



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Dennis Hawkins, CMC  
City Clerk

**SUBJECT:** SEE BELOW

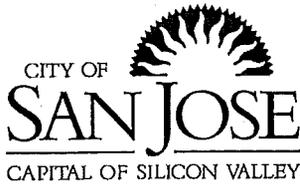
**DATE:** 11-16-11

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**SUBJECT: STREET TREE ORDINANCE CLARIFICATION AND AMENDMENTS**  
**RECOMMENDATION**

As recommended by the Transportation and Environment Committee on November 7, 2011 and outlined in the attached memo submitted to the Transportation and Environment Committee:

- (a) Approve an ordinance amending Chapter 13.28 of Title 13 of the San José Municipal Code (Street Tree Ordinance) with the following proposed revisions:
  - (1) Streamline and reorganize the Street Tree Ordinance into five parts: (i) General Provisions, (ii) Powers and Duties, (iii) Permit Requirements, (iv) Maintenance Responsibility and Protection of the Community Forest, and (v) Enforcement and Assessment;
  - (2) Add definition provisions and delete other obsolete provisions as described in this report;
  - (3) Reorganize the Permit Requirements section on planting, removing, and pruning of street trees to provide clarity and consistency and authorize the Director of Transportation to amend and revoke permits;
  - (4) Provide clarity on the tree maintenance and replacement requirements of property owners adjacent to or fronting on any portion of a street, including the requirement that all work is to be done according to American National Standards Institute A300 standards;
  - (5) Clarify the Enforcement and Assessment provisions including the ability of the City to recover the costs associated with non-emergency tree services performed on behalf of property owners; and
  - (6) Make other revisions as described in the memorandum to Council.
- (b) Approve an ordinance amending Section 1.08.020 of Chapter 1.08 of Title 1 of the San José Municipal Code to update the list of infractions to be consistent with the numbering in the proposed revisions to Chapter 13.28 of the San José Municipal Code.
- (c) Adopt a resolution amending the Administrative Citation Schedule of Fines to modify certain administrative fines for violations related to Chapter 13.28 of the San José Municipal Code, effective on January 13, 2012, and repealing Resolution No. 75865.



# Memorandum

**TO:** TRANSPORTATION AND  
ENVIRONMENT COMMITTEE

**FROM:** Hans F. Larsen

**SUBJECT: STREET TREE ORDINANCE  
CLARIFICATION & AMENDMENTS**

**DATE:** 10-19-11

Approved

Date

10/28/11

## RECOMMENDATION

Recommend to the City Council approval of an ordinance amending Chapter 13.28 of Title 13 of the San José Municipal Code (Street Tree Ordinance) with the following proposed revisions:

- a. Streamline and reorganize the Street Tree Ordinance into five parts: (i) General Provisions, (ii) Powers and Duties, (iii) Permit Requirements, (iv) Maintenance Responsibility and Protection of the Community Forest, and (v) Enforcement and Assessment.
- b. Add definition provisions and delete other obsolete provisions as described in this report.
- c. Reorganize the Permit Requirements section on planting, removing, and pruning of street trees to provide clarity and consistency and authorize the Director of Transportation to amend and revoke permits.
- d. Provide clarity on the tree maintenance and replacement requirements of property owners adjacent to or fronting on any portion of a street, including the requirement that all work is to be done according to American National Standards Institute A300 standards.
- e. Clarify the Enforcement and Assessment provisions including the ability of the City to recover the costs associated with non-emergency tree services performed on behalf of property owners.
- f. Make other revisions as described in this report.

## OUTCOME

The recommended changes help clarify, simplify and make more consistent the key provisions of the City's Street Tree Ordinance. The main changes reorganize the ordinance into five parts and clarify permit requirements, property owner maintenance responsibilities, and the ability of the City to recover costs for non-emergency tree work performed on behalf of the adjacent property owner.

## **BACKGROUND**

The Department of Transportation (DOT) is responsible under the Street Tree Ordinance to oversee all planting, maintenance and removal of street trees located in the City. The City has an estimated 242,000 street trees which are the responsibility of the adjacent property owner to maintain and replace. The Street Tree Ordinance has been in existence since 1951 and has been amended numerous times in the past 60 years, which has created some inconsistent provisions. The ordinance has not undergone a major reorganization and amendment during the ensuing decades to ensure clarity and consistency. As a result, the Street Tree Ordinance in its current form is not well organized and has sections that have been superseded with subsequent revisions, or have become out-dated. The changes outlined in this report will improve the ordinance by organizing the contents in a more logical and understandable manner, provide clarity by adding definitions and simplified wording, and clarify provisions to make the ordinance consistent with current practices, eliminating confusion.

The proposed changes will result in an improved, but considerably different organization and format for the Street Tree Ordinance, making it not possible to provide a red lined version for comparison purposes between the current and proposed ordinance language. Therefore, this memo describes the changes in each of the five parts in detail to make the scope and content of the changes more readily understandable for the Committee, the public and ultimately the City Council. Attachment 1 provides the proposed amended Street Tree Ordinance, and the current Street Tree Ordinance is provided for reference in Attachment 2 along with this memo.

## **ANALYSIS**

The Street Tree Ordinance is recommended to be organized into the following five parts:

- Part 1 – General Provisions (Purpose and Definitions)
- Part 2 – Powers and Duties
- Part 3 – Permit Requirements
- Part 4 – Maintenance Responsibility and Protection of Community Forest
- Part 5 – Enforcement and Assessment

### **Part 1 – General Provisions (Purpose and Definitions)**

Currently, the general provisions of the ordinance only include the definition of terms. Staff recommends revising Part 1 to also include a short “Purpose” provision to clarify the intent of the Street Tree Ordinance. Further, staff recommends the following definitions to be added:

“American National Standards Institute (ANSI A300)”, “Critical Root Zone”, “Dead”, “Director”, “Emergency Permit”, “Imminently Hazardous Condition”, “Prune”, and “Topping.”

Staff also recommends removing the definition of "Person," which already exists in Title 1, and changing the term "Dangerous Condition" to "Hazardous Condition" and revising the definitions of "Hazardous Condition" and "Tree." These definitions listed in this report are recommended to be added, deleted, or revised to provide consistency between the ordinance and the current practice on permit requirements, the maintenance responsibilities of property owners, and corrective actions taken by the City on behalf of property owners when an imminently hazardous condition exists.

### **Part 2 – Powers and Duties (of the Director of Transportation)**

This part is recommended to reorganize the section regarding the general authority that currently exists for the Director of Transportation (Director) to superintend all planting, removal, and maintenance of street trees in the City. Additionally, the provision related to Heritage Trees would be moved from the end of the ordinance and included in this part.

Staff also recommends removing reference to the Street Tree Plan. Currently, the ordinance states that staff is required to prepare a street tree plan upon the request of the City Council. There are also other references to the street tree plan in the ordinance. Although the reference to a street tree plan has been in the ordinance for many years, the City has never funded or developed such a plan, and staff does not anticipate that the funding will become available in the foreseeable future to provide for the development of a plan. There is the desire for the City to formulate a "Community Forest Master Plan" once the street tree inventory is complete (60% of the inventory has been completed to date and it is anticipated that the entire inventory could be completed in 2-3 years, if sufficient grant or other funding is received). At that time and if there are additional master plan funding opportunities available, the City Council could direct the development of the "Community Forest Master Plan", but it is not necessary to include the plan requirement in the ordinance.

### **Part 3 – Permit Requirements**

This part is recommended to be revised to consolidate permit requirements into one section. The current ordinance sets forth the planting, pruning, and removal permit processes and requirements in various places throughout the ordinance. The proposed changes also clarify when the Director shall issue a street tree removal permit, when permits are not required, and provides authority for the Director to amend and revoke permits if they have been previously obtained by false, misleading or incomplete information. The current notification requirements for tree removals as well as the requirement to present permits upon the request of duly authorized City officials have not been changed.

