



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Cohen and Members of the City Council

THROUGH: Geoff Dolan, City Manager

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

DATE: March 4, 2009

SUBJECT: Adoption of Ordinance Approving 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.

RECOMMENDATION:

Staff recommends that the City Council **ADOPT ORDINANCE NO. 2121.**

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:

On February 17, 2009 the City Council reviewed the Planning Commissions recommendations to revise the Tree Preservation Ordinance and require a new Tree Trimmers Permit. After taking public input, reviewing and discussing the proposed revisions, and making further revisions, the City Council introduced Ordinance No. 2121 and scheduled the second reading and adoption for tonight's meeting. Based on Council direction, one sentence in the Purpose section, page one, was relocated to Section G. dd., Tree Removal Permit Process, Criteria and Findings on page four. The original language in Section G. dd. on page four was then eliminated. The attached redline strikeout text shows the changes (Attachment A).

CONCLUSION:

The proposed revisions to the Tree Preservation regulations are intended to meet the City Council's 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 recommends that the City Council adopt Ordinance No. 2121.

ATTACHMENTS:

- A. Tree Ordinance redline-strike out proposed revisions
- B. Draft Ordinance No. 2121

REDLINE-STRIKEOUT TEXT
TREE ORDINANCE
CITY COUNCIL 3-4-09
EXHIBIT A
BLACK- ORIGINAL TEXT

**RED- 2-11-09 REVISIONS RECOMMENDED BY PLANNING COMMISSION AS
MODIFIED BY CITY COUNCIL ON 2-17-09**

**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.

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.

Comment: SECTION D 7. WAS
ORIGINALLY MOVED TO THE
PURPOSE SECTION BY THE
PLANNING COMMISSION, THEN
RELOCATED TO SECTION G.1. dd.
BY THE CITY COUNCIL ON 2-17-09-
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.

REDLINE-STRIKEOUT TEXT
TREE ORDINANCE
CITY COUNCIL 3-4-09
EXHIBIT A
BLACK- ORIGINAL TEXT
RED- 2-11-09 REVISIONS RECOMMENDED BY PLANNING COMMISSION AS
MODIFIED BY CITY COUNCIL ON 2-17-09

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.

REDLINE-STRIKEOUT TEXT
TREE ORDINANCE
CITY COUNCIL 3-4-09
EXHIBIT A
BLACK- ORIGINAL TEXT

**RED- 2-11-09 REVISIONS RECOMMENDED BY PLANNING COMMISSION AS
MODIFIED BY CITY COUNCIL ON 2-17-09**

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 ORIGINALLY MOVED TO THE PURPOSE SECTION BY THE PLANNING COMMISSION, THEN RELOCATED TO SECTION G.1. dd. BY THE CITY COUNCIL ON 2-17-09. 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.

REDLINE-STRIKEOUT TEXT
TREE ORDINANCE
CITY COUNCIL 3-4-09
EXHIBIT A
BLACK- ORIGINAL TEXT

**RED- 2-11-09 REVISIONS RECOMMENDED BY PLANNING COMMISSION AS
MODIFIED BY CITY COUNCIL ON 2-17-09**

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 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. 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 ~~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

Comment: SECTION D 7. WAS ORIGINALLY MOVED TO THE PURPOSE SECTION BY THE PLANNING COMMISSION, THEN RELOCATED TO SECTION G.1. dd. BY THE CITY COUNCIL ON 2-17-09. 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.

REDLINE-STRIKEOUT TEXT
TREE ORDINANCE
CITY COUNCIL 3-4-09
EXHIBIT A
BLACK- ORIGINAL TEXT
RED- 2-11-09 REVISIONS RECOMMENDED BY PLANNING COMMISSION AS
MODIFIED BY CITY COUNCIL ON 2-17-09

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.

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.

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.

REDLINE-STRIKEOUT TEXT
TREE ORDINANCE
CITY COUNCIL 3-4-09
EXHIBIT A
BLACK- ORIGINAL TEXT

**RED- 2-11-09 REVISIONS RECOMMENDED BY PLANNING COMMISSION AS
MODIFIED BY CITY COUNCIL ON 2-17-09**

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).

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

REDLINE-STRIKEOUT TEXT
TREE ORDINANCE
CITY COUNCIL 3-4-09
EXHIBIT A
BLACK- ORIGINAL TEXT
RED- 2-11-09 REVISIONS RECOMMENDED BY PLANNING COMMISSION AS
MODIFIED BY CITY COUNCIL ON 2-17-09

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.

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

REDLINE-STRIKEOUT TEXT
TREE ORDINANCE
CITY COUNCIL 3-4-09
EXHIBIT A
BLACK- ORIGINAL TEXT

**RED- 2-11-09 REVISIONS RECOMMENDED BY PLANNING COMMISSION AS
MODIFIED BY CITY COUNCIL ON 2-17-09**

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)

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, 2006, 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, discussing the item, and making minor revisions, 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:

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. 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 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. 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 ,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 4th day of March, 2009.

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor of the City of Manhattan Beach, California

ATTEST:

City Clerk