

ORDINANCE NO. O-20-1369

**AN ORDINANCE OF THE CITY OF SAN MARINO
REGARDING THE PRESERVATION OF TREES AND
AMENDING THE SAN MARINO MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF SAN MARINO DOES HEREBY ORDAIN AS
FOLLOWS:

SECTION 1. Article 6 (Requirements and Restrictions Generally) of Chapter 23 (Zoning and Development, Advertising and Signs, Fences and Walls) of the San Marino City Code is hereby amended by deleting Section 23.06.15 Preservation of Trees and renumbering Section 23.06.16 as Section 23.06.15.

SECTION 2: Chapter 23 of the San Marino City Code (Zoning and Development, Advertising and Signs, Fences and Walls) is hereby amended by adding new Article 19 (Preservation of Trees) thereto to read as follows:

ARTICLE 19: PRESERVATION OF TREES:

23.19.01: Applicability

23.19.02 Definitions

23.19.03 Prohibitions

23.19.04 Tree Trimming Permit Procedure

23.19.05 Tree Removal Permit Procedure

23.19.06 Appeals

23.19.07 Other Requirements and Incentives for the Protection of Trees

23.19.08 Violation, Enforcement and Restoration

23.19.01 Applicability:

This section applies only to trees in the R-1 and C-1 zones; excepting trees in the public parkways adjacent to the R-1 and C-1 zones, which are subject to Chapter 18 of this Code.

23.19.02 Definitions:

CERTIFIED ARBORIST: An individual who has been tested by, and is currently certified as an “arborist,” by the International Society of Arboriculture (ISA).

DAMAGE: Any action taken which causes death or irreversible damage, injury, or disfigurement to a tree. This includes, but is not limited to, severe pruning, topping, poisoning, drilling, under or over watering or improperly transplanting. Confirmation of death or irreversible damage shall be determined by the Director of Community Development or his/her designee.

DEAD TREE: A tree that is no longer alive or that has been damaged so extensively that it cannot recover or is in an advanced state of decline (where an insufficient amount of live tissue, green leaves, limbs or branches, exists to sustain life) and has been determined to be in such condition by a certified arborist.

ESTABLISHED TREE: A tree that is not a Heritage Tree or an Oak Tree, that is at least fifteen feet (15') in height, and/or whose trunk diameter is at least six inches (6") at its widest point, when measured at a point four and one-half feet (4.5') above natural grade.

HAZARD OR HAZARDOUS: A potential source of imminent harm or danger to a person or property.

HEDGE: A row of planted trees, shrubs or other vegetation that forms a physical boundary or barrier, or otherwise obscures visibility into or onto the property upon which it is located.