The proposed ordinance amendments aim to clarify and ensure consistent understanding between the City and property owners concerning the criteria used to evaluate whether a removal permit should be issued for a particular street tree. The table below compares the current language in Section 13.28.130 of the Street Tree Ordinance and the proposed language:

CURRENT CODE LANGUAGE	PROPOSED CODE LANGUAGE
The director shall issue a permit to remove a street tree only if at least one of the following criteria is met:	The Director shall issue a permit to remove a Street Tree only if at least one of the following criteria is met:
<ol style="list-style-type: none"> <li>1. The tree is dead or dying.</li> <li>2. The tree is seriously diseased.</li> <li>3. The tree is in or creates a hazardous condition.</li> </ol>	<ol style="list-style-type: none"> <li>1. The Tree is in a Hazardous Condition or Imminently Hazardous Condition (as defined in the ordinance).</li> </ol>
<ol style="list-style-type: none"> <li>4. The tree is a detrimental species that is disapproved by the director for planting on the street in the city's street tree plan.</li> </ol>	<ol style="list-style-type: none"> <li>2. The type, species, and location of the Tree are in conflict with a community forest master plan or Tree policy, guidelines, or Best Practices published by the Director.</li> </ol>
<ol style="list-style-type: none"> <li>5. The tree interferes with high tension electrical lines and the problem cannot be corrected by topping the tree.</li> </ol>	<ol style="list-style-type: none"> <li>3. The Tree interferes with high tension electrical lines and the problem cannot be corrected by Topping the tree.</li> </ol>
<ol style="list-style-type: none"> <li>6. The tree has caused extensive concrete damage after the tree has been deep-watered, root-trimmed for several years and the concrete has been repaired several times in the preceding years.</li> </ol>	<ol style="list-style-type: none"> <li>4. The Tree has caused extensive concrete damage and the concrete has been replaced more than once in the preceding ten years.</li> </ol>
<ol style="list-style-type: none"> <li>7. The tree has done extensive sewer system damage and created a sewer problem that cannot be resolved by any other reasonable means.</li> </ol>	<ol style="list-style-type: none"> <li>5. The Tree has done extensive sewer system damage and created a sewer problem that cannot be resolved by any other reasonable means.</li> </ol>
	<ol style="list-style-type: none"> <li>6. The Tree is in conflict with an approved development permit for the property or right of way pursuant to Title 20 of this Municipal Code.*</li> </ol>

\* The last proposed criterion has been added for those situations in which a street tree needs to be removed because it conflicts with the plan in an approved development permit, such as due to the relocation of a driveway.

**Part 4 – Maintenance Responsibility and Protection of Community Forest**

This section continues to assign the maintenance responsibility for street trees to the adjacent property owner. The responsibility comes with the expectation that street trees need to be

maintained properly to ensure the health of street trees, consistent with industry standards. Neighborhoods and property owners have experienced the negative effects of improper and sub-standard pruning, often done by unlicensed or untrained workers, leading to the trees being topped or excessively pruned, thus weakening the health and structure of the tree and degrading the appearance of the tree and the neighborhood.

The proposed ordinance update would establish that the "American National Standards Institute A300" be the pruning standard for San José street trees. This standard, when followed, results in healthy and aesthetic trees that improve the appearance and value of neighborhoods, and would prohibit destructive pruning activities such as topping or excessive pruning. The clearance requirement that street trees be pruned to provide a minimum clearance of thirteen (13) feet over the street would be updated to fourteen (14) feet of clearance. This provides the necessary clearance for larger vehicles, such as the newer style garbage trucks, street sweepers, and hybrid buses to operate without damaging the adjacent street trees and possibly causing vehicle damage.

#### **Part 5 – Enforcement and Assessment (Procedures)**

The enforcement and assessment provisions of the ordinance are contained within this part. The most significant update proposed in this part relates to non-emergency, but essential tree maintenance work, generally brought to the City's attention by residents for a tree in need of maintenance because it is blocking some type of traffic or pedestrian infrastructure in the public right of way (e.g. sidewalk, streetlight, traffic sign).

When a tree blocks traffic or pedestrian infrastructure creating potential for a dangerous condition, but it is not an imminent hazard (e.g. blocking a traffic signal or stop sign), and the City is made aware of the condition, the property owner adjacent to the street tree is notified by the Department of Transportation to address the condition. Typical conditions include low hanging limbs over the street or sidewalk that may interfere with pedestrians, bicyclists or street sweeping operations or branches that obscure street lights or non-regulatory traffic signs. If the property owner fixes the condition, the matter is closed. Although the ordinance only references a single notification, in practice, if the condition is not rectified, the property owner is notified again to fix the condition. If still no action by the property owner occurs, the City has the authority to trim the tree and fix the condition, but has no ability to assess the property owner for the work performed on their behalf and the City covers the cost.

Prior to the elimination of the City's Tree Maintenance Crew, the City would assist property owners in performing these minor, yet necessary trimming projects. With the elimination of the City's Tree Maintenance Crew because of past budget balancing actions, the Code was amended in December 2008 to authorize the City to assess property owners for emergency tree work performed by the City on behalf of the property owners, when the property owner was unable or chose not to maintain tree(s) that created an emergency condition (e.g. tree has fallen across the roadway). However, the amendments did not specify the ability of the City to assess property owners for tree work on non-imminent conditions on behalf of the property owner. Staff is proposing that the street tree ordinance be amended to authorize staff to perform the non-

emergency work with its licensed contractor on behalf of property owner, and to assess them for the cost of the work performed, similar to current process for emergency tree work, sidewalk repair, and trash and recycling collections. This will address many of the repeated complaints that come to the attention of the Department of Transportation and Council Offices, which create frustration to the reporting parties and staff because the matters are not being resolved. There is a very limited funded hardship program to assist those low-income property owners that meet the income qualifications of the program. The language for non-emergency tree work assessment and billing can be found in Sections 13.28.190 through 13.28.230 of the proposed Street Tree Ordinance.

### EVALUATION AND FOLLOW-UP

No additional follow-up is anticipated at this time.

### POLICY ALTERNATIVES

Not applicable.

### PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum does not meet any of the criteria above because it is only consolidating, clarifying, and aligning the ordinance. The memorandum will be posted on the City's website prior to the November 7, 2011 Transportation and Environment Committee meeting.

### COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

**FISCAL/POLICY ALIGNMENT**

Not applicable.

**COST SUMMARY/IMPLICATIONS**

Not applicable.

**CEQA**

Not a Project, File No. PP10-068 (b), Municipal Code or Policy.

/s/

HANS F. LARSEN  
Director of Transportation

For questions please contact Ralph Mize, City Arborist, at 794-1915.

Attachments

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 13.28 OF TITLE 13 OF THE SAN JOSE MUNICIPAL CODE TO (1) STREAMLINE AND REORGANIZE THE CHAPTER INTO FIVE PARTS; (2) ADD AND DELETE CERTAIN DEFINITION PROVISIONS; (3) REVISE THE PERMIT REQUIREMENTS; (4) REVISE THE MAINTENANCE AND REPLACEMENT STANDARDS; AND (5) CLARIFY THE ASSESSEMENT AND ENFORCEMENT PROVISION

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Chapter 13.28 of Title 13 of the San José Municipal Code is amended in its entirety, to be numbered, entitled and to read as follows:

**CHAPTER 13.28**  
**STREET TREES, HEDGES AND SHRUBS**  
**Part 1**  
**General Provisions**

**13.28.005 Purpose of Provisions**

It is the purpose of this Chapter to promote the health, safety, and welfare of the City by regulating the planting, removal, and maintenance of our community forest.

**13.28.010 Definitions**

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

**13.28.015 American National Standards Institute**

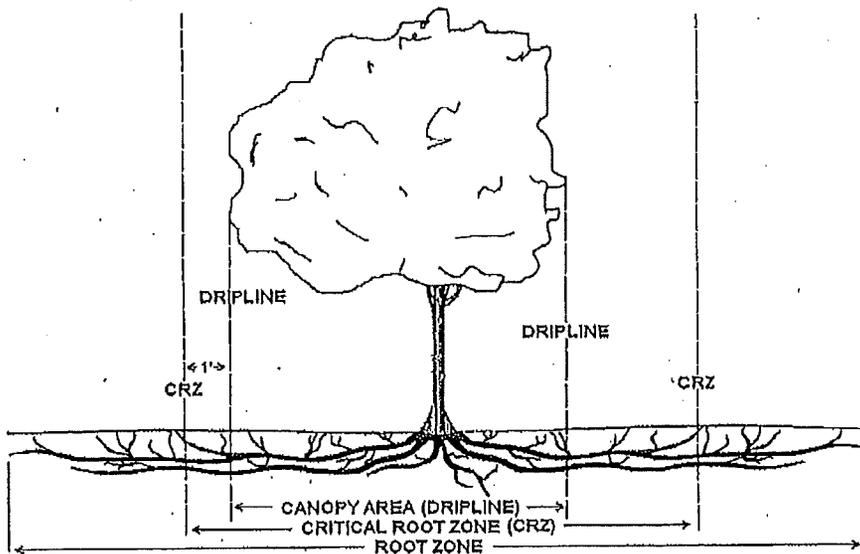
“American National Standards Institute (ANSI)” shall mean the most current version of ANSI A300 (Part 1 – Pruning) setting forth the standards and practices for the care and protection of Trees, Shrubs, Hedges, and other plants.

**13.28.020 Corner Lot**

A “Corner Lot” shall mean any lot which is bounded on two (2) or more sides by Streets.

**13.28.025 Critical Root Zone**

“Critical Root Zone” shall mean a defined circular area around a Tree with a radius measured to the nearest foot of the Tree’s longest dripline radius plus one foot as illustrated below:



### **13.28.030 Dead**

“Dead” shall mean a Tree that is no longer alive, has been damaged beyond repair, or is in an advanced state of decline (where an insufficient amount of live tissue, green leaves, limbs, or branches exist to sustain life) and has been determined to be in such a state by the Director.

