trees are subject to Community Development Director approval. The City street tree list may be used as a guideline by the Director in determining appropriate replacement tree(s). A combination of protected and replacement tree quantities shall not result in less than one (1) protected tree per lot or thirty feet (30') of site frontage. If the Director of Community Development determines that there is not adequate room on the property for replacement tree(s) due to the number of existing trees to remain, then the requirement for replacement trees may be modified or waived.

**~~I-H~~. Exemptions.** Tree removals and alterations exempt from the requirements of this section are as follows:

1. Removal in case of imminent emergency caused by the hazardous or dangerous condition of a tree, requiring immediate action for the safety of life or property (e.g., a tree about to topple onto a dwelling due to heavy wind velocities) with the prior approval of the Director of Community Development or his or her designee if a subsequent application for a Tree Permit is filed within five (5) working days.
2. Removal of any tree that is determined to be a public nuisance in accordance with Section 7.32.070, with prior approval of the Directors of Community Development and Public Works or his or her designee if a subsequent application for a Tree Permit is filed within five (5) working days.
3. Removal of deciduous fruit-bearing trees, *Washingtonia robusta*, or *Washingtonia filifera*.
4. Public Utility actions, under the jurisdiction of the Public Utilities Commission of the State of California, as may be necessary to comply with their safety regulations, or to maintain the safe operation of the facilities.
5. Cutting of tree branches and roots extending across property lines into adjacent property, to the extent that the pruning complies with the American National Standards Institute (ANSI A300) standards and does not damage or potentially damage the health and structure of the tree(s).
6. Cutting of tree branches and roots to the extent that the pruning complies with the American National Standards Institute (ANSI A300) requirements and does not damage or potentially damage the health and structure of the tree(s).

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**J. Tree Trimmers Permit.**

**1. Permit requirements-**

Any person pruning any private property protected tree in the City of Manhattan Beach must have a Tree Trimmers Permit. Residents are responsible for hiring City licensed Tree Trimmers. Residents pruning their own trees are exempt from obtaining a Tree Trimmers Permit but must still comply with the ANSI A300 standards.

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**2. Standards-**

**a. All Tree Trimmers and Residents-**

Protected trees must be pruned in accordance with ANSI A300 pruning standards, which include, but are not limited to, the following standards:

- i. Generally no more than 25% of living foliage should be removed annually, and
- ii. Topping of trees is generally prohibited.

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**b. All Tree Trimmers-**

The following standards must also be met when pruning protected trees.

- i. A notice provided by the City shall be posted on the site, in accordance with the requirements stated in the Tree Trimmers Permit.
- ii. The State of California may require contractor's to have one of the following licenses if the total cost of the job exceeds a dollar value established by the State:
  - aa. C27- Landscaping Contractor, or
  - bb. C61- Limited Specialty Classification and D49 Tree Service.

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**K. Effective date--Appeals.** Unless appealed in accordance with Chapter 10.100, a Tree Permit decision shall become effective after expiration of the time limits for appeal set forth in Section 10.100.030.

**L. I. Non-liability of City.** Nothing in this section shall be deemed to impose any liability for damages or a duty of care and maintenance upon the City or upon any of its officers or employees. The person in possession of any private property shall have a duty to keep the trees upon the property and under his control in a safe and healthy condition.

**M. J. Violation/Penalties.** Violation of this chapter shall be punishable as a misdemeanor or an infraction subject to the discretion of the City Prosecutor with the following additional penalties:

**1. Suspension, Revocation and Restoration.** In addition to any other penalties allowed by this Code, the Director of Community Development may suspend any Tree Permit. The Planning Commission or City Council may suspend the Tree Permit for a Discretionary Project upon a finding at a public hearing that a violation of conditions of approval has occurred.

**2. Stop Work Orders.** Whenever any construction or work is being performed contrary to the provisions of this section or condition of approval of the applicable discretionary project the Director of Community Development may issue a written notice to the responsible party to stop work on the project on which the violation has occurred or upon which the danger exists. The notice shall state the nature of the violation and the risk to the trees. No work shall be allowed until the violation has been rectified and approved by the Director of Community Development.

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3. **After-the-Fact Permit Fees.** The standard permit fee shall be doubled for tree removals or other work requiring a Tree Permit pursuant to this section when commenced prior to issuance of said permit.

~~N-K~~ **Administrative Fines.** The Director of Community Development may impose a fine against any person who is in violation of any provision of this section. Such fine shall be a range as specified in the City Fee Resolution. The proceeds of all administrative fines imposed under this section shall be placed in a "Tree Canopy Restoration Fund" to be used solely for the replacement and maintenance of trees in the public right-of-way or on public property within the City.

1. Any person upon whom a fine is considered to be imposed pursuant to this section shall be entitled to a written notice of the pending decision of the imposition of the fine within ten (10) calendar days of the decision of the imposition of the fine. The notice shall state the amount of the fine, the reason for the proposed imposition of the fine and the authority for imposing the fine. The notice shall also state that the person upon whom the fine is proposed to be imposed has a right to request a hearing to protest the proposed decision of imposition of the fine and the time and method by which a hearing may be requested.

2. Any person upon whom a fine authorized by this section is proposed to be imposed may request, in writing, a hearing to protest the proposed fine. The request must be filed with the City Clerk within ten (10) calendar days from the mailing date of the notice of the proposed fine. The failure to timely file a written request for a hearing shall constitute a waiver of the right to a hearing.

3. Upon timely receipt of a request for a hearing, the City shall, within ten (10) calendar days of receipt of such a request hold a hearing to be presided over by the Director of Community Development or his or her designee. This presiding officer shall determine the procedure and rules for the conduct of the hearing. The ruling of the presiding officer, notwithstanding any other provision of this Code shall be final.

4. If the Director determines that a fine is due, and the fine imposed by this section is not paid within fifteen (15) calendar days of its becoming due and payable the City may file a lien in the amount of the fine plus interest at the legal rate, which may be recorded on any property owned by the individual subject to the fine which is located in the City of Manhattan Beach.

5. In the event that a civil action is filed regarding any provision of this subsection K the City shall be entitled to attorney fees if it prevails.

(Ord. No. 1884, Enacted August 19, 1993; § 2, Ord. 2045, eff. May 6, 2003, as amended by § 2, Ord. 2082, eff. March 21, 2006)

**DRAFT RESOLUTION NO. PC 09-02**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH RECOMMENDING APPROVAL OF AMENDMENTS TO THE CITY ZONING CODE (SECTION 10.52.120) TO REVISE THE TREE PRESERVATION REGULATIONS**

**THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** The Planning Commission of the City of Manhattan Beach hereby makes the following findings:

- A. The City's Tree Preservation Ordinance was originally adopted August 19, 1993 (Ordinance No. 1884), and is included as Section 10.52.120 of the Zoning Code, and the Ordinance originally applied only to the Tree Section, generally bounded by Rosecrans Avenue, Blanche Road, Valley Drive and Sepulveda Boulevard.
- B. On May 6, 2003, the Ordinance was expanded (Ordinance No. 2045) to apply to all of the residential zones in Area Districts I and II; the Beach Area is not covered by the Tree Ordinance.
- C. On June 24, 2005, the City Council held a special session and developed the 2005-2007 Work Plan, which included an item to study possible revisions to the Tree Ordinance.
- D. On July 5, 2005, the City Council amended and formally adopted the 2005-2007 Work Plan.
- E. On July 26, 2005 the City Council and Planning Commission held a joint Work Plan meeting, and provided direction to revise the Tree Ordinance as one of the top priorities for the Community Development Department.
- F. On March 21, 2006 the City Council adopted Ordinance No. 2082 amending the Tree Preservation regulations to protect streetside trees on corner lots, require new trees on lots that have no trees, increase the size of replacement trees, and require tree pruning standards. Additionally, new fees and fines for violations of the Tree Ordinance were adopted with the fines going to the newly established Tree Canopy Restoration Fund, and the concept of a residents' Tree Committee was approved. The Tree Committee was formally approved April 18, 2009.
- G. On September 18, 2007 the City Council held a special study session to discuss the Tree Ordinance, and requested that staff return with a status report.
- H. On December 4, 2007 the Council reviewed a status report, provided direction to staff to utilize the City arborist more, and adopted Resolution No. 6117 increasing fines for tree ordinance violations. The Tree Committee made a presentation, and the Council directed them to focus on developing a number of outreach and educational items, including a Tree Trimmers Permit.

- I. On June 17, 2008 the City Council adopted the 2008-2009 Work Plan, which includes providing a status report on the Tree Ordinance.
- J. On October 21, 2008, the Council adopted Resolution No. 6163 approving a reduced fee of \$100 for a Tree Permit for the removal and replacement of dead or dying trees.
- K. On November 18, 2008 staff presented a status report to the City Council in accordance with the 2008-2009 Work Plan. The Tree Committee was directed to focus their efforts on public education, and staff to proceed with Code Amendments to provide flexibility in the Tree Preservation regulations and provide a no cost Tree Trimmers Permit and license.
- L. Pursuant to applicable law, the Planning Commission of the City of Manhattan Beach conducted a public hearing on January 28, 2009, on the proposed Code Amendments related to revisions to the Tree Preservation regulation. The hearing was conducted and continued to February 11, 2009.
- M. The January 28<sup>th</sup> public hearing was advertised pursuant to applicable law, and testimony was invited and received at both public hearings. Public noticing included an ad published on January 8, 2009 in a newspaper of general circulation (Beach Reporter).
- N. The applicant for the subject project is the City of Manhattan Beach.
- O. Pursuant to the California Environmental Quality Act (CEQA) and the Manhattan Beach CEQA Guidelines, the subject Amendments are exempt in that they are covered by the general rule that CEQA [Section 15061 (3)] only applies to projects which have the potential for causing a significant effect on the environment, and since it can be seen with certainty that there is no possibility that the activity will have a significant effect on the environment, the activity is not subject to CEQA.
- P. The proposed amendments have been prepared in accordance with the provisions of Title 7, Division 1, Chapter 4, Section No. 65853, et seq., of the State of California Government Code.
- Q. The Planning Commission finds that the project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- R. The Planning Commission made the following findings with regard to the proposed changes:
  - 1. The proposed amendments are consistent with the City of Manhattan Beach General Plan.