HERITAGE TREE: A tree that is at least fifteen feet (15') in height, and/or whose trunk diameter is at least four inches (4") at its widest point, when measured at a point four and one-half feet (4.5') above natural grade, and is one of the following: *Platanus racemosa* (Western Sycamore), *Juglans californica* (California Black Walnut), *Sambucus nigra* (Elder), *Sambucus Mexicana* (Mexican Elderberry), *Aesculus californica* (California Buckeye), *Salix lasiolepis* (Arroyo Willow), *Populus fremontii* (Fremont Cottonwood), *Alnus rhombifolia* (White Alder), *Umbellularia californica* (California Bay Laurel), *Populus trichocarpa* (Black Cottonwood), *Ginkgo biloba* (Maidenhair), *Cedrus deodora* (Deodar Cedar), *Pinus canariensis* (Canary Island Pine), *Pinus halepensis* (Aleppo Pine), *Pinus pinea* (Stone Pine), *Pinus thunbergiana* (Black Pine), *Sequoia sempervirens* (Coast Redwood), *Taxodium mucronatum* (Montezuma Cypress), *Calocedrus decurrens* (California Cedar), *Cupressus sempervirens* (Mediterranean Cypress), *Podocarpus gracilior* (African Fern Pine), *Magnolia grandiflora* (Southern Magnolia), *Magnolia xsoulangeana* (Chinese Magnolia), *Cinnamomum camphora* (Camphor), *Persea Americana* (Avocado), *Liquidambar styraciflua* (Sweetgum), *Ulmus parvifolia* (Chinese Elm), *Ficus microcarpa* (Chinese banyan), *Quercus agrifolia* (Coast Live Oak), *Quercus engelmannii* (Engelmann or Pasadena Oak), *Quercus ilex* (Holly Oak), *Quercus lobata* (Valley Oak), *Quercus suber* (Cork Oak), *Brachychiton discolor* (Lacebark), *Brachychiton populneus* (Kurrajong), *Chorisia speciosa* (Silk Floss Tree), *Arbutus unedo* (Strawberry Tree), *Prunus caroliniana* (Carolina Cherry-Laurel), *Pyrus kawakamii* (Evergreen Pear), *Cassia* spp (Golden Shower Tree), *Ceratonia siliqua* (Carob), *Lagerstroemia indica* (Crepe Myrtle), *Callistemon* spp (Bottlebrush), *Eucalyptus citriodora* (Lemon-Scented Gum), *Melaleuca quinquenervia* (Paper Bark Tea Tree), *Grevillea robusta* (Southern Silky Oak), *Cupaniopsis anacardioides* (Carrotwood), *Koelreuteria* spp (Chinese Flame Tree), *Schinus molle* (California Pepper Tree), *Citrus sinensis* (Sweet Orange), *Fraxinus uhdei* (Shamel Ash), *Olea europaea* (Olive Tree), *Jacaranda mimosiflora* (Blue Jacaranda), *Tabebuia* spp (Tabebuia), *Brahea edulis* (Guadalupe Palm), *Butia capitata* (Jelly Palm), *Phoenix canariensis* (Canary Island Date Palm), *Syagrus romanzoffianam* (Queen

Palm), *Washingtonia filifera* (California Palm), *Washington robusta* (Mexican Fan Palm), *Cedrus atlantica* (Atlas Cedar), and *Cedrus atlantica* (Blue Atlas).

IRREVERSIBLE: Any damage to the structure, shape or health of a tree from which the tree is unable to substantially recover within a three-year period, as determined by the Director of Community Development or his or her designee.

MULTI-TRUNK: Any tree with multiple trunks attributed to a single plant. The diameter of each trunk shall be measured at its widest point, when measured at a point four and one-half feet (4.5') feet above natural grade, and the combined trunk diameters shall be used to determine the tree's size for the purposes of this section.

OAK TREE: A tree that is at least fifteen feet (15') in height, and/or whose trunk diameter is at least four inches (4") at its widest point, when measured at a point four and one-half feet (4.5') above natural grade, and is of the genus *Quercus*, including, but not limited to, *Quercus agrifolia* (coast live oak), *Quercus dumosa* (coastal scrub oak), *Quercus engelmannii* (engelmann oak), *Quercus berberidifolia* (scrub oak), *Quercus lobata* (valley oak), and *Quercus virginiana* (southern live oak).

SEVERELY PRUNE: To remove foliage or branches from a tree in a manner that causes irreversible injury to the shape, health or natural growth of the tree, or that irreversibly disfigures or kills the tree. Confirmation of severe pruning shall be determined by the Director of Community Development or his/her designee.

TOP: To severely cut back the limbs within a tree's crown(s) to stubs larger than three inches in diameter, to such degree so as to remove the normal canopy, or irreversibly disfigure or kill the tree. Confirmation of topping shall be determined by the Director of Community Development or his/her designee.

TRANSPLANT: To relocate a tree and its root system from its original location and replant the tree in a proper manner at another location that does not harm the health or vigor of the tree.

TREE: A perennial plant having a permanent, woody, self-supporting main stem or trunk(s) growing to a considerable height, regardless of whether it is commonly known as a "tree" or "shrub."

TREE APPRAISAL: A method of determining the monetary value of a tree as it relates to the real estate value of the property upon which it is located and upon the surrounding neighborhood or community. When required, a certified arborist shall appraise a tree's basic value by its condition, location and species using the most recent edition of the ISA Guide for Plant Appraisal.

TREE HEIGHT: Tree height shall be measured from the natural grade to the upper most foliage of the canopy.