### **13.28.035 Director**

“Director” shall mean the Director of Transportation of the City of San José or such other person designated by the City Manager to administer and enforce the provisions of this Chapter.

### **13.28.040 Emergency Permit**

“Emergency Permit” shall mean a permit issued in cases where the Director determines that a Tree, Shrub or Hedge subject to this Chapter presents an Imminently Hazardous Condition.

**13.28.045 Hazardous Condition**

“Hazardous Condition” shall mean any Tree, Shrub or Hedge that is or appears to be (i) Dead; (ii) likely to fall; (iii) seriously diseased; (iv) an obstruction or potential obstruction to pedestrian or vehicular travel in any Street; (v) an obstruction or potential obstruction to any traffic signs, traffic controls, streetlights, regulatory sign, or similar type of equipment or sign; or (vi) in a condition that is detrimental to the public health, safety, or general welfare.

**13.28.050 Hedge**

“Hedge” shall mean any group of shrubs planted in line or in groups so that the branches of any one plant are intermingled or form contact with the branches of any other plant in the line.

**13.28.055 Imminently Hazardous Condition**

“Imminently Hazardous Condition” shall mean a Hazardous Condition which presents an immediate threat to the health, safety or general welfare of the public which requires immediate action to abate.

**13.28.060 Interior Lot**

An “Interior Lot” shall mean any lot which is not a Corner Lot.

**13.28.065 Park Strip**

"Park Strip" shall mean that area of the Street lying between the face of curb and the sidewalk.

**13.28.070 Planting Easement**

The term "planting easement" shall mean an easement in the name of the City for planting Trees, Shrubs or Hedges contiguous to the public right-of-way for vehicular traffic.

**13.28.075 Prune**

"Prune" shall mean to remove any segment of the above or below ground woody tissue of a Tree, Shrub, or Hedge.

**13.28.080 Public Place**

"Public Place" shall mean any real property owned by, leased to or under the control of the City of San José.

**13.28.085 Shrub**

"Shrub" shall mean a bush, not a Hedge, or a plant more than twelve (12) inches tall but not more than six (6) feet tall.

**13.28.090 Street**

"Street" shall mean a public right-of-way owned by or under the control of the City of San José whose primary function is to carry vehicular traffic and shall also include sidewalks, Park Strips and Planting Easements.

**13.28.095 Street Tree**

"Street Tree" shall mean any Tree on a Street.

**13.28.100 Topping**

"Topping" shall refer to the removal of branches from mature trees leaving stubs and large wounds on such Trees.

**13.28.105 Tree**

"Tree" shall mean any perennial, woody plant species or cultivar that reaches a height exceeding six (6) feet at maturity, whether planted singly or as a hedge, and having secondary branches supported on a main stem or stems.

**Part 2**  
**Powers and Duties**

**13.28.200 Powers And Duties**

The Director may exercise the powers and duties that are provided in this Chapter relating to Street Trees, Shrubs and Hedges, except such powers and duties as are vested in other officers or employees by the Charter or the Municipal Code.

**13.28.210 Authority To Direct Work On Trees, Shrubs, and Hedges**

The Director shall direct and superintend all planting, removal, and maintenance, including cutting, Pruning, trimming or Topping of any Trees, Hedges and Shrubs in Public Places or on any Streets, and any activities that may affect the Critical Root Zone or aerial portions of a tree canopy, except those Trees, Hedges, and Shrubs located in City parklands and in City-owned or controlled public buildings.

**13.28.220 Heritage Trees**

- A. Any Tree which, because of factors including but not limited to its history, girth, height, species or unique quality, has been found by the City Council to have a special significance to the community shall be designated a heritage tree. Such Trees shall be placed on a heritage tree list which shall be adopted by the City Council by resolution, which resolution may be amended from time to time to add to or delete certain Trees therefrom:
  
- B. Any person who unlawfully vandalizes, 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.

**13.28.230 Prohibition of Violation of Chapter**

It shall be unlawful for any person to plant, remove, Prune or maintain any Trees, Shrubs, or Hedges or cause to the same to be done, in the City in violation of this Chapter.

**Part 3**

**Permit Requirements**

**13.28.300 Planting of Street Tree -- Permit Required**

- A. It shall be unlawful for any person to plant or install any Tree on any Street within the City, unless one of the following conditions exists:
1. A permit that allows the planting or installation of the tree was issued by the Director in accordance with this Chapter; or
  2. There is a valid written contract with the City for the planting or installation of Street Trees approved by the City Manager or City Council, as applicable.
- B. Each permit to plant or install a Street Tree shall contain the following information:
1. Name of permit applicant;

2. Time period in which to complete the action specified or required in the permit;
3. Type and species of Tree to be purchased by permittee, at permittee's expense, to be planted; and
4. Location for planting the Tree.

**13.28.310 Pruning or Removal of Street Tree - Permit Required**

- A. Except as provided in this Section, it shall be unlawful for any person to Prune or remove any Street Tree, or do any construction work or activity that may affect the Critical Root Zone of a Street Tree, without a permit issued by the Director.
- B. Each permit to Prune or remove a Street Tree shall contain the following information:
  1. Name of permit applicant;
  2. Time period in which to complete the action specified or required in the permit;
  3. Type and species of replacement Tree to be purchased by permittee, at permittee's expense, to be planted, if applicable;
  4. Description of the Pruning, if applicable; and
  5. Location of removal of Tree and replanting of Tree or location of Tree to be Pruned.

- C. The Director shall issue a permit to remove a Street Tree only if at least one of the following criteria is met:
1. The Street Tree is in a Hazardous Condition or Imminently Hazardous Condition.
  2. The type, species, or location of the Street Tree is in conflict with a community forest master plan adopted by the City Council or Tree policy, guidelines, and best practices published by the Director.
  3. The Street Tree interferes with high tension electrical lines and the interference cannot be corrected by Topping the Street Tree.
  4. The Street Tree has caused extensive concrete damage and the concrete has been replaced more than once in the preceding ten (10) years.
  5. The Street Tree has done extensive sewer system damage that cannot be resolved by any other reasonable means.
  6. The Street Tree is in conflict with an approved development permit for the adjacent property or right of way pursuant to Title 20 of this Municipal Code.

**13.28.320 Permit Application**

- A. The Director shall review each permit application for the planting, Pruning, or removal of any Street Tree accepted for filing. As part of the review of each application, the Director may request additional information from the applicant or

conduct any investigation the Director believes is necessary to complete the review. After the completion of the review of the permit application, the Director shall provide notice to the applicant with a written decision to issue (as requested or modified) or deny the permit.

- B. The notice shall be in a form prescribed by the Director. The notice shall provide the opportunity for the applicant to object to the decision of the Director. Any objection shall be made in writing to the Director within seven (7) calendar days of the date the notice was first mailed to the applicant. The Director shall give the applicant who files a timely written objection an opportunity to be heard and will thereafter render a written decision regarding the requested permit within a reasonable amount of time, and such decision will be final.

### **13.28.330 Development Permit Combined**

The request for a Street Tree planting or removal permit pursuant to the provisions of this Chapter may be included as part of an application for a development permit under the provisions of Title 20 of this Municipal Code. Where the request for a Street Tree planting or removal permit is included as a part of the development permit application under Title 20, the development permit may serve as the Street Tree planting or removal permit and be processed under the application, noticing, hearing and appeal provisions applicable to the development permit application, and no separate Street Tree planting or removal permit application and Street Tree Planting or removal permit is required, so long as all of the substantive provisions and permit processing requirements of this Chapter are met as a part of processing that development application.

**13.28.340 No Permit Required**

- A. Notwithstanding any provisions of this Part, no permit shall be required for Pruning or removing a Street Tree if any of the following criteria are met prior to any work being performed:
1. An Imminently Hazardous Condition exists where the immediate Pruning of a Street Tree(s) is necessary to protect the public health, safety or welfare. The person who performs the emergency work must not Prune the Street Tree(s) more than is reasonably required to eliminate the Imminently Hazardous Condition and must provide, within two (2) business days of the completion of the emergency work, written notice to the Director that includes a full description of the work completed, the exact location where the work was performed, and the basis for the emergency Pruning.
  2. An Imminently Hazardous Condition exists and the Director has provided written notice to the responsible property owner to take certain corrective action to abate the Imminently Hazardous Condition and the work performed complies with the notice.
  3. Removal of the Street Tree is required pursuant to the provisions of this Chapter 13.28.
  4. Removal of the Street Tree is in connection with a City-approved public works project.
  5. Removal of the Street Tree is in connection with a Redevelopment Agency project.

