

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO,
CALIFORNIA, AMENDING SECTIONS 13-305 AND 13-306
AND ADDING SECTION 13-310 AND 13-311 OF THE
FRESNO MUNICIPAL CODE, RELATING TO STREET
TREES

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 13-305 of the Fresno Municipal Code is amended to read:

SECTION 13-305. - TREE PRESERVATION.

(a) Policy. It shall be the city's policy to utilize whatever techniques, methods, and procedures are required to preserve, whenever feasible, all trees in the city including, but not limited to, trees which are affecting surface improvements or underground facilities or which are diseased, or located where construction is being considered or will occur.

(b) By the City. The Director shall be responsible for the preservation and, when required herein, the removal of all trees on public property.

(c) By the Property Owner. Every property owner or his/her occupant shall be responsible for the normal care, including watering, of trees in such property owner's abutting parkway, front yard or side yard setback, or in any public tree easement.

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval:



Ordinance No.

[(d) Tree Removal or Maintenance by Property Owners. The Director may issue a permit to property owners to remove or maintain a street tree if all of the following apply:

(1) Tree removal or maintenance will occur under the direction of a certified arborist and completed by a City licensed contractor. Tree removal or maintenance must adhere to standards issued by the International Society of Arboriculture;

(2) All removal or maintenance costs are borne by the applicant. Voluntary removal or replacement of trees, which do not meet the removal criteria set forth in Section 13-305(f)(6), shall not utilize any City funding appropriated by the Council for the Street Tree Program in the Public Works Department; however this section shall not preclude the City's ability to use discretionary infrastructure funds, if desired by the Council.

(3) An applicant shall pay a refundable permit fee for tree planting to the City in an amount established by City Council resolution and set forth in the master fee schedule. A city arborist shall inspect and verify applicant has completed planting of the replacement tree(s) at which time applicant's permit fee shall be refunded. Applicant's failure to plant replacement tree(s) as set forth in this section shall result in forfeiture of the permit fee, which shall be deposited into the city's Tree Trust Fund.

(4) The City, through the use of door hangers, shall notify homeowners of any proposed tree removals within fifty feet of the front or side of their property line. These persons have fourteen days to protest the removal to the Director.

(5) The applicant must comply with all other permit conditions listed in this chapter including, without limitation, entering into a hold harmless agreement with the City;

(6) Trees shall be replaced by a replacement tree approved by the Director as set forth in the City's Approved Tree List. Alternatively, the applicant may pay a fee in lieu of replacement as set forth in Section 13-305(f).

(7) Trees on the Special Tree List in Section 13-306 or otherwise determined to be protected by the City are not eligible for removal or replacement under this Section. (1) Every

~~property owner may apply to the Director for a permit to trim or remove and replace street trees at the property owner's expense, provided that the replacement trees are from the Master Tree List and further provided that the property owner pays any/all applicable scheduled fees.~~

An exception to this section applies to] Except that minor trimming to alleviate a dangerous condition presented by a tree may be done with [the] Director's prior consent, by the property

owner without a permit. Any such trimming must be performed in a manner that ensures tree preservation.

~~(2)~~ [(e) Permit Conditions.] The Director shall promulgate and implement permit procedures and standards to facilitate the issuance of such permits. [The Director shall condition a tree permit on the following:

(1) That the applicant plant another tree in the place of the one removed or destroyed at the applicant's sole cost or pay a fee in lieu of replacing the tree(s) as set forth in this Section.

(2) That a particular species of tree, as determined by the City's Approved Tree List, be used as a replacement. The Director may select the species of tree that may be planted.

(3) That the applicant enters into a hold harmless agreement with the City which will, in part, indemnify the City, its officers, employees, and agents, from any liability arising from the applicant's activities in a form approved by the city attorney.]

At a minimum a permit application shall include the number and location of each tree to be removed, the ~~type~~ [species] and approximate size of the tree, the reason for removal and such additional information as the Director may require. ~~Each application shall be reviewed and determined on the basis of the following criteria (i) the location and condition of the tree, (ii) the necessity to remove the tree for economic or other enjoyment of the property, (iii) the topography of the land and the effect of the tree removal~~

~~upon erosion, soil retention and the diversion or increased flow of surface water, (iv) the number, species, size and location of existing trees in the area and the effect the removal would have upon shade, privacy impact, scenic beauty, property values and any established standards of the area, and (v) the number of healthy trees the property is able to support according to good forestry practices. The Director may refer the application to another department, commission or person for a report and recommendation.~~ The Director shall render his/her decision within thirty (30) days after the filing of the application for a permit. The Director may grant, conditionally grant, or deny the application. Any denial shall state the reasons for denial. [The decision of the Director shall be mailed to the applicant and to all owners of record of the subject property on the same day the decision is made. In addition, the site or tree shall be posted with a sign by the Department for at least ten calendar days indicating the decision of the Director. No tree for which a Tree Removal Permit is required shall be removed until all conditions of the permit have been satisfied and the decision has become final.] ~~A condition to any grant of permit allowing removal of a tree shall be applicant's obtaining and planting of one or more replacement trees from the Master Tree List at locations and in quantities designated by the Director, at applicant's sole cost.~~

[(f) Payment in-lieu of Fees

(1) Payment of a fee in-lieu-of replacing a removed tree shall be the same as the refundable permit fee for tree planting established by City Council resolution and set forth in the master fee schedule.

(2) The payment in-lieu-of fees will be used to purchase trees that will be planted within the public right-of-way or on other public property as determined by the Director. Where feasible, trees will be planted in the vicinity in which the tree(s) was removed.

(3) Payment of the in-lieu fee shall be made before the issuance of the Tree Removal Permit.

(d)(g) Tree] Inspection and Removal [by Director.

The Director may inspect, remove, or maintain trees from the public right-of-way, if the Director determines one or more of the following conditions exist:]

(1) At such times and on such occasions as he deems appropriate, the Director shall inspect trees on any public property and on any private property if the trees overhang or project into public property.

(2) If any city-planted tree in the city appears to the Director to be dead, liable to fall, dangerous, poses a public nuisance including an obstruction to public travel and/or is not

pruned or trimmed to a height of fourteen feet, six inches above the paved portion of the street to accommodate such vehicles as garbage trucks, buses, moving vans and street maintenance trucks, [and seven feet above the pedestrian path of travel], the Director shall take the necessary corrective action.

(3) It shall be the responsibility of the property owner and/or his/her occupant to prevent any tree on his/her private property or in the abutting parkway, other than city-planted trees, from overhanging or projecting into public property, as provided in this subsection. The Director shall have the authority to require the property owner or his/her occupant to prune, trim, cut down or remove any such tree, or part or parts thereof, if it appears to the Director to be dead, structurally hazardous, dangerous, poses a public nuisance, an obstruction to public travel, or is not pruned or trimmed to a height of fourteen feet, six inches above the paved portion of the street to accommodate such vehicles as garbage trucks, buses, moving vans and street maintenance trucks [and seven feet above the pedestrian path of travel]. Except in case of immediate public danger, no such tree, shall be pruned, trimmed, cut down or removed by the Director unless the Director has given the property owner and/or his/her occupant ten (10) days' written notice to take corrective action. If the necessary corrective action is not taken by the property owner or his/her occupant within ten (10)

days, the Director shall perform the services and the costs thereof shall be assessed to the property owner and/or occupant, including the cost of labor (including overhead), equipment and materials, and disposal of removed material [pursuant to the procedures as set forth in Chapter 1, Article 5 of the Fresno Municipal Code].

In the event the Director determines that there is immediate public danger, the Director may cause the offending tree or portion thereof to be trimmed or removed without prior notice. The trimmed material shall be placed on the property of the responsible party, outside of the public right-of-way, for disposal by the responsible party. The Director shall cause to be provided to the responsible property owner, and/or occupant, notification of the corrective action taken by the city. The notice shall include a statement that the property owner and/or occupant is responsible for proper disposal of the trimmed material within ten (10) days. If the property owner and/or occupant fails to properly dispose of the trimmed material the city may cause the material to be disposed of with the costs thereof assessed to the property owner and/or occupant [pursuant to the procedures as set forth in Chapter 1, Article 5 of the Fresno Municipal Code].

(4) If any tree on public property is infected or infested with insects, pests or disease, the Director shall [may] cause such condition to be treated or, if any such tree is infected or infested to

such a degree that such condition cannot be eradicated by treatment, the Director may order the removal and replacement of such tree.

(5) It shall be the responsibility of the property owner and/or his/her occupant to treat or remove any tree, grass or other vegetation on his/her private property or in the abutting parkway, other than city-planted trees, if it is so diseased or insect-infected as to constitute a public nuisance. ~~The Director shall have the authority to require the property owner and/or his/her occupant to take such action as is necessary to control insects, scales, parasites, fungi and other injurious pests, or diseases. The Director shall notify the property owner and/or his/her occupant in writing, describing the conditions, stating the control necessary for correction, and establishing a reasonable time within which the required steps must be taken. If the property owner and/or his/her occupant questions the necessity for such action, the Director shall refer the matter to a plant pathologist for decision. If necessary corrective action is not taken within the time specified, the Director is authorized, in the public interest, to enter on the property in question and to spray, trim, prune, treat or remove all or any part of the tree, grass or other vegetation determined to be infested or diseased. The cost of such service shall be assessed to the~~

~~property owner and/or occupant, including the cost of labor (including overhead), equipment and materials.~~

(6) The Director, after unsuccessfully utilizing all techniques, methods and procedures which he deems reasonable to save trees planted on public property which are dead, dying, in a dangerous condition, unsafe, a public nuisance, or likely to cause damage, shall remove and replace such trees.

(7) The Director may cause the removal of any tree on private property that is a public nuisance[.] ~~and the replacement of each tree removed with one or more trees from the Master Tree List.~~

(8) Tree replacement ratios under this article shall be in the Director's discretion[.], ~~consistent with the Master Tree Policy.~~

~~(e)~~ [(h)] Interference with Employees. No person shall interfere with or cause or permit any person to interfere with employees of the city who are engaged in the planting, preserving, maintaining, treating[, trimming] or removing of any tree or plant or related work in the city.

~~(f)~~ [(i)] Other Unlawful Acts. No person, except authorized city personnel, shall remove, destroy, deface or injure any tree on public property by any means including, but not limited to, the following:

(1) By pouring any material on any tree or on the ground which would be harmful to the tree;

(2) By attaching any sign or notice or other object on any tree or fastening any guy wire, cable, rope, nails or screws or any other device to any tree, except that agencies may, under the supervision of the Director, temporarily affix no parking signs to trees when necessary in conjunction with activities in the public interest, such as street improvement work, tree maintenance work, or parades;

(3) By causing or encouraging any unnecessary fire or burning near or around any tree;

(4) By constructing a concrete, asphalt, brick or ~~gravel~~ surface, or otherwise covering the ground within a four-foot radius of any tree so as to shut off air or water from the roots, except under written authority from the Director.

~~(g)~~(i) Unauthorized Plantings.

(1) No person shall plant any tree in any public property of the city or public tree easement without written permission of the Director.

(2) The Director may cause to be removed a tree planted within any parkway or public tree easement without a written permit of the Director. The Director shall notify the ~~abutting~~ property owner and/or his/her occupant in writing, listing the unlawfully planted tree(s) ordering their removal [within ten days], and ~~establishing a reasonable time within which removal shall be accomplished.~~ In the

event the removal is not accomplished within a specified time, the Director is authorized to remove, or cause to be removed, such trees and all cost thereof shall be assessed to the property owner and/or occupant [pursuant to the procedures as set forth in Chapter 1, Article 5 of the Fresno Municipal Code]. The charge assessed shall be equal to the cost of labor (including overhead), equipment, disposal costs and materials.

~~(h)~~ [(k)] Construction Areas.

(1) Any tree growing upon public property which is to be removed for construction purposes shall be replaced, if it is possible to do so in accordance with the city's tree planting policy. If the Director determines that a tree can be replaced, the person causing its removal shall, at his/her own expense, remove and replace such tree with a tree in a location and of a size and species to be determined by the Director. If the Director determines that a tree cannot be replaced, the person causing its removal shall, at his/her own expense, remove the tree and pay to the city the ~~reasonable~~ [replacement] value of the tree, as fixed by the Director.

(2) Any tree growing upon public property near any excavation, construction or street work shall be sufficiently guarded and protected by those responsible for such work so as to prevent any injury to said tree. No person shall excavate any ditches, tunnels or trenches, or install pavement ~~within a radius of four feet~~

from [adjacent to] any public tree without the written permission of the Director.

(3) Whenever any parkway is paved, openings at intervals and sizes determined by the Director shall be left unpaved or uncovered in a manner acceptable to the Director.

(i) ~~[(1)] Damage to Private Improvements.~~ Without limiting this article and consistent therewith, if following written notice and request from a private property owner, the Director determines that the natural growth process of any street tree has damaged or destroyed privately owned improvements causing non-routine maintenance thereof, the Director shall take the necessary action to prevent continued damage or destruction by the street tree. The Director's action shall be taken as soon as possible in the normal course of city business but in any event not later than the next regularly scheduled street tree inspection and maintenance event. Nothing in this subsection shall constitute a waiver of rights and remedies held by the city and the private property owner/occupant. This subsection shall not apply to sidewalks and parkways. Nothing in this subsection shall be deemed to impose any liability upon the city or upon any of its officers or employees nor to relieve the owner/occupant of any private property from the obligations and duties imposed by law including Chapter 13, Article 2 of this Code, to maintain, repair and keep safe sidewalks and parkways fronting

~~such private property, and trees upon private property or under
his/her control.~~

SECTION 2. Section 13-306 of the Fresno Municipal Code is amended to read:

SECTION 13-306. - SPECIAL TREE LIST.

The Director is authorized to develop and maintain a Special Tree List. Such list is intended to include those trees of special interest to the city, including, but not limited to, landmark trees or trees of outstanding size or beauty. [The City Council may also designate trees on the Special Tree List by resolution.] The Director shall give and encourage others to give such trees special treatment and care to retain and protect them.

[The Public Works Director shall review all tree removal requests for special trees filed independent of a development application. The Director shall render his/her decision within thirty (30) days after the filing of the request. Any denial shall state the reasons for denial. The decision of the Director shall be mailed to the applicant and to all owners of record of the subject property on the same day the decision is made. In addition, the site or tree shall be posted with a sign by the Department for at least ten calendar days indicating the decision of the Director.]

Decisions of the Public Works Director may be appealed to the City Council by the Councilmember of the district in which the project is located or by the Mayor, either on their own initiative or upon receiving a petition from any person. Appeals must be initiated by filing a letter with the Public Works Director. Such action shall require a statement of reasons for the appeal. Unless

otherwise specified in a governing State or federal law, all appeals shall be filed with the Public Works Director in writing within 15 days of the date of the decision.]

SECTION 3. Section 13-310 is added to the Fresno Municipal Code to read:

[SECTION 13-310. - TREE TRUST FUND.

All fees, fines, or assessments as defined in this chapter or the tree policy will be deposited in a Tree Trust Fund and reinvested into the City's urban forest.]

SECTION 4. Section 13-311 is added to the Fresno Municipal Code to read:

[SECTION 13-311. - VIOLATIONS.

Any person who removes or causes to be removed any tree in violation of this article shall be required to:

(a) Apply for and obtain a Tree Removal Permit and pay double the cost of a permit, which shall be non-refundable, and

(b) Act as the responsible for property restoration which shall include:

(1) Replacing the tree(s) removed with tree(s) of reasonably equivalent value and largest size feasible to the tree(s) removed or alternatively paying the replacement cost of the removed tree(s).

(2) The number, size, and location of the replacement trees shall be determined by the Director after receipt or a report and recommendation by a licensed arborist.]

SECTION 5. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2018.

AYES :
NOES :
ABSENT :
ABSTAIN :

YVONNE SPENCE, MMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Tracy N. Parvanian Date
Deputy City Attorney

TNP:prn [76365prn/ord] 08-16-17