TREE TRIMMING OR TREE PRUNING: A common tree maintenance procedure that is required to ensure the ongoing health, safety and attractive condition of the tree. Tree trimming may include specific pruning types such as cleaning, thinning, crown raising and reduction. Tree trimming shall follow the tree pruning techniques established by the ISA for “Pruning Mature Trees.”

TREE RESTORATION PLAN: A plan prepared by a certified arborist that outlines measures to restore the natural condition of one or more trees and the tree canopy on the property where the trees are located. Such plan shall take into account the building area or building footprint, other existing trees and landscaping, utility or power lines and appropriate tree selection methods as described by ISA guidelines.

TREE PROTECTION PLAN: A plan prepared by a certified arborist that outlines measures to protect and preserve trees in connection with a construction project. This plan shall include requirements for preconstruction treatments during demolitions and/or construction; establishment of a tree protection zone for each tree that is to be retained; establishment of a tree monitoring and inspection schedule, and provide for continued maintenance of trees after construction.

23.19.03: Prohibitions:

1. **Prohibition on Tree Removal without a Permit:** Except as authorized by a tree removal permit from the City, it shall be unlawful for any person to remove any Established Tree, Heritage Tree, or Oak Tree, whether alive, dead, diseased or dying, located on any lot in the R-1 or C-1 zones.

2. **Prohibition on Damage, Severe Pruning or Topping:** It shall be unlawful for any person to severely prune, top or damage an Established Tree, Heritage Tree, or Oak Tree on any lot in the R-1 or C-1 zones.

23.19.04: Tree Trimming Permit Procedure:

1. **Findings for Approving a Tree Trimming Application:**

a. A tree trimming permit may be issued in either of the following instances:

1. Where a written determination has been made by a certified arborist or a state-licensed tree trimmer that the excess foliage or limbs of the tree pose a reasonable risk of injury or harm to persons or property or are substantially interfering with the structural integrity or the use of an existing structure (including, but not limited to, a fence or wall) and there is no feasible and reasonable alternative to mitigate the interference; or

2. Where a written determination has been made by a certified arborist or a state-licensed tree trimmer, after a visual inspection or scientific evaluation, that the limbs proposed to be trimmed are diseased or damaged or are detrimental to the structural integrity of the tree. The Community Development Director or the Planning Commission may waive the

requirement for a certified arborist's written statement when the proposed limbs to be trimmed can reasonably be determined to be dead by a layperson's visual inspection, or when, after conducting an inspection of the tree, the Director of Community Development or the Director's designee determines that the tree poses an obvious and imminent threat to life or property.

2. Requirements for a Tree Trimming Permit:

a. A tree trimming permit shall be required if:

1. More than 10 percent of the live foliage or limbs of a mature oak tree will be removed within a 12-month period; or

2. More than 20 percent of the live foliage or limbs of any heritage tree or established tree will be removed within a 12-month period.

b. Any person applying for a tree trimming permit shall file with the Director of Community Development an application in writing on a form furnished by the Director. The application shall contain the following information:

1. The name and residence or business address of the applicant;

2. The location of the tree(s) and description of the species of the tree(s);

3. A description of the proposed work including the reason for tree trimming. Photographs may be provided as exhibits, if desired;

4. The name and state contractor's license number of the person who will perform the work. Permits shall only be issued to persons possessing a C-27 or C-61 (D-49) state contracting license;

5. The tree trimming will be performed in accordance with ISA standards; and

6. Additional information as the Director of Community Development may require.

c. No permit is required to trim an established tree or heritage tree damaged by a storm, fire or other natural disaster or determined to be an imminent hazard by the City Manager, any police officer, any firefighter, the Parks Manager, the Director of Community Development, or his/her designee or the Urban Forester. No person shall trim a damaged tree until such finding is made or unless such trimming is otherwise exempt from the requirement to obtain a tree trimming permit.

d. Any public agency or utility company having jurisdiction shall be exempt from the requirement to obtain a permit as long as they notify the City, the property owner and occupant in writing, seventy two (72) hours prior to any trimming of any established tree.

e. A property owner is not required to obtain a permit for removing any foliage or branches from an Oak tree, Heritage tree or established tree where less than ten percent (10%) of any foliage or limbs are to be trimmed or removed within a twelve month period.

