

Draft 11/23/04
CITY COUNCIL ACTION FOR
PUBLIC TREE and COMMUNITY FOREST ORDINANCE

WHEREAS:

WHEREAS, a community forest, also known as an urban forest, is comprised of every tree in our City, including those located on: local, state and federal public land, parks and open space; street rights-of-way; school property; and private property; such that the total number of trees is substantial, even in our City's semi-arid environment; and

WHEREAS, trees are an environmentally sensitive, low-technology way to achieve many of our City's most important objectives, including reduced energy consumption, improved air quality, reduced heat islands, reduced stormwater runoff to our beaches and bays, decreased soil erosion, reduced glare, and improved community image and aesthetics, such that trees represent an important part of our City's infrastructure; and

WHEREAS, from 1956 to 1997, the City recognized the public benefit of regulating the community forest in San Diego Municipal Code Chapter 14, Article 2, Division 4, "Landscape Regulations," San Diego Municipal Code Chapter 6, Article 2, Division 6, "Street Planting," and Council Policy 200-5, "Planting of Trees on City Streets"; and

WHEREAS, in 1995 the City recognized the value of developing additional regulations for the community forest when it adopted Resolution No. R-286098 creating the Tree Advisory Board, the duties of which include to "Advocate and formulate proactive urban forestry policies, ordinances and guidelines"; in 1999 adopted Municipal Code Sections 26.0501 through 26.0503 additionally charging the Board to "Provide advice and recommendations directly to the Mayor, City Council and City Manager on all policy issues relating to urban forestry"; and in 2002 amended that Ordinance to rename the Board the Community Forest Advisory Board; and

WHEREAS, the Community Forest Advisory Board's vision is to create mechanisms for establishing, advocating and stewarding, in perpetuity, a healthy urban forest and thereby a healthy, attractive and prosperous City; and

WHEREAS, the Community Forest Advisory Board, in fulfilling its vision and duties, recommends adoption of a "Public Tree and Community Forest Ordinance" to regulate certain aspects of tree planting, protection, removal and replacement; NOW THEREFORE

BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF SAN DIEGO, AS FOLLOWS:

1. The above recitals are true and correct.
2. The "Public Tree and Community Forest Ordinance" is introduced as Chapter 6, Article 2, Division 6 of the San Diego Municipal Code.

3. The Technical Manual for this ordinance is adopted by reference for the purpose of establishing uniform interdepartmental policies and guidelines to carry out the City's community forestry functions, and to provide information and guidance to City staff, the general public and private sector professionals who are responsible for planting, pruning, removing or replacing trees; and the Manager is directed to update the Technical Manual as needed without further Council action, unless that amendment would increase either the public or private cost of compliance with the ordinance.
4. The following City ordinance is amended, as follows: Chapter 2, Article 6, Division 5: Section 26.0501: Purpose and Intent: "It is the purpose and intent of the City Council to establish a Community Forest Advisory Board to serve in an advisory capacity to the Mayor, City Council and City Manager on policy issues relating to urban ecosystems, including the green infrastructure and urban forestry. The vision statement for the Board is to create mechanisms for establishing, advocating and stewarding, in perpetuity, a healthy green infrastructure and urban forest and thereby a healthy, attractive and prosperous city"; and

Section 26.0502: Community Forest Advisory Board Established: Reduce membership from 14 to 12 by deleting membership of People for Trees and a Horticulturist/Nursery Industry representative; and
5. The following City ordinance is rescinded on the date that the "Public Tree and Community Forest Ordinance" takes effect:
 - San Diego Municipal Code Chapter 6, Article 2, Division 6
6. The following City policy is rescinded on the date that the "Public Tree and Community Forest Ordinance" takes effect:
 - Council Policy 200-5
7. The following City policies, ordinances and codes shall be revised and / or integrated as necessary to conform to or reference the "Public Tree and Community Forest Ordinance":
 - San Diego Municipal Code Sections 62.0600-62.0616, "Street Planting"
 - San Diego Municipal Code Section 142.0403, "Irrigation and Plant Material Standards"
 - San Diego Municipal Code Section 142.0409, "Street Tree Requirements"
 - San Diego Municipal Code Chapter 14, Article 2, Division 4, "Landscape Regulations"
 - San Diego Municipal Code Chapter 1, Article 2, "Code Enforcement Judicial and Administrative Remedies"
8. City Manager is authorized and directed to implement this ordinance, and return to City Council with recommended amendments to other City documents as authorized by this resolution.

Draft Public Tree and Community Forest Ordinance

1. Purpose

It is the purpose of this ordinance to promote and protect the public health, safety and general welfare by providing for the regulation of *public tree* planting, maintenance, removal and replacement within the City in order to help develop, nurture and protect a *sustainable community forest*.