6. A development permit, or amendment thereto, that allows the removal of the Street Tree has been issued by City and accepted by the permit applicant pursuant to the provisions of Title 20 of this Municipal Code.

#### **13.28.350 Amendment to Permit**

The Director may issue an amendment to any permit issued pursuant to this Part if the Director makes all the required findings for the original permit and the additional finding that there are changed circumstances sufficient to justify the approval of the amendment.

#### **13.28.360 Posting Notice of Tree Removal**

- A. Any Street Tree for which a removal permit is required pursuant to Section 13.28.310, 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 determines that such Street Tree poses an Imminently Hazardous Condition.
- 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 to allow any objections to be filed with the Director as set forth in Section 13.28.360C.
- C. Any resident of the City who wishes to object to the proposed removal may file an objection in writing with the Director that must be received 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.
- 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.

**13.28.370 Presentation of Permit on Request**

- A. It shall be unlawful for any person to Prune or remove or cause the same to be done to a Street Tree unless the permit or a copy of the permit allowing for this activity is maintained on the site where the Tree to be Pruned or removed is located.
- B. It shall be unlawful for any person to Prune or remove or cause the same to be done to a Street Tree unless the permit or a copy of the permit can immediately be presented upon request to the Director of Planning, Building, and Code Enforcement, Director of Transportation, police officers, and their designees.
- C. It shall be unlawful for any person to engage in any work on the Street Tree or allow any work on the Street Tree that is the subject of the permit to occur unless and until: (1) the permit or a copy of the permit is located on the site where the subject Tree is located; and (2) the permit or a copy of the permit is readily available for presentation upon request as described in this Section.

**13.28.380 Revocation of Permit**

- A. The Director may revoke a permit issued pursuant to this Part if the Director determines any of the following:
1. The permit was obtained or extended by false, misleading, or incomplete information;
  2. One or more conditions set forth in the permit have been violated; or
  3. One or more provisions of this Chapter have been violated.
- B. The Director shall give written notice of the revocation of the permit to the applicant. Any objection to the revocation shall be filed in writing by the applicant and received by the Director within seven (7) calendar days of the mailing of the notice. The Director shall give the applicant who files a timely written objection an opportunity to be heard and will thereafter render a written decision within a reasonable amount of time. The Director's decision shall be mailed to the applicant, and such decision will be final.

**Part 4**

**Maintenance Responsibility And Protection**

**13.28.400 Property Owner Maintenance Responsibility And Duty To Public**

- A. The property owner of a lot or portion of a lot adjacent to or fronting on any portion of a Street shall maintain and replace, if necessary, any Street Trees, Shrubs, Hedges or other landscaping adjacent to or fronting on the subject property in such conditions that the Street Trees, Shrubs, Hedges or other

landscaping comply with this Chapter. Each property owner shall plant and replace any removed or otherwise missing Street Trees in accordance with the requirements of Sections 13.28.300 and 13.28.310.

- B. Property owners required by this Section to plant, maintain, and replace, if necessary, Street Trees, Shrubs, Hedges and other landscaping shall owe a duty to members of the public using Streets and to maintain such Street Trees, Shrubs, Hedges or other landscaping in a safe and nonhazardous condition for users of the Streets. For purposes of this Section, maintenance of Street Trees, Shrubs, Hedges and other landscaping includes, but is not limited to: watering, Pruning, fertilizing, pest control, removal of branches, leaves, and other debris, weed abatement, and protection of the Critical Root Zone.
- C. The property owner shall maintain any Street Trees, Shrubs, Hedges, or landscaping subject to this Chapter in accordance with the following:
1. Provide the necessary maintenance so that the Street Tree, Shrub, Hedge or landscaping is not in a Hazardous Condition or will likely be in a Hazardous Condition;
  2. Provide a minimum eight (8) foot vertical pedestrian clearance from the top of the sidewalk and a minimum fourteen (14) foot vertical vehicular clearance from the top of the pavement, to any part of a Street Tree;
  3. Provide adequate clearance for unobstructed pedestrian and vehicular view of all authorized traffic signals, traffic cameras, Street lights, regulatory signs, Street name signs, and other similar type of equipment or signs;

4. All maintenance shall be completed in accordance with the American National Standard Institute (ANSI);
  5. Any maintenance performed pursuant to this Part 4 may require a permit as set forth in Part 3 above.
- D. If any property owner fails to maintain any adjacent Street Trees, Shrubs, Hedges or other landscaping in a nonhazardous condition as required by this Part, and any person suffers damage or injury to person or property, the property owner shall be liable for all damages or injuries caused by the failure of the owner to maintain the adjacent Street Trees, Shrubs, Hedges or other landscaping in a nonhazardous condition.

**13.28.410 Disclosure Obligations Upon Sale or Transfer of a Residential Real Property**

- A. Not less than seven (7) business days before the sale or other transfer of residential real property concludes a selling or transferring property owner must disclose to the acquiring property owner, on a disclosure form provided by the City, whether the residential real property to be sold or transferred fully complies with the City's Street Tree maintenance and replacement requirements of Sections 13.28.310.C and 13.28.400.
- B. If the selling or transferring property owner cannot determine whether Street Trees located on or adjacent to the residential property are substantially in compliance with the approved development permits for the property, or the property's approved development permits are inconclusive as to the requirements for the presence and location of Street Trees on or adjacent to the

property, then the following requirements for the planting and presence of Street Trees shall apply:

1. The property must have one (1) Street Tree for any adjacent Street if it is an Interior Lot and at least three (3) Street Trees if it is a Corner Lot, unless otherwise modified by the Director in the interest of public safety.
  2. If the current General Plan requirements for Street Trees on or adjacent to the property differ from the requirements specified in Subsection B.1, then the current General Plan requirements shall govern the number and location of Street Trees required on or adjacent to the property at the time of sale or transfer. If the property meets the General Plan requirement, then the selling property owner must indicate such compliance with the General Plan on the disclosure to the acquiring property owner.
  3. All Street Trees shall be planted in accordance with the requirements of Section 13.28.300.
- C. Upon a written request, the Director may grant the selling or transferring property owner an exemption in writing from the requirements of this Section if the Director determines in the interest of public safety that planting and maintaining Street Trees on or adjacent to the residential property at the time of sale or transfer is not appropriate. Such an exemption does not run with the land and shall not allow any deviations from the disclosure requirements upon residential real property sales or transfers for future sellers or transferors.

**13.28.420 Interfering With Maintenance Work Or Injuring Street Trees Prohibited**

- A. No person shall in any way interfere with the City, its employees or contractors engaged in the planting, mulching, Pruning, spraying, treating or removing of any Street Tree, or in the removing of stone, cement or other substance about the trunk of any Street Tree.
  
- B. No person shall, except with written permission of the Director, (a) damage, cut, carve, girdle or injure the bark of any Street Tree; (b) attach or keep attached, or cause the same, any sign, wire, device or injurious material to any such tree or to the guard or stake intended for the protection of such Street Tree; (c) allow any gaseous, liquid or solid substance, or pesticide, herbicide or similar chemical agent harmful to such Street Trees to come in contact with the roots, leaves, bark or any part of any such Street Tree; (d) construct concrete, asphalt or brick paving or otherwise fill up the ground area within four (4) feet of any such Street Tree that may shut off air, light or water from the roots; (e) pile building material or other material about any Street Tree in any manner that will in any way injure such Street Tree; or (f) construct any raised planter around the Street Tree trunk.
  
- C. As part of any construction work or activity of a building or structure, the owner or responsible party thereof shall place such guards around all nearby Street Trees as shall in the opinion of the Director effectively prevent injury to them.
  
- D. Tree stakes or guards may be placed around Street Trees by the Department of Transportation, or such other department designated by the City Manager to administer or enforce this Chapter, by City contractors or by owners of property abutting such Street Trees provided the same are merely placed near such Street Tree for the purpose of protecting or training such Street Trees.

- E. Every person having any wire charged with electricity running through a Street in the City shall securely fasten such wire so that it will not come in contact with any Street Tree therein; and no person shall, without the written permit of the Director, attach any electric wire, insulator or any device for the holding of any electric wire or for bracing the poles which carry the same to any Street Tree growing or planted upon any Street.
- F. No person shall move any building or other object along any Street in such manner as to injure any Street Tree. Whenever the Director determines or reasonably believes that any Street Tree may be injured, the Director may require any person moving a building or any other object along a Street in the City to furnish a bond in an amount sufficient to cover the damage or destruction of such Street Tree.

#### **13.28.430 Diseased Street Trees -- Inspection And Removal**

The Director may inspect all Street Trees or cause the same to be inspected. Upon discovering that any such Street Tree is infected or infested with plant or animal life or growth, or any insect detrimental to the growth, health or life of such Street Tree, the Director may remove, eradicate or destroy such condition or cause such be done. If any Street Tree is so infected or infested to such a degree that such condition cannot be removed, eradicated or destroyed by the usual means and efforts employed, the Director may remove and destroy any such Street Tree, or cause such removal or destruction to be done.