23.19.05: Tree Removal Permit Procedure:

1. Application: All persons desiring to remove an Established Tree, Heritage Tree, or Oak Tree in the R-1 or C-1 zones shall first submit a tree removal permit application to the Community Development Director. Any person who removes a tree, or causes a tree to be removed, in violation of this requirement shall be subject to the penalties provided in Section 23.19.08 (Violation, Enforcement, and Restoration) below.

2. Application Contents:

a. A complete application form, signed by the property owner or a licensed State contractor possessing a C61 and D49 or C27 classified license, under penalty of perjury.

b. A tree plan containing the following information: a description of the work proposed to be performed; the number, type, and trunk diameter at the widest point at a point four and one-half feet (4.5') above natural grade of the Established Tree, Heritage Tree, or Oak Tree to be removed; the location of all trees on the property, with all Established Trees, Heritage Trees, and Oak Trees identified; the reason(s) for tree removal, with any tree to be removed for poor health or condition documented in an ISA Level 1 Tree Risk Assessment report prepared and signed by a Certified Arborist. The Director of Community Development may require review of the tree plan by a second Certified Arborist contracted for and managed by the City. If such review is required, all fees incurred shall be the responsibility of the applicant.

c. Any other information the Director of Community Development, or his/her designee, determines to be necessary.

3. Application Fee: An application for a tree removal permit shall be accompanied by a processing fee, in an amount established by resolution of the City Council. No fee shall be required for the following:

a. An application to remove an Established Tree, Heritage Tree, or Oak Tree that has been damaged by a storm, fire or other natural disaster, and which is determined to be dangerous by the Director of Community Development or his/her designee.

b. An application to remove an Established Tree, Heritage Tree, or Oak Tree found to be dead, as determined by a Certified Arborist and confirmed by the Community Development Director or his/her designee.

c. An application by a public or private school.

4. Findings for Approval of a Tree Removal Application:

a. Established Tree: The Community Development Director may issue a tree removal permit if he or she determines that one of the following conditions is met:

1. The Established Tree adversely impacts the growth of adjacent trees, or constitutes a nuisance or hazard to persons or property because of its condition, location, species, proximity to existing structures, closeness to walkways, or interference with utilities; or

2. The removal of the Established Tree is part of a re-landscaping plan that will provide a tree canopy replacement that is sustainable over the long term.

b. Heritage Tree or Oak Tree: The Community Development Director may issue a tree removal permit if he/she determines that the Heritage Tree or Oak Tree constitutes a hazard to persons or property because of its condition, location, species, proximity to existing structures, closeness to walkways, or interference with utilities.

5. Requirements for Tree Removal Permit:

a. If a tree removal permit is granted, the permittee shall replace the tree(s) at his/her expense pursuant to the Tree Replacement Matrix (see below). The Tree Replacement Matrix shall not be applicable for the required Tree Protection Plan or the unlawful removal of trees.

TREE REPLACEMENT MATRIX	
TRUNK OF REMOVED TREE	REPLACEMENT TREES
Diameter at Breast Height	Number/Size
4-8 inches	1-36" box
9-12 inches	2-36" box
13-18 inches	4-24" box or 2-36" box
19-36 inches	8-24" box or 4-36" box
37" or greater	12-24" box or 8-36" box

b. Heritage Trees shall be replaced with equivalent Heritage Trees, as defined in this Article, that are appropriate or compatible with the landscaping of the property and the Neighborhood (as defined in the Municipal Code). All replacement trees must be planted in accordance with all ISA best practices.

c. Oak Trees shall be replaced with equivalent Oak Trees, as defined in this Article, that are appropriate or compatible with the landscaping of the property and the Neighborhood (as defined in the Municipal Code). All replacement trees must be planted in accordance with all ISA best practices.

d. If required by the Community Development Director or his/her designee, the permittee shall agree to accept the conditions of tree replacement prior to issuance of the tree removal permit.

e. If transplanting a tree, the new location of the tree shall be approved by the Community Development Director or his/her designee. A Certified Arborist shall oversee the transplanting of the tree, and a three (3) year guarantee shall be provided. In the event the transplanted tree dies within three (3) years, a comparable tree shall be required to be planted by the permittee as set forth in the Tree Replacement Matrix and approved by the Community Development Director or his/her designee.

f. The Community Development Director, Urban Forester, Planning Commission, or the City Council may reduce the requirement for tree replacement upon determining that there is not enough space on the lot to plant the replacement trees, based on the following site characteristics: size of the lot and capacity for replanting; reasons for removal; number of trees being removed as part of any one request; number of permitted tree removals in the past 5 years; presence of other trees and vegetation on the same lot; and proposed size and type of replacement trees.