1.1. Applicability

1.1.1 Public Trees

This ordinance applies to *public trees*, unless *City trees* are specified. Nothing in this ordinance or associated *Technical Manual* shall supercede *tree* planting required by the Landscape Regulations, Street Design Manual, Centre City Streetscape Manual or any other applicable landscape or streetscape regulation. Nothing in these sections or associated *Technical Manual* shall supercede the requirements of the Invasive Exotic Plant Ban restricting the sale or use of exotic species, the CalEPPC Exotic Pest Plants of Greatest Ecological Concern List or the intent of the Land Development Code Landscape Standards Section 1.3 or any actions by the Park and Recreation Department to remove non-native invasive species from City owned Designated or Dedicated Open Space lands. Nor should this ordinance prevent the creation of defensible space under the Brush Management Ordinance where properties abut areas of high wildland fire potential.

1.1.2 Protected Private Trees

This ordinance applies to *City trees* and to *private trees* that have been designated for protection upon the request of the property owner or that exist as part of privately owned open space parcel resulting from an easement placed on the property as a condition of permit or approval. Nothing in this section or associated *Technical Manual* shall restrict the removal of any *tree* designated for protection if the *tree* constitutes a threat to public safety after reasonable efforts have been made to remove that threat through additional care, corrective actions and/or maintenance. Nothing in this section or associated *Technical Manual* shall supercede *tree* protections under the Environmentally Sensitive Lands Regulations or the Multiple Species Conservation Program (MSCP Subarea Plan) or protections for *trees* that are considered to be state or federally endangered or sensitive. Likewise, nothing in this section shall supercede the requirements of the Invasive Exotic Plant Ban or other programs requiring the removal of exotic invasive species from *Open Space Preserves* or prevent the creation of defensible space under the Brush Management Ordinance where properties abut areas of high wildland fire potential.

1.2. Vision and Objectives

Primary among the important benefits of a *community forest* is its ability to enhance air quality, provide energy conservation, reduce storm water runoff, limit erosion and increase the quality of

life for its residents as well as visiting tourists. These benefits result in financial savings and therefore have a dollar value. All of these benefits are increased when the size and extent of the *tree* canopy is increased.

The vision for the City's *community forest* is one of a thriving and sustainable *tree* canopy which extends over all areas of the City, especially where people live, shop and play.

Specific objectives for measuring the attainment of this vision include:

- A 12% increase in the City's *tree* canopy coverage by 2012, bringing the total canopy to 25% to match the goal determined by American Forests' Urban Ecosystem Analysis for San Diego produced in 2002.
- An age-diversified *tree* canopy where approximately 1/3 are new plantings (0-5 years), 1/3 young (5-25 years), and 1/3 mature (25 plus years).
- A species-diversified *tree* canopy to prevent species-specific spread of disease while at the same time providing for consistent *street tree* design themes on a street-by-street basis. No one species should make up more than 10% of the total trees in the urban forest.
- A process that provides for inventory and project review protecting *Landmark trees*, *Heritage trees*, *Parkway resource trees* and *Preservation groves*.
- A process that assures no net loss in the *tree* canopy due to development or redevelopment activities. A net loss can occur only in areas where non-native invasive *trees* are proposed to be removed in *Open Space Preserves* for habitat enhancement purposes.
- An approved community *street tree* master plan for all community planning areas along with a citywide community forest master plan.
- At least one *street tree* in the *public right-of-way* in front of 90% of developed residential parcels (located in front yard or *parkway*).
- At least one *street tree* every 50 feet in *public right-of-way* in front of every commercial and industrial parcel (located in a landscaped frontage area or *parkway*).
- At least 22 *trees* per acre average in every developed park, excluding sports field acreage or other active use areas reserved for active sports or open playfield requirements. The current City of San Diego Park and Recreation Standards including the Consultants Guide to Park Development" will remain as the appropriate guidance in many circumstances.

2. Definitions

The following words are defined for purposes of this division as follows:

Assessed value is the value of a *tree* as determined by the *Manager*. When *assessed value* is used to calculate a monetary penalty, *assessed value* may be appealed to the *Community Forest Advisory Board*.

Certified arborist means an individual certified as an arborist by the International Society of Arboriculture (ISA), These professional arborists have a minimum of three years experience in some aspect of tree care and have passed an exam developed by an international panel of experts. The exam extensively covers every aspect of tree care and the individuals must have an acceptable level of knowledge in all areas of arboriculture.

City arborist means any *certified arborist* employed by the City to perform urban forestry or *tree* work. Other working titles such as Citywide Community Forester, Urban Forester, Park and Recreation Arborist, Arborist or Horticulturist are applicable. In cases where only *Open Space Preserve* land is affected, a biologist may play the role of a *City arborist*.

City standard for trees in the *public right-of-way* means *trees* planted by the City, or planted with a *City Street Tree Permit* in quantity and type that are consistent with what the City provides. Landscaping, including *trees*, in excess of the *City standard* is only allowed in the *public right-of-way* with a City development permit and a signed maintenance agreement for that landscaping.

