



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Fahey and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Richard Thompson, Director of Community Development
Laurie B. Jester, Senior Planner

DATE: September 20, 2005

SUBJECT: Consideration of City Council 2005-2007 Work Plan Item and Planning Commission Recommendation to Approve Zoning Code Amendments (MBMC Section 10.52.120) to revise the Tree Preservation regulations

RECOMMENDATION:

Staff recommends that the City Council **CONDUCT THE PUBLIC HEARING, WAIVE FURTHER READING AND INTRODUCE ORDINANCE NO. 2079.**

FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action

BACKGROUND:

The City's Tree Preservation Ordinance was originally adopted in 1993 and at that time, the Ordinance applied only to the Tree Section. The Ordinance protects most trees with a 12" or greater trunk diameter located in the front yard. At that time the Ordinance was implemented more as a "removal and replacement" regulation than a "preservation" regulation.

In 2003, the Ordinance was expanded to apply to all of the residential zones in Area Districts I and II; the Beach Area is not covered by the Tree Ordinance. With the expansion of the Tree Ordinance, planning staff began implementing the regulation as a "preservation" regulation, not a "removal and replacement" regulation as previously implemented. After the adoption of the expanded Tree Ordinance, the City Council and Planning Commission held a joint meeting and at that meeting the City Council confirmed that the Ordinance was intended to preserve trees, and that Staff should continue to enforce the Ordinance accordingly.

In May 2005 the City Council heard the first two appeals of staff decisions on Tree Permits and at that time the Council requested that staff bring back a report on the status of the Tree Ordinance. In July 2005, the City Council adopted the 2005-2007 Work Plan which included this item as one of the top Work Plan priority items for the Department, reviewed a status report on the Tree Preservation regulations, and provided direction on revisions to the regulations.

On August 25, 2005 the Planning Commission conducted a public hearing, discussed the proposed Code Amendments and adopted Resolution No. PC 05-11, with a 5:0 vote.

DISCUSSION:

The attached Planning Commission staff report provides a complete description of the Tree Permit process. The following is a summary of the revisions to the Tree Ordinance as recommended by the Planning Commission. The proposed revisions will clarify the City's Tree Ordinance requirements and make it easier to enforce as requested by the City Council.

Emergency Removal

The Exemptions section of the Code (Section 10.52.120 H. 1.) currently allows removal of trees in cases of emergency. This section requires that a Tree Permit application then be submitted within five working days after removal of a tree. The revision would require approval by the Director of Community Development prior to removal. The City Attorney is recommending this revision as this section is vague as to what constitutes an "emergency" and it is susceptible to abuse by those wishing to rid themselves of unwanted trees who cannot otherwise obtain a permit.

Trees on Adjacent Properties

There are two sections of the Code that address trees on adjacent properties that conflict. These two Sections (10.52.120 D and 10.52.120 H. 4) have been revised so that adjacent property trees are reasonably protected and any pruning of branches or roots that could potentially damage the health of trees is not allowed without submittal of a Tree Permit to evaluate potential impacts.

Trees Exempt from Protection

Section 10.52.120 H. 2 of the Tree Preservation regulations exempts deciduous fruit bearing trees, such as peaches, plums, nectarines, cherries, and apples, and two Palm trees, *Washingtonia robusta*, Mexican Fan Palm, and *Washingtonia filifera*, the California Fan Palm, from the protection regulations. The Planning Commission recommended that this section be modified so that no trees with a trunk diameter of 12 inches or greater are exempt from the ordinance. This gives staff the ability to evaluate each removal request on an individual basis and then make a determination if removal and replacement is appropriate.

Protected tree size and replacement size

The Planning Commission recommended that trees with a 6 to 12 inch trunk diameter generally be allowed to be removed, however they would be required to be replaced with a 24 inch box size tree. Trees with a trunk diameter of 12 inches or greater would be protected consistent with current regulations, and if removed would be required to be replaced with a minimum 36 inch box tree. Trees with less than a 6 inch trunk diameter would not be protected and could be removed without a permit. (Section G)

There may be difficulty on some properties to replace all the trees that are removed when a new home is being constructed if there are several trees on the property. Sometime the driveway and the walkways take up a significant amount of area in the front yard and there only is room for one or two new replacement trees, particularly if one or more mature trees are being retained. The Planning Commission therefore recommended that if it is determined that it is not feasible to physically fit new replacement trees on a particular site, then the applicant would be required to

pay a fee to the City's Tree Canopy Restoration Fund in lieu of planting all of the required replacement trees. (Section G) The fund is used to evaluate the health of trees and plant new trees throughout the City to compensate for the loss and to help re-establish and enhance the tree canopy throughout the City in the future. This in-lieu fee was not previously discussed by the City Council.

Street Side yard trees

The Tree Ordinance only protects trees in the 20 foot front yard setback. On corner lots the front setback is located adjacent to the shortest property line, so there is a long streetside setback in which the trees are not protected. The Planning Commission recommended requiring that these streetside trees not be required to be protected and retained, but require that they be replaced with a minimum 24 inch box size tree if they are removed (Sections D. 1 and G.).

Violations and Penalties

Section 10.52.120 J. establishes standards for violations of the Tree Preservation standards. The Planning Commission recommended as an addition to this section an administrative fine, Section K., be added for any violation of the tree preservation regulations.

Right-of- Way Improvements

Public Works and Planning staff currently work together to look at alternative designs and materials in situations where right-of-way improvements may impact trees. Required public improvements take priority over preserving trees, however alternative designs will be used to preserve trees where feasible. The Planning Commission recommended revisions (Section D. 6.) to codify these current practices. Public Works staff will be bringing an update and status report on public right-of-way trees to the City Council within the next several months.

Purpose

The Planning Commission recommended that the purpose section be expanded to discuss the design of residences being required to consider and accommodate existing protected trees when feasible, and that the preservation of trees increases property values, provides cooling shade and beauty, and minimizes spread of disease to healthy trees. (Section A)

Miscellaneous revisions and abuse of trees

These revisions were not considered by the City Council, however while in the process of reviewing and revising the Code, staff felt that it was important to address these items. The Planning Commission recommended a few language changes for consistency with current procedures and internal language consistency. These include revisions related to the arborist report, the tree plan, and replacement trees. Additionally, the abuse or mutilation of trees can severely damage or kill a tree so new language has been added into Section 10.52.120 B.2., so that damage of trees is a violation of the regulations, consistent with the public tree requirements.

Planning Commission Discussion

At the Commission meeting there were no speakers for the proposed amendments. The Commissions recommendations are basically consistent with the direction provided by the City Council. The Commission discussion generally related to questions to clarify existing procedures and to clarify the proposed language.

Regarding the Administrative Fines in Section K of the Ordinance, some of the Commission felt that the fines should be defined or have a range within the Ordinance and that there should be a formula for the fines that relates to the size of the tree. The consensus of the Commission was that fines need to be very high to discourage developers and others from illegally removing trees, and that there should be different fines for the intentional removal of trees by people that are aware of the regulations versus unintentional removal by those who are not familiar with the requirements. They felt that these higher fines would require a due process procedure. Revisions related to these recommendations have not been incorporated into the Ordinance as fines will be set separately by Resolution at a later date.

CONCLUSION:

Staff recommends that the City Council conduct the public hearing and introduce the Ordinance.

- Attachments:
- A. Draft City Council Ordinance No. 2079
 - B. Planning Commission Resolution No. PC 05-11
 - C. Planning Commission minute excerpts, staff report, and attachments – August 24, 2005

ORDINANCE NO. 2079

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, APPROVING AMENDMENTS TO THE CITY ZONING CODE (SECTION 10.52.120) TO REVISE THE TREE PRESERVATION REGULATIONS

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings:

- A. Pursuant to applicable law, the Planning Commission conducted a duly noticed public hearing on August 24, 2005 regarding the proposed Code Amendments related to revisions to the tree preservation regulations, and public testimony was invited and received.
- B. The public hearing held by the Planning Commission was advertised by a one-quarter page display ad published on August 11, 2005 in The Beach Reporter, a newspaper of general circulation in Manhattan Beach.
- C. Pursuant to applicable law, the City Council conducted a duly noticed public hearing on September 20, 2005 regarding the Planning Commission's recommendation regarding the proposed Code Amendments (Resolution PC 05-11) related to revisions to the tree preservation regulations, and public testimony was invited and received.
- D. The public hearing held by the City Council was advertised by a one-quarter page display ad published on September 1, 2005 in The Beach Reporter, a newspaper of general circulation in Manhattan Beach and notice was mailed to interested parties of record.
- E. The applicant for the subject project is the City of Manhattan Beach.
- F. The purpose of the proposed Amendments includes but is not limited to:
 - a. Continue to encourage the retention and preservation of trees while permitting the reasonable enjoyment of private property;
 - b. Provide internal consistency within the existing Tree Preservation regulations;
 - c. Ensure that the purpose as stated within the regulations is met;
 - d. Preservation and retention of trees for future generations;
 - e. Adequate size replacement trees in relationship to the size of trees that are removed; and,
 - f. Consistency with other Code provisions and current practices, including but not limited to street tree provisions.

The City Council also finds as follows:

- a. Removal of trees in certain zones requires a permit to be issued by the Director of Community Development;
 - b. An exemption to this requirement is provided for when an "emergency" exists;
 - c. Because this section is vague as to what constitutes an "emergency" it is susceptible to abuse by those wishing to rid themselves of unwanted trees who cannot otherwise obtain a permit.
 - d. It is therefore in the best interests of the general public health, safety and welfare with regard to the preservation of trees to amend this exemption to clarify when a tree may be removed for "emergency" reasons and to insure that public safety is the real reason.
- G. Pursuant to the California Environmental Quality Act (CEQA) and the Manhattan Beach CEQA Guidelines, the subject Amendments are exempt in that they are covered by the general rule that CEQA [Section 15061 (3)] only applies to projects which have the potential for causing a significant effect on the environment, and since it can be seen with certainty that there is no possibility that the

activity will have a significant effect on the environment, the activity is not subject to CEQA; and,

- H. The proposed amendments have been prepared in accordance with the provisions of Title 7, Division 1, Chapter 4, Section No. 65853, et seq., of the State of California Government Code.
- I. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- J. The proposed amendment to the Title 10 of the Municipal Code (Zoning Ordinance) is consistent with the following goals and policies of the Manhattan Beach General Plan as follows:

Goal LU-2: Encourage the provision and retention of private landscaped open space.

Policy LU-2.3: Protect existing mature trees throughout the City, and encourage their replacement with specimen trees whenever they are lost or removed.

Goal LU-3: Achieve a strong, positive community aesthetic.

Goal CR-4: Preserve the existing landscape resources in the City, and encourage the provision of additional landscaping.

Policy CR-4.1: Protect existing mature trees throughout the City and encourage their replacement with specimen trees whenever they are lost or removed.

Policy CR-4.3: Recognize that landscaping, and particularly trees, provide valuable protection against air pollution, noise, soil erosion, excessive heat, and water runoff, and that they promote a healthy environment.

Policy CR-4.4: Review the tree ordinance to consider its application citywide and to determine the need to strengthen tree preservation criteria.

Policy CR-4.5: Discourage the reduction of landscaped open space and especially the removal of trees from public and private land.

SECTION 2. The City Council of the City of Manhattan Beach hereby APPROVES the proposed amendment to Section 10.52.120 (Tree preservation and restoration in residential zones, Area Districts I and II) of the Manhattan Beach Municipal Code as follows:

“10.52.120 Tree Preservation and Restoration in Residential Zones Area Districts I and II

“A. Purpose. Tree preservation is necessary for the health and welfare of the citizens of the City of Manhattan Beach in order to provide cooling shade and beauty, increase property values, minimize spread of disease to healthy trees, conserve scenic beauty, prevent erosion of topsoil, protect against flood hazards, counteract pollutants in the air, and generally maintain the climatic and ecological balance of the area. The design of residences, including grading, driveways, walkways, patios, utilities and right-of-way improvements, shall consider and accommodate existing protected trees when feasible. The intent of this section is the retention and preservation of trees while permitting the reasonable enjoyment of private property.

B. General Requirements.

1. Except as provided in subsection G (Exemptions), no person shall directly or indirectly remove or cause to be removed, any protected tree as herein defined, from residentially zoned properties within Area Districts I and II, without first obtaining a permit to do so in accordance with the procedures set forth in this section.

2. No person shall directly or indirectly neglect, abuse, damage, mutilate, injure or harm any protected tree as herein defined, from residentially zoned properties within Area Districts I and II.

C. Definitions.

1. "Protected tree" shall include: any species of tree, the trunk of which is located at least partially within the required front or streetside yard of a site, with a trunk diameter of six inches (6") or

multiple trunks totaling six inches (6") in diameter or greater at a height of four and one-half feet (4.5') from existing grade; and any replacement tree required pursuant to this section.

2. A "tree permit" is a permit required for the removal or replacement of a protected tree.
3. A "tree plan" shall mean a plot plan (scale 1/8 inch = 1 foot, minimally) with all trees on the subject property identified by location, size and species, including:
 - a. footprint of all existing and proposed buildings and/or additions to buildings on the property
 - b. location of all trees within the front yard
 - c. size (diameter and height) and species of each tree
 - d. location of drip line for each tree
 - e. designation of tree(s) to be removed, saved, and/or replaced
 - f. proposed location, size and type of replacement tree(s)
 - g. photos of all trees in front and streetside yards.

D. Preservation of Trees During Grading and Construction Operations.

1. All trees located in the streetside yard with a trunk diameter of six inches (6") or multiple trunks totaling six inches (6") in diameter or greater, and all trees located in the front yard with a six (6") inch to less than twelve (12") inch trunk diameter at a height of four and one-half feet (4.5') from existing grade, may be removed with prior approval of a tree permit provided they are replaced in accordance with the provisions of this Section.

2. All trees located in the front yard with a twelve (12") inch or greater trunk diameter at a height of four and one-half feet (4.5') from existing grade, shall be protected and may be only be removed with prior approval of a tree permit provided they are replaced in accordance with the provisions of this Section.

3. Trees required to be retained shall be protected during demolition, grading, and construction operations by methods subject to the approval of the Community Development Director.

4. Care shall be exercised for trees to be preserved so that no damage occurs to said trees. All construction shall preserve and protect the health of trees:

- a. Remaining in place
- b. Being relocated
- c. Planted to replace those removed
- d. Adjacent to the subject property.

5. Any tree which is adjacent to the subject property and may be potentially impacted by construction activity on the subject property shall be protected pursuant to the provisions of this chapter.

6. No construction, including structures, paving, and walls, that disrupts the root system on private as well as public property, shall be permitted without prior approval by the Community Development Director. As a guideline, no cutting of roots over 2 inches in diameter should occur within the drip line of the tree as measured at ground level. Required public right-of-way improvements shall take priority over tree preservation, however alternative designs and materials, including but not limited to permeable surfaces and planter areas with irrigation, shall be considered and implemented as feasible. Where some root removal is necessary as approved by the City the tree crown may require thinning to prevent wind damage.

7. No fill material shall be placed within the drip line of any tree.

8. The Community Development Department may impose special measures determined necessary to preserve and protect the health of trees to remain on site.

E. Tree Permit Applications - without Building Permit.

1. Any person desiring to remove one or more protected trees shall obtain a Tree Permit from the Community Development Department. A fee, as specified in the City's Fee Resolution, shall be required for a Tree Permit.

2. Tree Permit applications shall include a Tree Plan, and written proof of neighbor notification pursuant to applicable permit instructions and may also include ~~or~~ an arborist's report.

3. The Community Development Director, when approving tree permits, shall determine the adequacy and appropriateness of the submitted plan, neighbor input, and other related information.

F. Tree Permit - with Building Permit.

1. Application for a Building Permit shall require a Tree Permit as defined above, if protected trees are located on the property.

2. A Tree Permit shall be required if the proposed project may impact existing trees in the front or streetside yard of the subject property even though removal is not planned.

3. A fee, as specified in the City's Fee Resolution, shall be required for a Tree Permit.

G. Replacement Trees. Required replacement trees shall be minimum twenty-four inch (24") boxed trees for front yard trees with a six (6") inch to less than twelve (12") inch trunk diameter and all

streetside yard trees, and a minimum thirty-six inch (36") boxed trees for front yard trees with a twelve (12") inch or greater trunk diameter, of an appropriate species and must be planted prior to final inspection. Actual sizes, species, location, and quantities of replacement trees are subject to Community Development Director approval. In no case shall replacement tree quantities result in less than one protected tree per lot or thirty feet (30') of site frontage. If the Director of Community Development determines that there is not adequate room on the property for the required replacement tree(s), then an in-lieu fee to be deposited in the City's Tree Canopy Restoration Fund, or a similar fund,, equivalent to the amount of the actually estimated cost of the tree(s) including installation, may be required to be paid..

H. Exemptions. Tree removals and alterations exempt from the requirements of this section are as follows:

1. Removal in case of imminent emergency caused by the hazardous or dangerous condition of a tree, requiring immediate action for the safety of life or property (e.g., a tree about to topple onto a dwelling due to heavy wind velocities) with the prior approval of the Director of Community Development or his or her designee if a subsequent application for a Tree Permit is filed within five (5) working days.

