

ORDINANCE NO. O-18-1341

**AN ORDINANCE OF THE CITY OF SAN MARINO
REGARDING THE PRESERVATION OF TREES
AND AMENDING THE SAN MARINO CITY CODE
REGARDING THE SAME**

THE CITY COUNCIL OF THE CITY OF SAN MARINO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Ordinance No. O-18-1343-U, “An Urgency Ordinance of the City of San Marino Enacted Pursuant to Government Code Section 65858 Establishing a Moratorium on the Issuance of Tree Removal Permits; Prohibiting the Removal of or Damage to Certain Categories of Trees; and Declaring the Urgency Thereof,” is hereby repealed.

SECTION 2. Section 23.06.15 (Preservation of Trees) of Article 6 (Requirements and Restrictions Generally) of Chapter 23 (Zoning and Development, Advertising and Signs, Fences and Walls) of the San Marino City Code is hereby amended in its entirety to read as follows:

23.06.15: PRESERVATION OF TREES:

A. Applicability:

This section applies only to trees in the R-1 and C-1 zones; excepting trees in the public parkways adjacent to the R-1 and C-1 zones, which are subject to Chapter 18 of this Code.

B. Definitions:

CERTIFIED ARBORIST: An individual who has been tested by, and is currently certified as an “arborist”, by the International Society of Arboriculture (ISA).

DAMAGE: Any action taken which causes injury, disfigurement or death to a tree. This includes, but is not limited to, severe pruning, topping, poisoning, drilling, under watering or improperly transplanting. Confirmation of damage shall be determined by the Planning and Building Director or his/her designee.

ESTABLISHED TREE: A tree that is not a Heritage Tree or an Oak Tree, that is at least fifteen feet (15’) in height, and whose trunk diameter is at least six inches (6”) at its widest point, when measured at a point four and one-half feet (4.5’) above natural grade.

HEDGE: A row of planted trees, shrubs or other vegetation that forms a physical boundary or barrier, or otherwise obscures visibility into or onto the property upon which it is located.

HERITAGE TREE: A tree that is at least fifteen feet (15’) in height, and whose trunk diameter is at least four inches (4”) at its widest point, when measured at a

point four and one-half feet (4.5') above natural grade, and is one of the following: *Platanus racemosa*, *Juglans californica*, *Sambucus nigra*, *Sambucus Mexicana*, *Aesculus californica*, *Salix lasiolepis*, *Populus fremontii*, *Alnus rhombifolia*, *Umbellularia californica*, or *Populus trichocarpa*, *Ginkgo biloba*, *Cedrus deodora*, *Pinus canariensis*, *Pinus halepensis*, *Pinus pinea*, *Pinus thunbergiana*, *Sequoia sempervirens*, *Taxodium mucronatum*, *Calocedrus decurrens*, *Cupressus sempervirens*, *Podocarpus gracilior*, *Magnolia grandiflora*, *Magnolia xsoulangeana*, *Cinnamomum camphora*, *Persea americana*, *Liquidambar styraciflua*, *Ulmus parvifolia*, *Ficus microcarpa*, *Quercus agrifolia*, *Quercus engelmannii*, *Quercus ilex*, *Quercu lobate*, *Quercus suber*, *Brachychiton discolor*, *Brachychiton populneus*, *Chorisia speciose*, *Arbutus unedo*, *Prunus caroliniana*, *Pyrus kawakamii*, *Cassia spp*, *Ceratonia silique*, *Lagerstroemia indica*, *Callistemon spp*, *Eucalyptus citriodora*, *Melaleuca quinquenervia*, *Grevillea robusta*, *Cupaniopsis anacardioides*, *Koelreuteria spp*, *Schinus molle*, *Citrus sinensis*, *Fraxinus uhdei*, *Olea europaea*, *Jacaranda mimosiflora*, *Tabebuia spp*, *Brahea edulis*, *Butia capitate*, *Phoenix canariensis*, *Syagrus romanzoffianam*, *Washingtonia filifera*, and *Washington robusta*.

MULTI-TRUNK: Any tree with multiple trunks attributed to a single plant. The diameter of each trunk shall be measured at its widest point, when measured at a point four and one-half feet (4.5') feet above natural grade, and the combined trunk diameters shall be used to determine the tree's size for the purposes of this section.