City tree means any *tree*, planted within *public right-of-way*, park, greenbelt, public place or property owned or leased by the City or by an agency of the City, or on private land placed in a permanent open space easement.

Community forest refers to all publicly and privately owned *trees* within the City (same as urban forest).

Community Forest Advisory Board is a 12-member Board created by Municipal Code Sections 26.0501 through 26.0503. The Board is charged with making recommendations to the Mayor, Council and *Manager* on all policy issues relating to urban forestry.

Cutting means the trimming, detaching or separating of any limb, trunk, root or any other part of a *tree*, including cutting into the trunk of a *tree*.

Damage means any action undertaken that causes injury, death or *disfigurement* of a *tree*. *Damage* may occur by, among other means: *cutting*, poisoning or over-watering a

tree; relocating or transplanting a *tree* against the advice of a *certified arborist*; or trenching, excavating or paving within the *Tree Protection Zone (TPZ)* of a *tree*.

Diameter at Breast Height (DBH) means the diameter of a *tree* trunk measured at four feet six inches above ground level. The diameter may be calculated by use of the following formula: $DBH = \text{circumference at breast height} \div 3.14$. *DBH* is a factor used in many forms of *tree* evaluation, e.g. it is one measure of *tree* size, and it is used in *assessed value*, etc.

Disfigure a tree means to deform a *tree's* appearance by excessive pruning in ways that are radically different from the *tree's* natural growth patterns and would be considered permanent if the *tree* is unable to re-grow and attain its natural form.

Fatal damage to a *tree* means *damage* that will cause a *tree* to die either immediately or within a one year growing season.

Hazardous tree means:

a). The *tree* is a *hazard* because it is dead and in danger of falling; or

b). The *tree* is not dead but is a *hazard* because: (1) the main trunk may fail or drop major limbs within the inspection period interval (assumed to be annually) in an area where people are likely to be for extended periods of time, block critical visibility at intersections, or represent an obstacle in or directly next to a travel lane that cannot feasibly be protected, and (2) corrective action such as *pruning*, *guying* or *crown reduction* is not feasible, such that an unsafe condition exists. Feasibility of corrective action shall be determined by the *Manager or City Arborist*; or

c). The *tree* is a *hazard* because: (1) the *tree* is damaging public or private Improvements, and (2) the damage cannot be reasonably corrected by above surface or underground *pruning* or sidewalk corrective actions or adjustments. Reasonableness of corrective action shall be determined by the *Manager*.

Heritage tree is a *tree protection category* within *protected trees*.

These *trees* may be either naturally occurring or planted, and qualify under this category if they are 50 years or older or have a connection to a significant historic event, building or district, or were planted by an historically significant individual. Specific proof of age may be difficult to ascertain but research using aerial photographs or estimations based on the age of the adjacent development or the size of the *tree* can be adequate for this designation.

In-lieu fee is a fee paid instead of paying to plant and/or water a *required tree*. Fee is deposited in *Urban Tree Fund*.

Landmark tree is a *tree protection category* within *protected trees*. It includes *trees* that are unusual or have a very high aesthetic quality. A *Landmark tree* is unusual due to: large size obtained for that species; special and intact aesthetic form; unusual shape not normally seen in most *trees*; very interesting flowers and/or branching patterns; or being a species of *tree* that rarely occurs in the City. The intent of this category is to recognize unusual trees that have achieved a landmark status and not to apply this category to a broad number of trees.

Major City project means any project over \$250,000 total value for which the City or a City agency is the lead entity.

Maintenance Assessment District (MAD) is a legal mechanism by which property owners can vote to assess themselves to pay for and receive services above-and-beyond the services the City normally provides.

Maintenance Assessment District maintained tree is any tree planted within the public right-of-way or in a MAD maintained easement and maintained with MAD funds.

Manager means City Manager or his/her designee.

Modification of a tree refers to direct (e.g. *prune*) and indirect (e.g. grade change, trenching) impact to *tree* or the surrounding area that results in physical impact upon a *tree*.

Open Space means any land or water area:

- (a) which is primarily in its natural state and has value for park and recreation purposes, and
- (b) which, in the opinion of the City Council of the City,
 - (1) conforms to the criteria established for open space land set forth in the “Progress Guide and General Plan for The City of San Diego” as amended, and
 - (2) would, if retained in its natural state or improved, enhance the present or potential value of abutting or surrounding properties or would maintain or enhance the conservation of natural or scenic resources. It differs from the term used as *Open Space Preserve* in that its primary function is not biological and it may or may not contain native vegetation. Those areas that are managed primarily for native habitat are defined below under the category of *Open Space Preserves*.