**Goal LU-2: Encourage the provision and retention of private landscaped open space.**

Policy LU-2.3: Protect existing mature trees throughout the City, and encourage their replacement with specimen trees whenever they are lost or removed.

**Goal LU-3: Achieve a strong, positive community aesthetic.**



**Goal CR-4: Preserve the existing landscape resources in the City, and encourage the provision of additional landscaping.**

Policy CR-4.1: Protect existing mature trees throughout the City and encourage their replacement with specimen trees whenever they are lost or removed.

Policy CR-4.3: Recognize that landscaping, and particularly trees, provide valuable protection against air pollution, noise, soil erosion, excessive heat, and water runoff, and that they promote a healthy environment.

Policy CR-4.4: Review the tree ordinance to consider its application citywide and to determine the need to strengthen tree preservation criteria.

Policy CR-4.5: Discourage the reduction of landscaped open space and especially the removal of trees from public and private land.

**SECTION 2. NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Manhattan Beach hereby recommends **APPROVAL** of the proposed amendments to the Manhattan Beach Municipal Code (Section 10.52.120-Tree preservation and restoration in residential zones, Area Districts I and II) as follows:

**SECTION 3.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by amending Section 10.52.120 A. (Purpose) as follows:

**A. Purpose.** Tree preservation is necessary for the health and welfare of the citizens of the City of Manhattan Beach in order to provide cooling shade and beauty, increase property values, minimize spread of disease to healthy trees, conserve scenic beauty, prevent erosion of topsoil, protect against flood hazards, counteract pollutants in the air, and generally maintain the climatic and ecological balance of the area.

These regulations strive to preserve and enhance the existing healthy tree canopies on individual residential properties as well as the overall neighborhood, in order to maintain the neighborhood character, while allowing flexibility for removal of existing trees that may be inappropriate for an area or causing damage. The design of residences, including grading, driveways, walkways, patios, utilities and right-of-way improvements, shall consider and accommodate existing healthy protected trees, as reasonably feasible. Residential buildings shall take priority over tree preservation, however alternative designs and materials, shall be considered and implemented, as feasible, with the proposed overall design of the project. The intent of this section is the reasonable retention and preservation of healthy trees while considering and balancing the reasonable enjoyment of private property. The intent is also to enhance the future tree canopy of the City, striving to provide the right trees in the right location.

The purpose of the Tree Trimmers Permit is to provide standards so that trees are pruned properly in order to protect the City's tree canopy and to provide residents with a list of permitted Tree Trimmers.

**SECTION 4.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by deleting Section 10.52.120 D. 7. as follows:

**D. Preservation of Trees During Grading and Construction Operations.**

~~7. Residential buildings shall take priority over tree preservation, however alternative designs and materials, shall be considered and implemented, as feasible, with the proposed overall design of the project.~~

**SECTION 5.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by modifying Section 10.52.120 D. 8. as follows:

**D. Preservation of Trees During Grading and Construction Operations.**

7. Required public right-of-way improvements shall take priority over tree preservation, however alternative designs and materials, including but not limited to modified dimensions, permeable surfaces and planter areas with irrigation, shall be considered and implemented, as feasible.

**SECTION 6.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by adding Section 10.52.120 G. (Tree Permit Criteria) as follows:

**G. Tree Permit Criteria.** When reviewing a Tree Permit application, the Director of Community Development shall make a finding that the application is consistent with the Purpose portion of this Section. The Director shall also consider the age, species, history, and location of the tree in relationship to other trees, and existing and proposed surrounding structures, utilities and other improvements. Additionally, the following criteria shall be met in order to remove and replace a protected tree.

1. The tree is dead, or
2. The tree is a health or safety hazard, or is structurally unstable, or
3. The tree is dying or in marginal condition and reasonable alternatives to preserve or rejuvenate the tree have been implemented unsuccessfully or have been analyzed, and are not feasible, or
4. Construction will cause significant unavoidable damage to the tree that will compromise the health of the tree, and reasonable alternatives to preserve the tree have been analyzed and are not feasible, or
5. The tree is causing or will cause in the near future, significant damage to public or private property, which creates a liability, health or safety concern, and can not reasonably be repaired, maintained or corrected. Trees causing minor damage to sewers, water lines or other similar private underground utilities, generally shall not be considered to meet the criteria for removal and replacement, or
6. The tree is obstructing protected solar access as regulated by California State law, Solar Shade Control Act, Public Resources Code 25980-25986, and the tree can not be reasonably pruned or maintained in accordance with the State requirements.

The Director of Community Development may require the applicant to submit a report from an ISA certified arborist or other horticultural professional, and/or historical or other support documentation in order to substantiate that the required criteria has been met. The City arborist and/or other City staff may review the information. All costs shall be the responsibility of the applicant. If the applicant's arborist or other horticultural professional is not in agreement with the findings of the City arborist or staff a third party ISA certified arborist, agreed to by the applicant and the City, may be contracted to mediate the situation. The cost of this third party arborist shall be shared between the applicant and the City.

**SECTION 7.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by adding Section 10.52.120 J. (Tree Trimmers Permit) as follows:

**J. Tree Trimmers Permit.**

**1. Permit requirements-**

Any person pruning any private property protected tree in the City of Manhattan Beach must have a Tree Trimmers Permit. Residents are responsible for hiring City licensed Tree Trimmers. Residents pruning their own trees are exempt from obtaining a Tree Trimmers Permit but must still comply with the ANSI A300 standards.

**2. Standards-**

**a. All Tree Trimmers and Residents-**

Protected trees must be pruned in accordance with ANSI A300 pruning standards, which include, but are not limited to, the following standards;

- i. Generally no more than 25% of living foliage should be removed annually, and
- ii. Topping of trees is generally prohibited.

**b. All Tree Trimmers-**

The following standards must also be met when pruning protected trees.

- i. A notice provided by the City shall be posted on the site, in accordance with the requirements stated in the Tree Trimmers Permit.
- ii. The State of California may require contractor's to have one of the following licenses if the total cost of the job exceeds a dollar value established by the State:
  - aa. C27- Landscaping Contractor, or
  - bb. C61- Limited Specialty Classification and D49 Tree Service.

**SECTION 8.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by adding Section 10.52.120 K. (Effective date--Appeals) as follows:

**K. Effective date--Appeals.** Unless appealed in accordance with Chapter 10.100, a Tree Permit decision shall become effective after expiration of the time limits for appeal set forth in Section 10.100.030.

**SECTION 9.** A staff review of the proposed amendments is hereby directed to occur approximately twelve (12) months after the effective date of the City Council approved Ordinance.

**SECTION 10.** Pursuant to Government Code Section 66499.37, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.

**SECTION 11.** If any sentence, clause, or phrase of this resolution is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this resolution. The Planning Commission hereby declares that it would have passed this resolution and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

**SECTION 12.** Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other resolution of the City, to the extent that they are inconsistent with this resolution, and no further, are hereby repealed.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of February 11, 2009 and that said Resolution was adopted by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

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**Richard Thompson**  
Secretary to the Planning Commission

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**Sarah Boeschen**  
Recording Secretary



# TREE TRIMMERS PERMIT APPLICATION (PRIVATE PROPERTY PROTECTED TREES)

CITY OF MANHATTAN BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT  
(310)-802-5503 www.citymb.info

2-11-09 DRAFT DRAFT DRAFT DRAFT 2-11-09 DRAFT DRAFT DRAFT DRAFT DRAFT

Business Name (DBA)

Business License No.

Address

City

Zip

Business phone number

Cell phone number

**Purpose:** To provide standards so that trees are pruned properly in order to protect the City's tree canopy and to provide residents with a list of permitted Tree Trimmers.

**Permit and Notice:** Any person pruning any private property **Protected Tree** in the City of Manhattan Beach must have a Tree Trimmers Permit, in accordance with Section 10.52.120 J. of the MBMC. Residents are responsible for hiring City licensed Tree Trimmers. Residents pruning their own trees are exempt from obtaining a permit, but must still comply with the ANSI A300 standards (summary below). Residents may obtain a list of permitted Tree Trimmers from the City of Manhattan Beach Finance Department, Business License Division. Pruning all trees in the public right-of-way requires a right-of-way permit

**Protected Trees** are defined by Section 10.52.120 of the MBMC as follows.

1. Trees that are on private property in all Residential Zones, **and**
2. Located in Area Districts I and II, generally east of Valley/Ardmore and Blanche/Bell (See map on back), **and**
3. Located in the front yard or streetside yard (on corner lots), **and**
4. Have a trunk diameter of twelve inches (12") in diameter or greater or multiple trunks totaling twelve inches (12") in diameter or greater at a height of four and one-half feet (4.5') from the ground or is a required new or replacement tree for any protected tree that was removed.

