

Introduced by Council member _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 8.52 (CITY TREES AND TREE PROTECTION ORDINANCE) OF THE PASADENA MUNICIPAL CODE.

SECTION 1. Ordinance No. _____, due to its length and corresponding cost of publication, will be published by title and summary as permitted by Section 508 of the Pasadena City Charter. The approved summary of this Ordinance is as follows:

"Summary

"Ordinance No. _____ will amend Title 8 of the Pasadena Municipal Code in the following ways: Chapter 8.52 (TREES AND TREE PROTECTION ORDINANCE) will be amended to enhance penalties for violation, and strengthen the City's ability to prosecute and remedy violations of the Code. Additionally, the City Manager will be authorized to prepare and update the tree protection guidelines and the tree replacement matrix.

Ordinance No. _____ shall take effect 30 days after publication."

SECTION 2. Pasadena Municipal Code, Title 8, Chapter 8.52, Section 8.52.030, is amended to read as follows:

"8.52.030- City manager responsibilities.

The city manager shall:

A. By use of city employees, private contractors or authorized volunteers, plant, maintain and otherwise care for, or, if necessary, remove public trees.

B. Prepare an annual program for tree planting and tree care in public places of the city;

C. Recommend to the city council changes or additions to the master street tree plan as needed;

D. Inspect the planting, maintenance and removal of all public trees;

E. Develop maintenance standards as they relate to trees in public places.

F. Make determinations on public tree removal based upon tree reports prepared by certified arborists, other relevant facts, and upon established public tree removal criteria;

G. Review development and construction plans as they affect mature, landmark, landmark-eligible, native, public and specimen trees;

H. Act as advisor to the design commission of the city;

I. Prepare and submit and periodically revise the tree protection guidelines.

J. Prepare and submit the specimen tree list, and any revisions thereto to the city council for adoption by resolution;

~~JK.~~ Issue permits and make determinations specified under this chapter;

~~KL.~~ Maintain a comprehensive inventory of public trees; and

~~LM.~~ Act as the enforcement official who is designated to issue a compliance order or an administrative citation to enforce this chapter pursuant to Chapter 1.25 or 1.26, respectively, of this code."

SECTION 3. Pasadena Municipal Code, Title 8, Chapter 8.52.032, is amended to read as follows:

"8.52.032 – Tree protection guidelines.

8.52.032 - Tree protection guidelines.

Tree protection guidelines are the standards and specifications for the protection of trees under this chapter. The tree protection guidelines, and any revision thereto, shall be ~~effective as of the date of their adoption by resolution of the city council~~ **prepared by the city manager and revised as necessary.**"

SECTION 4. Pasadena Municipal Code, Title 8, Chapter 8.52, Section 8.52.075 is amended to read as follows:

“8.52.075 – Private property tree removal and landmark tree pruning permits-Issuance.

A. Any permit or approval which will result in injury to or removal of a mature, landmark, landmark-eligible, native or specimen tree protected under this chapter shall be denied unless one of the following findings is made: (1) there is a public benefit as defined in Section 8.52.024(R), or a public health, safety or welfare benefit, to the injury or removal that outweighs the protection of the specific tree; or (2) the present condition of the tree is such that it is not reasonably likely to survive; or (3) tree is an objective feature of the tree that makes the tree not suitable for the protections of this chapter; or (4) there would be a substantial hardship to a private property owner in the enjoyment and use of real property if the injury or removal is not permitted; or (5) to not permit injury to or removal of a tree would constitute a taking of the underlying real property; or (6) the project, as defined in Section 17.12.020, includes a landscape design plan that emphasizes a tree canopy that is sustainable over the long term by adhering to the replacement matrix ~~adopted~~ **prepared** ~~by resolution of the city council~~ **the city manager** and included in the associated administrative guidelines. Finding 6 shall not apply to permits or approvals seeking removal of a landmark tree and landmark-eligible trees. In addition, for removal of a landmark tree, any such permit or approval shall be denied unless procedures specified for removal of landmarks in Chapter 17.62 are first followed.

B. An application shall be granted, denied, or granted conditionally on the date of the associated discretionary decision, or, if none, within 15 business days after a complete application is made. The approval may be based on imposed conditions reasonably necessary to meet the standards of this chapter.