Open Space Preserve for the purposes of this ordinance, means public lands owned or managed by the *City* that contain natural areas identified under the Multiple Species Conservation Program (MSCP Subarea Plan), or other natural areas found to have sensitive or endangered plant and animal species or that can be expected to sustain these species with enhancement and management efforts. These preserves also include lands that were privately owned but were transferred to the *City* as open space through a designation or dedication process. *Open Space* also includes

privately held lands that have an *Open Space Easement* placed upon them but where ownership remains private.

Parkway is the part of the street between the face of the curb (or edge of traveled way) and the right-of-way line.

Parkway resource tree is a *tree protection category* within *protected trees*. Planted groups of trees along public streets, public parking lots or trails with a consistent design theme are considered to be *Parkway resource trees* when their overall size, health and form are relatively consistent. Relative consistency means that: 1) more than 50% of the parcels per block contain the same *tree* species, or 2) groups of different species provide a consistent canopy over a portion of a street.

Permitted tree means any *City tree* planted under the authority of a *Street Tree Permit*.

Preservation grove is a *tree protection category* within *protected trees*.

Naturally occurring *trees* in *public right-of-way*, *open space*, designated Environmentally Sensitive Lands or parkland may be considered *Preservation groves*. A grove consists of at least six (6) *trees* grouped in close proximity (within a one-quarter (1/4)-acre area) with trunks closer together than 100 feet that are of the same species or are very similar in form. The *trees* shall be native, naturalized or endemic and surviving without intervention or supplemental watering. Non-native or naturalized species found within *Open Space Preserves* shall not be eligible for protection under this ordinance, though native *trees* within these preserves may be designated as *Preservation groves*.

Private tree means any *tree* privately owned and growing on private property outside of the *public right-of-way*.

Property owner means the record owner of real property based on the County Assessor's records.

Proposed Tree Removal List is a monthly list of all *City trees* being considered for removal. The list is distributed for public review and comment before action is taken on the requested *tree* removal. Distribution of the *Proposed Tree Removal List* is to officially recognized community planning groups, the *Community Forest Advisory Board*, *Manager*, *Mayor* and *Council* members.

Protected tree means a *tree* designated for protection under the provisions of this ordinance. It is a *tree* in one of the following *tree protection categories*: *Heritage tree*, *Landmark tree*, *Parkway resource tree*, or *Preservation grove*.

Prune shall refer to both above surface and underground *cutting*; to cut off or cut back parts to enhance health and structure. All *pruning* shall conform to *Tree Pruning*

Guidelines (International Society of Arboriculture) or Pruning Standards (American National Standards Institute- A300)

Prune excessively shall mean pruning in excess of Tree Pruning Guidelines (International Society of Arboriculture) or Pruning Standards (American National Standards Institute A300). It shall apply to both above surface and underground *cutting*.

Public right-of-way means the property dedicated for public roadway including areas for sidewalks and parkway planters.

Public tree means a *City tree* or other *tree* located within the City on public land that is accessible to the general public and is managed by any public agency including, but not limited to: CalTrans, Airport Authority, San Diego Unified Port District, school districts and other state or federal agencies.

Removal means removal of a *tree* by cutting to the ground and complete extraction of the tree trunk as well as surface roots.

Required tree is a *tree* required to be planted as a condition of a development permit or ordinance.

Street tree means any *tree* adjacent to a street and located within the *public right-of-way*.

Street Tree Permit refers to a no-fee permit issued by the City for actions affecting *City trees*, including planting, pruning, removal or replacement.

Sustainable community forest is a *community forest* in which the *trees* span a range of ages and species so that the forest is not vulnerable to decimation by insects or disease.

Technical Manual for this ordinance details the specific implementation practices for the Public Tree and Community Forest Ordinance. *Technical Manual* is adopted by this ordinance by reference. The *Technical Manual* may be amended by the City *Manager* from time-to-time without Council action, unless that amendment would increase either the public or private cost of compliance with the ordinance.

Topping is the practice of *cutting* the entire upper portion or top of a *tree*. It involves removing major *tree* trunks, limbs and primary branches that are not part of the leaf, twig and small branch annual or biannual growth of the *tree*.

Tree means any woody perennial plant having one or several main stems commonly achieving eight or more feet in height and capable of being *pruned* and shaped to develop a branch-free trunk at least six feet in height. Reference to any *tree* indicates the entire plant, including both visible (canopy, trunk) and below grade (roots).

Tree protection category means one of the following: *Heritage tree*, *Landmark tree*, *Parkway resource tree*, or *Preservation grove*. A *tree* may qualify for protection under one or more *tree protection categories*. A *tree* in any *tree protection category* is a *protected tree*.

Tree Protection Zone (TPZ) means the area within the outermost edge of a *tree's* canopy (its drip line), as measured accurately at the time of application for a building permit, discretionary project review, *Street Tree Permit* or other discretionary approval.