**Exclusions:** Trees excluded from protection include: 1- deciduous (lose their leaves in winter) fruit-bearing trees and 2- Washingtonia species palm trees (California and Mexican Fan Palms).

**Standards:**

**All Tree Trimmers and Residents** must comply with the following standards when pruning protected trees.

1. Trees must be pruned in accordance with ANSI A300 pruning standards. Standards may be obtained from the Tree Care Industry website at: [http://www.natlarb.com/code/gov\\_standards\\_a300.htm](http://www.natlarb.com/code/gov_standards_a300.htm). ANSI A300 standards provide, in part, that:
  - a. Generally no more than 25% of living foliage should be removed annually. Exceptions exist such as for utility clearance, crown dieback or decay, damage due to natural or accidental causes, insects or disease, and where trees are used as hedges.
  - b. Topping of trees (indiscriminately trimming major branches to limit height) is generally prohibited.

In addition to the standards above, **all Tree Trimmers** must comply with the following standards when pruning protected trees.

1. A notice provided by the City shall be posted on the site, **NOT** on the tree. The notice shall be visible from the street, state the job address and date of pruning, be posted a minimum of 24 hours prior to pruning and remain on the site for a minimum of two weeks after the pruning.
2. The State of California requires contractors that are doing tree trimming jobs that **total \$500 or more** must have one of the following contractor's licenses:
  - a. C27- Landscaping Contractor, **OR**
  - b. C61- Limited Specialty Classification and D49 Tree Service

**VIOLATIONS OF THESE REQUIREMENTS ARE PUNISHABLE AS A MISDEMEANOR OR AN INFRACTION AND/OR ARE SUBJECT TO ADMINISTRATIVE FINES.**

**I HEREBY CERTIFY THAT THE INFORMATION I PROVIDED ABOVE IS TRUE AND THAT I HAVE READ, UNDERSTAND, AND WILL COMPLY WITH THE ABOVE STANDARDS.**

SIGNATURE

PRINT NAME

DATE

OFFICE USE ONLY:

Approved ( )

Denied ( )

Signature

Date

**THIS APPLICATION IF APPROVED MUST BE ACCOMPANIED BY A BUSINESS LICENSE APPLICATION**



# CITY OF MANHATTAN BEACH PROTECTED TREE 2009 TREE TRIMMERS PERMIT

Job Address: DRAFT DRAFT DRAFT 2-11-09 DRAFT DRAFT DRAFT EXHIBIT D

Date of pruning: \_\_\_\_\_ Business License No.: \_\_\_\_\_

Business Name (DBA): \_\_\_\_\_ Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Business phone number: \_\_\_\_\_ Cell phone number: \_\_\_\_\_

- Trees must be pruned in accordance with ANSI A300 pruning standards
- Generally no more than 25% of living foliage should be removed annually;
  - Exceptions for utility line/structure clearance, crown dieback or decay, damaged branches, trees used as hedges and similar ANSI exceptions.
- Topping of trees is generally prohibited.
- This notice shall be posted to be visible from the street (not on the tree) a minimum of 24 hours prior to pruning and remain on the site for a minimum of two weeks after pruning.
- Violations of these requirements are punishable as a misdemeanor or an infraction and/or are subject to administrative fines.

**TO REPORT VIOLATIONS OR FOR MORE INFORMATION CONTACT THE CITY OF  
MANHATTAN BEACH AT (310) 802-5538 OR 5503 OR WWW.CITYMB.INFO**

**CITY OF MANHATTAN BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT**

**TO:** Planning Commission

**THROUGH:** Richard Thompson, Director of Community Development

**FROM:** Laurie B. Jester, Planning Manager

**DATE:** January 28, 2009

**SUBJECT:** City Council 2008-2009 Work Plan item: Zoning Code Amendment to the Tree Preservation regulations (Section 10.52.120 of the Zoning Code) and related Code sections, to revise the tree preservation regulations, to provide more flexibility and to require a Tree Trimmers Permit.

**RECOMMENDATION**

Staff recommends that the Planning Commission **CONDUCT** the **PUBLIC HEARING, DISCUSS,** and **ADOPT DRAFT RESOLUTION PC 09-02** for revisions to the Zoning Code related to the Tree Preservation Ordinance.

**BACKGROUND**

The City's Tree Preservation Ordinance was originally adopted in 1993 and at that time, the Ordinance applied only to the Tree Section. The Ordinance protected most private property trees with a 12" or greater trunk diameter located in the front yard. At that time the Ordinance was implemented more as a "removal and replacement" regulation rather than a "preservation" regulation.

In 2003, the Ordinance was expanded to apply to all of the residential zones in Area Districts I and II; the Beach Area is not covered by the Tree Ordinance. With the expansion of the Tree Ordinance, planning staff began implementing the regulation as a "preservation" regulation, not a "removal and replacement" regulation as previously implemented. At a joint City Council and Planning Commission meeting the City Council confirmed that the Ordinance was intended to preserve trees, and that Staff should continue to enforce the Ordinance accordingly.

In July 2005, the City Council adopted the 2005-2007 Work Plan which included a status report on the Tree Preservation regulations, and the Council provided direction on revisions to the regulations. In March 2006 the City Council adopted Ordinance No. 2082 amending the Tree Preservation regulations to protect streetside trees on corner lots, require new trees on lots that have no trees, increase the size of replacement trees, and require tree pruning standards. Additionally, new fees and fines for violations of the Tree Ordinance were adopted with the fines going to the newly established Tree Canopy Restoration Fund. City Council also directed staff to work with a group of interested residents to form a Tree Committee.

In April 2006 the City Council approved the formation of the Tree Committee as well as established the purpose of the Committee to work with City staff to focus on educating the public on the Tree Preservation Ordinance and to promote the protection and enhancement of the Manhattan Beach tree canopy.

In September 2007 the City Council held a special study session to discuss the Tree Ordinance, and then at that meeting requested that staff return with a status report as a regular agenda item. In December 2007 the Council reviewed the status report, provided direction to staff to utilize the City arborist more, and approved increased fines for tree ordinance violations. The Council also accepted a presentation from the Tree Committee, acknowledging their efforts and refined their role, directing them to focus on developing a number of outreach and educational items. One of the items that Council directed staff to work with the Committee on was a Tree Trimmers Permit.

In June 2008 the City Council adopted the 2008-2009 Work Plan. One of the Work Plan items under the category of "Other Environmental Initiatives" was to provide a status report on the Tree Ordinance as follows:

"Staff will present a status report on implementing the City's tree ordinance to the City Council, as well as feedback from it's meetings with the Palo Alto Tree Specialist and the Canopy Committee held in May. City Council will provide direction for any changes to the ordinance, its implementation, or public outreach that may be necessary."

In October 2008, the Council approved a reduced fee of \$100 for a Tree Permit for the removal and replacement of dead or dying trees. On November 18, 2008 staff presented a status report to the City Council in accordance with the Work Plan. The Council directed the Tree Committee to focus their efforts on public education, and they directed staff to proceed with Code Amendments to provide flexibility in the regulations and a no cost Tree Trimmers Permit and license.

## **DISCUSSION**

At the November 2008 City Council meeting, the Council heard from various members of the public, including the Tree Committee, that the existing Tree Preservation Ordinance is too restrictive. They felt that it does not allow enough flexibility for removal and replacement of trees. Although there were strong opinions on both sides of the issue, the general consensus was that the original 1993 ordinance was too lax, and the 2003 revisions are too restrictive, and a more "middle of the road" approach would better suit the desires of the community. Based on those discussions the Council formed a subcommittee that met with staff to discuss revisions to the Tree Ordinance.

The subcommittee felt that it was important to provide some flexibility in the regulations to allow the removal and replacement of trees in marginal health, trees that will be impacted by development, and trees that significantly damage private property, creating a liability and safety



concern. The subcommittee also directed staff to address the State Solar Shade Control Act requirements in the Tree Ordinance.

The Council subcommittee also discussed developing guidelines for tree canopy management. (Attachments F, G and H). They suggested that guidelines should be a future work effect, that it was important to go forward with the initial revisions as soon as possible and not have the guidelines delay the other revisions. Staff received one e-mail that addresses this issue, included at Attachment D. The Council subcommittee then reported back to the Council on January 6, 2009, and the Council directed staff to proceed with the revisions to the Planning Commission. This item is before the Commission tonight based on that direction from the City Council.

### ***Tree Trimmers License***

The Community Development and Finance Departments, and City Attorneys office have worked with the Tree Committee to develop a Tree Trimmers Permit Application. Currently all gardeners and landscapers in the City require a City business license. Currently there are about 300 total licensed landscapers and gardeners in town. If they also trim protected trees they will be required to also obtain a Tree Trimmers Permit. The Permit will be valid for one year, the same as the business license. The Permit has criteria that they must meet, such as requiring that the tree trimmers acknowledge that they will meet ANSI A300 pruning standards as already specified in the Tree Preservation ordinance, and that a notice will be posted near the protected trees to be trimmed. The City will provide the Tree Trimmer with a supply of large notices with the Trimmers permit information and the Tree Trimmer will be required to complete information on the job address and dates of pruning and post the notice on each job site.

Homeowners that prune their own trees do not need a permit, however they must comply with the ANSI pruning standards. Tree Trimmers and homeowners will also be informed that there are fines for violations of the ordinance. A list of permitted Tree Trimmers will be available from the Finance and Community Development Departments and posted on the City website. Links to the International Society of Arboriculture (ISA) website with the ANSI Pruning Standards are available on the City website.

