

ORDINANCE NO. 2082

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MANHATTAN BEACH 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
HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach, California, does hereby
find, determine and declare as follows:

WHEREAS, 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, and the
Ordinance originally applied only to the Tree Section, generally bounded by Rosecrans Avenue,
Blanche Road, Valley Drive and Sepulveda Boulevard, and;

WHEREAS, 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, and;

WHEREAS, on June 24, 2005, the City Council held a special session and developed
the 2005-2007 Work Plan, which included an item to study possible revisions to the Tree Ordinance,
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 Community Development 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 adopted Resolution No. PC 05-11 recommending to the
City Council revisions to the Tree Ordinance, 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 published on August
11, 2005 in a newspaper of general circulation (Beach Reporter), and;

WHEREAS, 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 No. PC 05-11) related to revisions to the tree preservation
regulations, and public testimony was invited and received, and the Council directed staff and the
Planning Commission to revisit portions of the proposed Ordinance, and;.

WHEREAS, 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, and;

WHEREAS, pursuant to applicable law, the Planning Commission of the City of Manhattan
Beach conducted a public hearing on October 26, 2005, on the proposed Code Amendments related to
revisions to the Tree Preservation regulation, and after accepting public input and discussing the item,
provided direction to staff for revisions to the Ordinance and continued the public hearing to December 14,
2005, and adopted Resolution No. PC 05-20, recommending to the City Council revisions to the Tree
Preservation regulations, 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 published on October 13, 2005 in a newspaper of general circulation (Beach Reporter), and;

WHEREAS, pursuant to applicable law, the City Council of the City of Manhattan Beach conducted a public hearing on February 7, 2006, on the proposed Code Amendments related to revisions to the Tree Preservation regulation, and after accepting public input and discussing the item, provided direction to staff for further revisions to Draft Ordinance No. 2082, and;

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

WHEREAS, the public hearing held by the City Council was advertised by an ad published on January 26, 2006 in The Beach Reporter, a newspaper of general circulation in Manhattan Beach and notice was mailed to interested parties of record, and;

WHEREAS, pursuant to applicable law, the City Council of the City of Manhattan Beach conducted a public hearing on March 7, 2006, on the proposed Code Amendments related to revisions to the Tree Preservation regulation, and after accepting public input and discussing the item, introduced Ordinance No. 2082, for revisions to the Tree Preservation regulations, and;

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

WHEREAS, the public hearing held by the City Council was advertised by a 1/4 page ad published on February 24, 2006 in The Beach Reporter, a newspaper of general circulation in Manhattan Beach and notice was mailed to interested parties of record, 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, and;

WHEREAS, the City Council finds that 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; and,

WHEREAS, the City Council made the following findings with regard to the proposed changes:

1. The proposed amendments are consistent with the City of 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.

- 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.

- 3. 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.

SECTION 2. The City Council of the City of Manhattan Beach hereby amends Section 10.52.120 of Title 10, of the Manhattan Beach Municipal Code, entitled 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. *These regulations strive to preserve and enhance the existing tree canopies on individual residential properties as well as the overall neighborhood, in order to maintain the neighborhood character. The design of residences, including grading, driveways, walkways, patios, utilities and right-of-way improvements, shall consider and accommodate existing protected trees.* 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, *or relocate* 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 yard or streetside yard (on corner lots) of a site, with a trunk diameter of twelve inches (12") or greater or multiple trunks totaling twelve inches (12") 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, relocation 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 and streetside yards, in the adjacent public right-of-way and on adjacent properties within 10 feet of the subject property adjacent to the front and streetside yards

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, relocated 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 protected trees, as defined above, shall be preserved and protected, and may be only be removed or relocated with prior approval of a tree permit provided they are replaced or relocated in accordance with the provisions of this Section.

2. 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.

3. Care shall be exercised for trees to be preserved so that no damage occurs to said trees. Advisory sign(s) that identify the tree protection requirements shall be clearly posted on the site. 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 grading or 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. Where some root removal is necessary as approved by the City the tree crown may require thinning to prevent wind damage.

7. Residential buildings shall take priority over tree preservation, however alternative designs and materials, shall be considered and implemented, as feasible, with the proposed overall design of the project.

8. 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.

9. Relocation of protected trees shall only be allowed if the Community Development Director determines that the relocation will not be detrimental to the health of the tree or to other protected trees.

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

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

~~3. A bond, cash deposit or other financial security, may be required to ensure required replacement trees are planted and/or that existing protected trees are properly protected, as determined to be appropriate by the Community Development Director.~~

4. 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/Acknowledgement and~~ 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.~~

~~4. A bond, cash deposit or other financial security, may be required to ensure required replacement trees are planted and/or that existing protected trees are properly protected, as determined to be appropriate by the Community Development Director.~~

~~5. Any new residential construction project in Area Districts I and II which exceeds fifty-percent (50%) valuation (total estimated cost of reconstructing the entire structure as defined by Section 10.68.030 of the Manhattan Beach Municipal Code) shall be required to plant a minimum of one new thirty-six inch (36") box tree, unless the Director of Community Development determines that it is inappropriate to require additional tree(s) on the property.~~

G. Replacement Trees. Required replacement trees shall be minimum ~~twenty-four inch (24") boxed trees~~ *thirty-six inch (36") box trees* for each protected tree removed 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. ~~The City street tree list may be used as a guideline by the Director in determining appropriate replacement tree(s). In no case shall~~ *A combination of protected and* replacement tree quantities ~~shall not~~ 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 replacement tree(s) due to the number of existing trees to remain, then the requirement for replacement trees may be modified or waived.*

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 American National Standards Institute (ANSI A300) standards and does not damage or potentially damage the health and structure of the tree(s).~~

~~5. Cutting of tree branches and roots to the extent that the pruning complies with the American National Standards Institute (ANSI A300) requirements 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. All other provisions of the City of Manhattan Beach Municipal Code shall remain unchanged and continue in full force and effect.

SECTION 4. Any provisions of the City of 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, phrase or portion 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 this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 6. A staff review of the proposed amendments per Section 2 of this

Ordinance is hereby directed to occur approximately twelve (12) months after the effective date of this Ordinance.

SECTION 7. 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 8. The City Clerk shall certify to the passage and adoption of this ordinance shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council of said City in the minutes of the meeting of said Council at which the same is passed and adopted; and shall within fifteen (15) days after the passage and adoption thereof cause the same to be published once in a weekly newspaper of general circulation, printed, published and circulated within the City of Manhattan Beach, California and which is hereby designated for that purpose.

PASSED, APPROVED AND ADOPTED this 21st day of March, 2006.

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor of the City of Manhattan Beach, California

ATTEST:

City Clerk