Urban Tree Fund means Fund XXXXX, as described in Resolution No.R-XXXXXX. Funds may be used only for the purposes described in the Fund's authorization, basically planting and/or maintaining trees on public property. A separate account will be developed for fees paid for the purposes of a neighborhood code compliance investigation with the ability for appropriate departmental personnel to charge against this account for cost recovery purposes.

3. Referenced Documents

- 3.1. National Environmental Policy Act (NEPA) (U.S. Code, Title 42, Chapter 55)
- 3.2. California Environmental Quality Act (CEQA) (California Public Resources Code, Division 13, Environmental Protection)
- 3.3. Progress Guide and General Plan, as amended by the Strategic Framework Plan and other subsequent documents
- 3.4. Landscape Regulations (San Diego Municipal Code Chapter 14, Article 2, Division 4)
- 3.5. Environmentally Sensitive Lands Regulations (San Diego Municipal Code Chapter 14, Article 3, Division 1)
- 3.6. Invasive Exotic Plant Ban, (San Diego Municipal Code Chapter 6, Article 3, Division 16, Sections 63.1601-63.1604)
- 3.7. Brush Management Ordinance (San Diego Municipal Code Chapter 12, Article 2, Division 4)
- 3.8. Code Enforcement Judicial and Administrative Remedies (San Diego

Municipal Code Chapter 1, Article 2)

- 3.9. Multiple Species Conservation Program (MSCP Subarea Plan) (Document No. RR-288455-2 adopted by R-288455 on March 18, 1997)
- 3.10. Street Design Manual, (Document No. RR-297376 adopted by R-297376 on November 25, 2002)
- 3.11. Centre City Streetscape Manual
- 3.12. Redevelopment Plans
- 3.13. Special Project Area Plans
- 3.14. Street Tree Selection Guide
- 3.15. Technical Manual for Public Tree and Community Forest Ordinance (“Technical Manual,” Document No. RR-XXXXXX.) Technical Manual is incorporated into this ordinance by reference.

4. Regulations

4.1. General Requirements

4.1.1. This ordinance incorporates by reference the *Technical Manual*. The *Manager* may update the *Technical Manual*, as needed, without further Council action, unless that amendment would increase either the public or private cost of compliance.

4.1.2. The objectives of this ordinance, listed in Section 1.2, shall be incorporated into other city planning policy documents including, but not limited to, the Progress Guide and General Plan, Related Elements, Redevelopment Plans and Special Project Area Plans (private or public).

4.1.3. *Public trees* are an important part of public infrastructure, and the beneficial effects of *trees* listed in Section 2 of the *Technical Manual* shall be taken into account when developing public policy, implementing *major City projects*, preserving *protected trees* and reviewing permits for *public tree removal*.

4.2. Applicability to Major City Projects

4.2.1. For all *major City projects* where a portion of the project touches an improved street right-of-way, the project shall review the applicability of the objectives of this ordinance, listed in Section 1.2, and of the appropriate community *street tree* master plans, and incorporate all practical measures into the

major City project to achieve these objectives and conform to the community *street tree* master plans. If any of these objectives are not incorporated, an explanation shall be documented. Where a City project involves an open space area or park and recreation facility, the general goals of this ordinance will be adhered to but will not supercede currently adopted park design guidelines and standards as long as they meet a similar goal of 22 trees per acre (excluding lands set aside for active formal and informal sports areas).

4.2.2 All departments and redevelopment agencies of the City shall coordinate the requirements of the *Ordinance* with their operations and projects that potentially affect *public trees*. This coordination includes the processing of all permits for construction, whether public or private. The responsibility for meeting the intent of the *Ordinance*, with special attention given to *tree* protection, shall be placed within all departments. These departments shall be able to rely on the direction, advice and technical support provided by *City arborists* and recommendations of the *Community Forest Advisory Board*.

4.3. Applicability to Ministerial and Discretionary Projects

4.3.1. All ministerial and discretionary projects shall comply with these landscape regulations. *Ordinance* compliance requirements are included in the Land Development Code under Chapter 14, Division 4, Landscape Regulations.

4.3.2. Any permit issued by a City department or City agency that includes permission to plant, *prune*, *remove* or replace a *street tree*, shall comply with the requirements listed in this ordinance and the associated *Technical Manual*.

4.3.3. All ministerial and discretionary projects occurring on streets that have community *street tree* master plans, as described in the *Technical Manual*, shall be required to follow these plans in conjunction with other landscape requirements as determined by the Landscape Regulations. If a community *street tree* master plan does not exist, then refer to Section 4.3.6.

4.3.4. The Development Services Department shall be responsible for coordinating requirements for *tree* plantings, *tree* protection enforcement and *tree removal* permits with Development Services Department's issuance of building, grading, demolition, shoring and development permits. Neighborhood Code Compliance shall be responsible for receiving and investigating claims, with assistance from City arborists. The CFAB shall serve as the Hearing Officer, with recommendations to the City Council for final determination. The City Council will serve as the final appeal decision maker.