Attachment B is a copy of the draft Tree Trimmers Permit, and Attachment C is a reduced size of the draft Tree Trimmers Permit sign that will be posted on the site where the tree is being pruned. The Council previously reviewed and approved these in concept. The Council also directed that no fee be charged for the Tree Trimmers Permit.

### ***Tree Ordinance flexibility***

The following is a summary of the revisions to the Tree Ordinance as discussed in concept with the Council Subcommittee. The proposed revisions will allow more flexibility in the removal and replacement of trees.

#### ***Purpose***

The purpose section is proposed to be revised to emphasize that healthy trees should be protected, allow flexibility for removal of trees that may be inappropriate or causing damage, and balancing the preservation of healthy trees with the reasonable enjoyment of private property.

### *Criteria*

A new section is proposed to be added to the Code to establish the criteria for the removal and replacement of trees. The criteria includes the current standards that staff uses: if the tree is dead, dying, a health or safety hazard, structurally unstable, or construction will cause significant unavoidable damage to the tree, staff will approve removal. Generally the applicant will submit an arborist report and the City arborist will also review the request to remove the tree and make a recommendation before staff makes a decision. Currently there needs to be a compelling health or safety reason in order for staff to approve removal and replacement of a protected tree. Cracked driveways, walkways, or walls or clogged sewers have not been compelling reasons to approve tree removal.

Additional criteria is also proposed to be added to allow more flexibility. First if the tree is in marginal condition and reasonable alternatives are not available to preserve the tree, staff feels it is appropriate to remove and replace a tree. Construction is very stressful for existing trees, even when they are protected on a job site. Sites are very small, leaving limited room for tree protection, access to the site and on-site storage of construction materials and debris. Roots are compacted, watering is limited and construction equipment can damage trees. Abandoned cesspools are required to be dug up, and underground utility trenching can damage tree roots. If a tree is in marginal condition at the beginning of a construction job it is not likely to survive and thrive through a year or more of construction. On sites where there is no construction sometimes it is in the best interest of the entire landscaping to remove a tree in marginal health and replace it with a younger, stronger, healthier tree that is more appropriate for the location.

If a tree is significantly damaging public property, cracking a sidewalk, curb or gutter, or damaging a utility meter, which creates a public liability, health or safety concern, and it can not be reasonably repaired or maintained, staff will approve removal. The Council requested that staff include similar criteria for damage to private property to the regulations. This will allow trees that are significantly damaging driveways, walkways, walls or other above ground structures, to be removed if there is a liability, health or safety concern, and the situation can not be reasonably be repaired, maintained, or corrected. The applicant would generally be required in these situations to submit support documentation to substantiate the request. Generally damage to underground structures and utilities, such as sewers, and water pipes would not be sufficient justification to approve removal and replacement of a protected tree.

State laws in California protect homeowner's access to the sun for solar systems. The Public Resources Code Section 25980-25986, the Solar Shade Control Act, (Attachment E) allows the pruning and removal of trees in certain situations, if trees are shading more than 10% of the solar panel between 10:00 am and 2:00 pm. There are a number of exemptions for tree that were planted prior to the installation of the solar panels and their replacement trees if those trees die, as well as trees that are protected under City ordinances. Due to these exceptions it is unlikely that trees will be removed in accordance with the State Solar requirements, however staff felt it was important to add this reference.

### *Third party arborist*

Usually, when a tree permit is submitted the applicant is also required to submit a report from an ISA certified arborist or other horticultural professional, and/or historical or other support documentation to justify the removal and replacement of the tree. The City arborist and City staff reviews the information and make a determination if the request meets the established criteria. Occasionally the applicants arborist and the City arborist will disagree. In these cases the application is brought before the Planning Commission. As an alternative staff would like to have the option of contracting with a third party ISA certified arborist, agreed to by the applicant and the City, to mediate the situation. The cost of this third party arborist would be shared between the applicant and the City. City staff would make the determination if this is the appropriate approach and whether or not the application would then be forwarded to the Planning Commission, and ultimately the City Council.

### *Appeals*

Staff is adding a new Appeals section that references the current Code Section, Chapter 10.100. This Chapter indicates that decisions of the Director of Community Development are appealable to the Planning Commission , and Planning Commission decisions are appealable to the City Council. If none of the criteria for removal can be met and the applicant desires to remove the tree, the applicant may appeal the Directors denial of the permit. When reviewing the request one of the options that the Planning Commission could consider it to have an determination made on the appraised value of the tree. If the Commission or City Council feels it is appropriate to remove the tree an option would be to have the applicant pay the City the full appraised value of the tree, minus the cost of replacement trees. The funds paid by the applicant could then be placed in the City Tree Canopy Restoration Fund to be used by the City for tree planting, education and other tree related projects. These are options that could be reviewed during an appeal.

### **CONCLUSION:**

Staff requests that the Commission conduct the public hearing, review and adopt the attached draft Resolution recommending to the City Council approval of the proposed amendments to the Tree Ordinance.

### Attachments:

- A. Draft Resolution No. PC 09-02
- B. Tree trimmers Permit
- C. Tree Trimmers sign
- D. E-mail from Gary Osterhout- January 17, 2009
- E. State of California Solar Shade Control Act- Public Resources Code 25980-25986
- F. Guidelines for Developing and Evaluating Tree Ordinances- (document not attached- link to document on International Society of Arboriculture website - <http://www.isa-arbor.com/publications/tree-ord/resources/treeord.pdf>)

- G. Tree Guidelines for Coastal Southern California Communities- (document not attached-link to document on website- Local Government Commission- [http://www.fs.fed.us/psw/programs/cufr/products/2/cufr\\_48.pdf](http://www.fs.fed.us/psw/programs/cufr/products/2/cufr_48.pdf))
- H. Protecting and Developing the Urban Tree Canopy- The United States Conference of Mayors- (document not attached-link to document on website- <http://www.urbanforestrysouth.org/resources/library/protecting-and-developing-the-urban-tree-canopy-a-135-city-survey>)

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**CITY OF MANHATTAN BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT**

**TO:** Planning Commission

**THROUGH:** Richard Thompson, Director of Community Development

**FROM:** Laurie B. Jester, Planning Manager

**DATE:** January 28, 2009

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In 2003, the Ordinance was expanded to apply to all of the residential zones in Area Districts I and II; the Beach Area is not covered by the Tree Ordinance. With the expansion of the Tree Ordinance, planning staff began implementing the regulation as a "preservation" regulation, not a "removal and replacement" regulation as previously implemented. At a joint City Council and Planning Commission meeting the City Council confirmed that the Ordinance was intended to preserve trees, and that Staff should continue to enforce the Ordinance accordingly.

In July 2005, the City Council adopted the 2005-2007 Work Plan which included a status report on the Tree Preservation regulations, and the Council provided direction on revisions to the regulations. In March 2006 the City Council adopted Ordinance No. 2082 amending the Tree Preservation regulations to protect streetside trees on corner lots, require new trees on lots that have no trees, increase the size of replacement trees, and require tree pruning standards. Additionally, new fees and fines for violations of the Tree Ordinance were adopted with the fines going to the newly established Tree Canopy Restoration Fund. City Council also directed staff to work with a group of interested residents to form a Tree Committee.

In April 2006 the City Council approved the formation of the Tree Committee as well as established the purpose of the Committee to work with City staff to focus on educating the public on the Tree Preservation Ordinance and to promote the protection and enhancement of the Manhattan Beach tree canopy.

In September 2007 the City Council held a special study session to discuss the Tree Ordinance, and then at that meeting requested that staff return with a status report as a regular agenda item. In December 2007 the Council reviewed the status report, provided direction to staff to utilize the City arborist more, and approved increased fines for tree ordinance violations. The Council also accepted a presentation from the Tree Committee, acknowledging their efforts and refined their role, directing them to focus on developing a number of outreach and educational items. One of the items that Council directed staff to work with the Committee on was a Tree Trimmers Permit.

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## **DISCUSSION**

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The subcommittee felt that it was important to provide some flexibility in the regulations to allow the removal and replacement of trees in marginal health, trees that will be impacted by development, and trees that significantly damage private property, creating a liability and safety

concern. The subcommittee also directed staff to address the State Solar Shade Control Act requirements in the Tree Ordinance.

The Council subcommittee also discussed developing guidelines for tree canopy management. (Attachments F, G and H). They suggested that guidelines should be a future work effect, that it was important to go forward with the initial revisions as soon as possible and not have the guidelines delay the other revisions. Staff received one e-mail that addresses this issue, included at Attachment D. The Council subcommittee then reported back to the Council on January 6, 2009, and the Council directed staff to proceed with the revisions to the Planning Commission. This item is before the Commission tonight based on that direction from the City Council.

### ***Tree Trimmers License***

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Homeowners that prune their own trees do not need a permit, however they must comply with the ANSI pruning standards. Tree Trimmers and homeowners will also be informed that there are fines for violations of the ordinance. A list of permitted Tree Trimmers will be available from the Finance and Community Development Departments and posted on the City website. Links to the International Society of Arboriculture (ISA) website with the ANSI Pruning Standards are available on the City website.

Attachment B is a copy of the draft Tree Trimmers Permit, and Attachment C is a reduced size of the draft Tree Trimmers Permit sign that will be posted on the site where the tree is being pruned. The Council previously reviewed and approved these in concept. The Council also directed that no fee be charged for the Tree Trimmers Permit.

### ***Tree Ordinance flexibility***

The following is a summary of the revisions to the Tree Ordinance as discussed in concept with the Council Subcommittee. The proposed revisions will allow more flexibility in the removal and replacement of trees.