**13.28.440 Sight Obstructions On Private Property**

- A. No owner or person in possession or control of any premises shall maintain any Tree, Hedge, Shrub or other landscaping located on such premises in a manner that causes or may cause a Hazardous Condition on a Street.
  
- B. No owner or person in possession or control of any premises on any Corner or Interior Lot abutting upon a Street shall permit the existence of any Tree, Hedge, Shrub, landscaping, mound of earth, or boulders that obscure and impair the view of intersecting or entering traffic from a Street of passing motorists or pedestrians or which impairs the view of the Street signs, traffic signs, or any other control devices or signs placed upon the Streets for the safety and convenience of the public.

**Part 5**

**Enforcement and Assessment**

**13.28.500 Notice of Violation**

If the Director determines that the condition of any Tree, Shrub, or Hedge constitutes a violation of any provision of this Chapter, the Director shall, by notice in writing, notify the owner of the property in violation to Prune or remove the Tree, Shrub or Hedge or take any other necessary corrective action to cure the violation.

**13.28.510 Notice of Violation – Delivery**

The notice of violation specified in Section 13.28.500 may be given by delivering a written notice personally to the property owner, or by mailing the notice, postage

prepaid, to the property owner thereof at his or her last known address as the same appears on the last equalized assessment rolls of the County.

**13.28.520 Notice of Violation – Contents**

A. Any notice of violation issued by the Director pursuant to Section 13.28.500 shall contain the following information:

1. The date of the inspection.
2. The address or a description of the property upon which such Tree, Shrub or Hedge is located, or the property which fronts upon the Street on which such Tree, Shrub, or Hedge is located.
3. A description of the violation.
4. A description of the corrective action required to address the violation.
5. A definitive time period to complete the corrective action.

**13.28.530 Notice of Violation – Hearing**

The notice of violation shall further specify that the property owner receiving such notice may file with the Director his or her written objection to such notice and such written objection must be received by the Director within seven (7) calendar days of the notice. The written objection shall clearly outline the objection to the notice and the basis for such objection. The Director shall duly review all timely written objections that comply with this Section and provide the property owner with an opportunity to be heard, and will thereafter render a written decision within a reasonable amount of time to sustain,

overrule, or amend the notice of violation. The written decision of the Director shall be provided to the owner in the manner specified in Section 13.28.510, and such decision will be final.

**13.28.540 Work Performed by the City**

- A. If the corrective action required by notice is not completed within the time specified in the notice of violation, the City shall have the authority to perform this work or cause this work to be performed and the owner of the affected property shall be billed for the costs incurred. The property owner shall be responsible for all costs associated with the corrective action including costs of planting, removal or Pruning of the Tree, Hedge or Shrub, administration time and expense, late charges, and the handling of any lien placed on the property due to failure of the property owner to pay within the required period.
- B. After the City completes the corrective action as set forth in this Section, the City shall mail an invoice to the property owner. The property owner shall remit full payment to the City on or before the date specified in the invoice.
- C. Any invoice not fully paid by the date specified on the invoice shall be deemed delinquent and the Director shall initiate the assessment procedures set forth in this Part.

**13.28.550 Emergency Services Performed By City**

- A. In cases of Imminently Hazardous Conditions, the Director shall have the authority to perform or cause to be performed the corrective work to abate the Imminently Hazardous Condition without observance of any notice requirements. The property containing a Tree, Hedge, or Shrub that poses an Imminently

Hazardous Condition or the property adjacent to or fronting on the subject Street Tree, Hedge, or Shrub that poses an Imminently Hazardous Condition may be assessed for the costs incurred in accordance with this Part.

- B. The owner of a property containing a Tree, Hedge, or Shrub that poses an Imminently Hazardous Condition or adjacent to or fronting on a Street Tree, Shrub or Hedge or a property containing a Tree, Hedge, or Shrub that poses an Imminently Hazardous Condition for which the City takes corrective action shall pay any costs and expenses associated with the emergency services, including costs of removal of the Tree, Hedge or Shrub, administration time and expense, late charges, and the handling of any lien placed on the property due to failure of the property owner to pay within the required period. The City shall send an invoice to the property owner setting forth the costs and expenses as described herein and the date specified for full payment to the City.
- C. If the property owner has failed to pay the invoice, the Director shall issue a notice of cost informing the property owner of the failure to pay the invoice and that failure to pay the amount will result in the initiation of proceedings to place a lien against the property owner's property.

**13.28.560 Notice of Hearing Before City Council**

After completion of the work and failure of a property owner to pay the amounts set forth in the invoice, the Director shall cause notice of the public hearing on the cost to be given in the manner specified in this Part, which shall specify the day, hour and place when the City Council will hear and pass upon a report by the Director of the cost of the work, the amount proposed to be assessed against the property, together with written objections, if any, which may be raised by any person liable to be assessed for the cost of such work.

**13.28.570 Conference with Director on Notice of Cost**

The Director may include with the notice of hearing, as specified in Section 13.28.560 hereinabove, notice of a conference with the Director. The conference which may be scheduled by the Director upon receipt of the written objection, specified in Section 13.28.560, shall be conducted prior to the City Council hearing for the purpose of discussion between the property owner and the Director of the costs of the work. Upon the conclusion of the conference, the Director shall note his or her conclusions in the report to the City Council together with any recommendations for adjustment of the costs of the work.

**13.28.580 Report to City Council**

If the property owner does not pay the invoice by the required date, the Director shall prepare and file with the City Council a report specifying the work which has been done, the cost thereof, a description of the real property upon which the Tree, Shrub or Hedge was located or of the real property adjacent to or fronting upon the Street on which such Tree, Shrub or Hedge was located and the assessment against the parcel of land proposed to be levied to pay the cost thereof.

### **13.28.590 Hearing on Assessment Costs**

Upon the day and hour fixed for the hearing, the City Council shall hear and pass upon the report of the Director, together with any written or oral objections which may be raised by any property owner liable to be assessed for the corrective work. The City Council may make such modifications in the report as it may deem just, after which, by resolution, the report as submitted or as modified shall be confirmed. The decision of the City Council on all objections shall be final and conclusive.

This hearing serves to provide the full opportunity of a person subject to an invoice to be heard and object to the determination that a violation occurred and was not corrected. The failure of any person to appear at the hearing shall constitute a failure to exhaust administrative remedies.

### **13.28.600 Assessment Deemed a Lien**

The cost of any corrective action may be assessed by the City Council against the parcel of property upon which the Tree, Hedge, or Shrub is located, or the parcel of property which fronts upon or is adjacent to the Street on which such Tree, Shrub or Hedge is located, and such cost so assessed, if not paid within five (5) days after its confirmation by the City Council, shall constitute a special assessment against that parcel of property, and shall be a lien on the property for the amount thereof, which lien shall continue until the assessment and all interest thereon is paid, or until discharged.

### **13.28.610 Lien -- Recordation and Collection**

The City Council, after confirmation of the report of the Director, may order a notice of lien to be delivered to the County Recorder, who shall enter the amount thereof on the

County assessment book opposite the description of the particular property, and the amount shall be collected, together with all taxes against the property. Thereafter, the amount of the lien shall be collected at the same time and in the same manner as taxes against the property are collected, and shall be subject to the same penalties and interest, and to the same procedure under foreclosure and sale in case of delinquency.

**13.28.620 Designated Body**

As an alternative to the procedures set forth in this Part, the public hearing before the City Council and the imposition of a special assessment lien may be conducted and imposed by a Designated Body pursuant to Chapter 1.18 of this Municipal Code.

**13.28.630 Private Arrangements For Tree Trimming Or Removal**

The Director may cut down, trim or remove any Trees in any Street, or remove any Trees in any Street or which overhang any Street, or cause the same to be done, by private arrangement for reimbursement to the fund from which the expenditure by City was made, with the owner of any lot or parcel of land upon which, or fronting upon which the Trees are situated.

**13.28.640 Liability Limitation**

Nothing contained in this Chapter shall be deemed to impose any liability upon the City, its officers or employees, nor to relieve the owner of any private property from the duty to keep Trees, Shrubs and Hedges upon said private property, or under his or her control or upon Streets in front of or contiguous to such private property, in a safe condition.

**13.28.650 No Interference With Enforcement Of This Chapter**

No person shall interfere with or delay the authorized representative of the City from the execution and enforcement of this Chapter except as provided by law.

**13.28.660 Failure To Give Or Receive Notice**

The failure to post, mail or deliver by personal service any notice required under this Chapter or the failure of any person to receive such notice shall not affect the validity of any proceedings or actions taken by the City or its employees, agents or contractors under this Chapter.

