

**DRAFT**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING BOTH SECTION 13.28.140 OF CHAPTER 13.28 OF TITLE 13 OF THE SAN JOSE MUNICIPAL CODE TO INCREASE THE POSTING PERIOD FOR POTENTIAL STREET TREE REMOVALS FROM SEVEN TO FOURTEEN DAYS AND IF NO TIMELY OBJECTION HAS BEEN RECEIVED BY THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION, THE PROPOSED STREET TREE REMOVAL MAY BE CARRIED OUT SEVENTEEN DAYS FROM THE INITIAL DATE OF POSTING, AND AMENDING SECTION 13.28.340 OF CHAPTER 13.28 OF TITLE 13 TO INCREASE THE POTENTIAL MAXIMUM CIVIL PENALTY FOR REMOVAL OR DESTRUCTION OF HERITAGE TREES WITHIN A THREE YEAR PERIOD FROM FIVE THOUSAND DOLLARS TO THIRTY THOUSAND DOLLARS**

**WHEREAS**, the City of San José (“City”) believes that amending the current San José Municipal Code Section 13.28.140 to increase the posting notice period for the potential removal of a street tree from seven to fourteen days will respond to the concerns of residents that the seven day posting period for street tree removals was insufficient and did not provide a reasonable amount of time to object to the potential removal of a street tree; and

**WHEREAS**, City believes that amending the current San José Municipal Code Section 13.28.340 to increase the maximum potential civil penalty for any person who unlawfully vandalizes, grievously mutilates, removes or destroys a heritage tree in an amount up to thirty thousand dollars for each such tree so vandalized, mutilated, removed or destroyed within a three year period will provide additional deterrence to the illegal removal of heritage trees;

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**NOW, THEREFORE,** BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 13.28.140 of Chapter 13.28 of Title 13 of the San José Municipal Code is hereby amended to read as follows:

**13.28.140 Posting Notice of Tree Removal**

- A. Any street tree for which a permit is required pursuant to Section 13.28.130, and the surrounding area, within one hundred and fifty (150) feet on both sides of the tree and on both sides of the street, shall be posted with a notice of proposed removal in accordance with this Section, unless the Director of Transportation determines that such tree poses an immediate danger to persons or property.
- B. The notice shall be in a form prescribed by the Director, and shall be posted in a manner prescribed by the Director, for a period of not fewer than fourteen (14) calendar days.
- C. Any resident of the City who wishes to object to the proposed removal may file an objection in writing with the Director within fourteen (14) calendar days of the date the notice was first posted.
- D. The proposed removal may be carried out seventeen (17) calendar days from the initial date of posting if no timely written objection is received by the Director.
- E. The Director shall give any person(s) who file(s) a timely written objection an opportunity to be heard and will thereafter render a written decision regarding the proposed removal.

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F. A copy of the Director's decision shall be made available to any person who has filed a timely written objection, and such decision will be final.

G. The provisions of this Section shall not apply to City-approved public projects, or Redevelopment Agency projects.

SECTION 2. Section 13.28.340 of Chapter 13.28 of Title 13 of the San José Municipal Code is hereby amended to read as follows:

**13.28.340 Removal or Destruction of Heritage Trees**

Any person who unlawfully vandalizes, grievously mutilates, removes or destroys a heritage tree shall incur a civil penalty in an amount up to thirty thousand dollars (\$30,000) for each such tree so vandalized, mutilated, removed or destroyed within a three (3) year period, the collection of which shall be enforced by civil action brought in the name of the City by the City Attorney.

RD:MH  
5/23/2006

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PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk