

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**

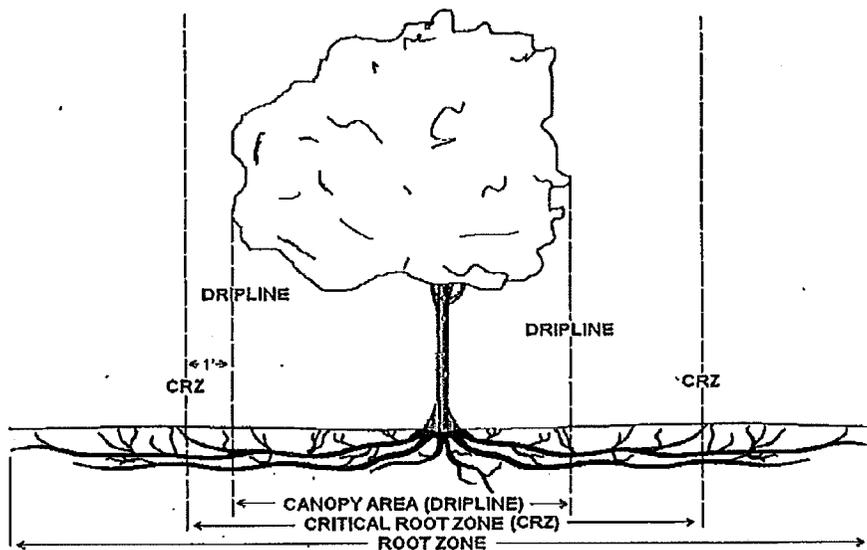
“American National Standards Institute (ANSI)” shall mean the most current version of ANSI A300 (Part 1 – Pruning) setting forth the standards and practices for the care and protection of Trees, Shrubs, Hedges, and other plants.

**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 or the group.

**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**

“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 that is planted 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, Shrubs, and Hedges 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, Shrubs, and Hedges 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 Street Tree within the City, unless one of the following conditions exists:
1. A permit that allows the planting or installation of the Street 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 Street Tree to be purchased by permittee, at permittee's expense, to be planted; and
4. Location for planting the Street 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 the replacement Street Tree to be purchased by permittee, at permittee's expense, and to be planted, if applicable;
  4. Description of the Pruning, if applicable; and
  5. Location of removal of the Street Tree and replanting of the Street Tree or location of Street 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 the Street 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, subject to the objection process set forth in Section 13.28.360, will be final. The informal hearing may be conducted by phone, in-person, in writing, or a combination thereof as required by the Director.

### **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 City of San José Redevelopment Agency project.
6. A development permit, or amendment thereto, that allows the removal of the Street Tree has been issued by the 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 Street 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 Street 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 the Director notifies the applicant that no timely written objection was 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. The informal hearing may be conducted by phone, in-person, in writing, or a combination thereof as required by the Director.
- 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 Street 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 ore 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 informal hearing may be conducted by phone, in-person, in writing, or a combination thereof as required by the Director. 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 condition 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. A property owner 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 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. A property owner required by this Section to maintain any Street Trees, Shrubs, Hedges, or landscaping shall comply with the following:
1. Provide the necessary maintenance so that the Street Tree, Shrub, Hedge or landscaping is not in a Hazardous Condition or in a condition that will likely become 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. Obtain a permit as required 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 Section 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 form provided 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 Hazardous Conditions; Sight Obstructions On Private Property**

- A. No owner or person in possession or control of any premises shall maintain any Tree, Shrub, Hedge 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, Shrub, Hedge, 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, Hedge, or landscaping 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, Hedge, or landscaping 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, Hedge, or landscaping is located, or the property which fronts upon the Street on which such Tree, Shrub, Hedge, or landscaping 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, Shrub, Hedge, or landscaping, administration time and expense, late charges, and the handling of any lien placed on the property owner's 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, Shrub, Hedge, or landscaping that poses an Imminently Hazardous Condition or the property adjacent to or fronting on the subject Street Tree, Shrub, Hedge, or landscaping 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, Shrub, Hedge, or landscaping that poses an Imminently Hazardous Condition or adjacent to or fronting on a Street Tree, Shrub, Hedge, or landscaping or a property containing a Tree, Shrub, Hedge, or landscaping 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, Shrub, Hedge, or landscaping, administration time and expense, late charges, and the handling of any lien placed on the property owner's 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 to the property owner 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, Hedge, or landscaping was located or of the real property adjacent to or fronting upon the Street on which such Street Tree, Shrub, Hedge, or landscaping 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, Shrub, Hedge, or landscaping is located, or the parcel of property which fronts upon or is adjacent to the Street on which such Street Tree, Shrub, Hedge, or landscaping 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, Hedges, or landscaping 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:

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DENNIS D. HAWKINS, CMC  
City Clerk