**13.28.670 Remedies**

The provisions of this Chapter are nonexclusive and supplementary to any existing rights and remedies, and the provisions of this Chapter may be enforced by any remedies provided for in this Municipal Code or otherwise available at law. Violations of this Chapter may be prosecuted criminally, civilly, or administratively either undertaken separately or in conjunction with other remedies, at the sole discretion of the City. Nothing in this Chapter shall be deemed to prevent the City from commencing any administrative or legal proceeding to enforce this Chapter, Municipal Code, or any law.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED  
Mayor

ATTEST:

---

DENNIS D. HAWKINS, CMC  
City Clerk

## ATTACHMENT 2

### Current Street Tree Ordinance - San José Municipal Code Chapter 13.28

#### Part 1 DEFINITIONS

##### 13.28.010 Definitions as used herein.

Except where the context requires otherwise, the definitions given in the following subsections shall govern the construction of this chapter:

A. A "corner lot" means any lot which is bounded on two or more sides by public or private streets.

B. The term "dangerous" shall refer to trees, shrubs or hedges that appear to be: dead; liable to fall; or to have the potential to obstruct public pedestrian or vehicular travel and would require corrective action, including, but not limited to: removal of trees or limbs that may soon block the public right-of-way and clearance pruning of limbs that impair the view of traffic or signs.

C. The term "hedge" shall mean any group of shrubs planted in line or in groups so that the branches of any one plant are intermingled or form contact with the branches of any other plant in the line.

D. An "interior lot" means any lot which is not a corner lot.

E. The term "manifest public danger" shall refer to any trees, shrubs or hedges that: (1) obstructs in any way the public right-of way that poses an imminent hazard to public health or safety; (2) is in a decayed or damaged condition that is an imminent hazard to public health or safety; or (3) that obstructs traffic signals and certain regulatory traffic signs.

F. "Persons," as used herein, shall mean any person, firm, association, organization, partnership, business, trust, company or corporation.

G. The term "park strip" shall mean that area of the street lying between the face of curb and the sidewalk.

H. The term "planting easement" shall mean an easement in the name of the city for planting trees, shrubs or hedges contiguous to the public right-of-way for vehicular traffic.

I. The term "public place" shall mean any real property owned by, leased to or under the control of the City of San José.

J. The term "shrub" shall mean a bush, not a hedge, or a plant more than twelve inches but not more than six feet tall.

K. A "street" shall mean a public right-of-way owned by the City of San José whose primary function is to carry vehicular traffic and shall also include sidewalks, park strips and tree planting easements.

L. The term "street tree" means any tree on a street.

M. The term "tree" shall mean any growing plant exceeding six feet in height, whether planted singly or as a hedge.

(Ords. 21362, 22353, 28472.)

## **Part 2 UNIFORM METHOD OF STREET TREE PLANTING**

### **13.28.020 Street tree plan - Preparation - Information included.**

The department of streets and traffic shall prepare a street tree plan upon request of the city council which shall contain a complete map of the city streets, indicating the species of tree or trees allowed on each such street, and species of trees disapproved for planting on city streets.

(Prior code § 7402; Ords. 21362, 23734.)

### **13.28.030 Planting plan - Action by city council.**

The director of streets and traffic shall submit said street tree plan to the city council for adoption or modification when requested to do so by city council. If and when the said plan of the department of streets and traffic, in its original or modified form, is adopted by the city council, it shall become the tree planting plan for the city.

(Prior code § 7403; Ords. 21362, 23734.)

### **13.28.040 Powers and duties.**

The director of streets and traffic shall exercise the powers and duties that are now or may hereafter be imposed upon him or her relating to tree installation, care and removal, except such powers and duties as are vested in other officers or employees by the Charter or the code.

(Prior code § 7404; Ords. 21362, 23734.)

**13.28.050 Authority to direct work on trees and shrubs.**

The director of streets and traffic shall direct and superintend all planting, removal, cutting, pruning, trimming or topping of all trees, hedges and shrubs on property owned by the city, except those located in city parklands and in sites for city-owned public buildings in which cases the director of recreation, parks and community services shall exercise such direction and superintendence.

(Prior code § 7405; Ords. 21362, 23734.)

**13.28.060 Planting - Conformity with plan and chapter provisions.**

A. No tree shall hereafter be planted in any city street of said city, except in accordance with this chapter and street tree plan adopted by the city council, and upon permits issued by the director of streets and traffic or contracts for planting street trees approved by the city council.

B. In the event that the city undertakes to do the actual work of planting and maintaining of trees in any street, the same shall be done or caused to be done by the department of streets and traffic, unless jurisdiction of the work rests with the department of public works in accordance with this chapter and street tree plan adopted by the city council.

(Prior code § 7406; Ords. 21362, 23734.)

**13.28.070 Planting - Permit required.**

No person shall plant or set out any tree on any part of any street within the city without first having obtained a written permit therefor from the director of streets and traffic, or pursuant to a contract for planting approved by the city council setting forth the conditions under which trees may be set out or planted and the kind thereof, and the person obtaining such permit shall comply with all terms and conditions thereof.

(Prior code § 7407; Ords. 21362, 23734.)

**Part 3 MAINTENANCE, REMOVAL AND PROTECTION OF TREES**

**13.28.080 Interfering with maintenance work or injuring trees prohibited.**

A. No person shall in any way interfere with the city, its employees or contractors engaged in the planting, mulching, pruning, spraying, treating or removing of any tree in the public streets of the city, or in the removing of stone, cement or other substance about the trunk of any tree in any such street.

B. No person shall, except with written permission of the director of streets and traffic, (a) damage, cut, carve, girdle or injure the bark of any street tree; (b) attach or

keep attached any sign, wire, device or injurious material to any such tree or to the guard or stake intended for the protection of such tree; (c) allow any gaseous, liquid or solid substance or weed killer harmful to such trees to come in contact with the roots, leaves, bark or any part of any such tree; (d) construct concrete, asphalt or brick paving or otherwise fill up the ground area within four feet of any such tree so as to shut off air, light or water from the roots; (e) pile building material or other material about any tree in a street in any manner that will in any way injure such tree; or construct any raised planter around the street tree trunk.

C. In the erection or repair of a building or structure, the owner thereof shall place such guards around all nearby trees in the street as shall in the opinion of the director of streets and traffic effectively prevent injury to them.

(Prior code § 7408; Ords. 21362, 23734.)

### **13.28.090      Diseased trees - Inspection and removal.**

The director of streets and traffic may inspect all trees in all streets or cause same to be inspected. Upon discovering that any such trees are infected or infested with plant or animal life or growth, or any insect detrimental to the growth, health or life of such trees, he or she may remove, eradicate or destroy such condition or cause such be done. If any trees in any street are so infected or infested to such a degree that such condition cannot be removed, eradicated or destroyed by the usual means and efforts employed, said director of streets and traffic may remove and destroy any such trees, or cause such removal or destruction to be done.

(Prior code § 7412; 13.28.130; Ords. 21362, 23734.)

### **13.28.100      Tree guards permitted.**

Tree stakes or guards may be placed around street trees by the department of streets and traffic, by city contractors or by owners of property abutting such trees provided the same are merely placed near such tree for the purpose of protecting or training such trees.

(Prior code § 7409; 13.28.090; Ords. 21362, 23734.)

### **13.28.110      Moving object on streets - Tree protection requirements.**

No person shall move any building or other object along any street in such manner as to injure any street tree. The director of streets and traffic may, if he or she deems advisable, require any person moving a building or any other object along a street in said city to furnish a bond in an amount sufficient to cover the damage or destruction of street trees.

(Prior code § 7411; Ords. 21362, 23734.)

**13.28.120 Electrical wires - Placement restrictions.**

Every person having any wire charged with electricity running through a public street in the city shall securely fasten such wire so that it will not come in contact with any tree therein; and no person shall, without the written permit of the director of streets and traffic, attach any electric wire, insulator or any device for the holding of any electric wire or for bracing the poles which carry the same to any tree growing or planted upon any public street.

(Prior code § 7413; Ords. 21362, 23734.)

**13.28.130 Street tree permit requirements.**

A. Except as provided in this section, no person shall trim, prune, cut or remove any street tree except pursuant to a permit from the director of transportation.

B. The director shall issue a permit to remove a street tree only if at least one of the following criteria is met:

1. The tree is dead or dying.
2. The tree is seriously diseased.
3. The tree is in or creates a hazardous condition.
4. The tree is a detrimental species that is disapproved by the director for planting on the street in the city's street tree plan.
5. The tree interferes with high tension electrical lines and the problem cannot be corrected by topping the tree.
6. The tree has caused extensive concrete damage after the tree has been deep-watered, root-trimmed for several years and the concrete has been repaired several times in the preceding years.
7. The tree has done extensive sewer system damage and created a sewer problem that cannot be resolved by any other reasonable means.

C. Each permit to remove a street tree shall contain the condition that the permittee purchase and plant, at the permittee's expense, a replacement tree designated by the director.

D. Notwithstanding the provisions of subsection A. above, no permit shall be required for trimming, pruning or cutting a street tree if all of the following criteria are met prior to any work being performed:

1. The director is provided with evidence, satisfactory to the director, that the person who is contracted to perform the work is licensed to perform the work by the appropriate state agency and has the necessary bond and insurance required by such agency; and

2. The person who will perform the work has warranted to the director's satisfaction that the work will be performed in compliance with the trimming, cutting or pruning standards adopted by the American National Standards Institute (ANSI) A300, Part 1, 2001, as may be revised; and

3. The person who will perform the work has provided written notice to the director that includes a full description of the work to be performed, the exact location where the work will be performed, and the approximate date(s) that the work will be performed at least one business day prior to the commencement of the work.

E. Notwithstanding the provisions of subsection A. above, no permit for trimming, pruning or cutting a street tree is required in the event that an emergency situation exists where the immediate trimming, cutting, or pruning of a street tree(s) is necessary to protect the public health, safety or welfare. The person who performs the emergency work must not trim, cut or prune the street tree(s) more than is reasonably required to eliminate the dangerous condition and must provide, within two business days of the completion of the emergency work, notice to the director that includes a full description of the work completed and the exact location where the work was performed.

F. Notwithstanding the provisions of subsection A. above, no permit shall be required for street tree removal in connection with a city-approved public works project, or a redevelopment agency project.

(Prior code § 7414; 13.28.150; Ords. 21362, 22353, 23734, 26821.)

#### **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.

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.

(Prior code § 7416; 13.28.170; Ords. 21362, 22353, 23734, 26754, 27761.)

**13.28.145 Presentation of permit on request.**

A. It shall be unlawful for any person to trim, prune, cut, or remove or cause the same to be done to a street tree unless the permit or a copy of the permit allowing for this activity is maintained on the site where the tree to be trimmed, pruned, cut, or removed is located.

B. It shall be unlawful for any person to trim, prune, cut, or remove or cause the same to be done to a street tree unless the permit or a copy of the permit can immediately be presented upon request to the director of planning, building, and code enforcement, director of transportation, police officers, and their designee.

C. It shall be unlawful for any person to engage in any work on the street tree or allow any work on the tree that is the subject of the permit to occur unless and until: (1) the permit or a copy of the permit is located on the site where the subject tree is located, and (2) the permit or a copy of the permit is readily available for presentation upon request as described in this section.

(Ord. 27978.)

**Part 4 SIGHT OBSTRUCTIONS, PRUNING, OWNER MAINTENANCE**

**13.28.150 Sight obstructions on private property.**

No owner or person in possession of any premises on any corner or interior lot abutting upon a street shall permit the existence of any hedge, shrub, tree, landscaping, mound of earth, or boulders greater than thirty inches in height or limb of a tree less than eighty-four inches in height between the setback lines of such lot as provided in Title 20 of the San José Municipal Code and the street excluding planting easements, which is determined by the director of streets and traffic to obscure and impair the view of intersecting or entering traffic from a street of passing motorists or pedestrians or which

impairs the view of the street signs, traffic signs, or any other control devices or signs placed upon the streets for the safety and convenience of the public.

(Ords. 21362, 23734.)

**13.28.160 Notice of existence of obstruction.**

The director of streets and traffic shall give written notice of the existence of an obstruction of the type described in Section 13.28.150 personally to the owner or person in possession of the premises mentioned in said Section 13.28.150 or by mailing a notice, postage prepaid, to the person in possession of such premises or to the owner thereof at his or her last known address as the same appears on the last equalized assessment rolls of the county to remove the sight obstruction by trimming or removing the obstructing hedge, shrub, limb of tree, tree, landscaping or removing or regrading the mound of earth or boulders, as determined necessary by the director of streets and traffic. The director of streets and traffic may require the removal of such hedge, shrub, limb of tree, tree, landscaping or mound of earth or boulders, if trimming or regrading will not adequately remove the sight obstruction. It shall be unlawful for the owner or person in possession of said premises to neglect or fail to comply with the directions of the director of streets and traffic concerning such obstruction within fourteen days after the service upon him or her of said notice. No permit to remove trees creating a hazard to the public of the type described in Section 13.28.150 shall be required.

(Ords. 21362, 23734.)

**13.28.170 Injunction.**

In addition to any remedy provided for herein, or by law for the violation or violations of Sections 13.28.150 and 13.28.160, the city attorney may maintain an action for an injunction to restrain, abate, or to correct or compel the removal of such violation or violations.

(Ord. 21362.)

**13.28.180 Sight obstructions, obstructing or dangerous trees or shrubs on streets.**

A. The director of streets and traffic may inspect any and all trees, shrubs and hedges which are in any street or which, standing on any private property, overhang or project into any such street, to determine whether any of the same, or any part thereof, appears to be dead, liable to fall, dangerous or an obstruction to public pedestrian or vehicular travel on any such street or cause such inspection to be performed.

B. In case any tree, shrub or hedge in any street, or any tree, hedge or shrub on any private property overhanging or projecting into any such street appears to be dead, liable to fall, dangerous, or an obstruction to such public pedestrian or vehicular travel on any

such street, the director of streets and traffic may cut down or cause the same or such parts thereof as are dead, liable to fall, dangerous or an obstruction to such public pedestrian or vehicular travel, to be cut down, and if in any such street, to remove or cause the same or such parts thereof to be removed therefrom.

(Prior code § 7415; 13.28.160; Ords. 21362, 23734.)

**13.28.190 Trees - Property owner maintenance responsibility and duty to public.**

A. The owner of a lot fronting on or adjacent to any portion of a street shall maintain and replace, if necessary, any trees, shrubs, hedges or other landscaping along said street or within the street right-of-way adjacent to his or her property in such nondangerous conditions that the trees, shrubs, hedges or other landscaping will not interfere with the public convenience or safety in the use of the streets and sidewalks. Said owner shall replace any removed or otherwise missing street trees in accordance with the requirements of Sections 13.28.070 and 13.28.130.B., and shall maintain all street trees so that there is a minimum eight-foot vertical pedestrian clearance from the top of the sidewalk and a minimum thirteen-foot vertical vehicular clearance from the top of the curb to any part of a street tree.

B. For purposes of this part, maintenance of trees, shrubs, hedges and other landscaping includes, but is not limited to: deep root watering, root pruning, installing root barriers, clearance and structural trimming, fertilizing, pest control, and removal of branches, leaves, and other debris.

C. Property owners required by this section to maintain and replace, if necessary, trees, shrubs, hedges and other landscaping, shall owe a duty to members of the public using public streets and sidewalks to maintain such trees, shrubs, hedges or other landscaping in a safe and nondangerous condition for users of the public streets and sidewalks.

D. If any property owner fails to maintain any adjacent trees, shrubs, hedges or other landscaping in a nondangerous condition as required by this section, and any person suffers damage or injury to person or property, the property owner shall be liable for all damages or injuries caused by the failure of the owner to maintain these areas.

(Prior code § 7418; 13.28.180; Ords. 21362, 23389, 26821.)

**13.28.195 Disclosure obligations upon sale or transfer of a residential real property.**

A. Not less than seven business days before the sale or other transfer of residential real property concludes, a selling or transferring property owner must disclose to the acquiring property owner, on a disclosure form provided by the city, whether the residential real property to be sold or transferred fully complies with the city's street tree maintenance and replacement requirements of Sections 13.28.130.B. and 13.28.190.

B. If the selling or transferring property owner cannot determine whether street trees located on the residential property are substantially in compliance with the approved development permits for the property, or the property's approved development permits are inconclusive as to the requirements for the presence and location of street trees on the property, then the following requirements for the planting and presence of street trees shall apply:

1. The property must have one street tree for any adjacent street if it is an interior lot and at least three street trees if it is a corner lot, unless otherwise modified by the director in the interest of public safety.

2. If the current general plan requirements for street trees on the property differ from the requirements specified in subsection B.1., then the current general plan requirements shall govern the number and location of street trees required on the property at the time of sale or transfer. If the property meets the general plan requirement, then the selling property owner must indicate such compliance with the general plan on the disclosure to the acquiring property owner.

3. All street trees shall be planted in accordance with the requirements of Section 13.28.070.

C. Upon a written request, the director may grant the selling or transferring property owner an exemption in writing from the requirements of this section if the director determines in the interest of public safety that planting and maintaining street trees on the residential property at the time of sale or transfer is not appropriate. Such an exemption does not run with the land and shall not allow any deviations from the disclosure requirements upon residential real property sales or transfers for future sellers or transferors.

(Ord. 26821.)

**13.28.200 Dangerous trees - Notice to trim or remove.**

When any tree, shrub or hedge or any part thereof appears to be dead, is liable to fall, is dangerous, or is an obstruction to public pedestrian or vehicular travel, whether or not the tree, shrub or hedge is on any private property and overhangs or projects into any street or is in any street, the director of streets and traffic may, by notice in writing, notify the owner or person in possession of the property to cut down, trim or remove the tree, shrub or hedge. No permit to cut down, trim or remove such tree, shrub or hedge shall be required.

No such tree standing on any private property shall be removed unless the owner or occupant of such property nearest such tree is given written notice of his or her opportunity within seven days after the giving of such notice to file with the said director his or her objection in writing to such removal and unless the said director duly reviews

the objection if such is filed and thereafter approves, in writing, the removal if such objection is not sustained and notifies the owner or occupant of such decision.

(Prior code § 7419; 13.28.190; Ords. 21362, 23734.)

**13.28.210 Notice to trim or remove - Delivery.**

The notice mentioned in Section 13.28.200 may be given by delivering a written notice personally to the owner or to the person in possession of the property, or by mailing a postal card, postage prepaid, to the person in possession of such property, or to the owner thereof at his last known address as the same appears on the last equalized assessment rolls of the county.

(Prior code § 7420; 13.28.2000; Ord. 21362.)

**13.28.220 Notice to trim or remove - Contents.**

The notice shall particularly specify what work is required to be done and shall further specify that if the tree, shrub or hedge is not cut down, trimmed, or removed within thirty days after the giving of such notice, the director of streets and traffic shall perform such work or cause same to be done and the cost of the same shall be a lien on the property upon which such tree, shrub or hedge is located, or on the property which fronts upon the street on which such tree, shrub, or hedge is located.

(Prior code § 7421; 13.28.210; Ords. 21362, 23734.)

**13.28.230 Notice to trim or remove - Trees on private property.**

If the tree to be removed is on private property, the notice shall further specify that the owner or occupant of private property nearest such tree may, within seven days after the giving of such notice, file with the director of streets and traffic his or her written objection to such removal; that if such objection is filed, the said director shall duly review the objection and that if such objection is not sustained, the said director shall thereafter approve in writing the removal and shall cause notice of such decision to be given to the owner or person in possession in the manner specified in Section 13.28.210 and that no such tree shall be removed until such review has occurred and decision rendered and notice thereof been given.

(Ords. 21362, 23734.)

**13.28.240 Removal of dangerous trees by city.**

If the tree, shrub or hedge is not cut down, trimmed, or removed as required by notice, the director shall perform this work or cause this work to be performed and the affected property may be assessed for the costs incurred in accordance with this part.

(Prior code § 7422; 13.28.220; Ords. 21362, 23734, 25264, 28472.)

**13.28.245 Emergency tree services performed by city.**

A. In cases of manifest public danger, the director of transportation shall perform or cause to be performed the work described in Sections 13.28.180 and 13.28.200 without observance of any notice requirements after which the affected property may be assessed for the costs incurred in accordance with this part.

B. The owner of a property abutting a street tree, shrub or hedge or a property containing a tree, hedge, or shrub that poses a manifest public danger and is required to take corrective action by the city shall pay any costs and expenses associated with the emergency services, including costs of removal of the tree, hedge or shrub, administration time and expense, late charges, and the handling of any lien placed on the property due to failure of the property owner to pay within the required period.

C. After completion of the emergency tree service if the owner has failed to pay the costs of the work as set forth in this part, the director shall issue a notice of cost informing the property owner of the failure to pay for the cost of the work completed and that failure to pay the amount will result in a hearing by council, described in Section 13.28.250. If the property owner fails to pay following the notice of cost and hearing by council, the director shall initiate the assessment procedures set forth in this part.

(Ord. 28472.)

**13.28.250 Notice of hearing by council.**

After completion of the work and failure of an owner to pay the amounts set forth in the notice of cost, the director of transportation shall cause notice of the public hearing thereof to be given in the manner specified in this chapter, which shall specify the day, hour and place when the city council will hear and pass upon a report by the director of transportation of the cost of the work, together with any written objections or protests, if any, which may be raised by any person liable to be assessed for the cost of such work.

(Prior code § 7423; 13.28.230; Ords. 21362, 23734, 28472.)

**13.28.260 Conference with director of transportation.**

The director of transportation may include with the notice of hearing, as specified in Section 13.28.250 hereinabove, additional notice of a conference with the said director. The conference which may be scheduled by the said director upon receipt of the written objection or protest, specified in Section 13.28.250, shall be conducted prior to the council hearing for the purpose of discussion between the property owner and the said director of the costs of the work. Upon the conclusion of the conference, the said director shall note his or her conclusions in the report together with any recommendations for adjustment of the costs of the work.

(Ords. 21362, 23724; 28472.)

**13.28.270 Removal costs - Assessment against property.**

Upon completion of the work, the director of the department of streets and traffic shall prepare and file with the city council a report specifying the work which has been done, the cost thereof, a description of the real property upon which the tree, shrub or hedge was located or of the real property which fronts upon the street on which such tree, shrub or hedge was located and the assessment against the parcel of land proposed to be levied to pay the cost thereof.

(Prior code § 7424; 13.28.240; Ords. 21362, 23734.)

**13.28.280 Hearing on assessment costs.**

Upon the day and hour fixed for the hearing, the city council shall hear and pass upon the report of the director of streets and traffic, together with any written objections which may be raised by any property owner liable to be assessed for the work of cutting down, trimming, or removing any tree, shrub or hedge. Thereupon, the city council may make such modifications in the report as it may deem just, after which, by resolution, the report as submitted or as modified shall be confirmed. The decisions of the city council on all protests and objections shall be final and conclusive.

(Prior code § 7425; 13.28.250; Ords. 21362, 23734.)

**13.28.290 Assessment deemed a lien when.**

The cost of cutting down, trimming or removing any tree, hedge or shrub may be assessed by the city council against the parcel of property upon which the same is located, or the parcel of property which fronts upon the street on which such tree, shrub or hedge is located, and such cost so assessed, if not paid within five days after its confirmation by the city council, shall constitute a special assessment against that parcel of property, and shall be a lien on the property for the amount thereof, which lien shall continue until the assessment and all interest thereon is paid, or until discharged.

(Prior code § 7426; 13.28.260; Ord. 21362.)

**13.28.300 Lien - Recordation and collection.**

The city council, after confirmation of the report of the director of streets and traffic, may order a notice of lien to be delivered to the county auditor, who shall enter the amount thereof on the county assessment book opposite the description of the particular property, and the amount shall be collected, together with all other taxes against the property. Thereafter, the amount of the lien shall be collected at the same time and in the same manner as ordinary city taxes are collected, and shall be subject to the same

penalties and interest, and to the same procedure under foreclosure and sale in case of delinquency, as provided for ordinary city taxes.

(Prior code § 7427; 13.28.270; Ords. 21362, 23734.)

**13.28.305 Designated body.**

As an alternative to the procedures set forth in Sections 13.28.250 through 13.28.300, the public hearing before the city council and the imposition of a special assessment lien referenced in those sections may be conducted and imposed by a designated body pursuant to Chapter 1.18 of this Code.

(Ord. 25264.)

**13.28.310 Private arrangements for tree trimming or removal.**

The director of streets and traffic may cut down, trim or remove any trees in any street, or remove any trees in any street or which overhang any street, or cause the same to be done, by private arrangement for reimbursement to the fund from which the expenditure by city was made, with the owner of any lot or parcel of land upon which, or fronting upon which the trees are situated.

(Prior code § 7428; 13.28.280; Ords. 21362, 23734.)

**13.28.320 Liability limitation.**

Nothing contained in this chapter shall be deemed to impose any liability upon the city, its officers or employees, nor to relieve the owner of any private property from the duty to keep trees, shrubs and hedges upon said private property, or under his or her control or upon streets in front of or contiguous to such private property, in a safe condition.

(Prior code § 7417; 13.28.290; Ord. 21362.)

**13.28.330 Heritage trees.**

Any tree which, because of factors including but not limited to its history, girth, height, species or unique quality, has been found by the city council to have a special significance to the community shall be designated a heritage tree. Such trees shall be placed on a heritage tree list which shall be adopted by the city council by resolution, which resolution may be amended from time to time to add to or delete certain trees therefrom.

(Ord. 21362.)

**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 (\$30,000.00) for each such tree so vandalized, mutilated, removed or destroyed within a three-year period, the collection of which shall be enforced by civil action brought in the name of the city by the city attorney.

(Ords. 21362, 27761.)

**13.28.350 No interference with enforcement of this chapter.**

No person shall interfere with or delay the authorized representative of the city from the execution and enforcement of this chapter except as provided by law.

(Ord. 21362.)

**13.28.360 Failure to give or receive notice.**

The failure to post, mail or deliver by personal service any notice required under this chapter or the failure of any person to receive such notice shall not affect the validity of any proceedings or actions taken by the city or its employees, agents or contractors under this chapter.

(Ord. 21362.)