#### ***Purpose***

The purpose section is proposed to be revised to emphasize that healthy trees should be protected, allow flexibility for removal of trees that may be inappropriate or causing damage, and balancing the preservation of healthy trees with the reasonable enjoyment of private property.

### *Criteria*

A new section is proposed to be added to the Code to establish the criteria for the removal and replacement of trees. The criteria includes the current standards that staff uses: if the tree is dead, dying, a health or safety hazard, structurally unstable, or construction will cause significant unavoidable damage to the tree, staff will approve removal. Generally the applicant will submit an arborist report and the City arborist will also review the request to remove the tree and make a recommendation before staff makes a decision. Currently there needs to be a compelling health or safety reason in order for staff to approve removal and replacement of a protected tree. Cracked driveways, walkways, or walls or clogged sewers have not been compelling reasons to approve tree removal.

Additional criteria is also proposed to be added to allow more flexibility. First if the tree is in marginal condition and reasonable alternatives are not available to preserve the tree, staff feels it is appropriate to remove and replace a tree. Construction is very stressful for existing trees, even when they are protected on a job site. Sites are very small, leaving limited room for tree protection, access to the site and on-site storage of construction materials and debris. Roots are compacted, watering is limited and construction equipment can damage trees. Abandoned cesspools are required to be dug up, and underground utility trenching can damage tree roots. If a tree is in marginal condition at the beginning of a construction job it is not likely to survive and thrive through a year or more of construction. On sites where there is no construction sometimes it is in the best interest of the entire landscaping to remove a tree in marginal health and replace it with a younger, stronger, healthier tree that is more appropriate for the location.

If a tree is significantly damaging public property, cracking a sidewalk, curb or gutter, or damaging a utility meter, which creates a public liability, health or safety concern, and it can not be reasonably repaired or maintained, staff will approve removal. The Council requested that staff include similar criteria for damage to private property to the regulations. This will allow trees that are significantly damaging driveways, walkways, walls or other above ground structures, to be removed if there is a liability, health or safety concern, and the situation can not be reasonably be repaired, maintained, or corrected. The applicant would generally be required in these situations to submit support documentation to substantiate the request. Generally damage to underground structures and utilities, such as sewers, and water pipes would not be sufficient justification to approve removal and replacement of a protected tree.

State laws in California protect homeowner's access to the sun for solar systems. The Public Resources Code Section 25980-25986, the Solar Shade Control Act, (Attachment E) allows the pruning and removal of trees in certain situations, if trees are shading more than 10% of the solar panel between 10:00 am and 2:00 pm. There are a number of exemptions for tree that were planted prior to the installation of the solar panels and their replacement trees if those trees die, as well as trees that are protected under City ordinances. Due to these exceptions it is unlikely that trees will be removed in accordance with the State Solar requirements, however staff felt it was important to add this reference.



### *Third party arborist*

Usually, when a tree permit is submitted the applicant is also required to submit a report from an ISA certified arborist or other horticultural professional, and/or historical or other support documentation to justify the removal and replacement of the tree. The City arborist and City staff reviews the information and make a determination if the request meets the established criteria. Occasionally the applicants arborist and the City arborist will disagree. In these cases the application is brought before the Planning Commission. As an alternative staff would like to have the option of contracting with a third party ISA certified arborist, agreed to by the applicant and the City, to mediate the situation. The cost of this third party arborist would be shared between the applicant and the City. City staff would make the determination if this is the appropriate approach and whether or not the application would then be forwarded to the Planning Commission, and ultimately the City Council.

### *Appeals*

Staff is adding a new Appeals section that references the current Code Section, Chapter 10.100. This Chapter indicates that decisions of the Director of Community Development are appealable to the Planning Commission , and Planning Commission decisions are appealable to the City Council. If none of the criteria for removal can be met and the applicant desires to remove the tree, the applicant may appeal the Directors denial of the permit. When reviewing the request one of the options that the Planning Commission could consider it to have an determination made on the appraised value of the tree. If the Commission or City Council feels it is appropriate to remove the tree an option would be to have the applicant pay the City the full appraised value of the tree, minus the cost of replacement trees. The funds paid by the applicant could then be placed in the City Tree Canopy Restoration Fund to be used by the City for tree planting, education and other tree related projects. These are options that could be reviewed during an appeal.

### **CONCLUSION:**

Staff requests that the Commission conduct the public hearing, review and adopt the attached draft Resolution recommending to the City Council approval of the proposed amendments to the Tree Ordinance.

### Attachments:

- A. Draft Resolution No. PC 09-02
- B. Tree trimmers Permit
- C. Tree Trimmers sign
- D. E-mail from Gary Osterhout- January 17, 2009
- E. State of California Solar Shade Control Act- Public Resources Code 25980-25986
- F. Guidelines for Developing and Evaluating Tree Ordinances- (document not attached- link to document on International Society of Arboriculture website - <http://www.isa-arbor.com/publications/tree-ord/resources/treeord.pdf>)

- G. Tree Guidelines for Coastal Southern California Communities- (document not attached-link to document on website- Local Government Commission- [http://www.fs.fed.us/psw/programs/cufr/products/2/cufr\\_48.pdf](http://www.fs.fed.us/psw/programs/cufr/products/2/cufr_48.pdf))
- H. Protecting and Developing the Urban Tree Canopy- The United States Conference of Mayors- (document not attached-link to document on website- <http://www.urbanforestrysouth.org/resources/library/protecting-and-developing-the-urban-tree-canopy-a-135-city-survey>)

H:\Work Plan 2008-2009\Tree Ordinance-\PC Report 1-28-09- tree trimmers and flexibility.doc

**DRAFT RESOLUTION NO. PC 09-02**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH RECOMMENDING APPROVAL OF AMENDMENTS TO THE CITY ZONING CODE (SECTION 10.52.120) TO REVISE THE TREE PRESERVATION REGULATIONS**

**THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** The Planning Commission of the City of Manhattan Beach hereby makes the following findings:

- A. The City's Tree Preservation Ordinance was originally adopted August 19, 1993 (Ordinance No. 1884), and is included as Section 10.52.120 of the Zoning Code, and the Ordinance originally applied only to the Tree Section, generally bounded by Rosecrans Avenue, Blanche Road, Valley Drive and Sepulveda Boulevard.
- B. On May 6, 2003, the Ordinance was expanded (Ordinance No. 2045) to apply to all of the residential zones in Area Districts I and II; the Beach Area is not covered by the Tree Ordinance.
- C. On June 24, 2005, the City Council held a special session and developed the 2005-2007 Work Plan, which included an item to study possible revisions to the Tree Ordinance.
- D. On July 5, 2005, the City Council amended and formally adopted the 2005-2007 Work Plan.
- E. On July 26, 2005 the City Council and Planning Commission held a joint Work Plan meeting, and provided direction to revise the Tree Ordinance as one of the top priorities for the Community Development Department.
- F. On March 21, 2006 the City Council adopted Ordinance No. 2082 amending the Tree Preservation regulations to protect streetside trees on corner lots, require new trees on lots that have no trees, increase the size of replacement trees, and require tree pruning standards. Additionally, new fees and fines for violations of the Tree Ordinance were adopted with the fines going to the newly established Tree Canopy Restoration Fund, and the concept of a residents' Tree Committee was approved. The Tree Committee was formally approved April 18, 2009.
- G. On September 18, 2007 the City Council held a special study session to discuss the Tree Ordinance, and requested that staff return with a status report.
- H. On December 4, 2007 the Council reviewed a status report, provided direction to staff to utilize the City arborist more, and adopted Resolution No. 6117 increasing fines for tree ordinance violations. The Tree Committee made a presentation, and the Council directed them to focus on developing a number of outreach and educational items, including a Tree Trimmers Permit.

- I. On June 17, 2008 the City Council adopted the 2008-2009 Work Plan, which includes providing a status report on the Tree Ordinance.
- J. On October 21, 2008, the Council adopted Resolution No. 6163 approving a reduced fee of \$100 for a Tree Permit for the removal and replacement of dead or dying trees.
- K. On November 18, 2008 staff presented a status report to the City Council in accordance with the 2008-2009 Work Plan. The Tree Committee was directed to focus their efforts on public education, and staff to proceed with Code Amendments to provide flexibility in the Tree Preservation regulations and provide a no cost Tree Trimmers Permit and license.
- L. Pursuant to applicable law, the Planning Commission of the City of Manhattan Beach conducted a public hearing on January 28, 2009, on the proposed Code Amendments related to revisions to the Tree Preservation regulation.
- M. The public hearing was advertised pursuant to applicable law, testimony was invited and received. Public noticing included an ad published on January 8, 2009 in a newspaper of general circulation (Beach Reporter).
- N. The applicant for the subject project is the City of Manhattan Beach.
- O. Pursuant to the California Environmental Quality Act (CEQA) and the Manhattan Beach CEQA Guidelines, the subject Amendments are exempt in that they are covered by the general rule that CEQA [Section 15061 (3)] only applies to projects which have the potential for causing a significant effect on the environment, and since it can be seen with certainty that there is no possibility that the activity will have a significant effect on the environment, the activity is not subject to CEQA.
- P. The proposed amendments have been prepared in accordance with the provisions of Title 7, Division 1, Chapter 4, Section No. 65853, et seq., of the State of California Government Code.
- Q. The Planning Commission finds that the project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- R. The Planning Commission made the following findings with regard to the proposed changes:

- 1. The proposed amendments are consistent with the City of Manhattan Beach General Plan.