C. Alternative to Replacement Matrix Requirements. When using Finding 6 for removal of protected trees, the planting of required replacement trees on-site may be satisfied through the following alternative, in compliance with the city's regulations for the implementation of this chapter.

1. Alternative Replacement Fee. The developer may request to pay a fee instead of planting on site up to 50 percent of the required number of replacement trees, as follows:

a. The amount of the fee shall be 100 percent of the appraised value of the tree/s that cannot be replaced.

i. Applicant must submit an application that includes: an appraisal by a certified arborist utilizing the most recent edition of the Guide for Plant Appraisal (published by the International Society of Arboriculture), the number replacement trees calculated using the replacement matrix, and a report by a certified arborist or landscape architect that determines that the number of required on-site replacement trees would inhibit healthy growth (e.g., overcrowding of new trees; interfere with roots and canopy of existing protected trees and street trees);

ii. Up to 50 percent of the required replacement trees must be planted on-site and the replacement fee shall be a maximum of 50 percent of the appraised value of all trees to be removed, prorated as necessary.

b. The review authority may approve an alternative replacement fee only after first making all of the following findings:

i. Applicant investigated alternative site designs and building footprints using existing development standards;

ii. Placing the required number of replacement trees on site with existing plan is not conducive to a sustainable landscape plan (e.g., overcrowding with existing or new trees; occluding important view corridors; disrupting the configuration of existing open space; or a landscape design which has historic or aesthetic importance; interfering with existing site features—walls, driveways, berms, planting beds, pergolas—which have historic or aesthetic importance);

iii. A minimum of 50 percent of the required replacement trees are on-site and the spacing and selection of the proposed trees and the landscape design contributes to the city's long-term goals of a sustainable urban forest as determined by the city's arborist;

iv. Project includes a well-integrated and thoughtful design solution that enhances the property and its surroundings;

v. Project is not injurious to adjacent properties or uses, or detrimental to environmental quality, quality of life, or the health, safety, and welfare of the public; and

vi. Project is consistent with the objectives and policies of the applicable design guidelines and the citywide design principles in the general plan.

c. One-half of the alternative replacement fee required by this subsection shall be paid (or alternate security provided in a form acceptable to the director of finance) before issuance of a building permit for any part of the project. The remainder of the fee shall be paid before a certificate of occupancy is issued for any portion of the project.

d. Fees collected in compliance with this section shall be specified for additional plantings that are above and beyond the city's regular planting programs."

SECTION 5. Pasadena Municipal Code, Title 8, Chapter 8.52, Section 8.52.076 is amended to read as follows:

"8.52.076 – Work on public trees.

Public trees. No permits will be issued to any person or entity for pruning or removal of public trees, and all pruning and removal of public trees shall be undertaken by employees or contractors of the city pursuant to Section 8.52.080. Any person desiring to initiate special maintenance or removal of a public tree by the city, may make a written request to the city manager and pay the costs of service and replacement at rates **established by the city manager and set forth in the tree protection guidelines** ~~set by resolution of the city council~~, should the request be granted. Any such request will be considered based on the provisions of this chapter, established public tree removal criteria, other ongoing public tree work and available resources."

SECTION 6. Pasadena Municipal Code, Title 8, Chapter 8.52, Section 8.52.085 is amended to read as follows:

"8.52.085 – Prohibited acts.

The following are prohibited acts under this chapter unless expressly exempted:

A. Landmark Tree. To prune, injure, or to remove without a permit, a landmark tree located anywhere in the city.

B. Native Tree. To injure, or to remove without a permit, any native tree located in the established front yard, required side yard, established corner yard, or required rear yard of all property located in a single-family residential or RM-12 multifamily residential zone, and in all areas of all other zoning district anywhere in the city.

C. Public Tree. To prune, to injure or to remove a public tree located anywhere in the city.

D. Specimen Tree. To injure, or to remove without a permit, any specimen tree located in the established front yard, required side yard, established corner yard, or required rear yard of all property located in a single-family residential or RM-12 multifamily residential zone, and in all areas of all other zoning districts anywhere in the city.

E. Landmark-Eligible Tree. To injure, or to remove without a permit, any landmark-eligible tree located in the established front yard, required side yard, established corner yard, or required rear yard of all projects subject to RS and RM-12 development standards, and in all areas of all other zoning district anywhere in the city.

F. Mature Tree. To injure, or to remove without a permit, any mature tree located in any zone except projects subject to RS and RM-12 development standards.