4.3.5. Redevelopment agencies operating under the auspices of the City, shall coordinate all development permits, plans or other approvals with the requirements of the *Ordinance*.

4.3.6 All discretionary and ministerial projects (where applicable) shall adhere to community *street tree* master plans. If a community *street tree* master plan does not exist for the project location and: (a) the project is considered a full city block or multi-block project, the project shall be required to develop a *street tree* master plan for the block (including both sides of the street) which shall be presented to the local community planning group for a recommendation; (b) alternatively, *the City Arborist* can approve an appropriate *street tree* selection. When not otherwise specialized, the proposed *street trees* shall be determined by the existing dominant *tree* on that street, or where no clear dominance exists, the *tree* should be derived from the Street Tree Selection Guide described in Section 7.

4.4. Street Tree Master Plans

4.4.1. Individual community plans shall identify community *street tree* master plans, as described in Section 6 of the *Technical Manual*. The plan shall designate priority community streets for street tree programs and indicate by species (with acceptable alternatives) or by design form, the types of trees proposed for these priority streets. The plan will also integrate *known protected trees* and inventory for other candidate *City trees* for this designation. If street tree master plans are not currently a part of a community plan or if a community plan update is not possible, then an interim *street tree* master plan can be developed by the community, adopted by the elected board members of the community group and used to direct street tree priorities for that community. When an update does take place, however, it should consider the incorporation of the locally adopted *street tree* master plan and/or the development of a new *street tree* master plan.

4.4.2. The aggregate of community *street tree* master plans shall represent the citywide *community forest* master plan. Not all community *street tree* master plans need to be complete prior to the development of the *community forest* master plan. Placeholders for each community *street tree* master plan will be acceptable

4.5. Trees Designated for Protection

4.5.1 Trees and groups of trees shall be eligible for special protection as *protected trees* in one or more of the following *tree protection categories*: *Landmark tree*, *Heritage tree*, *Parkway resource tree* and *Preservation grove*.

4.5.2. All *City trees* with at least an 8-inch *Diameter at Breast Height (DBH)* shall be evaluated for potential designation as *protected trees* prior to consideration for *removal*. Criteria for designation, and the protection measures afforded *protected trees*, are described in Section 12 of the *Technical Manual*.

4.5.3. *Manager* shall ensure that permits issued by City departments and City agencies do not authorize *removal* of *protected trees* without first complying with Section 12 of the *Technical Manual*.

4.5.4. *Parkway resource trees* that are *removed* and replaced in accordance with the *Technical Manual* shall be replaced with the same species of *tree*, unless a *certified arborist* provides justification as to why this type of *tree* should not be used or where an adopted community plan or streetscape master plan indicates a complete change of design theme for a particular street. Tree replacement in a *Maintenance Assessment District* managed area, shall be replaced with a tree consistent with the original design theme unless the Grounds Maintenance Manager in consultation with the MAD Advisory Committee and a *City Arborist* decides that the original trees are no longer suitable for the conditions of the parkway.

4.6. City Tree Records

4.6.1. *Manager* shall create, maintain, update annually and post on the City website the Street Tree Selection Guide. The Street Tree Selection Guide shall include links to information listed in the *Technical Manual*.

4.6.2. *Manager* shall create, maintain, update as needed and post on the City's web site a Street Tree Inventory. The Street Tree Inventory shall, at a minimum, identify *protected trees* and their *tree protection category*. Because of limited funding, a phased approach will be required and not all areas will be able to be updated on a regular basis. Priority areas for updating should be determined by the *City's Urban Forester*. Generally street tree inventories in older neighborhoods should receive a higher priority for funding than *trees* associated with *open space* areas.

4.6.3. *Manager* shall create, maintain, update annually and make available to City departments and City agencies, in electronic or hardcopy format, location maps of all *protected trees*.

4.6.4. *Manager* shall compile and distribute monthly a *Proposed Tree Removal List*.

4.7. City Street Tree Permits

4.7.1. A *Street Tree Permit* shall be required for any of the following actions in the *public right-of-way*: planting, *pruning*, *removing* or replacing a *tree*.

4.7.2. *Manager* shall specify or approve the species and locations of *trees* to be planted in the *public right-of-way* in accordance with the standards and criteria in the Landscape Regulations.

4.7.3. City shall not charge a fee for a *Street Tree Permit*.

4.7.4. *Maintenance Assessment Districts* are not required to obtain a *Street Tree Permit* for *pruning* or replacing a *tree*. This action is completed in accordance with Park and Recreation standards in consultation with a *City Arborist*.

4.8. City/Street Tree Planting Requirements

In order to offset the effects of urban heat islands, promote energy conservation, and lessen air quality impacts, *tree* planting in the *public right-of-way* shall be required under the following conditions:

4.8.1. Whenever required by the Landscape Regulations, Street Design Manual, Centre City Streetscape Manual or any other applicable landscape or streetscape regulation.