2. Removal of any tree that is determined to be a public nuisance in accordance with Section 7.32.070, with prior approval of the Directors of Community Development and Public Works or his or her designee if a subsequent application for a Tree Permit is filed within five (5) working days.

3. Public Utility actions, under the jurisdiction of the Public Utilities Commission of the State of California, as may be necessary to comply with their safety regulations, or to maintain the safe operation of the facilities.

4. Cutting of tree branches and roots extending across property lines into adjacent property, to the extent that the pruning complies with the International Society of Arboriculture (ISA) standards and does not damage or potentially damage the health and structure of the tree(s).

I. Non-liability of City. Nothing in this Ordinance shall be deemed to impose any liability for damages or a duty of care and maintenance upon the City or upon any of its officers or employees. The person in possession of any private property shall have a duty to keep the trees upon the property and under his control in a safe and healthy condition.

J. Violation/Penalties. Violation of this chapter shall be punishable as a misdemeanor or an infraction subject to the discretion of the City Prosecutor with the following additional penalties:

1. Suspension, Revocation, and Restoration: In addition to any other penalties allowed by this Code, the Director of Community Development may suspend any Tree Permit. The Planning Commission or City Council may suspend the Tree Permit for a Discretionary Project upon a finding at a public hearing that a violation of conditions of approval has occurred.

2. Stop Work Orders: Whenever any construction or work is being performed contrary to the provisions of this section or condition of approval of the applicable discretionary project the Director of Community Development may issue a written notice to the responsible party to stop work on the project on which the violation has occurred or upon which the danger exists. The notice shall state the nature of the violation and the risk to the trees. No work shall be allowed until the violation has been rectified and approved by the Director of Community Development.

3. After-the-Fact Permit Fees: The standard permit fee shall be doubled for tree removals or other work requiring a tree permit pursuant to this section when commenced prior to issuance of said permit."

K. Administrative Fines. The Director of Community Development may impose a fine against any person who is in violation of any provision of this section. Such fine shall be a range as specified in the City fee Resolution. The proceeds of all administrative fines imposed under this section shall be placed in a "Tree Canopy Restoration Fund" to be used solely for the replacement and maintenance of trees in the public right of way or on public property within the City.

1. Any person upon whom a fine is considered to be imposed pursuant to this section shall be entitled to a written notice of the pending decision of the imposition of the fine within ten (10) calendar days of the decision of the imposition of the fine. The notice shall state the amount of the fine, the reason for the proposed imposition of the fine and the authority for imposing the fine. The notice shall also state that the person upon whom the fine is proposed to be imposed has a right to request a hearing to protest the proposed decision of imposition of the fine and the time and method by which a hearing may be requested.

2. Any person upon whom a fine authorized by this section is proposed to be imposed may request, in writing, a hearing to protest the proposed fine. The request must be filed with the City Clerk within ten (10) calendar days from the mailing date of the notice of the proposed fine. The failure to timely file a written request for a hearing shall constitute a waiver of the right to a hearing.

3. Upon timely receipt of a request for a hearing the City shall, within ten (10) calendar days of receipt of such a request hold a hearing to be presided over by the Director of Community Development or his or her designee. This presiding officer shall determine the procedure and rules for the conduct of the hearing. The ruling of the presiding officer, notwithstanding any other provision of this code shall be final.

4. If the Director determines that a fine is due, and the fine imposed by this section is not paid within fifteen (15) calendar days of its becoming due and payable the City may file a lien in the amount of the fine plus interest at the legal rate, which may be recorded on any property owned by the individual subject to the fine which is located in the City of Manhattan Beach.

5. In the event that a civil action is filed regarding any provision of this subsection "K" the City shall be entitled to attorney fees if it prevails.

SECTION 3. Pursuant to Government Code Section 66499.37, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this Ordinance and the City Council is served within 120 days of the date of this Ordinance.

SECTION 4. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 5. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other Ordinance of the City, to the extent that they are inconsistent with this Ordinance, and no further, are hereby repealed.

SECTION 6. This Ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 7. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 4th day of October, 2005.

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

RESOLUTION NO. PC 05-11

**RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MANHATTAN BEACH
RECOMMENDING APPROVAL OF AMENDMENTS
TO THE CITY ZONING CODE (SECTION 10.52.120)
TO REVISE THE TREE PRESERVATION
REGULATIONS**

**THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH
DOES HEREBY RESOLVE AS FOLLOWS:**

WHEREAS, on June 24, 2005, the City Council held a special session and developed the 2005-2007 Work Plan, and;

WHEREAS, on July 5, 2005, the City Council amended and formally adopted the 2005-2007 Work Plan, and;

WHEREAS, on July 26, 2005 the City Council and Planning Commission held a joint Work Plan meeting, and provided direction to revise the Tree Ordinance as one of the top priorities for the Department, and;

WHEREAS, pursuant to applicable law, the Planning Commission of the City of Manhattan Beach conducted a public hearing on August 24, 2005, on the proposed Code Amendments related to revisions to the Tree Preservation regulation, and;

WHEREAS, the public hearing was advertised pursuant to applicable law, testimony was invited and received, and;

WHEREAS, public noticing included a one-quarter page display ad in a newspaper of general circulation (Beach Reporter), and;

WHEREAS, the applicant for the subject project is the City of Manhattan Beach; and,

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) and the Manhattan Beach CEQA Guidelines, the subject Amendments are exempt in that they are covered by the general rule that CEQA [Section 15061 (3)] only applies to projects which have the potential for causing a significant effect on the environment, and since it can be seen with certainty that there is no possibility that the activity will have a significant effect on the environment, the activity is not subject to CEQA; and,

WHEREAS, the proposed amendments have been prepared in accordance with the provisions of Title 7, Division 1, Chapter 4, Section No. 65853, et seq., of the State of California Government Code.

WHEREAS, the Planning Commission finds that the project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the

RESOLUTION NO. PC 05-11

Fish and Game Code; and,

WHEREAS, the Planning Commission made the following findings with regard to the proposed changes:

1. The proposed amendments are consistent with the City of Manhattan Beach General Plan.

Goal LU-2: Encourage the provision and retention of private landscaped open space.

Policy LU-2.3: Protect existing mature trees throughout the City, and encourage their replacement with specimen trees whenever they are lost or removed.

Goal LU-3: Achieve a strong, positive community aesthetic.

Goal CR-4: Preserve the existing landscape resources in the City, and encourage the provision of additional landscaping.

Policy CR-4.1: Protect existing mature trees throughout the City and encourage their replacement with specimen trees whenever they are lost or removed.

Policy CR-4.3: Recognize that landscaping, and particularly trees, provide valuable protection against air pollution, noise, soil erosion, excessive heat, and water runoff, and that they promote a healthy environment.

Policy CR-4.4: Review the tree ordinance to consider its application citywide and to determine the need to strengthen tree preservation criteria.

Policy CR-4.5: Discourage the reduction of landscaped open space and especially the removal of trees from public and private land.

2. The purpose of the proposed amendments include, but are not limited to, the following:
 - A. Continue to encourage the retention and preservation of trees while permitting the reasonable enjoyment of private property;
 - B. Provide internal consistency within the existing Tree Preservation regulations;
 - C. Ensure that the purpose as stated within the regulations is met;
 - D. Preservation and retention of trees for future generations;
 - E. Adequate size replacement trees in relationship to the size of trees that are removed; and,
 - F. Consistency with other Code provisions and current practices, including but not limited to street tree provisions.

RESOLUTION NO. PC 05-11

3. The Planning Commission also finds as follows:
 - A. Removal of trees in certain zones requires a permit to be issued by the Director of Community Development;
 - B. An exemption to this requirement is provided for when an “emergency” exists;
 - C. Because this section is vague as to what constitutes an “emergency” it is susceptible to abuse by those wishing to rid themselves of unwanted trees who cannot otherwise obtain a permit.
 - D. It is therefore in the best interests of the general public health, safety and welfare with regard to the preservation of trees to amend this exemption to clarify when a tree may be removed for “emergency” reasons and to insure that public safety is the real reason.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Manhattan Beach hereby recommends **APPROVAL** of the proposed amendments to the Manhattan Beach Municipal Code (Section 10.52.120-Tree preservation and restoration in residential zones, Area Districts I and II) as follows:

“10.52.120 Tree Preservation and Restoration in Residential Zones Area Districts I and II

“A. **Purpose.** Tree preservation is necessary for the health and welfare of the citizens of the City of Manhattan Beach in order to provide cooling shade and beauty, increase property values, minimize spread of disease to healthy trees, conserve scenic beauty, prevent erosion of topsoil, protect against flood hazards, counteract pollutants in the air, and generally maintain the climatic and ecological balance of the area. The design of residences, including grading, driveways, walkways, patios, utilities and right-of-way improvements, shall consider and accommodate existing protected trees when feasible. The intent of this section is the retention and preservation of trees while permitting the reasonable enjoyment of private property.

B. General Requirements.

1. Except as provided in subsection G (Exemptions), no person shall directly or indirectly remove or cause to be removed, any protected tree as herein defined, from residentially zoned properties within Area Districts I and II, without first obtaining a permit to do so in accordance with the procedures set forth in this section.

2. No person shall directly or indirectly neglect, abuse, damage, mutilate, injure or harm any protected tree as herein defined, from residentially zoned properties within Area Districts I and II.

C. Definitions.

1. "Protected tree" shall include: any species of tree, ~~(excluding deciduous fruit-bearing trees and Washingtonia species palms)~~ the trunk of which is located at least partially within the required front or streetside yard of a site, with a trunk diameter of six inches (6") ~~twelve inches (12")~~ or multiple trunks totaling six inches (6") ~~twelve inches (12")~~ in diameter or greater at a height of four and one-half feet (4.5') from existing grade; and any replacement

RESOLUTION NO. PC 05-11

tree required pursuant to this section.

2. A "tree permit" is a permit required for the removal or replacement of a protected tree.

3. A "tree plan" shall mean a plot plan (scale 1/8 inch = 1 foot, minimally) with all trees on the subject property identified by location, size and species, including:

a. footprint of all existing and proposed buildings and/or additions to buildings on the property

b. location of all trees within the front yard

c. size (diameter and height) and species of each tree

d. location of drip line for each tree

e. designation of tree(s) to be removed, saved, and/or replaced

f. proposed location, size and type of replacement tree(s)

g. photos of all trees in front and *streetside* yards.

D. Preservation of Trees During Grading and Construction Operations.

1. *All trees located in the streetside yard with a trunk diameter of six inches (6") or multiple trunks totaling six inches (6") in diameter or greater, and all trees located in the front yard with a six (6") inch to less than twelve (12") inch trunk diameter at a height of four and one-half feet (4.5') from existing grade, may be removed with prior approval of a tree permit provided they are replaced in accordance with the provisions of this Section.*

2. *All trees located in the front yard with a twelve (12") inch or greater trunk diameter at a height of four and one-half feet (4.5') from existing grade, shall be protected and may be only be removed with prior approval of a tree permit provided they are replaced in accordance with the provisions of this Section.*

3. Trees required to be retained shall be protected during demolition, grading, and construction operations by methods subject to the approval of the Community Development Director.

4. Care shall be exercised for trees to be preserved so that no damage occurs to said trees. All construction shall preserve and protect the health of trees:

a. Remaining in place

b. Being relocated

c. Planted to replace those removed

d. Adjacent to the subject property.

5. Any tree which is adjacent to the subject property and may be potentially impacted by construction activity on the subject property shall be protected pursuant to the provisions of this chapter.

6. No construction, including structures, *paving*, and walls, that disrupts the root system *on private as well as public property*, shall be permitted without prior approval by the Community Development Director. As a guideline, no cutting of roots *over 2 inches in diameter* should occur within the drip line of the tree as measured at ground level. *Required public right-of-way improvements shall take priority over tree preservation, however alternative designs and materials, including but not limited to permeable surfaces and planter areas with irrigation, shall be considered and implemented as feasible.* Where some root removal is necessary as approved by the City the tree crown may require thinning to prevent wind damage.

7. No fill material shall be placed within the drip line of any tree.

8. The Community Development Department may impose special measures determined necessary to preserve and protect the health of trees to remain on site.

E. Tree Permit Applications - without Building Permit.

1. Any person desiring to remove one or more protected trees shall obtain a Tree Permit from the Community Development Department. A fee, as specified in the City's Fee Resolution, *shall may* be required for a Tree Permit.

2. Tree Permit applications shall include a Tree Plan, and written proof of

RESOLUTION NO. PC 05-11

neighbor notification pursuant to applicable permit instructions and may also include ~~or~~ an arborist's report, or verification of a potential safety risk.

3. The Community Development Director, when approving tree permits, shall determine the adequacy and appropriateness of the submitted plan, neighbor input, and other related information.

F. Tree Permit - with Building Permit.

1. Application for a Building Permit shall may require a Tree Permit Plan as defined above, if protected trees are located on the property.

2. A Tree Permit shall be required if the proposed project may impact existing trees in the front or streetside yard of the subject property even though removal is not planned.

3. A fee, as specified in the City's Fee Resolution, shall be required for a Tree Permit.

G. **Replacement Trees.** Required replacement trees shall be minimum twenty-four inch (24") boxed trees for front yard trees with a six (6") inch to less than twelve (12") inch trunk diameter and all streetside yard trees, and a minimum thirty-six inch (36") boxed trees for front yard trees with a twelve (12") inch or greater trunk diameter, of an appropriate species and must be planted prior to final inspection. Actual sizes, species, location, and quantities of replacement trees are subject to Community Development Director approval. In no case shall replacement tree quantities result in less than one protected tree per lot or thirty feet (30') of site frontage storage-If the Director of Community Development determines that there is not adequate room on the property for the required replacement tree(s), then an in-lieu fee to be deposited in the City's Tree Canopy Restoration Fund, or a similar fund., equivalent to the amount of the actually estimated cost of the tree(s) including installation, may be required to be paid..

H. **Exemptions.** Tree removals and alterations exempt from the requirements of this section are as follows:

1. Removal in case of imminent emergency caused by the hazardous or dangerous condition of a tree, requiring immediate action for the safety of life or property (e.g., a tree about to topple onto a dwelling due to heavy wind velocities) with the prior approval of the Director of Community Development or his or her designee if a subsequent application for a Tree Permit is filed within five (5) working days.

2. Removal of any tree that is determined to be a public nuisance in accordance with Section 7.32.070, with prior approval of the Directors of Community Development and Public Works or his or her designee if a subsequent application for a Tree Permit is filed within five (5) working days.

~~2. Removal of deciduous, fruit-bearing trees, Washingtonia robusta, or Washingtonia filifera.~~

3. Public Utility actions, under the jurisdiction of the Public Utilities Commission of the State of California, as may be necessary to comply with their safety regulations, or to maintain the safe operation of the facilities.

4. Cutting of tree branches and roots extending across property lines into adjacent property, to the extent that the pruning complies with the International Society of Arboriculture (ISA) standards and does not damage or potentially damage the health and structure of the tree(s).

I. **Non-liability of City.** Nothing in this Ordinance shall be deemed to impose any liability for damages or a duty of care and maintenance upon the City or upon any of its officers or employees. The person in possession of any private property shall have a duty to keep the trees upon the property and under his control in a safe and healthy condition.

J. **Violation/Penalties.** Violation of this chapter shall be punishable as a misdemeanor or an infraction subject to the discretion of the City Prosecutor with the following additional penalties:

RESOLUTION NO. PC 05-11

1. **Suspension, Revocation, and Restoration:** In addition to any other penalties allowed by this Code, the Director of Community Development may suspend any Tree Permit. The Planning Commission or City Council may suspend the Tree Permit for a Discretionary Project upon a finding at a public hearing that a violation of conditions of approval has occurred.

2. **Stop Work Orders:** Whenever any construction or work is being performed contrary to the provisions of this section or condition of approval of the applicable discretionary project the Director of Community Development may issue a written notice to the responsible party to stop work on the project on which the violation has occurred or upon which the danger exists. The notice shall state the nature of the violation and the risk to the trees. No work shall be allowed until the violation has been rectified and approved by the Director of Community Development.

3. **After-the-Fact Permit Fees:** The standard permit fee shall be doubled for tree removals or other work requiring a tree permit pursuant to this section when commenced prior to issuance of said permit.”

K. Administrative Fines. The Director of Community Development may impose a fine against any person who is in violation of any provision of this section. Such fine shall be a range as specified in the City fee Resolution. The proceeds of all administrative fines imposed under this section shall be placed in a “Tree Canopy Restoration Fund” to be used solely for the replacement and maintenance of trees in the public right of way or on public property within the City.

1. Any person upon whom a fine is considered to be imposed pursuant to this section shall be entitled to a written notice of the pending decision of the imposition of the fine within ten (10) calendar days of the decision of the imposition of the fine. The notice shall state the amount of the fine, the reason for the proposed imposition of the fine and the authority for imposing the fine. The notice shall also state that the person upon whom the fine is proposed to be imposed has a right to request a hearing to protest the proposed decision of imposition of the fine and the time and method by which a hearing may be requested.

2. Any person upon whom a fine authorized by this section is proposed to be imposed may request, in writing, a hearing to protest the proposed fine. The request must be filed with the City Clerk within ten (10) calendar days from the mailing date of the notice of the proposed fine. The failure to timely file a written request for a hearing shall constitute a waiver of the right to a hearing.

3. Upon timely receipt of a request for a hearing the City shall, within ten (10) calendar days of receipt of such a request hold a hearing to be presided over by the Director of Community Development or his or her designee. This presiding officer shall determine the procedure and rules for the conduct of the hearing. The ruling of the presiding officer, notwithstanding any other provision of this code shall be final.

4. If the Director determines that a fine is due, and the fine imposed by this section is not paid within fifteen (15) calendar days of its becoming due and payable the City may file a lien in the amount of the fine plus interest at the legal rate, which may be recorded on any property owned by the individual subject to the fine which is located in the City of Manhattan Beach.

5. In the event that a civil action is filed regarding any provision of this subsection “K” the City shall be entitled to attorney fees if it prevails.

RESOLUTION NO. PC 05-11

SECTION 3. Pursuant to Government Code Section 66499.37, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.

SECTION 4. If any sentence, clause, or phrase of this resolution is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this resolution. The Planning Commission hereby declares that it would have passed this resolution and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 5. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other resolution of the City, to the extent that they are inconsistent with this resolution, and no further, are hereby repealed.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of August 24, 2005 and that said Resolution was adopted by the following votes:

AYES: Chair Savikas, Vice-Chairman Simon,
Commissioners Schlager, Bohner, and Lesser
NOES: None
ABSENT: None
ABSTAIN: None

RICHARD THOMPSON
Secretary to the Planning Commission

SARAH BOESCHEN
Recording Secretary

CITY OF MANHATTAN BEACH
MINUTES OF THE REGULAR MEETING OF THE PLANNING COMMISSION
AUGUST 24, 2005

1
2 **05/0824.2 Zoning CODE AMENDMENT to the Tree Preservation Regulations (Section**
3 **10.52.120) and Related Code Sections, to Revise the Tree Preservation**
4 **Regulations**
5

6 Director Thompson indicated that the issue is a work plan item, and the Planning Commission
7 will be involved in regulating trees on private property.
8

9 Senior Planner Jester summarized the staff report. She stated that the original Ordinance was
10 originally adopted in 1993 and was expanded in 2003 to apply to all of Area Districts I and II.
11 She pointed out that Area Districts III and IV, which include the beach areas, are excluded. She
12 commented that the City Council indicated in July of 2003 that they consider the Ordinance to
13 apply to the preservation rather than a removal and replacement of trees. She commented that
14 there were two appeals of staff's decision on Tree Permits earlier in 2005. She stated that staff
15 provided the Council with a status report, and the issue was placed on the work plan.
16

17 Senior Planner Jester stated that the purpose of the Ordinance is to preserve the City's scenic
18 beauty; prevent erosion; protect against flooding; counteract pollutants; and to maintain climatic
19 and ecologic balance. She indicated that the intent is to retain and preserve existing trees;
20 however, there is a balance of permitting the reasonable enjoyment of private property. She
21 commented that the current regulations protect trees in front yards that are 12 inches or larger in
22 trunk diameter measured 4 ½ feet above ground. She commented that any replacement trees are
23 also protected. She indicated that there currently are exemptions for deciduous fruit bearing trees
24 and the Washingtonia species of palm trees. She pointed out that there are some species of trees
25 that produce a large canopy but have a narrow trunk diameter that are not protected under the
26 Ordinance.
27

28 Senior Planner Jester stated that staff works with architects contractors on preserving existing
29 trees to ensure that the root system out to the drip line is protected; grading and paving is limited;
30 utility locations are considered; and right of way improvements are considered. She stated that as
31 part of the Tree Permit Application, people are required to submit photographs of the tree; a site
32 plan; a survey; reasoning for the removal request; and information regarding the type of tree
33 proposed for replacement. She commented that the City's consulting arborist will sometimes
34 help with site inspections and recommendations. She indicated that staff will recommend
35 removal if a tree is determined to be unhealthy or hazardous. She commented that staff will also
36 allow removal and replacement in instances where a tree greatly impacts development on a site,
37 such as a tree directly in the center of a narrow lot. She stated that during the permit review
38 process, staff considers the health of the subject tree; the growth habits; past pruning; location of
39 the tree on site; the type of species; any damage that the tree has caused to private property; any
40 damage that the tree has caused to public property; and view protection if located along a walk-
41 street. She said that decisions regarding Tree Permits are made by the Community Development

PLANNING COMMISSION MINUTES

August 24, 2005

Page 2

1 Director, are appealable to the Planning Commission, and are received and filed by the City
2 Council.

3
4 In response to a question from Chairperson Savikas, Senior Planner Jester indicated that
5 replacement trees are considered on a case by case basis.

6
7 Senior Planner Jester indicated that the Code currently includes a provision for emergency
8 removal by which a permit is granted after a tree is removed, and the Ordinance is proposed to be
9 changed to require a Tree Permit prior to any removal. She commented that staff does not
10 foresee instances where a tree must be removed immediately or else it will create major damage,
11 and staff wants to prevent abuse of the emergency provision.

12
13 Director Thompson said that staff has not experienced a situation where there was not sufficient
14 time before a tree falls for staff to inspect a tree and make a determination that it needs to be
15 removed. He said that there have been instances where people have asked for removal of a tree
16 on an emergency basis and staff went to the site and granted approval quickly. He said that the
17 proposed language helps to prevent developers from abusing the emergency provision.

18
19 Senior Planner Jester indicated that deciduous fruit bearing trees and Washingtonia Palms
20 (California and Mexican fan palms) are currently exempt from the Tree Ordinance. She stated
21 that staff is proposing no exemptions and that trees be reviewed on an individual basis. She
22 commented that the largest issue with fruit bearing trees and palms is rodents, and many of them
23 have very small trunk diameters. She commented that in many instances palm trees are
24 relocated. She pointed out that trees that are currently exempt do not require a replacement, and
25 all trees that are removed would require a replacement with none being exempt as proposed.

26
27 Senior Planner Jester stated that trees with a 12 inch or greater trunk diameter are currently
28 protected under the Ordinance, and any trees that are removed require replacement with a
29 minimum 24-inch box tree. She stated that the new regulations would include that trees with a 6-
30 12 inch trunk diameter may be removed but must be replaced with a 24 inch box tree. She
31 indicated that with a 12 inch trunk and larger diameter would still be protected consistent with
32 the current regulations and must be replaced with a 36 inch box tree if approved to be replaced.
33 She commented that staff is recommending that the Commission consider allowing the applicant
34 to pay a fee to the City's Tree Canopy Restoration Fund in lieu of planting required replacement
35 trees if it is determined that it is not feasible to physically fit replacement trees on a site. She said
36 that the people who illegally remove trees are required to pay the amount at which the removed
37 tree is appraised, and the difference between the appraisal amount and the cost of the replacement
38 tree is put into the fund. She indicated that the fund is used to plant trees in parks and parkways
39 and to evaluate the health of trees in the City.

40

PLANNING COMMISSION MINUTES

August 24, 2005

Page 3

1 Commissioner Lesser asked whether the new provision would discourage homeowners from
2 planting trees because they do not want the City to regulate their landscaping, particularly the
3 new requirement that smaller trees between 6 and 12 inches must be replaced.

4
5 Senior Planner Jester said that the type of and location of replacement trees are typically the
6 decision of the property owner, and there are very few instances where staff has made a decision
7 that a particular tree would not be feasible in a certain location. She said that generally people
8 want to upgrade their properties and have trees; however there are some instances where the
9 homeowner is unhappy with the appearance or location of an existing tree.

10
11 Senior Planner Jester stated that trees on the long street side setback of corner lots outside of the
12 designated front yard setback are currently not protected, and staff is recommending replacement
13 of such trees be required with a minimum 24 inch box tree. She stated that the City Attorney has
14 suggested that administrative fines be imposed for violations.

15
16 In response to a question from Commissioner Bohner, Senior Planner Jester stated that the Public
17 Works Department often identifies trees that are being removed in violation of the Ordinance.
18 She indicated that violations are also identified if surveys done for a project show a tree and there
19 is no tree on site when the property is inspected. She indicated that neighbors also occasionally
20 will inform staff of violations.

21
22 In response to a question from Commissioner Lesser, Senior Planner Jester said that staff does
23 not feel there is an issue with enforcement of the proposed new standards of requiring a
24 replacement for smaller trees. She stated that staff has a great deal of outreach with contractors
25 and architects.

26
27 In response to a question from Commissioner Bohner, Senior Planner Jester stated that the
28 general consensus of the public response is in support of the Tree Ordinance. She said that there
29 have been some comments that it is over-regulating; however, they have generally been from
30 people who feel that the City should not control the size, height and setbacks on private property.
31 She indicated that the largest issue staff has with developers is with existing trees interfering with
32 their desired design for a property.

33
34 Senior Planner Jester indicated that the purpose section of the Ordinance is proposed to be
35 expanded to include that the design of residences should consider existing trees and that tree
36 preservation increases property values, provides cooling, shade, and beauty, and minimizes
37 spread of diseases by removing unhealthy trees. She indicated that language is also being added
38 which parallels the Public Works Street Tree Section that intentional damage neglect, or abuse of
39 trees is a violation of the Ordinance. She commented that staff has suggested to the Council that
40 pruning standards be established because trees can be severely damaged or can die if pruned to

PLANNING COMMISSION MINUTES

August 24, 2005

Page 4

1 severely and not to correct standards; however the Council felt it was too extreme.

2
3 Director Thompson commented that the City does not have the staff to enforce standards for
4 pruning trees, and it would be extremely difficult for staff to make the determination whether
5 pruning was done incorrectly.

6
7 Commissioner Simon commented that he has a concern with Item D(6) on page 4 of the
8 Resolution which is proposed to be revised from the original Ordinance to read: “No
9 construction, including structures, paving, and walls, that disrupts the root system on private as
10 well as public property shall be permitted without prior approval by the Community
11 Development Director.” He indicated that his understanding is that covering a root system can
12 disrupt it, and a property owner adding bricks to their front yard setback would require approval
13 under the new guidelines if adjacent a protected tree. He commented that his understanding is
14 that the new regulations would allow trees to be cut down within the streetside setback of corner
15 lots but would prohibit trees in the same areas from being damaged by covering the root systems,
16 which seems inconsistent.

17
18 In response to a question from Commissioner Simon, Senior Planner Jester indicated that the
19 suggestion of adding the wording to include public property was to tie in public improvements
20 with private property. She commented that there typically are not requests to pave the entire
21 front setback. She commented that paving typically does require approval, and the proposed
22 language is consistent with Public Works requirements that restricts paving over tree roots in the
23 public right of way.

24
25 Chairperson Savikas opened the public hearing.

26
27 There being no-one wishing to speak regarding the item, Chairperson Savikas closed the public
28 hearing.

29
30 Commissioner Lesser stated that he is troubled with certain aspects and the overall impact with
31 some of the proposed regulations. He stated that some trees planted by a prior owner are not
32 appropriate for a particular location even after they reach a certain size. He said that he is not
33 certain that under the proposed revisions would provide adequate consideration for requests to
34 remove trees that continually interfere with drains and plumbing.

35
36 Senior Planner Jester commented that ficus tree roots are extremely destructive root systems to
37 sewers, sidewalks, and structures. She indicated that it was decided not to list them as exempt
38 because that would mean their removal would not require a replacement. She indicated that she
39 does not foresee an instance where replacement of a ficus for a different type of tree would not be
40 granted.

PLANNING COMMISSION MINUTES

August 24, 2005

Page 5

1
2 Commissioner Lesser asked if it would be difficult under the new guidelines to be granted
3 approval for removal of a tree interfering with the foundation of a home if the tree was within the
4 front setback.

5
6 Senior Planner Jester stated that trees that are causing or are very likely to cause structural
7 damage will be granted approval for removal. She said that approval is not granted for requests
8 to remove trees because the roots are cracking sidewalks, expanding into lawns, or because the
9 property owner wishes to eliminate falling leaves into their yard.

10
11 Commissioner Lesser commented that he was approached by a member of the community who
12 expressed a concern regarding the new regulations of the City government overseeing what is
13 done to their property, particularly with the proposed new requirement that trees with a trunk
14 diameter of 6 to 12 inches must be replaced. He stated that he is comfortable with enforcement
15 of the proposed Ordinance by the current staff and Director; however, he has a concern with the
16 enforcement of the Ordinance in the future.

17
18 Director Thompson stated that requests for trees to be removed because of intrusion into sewers
19 and waterlines does not by itself justify removal of a tree. He said that staff also considers the
20 number of trees in the front yard and takes a practical approach in making decisions in applying
21 the Ordinance. He pointed out that there are also appeal rights to a decision that is made by the
22 Community Development Director.

23
24 Senior Planner Jester said that staff takes into consideration instances where there are too many
25 trees on a property and they are not all able to grow and thrive because of overcrowding.

26
27 Commissioner Schlager stated that staff's report is knowledgeable, and preservation the
28 Ordinance moves the City towards the goal of tree preservation.

29
30 Commissioner Bohner stated that the requested changes are reasonable. He commented that
31 there should be some oversight of people declaring after a tree has been removed that it had
32 created an emergency situation, and requiring someone from the City to oversee such situations is
33 not an overly burdensome requirement. He commented that the request to expand the type of
34 diameter of the trees and the nature of the trees that apply to the Ordinance is reasonable. He
35 said that there are sufficient checks on the discretion of the staff in denying requests to remove a
36 tree. He commented that the proposed changes to the Ordinance is a positive step forward in
37 preserving trees.

38
39 Commissioner Simon stated that he would support the idea of allowing the applicant to pay a fee
40 to the City's Tree Canopy Restoration Fund in lieu of planting replacement trees when

PLANNING COMMISSION MINUTES

August 24, 2005

Page 6

1 determined to be appropriate.

2

3 Chairperson Savikas asked regarding the risk to homeowners of tripping hazards because damage
4 to walkways from roots if the City denies removal of trees.

5

6 In response to a question from Chairperson Savikas, Senior Planner Jester stated that there are
7 different standards for public walkways and walkways on private property. She indicated that it
8 is easier to remove or repair a walkway and there are more options for types of paving materials
9 on private property than on public property.

10

11 Chairperson Savikas suggested applying a standard formula for fines.

12

13 Commissioner Bohner said that he is concerned with due process with not having some type of
14 formula quantified for fines. He said that there is an issue with not articulating the methodology
15 is in imposing a fine.

16

17 Director Thompson commented that people who violate the standards are the developers rather
18 than homeowners. He said that staff is not certain of establishing a standard that would prevent
19 intentional offenders from committing the same offense in the future except for the ability of the
20 City Attorney to file criminal charges, which is provided for in the proposed language. He
21 indicated that criminal charges would be more of a threat than imposing a fine on developers
22 who are repeat offenders. He indicated that staff will relay that the Commission had concerns
23 that the methodology for imposing the fine is not well articulated and should be more clearly
24 defined. He said that staff will also consider the issue further with the City Attorney.

25

26 Commissioner Schlager commented that he feels a fine of possibly \$10,000.00 to \$25,000.00
27 should be imposed to discourage people from intentionally violating the Ordinance.

28

29 Commissioner Bohner said that he would like for a formula for a fine to be articulated in the
30 Ordinance in some fashion. He said that he would be comfortable with providing direction to the
31 City Attorney to incorporate the appropriate language.

32

33 Director Thompson commented that most developers do comply. He said that it could be
34 forwarded to the Council if the consensus is for imposing a fine.

35

36 Senior Planner Jester pointed out that some trees are removed in violation by homeowners who
37 are genuinely unaware of the regulations, which is a very different situation from a developer
38 who intentionally violates the Ordinance.

39

40 Chairperson Savikas suggested that the City Attorney draft language which addresses the

PLANNING COMMISSION MINUTES

August 24, 2005

Page 7

1 violations which are intentional from developers and unintentional from property owners.

2
3 A motion was MADE and SECONDED (Schlager/Bohner) to **ADOPT** the draft Resolution
4 recommending the City Council approve Zoning CODE AMENDMENT to the Tree Preservation
5 Regulations (Section 10.52.120) and Related Code Sections, with the recommendations that
6 applicants be able to pay a fee to the City’s Tree Canopy Restoration Fund in lieu of planting
7 required replacement when determined to be appropriate; and that the City Attorney be directed
8 to review whether there is sufficient due process of procedures with regard to fining those who
9 show intent in removing trees.

- 10
- 11 AYES: Bohner, Lesser, Schlager, Simon, Chairperson Savikas
- 12 NOES: None
- 13 ABSENT: None
- 14 ABSTAIN: None

15
16 Director Thompson explained the 15-day appeal period and stated that the item and
17 Commission’s recommendations will be forwarded to the City Council as a public hearing at a
18 future date

19
20 **DIRECTOR’S ITEMS** None

21
22 **PLANNING COMMISSION ITEMS**

23
24 Chairperson Savikas the Second Annual Manhattan Beach Mayors’ Golf Tournament is Monday,
25 October 10 at Candlewood Country Club. She commented that the phone number for further
26 information is (310) 344-0697.