**Goal LU-2: Encourage the provision and retention of private landscaped open space.**

Policy LU-2.3: Protect existing mature trees throughout the City, and encourage their replacement with specimen trees whenever they are lost or removed.

**Goal LU-3: Achieve a strong, positive community aesthetic.**

**Goal CR-4: Preserve the existing landscape resources in the City, and encourage the provision of additional landscaping.**

Policy CR-4.1: Protect existing mature trees throughout the City and encourage their replacement with specimen trees whenever they are lost or removed.

Policy CR-4.3: Recognize that landscaping, and particularly trees, provide valuable protection against air pollution, noise, soil erosion, excessive heat, and water runoff, and that they promote a healthy environment.

Policy CR-4.4: Review the tree ordinance to consider its application citywide and to determine the need to strengthen tree preservation criteria.

Policy CR-4.5: Discourage the reduction of landscaped open space and especially the removal of trees from public and private land.

**SECTION 2. NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Manhattan Beach hereby recommends **APPROVAL** of the proposed amendments to the Manhattan Beach Municipal Code (Section 10.52.120-Tree preservation and restoration in residential zones, Area Districts I and II) as follows:

**SECTION 3.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by amending Section 10.52.120 A. (Purpose) as follows:

A. **Purpose.** Tree preservation is necessary for the health and welfare of the citizens of the City of Manhattan Beach in order to provide cooling shade and beauty, increase property values, minimize spread of disease to healthy trees, conserve scenic beauty, prevent erosion of topsoil, protect against flood hazards, counteract pollutants in the air, and generally maintain the climatic and ecological balance of the area. These regulations strive to preserve and enhance the existing healthy tree canopies on individual residential properties as well as the overall neighborhood, in order to maintain the neighborhood character, while allowing flexibility for removal of existing trees that may be inappropriate for an area or causing damage. The design of residences, including grading, driveways, walkways, patios, utilities and right-of-way improvements, shall consider and accommodate existing healthy protected trees. The intent of this section is the reasonable retention and preservation of healthy trees while considering and balancing the reasonable enjoyment of private property. The purpose of the Tree Trimmers Permit is to provide standards so that trees are pruned properly in order to protect the City's tree canopy and to provide residents with a list of permitted Tree Trimmers.

**SECTION 4.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by adding Section 10.52.120 G. (Tree Permit Criteria) as follows:

G. Tree Permit Criteria. In addition to being in compliance with the Purpose portion of this Section, the following criteria shall be met in order to remove and replace a protected tree.

1. The tree is dead, or
2. The tree is a health or safety hazard, or
3. The tree is structurally unstable, or

4. The tree is dying or in marginal condition and reasonable alternatives to preserve or rejuvenate the tree have been implemented unsuccessfully or have been analyzed, and are not feasible, or
5. Construction will cause significant unavoidable damage to the tree that will compromise the health and/or safety of the tree, and reasonable alternatives to preserve the tree have been analyzed and are not feasible, or
6. The tree is causing or is likely to cause in the future, significant damage to public or private property, which creates a liability, health or safety concern, and can not reasonably be repaired, maintained or corrected. Trees causing damage to sewers, water piper or other similar private underground utilities or structures, generally shall not be considered to meet the criteria for removal and replacement, or
7. The tree is obstructing protected solar access as regulated by California State law, Solar Shade Control Act, Public Resources Code 25980-25986, and the tree can not be reasonably pruned or maintained in accordance with the State requirements.

The Director of Community Development may require the applicant to submit a report from an ISA certified arborist or other horticultural professional, and/or historical or other support documentation in order to substantiate that the required criteria has been met. The City arborist and/or other City staff may review the information. All costs shall be the responsibility of the applicant. If the applicant's arborist or other horticultural professional is not in agreement with the findings of the City arborist or staff a third party ISA certified arborist, agreed to by the applicant and the City, may be contracted to mediate the situation. The cost of this third party arborist shall be shared between the applicant and the City.

**SECTION 5.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by adding Section 10.52.120 J. (Tree Trimmers Permit) as follows:

J. Tree Trimmers Permit.

1. Any person pruning any private property Protected Tree in the City of Manhattan Beach must have a Tree Trimmers Permit. Residents pruning their own trees are exempt from obtaining a permit but must still comply with the ANSI A300 standards. Homeowners are responsible for hiring City licensed Tree Trimmers.

2. All Tree Trimmers and Homeowners must prune protected trees in accordance with ANSI A300 pruning standards.

3. All Tree Trimmers must comply with the following standards when pruning protected trees.

- a. A notice provided by the City shall be posted on the site.
- b. If the tree trimming job totals \$500 or more then one of the following State of California contractor's licenses must be provided:
  - i. C27- Landscaping Contractor, or
  - ii. C61- Limited Specialty Classification and D49 Tree Service.

**SECTION 6.** The Planning Commission of the City of Manhattan Beach hereby recommends modifying Section 10.52.120 (Tree Preservation and Restoration in Residential Zones Area Districts I and II) of the Manhattan Beach Municipal Code by adding Section 10.52.120 K. (Effective date-Appeals) as follows:

**K. Effective date--Appeals.** Unless appealed in accordance with Chapter 10.100, a Tree Permit decision shall become effective after expiration of the time limits for appeal set forth in Section 10.100.030.

**SECTION 7.** A staff review of the proposed amendments is hereby directed to occur approximately twelve (12) months after the effective date of the City Council approved Ordinance.

**SECTION 8.** Pursuant to Government Code Section 66499.37, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.

**SECTION 9.** If any sentence, clause, or phrase of this resolution is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this resolution. The Planning Commission hereby declares that it would have passed this resolution and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

**SECTION 10.** Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other resolution of the City, to the extent that they are inconsistent with this resolution, and no further, are hereby repealed.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of January 28, 2009 and that said Resolution was adopted by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

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**Richard Thompson**  
Secretary to the Planning Commission

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**Sarah Boeschen**  
Recording Secretary



# TREE TRIMMERS PERMIT APPLICATION (PRIVATE PROPERTY PROTECTED TREES)

CITY OF MANHATTAN BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT  
(310)-802-5503 www.citymb.info

11-18-08 DRAFT DRAFT DRAFT DRAFT 1-18-08 DRAFT DRAFT DRAFT DRAFT DRAFT

Business Name (DBA)

Business License No.

Address

City

Zip

Business phone number

Cell phone number

**Purpose:** To provide standards so that trees are pruned properly in order to protect the City's tree canopy and to provide residents with a list of permitted Tree Trimmers.

**Permit and Notice:** Any person pruning any private property **Protected Tree** in the City of Manhattan Beach must have a Tree Trimmers Permit, in accordance with Section 10.52.XXX of the MBMC. Residents pruning their own trees must still comply with the ANSI A300 standards (summary below), but are exempt from obtaining a permit. Residents may obtain a list of permitted Tree Trimmers from the City of Manhattan Beach Finance Department, Business License Division. Homeowners are responsible for hiring City licensed Tree Trimmers. Pruning all trees in the public right-of-way requires a right-of-way permit

**Protected Trees** are defined by Section 10.52.120 of the MBMC as follows.

1. Trees that are on private property in all Residential Zones, **and**
2. Located in Area Districts I and II, generally east of Valley/Ardmore and Blanche/Bell (See map on back), **and**
3. Located in the front yard or streetside yard (on corner lots), **and**
4. Have a trunk diameter of twelve inches (12") in diameter or greater or multiple trunks totaling twelve inches (12") in diameter or greater at a height of four and one-half feet (4.5') from the ground or is a required new or replacement tree for any protected tree that was removed.

**Exclusions:** Trees excluded from protection include deciduous (lose their leaves in winter) fruit-bearing trees and Washingtonia species palm trees (California and Mexican Fan Palms).

**Standards:**

**All Tree Trimmers and Homeowners** must comply with the following standards when pruning protected trees.

1. Trees must be pruned in accordance with ANSI A300 pruning standards. Standards may be obtained from the Tree Care Industry website at: [http://www.natlarb.com/code/gov\\_standards\\_a300.htm](http://www.natlarb.com/code/gov_standards_a300.htm).
2. ANSI A300 standards provide, in part, that generally no more than 25% of living foliage should be removed annually. Exceptions exist such as for utility clearance, crown dieback or decay, damage due to natural or accidental causes, insects or disease, and where trees are used as hedges.
3. Topping of trees (indiscriminately trimming major branches to limit height) is prohibited.

In addition to the standards above, **all Tree Trimmers** must comply with the following standards when pruning protected trees.