6. Notification:

a. Immediately following approval of a tree removal permit, and at least fifteen (15) days before the tree is scheduled for removal, the permittee shall provide written notice by personal delivery of the tree's location and removal reason(s), to the owners and occupants of all properties within a 100-foot radius of the site on which the subject tree is located.

b. Immediately following approval of a tree removal permit, the permittee shall also post on the subject tree an 8.5 inch by 11 inch size notice, in a form and manner approved by the Community Development Director, for not fewer than fifteen (15) consecutive days. If the subject tree is not readily visible from the public right-of-way, notice shall instead be posted on the parcel on which the tree is located, in a location that is visible from, and within ten (10) feet of, the public right-of-way.

c. The permittee shall submit proof of the required noticing to the Community Development Director. No work is to begin until City staff has verified that notice was provided and posted as required by this subsection 6.

d. The posted notice shall be removed upon completion of the tree removal work, or fifteen (15) days after the end of the ten (10) day posting period, whichever comes first.

7. **Stump Removal Required:** Where a tree is removed pursuant to this section and the stump is visible from public view, the permittee shall dig out the stump or remove it with a stump grinder. The Community Development Director may permit the stump to be retained if he/she finds that access to the stump cannot be reasonably obtained or the stump is located on a steep slope.

8. **Permit Expiration and Inspection:** All work for which a tree removal permit is issued shall be completed within ninety (90) days from the date the permit is issued, unless the City grants one written extension for a period not to exceed thirty (30) days. The permittee shall, within seven (7) business days of the completion of the work, contact the Community Development Director and schedule a compliance inspection.

9. **Emergency Tree Removals:** Notwithstanding any other provision in this Article, an Emergency Tree Removal Permit may be approved when necessary to correct a hazardous or unsafe condition that poses a threat to public health and poses a safety hazard because of its high potential for failure due to considerable dead or dying foliage, branches, roots or trunk. An Emergency Tree Removal Permit shall only be issued at the discretion of the Community Development Director or his or her designee upon a finding that such work as is necessary to correct the hazardous or unsafe condition, and upon and subject to such terms, conditions and limitations as are necessary to correct the hazardous or unsafe condition. Such permits shall only be issued in accordance with the following:

a. The owner of the tree shall submit an application on a form prescribed by the Community Development Director, along with a tree hazard report prepared by a Certified Arborist, which documents the existence of the hazard or unsafe condition.

b. If, due to imminent danger, it is not possible to obtain a report from a Certified Arborist that documents the existence of the hazardous or the unsafe condition of the tree, the Community Development Director or his or her designee may inspect the tree and issue the removal permit.

23.19.06: **Appeals:** An applicant or other interested party may appeal a decision of the Community Development Director to the Planning Commission and a decision of the Planning Commission to the City Council. An appeal shall be processed as follows:

1. **Filing an Appeal:** The appellant shall file a written notice of appeal with the City Clerk no later than fifteen (15) days after the date of the decision. The notice of appeal shall be accompanied by a fee in the amount established by resolution of the Council, as well as documentation supporting the basis for the appeal, including if applicable, the tree removal permit application, tree replacement plan, a report by a Registered Consulting Arborist and any Certified Arborist report(s).

2. **Scheduling:** The City Clerk shall set the time, date, and location for a hearing on the appeal. The hearing shall not be set sooner than fifteen (15) calendar days from the date the appeal was received. Notice of the time and place of the hearing will be sent to the appellant and the owner of the property where the tree is located (property owner), if not the appellant. Failure to receive the notice of hearing shall not invalidate the proceedings under this

section. At the hearing, the appellant and the property owner, if not the appellant, shall have the right to be heard and to present testimony and other evidence in support of the appeal.