4.8.2. For residential renovation projects which are exempt from *tree* planting requirements in the Landscape Regulations, when a building permit is requested for over \$50,000 worth of improvements and the property does not already have at least one (1) *street tree* that is at least equivalent to a 15-gallon tree per 50 lineal feet of street frontage, the City permit for the project shall require the *property owner* to plant one (1) 15-gallon *tree* in the *public right-of-way* per 30 lineal feet of street frontage per the *tree* planting standards described in the *Technical Manual* within 30 days of project completion or occupancy permit and provide a signed agreement to water and otherwise maintain in good health, the newly planted *tree(s)* for the first three (3) years. If an irrigation system is provided, the watering requirement will have been met.

4.8.3. For all City capital projects that involve development with a street frontage or where one or more edges of the project is adjoining a *public right-of-way*, and the project value is above \$250,000 and at least one tree per 50 lineal feet of right-of-way do not exist, the project shall: 1) plant one (1) 15-gallon *tree* in the *public right-of-way* per 30 lineal feet of street frontage where such *tree(s)* do not already exist, using the *tree* planting standards described in the *Technical Manual*, within 30 days of project completion; and 2) require the tree establishment period provided by the contractor be a minimum of one year; and 3) provide a *street tree* watering contract (or an in lieu-fee) to water the newly planted *tree(s)* for the second and third years. If an irrigation system is provided, the watering requirement will have been met.

Exceptions from this requirement may be granted by the *Manager* for projects away from the general public, where a case can be made that the street frontage is rarely walked or seen by the public, or where the *tree* would create a safety hazard,

fire hazard, or negative habitat impact. Decisions of the *Manager* may be appealed to the *Community Forest Advisory Board*.

4.8.4. The City will consider impacts associated with the removal of *public trees* and will consider the removal of *public protected trees* as a factor that may reach a level of significance in determining historical resource, visual or community character impacts.

4.8.5. The City will define appropriate mitigations for impacts on stormwater runoff quantities, traffic generation, air quality and other adverse affects resulting from increased concrete and asphalt construction. Tree planting requirements (above those normally required in the Landscape Regulations) will be considered as partial or full mitigation for these impacts. The method for determining the number of *trees* to be planted, shall be based on the number of *trees* necessary to mitigate for the tons of air pollution produced by the project or resulting from the project's average daily traffic generation (with larger air pollution amounts attributed to each vehicle affecting peak hour traffic or negatively affecting a "C" or lower level of service) or based upon acre-feet of storm water runoff produced by the project. The methodology for calculating required mitigation trees is provided in the *Technical Manual*.

4.8.6. For each *required tree* that cannot be planted on site, the project shall pay an *in-lieu fee* as described in the *Technical Manual*.

4.8.7. Any *street tree* required by any permit to be planted shall not be removed without a *Street Tree Permit* and if removed, must be replaced with another suitable and comparable tree.

4.9. City/Street Tree Maintenance

4.9.1 Adjacent *property owners* shall be responsible for watering and fertilizing *street trees* in the *public right-of-way* unless maintenance is assigned to another party by a signed maintenance agreement with the City. In the event that the adjacent property owner is the *City*, the *City* will water and maintain the tree directly by city crews or indirectly with the payment of an in-lieu fee or a fair share contribution to a Maintenance Assessment District. In the case of Capital Projects where *street trees* are required, the establishment period of maintenance will be at least one year and no more than three years. Maintenance will be transferred to an Operating Department.

4.9.2. *Manager* shall be responsible for public safety maintenance of *street trees* within the *City standard*. For landscaping that exceeds the *City standard*, public

safety maintenance of *street trees* shall be assigned to another party by a signed maintenance agreement with the City.

4.9.3. As budgets allow, *Manager* shall be responsible to *prune street trees* within the *City standard*, including both palm and broadleaf canopy *trees*. For landscaping that exceeds the *City standard*, *pruning of street trees* shall be assigned to another party by a signed maintenance agreement with the City. The intent is to *prune* all *trees* within *public right-of-way* no more than once a year and no less than once every five years, with exceptions for trees not needing to be pruned as determined by the City's urban forester. Budget priorities for *street tree pruning* shall be: 1) trees affecting public safety; 2) *protected street trees*; 3) *trees* where adjacent *property owners* have asked for *tree removal* for reasons that *pruning* may be able to address; 4) corrective developmental *pruning* to resolve particular problems negatively affecting the public; and 5) periodic *pruning* for which, for greatest cost effectiveness, full neighborhoods shall be done at one time. *Property owners* wishing to pay for *street tree pruning* themselves, may request a *Street Tree Permit* to *prune a street tree*. All *pruning* shall be done utilizing tree *pruning* standards described in Section 10 of the *Technical Manual*.