1. A notice provided by the City shall be posted on the site, **NOT** on the tree. The notice shall be visible from the street, state the job address and date of pruning, be posted a minimum of 24 hours prior to pruning and remain on the site for a minimum of two weeks after the pruning.
2. In addition, the following is required for tree trimmers doing jobs that **total \$500 or more**.  
One of the following State of California contractor's licenses must be provided:
  - a. C27- Landscaping Contractor, **OR**
  - b. C61- Limited Specialty Classification and D49 Tree Service

**VIOLATIONS OF THESE REQUIREMENTS ARE PUNISHABLE AS A MISDEMEANOR OR AN INFRACTION AND/OR ARE SUBJECT TO ADMINISTRATIVE FINES.**

**I HEREBY CERTIFY THAT THE INFORMATION I PROVIDED ABOVE IS TRUE AND THAT I HAVE READ, UNDERSTAND, AND WILL COMPLY WITH THE ABOVE STANDARDS.**

SIGNATURE

PRINT NAME

DATE

OFFICE USE ONLY:

Approved ( )

Denied ( )

Signature

Date

**THIS APPLICATION IF APPROVED MUST BE ACCOMPANIED BY A BUSINESS LICENSE APPLICATION**





# CITY OF MANHATTAN BEACH PROTECTED TREE 2009 TREE TRIMMERS PERMIT

Job Address: DRAFT DRAFT DRAFT DRAFT 11-18-08 DRAFT DRAFT DRAFT

Date of pruning: \_\_\_\_\_ Business License No.: \_\_\_\_\_

Business Name (DBA): \_\_\_\_\_ Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Business phone number: \_\_\_\_\_ Cell phone number: \_\_\_\_\_

- Trees must be pruned in accordance with ANSI A300 pruning standards
- Generally no more than 25% of living foliage should be removed annually;
  - Exceptions for utility line/structure clearance, crown dieback or decay, damaged branches, trees used as hedges and similar ANSI exceptions.
- Topping of trees is prohibited.
- This notice shall be posted to be visible from the street (not on the tree) a minimum of 24 hours prior to pruning and remain on the site for a minimum of two weeks after pruning.
- Violations of these requirements are punishable as a misdemeanor or an infraction and/or are subject to administrative fines.

**TO REPORT VIOLATIONS CALL CITY OF MANHATTAN BEACH (310) 802-5538 OR 5503**

**Laurie B. Jester**

**From:** Richard Thompson  
**Sent:** Tuesday, January 20, 2009 8:09 AM  
**To:** Laurie B. Jester  
**Subject:** FW: Tree Ordinance



Tree  
Ordinances.pdf (1 ME  
fyi

Richard Thompson  
Director of Community Development

-----Original Message-----  
From: gosterhout@roadrunner.com [mailto:gosterhout@roadrunner.com]  
Sent: Saturday, January 17, 2009 11:14 AM  
To: Sandra Seville-Jones; Wayne Powell; jim@fasolaarchitects.com; paralusz@hotmail.com; David Lesser; Richard Thompson  
Cc: Gerry O'Connor; Kaye Sherbak; Portia Cohen - External email  
Subject: Tree Ordinance

Dear Planning Commission Members:

This is in reference to your upcoming meeting to review the Tree Ordinances and Pruning Permit.

I am currently concerned about how long it is taking for our city to get these ordinances and collateral items in place, as trees are imperiled daily. I know in your due diligence review you will have questions whether the proposed materials are appropriate To that end, I have attached what I believe to be the most comprehensive tree ordinance publication available: "Guidelines for Developing and Evaluating Tree Ordinances." If accessed online at [www.isa-arbor.com/publications/tree-ord/resources/treecord.pdf](http://www.isa-arbor.com/publications/tree-ord/resources/treecord.pdf), there are actual links in the document from the index and to other source documents and websites.

I'm not sure if you are provided with resources like this by Community Services or have your own sources, but hopefully you can use this document as a template for your own independent research, to provide definitions where definitions might be lacking, as reference to discuss a concern with your fellow commission members or the audience, or to satisfy yourself that the ordinance you are reviewing is not that far off or far-reaching. I personally have been searching a long time for something like this. If needed, I also have a copy if needed of ANSI 300 Part I (Tree, Shrub, and Other Woody Plant Management-Standard Practices (Pruning), and a more readable companion publication to ANSI 300 Part I published by the International Society of Arboriculture.

I am suggesting you use this material to break through any roadblocks confronted in your recommendations concerning the proposed materials you will be receiving, not as a motivation to re-create the wheel. Please don't consider this as suggesting that the Manhattan Canopy Tree Committee product is in any way flawed. I believe this is one hard-working committee that knows what it is doing and has developed a good product. Again, your due diligence review requires asking

some hard questions; hopefully the attached reference material will expedite that process.

Regards,

Gary Osterhout

## **PUBLIC RESOURCES CODE**

### **SECTION 25980-25986**

25980. This chapter shall be known and may be cited as the Solar Shade Control Act. It is the policy of the state to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources. In particular, the state encourages the planting and maintenance of trees and shrubs to create shading, moderate outdoor temperatures, and provide various economic and aesthetic benefits. However, there are certain situations in which the need for widespread use of alternative energy devices, such as solar collectors, requires specific and limited controls on trees and shrubs.

25981. (a) As used in this chapter, "solar collector" means a fixed device, structure, or part of a device or structure, on the roof of a building, that is used primarily to transform solar energy into thermal, chemical, or electrical energy. The solar collector shall be used as part of a system that makes use of solar energy for any or all of the following purposes:

- (1) Water heating.
- (2) Space heating or cooling.
- (3) Power generation.

(b) Notwithstanding subdivision (a), for the purpose of this chapter, "solar collector" includes a fixed device, structure, or part of a device or structure that is used primarily to transform solar energy into thermal, chemical, or electrical energy and that is installed on the ground because a solar collector cannot be installed on the roof of the building receiving the energy due to inappropriate roofing material, slope of the roof, structural shading, or orientation of the building.

(c) For the purposes of this chapter, "solar collector" does not include a solar collector that is designed and intended to offset more than the building's electricity demand.

(d) For purposes of this chapter, the location of a solar collector is required to comply with the local building and setback regulations, and to be set back not less than five feet from the property line, and not less than 10 feet above the ground. A solar collector may be less than 10 feet in height only if, in addition to the five-foot setback, the solar collector is set back three times the amount lowered.

25982. After the installation of a solar collector, a person owning or in control of another property shall not allow a tree or shrub to be placed or, if placed, to grow on that property so as to cast a shadow greater than 10 percent of the collector absorption area upon that solar collector surface at any one time between the hours of 10 a.m. and 2 p.m., local standard time.

25982.1. (a) An owner of a building where a solar collector is proposed to be installed may provide written notice by certified mail

to a person owning property that may be affected by the requirements of this chapter prior to the installation of the solar collector. If a notice is mailed, the notice shall be mailed no more than 60 days prior to installation of the solar collector and shall read as follows:

SOLAR SHADE CONTROL NOTICE

Under the Solar Shade Control Act (California Public Resources Code Sec. 25980 et seq.) a tree or shrub cannot cast a shadow greater than 10 percent of a solar collector absorption area upon that solar collector surface at any one time between the hours of 10 a.m. and 2 p.m. local standard time if the tree or shrub is placed after installation of a solar collector. The owner of the building where a solar collector is proposed to be installed is providing this written notice to persons owning property that may be affected by the requirements of the act no more than 60 days prior to the installation of a solar collector. The building owner is providing the following information:

Name and address of building owner:  
 Telephone number of building owner:  
 Address of building and specific location where a solar collector will be installed (including street number and name, city/county, ZIP Code, and assessor's book, page, and parcel number):  
 Installation date of solar collector:

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Building Owner, Date

(b) If the owner of the building where a solar collector is proposed to be installed provided the notice pursuant to subdivision (a), and the installation date is later than the date specified in that notice, the later date shall be specified in a subsequent notice to persons receiving the initial notice.

(c) (1) A transferor of the building where the solar collector is installed may provide a record of persons receiving the notice pursuant to subdivision (a) to a transferee of the building.

(2) A transferor receiving a notice pursuant to subdivision (a) may provide the notice to a transferee of the property.

25983. A tree or shrub that is maintained in violation of Section 25982 is a private nuisance, as defined in Section 3481 of the Civil Code, if the person who maintains or permits the tree or shrub to be maintained fails to remove or alter the tree or shrub after receiving a written notice from the owner or agent of the affected solar collector requesting compliance with the requirements of Section 25982.

25984. This chapter does not apply to any of the following:

(a) A tree or shrub planted prior to the installation of a solar collector.

(b) A tree planted, grown, or harvested on timberland as defined in Section 4526 or on land devoted to the production of commercial agricultural crops.

(c) The replacement of a tree or shrub that had been growing prior to the installation of a solar collector and that, subsequent to the installation of the solar collector, dies, or is removed for the protection of public health, safety, or the environment.

(d) A tree or shrub that is subject to a city or county ordinance.

25985. (a) A city, or for unincorporated areas, a county, may adopt, by majority vote of the governing body, an ordinance exempting their jurisdiction from the provisions of this chapter. The adoption of the ordinance shall not be subject to the California Environmental Quality Act (commencing with Section 21000).

(b) Notwithstanding the requirements of this chapter, a city or a county ordinance specifying requirements for tree preservation or solar shade control shall govern within the jurisdiction of the city or county that adopted the ordinance.

25986. Any person who plans a passive or natural solar heating system or cooling system or heating and cooling system which would impact on an adjacent active solar system may seek equitable relief in a court of competent jurisdiction to exempt such system from the provisions of this chapter. The court may grant such an exemption based on a finding that the passive or natural system would provide a demonstrably greater net energy savings than the active system which would be impacted.

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**Laurie B. Jester**

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**From:** Laurie B. Jester  
**Sent:** Tuesday, January 27, 2009 8:22 AM  
**To:** 'Mike Garcia'  
**Subject:** RE: PC Report and Attachments- 1-28-09- trees.pdf

Thanks -  
Great!

-----Original Message-----  
From: Mike Garcia [mailto:mike@enviroponds.com]  
Sent: Monday, January 26, 2009 6:59 PM  
To: Laurie B. Jester  
Subject: RE: PC Report and Attachments- 1-28-09- trees.pdf

Thanks for the invite. I think you did a super job. That's my only comment.

Hoping to see as many as possible at the educational event on 2/28/09 at MCHS.