G. To plant a tree of a species other than the official street tree in a parkway, median or traffic island, and a violator shall be subject to a civil penalty.

H. To fail to adhere to the terms and conditions of any permit issued under this chapter.

I. To fail to adhere to the terms of any tree protection plan imposed as a condition of any discretionary land use approval or development agreement with the city.

J. To do or commit any unpermitted act that is injurious to a protected tree, including but not limited to, causing root damage, damage to the trunk, scarring, or any other unpermitted alteration of a protected tree.

SECTION 7. Title 8, Chapter 8.52, Section 8.52.155 is amended to read as follows:

“8.52.155 – Prosecution of violations.

A violation of any provision of this chapter shall be prosecuted as a misdemeanor or infraction at the option of the city prosecutor and as further set forth in Section 8.52.150~~60~~ with respect to penalties and administrative proceedings”

SECTION 8. Title 8, Chapter 8.52, Section 8.52.160 is amended to read as follows:

"8.52.160 - Penalties and administrative proceedings.

A. Misdemeanors. Any person who violates any provision of this chapter and is convicted of a misdemeanor shall be punished by a fine of not more than \$1,000.00 or by imprisonment for a period of not more than 6 months or by both such fine and imprisonment.

B. Infractions. Any person who violates any provision of this chapter and is convicted of an infraction shall be punished by a fine of not more than \$250.00. Each person convicted may be deemed guilty of a separate offense for every day during any portion of which any violation is committed or permitted.

C. In addition to the penalty provisions of subsections A and B of this section, violations of Sections 8.52.085, 8.52.100, 8.52.110, 8.52.120 or 8.52.140 may be subject to the administrative proceedings set forth in Chapters 1.25 and 1.26 of this code, including, but without limitation, civil penalties, late payment penalties, administrative fees, other related charges and, to the maximum extent permitted by law, tree replacement costs as established by resolution of the city council **as set forth in this chapter.**

D. Civil Penalties. In addition to the penalty provisions of subsections A, B and C of this section, the city may bring a civil action against any person who commits, allows, or maintains a violation of any provision of this chapter. As part of such civil action, a court may assess against any person who commits, allows or maintains a violation of any provision of this chapter a civil penalty in an amount not to exceed five thousand dollars per violation or in an amount as set forth below:

1. Where the violation has resulted in irreparable injury to or removal of a tree, the civil penalty shall be in an amount of five thousand dollars per tree unlawfully injured or removed, or in the full amount of the replacement value of each such tree, whichever amount is higher. Such amount shall be payable to the city. Replacement value for the purposes of this section shall be determined utilizing the most recent edition of the Guide for Plant Appraisal, published by the International Society of Arboriculture ("ISA").

2. Injunctive Relief. A civil action may be commenced to abate, enjoin, or otherwise compel the cessation of such violation.

3. Costs. In any civil action brought pursuant to this chapter in which the city prevails, the court shall award to the city all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action, and reasonable attorney fees.

E. In addition to the penalty provisions of subsections A, B, C, and D of this section, the city may suspend or revoke any application for, or grant of, any discretionary permit that may be associated with the address upon which such irreparable injury or removal of a protected tree has occurred.

1. Protected Trees. If a tree that is protected by this chapter is irreparably injured or removed in violation of this chapter after the responsible person has been previously notified or warned of the tree's protected status, then no building or construction-related permits shall be issued, and no permits or use of the property shall be allowed, from the date of irreparable injury or removal for a period of one year.

2. Date of actual injury or removal. For purposes of this Section, the irreparable injury or removal of any tree protected by this chapter shall be presumed to have occurred on the date the City has actual knowledge of the injury or removal. The person responsible for the injury or removal shall have the burden of proving a different date if one is claimed."

SECTION 9. If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and this City Council hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been deleted.

SECTION 10. This Ordinance shall take effect 30 days after publication.

SECTION 11. The City Clerk shall certify the adoption of this Ordinance and shall cause this Ordinance to be published by title and summary.

Signed and approved this _____ day of _____, 2018.

Terry Tornek
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held on _____ day of _____ 2018, by the following vote:

AYES:

NOES:


ABSENT:

ABSTAIN:

Published:

Mark Jomsky, CMC
City Clerk

APPROVED AS TO FORM:



Brad L. Fuller
Assistant City Attorney