OAK TREE: A tree that is at least fifteen feet (15') in height, and whose trunk diameter is at least four inches (4") at its widest point, when measured at a point four and one-half feet (4.5') above natural grade, and is of the genus *Quercus*, including, but not limited to, *Quercus agrifolia* (coast live oak), *Quercus dumosa* (coastal scrub oak), *Quercus engelmannii* (engelmann oak), *Quercus berberidifolia* (scrub oak), *Quercus lobata* (valley oak), and *Quercus virginiana* (southern live oak).

SEVERELY PRUNE: To remove foliage or branches from a tree in a manner that causes injury to the shape, health or natural growth of the tree, or disfigures or kills the tree. Confirmation of severely prune shall be determined by the Planning and Building Director or his/her designee.

TOP: To severely cut back the limbs within a tree's crowns to stubs larger than three inches in diameter, to such degree so as to remove the normal canopy, or disfigure or kill the tree. Confirmation of topping shall be determined by the Planning and Building Director or his/her designee.

TRANSPLANT: To relocate a tree and its root system from its original location and replant the tree in a proper manner at another location that does not harm the health or vigor of the tree.

TREE: A perennial plant having a permanent, woody, self-supporting main stem or trunk(s) growing to a considerable height, regardless of whether it is commonly known as a “tree” or “shrub.”

TREE HEIGHT: Tree height shall be measured from the natural grade to the upper most foliage of the canopy.

C. Prohibitions:

1. Prohibition on Tree Removal without a Permit: Except as authorized by a tree removal permit from the City, it shall be unlawful for any person to remove any Established Tree, Heritage Tree, or Oak Tree, whether alive, dead, diseased or dying, located on any lot in the R-1 or C-1 zones.
2. Prohibition on Damage, Severely Prune or Top: It shall be unlawful for any person to severely prune, top or damage an Established Tree, Heritage Tree, or Oak Tree on any lot in the R-1 or C-1 zones.

D. Tree Removal Permit Procedure:

1. Application: All persons desiring to remove an Established Tree, Heritage Tree, or Oak Tree in the R-1 or C-1 zones shall first submit a tree removal permit application to the Planning and Building Director. Any person who removes a tree, or causes a tree to be removed, in violation of this restriction shall be subject to the penalties provided in subsection G (Violation, Enforcement, and Restoration) below.
2. Application Contents:
 - a. A complete application form, signed by the property owner or a licensed State contractor possessing a C61 and D49 or C27 classified license, under penalty of perjury.
 - b. A tree plan containing the following information: a description of the work proposed to be performed; the number, type, and trunk diameter at the widest point at a point four and one-half feet (4.5’) above natural grade of the Established Trees, Heritage Trees, or Oak Trees to be removed; the location of all trees on the property, with all Established Trees, Heritage Trees, and Oak Trees identified; the reason(s) for tree removal, with any tree to be removed for poor health or condition documented in a ISA Level 1 Tree Risk Assessment report prepared and signed by a Certified Arborist. The Planning and Building Director may require review of the tree plan by a second Certified Arborist contracted and managed by the City. If such review is

required, all fees incurred shall be the responsibility of the applicant.

- c. Any other information the Planning and Building Director, or his/her designee, determines to be necessary.

3. Application Fee: An application for a tree removal permit shall be accompanied by a processing fee, in an amount fixed by resolution of the City Council. No fee shall be required for the following:

- a. An application to remove an Established Tree, Heritage Tree, or Oak Tree that has been damaged by a storm, fire or other natural disaster, and is determined to be dangerous by the Planning and Building Director or his/her designee.
- b. An application to remove of an Established Tree, Heritage Tree, or Oak Tree found to be dead, as determined by a Certified Arborist and confirmed by the Planning and Building Director or his/her designee.
- c. An application by a public or private school.