3. Determination: Upon consideration of reports, evidence, and testimony presented, the Planning Commission or City Council, as applicable, shall:

a. Affirm, modify, or reverse the action of the Community Development Director or Planning Commission, as applicable; or

b. Refer the matter back to the Community Development Director or Planning Commission, as applicable, for further review and consideration.

4. Decision is Final: The decision of the City Council shall be final and conclusive in all respects.

23.19.07: Other Requirements and Incentives for the Protection of Trees:

1. Construction Projects: All construction projects must adhere to all provisions of this section, as well as the tree protection standards set forth in Section 25.01.06(L) of the City Code.

2. Should a designated replacement or transplanted tree not survive for a period of three years, the applicant shall be required to replace it with another tree or pay to the city the full cost of replacing the tree at another location to be determined by the Director of Community Development or the Director's designee.

3. Projects Requiring Other Approvals: When considering an application for a permit under Chapter 23 (other than a tree removal permit) that preserves Established Trees, Heritage Trees, or Oak Trees, a decision may be made by the Design Review Committee or Planning Commission to modify the proposal or accept alternative solutions to assist in the preservation of such trees. Such modifications may include, but are not limited to, the reduction or rerouting of the driveway location or other hardscape, and the height of a building or other structure(s). The reviewing authority may approve the modification after first finding that:

a. The applicant investigated alternative site designs and building footprints using existing development standards;

b. The project includes a well-integrated and thoughtful structural design solution that enhances the property and its surroundings;

c. The project is not injurious to adjacent properties or uses, or detrimental to environmental quality, quality of life, or the health, safety, and welfare of the public; and

d. The project is consistent with the objectives and policies of the general plan.

23.19.08: Violation, Enforcement, and Restoration:

1. Violations of this Article:

a. Any person who violates or permits the violation of any provision of this Article, a condition of a tree removal or tree trimming permit, or a tree restoration plan imposed by Subsection 3 of this Section 23.19.08, shall be subject to any of the enforcement remedies set forth in Article 4 (Violations) and Article 6 (Administrative Procedures And Penalties For Code Violations) of Chapter 1 of this Code.

b. Any contractor or business who violates or permits the violation of any provision of this Article, a condition of a tree removal or tree trimming permit, or a tree restoration plan imposed by Subsection 3 of this Section 23.19.08, shall be subject to any of the enforcement remedies set forth in Article 2, Subsection 14 of Chapter 11 (Revocation or suspension of a license or permit), in addition to those provided herein.

c. Any gardener or tree trimming contractor who does not have a city business license, shall be subject to the penalties set forth in Article 4 (Violations) and Article 6 (Administrative Procedures And Penalties For Code Violations) of Chapter 1 of this Code.

2. Penalties: Any person who damages or removes a tree in violation of this section is guilty of a misdemeanor, except, at the discretion of the city prosecutor, the violation may be reduced to an infraction. Persons violating any of the provisions of this Article also shall be subject to the following:

a. The standard inspection fee;

b. Double the required tree removal or trimming permit fee, as applicable; and

c. The payment of a tree replacement fine in an amount up to, but not to exceed, double the value of the destroyed, removed or damaged tree. The city arborist shall determine the value of the destroyed, removed or damaged tree by using the most recent edition of the ISA Guide for Plant Appraisal.

d. All penalties and additional costs related to a tree violation must be paid to the city prior to its issuance of building or construction-related permits unless, in the opinion of the Community Development Director, such permits are necessary for the preservation of public health, safety or welfare.

3. Tree Restoration Plan: In addition to any penalties imposed pursuant to this Article, any property owner who damages or removes an Established Tree, Heritage Tree, or Oak Tree, or who permits the damage, severe pruning, topping or removal of any Established Tree, Heritage Tree, Oak Tree, on his/ her property in violation of the terms of this Article, shall restore the environment by planting one or more trees in such quantity that the Community Development Director or his/her designee requires as part of a Tree Restoration Plan. The requirements for and the regulations regarding a Tree Restoration Plan are as follows:

a. A Tree Restoration Plan shall be based on planting sufficient trees as are necessary to provide an amount of tree canopy reasonably equal to the amount of the tree

canopy that was unlawfully removed as determined by the Community Development Director or his/her designee.