4.10. City Tree Pruning

4.10.1. All persons, including but not limited to *property owners*, maintenance assessment districts, business improvement districts community volunteers, private corporations, public utilities and city departments, and any of their contractors, shall all follow the *tree pruning* standards described in Section 10 of the *Technical Manual* and, if those standards are not followed and *fatal damage* results, shall be subject to paying penalties for *fatal damage* to a *City tree* as described in Section 5.2 of this ordinance.

4.10.2. Repeat violators of the tree *pruning* standards such as *tree* care specialists, arbor care technicians or landscape contractors who have been found to *prune excessively* or use *topping* techniques, shall not only pay penalties under this ordinance, but also shall be reported to the State Contractors Board and be prevented from working on contracts with the City for the maximum time allowed by law.

4.11. City Tree Transplanting

4.11.1. City shall accommodate a request for tree transplanting to another public location where *removal* of a *City tree* is the most likely alternative if the *tree* is not transplanted. Where tree removal is absolutely required, the City shall accommodate a request for selling the tree to an arbor salvaging entity with no requirements that the tree be moved to another public location. If any value is assigned to the tree and the salvaging entity pays for the right to harvest the tree, the funds collected would go into the *Urban Tree Fund* account.

4.12. City Tree Removal

4.12.1. A *City tree* for which *removal* has been requested or proposed, and which is not a *hazardous tree*, regardless of size, shall be placed on a *Proposed Tree Removal List* for public review/comment as described in the *Technical Manual*, before action is taken on the requested removal. The *Proposed Tree Removal List* shall note if the *tree* is a *protected tree* and, if so, its *tree protection category*. Any and all associated concrete damages adjacent to a *street tree* which is removed at private expense, shall be repaired/replaced by the private party that requested the removal permit.

4.12.2. *City trees* shall only be *removed* if they meet the criteria for *removal* listed in the *Technical Manual*.

4.13. City Tree Replacement

4.13.1. All *City trees* removed at either public expense or private expense shall be replaced, or an *in-lieu fee* paid into the *Urban Tree Fund*, according to the formula in the *Technical Manual*. *Trees* that have been permanently damaged in storm events or wildland fires, *trees* that have died of natural causes or newly planted trees as part of a restoration effort but that have not survived, will be replaced with a different replacement ratio than those that are removed that are still alive. Non-native invasive species that are removed from *Open Space Preserves* may or may not be replaced with native trees depending on the biological habitat restoration goals.

4.13.2 All *trees removed* at either public expense or private expense within a *Maintenance Assessment District* maintained area, shall be replaced if appropriate or an in-lieu fee paid if appropriate into a *Maintenance Assessment District* fund, according to the formula in the *Technical Manual*. All in-lieu fees and fines collected through implementation of this section shall be deposited into the *Maintenance Assessment District* fund to be used by the appropriate district in accordance with their operating procedures.

5. Enforcement

5.1. Enforcement of this ordinance and the associated *Technical Manual* shall be governed by the provisions of San Diego Municipal Code Chapter 1, Article 2, Code Enforcement Judicial and Administrative Remedies. The Manager will direct Neighborhood Code Compliance to establish an Administrative Penalty Schedule as well as accounts for the deposit of fees collected from violators of the ordinance so that cost recovery can occur for reasonable investigative purposes.

5.2. Penalties for *City Tree Removal* or *Fatal Damage* Without a Permit

5.2.1 For *protected trees*, fines in the amount of 300% of the *assessed value* of the *tree* shall be levied on anyone found responsible for intentionally *removing* or *fatally damaging* a *protected City tree* without a *Street Tree Permit* for removal.

5.2.2 For *City trees* other than *protected trees*, fines in the amount of 100% of the *assessed value* of the *tree* shall be levied on anyone found responsible for intentionally *removing* or *fatally damaging* a *City tree* without a *Street Tree Permit* for removal.

5.2.3 Any individual or company found to have caused the *topping* of, *pruned excessively* or permanently *disfigured* a *City tree* shall be subject to the same penalty listed in Section 5.2.1. or 5.2.2., depending on its status as a *protected tree*.

6. Deposit of In-Lieu Fees and Assessed Fines

6.1. All *in-lieu fees* and fines collected through implementation of this ordinance shall be deposited into the *Urban Tree Fund* to be used for the purposes described in that fund. A separate account will be established for persons paying a fee for non-compliance and violations of this ordinance. This separate fee will be assessed for the purposes of cost recovery for investigation purposes as well as for other departmental input on the investigation.

7. Appeals

7.1. Where specified, decisions by the *Manager* may be appealed to the *Community Forest Advisory Board*. Final decision on the appeal will be made by City Council with input and recommendations from the CFAB. All other appeals shall be governed by the provisions of San Diego Municipal Code Chapter 1, Article 2, Code Enforcement Judicial and Administrative Remedies.

8. Severability

8.1. If any of the provisions of this ordinance are held invalid, the remainder of this ordinance shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.