4. Findings for Approval:

- a. Established Tree: The Planning and Building Director may issue a tree removal permit if he or she determines that one of the following conditions is met:
 - i. The Established Tree adversely impacts the growth of adjacent trees, or constitutes a nuisance or hazard to persons or property because of its condition, location, species, proximity to existing structures, closeness to walkways, or interference with utilities; or
 - ii. The removal of the Established Tree is part of a re-landscaping plan that will provide a tree canopy replacement that is sustainable over the long term.
- b. Heritage Tree or Oak Tree: The Planning and Building Director may issue a tree removal permit if he/she determines that the Heritage Tree or Oak Tree constitutes a nuisance or a hazard to persons or property because of its condition, location, species, proximity to existing structures, closeness to walkways, or interference with utilities.

5. Requirements for Tree Removal Permit:

- a. If a tree removal permit is granted, the permittee shall replace the tree(s) at his/her expense pursuant to the Tree Replacement Matrix (see below). The Tree Replacement Matrix shall not be applicable to the required Tree Protection Plan or the unlawful removal of trees.

TREE REPLACEMENT MATRIX

TRUNK OF REMOVED TREE	REPLACEMENT TREES
Diameter at Breast Height	Number/Size
4-8 inches	1-36" box
9-12 inches	2-36" box
13-18 inches	4-24" box or 2-36" box
19-36 inches	8-24" box or 4-36" box
37" or greater	12-24" box or 8-36" box

Heritage and Oak Trees must be replaced with Heritage and Oak Trees as identified in the City Code	The replacement tree must be planted in accordance with all ISA best practices.
Protected specimen trees must be replaced with specimen or heritage trees on the list of protected heritage and specimen trees	
Generally fruit and palm trees are not accepted tree replacements for any approved removals	

- b. If required, the permittee shall agree to accept the conditions of tree replacement by signing the application prior to issuance of the tree removal permit.
- c. If transplanting a tree, the location of a tree shall be determined by the Director of Planning and Building Director or his/her designee. A Certified Arborist shall oversee the transplanting of the tree, and a one (1) year guarantee shall be provided. In the event the transplanted tree dies within one (1) year, a comparable tree shall be required to be planted as set forth in the Tree Replacement Matrix.
- d. The Planning and Building Director, Planning Commission, or the City Council may waive or reduce the requirement for tree replacement upon determining that there is not enough space on the lot to plant the replacement trees, based on the following site characteristics: size of the lot and capacity for

replanting; reasons for removal; number of trees being removed as part of any one request; number of permitted tree removals in the past 5 years; presence of other trees and vegetation on the same lot; and proposed size and type of replacement trees.

6. Notification:
 - a. Immediately following approval of a tree removal permit, and at least fifteen (15) days before the tree is scheduled for removal, the permittee shall provide written notice by personal delivery of the tree's location, removal reason(s), as well as the date and time of the scheduled tree removal to the owners and occupants of all properties within a 100-foot radius of the site on which the subject tree is located.
 - b. Immediately following approval of tree removal permit, the permittee shall also post on the subject tree an 8.5 inch by 11 inch size notice, in a form and manner approved by the Planning and Building Director, for not fewer than fifteen (15) consecutive days. If the subject tree is not readily visible from the public right-of-way, notice shall instead be posted on the parcel on which the tree is located, in a location that is visible from, and within ten (10) feet of, the public right-of-way.
 - c. The permittee shall submit proof of the required noticing to the Planning and Building Director. No work is to begin until City staff has verified that notice was provided and posted as required by this subsection 6.
 - d. The posted notice shall be removed upon completion of the tree removal work, or fifteen (15) days after the end of the ten (10) day posting period, whichever comes first.
7. Stump Removal Required: Where a tree is removed pursuant to this section and the stump is visible from public view, the permittee shall dig out the stump or remove it with a stump grinder. The Planning and Building Director may permit the stump to be retained if he/she finds that access to the stump cannot be reasonably obtained or the stump is located on a steep slope.
8. Permit Expiration and Inspection: All work for which a tree removal permit is issued shall be completed within ninety (90) days from the date the permit is issued, unless the City grants one written extension for a period not to exceed thirty (30) days. The permittee shall, within seven (7) business days of the completion of the work,

contact the Building and Planning Director and schedule a compliance inspection.

