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ORDINANCE NO. O-12-1265**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARINO REGARDING PRESERVATION OF TREES AND AMENDING THE SAN MARINO CITY CODE**

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

Section 1. Section 23.06.15 (Preservation of Trees) of Article 06 (Requirements and Restrictions Generally) of Chapter XXIII (Zoning) of the San Marino City Code is hereby amended in its entirety to read as follows:

23.06.15: PRESERVATION OF TREES:

This Section applies to trees in the R-1 and C-1 Zones. This Section does not apply to trees in the Historical and Cultural Zone (H&C) and the Parks and Recreational Zone (P&R) or in the public parkways adjacent to the R-1 and C-1 Zones.

A. Definitions:

DAMAGE: Any action taken which causes injury, disfigurement or death to a tree. This includes, but is not limited to, cutting, poisoning, drilling, under-watering or improperly transplanting.

ESTABLISHED TREE: Shall mean in the front yard and side yard adjacent to a street, any woody plant that is at least fifteen feet (15') in height and whose trunk is at least thirty-six inches (36") or more in circumference when measured at a point four and one-half feet above natural grade level and in the rear yard and side yard not adjacent to a street, any woody plant that is at least fifteen feet (15') in height and whose trunk is at least forty-nine inches (49") in circumference when measure at a point four and one-half feet above the natural grade level.

FRONT, REAR AND SIDE YARDS: Shall be as defined in Section 23.01.01 of this Chapter.

OAK TREE: Any oak tree of the genus *Quercus* including, but not limited to, Coast Live Oak (*Quercus agrifolia*), Coastal Scrub Oak (*Quercus dumosa*), Engelmann Oak (*Quercus engelmannii*), Scrub Oak (*Quercus berberidifolia*), Valley Oak (*Quercus lobata*), and Southern Live Oak (*Quercus virginiana*) that is at least fifteen feet (15') in height and whose trunk is at least thirty-six inches (36") or more in circumference when measured at a point four and one-half feet above natural grade level.

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.

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

B. Prohibitions:

1. Prohibition on Tree Removal

a. **Front Yards and Side Yards Adjacent to a Street.** Except as provided in subsection C of this Section, it shall be unlawful for any person to remove any established tree or oak tree, whether alive, dead, diseased or dying, located in the front yard or side yard adjacent to a street of a property in the R-1 or C-1 Zones without first obtaining a tree removal permit from the City. In no event shall a tree removal permit be issued to remove an oak tree as part of a landscaping plan for a front yard or side yard adjacent to a street.

b. **Rear Yards and Side Yards not Adjacent to a Street.** Except as provided in subsection C of this Section, it shall be unlawful for any person to remove any established tree or oak tree whether alive, dead, diseased or dying, located in the rear yard or a side yard not adjacent to a street of a property in the R-1 or C-1 Zones without first obtaining a tree removal permit from the City. In no event shall a tree removal permit be issued to remove an oak tree as part of a landscaping plan for a rear yard or side yard not adjacent to a street unless the person obtains a tree removal permit from the City Council.

2. Prohibition on Severe Pruning. It shall be unlawful for any person to severely prune or damage an established tree or oak tree in any yard of any lot in the R-1 or C-1 Zones.

C. Exemptions:

No permit is required for the removal of an established tree or oak tree damaged by a storm, fire or other natural disaster and determined to be dangerous by the City Manager or his/her designee. No person shall remove a damaged tree until such determination has been made.

D. Procedure:

1. **Application.** Except as provided in subsection C of this Section, all persons desiring to remove an established tree located in the front yard or a side yard adjacent to a street or an oak tree anywhere on a property in the R-1 and C-1 Zones shall first complete a tree removal permit application form supplied by the City. The permit application shall contain all information necessary for the Planning and Building Director, or his or her designee, to determine whether the requirements for issuance of a tree removal permit have been satisfied. Such application shall be signed by the property owner or a licensed State contractor possessing a C61 and D49 or C27 classified license, under penalty of perjury. A description of the work to be performed, and the number, type and location of the established tree(s) or oak trees to be worked on shall be stated on the application.