27
28 **TENTATIVE AGENDA: September 14, 2005**

29
30 **Use Permit for a Proposed Commercial Project at 222 North Sepulveda**

31
32 **ADJOURNMENT**

33
34 The meeting of the Planning Commission was **ADJOURNED** at 8:15p.m. in the City Council
35 Chambers, City Hall, 1400 Highland Avenue, to Wednesday, September 14, 2005, at 6:30 p.m.
36 in the same chambers.

37
38
39 _____
40 RICHARD THOMPSON
Secretary to the Planning Commission

SARAH BOESCHEN
Recording Secretary

**CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Planning Commission

THROUGH: Richard Thompson, Director of Community Development

FROM: Laurie B. Jester, Senior Planner

DATE: August 24, 2005

SUBJECT: City Council 2005-2007 Work Plan item: Zoning Code Amendment to the Tree Preservation regulations (Section 10.52.120 of the Zoning Code) and related Code sections, to revise the Tree Preservation regulations. (City of Manhattan Beach)

RECOMMENDATION

Staff recommends that the Planning Commission **CONDUCT** the **PUBLIC HEARING, DISCUSS**, and **ADOPT** a Resolution (Exhibit A) recommending to the City Council approval of revisions to the Zoning Code related to the Tree Preservation Ordinance. At the Planning Commission meeting staff will provide a Powerpoint presentation with photographs of trees as they relate to the Tree Preservation regulations.

BACKGROUND:

The City's Tree Preservation Ordinance was originally adopted August 19, 1993 (Ordinance No. 1884), and is included as Section 10.52.120 of the Zoning Code (Exhibit B). At that time, the Ordinance applied only to the Tree Section, generally bounded by Rosecrans Avenue, Blanche Road, Valley Drive and Sepulveda Boulevard. The Ordinance protects all trees, except deciduous fruit-bearing trees and Washingtonia species palms, with a 12" or greater trunk diameter located in the front yard. At that time the Ordinance was implemented more as a "removal and replacement" regulation than a "preservation" regulation.

On May 6, 2003, the Ordinance was expanded (Ordinance No. 2045) to apply to all of the residential zones in Area Districts I and II; the Beach Area is not covered by the Tree Ordinance (Exhibit C). The Purpose Section states that "Tree Preservation is necessary for the health and welfare of the citizens of the City of Manhattan Beach in order to conserve scenic beauty, prevent the erosion of topsoil, protect against flood hazards, counteract pollutants in the air, and generally maintain the climatic and ecological balance of the area. The intent of this section is the retention and preservation of trees while permitting the reasonable enjoyment of private property." With the expansion of the Tree Ordinance, planning staff began implementing the regulation as a "preservation" regulation, not a "removal and replacement" regulation as previously implemented.

After the adoption of the expanded Tree Ordinance, the City Council and Planning Commission held a joint meeting on July 22, 2003 to discuss a variety of planning issues, including the Tree

Ordinance. At that meeting the City Council confirmed that the Ordinance was intended to preserve trees, and that Staff should continue to enforce the Ordinance accordingly.

On May 3, 2005 the City Council heard the first two appeals of staff decisions on Tree Permits and at that time the Council requested that staff bring back a report on the status of the Tree Ordinance.

On June 24, 2005, the City Council held a special session and developed the 2005-2007 Work Plan which was then amended and formally adopted on July 5, 2005 and included this Work Plan item related to revisions of the Tree Ordinance. At the July 5th meeting a status report and review of the Tree Ordinance was also considered by the City Council and the Council provided direction on revisions to the regulations. On July 26, 2005 the City Council and Planning Commission held a joint meeting and the City Council provided direction to revise the Tree Ordinance as one of the top Work Plan priorities for the Department.

DISCUSSION:

Tree Permit Process

Staff works with architects, developers and contractors during the design of a home, including the design of grading, walkways, patios, utilities and right-of-way improvements, and throughout construction to ensure that new construction considers and protects existing trees that are protected under the Ordinance. The Code requires that the root system within the dripline of the tree be protected during construction as this is critical to maintaining the health of the tree. The attached July 5th City Council staff report (Exhibit D) provides a complete description of the Tree Permit process.

Applications for a tree permit typically include notification signatures from neighbors and/or an arborist's written recommendation that the tree should be removed. Decisions on Tree Permits are made by the Director of Community Development, with input from the Public Works Department and city arborist when necessary, and the Director's decision is appealable to the Planning Commission. The Planning Commission's decision on an appeal is then placed on the City Council consent agenda as a receive and file item unless it is pulled for discussion.

Tree permits for dead or unhealthy trees typically require little review or concern. Proposed tree removals related to construction projects involve more review, and staff encourages retention of protected trees in the design process. If no alternatives are available to preserve the tree, then Staff typically approves the application. Any tree that is removed is required to be replaced with a minimum 24 inch box size tree. The Code states that the size, quantity and species of replacement trees are subject to approval of the Director of Community Development. Replacement trees are required to be installed prior to the issuance of a building final on a project. If there is no construction associated with the tree removal, typically replacement is required within a 1-3 month time frame.

Staff does not approve removal of trees if they are only causing minor damage to a property or for aesthetic, leaf litter, or sap concerns. If a tree is causing structural damage to a home and there are no reasonable options to address the situation, then staff will approve removal. Trees on

private or public property that constitute a danger to the improvements or people in the public right-of-way are addressed by the public tree regulations (Chapter 7.32) and are required to be removed. Trees on walkstreets in the encroachment area, where the public property is used for private gardens and patios, are regulated by Chapter 7.36. These regulations limit landscaping to 42 inches maximum in height to protect views and if valid complaints are received then existing trees are required to be trimmed or removed. New trees and landscaping over 42 inches in height are not allowed in the encroachment area.

When trees are removed illegally, staff follows through with Code Enforcement and the City Attorney as necessary, and works with property owners and developers to ensure that trees are replaced with large specimen box size trees. A “Tree Canopy Restoration Fund” has been established so that when trees are removed illegally and fines are assessed, the fines are deposited into this fund. The fund may then be used to evaluate the health of trees and plant new trees throughout the City to compensate for the loss and to help re-establish and enhance the tree canopy throughout the City in the future.

Proposed Ordinance Revisions

At the July 5th City Council meeting the Council directed staff to revise the Tree Ordinance to address the following issues. Planning staff worked with the City Attorney, the Public Works Department, and the city arborist to develop the revisions. The revised Code language is included as red-line strikeout text in the attached draft Resolution (Exhibit A).

Emergency Removal

The Exemptions section of the Code (Section 10.52.120 H. 1.) currently allows removal of trees in cases of emergency caused by hazardous or dangerous conditions of a tree, requiring immediate action for the safety of life or property. This section requires that a Tree Permit application then be submitted within five working days after removal of a tree. The revised language requiring approval by the Director of Community Development prior to removal. The City Attorney is recommending this revision as this section is vague as to what constitutes an “emergency” and it is susceptible to abuse by those wishing to rid themselves of unwanted trees who cannot otherwise obtain a permit.

Trees on Adjacent Properties

There are two sections of the Code that address trees on adjacent properties that conflict. In one Section (10.52.120 D), trees that are on adjacent properties that could potentially be impacted by construction are required to be protected. In the Exemption Section (10.52.120 H. 4), the cutting of tree branches and root extending across property lines onto adjacent properties are exempt from the regulations. City Council agreed with staff that adjacent property trees should be reasonably protected and any pruning of branches or roots that could potentially damage the health of trees should not be allowed or a Tree Permit could be required to evaluate potential impacts.

Trees Exempt from Protection

Section 10.52.120 H. 2 of the Tree Preservation regulations exempts deciduous fruit bearing trees, such as peaches, plums, nectarines, cherries, and apples, and two Palm trees, *Washingtonia robusta*, Mexican Fan Palm, and *Washingtonia filifera*, the California Fan

Palm, from the protection regulations. This section has been modified so that no trees with a trunk diameter of 12 inches or greater are exempt from the ordinance. This gives staff the ability to evaluate each removal request on an individual basis and then make a determination if removal and replacement is appropriate.

Protected tree size and replacement size

The City Council also recommended that staff explore protecting trees with less than a 12” trunk diameter, possibly using criteria based on a ratio of trunk caliper, tree height and canopy spread. The Council also agreed with staffs suggestion to look at the size of replacement trees in relationship to the size of the trees that are being removed, again possibly using a ratio criteria. Staff discussed a number of options with the City Arborist ,and the Public Works Maintenance Superintendent , who is responsible for the City street and park trees, and staff researched various cities Codes on tree preservation. A ratio system would need to be very detailed and relate to individual tree species which staff believes would be much to complex for the public as well as staff.

As the goal of the tree preservation ordinance is the retention and preservation of trees, staff believes that smaller trees as well as existing larger trees should be protected. All trees provide a benefit by improving the aesthetics of the City, helping to clean the air, provide shade, and reduce glare and heat. When trees are removed and not replaced then these benefits are lost. If a tree is not protected under the ordinance then it can removed without a Tree Permit and is not required to be replaced. The smaller trees are the future, and staff believes that it is important to protect these smaller trees as well as the existing larger trees, to benefit the future as well as protect what we currently enjoy.

Therefore, staff would recommend that trees with a 6 to 12 inch trunk diameter generally be allowed to be removed, however they would be required to be replaced with a 24 inch box size tree. Trees with a trunk diameter of 12 inches or greater would be protected consistent with current regulations, and if removed would be required to be replaced with a minimum 36 inch box tree. Trees with less than a 6 inch trunk diameter would not be protected and could be removed without a permit.

It may be difficult on some properties to replace all the trees that are removed when a new home is being constructed if there are several trees on the property. Sometime the driveway and the walkways take up a significant amount of area in the front yard and there only be room for one or two new replacement trees, particularly if one or more mature trees are being retained.

Staff would suggest that the Planning Commission consider allowing a different approach in lieu of replacement trees, if it is determined that it is not feasible to physically fit new replacement trees on a particular site. The applicant could be required to pay a fee to the city’s Tree Canopy Restoration Fund in lieu of planting all of the required replacement trees. As previously discussed, the fund is used to evaluate the health of trees and plant new trees throughout the City to compensate for the loss and to help re-establish and enhance the tree canopy throughout the City in the future. This provision has not been incorporated into the

revised regulations as it was not considered by the City Council, however staff would like the Commission to discuss this point and provide direction.

Street Side yard trees

The Tree Ordinance only protects trees in the 20 foot front yard setback. On corner lots the front setback is located adjacent to the shortest property line, so there is a long streetside setback in which the trees are not protected. Often these side setbacks have several large trees, particularly in the Tree Section. This sideyard setback is only three to five feet wide, and large trees, including the trunk, canopy and root systems, located in the streetside yard can encompass the entire sideyard and extend into the allowed building footprint area and the right-of way.

Protecting trees in this very narrow sideyard setback would impact the design and potentially the buildable floor area of homes. The Council directed staff to revise the regulations to not require that these streetside trees be protected, but require that they be replaced if they are removed. Staff suggests that these trees be replaced with a minimum 24 inch box size tree, and draft language is included within the attached draft resolution.

Violations and Penalties

Section 10.52.120 establishes standards for violations of the Tree Preservation standards. In addition to this section, staff and the City Attorney recommended to the City Council an administrative fine (Section 10.52.120 K.) for any violation of the tree preservation regulations. The Council supported this recommendation and the revisions as drafted by the City Attorney are included.

Right-of- Way Improvements

Excessive grading and paving in the dripline of tree can be detrimental to the root system of trees and potentially severely impact the health of a tree. Improvements in the right-of-way, such as retaining walls, parking pads and paving can be detrimental to private property trees. This is particularly an issue in areas were previously there was an open landscaped area which allows air, water and nutrients through to the tree roots which is essential for the health of the tree.

Public Works and Planning staff work together to look at alternative designs and materials in situations where right-of-way improvements may impact trees. Required public improvements take priority over preserving trees, however alternative designs will be used to preserve trees where feasible. Language has been added to the revised regulations to codify these current practices, as directed by the City Council.

Purpose

The purpose section has been expanded to discuss the design of residences, including grading, walkways, patios, utilities and right-of-way improvements, being required to consider and accommodate existing protected trees when feasible. The Purpose section of the street tree regulations (Section 7.32.010) provides other standards that have also been

incorporated into the Tree Preservation standards for private property, such as increase property values, provide cooling shade and beauty, and minimize spread of disease to healthy trees.

Miscellaneous revisions and abuse of trees

These revisions were not considered by the City Council, however while in the process of reviewing and revising the Code, staff felt that it was important to address these items. A few language changes that have been made throughout the regulations for consistency with current procedures and internal language consistency. These include revisions related to the arborist report, the tree plan, and replacement trees.

Additionally, the abuse or mutilation of trees can severely damage or kill a tree. The street tree regulations (Section 7.32.060) provides criteria for illegal abuse of trees, portions of which staff felt were appropriate to incorporate into the private property tree regulation, so new language has been added into Section 10.52.120 B.2 of the draft Resolution.

Pruning

There are no standards for pruning and improper pruning techniques can severely damage or kill a tree. Staff had suggested to the City Council that pruning should be required to be in accordance with the International Society of Arborists (ISA) standards. The City Council was not supportive of pruning criteria and therefore these standards have not been incorporated into the revisions.

CONCLUSION:

Staff requests that the Commission hold the public hearing and adopt the Resolution provided as Exhibit A, recommending to the City Council approval of the Code amendments.

- Attachments: A. Draft Planning Commission Resolution No. PC 05-XX
B. Section 10.52.120-Tree preservation and restoration in residential zones, Area Districts I and II
C. Map of area covered by Tree Ordinance- Area Districts I and II
D. City Council staff report, minutes, and attachments (duplicates deleted)- July 5, 2005

RESOLUTION NO. PC 05-XX

**RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MANHATTAN BEACH
RECOMMENDING APPROVAL OF AMENDMENTS
TO THE CITY ZONING CODE (SECTION 10.52.120)
TO REVISE THE TREE PRESERVATION
REGULATIONS**

**THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH
DOES HEREBY RESOLVE AS FOLLOWS:**

WHEREAS, on June 24, 2005, the City Council held a special session and developed the 2005-2007 Work Plan, and;

WHEREAS, on July 5, 2005, the City Council amended and formally adopted the 2005-2007 Work Plan, and;

WHEREAS, on July 26, 2005 the City Council and Planning Commission held a joint Work Plan meeting, and provided direction to revise the Tree Ordinance as one of the top priorities for the Department, and;

WHEREAS, pursuant to applicable law, the Planning Commission of the City of Manhattan Beach conducted a public hearing on August 24, 2005, on the proposed Code Amendments related to revisions to the Tree Preservation regulation, and;

WHEREAS, the public hearing was advertised pursuant to applicable law, testimony was invited and received, and;

WHEREAS, public noticing included a one-quarter page display ad in a newspaper of general circulation (Beach Reporter), and;

WHEREAS, the applicant for the subject project is the City of Manhattan Beach; and,

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) and the Manhattan Beach CEQA Guidelines, the subject Amendments are exempt in that they are covered by the general rule that CEQA [Section 15061 (3)] only applies to projects which have the potential for causing a significant effect on the environment, and since it can be seen with certainty that there is no possibility that the activity will have a significant effect on the environment, the activity is not subject to CEQA; and,

WHEREAS, the proposed amendments have been prepared in accordance with the provisions of Title 7, Division 1, Chapter 4, Section No. 65853, et seq., of the State of California Government Code.

WHEREAS, the Planning Commission finds that the project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the

RESOLUTION NO. PC 05-XX

Fish and Game Code; and,

WHEREAS, the Planning Commission made the following findings with regard to the proposed changes:

1. The proposed amendments are consistent with the City of Manhattan Beach General Plan.

Goal LU-2: Encourage the provision and retention of private landscaped open space.

Policy LU-2.3: Protect existing mature trees throughout the City, and encourage their replacement with specimen trees whenever they are lost or removed.

Goal LU-3: Achieve a strong, positive community aesthetic.

Goal CR-4: Preserve the existing landscape resources in the City, and encourage the provision of additional landscaping.

Policy CR-4.1: Protect existing mature trees throughout the City and encourage their replacement with specimen trees whenever they are lost or removed.

Policy CR-4.3: Recognize that landscaping, and particularly trees, provide valuable protection against air pollution, noise, soil erosion, excessive heat, and water runoff, and that they promote a healthy environment.

Policy CR-4.4: Review the tree ordinance to consider its application citywide and to determine the need to strengthen tree preservation criteria.

Policy CR-4.5: Discourage the reduction of landscaped open space and especially the removal of trees from public and private land.

2. The purpose of the proposed amendments include, but are not limited to, the following:
 - A. Continue to encourage the retention and preservation of trees while permitting the reasonable enjoyment of private property;
 - B. Provide internal consistency within the existing Tree Preservation regulations;
 - C. Ensure that the purpose as stated within the regulations is met;
 - D. Preservation and retention of trees for future generations;
 - E. Adequate size replacement trees in relationship to the size of trees that are removed; and,
 - F. Consistency with other Code provisions and current practices, including but not limited to street tree provisions.

RESOLUTION NO. PC 05-XX

3. The Planning Commission also finds as follows:
 - A. Removal of trees in certain zones requires a permit to be issued by the Director of Community Development;
 - B. An exemption to this requirement is provided for when an “emergency” exists;
 - C. Because this section is vague as to what constitutes an “emergency” it is susceptible to abuse by those wishing to rid themselves of unwanted trees who cannot otherwise obtain a permit.
 - D. It is therefore in the best interests of the general public health, safety and welfare with regard to the preservation of trees to amend this exemption to clarify when a tree may be removed for “emergency” reasons and to insure that public safety is the real reason.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Manhattan Beach hereby recommends **APPROVAL** of the proposed amendments to the Manhattan Beach Municipal Code (Section 10.52.120-Tree preservation and restoration in residential zones, Area Districts I and II) as follows:

“10.52.120 Tree Preservation and Restoration in Residential Zones Area Districts I and II

“A. **Purpose.** Tree preservation is necessary for the health and welfare of the citizens of the City of Manhattan Beach in order to provide cooling shade and beauty, increase property values, minimize spread of disease to healthy trees, conserve scenic beauty, prevent erosion of topsoil, protect against flood hazards, counteract pollutants in the air, and generally maintain the climatic and ecological balance of the area. The design of residences, including grading, driveways, walkways, patios, utilities and right-of-way improvements, shall consider and accommodate existing protected trees when feasible. The intent of this section is the retention and preservation of trees while permitting the reasonable enjoyment of private property.

B. General Requirements.

1. Except as provided in subsection G (Exemptions), no person shall directly or indirectly remove or cause to be removed, any protected tree as herein defined, from residentially zoned properties within Area Districts I and II, without first obtaining a permit to do so in accordance with the procedures set forth in this section.

2. No person shall directly or indirectly neglect, abuse, damage, mutilate, injure or harm any protected tree as herein defined, from residentially zoned properties within Area Districts I and II.

C. Definitions.

1. "Protected tree" shall include: any species of tree, ~~(excluding deciduous fruit-bearing trees and Washingtonia species palms)~~ the trunk of which is located at least partially within the required front or streetside yard of a site, with a trunk diameter of six inches (6") ~~twelve inches (12")~~ or multiple trunks totaling six inches (6") ~~twelve inches (12")~~ in diameter or greater at a height of four and one-half feet (4.5') from existing grade; and any replacement

RESOLUTION NO. PC 05-XX

tree required pursuant to this section.

2. A "tree permit" is a permit required for the removal or replacement of a protected tree.

3. A "tree plan" shall mean a plot plan (scale 1/8 inch = 1 foot, minimally) with all trees on the subject property identified by location, size and species, including:

a. footprint of all existing and proposed buildings and/or additions to buildings on the property

b. location of all trees within the front yard

c. size (diameter and height) and species of each tree

d. location of drip line for each tree

e. designation of tree(s) to be removed, saved, and/or replaced

f. proposed location, size and type of replacement tree(s)

g. photos of all trees in front and *streetside* yards.

D. Preservation of Trees During Grading and Construction Operations.

1. *All trees located in the streetside yard with a trunk diameter of six inches (6") or multiple trunks totaling six inches (6") in diameter or greater, and all trees located in the front yard with a six (6") inch to less than twelve (12") inch trunk diameter at a height of four and one-half feet (4.5') from existing grade, may be removed with prior approval of a tree permit provided they are replaced in accordance with the provisions of this Section.*

2. *All trees located in the front yard with a twelve (12") inch or greater trunk diameter at a height of four and one-half feet (4.5') from existing grade, shall be protected and may be only be removed with prior approval of a tree permit provided they are replaced in accordance with the provisions of this Section.*

3. Trees required to be retained shall be protected during demolition, grading, and construction operations by methods subject to the approval of the Community Development Director.

4. Care shall be exercised for trees to be preserved so that no damage occurs to said trees. All construction shall preserve and protect the health of trees:

a. Remaining in place

b. Being relocated

c. Planted to replace those removed

d. Adjacent to the subject property.

5. Any tree which is adjacent to the subject property and may be potentially impacted by construction activity on the subject property shall be protected pursuant to the provisions of this chapter.

6. No construction, including structures, *paving*, and walls, that disrupts the root system *on private as well as public property*, shall be permitted without prior approval by the Community Development Director. As a guideline, no cutting of roots *over 2 inches in diameter* should occur within the drip line of the tree as measured at ground level. *Required public right-of-way improvements shall take priority over tree preservation, however alternative designs and materials, including but not limited to permeable surfaces and planter areas with irrigation, shall be considered and implemented as feasible.* Where some root removal is necessary as approved by the City the tree crown may require thinning to prevent wind damage.

7. No fill material shall be placed within the drip line of any tree.

8. The Community Development Department may impose special measures determined necessary to preserve and protect the health of trees to remain on site.

E. Tree Permit Applications - without Building Permit.

1. Any person desiring to remove one or more protected trees shall obtain a Tree Permit from the Community Development Department. A fee, as specified in the City's Fee Resolution, *shall may* be required for a Tree Permit.

2. Tree Permit applications shall include a Tree Plan, and written proof of

RESOLUTION NO. PC 05-XX

neighbor notification pursuant to applicable permit instructions and may also include ~~or~~ an arborist's report, or verification of a potential safety risk.

3. The Community Development Director, when approving tree permits, shall determine the adequacy and appropriateness of the submitted plan, neighbor input, and other related information.

F. **Tree Permit - with Building Permit.**

1. Application for a Building Permit ~~shall~~ may require a Tree Permit Plan as defined above, if protected trees are located on the property.

2. A Tree Permit shall be required if the proposed project may impact existing trees in the front or streetside yard of the subject property even though removal is not planned.

3. A fee, as specified in the City's Fee Resolution, shall be required for a Tree Permit.

G. **Replacement Trees.** Required replacement trees shall be minimum twenty-four inch (24") boxed trees for front yard trees with a six (6") inch to less than twelve (12") inch trunk diameter and all streetside yard trees, and a minimum thirty-six inch (36") boxed trees for front yard trees with a twelve (12") inch or greater trunk diameter. of an appropriate species and must be planted prior to final inspection. Actual sizes, species, location, and quantities of replacement trees are subject to Community Development Director approval. In no case shall replacement tree quantities result in less than one protected tree per lot or thirty feet (30') of site frontage storage.

H. **Exemptions.** Tree removals and alterations exempt from the requirements of this section are as follows:

1. Removal in case of imminent emergency caused by the hazardous or dangerous condition of a tree, requiring immediate action for the safety of life or property (e.g., a tree about to topple onto a dwelling due to heavy wind velocities) with the prior approval of the Director of Community Development or his or her designee if a subsequent application for a Tree Permit is filed within five (5) working days.

2. Removal of any tree that is determined to be a public nuisance in accordance with Section 7.32.070, with prior approval of the Directors of Community Development and Public Works or his or her designee if a subsequent application for a Tree Permit is filed within five (5) working days.

~~2. Removal of deciduous, fruit-bearing trees, Washingtonia robusta, or Washingtonia filifera.~~

3. Public Utility actions, under the jurisdiction of the Public Utilities Commission of the State of California, as may be necessary to comply with their safety regulations, or to maintain the safe operation of the facilities.

4. Cutting of tree branches and roots extending across property lines into adjacent property, to the extent that the pruning complies with the International Society of Arboriculture (ISA) standards and does not damage or potentially damage the health and structure of the tree(s).

I. **Non-liability of City.** Nothing in this Ordinance shall be deemed to impose any liability for damages or a duty of care and maintenance upon the City or upon any of its officers or employees. The person in possession of any private property shall have a duty to keep the trees upon the property and under his control in a safe and healthy condition.

J. **Violation/Penalties.** Violation of this chapter shall be punishable as a misdemeanor or an infraction subject to the discretion of the City Prosecutor with the following additional penalties:

1. **Suspension, Revocation, and Restoration:** In addition to any other penalties allowed by this Code, the Director of Community Development may suspend any Tree Permit. The Planning Commission or City Council may suspend the Tree Permit for a Discretionary Project upon a finding at a public hearing that a violation of conditions of approval

RESOLUTION NO. PC 05-XX

has occurred.

2. **Stop Work Orders:** Whenever any construction or work is being performed contrary to the provisions of this section or condition of approval of the applicable discretionary project the Director of Community Development may issue a written notice to the responsible party to stop work on the project on which the violation has occurred or upon which the danger exists. The notice shall state the nature of the violation and the risk to the trees. No work shall be allowed until the violation has been rectified and approved by the Director of Community Development.

3. **After-the-Fact Permit Fees:** The standard permit fee shall be doubled for tree removals or other work requiring a tree permit pursuant to this section when commenced prior to issuance of said permit.”

K. Administrative Fines. The Director of Community Development may impose a fine against any person who is in violation of any provision of this section. Such fine shall be a range as specified in the City fee Resolution. The proceeds of all administrative fines imposed under this section shall be placed in a “Tree Canopy Restoration Fund” to be used solely for the replacement and maintenance of trees in the public right of way or on public property within the City.

1. Any person upon whom a fine is considered to be imposed pursuant to this section shall be entitled to a written notice of the pending decision of the imposition of the fine within ten (10) calendar days of the decision of the imposition of the fine. The notice shall state the amount of the fine, the reason for the proposed imposition of the fine and the authority for imposing the fine. The notice shall also state that the person upon whom the fine is proposed to be imposed has a right to request a hearing to protest the proposed decision of imposition of the fine and the time and method by which a hearing may be requested.

2. Any person upon whom a fine authorized by this section is proposed to be imposed may request, in writing, a hearing to protest the proposed fine. The request must be filed with the City Clerk within ten (10) calendar days from the mailing date of the notice of the proposed fine. The failure to timely file a written request for a hearing shall constitute a waiver of the right to a hearing.

3. Upon timely receipt of a request for a hearing the City shall, within ten (10) calendar days of receipt of such a request hold a hearing to be presided over by the Director of Community Development or his or her designee. This presiding officer shall determine the procedure and rules for the conduct of the hearing. The ruling of the presiding officer, notwithstanding any other provision of this code shall be final.

4. If the Director determines that a fine is due, and the fine imposed by this section is not paid within fifteen (15) calendar days of its becoming due and payable the City may file a lien in the amount of the fine plus interest at the legal rate, which may be recorded on any property owned by the individual subject to the fine which is located in the City of Manhattan Beach.

5. In the event that a civil action is filed regarding any provision of this subsection “K” the City shall be entitled to attorney fees if it prevails.

SECTION 3. Pursuant to Government Code Section 66499.37, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to

RESOLUTION NO. PC 05-XX

determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.

SECTION 4. If any sentence, clause, or phrase of this resolution is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this resolution. The Planning Commission hereby declares that it would have passed this resolution and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 5. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other resolution of the City, to the extent that they are inconsistent with this resolution, and no further, are hereby repealed.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of August 24, 2005 and that said Resolution was adopted by the following votes:

AYES:
NOES:
ABSENT:
ABSTAIN:

RICHARD THOMPSON
Secretary to the Planning Commission

SARAH BOESCHEN
Recording Secretary

Chapter 10.52
SITE REGULATIONS--RESIDENTIAL DISTRICTS

Section 10.52.120 Tree preservation and restoration in residential zones, Area District II west of Sepulveda Boulevard.

- A. **Purpose.** Tree preservation is necessary for the health and welfare of the citizens of the City of Manhattan Beach in order to conserve scenic beauty, prevent erosion of topsoil, protect against flood hazards, counteract pollutants in the air, and generally maintain the climatic and ecological balance of the area. The intent of this section is the retention and preservation of trees while permitting the reasonable enjoyment of private property.
- B. **General Requirements.** Except as provided in subsection G (Exemptions), no person shall directly or indirectly remove or cause to be removed any protected tree as herein defined, within the limits herein defined, without first obtaining a permit to do so in accordance with the procedures set forth in this section.
- C. **Definitions.**
1. "Protected tree" shall mean any species of tree, (excluding deciduous fruit-bearing trees, Washingtonia species) with a diameter of twelve (12) inches or multiple trunks totaling twelve (12) inches in diameter at a height of 4.5 feet from existing grade and located in the front yard.
 2. A "tree permit" is a permit required for the removal or replacement of a protected tree.
 3. A "tree plan" shall mean a plot plan (scale 1/8 inch = 1 foot, minimally) with all trees on the subject property identified by location, size and species, including:
 - a. footprint of all existing and proposed buildings and/or additions to buildings on the property
 - b. location of all trees within the front yard
 - c. size (diameter and height) and specie of each tree
 - d. location of drip line for each tree
 - e. designation of tree(s) to be removed, saved, and/or replaced
 - f. proposed location, size and type of replacement tree(s)
 - g. photos of all trees in front yard.
- D. **Tree Permit Applications - without Building Permit.**
1. Any person desiring to remove one or more protected trees shall obtain a Tree Permit from the Community Development Department. A fee, as specified in the City's Fee Resolution, may be required for a Tree Permit.
 2. Tree Permit applications shall include a Tree Plan.
 3. The Community Development Director, when approving tree plans, shall determine the adequacy and appropriateness of the proposed plan.
- E. **Tree Permit (with Building Permit).**
1. Application for any Building Permit must include a Tree Plan as defined above.
 2. Application for a Tree Permit shall be required if the proposed project may impact existing trees in the front yard of the subject property even though removal is not planned.
 3. The Community Development Director may waive the requirement for a Tree Plan, both where the construction activity is determined to be minor in nature (minor building or site modification), and/or where the proposed activity will not significantly modify the ground area within the drip line or the area immediately surrounding the drip line of any protected tree.
- F. **Preservation of Trees During Grading and Construction Operations.**
1. Trees required to be retained by permit shall be protected during demolition, grading, and construction operations by methods subject to the approval of the Community Development

Manhattan Beach Municipal Code

Director.

2. Care shall be exercised for trees to be preserved so that no damage occurs to said trees. All construction shall preserve and protect the health of trees:
 - a. Remaining in place
 - b. Being relocated
 - c. Planted to replace those removed
 - d. Adjacent to the subject property.
3. Any tree which is adjacent to the subject property and may be potentially impacted by construction activity on the subject property shall be protected pursuant to the provisions of this chapter.
4. No construction, including structure and walls, that disrupts the root system shall be permitted without prior approval by the Community Development Director. As a guideline, no cutting of roots should occur within the drip line of the tree as measured at ground level. Where some root removal is necessary as approved by the City the tree crown may require thinning to prevent wind damage.
5. No fill material shall be placed within the drip line of any tree.
6. The Community Development Department may impose special measures determined necessary to preserve and protect the health of trees to remain on site.
7. Minimum tree replacement ratio shall be 1:1.
8. Replacement trees shall be a minimum 24" boxed tree of an approved species and must be planted before final inspection and permit issuance.

G. Exemptions. This ordinance does not apply to the following:

1. Removal in case of emergency caused by the hazardous or dangerous condition of a tree, requiring immediate action for the safety of life or property (e.g., a tree about to topple onto a dwelling due to heavy wind velocities). A subsequent application for a Tree Permit shall be filed within five working days.
2. Removal of deciduous, fruit-bearing trees, *Washingtonia robusta*, or *Washingtonia filifera*.
3. Public Utility actions, under the jurisdiction of the Public Utilities Commission of the State of California, as may be necessary to comply with their safety regulations, or to maintain the safe operation of the facilities.
4. Tree branches and tree roots extending across property lines into adjacent property.

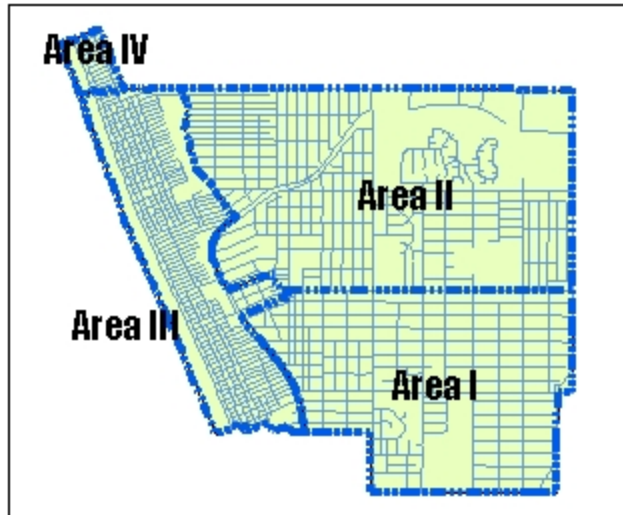
H. Non-liability of City. Nothing in this Ordinance shall be deemed to impose any liability for damages or a duty of care and maintenance upon the City or upon any of its officers or employees. The person in possession of any private property shall have a duty to keep the trees upon the property and under his control in a safe and healthy condition.

I. Violation/Penalties. Violation of this chapter shall be punishable as a misdemeanor or an infraction subject to the discretion of the City Prosecutor with the following penalties:

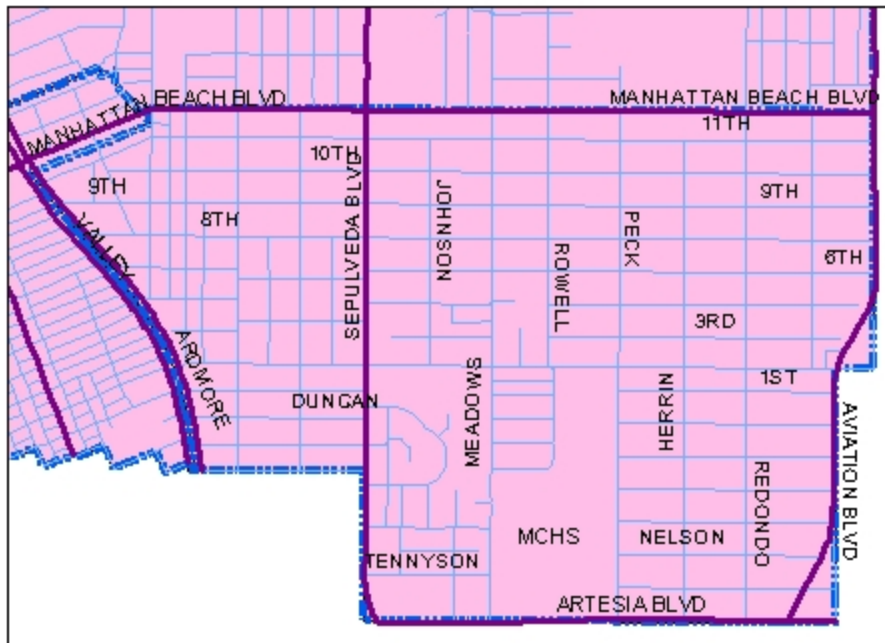
1. **Suspension, Revocation, and Restoration:** In addition to any other penalties allowed by this Code, the Director of Community Development may suspend any Tree Permit. The Planning Commission or City Council may suspend the Tree Permit for a Discretionary Project upon a finding at a public hearing that a violation of conditions of approval has occurred.
2. **Stop Work Orders:** Whenever any construction or work is being performed contrary to the provisions of this section or condition of approval of the applicable discretionary project the Director of Community Development may issue a written notice to the responsible party to stop work on the project on which the violation has occurred or upon which the danger exists. The notice shall state the nature of the violation and the risk to the trees. No work shall be allowed until the violation has been rectified and approved by the Director of Community Development.

(Ord. No. 1884, Enacted, 08/19/93)

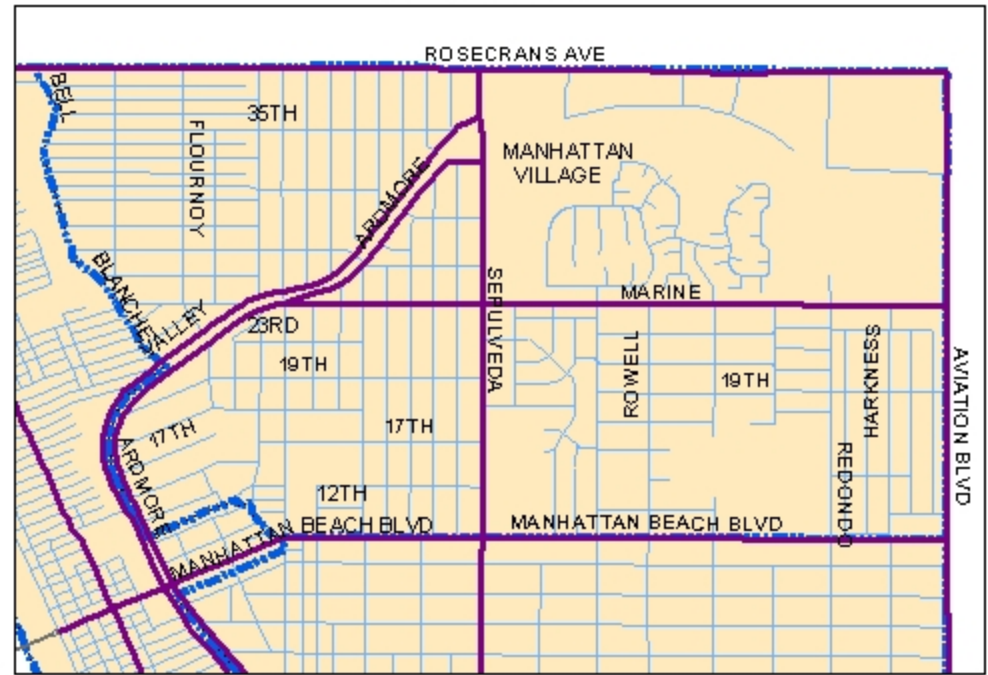
City of Manhattan Beach Tree Preservation Ordinance



Area District I



Area District II



— Area District Boundary

— Major City Streets

Section 10.52.120 M.B.M.C. Tree Preservation Ordinance
Applicable to Residentially Zoned Properties in Area Districts
I and II.



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Fahey and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Richard Thompson, Director of Community Development
Laurie B. Jester, Senior Planner

DATE: July 5, 2005

SUBJECT: Status Report and Review of the City's Tree Preservation Ordinance

RECOMMENDATION:

Staff recommends that the City Council **DISCUSS AND PROVIDE DIRECTION.**

FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action

BACKGROUND:

The City's Tree Preservation Ordinance was originally adopted August 19, 1993 (Ordinance No. 1884), and is included as Section 10.52.120 of the Zoning Code (Exhibit A). At that time, the Ordinance applied only to the Tree Section, generally bounded by Rosecrans Avenue, Blanche Road, Valley Drive and Sepulveda Boulevard. The Ordinance protects all trees, except deciduous fruit-bearing trees and Washingtonia species palms, with a 12" or greater trunk diameter located in the front yard. At that time the Ordinance was implemented more as a "removal and replacement" regulation than a "preservation" regulation.

On May 6, 2003, the Ordinance was expanded (Ordinance No. 2045) to apply to all of the residential zones in Area Districts I and II; the Beach Area is not covered by the Tree Ordinance (Exhibit B). The Purpose Section states that "Tree Preservation is necessary for the health and welfare of the citizens of the City of Manhattan Beach in order to conserve scenic beauty, prevent the erosion of topsoil, protect against flood hazards, counteract pollutants in the air, and generally maintain the climatic and ecological balance of the area. The intent of this section is the retention and preservation of trees while permitting the reasonable enjoyment of private property." With the expansion of the Tree Ordinance, planning staff began implementing the regulation as a "preservation" regulation, not a "removal and replacement" regulation as previously implemented.

After the adoption of the expanded Tree Ordinance, the City Council and Planning Commission held a joint meeting on July 22, 2003 to discuss a variety of planning issues, including the Tree Ordinance. At that meeting the City Council confirmed that the Ordinance was intended to

preserve trees, and that Staff should continue to enforce the Ordinance accordingly.

On May 3, 2005 the City Council heard the first two appeals of staff decisions on Tree Permits and at that time the Council requested that staff bring back a report on the status of the Tree Ordinance.

DISCUSSION:

Tree Permit Process

Staff works with architects, developers and contractors during the design of a home, including the design of grading, walkways, patios, utilities and right-of-way improvements, and throughout construction to ensure that new construction considers and protects existing trees that are protected under the Ordinance. The Code requires that the root system within the dripline of the tree be protected during construction as this is critical to maintaining the health of the tree. Staff regularly informs the construction community through newsletters and meetings of the Tree Ordinance requirements.

Different species of trees have different root systems, (i.e. shallow, spreading, deep), as well as different sensitivity to having their roots disturbed. The cutting of large diameter roots (2 inches or greater) can have serious impacts on both the health of trees and their structural stability. Large tree roots provide structural stability as well as they are arterials that act as conduits providing water and nutrients to the feeder roots at the end. Limiting paving in the area of the root system of a tree is critical to allow air, water, and nutrients through which is essential for the health of the tree.

Staff inspects and photographs existing protected private property trees, as well as trees in the public right-of-way, when plans are initially submitted to plan check, as well as when property owners call and request an inspection. Occasionally, the City's consulting arborist is utilized to assess the health of trees and make recommendations for preservation if appropriate. Planning and Public Works staff inspects approximately 20 to 25 residential sites per month with private and public property tree issues. Each request takes an average of 1-4 hours to process, although the time associated with tree permit appeals is much greater.

Applications for a tree permit typically include notification signatures from neighbors and/or an arborist's written recommendation that the tree should be removed. Decisions on Tree Permits are made by the Director of Community Development, with input from the Public Works Department and city arborist when necessary, and the Directors decision is appealable to the Planning Commission. The Planning Commissions decision on an appeal is then placed on the City Council consent agenda as a receive and file item unless it is pulled for discussion.

Tree permits for dead or unhealthy trees typically require little review or concern. Proposed tree removals related to construction projects involve more review, and staff encourages retention of protected trees in the design process. If no alternatives are available to preserve the tree, for example a large tree in the middle of a narrow lot making driveway access very difficult, then Staff typically approves the application. Any tree that is removed is required to be replaced with a minimum 24 inch box size tree. The Code states that the size, quantity and species of replacement trees are subject to approval of the Director of Community Development. If a large tree is removed then typically a larger size box tree and/or more than one replacement tree may

be required, depending on the individual situation. Staff uses the approved Street Tree List (Exhibit C) as a guide for replacement trees, however this list is not all inclusive and property owners are encouraged to discuss other possible replacement trees with local nurseries and staff. Replacement trees are required to be installed prior to the issuance of a building final on a project. If there is no construction associated with the tree removal, typically replacement is required within a 1-3 month time frame.

Staff does not approve removal of trees if they are only causing minor damage to a property such as roots in a sewer line or on a lawn, cracks in garden walls, walkways, or driveways, and aesthetic, leaf litter, or sap concerns. If a tree is causing structural damage to a home and there are no reasonable options to address the situation, then staff will approve removal. Trees on private or public property that constitute a danger to the improvements or people in the public right-of-way are addressed by the public tree regulations, Section 7.32.070 (Exhibit D), and are required to be removed. Trees on walkstreets in the encroachment area, where the public property is used for private gardens and patios, are regulated by Chapter 7.36. These regulations limit landscaping to 42 inches maximum in height to protect views and if valid complaints are received then existing trees are required to be trimmed or removed. New trees and landscaping over 42 inches in height are not allowed in the encroachment area.

In some instances trees may be relocated within the front yard to accommodate new construction. Remaining trees are required to be protected by chain link fencing during the construction process. The Community Development Director may also impose special measures as necessary to preserve and protect trees that remain.

When trees are removed illegally, staff follows through with Code Enforcement and works with property owners and developers to ensure that trees are replaced with large specimen box size trees. Staff also consults with the City Attorney to ensure that the goals of the Tree Ordinance are met. If necessary the City Prosecutor works with staff and files misdemeanor complaints. A "Tree Canopy Restoration Fund" has been established so that when trees are removed illegally and fines are assessed, the fines are deposited into this fund. The fund may then be used to plant new trees throughout the City to compensate for the loss and to help re-establish and enhance the tree canopy throughout the City in the future.

Possible Ordinance Revisions

There are a few areas of the Tree Ordinance that staff would suggest revising as follows.

Emergency Removal

The Exemptions section of the Code (Section 10.52.120 H. 1.) currently allows removal of trees in cases of emergency caused by hazardous or dangerous conditions of a tree, requiring immediate action for the safety of life or property. This section requires that a Tree Permit application then be submitted within five working days after removal of a tree. Staff would recommend requiring approval by the Director of Community Development prior to removal. The City Attorney is recommending this revision as this section is vague as to what constitutes an "emergency" and it is susceptible to abuse by those wishing to rid themselves of unwanted trees who cannot otherwise obtain a permit. Attached is a Draft Ordinance (Exhibit E) with the proposed language changes from the City Attorney.

Trees on Adjacent Properties

There are two sections of the Code that address trees on adjacent properties that conflict. In one Section (10.52.120 D), trees that are on adjacent properties that could potentially be impacted by construction are required to be protected. In the Exemption Section (10.52.120 H. 4), the cutting of tree branches and root extending across property lines onto adjacent properties are exempt from the regulations. Staff believes that adjacent property trees should be reasonably protected and any pruning of branches or roots that could potentially damage the health of trees should not be allowed or a Tree Permit could be required to evaluate potential impacts.

Trees Exempt from Protection

Section 10.52.120 H. 2 of the Tree Preservation regulations exempts deciduous fruit bearing trees, such as peaches, plums, nectarines, cherries, and apples, and two Palm trees, *Washingtonia robusta*, Mexican Fan Palm (Exhibit F), and *Washingtonia filifera*, the California Fan Palm (Exhibit G), from the protection regulations. Staff would suggest that this section be modified so that no trees with a trunk diameter of 12 inches or greater are exempt from the ordinance. This would give staff the ability to evaluate each removal request on an individual basis and then make a determination if removal and replacement is appropriate. All trees provide a benefit by improving the aesthetics of the City, helping to clean the air, provide shade, and reduce glare and heat. When trees are removed and not replaced then these benefits are lost. If a tree is not protected under the ordinance then it can be removed without a Tree Permit and is not required to be replaced.

Pruning and Abuse of Trees

There are no standards for pruning and improper pruning techniques can severely damage or kill a tree. Pruning should be required to be in accordance with the International Society of Arborists (ISA) standards. Additionally, cutting into a tree, poisoning a tree or paving over the entire root system can severely damage or kill a tree. The abuse or mutilation of trees section of the street tree regulations (Section 7.32.060) provides criteria for illegal abuse of trees, portions of which would be appropriate to incorporate into the Tree Preservation standards.

Violations and Penalties

Section 10.52.120 establishes standards for violations of the Tree Preservation standards. Staff and the City Attorney would recommend an administrative fine for illegal removal of trees, poisoning of trees, and severe pruning of trees that is not in conformance with ISA standards, and other abuse and neglect of trees that leads to the demise of a tree.

Purpose

The purpose section could be expanded to discuss the design of residences, including grading, walkways, patios, utilities and right-of-way improvements, being required to consider and accommodate existing protected trees when feasible. The Purpose section of the street tree regulations (Section 7.32.010) provides other standards that would also be appropriate to incorporate into the Tree Preservation standards for private property, such as increase property values, provide cooling shade and beauty, and minimize spread of disease to healthy trees.

Right-of- Way Improvements

Excessive grading and paving in the dripline of tree can be detrimental to the root system of trees and potentially severely impact the health of a tree. Improvements in the right-of-way, such as

retaining walls, parking pads and paving can be detrimental to private property trees. This is particularly an issue in areas where previously there was an open landscaped area which allows air, water and nutrients through to the tree roots which is essential for the health of the tree. Public Works and Planning staff work together to look at alternative designs and materials in situations where right-of-way improvements may impact trees. Structural soil, which is a combination of soil and stone particles with a stabilizing and binding agent, can be used in some situations instead of standard base material. This material provides air and water pockets within the soil which is essential for healthy roots, and can be compacted to meet structural design standards yet still allow sustainable root growth. Grasscrete has been used in numerous locations throughout the City and allows air, water and nutrients to the tree roots, while providing a very strong driving and parking surface. Additionally, grasscrete does not crack like a typical driveway if there are surface roots as it is somewhat a flexible surface, although it could buckle and not be perfectly level. Planter areas with irrigation adjacent to trees are also beneficial to again allow air, water and nutrients to the tree roots.

Street Side yard trees

The Tree Ordinance only protects trees in the 20 foot front yard setback. On corner lots the front setback is located adjacent to the shortest property line, so there is a long streetside setback in which the trees are not protected. Staff is addressing this issue as it has been suggested by a number of residents in the Tree Section that the Tree Ordinance should be expanded to include streetside setbacks.

Often these side setbacks have several large trees, particularly in the Tree Section. This sideyard setback is only three to five feet wide, and large trees located in the streetside yard can encompass the entire sideyard and extend into the allowed building footprint area and the right-of way. Additionally, the root system and extent of the dripline of the trees also usually extends into the building footprint area and the right-of way. Protecting trees in this very narrow sideyard setback would impact the design of homes in that “notching” of houses around trees would be necessary and there would potentially be a reduction in the buildable floor area of homes. Staff would caution against expanding the Tree Ordinance to protect trees in the streetside setback for these reasons.

CONCLUSION:

If the City Council directs staff to revise the Tree Ordinance, then staff will present a report to the Planning Commission at a noticed public hearing. The recommendations from the Planning Commission will then be forwarded to the City Council for final review and action.

- Attachments: A. Section 10.52.120-Tree preservation and restoration in residential zones, Area Districts I and II
B. Map of area covered by Tree Ordinance- Area Districts I and II
C. Street Tree List
D. Chapter 7.32- Tree, Shrub and Plant Regulations
E. Draft Ordinance- Emergency Exemptions from tree preservation regulations
F. Photograph of Mexican Fan Palm- *Washingtonia robusta*
G. Photograph of California Fan Palm- *Washingtonia filifera*

CITY OF MANHATTAN BEACH STREET TREE LIST

ZONE I

SEA COAST ZONE

Bounded on the north by Rosecrans Avenue and 39th Streets
Bounded on the south by Longfellow, Francisco, Homer, and 1st Streets
Bounded on the east by Valley Drive, Blanche Road, and Bell Avenue

Minimum
Planting Width

4 feet	Melaleuca Leucadendra	Cajeput tree
2 feet	Melaleuca Nesophila	Pink Melaleuca
4 feet	Metrosideros Tomentosa	New Zealand Christmas Tree
4 feet	Myoporum Laetum	
2 feet	Nerium Oleander "White"	Oleander
5 feet	Olea Europaea "Swan Hill"	Olive
3 feet	Pittosporum Crassifolium	Karo

ZONE II

IMMEDIATE ZONE

Bounded on the north by Rosecrans Avenue
Bounded on the south by Boundary Place
Bounded on the east by Sepulveda Boulevard
Bounded on the west by Bell Avenue, Blanche Road, and Ardmore Avenue

2 feet	Callistemon Citrinus	Lemon Bottlebrush
6 feet	Cupania Anacardioides	Carrotwood
5 feet	Eucalyptus Ficifolia	Red-flowering Gum
6 feet	Eucalyptus Rudis	Desert Gum
4 feet	Eucalyptus Sideroxylon	Red Ironbark
4 feet	Melaleuca Leucadendra	Cajeput tree
4 feet	Metrosideros Tomentosa	New Zealand Christmas Tree
3 feet	Pittosporum Crassifolium	Karo
4 feet	Tristania Conferta	Brisbane Box
2 feet	Melaleuca Nesophila	Pink Melaleuca

ZONE III

INLAND BOX

Bounded on the north by Rosecrans Avenue
Bounded on the south by Artesia Boulevard
Bounded on the east by Aviation Boulevard
Bounded on the west by Sepulveda Boulevard

6 feet	Agonis Flexuosa	Peppermint tree
2 feet	Callistemon Citrinus	Lemon Bottlebrush
6 feet	Calodendrum Capense	Cape Chestnut
6 feet	Ceratonia Siliqua	Carob
6 feet	Cupania Anacardioides	Carrotwood
5 feet	Eucalyptus Ficifolia	Red-flowering Gum
6 feet	Eucalyptus Polyanthemus	Silver Dollar Gum
6 feet	Eucalyptus Rudis	Desert Gum
4 feet	Eucalyptus Sideroxylon	Red Ironbark
6 feet	Fraxinus Uhdei "Tomlinson"	Tomlinson Ash
6 feet	Ginkgo Biloba (male only)	Maidenhair
4 feet	Ilex Altheclarensis "Wilsoni"	Wilson Holly
4 feet	Melaleuca Leucadendra	Cajeput tree
8 feet	Pinus Canariensis	Canary Island Pine
4 feet	Tristania Conferta	Brisbane Box

Chapter 7.32 TREE, SHRUB AND PLANT REGULATIONS

[Section 7.32.010 Purpose.](#)

[Section 7.32.020 Definitions.](#)

[Section 7.32.030 Enforcement.](#)

[Section 7.32.040 Permits.](#)

[Section 7.32.050 Maintenance.](#)

[Section 7.32.060 Abuse or mutilation of trees.](#)

[Section 7.32.070 Public nuisance.](#)

[Section 7.32.080 General provisions.](#)

[Section 7.32.090 Street tree planting guide.](#)

[Section 7.32.100 Protection of trees.](#)

Section 7.32.010 Purpose.

Official tree, shrub and plant regulations for the City are hereby adopted and established to serve the public health, safety and general welfare. To that end the purposes of this chapter are specifically declared to be as follows:

- A. Improve general aesthetic values;
- B. Reduce traffic noise;
- C. Deflect glare and heat;
- D. Lower wind velocity;
- E. Purify air;
- F. Increase property values;
- G. Provide cooling shade and beauty;
- H. Provide for the proper selection of trees to minimize trouble in sewer and water mains, broken sidewalks, storm drains, etc.;
- I. Minimize interference with street and traffic lighting;
- J. Minimize the spread of disease to healthy trees;
- K. Minimize danger of falling trees and limbs onto streets, sidewalks and private property;
- L. Minimize accumulation of leaves and debris which cause unnecessary labor in cleaning the sidewalks, streets and storm drains; and
- M. Select trees of longevity and suitable to the environment.

Section 7.32.020 Definitions.

Whenever in this chapter the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions:

- A. "City" shall mean the City of Manhattan Beach.
- B. "Public Works Director" shall mean the Public Works Director of the City of Manhattan Beach or his authorized agent.
- C. "Street or highway" shall include all lands lying between the so-called property lines on either side of all public streets, roads, boulevards and alleys.
- D. "Street trees" shall mean trees or shrubs in public places along City streets, roads, boulevards and alleys.
- E. "Trees and shrubs" shall include all woody vegetation now or hereafter growing, planted or to be planted on any public place or area.

Chapter 7.32 TREE, SHRUB AND PLANT REGULATIONS

F. "Parkway" shall mean that portion of the street, or highway other than the roadway or sidewalk.

G. "Public place or area" shall include all those streets and highways within the City and all other properties owned by the City of Manhattan Beach.

Section 7.32.030 Enforcement.

The Public Works Director shall have jurisdiction and control of the kind and type of planting, setting out, location, trimming, maintenance and removal of all trees and shrubs on City property and public places, and the supervision of all trees planted or growing in such places.

Section 7.32.040 Permits.

A. It shall be unlawful, and it is hereby prohibited for any person, firm, association, corporation or franchisee of the City to plant, move, remove, destroy, cut, trim, deface, injure, or replace any tree or shrub in, upon or along any public street or other public place of the City or to cause the same to be done without first obtaining a written permit from the Public Works Director. This permit shall specifically describe the work to be done.

B. Application for a tree permit shall be made to the Public Works Director at least five (5) days in advance of the time the work is to be done. The work shall be done within thirty (30) days from the date the permit is issued unless otherwise stated.

C. The Public Works Director shall inspect the work in progress and make a final inspection upon completion of the work.

D. It shall be unlawful and is hereby prohibited for any person, firm, corporation franchisee maintaining any overhead wires or pipes or underground conduits along or across any street, avenue, highway, park, parkway or public place within the City to have any tree or shrub trimmed or removed from any public place or area without first obtaining a written permit from the Public Works Director for the specific work to be done.

E. The Public Works Director may issue a permit for the removal of a street tree where it is in nonconformance with the street tree plan, or has been classified as a public nuisance according to Section 7.32.070, or is in such a condition as to present a threat to the maintenance of any overhead wires or pipes or underground conduits along or across any street.

F. A fee, established by the Council under separate resolution, shall be required for a permit to remove a tree. The fee shall be refunded in the event the property owner replaces the removed tree within ninety (90) days with an approved tree. In the event the property owner does not replace the tree, the City will install a replacement tree, retain the fee, and bill the property owner for the balance of the actual cost.

(§ 26, Ord. 1458, eff. June 17, 1976)

Section 7.32.050 Maintenance.

A. It is hereby made the duty of all owners and persons having possession and control of real property within the City to cultivate and care for and provide complete maintenance of all trees, shrubs, lawns and ground covers now or hereafter planted or set out within any of the streets, avenues, highways and parkways adjacent to their real

Chapter 7.32 TREE, SHRUB AND PLANT REGULATIONS

properties. This paragraph when applied to those certain residents and property owners designated in Manhattan Beach City Ordinance No. 916 shall not be construed to preclude access of vehicles for the planting, cutting, pruning, or removal of such trees, shrubs, lawns and ground covers provided that permission is first obtained from the Public Works Director for such access.

B. It shall be the duty of all owners and persons having possession or control of real property within the City promptly to notify the Public Works Director of any tree or shrub in a public area immediately adjacent to his property which is in such condition as to be a menace to public safety or dangerous to life or property.

Section 7.32.060 Abuse or mutilation of trees.

It shall be unlawful for any person to:

- A. Damage, cut, carve, etch, hew or engrave or injure the bark of any street tree;
- B. Allow any gaseous, liquid or solid substance harmful to trees to come in contact with any part of any street tree;
- C. Deposit, place, store or maintain upon any public area any stone, brick, concrete, or other materials which may impede the free passage of air, water and fertilizer to the roots of any tree or shrub growing therein, except by written permit of the Public Works Director;
- D. Except as may be authorized by the provisions of Section 7.32.040, damage, tear up or destroy any plantings, grass, flowers, shrubs, or trees planted upon or in any public place or area in the City; and
- E. Paint, tack, paste, post or otherwise attach or place any advertisement, notice, card or announcement or any printed or written matter or any wire, board, platform or injurious material of any kind upon any tree or shrub situated in any public place or area in the City.

Section 7.32.070 Public nuisance.

The Council, pursuant to the power and authority vested in it to do so under the provisions of Sections 38771 and 38773 of the Government Code of the State, does hereby find and declare that any of the following is apt to cause injury or damage to persons or property, or constitutes a then present menace or threat to life or property, or constitutes and is a nuisance, and shall be subject to abatement as such by civil action or summarily as provided by law:

- A. Any dead, diseased, infested, leaning or dying trees on private property so near to any street as to constitute a danger to street trees, or streets, sidewalks, or portions thereof, or the life, health or safety of the public.
- B. Any tree, shrub or plant on any private property or in a parkway of a type of species apt to destroy, impair or otherwise interfere with any street improvement, sidewalk, curb, approved street tree, gutter, sewer or other public improvements including water utilities or services.
- C. Any tree or shrub or parts thereof growing upon private property but overhanging or interfering with the use of any street, parkway, sidewalk or public place of the City such that in the opinion of the Public Works Director endangers the life, health, safety or property of the public.

Chapter 7.32 TREE, SHRUB AND PLANT REGULATIONS

D. The existence of any branches or foliage on private or public property which interferes with visibility on, or free use of, or access to any portion of any street improved for vehicular or pedestrian travel.

E. Trees on public property which constitute a public nuisance shall be removed, replaced or trimmed at the expense of the adjoining property owner as ordered by the Director of Public Works. If a tree on public property is ordered replaced under this section, the City shall pay the cost of the replacement tree, as established by the Council under separate resolution.

F. It shall be the duty of all owners and persons having possession and control of real property within the City to abate any public nuisances referred to in this section that occur on their real properties.

G. The procedures for notice, service of notice, hearing, abatement and removal by the City, and collection of the cost of the work by tax lien as provided in Section 9.64.030 through 9.64.130 of this Code shall be utilized. Said sections are incorporated herein by reference and made a part of this chapter.

(as amended by § 1, Ord. 1247, eff. August 5, 1971; § 1, Ord. 1290, eff. August 4, 1972; § 27, Ord. 1458, eff. June 17, 1976)

Section 7.32.080 General provisions.

A. Species or varieties of street trees:

1. The Public Works Director shall prepare a list of street trees which may be planted in each of the parkway areas of the City, which list shall be available to the public to aid in the choice of trees to be planted. This list may be modified as experience indicates the desirability of such modification. The original list and any modifications thereto shall be approved by the Public Works Director.

B. Planting of street trees:

1. All planting should be in good horticultural practice as determined by the Public Works Director.

2. All planting on unpaved streets without curb must have the special permission of the Public Works Director who shall determine the tree's exact location so that it will not be injured or destroyed when the street is improved;

3. Spacing of trees shall be determined by the Public Works Director according to local conditions and species to be used, their mature height, spread and form; and

4. The recommended size shall normally be that designated as fifteen (15) gallon size (accepted trade sizing); the minimum size acceptable shall be a five (5) gallon size.

C. Trimming and removal:

1. The property owner shall normally assume responsibility for trimming, topping or dehorning, pruning, and removing trees growing on any public place or area.

2. Except as may be provided for in subdivision (E) of Section 7.32.070, the City will not remove a tree in the parkway adjoining any property unless such tree is a hazard to the street maintenance or other services of the City. Responsibility and expense of all other tree removals shall be borne by the requesting property owner, person, firm, association, corporation or franchisee.

D. Spraying:

1. Suitable precaution shall be taken to protect and warn the public that spraying is being done.

Chapter 7.32 TREE, SHRUB AND PLANT REGULATIONS

Section 7.32.090 Street tree planting guide.

Those street trees now existing may remain until by old age or other reasons they are removed. When any new street tree is planted it shall conform to the street tree planting guide referred to in subdivision (A)(1) of Section 7.32.080.

Section 7.32.100 Protection of trees.

During the erection, repair, alteration or removal of any building, house, structure or street in the City, any person, firm, association, corporation or franchisee in charge of such work shall protect any tree, shrub or plant in any street, park, boulevard, or public place in the vicinity of such building or structure with sufficient guards or protectors as shall prevent injury to said tree, shrub or plant arising out of or by reason of said erection, repair, alteration or removal, and shall be held responsible if the Public Works Director determines that this protection has not been provided.

(§ 3, Ord. 1202, eff. February 19, 1970)

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DRAFT 7-5-05

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, AMENDING SECTION 10.52.120 OF CHAPTER 10.52 OF TITLE 10 OF THE MANHATTAN BEACH MUNICIPAL CODE EXEMPTIONS TO THE TREE REMOVAL PERMIT REQUIREMENT

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach hereby finds as follows:

- A. Removal of trees in certain zones requires a permit to be issued by the Director of Community Development;
- B. An exemption to this requirement is provided for when an "emergency" exists;
- C. Because this section is vague as to what constitutes an "emergency" it is susceptible to abuse by those wishing to rid themselves of unwanted trees who cannot otherwise obtain a permit.
- D. It is therefore in the best interests of the general public health, safety and welfare with regard to the preservation of trees to amend this exemption to clarify when a tree may be removed for "emergency" reasons and to insure that public safety is the real reason.

SECTION 2. Section 10.52.120 of Chapter 10.52 of Title 10 of the Manhattan Beach Municipal Code is hereby amended in its entirety to read as follows:

"10.52.120 Tree Preservation and Restoration in Residential Zones Area Districts I and II

"A. Purpose. Tree preservation is necessary for the health and welfare of the citizens of the City of Manhattan Beach in order to conserve scenic beauty, prevent erosion of topsoil, protect against flood hazards, counteract pollutants in the air, and generally maintain the climatic and ecological balance of the area. The intent of this section is the retention and preservation of trees while permitting the reasonable enjoyment of private property.

B. General Requirements. Except as provided in subsection G (Exemptions), no person shall directly or indirectly remove or cause to be removed any protected tree as herein defined, from residentially zoned properties within Area Districts I and II, without first obtaining a permit to do so in accordance with the procedures set forth in this section.

C. Definitions.

1. "Protected tree" shall include: any species of tree, (excluding deciduous fruit-bearing trees and Washingtonia species palms) the trunk of which is located at least partially within the required front yard of a site, with a trunk diameter of twelve inches (12") or multiple trunks totaling twelve inches (12") in diameter at a height of four and one-half feet (4.5') from existing grade; and any replacement tree required pursuant to this section.

2. A "tree permit" is a permit required for the removal or replacement of a protected tree.

3. A "tree plan" shall mean a plot plan (scale 1/8 inch = 1 foot, minimally) with all trees on the subject property identified by location, size and species, including:

a. footprint of all existing and proposed buildings and/or additions to buildings on the property

- b. location of all trees within the front yard
- c. size (diameter and height) and species of each tree
- d. location of drip line for each tree
- e. designation of tree(s) to be removed, saved, and/or replaced
- f. proposed location, size and type of replacement tree(s)
- g. photos of all trees in front yard.

D. Preservation of Trees During Grading and Construction Operations.

1. Trees required to be retained shall be protected during demolition, grading, and construction operations by methods subject to the approval of the Community Development Director.

2. Care shall be exercised for trees to be preserved so that no damage occurs to said trees. All construction shall preserve and protect the health of trees:

- a. Remaining in place
- b. Being relocated
- c. Planted to replace those removed
- d. Adjacent to the subject property.

3. Any tree which is adjacent to the subject property and may be potentially impacted by construction activity on the subject property shall be protected pursuant to the provisions of this chapter.

4. No construction, including structure and walls, that disrupts the root system shall be permitted without prior approval by the Community Development Director. As a guideline, no cutting of roots should occur within the drip line of the tree as measured at ground level. Where some root removal is necessary as approved by the City the tree crown may require thinning to prevent wind damage.

5. No fill material shall be placed within the drip line of any tree.

6. The Community Development Department may impose special measures determined necessary to preserve and protect the health of trees to remain on site.

E. Tree Permit Applications - without Building Permit.

1. Any person desiring to remove one or more protected trees shall obtain a Tree Permit from the Community Development Department. A fee, as specified in the City's Fee Resolution, may be required for a Tree Permit.

2. Tree Permit applications shall include a Tree Plan, and written proof of neighbor notification pursuant to applicable permit instructions or an arborist's verification of a potential safety risk.

3. The Community Development Director, when approving tree permits, shall determine the adequacy and appropriateness of the submitted plan, neighbor input, and other related information.

F. Tree Permit - with Building Permit.

1. Application for a Building Permit may require a Tree Plan as defined above.

2. A Tree Permit shall be required if the proposed project may impact existing trees in the front yard of the subject property even though removal is not planned.

G. Replacement Trees. Required replacement trees shall be minimum twenty-four inch (24") boxed trees of an appropriate species and must be planted prior to final inspection. Actual sizes, species, and quantities of replacement trees are subject to Community Development Director approval. In no case shall replacement tree quantities result in less than one protected tree per lot or thirty feet (30') of site storage.

H. Exemptions. Tree removals and alterations exempt from the requirements of this section are as follows:

1. Removal in case of imminent emergency caused by the hazardous or dangerous condition of a tree, requiring immediate action for the safety of life or property (e.g., a tree about to topple onto a dwelling due to heavy wind velocities) with the prior approval of the Director of

DRAFT 7-5-05

Ord. _____

Community Development or his or her designee if a subsequent application for a Tree Permit is filed within five (5) working days.

2. Removal of deciduous, fruit-bearing trees, *Washingtonia robusta*, or *Washingtonia filifera*.

3. Public Utility actions, under the jurisdiction of the Public Utilities Commission of the State of California, as may be necessary to comply with their safety regulations, or to maintain the safe operation of the facilities.

4. Cutting of tree branches and roots extending across property lines into adjacent property.

I. Non-liability of City. Nothing in this Ordinance shall be deemed to impose any liability for damages or a duty of care and maintenance upon the City or upon any of its officers or employees. The person in possession of any private property shall have a duty to keep the trees upon the property and under his control in a safe and healthy condition.

J. Violation/Penalties. Violation of this chapter shall be punishable as a misdemeanor or an infraction subject to the discretion of the City Prosecutor with the following additional penalties:

1. Suspension, Revocation, and Restoration: In addition to any other penalties allowed by this Code, the Director of Community Development may suspend any Tree Permit. The Planning Commission or City Council may suspend the Tree Permit for a Discretionary Project upon a finding at a public hearing that a violation of conditions of approval has occurred.

2. Stop Work Orders: Whenever any construction or work is being performed contrary to the provisions of this section or condition of approval of the applicable discretionary project the Director of Community Development may issue a written notice to the responsible party to stop work on the project on which the violation has occurred or upon which the danger exists. The notice shall state the nature of the violation and the risk to the trees. No work shall be allowed until the violation has been rectified and approved by the Director of Community Development.

3. After-the-Fact Permit Fees: The standard permit fee shall be doubled for tree removals or other work requiring a tree permit pursuant to this section when commenced prior to issuance of said permit.”

SECTION 3. All other provisions of Manhattan Beach Municipal Code shall remain unchanged and continue in full force and effect.

SECTION 4. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinances of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 5. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 6. This ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 7. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2005.

DRAFT 7-5-05

Ord. ____

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk



**Mexican Fan
Palm-
Washingtonia
robusta**



**California Fan
Palm-
Washingtonia
filifera**

**CITY OF MANHATTAN BEACH
MINUTES OF THE CITY COUNCIL
REGULAR MEETING OF
JULY 5, 2005**

The Regular Meeting of the City Council of the City of Manhattan Beach, California, was held on the 5th day of July, 2005, at the hour of 6:33 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

PLEDGE TO FLAG

Fire Chief Dennis Groat led the pledge of allegiance.

ROLL CALL

Present: Tell, Aldinger, Montgomery, Ward and Mayor Fahey.
Absent: None.
Clerk: Tamura.

CEREMONIAL ITEMS

05/0705.1 Consideration of a Resolution to Rename the City of Manhattan Beach 6-Man Beach Volleyball Tournament the "Charlie Saikley 6-Man Beach Volleyball Tournament"

Mayor Fahey, on behalf of the City Council, presented Rosa Lee Saikley with a copy of the Resolution and thanked the Saikley family for allowing the City to participate in remembering Charlie Saikley.

Mrs. Saikley thanked the City of Manhattan Beach for honoring her husband and keeping his memory alive.

MOTION: Councilmember Aldinger moved to adopt Resolution No. 5991 renaming the Manhattan Beach 6-man Volleyball Tournament the "Charlie Saikley 6-Man Beach Volleyball Tournament." The motion was seconded by Councilmember Montgomery and passed by the following unanimous vote:

Ayes: Tell, Aldinger, Montgomery, Ward and Mayor Fahey.
Noes: None.
Absent: None.
Abstain: None.

RESOLUTION NO. 5991

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MANHATTAN BEACH, CALIFORNIA, RENAMING
THE MANHATTAN BEACH 6-MAN BEACH
VOLLEYBALL TOURNAMENT THE "CHARLIE SAIKLEY
6-MAN BEACH VOLLEYBALL TOURNAMENT"**

Run-Off in Compliance with the Santa Monica Bay Beaches Bacteria Total Maximum Daily Load (TMDL) Regulations

Item No. 14 was pulled from the "CONSENT CALENDAR". Please refer to "ITEMS REMOVED FROM THE CONSENT CALENDAR."

BOARDS AND COMMISSIONS

Cultural Arts Commission

05/0705.15 *Consideration of Draft Minutes, Cultural Arts Commission Meeting of June 14, 2005*

The Council received and filed the subject draft minutes.

COMMUNITY ANNOUNCEMENTS

05/0705.19 *Mayor Fahey Re Concerts in the Park*

Mayor Fahey announced that *Concerts in the Park* take place on Sundays throughout the summer at Polliwog Park and encouraged everyone to attend.

PUBLIC HEARINGS

None.

GENERAL BUSINESS

05/0705.16 *Status Report and Review of the City's Tree Preservation Ordinance*

City Manager Geoff Dolan explained that this report would include a review of the provisions of the current Tree Preservation Ordinance and how it is administered, focusing primarily on private property trees. He noted that staff is looking for direction from Council regarding possible modifications to the Ordinance or changes on how it could be administered differently. He introduced Senior Planner Laurie Jester, who gave a PowerPoint presentation on the proposed Tree Preservation Ordinance.

Senior Planner Jester reviewed that Council gave direction to staff to come back with a report on the status of the Tree Ordinance after its first appeal in May of 2005. She explained that the original Ordinance, adopted in 1993, applied only to the Tree Section and then, in 2003, was expanded to the entire City except the Beach Area, and included the adoption of goals and policies related to the preservation of trees during the General Plan review process. She explained that a few months later, at a Joint City Council/Planning Commission Meeting, staff asked Council for guidance on how to implement the Ordinance, noting that with the expansion, it was perceived as more of a preservation Ordinance than a removal and replacement Ordinance. She noted that the regulations are incorporated in the Zoning Code and explained that the purposes include conserving scenic beauty, prevention of erosion, protection against flooding, counteracting pollutants, maintaining climatic and ecological balance, as well as preserving trees necessary for the health and welfare of the citizens of Manhattan Beach. Senior Planner Jester emphasized that the intent of the Ordinance is the retention and preservation of trees while permitting reasonable enjoyment of private property and stated that it is important to staff to maintain that balance. She clarified that the regulations only protect and preserve trees in a front yard that have a 12-inch or greater trunk diameter, measured 4-1/2 feet above the ground and stressed that tree replacement is required if a tree is removed. She reviewed the various exemptions to the preservation Ordinance including

City Council Meeting Minutes of July 5, 2005

trees less than 12 inches in diameter.

In response to Mayor Fahey's inquiry regarding the reasons specific trees are exempt and whether it would be worthwhile to review the exemptions, Senior Planner Jester stated that following review of several years of reports and minutes, staff did not find a decisive reason for the exemptions, however, they would be willing to look at the exemptions if directed by Council.

Senior Planner Jester reported that staff provides education regarding the preservation Ordinance to architects and contractors via a newsletter and quarterly meetings. She explained how staff inspects and photographs trees when plans come in for plan check; noted that, if necessary, the City arborist is consulted regarding removal of trees; that if the trees are determined to be unhealthy or hazardous or limits development, City staff may approve the application; and that if it is an unsure situation, the City's consulting arborist is contacted. She provided several examples of designs to accommodate trees while allowing access to a project and reviewed the replacement criteria. She explained what details staff looks for during the tree permit process; that walk streets have a different set of criteria; that decisions are made by the Director of Community Development; and that they can be appealed to the Planning Commission and received and filed by the City Council.

In response to Councilmember Ward's inquiry as to whether there is a requirement that trees must be replaced by the same type of tree that was removed, Senior Planner Jester stated that there is no specific requirement and that the City provides a list of trees from which residents can use as a guideline to choose their replacement tree.

Senior Planner Jester explained that the City occasionally uses the Code Enforcement Process, in concert with the City Attorney, when a tree is removed without a permit; that citations and fines have been issued for these types of violations; and that funds from these fines are put in a "Tree Canopy Restoration Fund" to replace trees in public areas. Senior Planner Jester and Council reviewed possible Code revisions and discussed whether they should be referred to the Planning Commission for consideration.

Councilmember Tell expressed concern regarding the City "taking on" the responsibility of preserving trees; stated that he prefers having a Tree Preservation Ordinance as opposed to a View Preservation Ordinance; and asked about the thought process the previous Council went through in deciding what the criteria would be.

Mayor Fahey stated that, at the time the Ordinance was adopted, Council did not go into detail regarding neighboring properties and roots affecting neighbor's lots; and that these things are a result of the implementation of the Ordinance.

Senior Planner Jester explained that, in 1993 when the Ordinance was originally adopted, Council looked at 8, 10 and 12 inch trees. When the Ordinance was expanded in 2003, the language stayed the same and it was a philosophical decision to implement it as a Preservation Ordinance.

Council discussed the reasoning behind requiring a certain size of tree and that because the approach has changed philosophically, more staff time is being required for this issue, even though the substantive part of the Ordinance has not changed.

In response to Mayor Fahey's inquiry regarding the procedure to be followed if administrative fines were imposed, City Attorney Robert Wadden stated that they could be imposed by the Community Development Director and subject to appeal to either the City Manager or an outside

hearing officer and that the amount could be specified or set by Resolution.

Councilmember Tell noted that it is important for Council to decide what it wishes to accomplish with the Ordinance; the purpose of exemptions from the Ordinance; the reason for the 12-inch diameter as a guideline; and whether Council wishes to try to preserve trees that contribute to the community and neighborhood and ensure that replacement trees are mature trees.

The following individuals spoke on this item:

- **Karol Wahlberg, No Address Provided**
- **Mark Radville, No Address Provided**

Councilmember Aldinger stated that his purpose in voting for the expansion of the original preservation Ordinance was because the aesthetics were being changed citywide and it was important to ensure that mature trees are kept in town.

Mayor Fahey agreed that the Ordinance was expanded beyond the tree section in an effort to maintain character in the communities without losing mature trees. She pointed out that the purpose as currently stated includes “the retention and preservation of trees while permitting the reasonable enjoyment of private property” and agreed that the balance is difficult to maintain. She stated that while staff is doing an excellent job of implementing the Ordinance, perhaps asking developers to build homes around a tree or to build their house around the roots of a neighbor’s tree is going too far and that a fair balance needs to be “struck”.

Councilmember Ward agreed with Mayor Fahey’s concerns of going “too far”, especially with regard to dictating pruning guidelines. He pointed out that Planning Commission and City Council discussions have always included the 24-inch box replacement tree and said this is a great opportunity to review the situation, either by doubling the size of the box or increasing the size of the diameter of the replacement tree. He stated that he is not willing to extend the rules to corner lots, noting that the current Ordinance works well but change could affect the ability to develop corner lots. He also questioned the logic behind the specific tree exemptions and suggested that they be reviewed.

Maintenance Superintendent Juan Price explained that the original intent of the exemption of fruit trees was to reduce rodent population, litter, stains on cars and sidewalks, and “trip hazards”. He noted that some palm trees cause rodent problems and further indicated that fruit trees and/or some palm trees are not on the approved list of trees for replacement.

In response to Councilmember Montgomery’s comment regarding box size and tree size, Maintenance Superintendent Price noted that there is no direct correlation between the box size and the trunk size, therefore suggested that the box size be changed to caliber size.

In response to Councilmember Tell’s inquiry regarding how the age of a tree is determined, Maintenance Superintendent Price stated that the only “fool-proof” way of determining age is by boring into the trunk of the tree. He added that just because a tree is old and large, does not necessarily mean it is a good tree and that regulations in other cities vary from very restrictive to non-existent.

Councilmember Montgomery stated that he is in favor of fruit tree exemptions as well as protecting trees on the street side.

City Manager Dolan pointed out that if street side yard trees are protected, it makes it

exceedingly difficult to develop these lots and suggested that the Planning Commission review the impact of this type of protection.

Councilmember Aldinger stated that the reason this matter is before Council is because of the two recent appeals. He said he is not in favor of relaxing the Tree Preservation Ordinance and complimented staff for doing a great job considering the number of applications they have processed.

Mayor Fahey approved the following individuals to speak a second time on this item:

- **Mark Radville, No Address Provided**
- **Karol Wahlberg, No Address Provided**

In response to Councilmember Tell's inquiry regarding disclosure requirements regarding tree protection for the sale of property, City Attorney Wadden stated that most of the requirements are in the Ordinance itself and are common to every property.

City Manager Dolan pointed out that the City already requires sellers to obtain a current building report and that this disclosure could be added as a component of the report, which would put the new owner on notice of any specific requirements for that property.

Council reviewed each component and provided the following direction to staff to have the Planning Commission review the following possible Amendments to the Ordinance:

Emergency Removal: There should be a separate emergency application to be decided administratively prior to the tree being removed, not after removal as currently allowed.

Protected Trees and Replacement Tree Size: Reconsider the definition of the trees to be preserved (consider caliper, canopy and height) and the replacement size in relationship to the size of the tree removed, as well as whether replacement is to be based on the size of a box, the diameter of the tree and/or tree canopy.

Street Side Yards: Review and consider replacement trees in side yards, but not preservation. It was noted that this proposal is a result of a meeting with residents, who proposed balancing this with the homeowners' rights and the rights to preserve the value of the property.

Administrative Fines: Review and consider setting up a schedule, determining who would have discretion to impose, etc.

Pruning: Leave as is, no standards or permits required for pruning.

Purpose: Add further language.

Trees on Adjacent Properties: Council noted that there are conflicting provisions in the Code - an issue of protecting neighbors trees versus allowing pruning of branches and roots across property lines. It was agreed that there are some trees that should be preserved and further discussion is needed regarding whether the root system of the neighbor's trees must be preserved. A reasonable balance should be the goal.

In response to Councilmember Aldinger's concern that Council set a precedent when it acted on the appeal last month, City Manager Dolan explained that the action of Council was to direct staff to do whatever could reasonably be done to preserve the tree, but, if it was not possible, the tree could be removed and replaced.

Mayor Fahey pointed out that this is a “reasonableness” test, which is an appropriate action.

Councilmember Tell emphasized that the current Code has two conflicting provisions that have been addressed on an individual basis, but need to be reconciled.

Right of Way Improvement: This is a staff request to codify what is currently being done, which the council supported.

City Manager Dolan thanked Council for their direction, noting that the Community Development staff devotes significant time to this issue and it is helpful to understand the intention of Council.

05/0705.17 Presentation of Proposed Downtown Hanging Plants Improvements

City Manager Dolan introduced Maintenance Superintendent Juan Price and reviewed Council’s request for staff to design ways of hanging plants from light standards as part of the downtown improvement. He suggested that Council take a break to view the three different designs, which had been hung outside of City Hall and to provide direction to staff regarding which, if any, of the designs they would like to use in the downtown improvement project.

RECESS AND RECONVENE

At 8:02 p.m. the Council recessed and reconvened at 8:10 p.m. with all Councilmembers present.

Councilmember Ward described the three different designs: an emblem of the sun, a surfboard and waves along the sand; a triangular hanging with a mermaid chasing three dolphins; and a platform-like element with the Pier Roundhouse at the end and a wave crashing over the top of the Roundhouse.

City Manager Dolan reiterated Council’s desire to place planters at a few intersections in the downtown area for the remainder of the summer, determine maintenance requirements and public reception, and perhaps consider expansion of the program if it is successful. He noted that this is a budget item and funds are available.

Council discussed the various designs and provided comments and input regarding their preferences of the three designs, agreeing that the mermaid design was not appropriate; that the sun/surf/surfboard could also be designed without the surfboard as well as with a solid surfboard; and that the wave at the end of the Pier Roundhouse should be smaller and “break” under the pier.

The following individual spoke on this item:

- **Carol Rowe, Downtown Business and Professional Association**

Mayor Fahey suggested, and Council concurred, that staff be allowed discretion in using all of the designs, with the exception of the mermaid, and provided direction that the planters be installed only at the main intersections at this time.

05/0705.18 Consideration of the City Council’s 2005-2007 Work Plan

City Manager Dolan explained that Council holds an annual Work Plan Meeting to develop a set of goals and objectives for staff and the Council to work on in the coming year. He noted that this year’s plan spans two years and reviewed 32 different high priority items, as listed in the staff report, that have not yet been prioritized. Referring to the significant list of