b. In the case of unlawful removal of a tree, the Tree Restoration Plan shall require the planting of not less than one 36-inch box size tree, and the total of the diameter of the trees to be planted shall be equal to the diameter of the tree that was unlawfully removed.

c. In the event that the diameter of the tree that was unlawfully removed cannot be determined, the Tree Restoration Plan shall be based on the likely diameter of the unlawfully removed tree determined by the City's Urban Forester, or a City-appointed Certified Arborist, using the best evidence available.

d. The Tree Restoration Plan shall require the tree(s) to be planted in those location(s) that will best restore the visual environment to the environment that existed before the unlawful and irreversible tree damage or removal occurred, as determined by the City's Urban Forester, or a City-appointed Certified Arborist, using the best evidence available.

e. If the Community Development Director or his/her designee determines that the property cannot accommodate the number of trees required to be planted by this subsection, the Tree Restoration Plan shall require the trees to be planted on publicly owned property at locations determined by the Community Development Director or his/her designee.

f. The property owner may select the species of tree(s) to be planted from a list of tree species designated by the Community Development Director, provided that the City's Urban Forester or a City-appointed Certified Arborist determines the tree(s)' size and height is equal to the tree that was unlawfully and irreversibly damaged, except in the case of Oak Trees which must be replaced with Oak Trees.

g. The Community Development Director shall reconsider a Tree Restoration Plan established in connection with a tree that was unlawfully removed, or irreversibly damaged if the replacement tree(s) dies within three (3) years from the date of the tree removal or damage, and may impose additional replacement requirements.

h. The City's determination of such violation and establishment of a Tree Restoration Plan under this Section 23.19.08 may be appealed as set forth in Section 23.19.06 (Appeals) of this Article.

i. Failure to comply with an approved Tree Restoration Plan shall constitute a separate violation of this Article.

j. Payment of any penalty and planting of replacement trees shall occur within 60 calendar days of the date the violator was directed to take such action by the Community Development Director. If the property owner does not complete planting of replacement trees within the allotted time, the Community Development Director, at the expense of the property owner, may procure and plant the requisite replacement trees, and the property owner shall be responsible for reimbursing the city for such additional costs. Reimbursement is due and payable within 30 calendar days of the city's issuance of a billing statement. If payment

of the penalty is not received by the city in 60 calendar days, the city manager can instruct that the outstanding obligation be collected in any of the following manners:

1. A civil action in the name of the city, in any court of competent jurisdiction; or
2. Use of a debt collection agency; or
3. A lien on the subject property, following notice and a public hearing.”

SECTION 3. The City Council hereby finds that the adoption of this Ordinance is an action authorized by state law to assure that trees within the City and the environment are protected, because this Ordinance requires proper maintenance, restoration, or enhancement of trees, which are a natural resource. This Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Sections 15307 and 15308 of the California Code of Regulations.

SECTION 4. The adoption of this Ordinance does not affect the following: final actions and proceedings that began before the effective date of this Ordinance; prosecution for ordinance violations committed before the effective date of this Ordinance; fines and penalties due and unpaid at the effective date of this Ordinance; collection of fines and penalties due and unpaid at the effective date of this Ordinance; bonds and cash deposits required to be posted, filed, or deposited pursuant to any ordinance, resolution, or regulation; matters of record that refer to or are connected with an ordinance previously adopted by the City the substance of which is amended by this Ordinance, in which case such references shall be construed to apply to the corresponding provisions of this Ordinance.

SECTION 5. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a 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 passed this Ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. This ordinance shall be effective thirty (30) days following its adoption by the City Council. A summary of this ordinance shall, within fifteen (15) days after passage, be published in accordance with Section 36933 of the Government Code of the State of California with the names of the City Councilmembers voting for and against it.

PASSED, APPROVED, AND ADOPTED this ____ day of _____ 2021.

KEN UDE, MAYOR

ATTEST:

CHRISTINA BAKER, CITY CLERK

APPROVED AS TO FORM

STEPHANIE CAO, CITY ATTORNEY

I HEREBY CERTIFY that the foregoing Ordinance No. O-20-1369 was duly adopted by the City Council of the City of San Marino at a Regular Meeting of the City Council held on February 10, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CHRISTINA BAKER, CITY CLERK