2. **Findings.** The Planning and Building Director, or his or her designee, may issue a tree removal permit, only if he or she determines that the following requirements have been met:

a. The established tree or oak tree adversely impacts the growth of adjacent trees or 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; or

b. The removal of the proposed established tree is part of a re-landscaping plan that the Planning and Building Director finds will provide a tree canopy that is sustainable over the long term.

3. The City Council shall grant a tree removal permit as part of a rear yard landscaping plan pursuant to Section 23.06.15 (B) (1) (b) only if the City Council determines that the following requirements have been met:

a. There would be a substantial hardship to the property owner in the enjoyment and use of his or her property if the removal is not permitted; and

b. The application includes a landscape design plan that will provide a tree canopy that is sustainable over the long term.

4. Additional requirements. In granting a tree removal permit, the City Council, the Planning and Building Director or the designee of the Planning and Building Director, as the case may be, may impose any of the following additional requirements:

a. The permittee must replace the tree at the applicant's expense. The number, size, location and species of the replacement tree(s) shall be determined by the City Council, the Planning and Building Director or the designee of the Planning and Building Director based upon consideration of the size and species of the tree proposed for removal, the significance the tree proposed to be removed has on the landscaping as seen from public view, the size of the lot, and the number of existing trees on the lot.

b. If replacement trees are required, the property owner must agree to accept the condition of replacement by signing the application prior to issuance of the permit. Nothing in this Section shall preclude the City Council, the Planning and Building Director or the designee of the Planning and Building Director from waiving conditions for tree replacement or from requiring that tree replacement exceed a one-for-one basis so long as the necessary findings for granting the permit are made.

c. The City Council, the Planning and Building Director or the designee of the Planning and Building Director may waive the requirement for tree replacement if the person or body granting the permit determines that there is not enough space on the lot to plant a tree and shall base the size and number of replacement trees on the significance of the amount of foliage remaining on the parcel after the removal of the tree(s).

4. Expiration and Inspection: All work for which a tree removal permit is issued shall be completed within ninety (90) days of the date the permit is issued unless the City grants a written extension for a period not to exceed thirty (30) days. The permittee shall, within three (3) business days of the completion of the work, contact the City and schedule a compliance inspection.

5. Stump Removal Required: All the stumps of all established trees visible from public view shall be removed with a stump grinder or shall be dug out. The Planning and

Building Director or his or her designee may permit the stump to be retained if he or she finds that access to the stump cannot be reasonably obtained or the stump is located on a steep slope.

E. Violation, Enforcement and Restoration:

Severe Pruning

1. Any person who violates or permits the violation of any provision of this Section or any condition of a tree removal permit or a tree restoration plan imposed by subsection E.3. of this Section 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. Each branch of a tree three inches (3") in diameter or greater removed due to damage or severe pruning of an established tree or oak tree shall constitute a separate violation of this Section.

Illegal Damage and/or Tree Removal

2. The following penalty fees shall be charged to anyone who irreversibly damages a tree or removes an established tree or oak tree, on his or her property in violation of the terms of this Section:

<u>Level of Violation</u>	<u>Circumference @ 4 ½ feet above grade</u>	<u>Fine (per tree)</u>
<i>Class I</i>	<i>36"-48"</i>	<i>\$5,000</i>
<i>Class II</i>	<i>49"-75"</i>	<i>\$10,000</i>
<i>Class III</i>	<i>76" or greater</i>	<i>\$25,000</i>

3. In addition to any penalties imposed pursuant to this Code, any property owner who damages, severely prunes or removes an established tree or oak tree, or permits the damage, severe pruning or removal of any established tree or oak tree, on his or 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 or his or her designee requires in 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 foliage reasonably equal to that unlawfully removed.

- 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 circumference of the trees to be planted shall be equal to the circumference of the tree unlawfully removed.

- c. In the event that the circumference of the tree unlawfully removed cannot be determined, the tree restoration plan shall be based on the likely circumference of the unlawfully removed tree determined by using the best evidence available.

d. The tree restoration plan shall require the trees to be planted in those locations that will best restore the visual environment to that existing before the unlawful tree damage, severe pruning or removal.

e. If the Planning and Building Director or his or her designee determines that the property cannot accommodate the number of trees required to be planted, 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 trees to be planted from a list of trees the Planning and Building Director or his or her designee determines will reach a size equal to the tree unlawfully damaged, severely pruned 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 severely pruned or damaged if the tree dies within one year from the date of the severe pruning or damage and may impose additional requirements equal to those that would have been established if the tree had been originally unlawfully removed.

h. The City's determination of such violation and establishment of a tree restoration plan under this subsection E.3 may be appealed as described in subsection G 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.