E. Appeals:

An applicant or other interested party may appeal a decision of the Planning and Building Director under this section to the Planning Commission and a decision of the Planning Commission to the City Council. An appeal shall be processed as follows:

1. Filing an Appeal: The appellant shall file a written notice of appeal with the City Clerk no later than fifteen (15) days after the date of decision. The notice of appeal shall be accompanied by a fee in the amount established by resolution of the Council, as well as documentation supporting the basis for the appeal, including if applicable, the tree removal permit application, tree replacement plan, a report by a Registered Consulting Arborist and any Certified Arborist report(s).
2. Scheduling: The City Clerk shall set the time, date, and location for a hearing on the appeal. The hearing shall not be set sooner than fifteen (15) calendar days from the date the appeal was received. Notice of the time and place of the hearing will be sent to the appellant. Failure to receive the notice of hearing shall not invalidate the proceedings under this section. At the hearing, the appellant shall have the right to be heard and to present testimony and other evidence in support of the appeal.
3. Determination: Upon consideration of reports, evidence, and testimony presented, the Planning Commission or City Council, as applicable, shall:
 - a. Affirm, modify, or reverse the action of the Planning and Building Director or Planning Commission, as applicable; or
 - b. Refer the matter back to the Planning and Building Director or Planning Commission, as applicable, for further review and consideration.
4. Decision is Final: The decision of the City Council shall be final and conclusive in all respects.

F. Other Requirements and Incentives for the Protection of Trees:

1. Construction Projects: All construction projects must adhere to all provisions of this Section, as well as the tree protection standards set forth in Section 25.01.06(L) of the City Code.

2. Projects Requiring Other Approvals: When considering an application for a permit under Chapter 23 (other than a tree removal permit) that preserves Established Trees, Heritage Trees, or Oak Trees, a decision may be made by the Design Review Committee or Planning Commission to modify the proposal or accept alternative solutions to assist in the preservation of such trees. Such modifications may include, but are not limited to, the reduction or rerouting of the driveway location or other hardscape, and the height of a building or other structure(s). The review authority may approve the modification of up to two standards after first finding that:
 - a. The applicant investigated alternative site designs and building footprints using existing development standards;
 - b. Tree(s) to be preserved is/are in good health and condition, taking into account species and longevity, as determined by a Certified Arborist;
 - c. The project includes a well-integrated and thoughtful design solution that enhances the property and its surroundings;
 - d. The 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
 - e. The project is consistent with the objectives and policies of the applicable design guidelines and the general plan.

G. Violation, Enforcement, and Restoration:

1. Violations for Tree Removal, Damage, Severe Prune or Topping:
 - a. Any person who violates or permits the violation of any provision of this Section, a condition of a tree removal permit, or a tree restoration plan imposed by Subsection 4 below, shall be subject to any of the enforcement remedies set forth in Article 4 (Violations) and Article 6 (Administrative Procedures And Penalties For Code Violations) of Chapter 1 of this Code.
 - b. Any contractor or business who violates or permits the violation of any provision of this Section, a condition of a tree removal permit, or a tree restoration plan imposed by Subsection 4 below, shall be subject to any of the enforcement remedies set forth in Article 2, Subsection 14 of Chapter 11 (Revocation or suspension of a license or permit), in addition to those provided herein.

- c. Each branch of an Established Tree, Heritage Tree, or Oak Tree that is three inches (3") in diameter or greater and is removed due to severe pruning, topping, or other damage shall constitute a separate violation of this Section.
2. Fines for Tree Removal and/or Damage: The following fines shall be charged to anyone who causes a tree to be severely pruned, topped damaged or removed that is an Established Tree, Heritage Tree, or Oak Tree on his/her property in violation of the terms of this Section. Tree diameter for these purposes shall be measured at the widest point (in inches) at four and one-half feet (4.5') above natural grade.

Established Trees

Violation	Diameter	Fine (per tree)
Class I	6-14	\$5,000
Class II	15-24	\$10,000
Class III	25 or more	\$25,000

Heritage Trees

Violation	Diameter	Fine (per tree)
Class I	4-8	\$5,000
Class II	9-12	\$10,000
Class III	13-18	\$25,000
Class IV	19 or more	\$35,000

Oak Trees

Violation	Diameter	Fine (per tree)
Class I	4-8	\$5,000
Class II	9-12	\$10,000
Class III	13-18	\$25,000
Class IV	19 or more	\$35,000

3. Violations on Unoccupied Residential Properties: In addition to the penalties described above, Established Trees, Heritage Trees, or Oak Trees located on unoccupied residential properties, as defined in Article 6 of Chapter 8, that are damaged, topped or severely pruned shall constitute a public nuisance and may be subject to abatement pursuant to Chapter 8 of this Code.