Kaye will forward you the particulars

Thanks again

Mike Garcia

-----Original Message-----  
From: Laurie B. Jester [mailto:ljester@citymb.info]  
Sent: Monday, January 26, 2009 8:25 AM  
To: Mike Garcia  
Cc: Ann Barklow; Kaye Sherbak; Steve Kahan  
Subject: RE: PC Report and Attachments- 1-28-09- trees.pdf

Mike-  
Thank you-  
Any comments on the proposal are welcome before or at the meeting. We are hoping that the commission can get through this in one hearing so we can forward to council and get the amendments in place as soon as possible. Laurie

-----Original Message-----  
From: Mike Garcia [mailto:mike@enviroponds.com]  
Sent: Sunday, January 25, 2009 6:50 AM  
To: Laurie B. Jester; 'Ann Barklow'; 'Kaye Sherbak'; 'Steve Kahan'  
Subject: RE: PC Report and Attachments- 1-28-09- trees.pdf

Laurie

What a great, well written report! It is very thorough and comprehensive and very easy to understand.

Keep up the great work.

Mike Garcia

-----Original Message-----

From: Laurie B. Jester [mailto:ljester@citymb.info]

Sent: Friday, January 23, 2009 5:12 PM

To: Ann Barklow; Kaye Sherbak; Mike Garcia; Steve Kahan

Subject: FW: PC Report and Attachments- 1-28-09- trees.pdf

Attached is the tree report- It will also be posted on the web

-----Original Message-----

From: Laurie B. Jester

Sent: Friday, January 23, 2009 9:35 AM

To: Eric Haaland

Subject: PC Report and Attachments- 1-28-09- trees.pdf

For webposting

Thanks

PC Report and Attachments- 1-28-09- trees.pdf <<PC Report and  
Attachments-  
1-28-09- trees.pdf>>



**Laurie B. Jester**

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**From:** Richard Thompson  
**Sent:** Wednesday, February 11, 2009 1:14 PM  
**To:** Laurie B. Jester  
**Subject:** FW: Tree Preservation ordinance markup

Richard Thompson  
Director of Community Development

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**From:** Nick Tell [mailto:ntell@fulcrumstrategypartners.com]  
**Sent:** Wednesday, February 11, 2009 11:32 AM  
**To:** Richard Thompson  
**Subject:** FW: Tree Preservation ordinance markup

Let's discuss. I think this makes sense.

**From:** Ron Howell [mailto:ronghowell@msn.com]  
**Sent:** Tuesday, February 10, 2009 8:04 PM  
**To:** Nick Tell  
**Subject:** Tree Preservation ordinance markup

Mr. Tell,

We appreciate your service to the city and your efforts to improve the tree preservation ordinance. Attached are our comments regarding the marked up ordinance as being considered by the Planning Commission. We are interested in your views regarding our comments.

Thanks for the opportunity to respond to this issue.

Best Regards,  
Ron and Nancy Howell

Distributed at  
2/11/09 P.C.  
meeting

Re: Redline and Greenline Strikeout Text – Tree Ordinance – Planning Commission  
1-28-09 and 2-11-09, Exhibit A

As a 37 year Manhattan Beach resident and property owner, we appreciate the efforts of the Planning Commission and City Council to maintain, guide and define the character of our unique city. We also recognize the challenges of the task considering the diverse interests, values and opinions of the changing city demographics.

Having spent our formative years in a rural eastern USA environment, we have a well developed appreciation and understanding of vegetation and tree canopies. The current tree preservation ordinance markup is a major improvement. However, there is a very real situation that, we believe, is not clearly addressed by the current markup. We live on Pacific Avenue between 8<sup>th</sup> and 9<sup>th</sup> Streets. The property has a large Aleppo pine tree that was planted at the northeastern property border approximately 60 years ago. Other than a pronounced southern lean, the tree appears healthy. However, since it was planted as a seedling in immediate proximity to the property border, the tree's growth has resulted in significant above ground infringement on both the owners and adjacent properties and structures. Since acquiring the property 24 years ago, qualified tree trimmers have indicated that to cut back the infringing tree parts will seriously risk the health of tree. Additionally, as the neighborhood matures and redevelops, the profile of the tree will significantly limit the development of the owners and adjacent properties. We believe the proposed changes to the ordinance should generally recognize and accommodate this type situation by allowing removal and replacement of trees of this nature. We don't believe that the intent of the Council is to preserve trees that may have fit the environment years ago when planted but have matured to the point of being a detriment, but not necessarily a safety hazard, to the property and adjoining properties. Consequently, we suggest the following changes to the current redline ordinance:

**Section A Purpose**

2<sup>nd</sup> Paragraph. Immediately following the word "healthy" each time it appears, add the words "and location appropriate"

**Section G Tree Permit Criteria**

Item 2. Immediately following "...safety hazard" add the words "or is a threat to an existing structure such that trimming or pruning the tree to avoid structure impingement would significantly risk the health of the tree"

Item 4. Add to the end of the sentence the words "property development is limited to criteria significantly less than otherwise would be permitted by the applicable building codes and regulations or"

Thanks for the opportunity to address this issue.  
Best regards,  
Ron and Nancy Howell

**Laurie B. Jester**

**From:** Richard Thompson  
**Sent:** Wednesday, February 11, 2009 4:08 PM  
**To:** Laurie B. Jester  
**Subject:** FW: Tree Ordinance

Richard Thompson  
Director of Community Development

*Distributed  
at 2/11/09  
P.C.*

-----Original Message-----  
From: gosterhout@roadrunner.com [mailto:gosterhout@roadrunner.com]  
Sent: Wednesday, February 11, 2009 3:08 PM  
To: Sandra Seville-Jones; Wayne Powell; jim@fasolaarchitects.com; paralusz@hotmail.com; David Lesser; Richard Thompson  
Cc: Ann Barklow  
Subject: Tree Ordinance

Dear Planning Commissioners:

I will be unable to attend tonight's meeting due to a conflict with the School District's city-wide orchestra concert. So please consider the following comments.

First, some general comments in respect to the additional revisions made 1/28/09. This ordinance started out as a "Tree Ordinance with Teeth." If you are certain the revised wording continues this objective, and you don't believe you've excessively word-smithed it, then by all means vote for it. However, I believe it would be difficult for you to add another "feasible" or "reasonable" or "generally" caveat in the body of the ordinance (there are currently four such references for each word, as well as three "reasonably's," and even one "reasonably feasible").

Similarly to the above, in respect to adding "minor" to the following: "Trees causing minor damage to sewers, water lines or other similar private underground utilities, generally shall not be considered to meet the criteria for removal and replacement." Without a definition for "minor," especially in relation to the accompanying "generally" caveat, it would appear difficult to see where this provision really is going to be a barrier to tree removal. Frankly, I liked the Director's proposed wording (per the minutes).

Second, even with all the new squishy wording in the new ordinance it would be fine, if there were a built-in accountability structure in respect to Community Development decisions over tree removal. But there appears to be none, such as a companion ordinance formally establishing and providing oversight duties of a community tree committee. We especially would need an understood accountability structure and provisions that would survive city employee and planning commission tenure. Thus, I caution you in going ahead with the non-pruning aspects of this ordinance-- especially one now less than precise--until you are certain such accountability structures are in place, which would include prescribed documentation and its retention (i.e., site-specific applications, photographs, etc.), and stipulated periodic oversight review to determine if the intent of the ordinance is being properly translated by the Community Development department. If nothing else, recommend that to the Council.

Finally, please review the following selections from the "Public Comment" section of tonight's staff report and my

following comments, in respect to a lack of clarity, meaning, or propriety (and I'll leave you to your own remedies, if any):

"Representatives from the Tree Committee e-mailed and spoke with staff and indicated at the meeting that they were supportive of the proposed revised, which they were very involved in formulating the concepts for."

"There were comments on the ANSI A300 standards and the ISA pruning booklets. The City has purchased a large volume of the ISA booklets and a number of other educational materials which the Tree Committee has provided free to the public at a number of educational events and most are available at City Hall and posted on the City website."

I believe it needs clarified whether the e-mails from representatives of the Tree Committee were in reference to the earlier revisions or the 1/28/09 revisions, for as someone on the Tree Committee mailing list I received no solicitation of comments by our "representatives" nor was I distributed any information in respect to agreement with the January 2009 revisions. Nor do I see those e-mails attached for tonight's report, which would seem essential if they are to be cited.

Next, contrary to the paragraph heading, there was no "public comment" that "The City has purchased a large volume of the ISA booklets and a number of other educational materials which the Tree Committee has provided free to the public at a number of educational events and most are available at City Hall and posted on the City website." Nor is such a comment reflected anywhere in the minutes, from anyone. The whole point of my mentioning these materials at the January meeting was to refute staff's assertion that the pertinent ANSI was a voluminous document. Nor obviously were the Commissioners supplied with this sort of information by staff in advance, which they should have been.

Further, there is no documentation in the report of the number of ISA booklets purchased by the city (which if worthy of mention is worthy of being specific). Also, having worked the Tree Canopy booth at the Hometown Fair, I can tell you folks that no ISA booklets were available for distribution or reference there, and there have been few other events that would allow distribution of a "large volume" of the ISA booklets. Nor could I easily find any information on tree pruning on the city's website, such as through a dedicated link. The few materials found on the website when finally word-searching for "pruning" (as "tree trimming" didn't yield anything of substance), produced only some disconnected "powerpoint"-type items produced by well-intentioned members of the community committee that to me convey very little information to the non-initiated, absent accompanying verbal commentary.

I thank you for giving these comments there due consideration.

Regards,  
Gary Osterhout