4. In addition to any penalties imposed pursuant to this Code, if a replacement tree dies within one year from the date of the severe pruning or damage, the property owner shall be required to replace said tree with a tree of the same species pursuant to this Section.

F. Expiration Time of a Tree Permit: A tree removal permit which is not used within ninety (90) days after such permit is issued is null and void and of no effect, except that the Planning and Building Director or his/her designee may, in his or her discretion, extend the expiration date of any tree permit. The conditions of an approved permit, which include stump removal and replacement, shall not be subject to expiration.

G. Appeal from Denial or Conditions to a Tree Removal Permit or a Tree Restoration Plan:

1. Any person (the appealing party) may appeal a denial of a tree removal permit, or the conditions imposed pursuant thereto or pursuant to requirements in a tree restoration plan imposed pursuant to subsection E.3 of this Section by filing a written appeal with the City Manager. The appeal shall:

- a. Be signed by the appealing party; and
- b. State the basis for the appeal; and

c. Be received by the City Manager within fifteen (15) calendar days of the City's decision on the permit application or of notification by first class mail to the applicant or property owner of same, whichever occurs later.

2. Upon receipt of a timely appeal, the City Manager, or his or her designee shall send, or cause to be sent, a notice of hearing to the appealing party by first class mail which states the date, time and location of a hearing on the appeal. The hearing shall not be set sooner than ten (10) calendar days from the date the appeal was received. The appealing party has the right to be heard and to present testimony and other evidence in support of the appeal. Failure of the appealing party to receive the notice of hearing shall not invalidate the proceedings under this Section.

3. Upon consideration of reports, evidence and testimony of the appealing party, any City officials and any other interested parties, the City Manager, or his or her designee shall:

a. Affirm, modify or reverse the decision or action of the Planning and Building Director, or his or her designee, or

b. Refer the matter back to the Planning and Building Director, or his or her designee, for further review and consideration.

4. The City Manager, or his or her designee, shall cause a notice of decision to be sent by first class mail to the appealing party within five (5) calendar days of the hearing. The Planning and Building Director's or his or her designee's decision remains in effect until the date of mailing of the City Manager's notice of decision.

5. The decision of the City Manager, or his or her designee, shall supersede the decision of the Planning and Building Director or his or her designee. The City Manager's or his or her designee's decision can be appealed to the Planning Commission and from the Planning Commission to the City Council. The decision of the Council shall be final and conclusive in all respects.

H. Appeal to Contest Determination that An Established Tree Has Been Severely Pruned or Damaged: Any person (the appealing party) may appeal the City's determination that they have violated the provisions within this Section by severely pruning or damaging an established tree. The appeal shall be heard by the City Manager. The appeal procedure shall be conducted as specified in subsection G of this Section."

Section 2. Item 2, of Subsection B, of Section 01, of Article 06, of Chapter 01 of the San Marino City Code is hereby amended to read as follows:

2. Section 23.06.15, "Preservation of Trees" (severe pruning cases only)

PASSED, APPROVED AND ADOPTED THIS 29th DAY OF JUNE, 2012.

RICHARD SUN, D.D.S.
MAYOR

ATTEST:

VERONICA RUIZ, CMC

CITY CLERK
 STATE OF CALIFORNIA)
 COUNTY OF LOS ANGELES) ss.
 CITY OF SAN MARINO)

I HERBY CERTIFY that the foregoing Ordinance No. O-12-1265, was introduced at a Regular Meeting of the City Council held on the 13th day of June, 2012, and was approved and adopted at an Adjourned Regular Meeting of the City Council held on the 29th day of June, 2012, by the following vote:

AYES: **COUNCIL MEMBERS: DENNIS KNEIER, EUGENE SUN, ALLAN YUNG, VICE-MAYOR RICHARD WARD AND MAYOR RICHARD SUN**

NOES: **NONE**

ABSTAIN: **NONE**

ABSENT: **NONE**

VERONICA RUIZ, CMC
 CITY CLERK