4. Tree Restoration Plan: In addition to any penalties imposed pursuant to this Code, any property owner who damages, tops, severely prunes or removes an Established Tree, Heritage Tree, or Oak Tree, or who permits the damage, severe pruning, topping or removal of any Established Tree, Heritage Tree, Oak Tree, on his/ her property in violation of the terms of this Section, shall restore the environment by planting one or more trees in such quantity that the Planning and Building Director requires as part of a Tree Restoration Plan. The requirements for and the regulations regarding a Tree Restoration Plan are as follows:
 - a. A Tree Restoration Plan shall be based on planting sufficient trees as are necessary to provide an amount of tree canopy reasonably equal to that unlawfully removed as determined by Planning and Building Director or his/her designee.
 - b. In the case of unlawful removal of a tree, the Tree Restoration Plan shall require the planting of not less than one 36-inch box size tree and the total of the diameter of the trees to be planted shall be equal to the diameter of the tree unlawfully removed.
 - c. In the event that the diameter of the tree unlawfully removed cannot be determined, the Tree Restoration Plan shall be based on the likely diameter of the unlawfully removed tree determined by the City's arborist, or a City-appointed Certified Arborist, using the best evidence available.
 - d. The Tree Restoration Plan shall require the tree(s) to be planted in those location(s) that will best restore the visual environment to that existing before the unlawful tree damage, topping, severe pruning or removal, as determined by the City's arborist, or a City-appointed Certified Arborist, using the best evidence available.
 - e. If the Planning and Building Director determines that the property cannot accommodate the number of trees required to be planted by this subsection, the Tree Restoration Plan shall require the trees to be planted on publicly owned property at locations determined by the Planning and Building Director.
 - f. The property owner may select the species of tree(s) to be planted from a list of tree species designated by the Planning and Building Director, provided that the City's arborist or a City-appointed Certified Arborist determines the tree(s)' size and height equal to the tree unlawfully damaged,

severely pruned, topped or removed, except in the case of Oak Trees which must be replaced with Oak Trees.

- g. The Planning and Building Director shall reconsider a Tree Restoration Plan established in connection with a tree that was unlawfully removed, severely pruned, topped or damaged if the replacement tree(s) dies within one year from the date of the tree removal, severe pruning, topping or damage, and may impose additional requirements.
- h. The City's determination of such violation and establishment of a Tree Restoration Plan under this Subsection G(4) may be appealed as described in Subsection E (Appeals) of this section.
- i. Failure to comply with a Tree Restoration Plan within thirty (30) days such plan becomes final shall constitute a separate violation.

SECTION 3. The City Council hereby finds that the adoption of this Ordinance is an action authorized by state law to assure the maintenance, restoration, or enhancement of a natural resource and the environment. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Sections 15307 and 15308 of the California Code of Regulations.

SECTION 4. The adoption of this Ordinance does not affect the following: actions and proceedings that began before the effective date of this Ordinance; prosecution for ordinance violations committed before the effective date of this Ordinance; fines and penalties due and unpaid at the effective date of this Ordinance; collection of fines and penalties due and unpaid at the effective date of this Ordinance; bonds and cash deposits required to be posted, filed, or deposited pursuant to any ordinance, resolution, or regulation; matters of record that refer to or are connected with an ordinance previously adopted by the City the substance of which is amended by this Ordinance, in which case such references shall be construed to apply to the corresponding provisions of this Ordinance.

SECTION 5. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. This ordinance shall be effective thirty (30) days following its adoption by the City Council. A summary of this ordinance shall, within fifteen (15) days after passage, be published in accordance with Section 36933 of the Government Code of the State of California with the names of the City Councilmembers voting for and against it.

PASSED, APPROVED, AND ADOPTED this 9th day of January 2019.

STEVEN W. HUANG, D.D.S.,
MAYOR

ATTEST:

AMANDA FOWLER
ACTING CITY CLERK