Chapter 12.28

STREET TREES

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12.28.010 Definitions

For the purpose of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

A. "Curb" shall mean a concrete or asphalt edging which defines the edge of paved street and may,
but need not, provide drainage;

B. "Ground Cover" shall mean any plant less than 12" in height;

C. "Gutter" shall mean a depressed, hard-surfaced area for conveying surface water;

D. "Hedge" shall mean any group of shrubs planted in line or in groups so that the branches of any one plant are intermingled or contact the branches of any other plant in the line or group;

E. "Landscape Maintenance" includes but is not limited to, maintaining trees, shrubs, hedges and ground covers, through deep root watering; root pruning; installation of root barriers; clearance and structural trimming, fertilization; pests control; removal of branches, leaves and other debris whether dead or dying; removal, filling, and replacement of landscaping within parkways; and all other work necessary to ensure the tree, shrub, hedge or ground cover does not create a dangerous condition;

F. "Parkway" shall mean that area from the back of the curb exists, that area from the edge of the pavement to the edge of the right-of-way;

G. "Person" shall mean any individual, firm, association, organization, partnership, business, trust company, corporation or other entity;

H. "Property Owner" or "Owner" shall mean any person holding title to real property abutting upon a right-of-way , or any agent thereof, as well as any person who has the legal right to occupy the property to the exclusion of others. For purposes of this Chapter, prime responsibility for compliance shall rest upon whichever of such persons is the occupant or user of the property, and the ultimate responsibility shall rest upon the property owner;

I. "Public Place" shall mean any real property owned by, leased to, or under the control of the City of Orange or any other public entity;

J. "Right-of-Way" shall mean the entirety of that area dedicated for public street and highway purposes;

K. "Shrub" shall mean a bush, or plant more than 12 inches but not more that 6 feet tall. A shrub shall not include a hedge;

L. "Sidewalk" for purposes of the Chapter shall mean any improved or unimproved pedestrian walkway within a right-of-way adjacent to a street;

M. "Street" for purposes of this Chapter shall mean the portion of a right-of-way dedicated to the City of Orange, the County of Orange, or the State of California, whose primary function is to carry vehicular traffic;

N. "Street Tree" shall mean all varieties of trees and shrubs located within all or any portion of a right-of-way including the parkway:

O. "Tree" shall mean any growing plant exceeding 6 feet in height, whether planted singly

or as a hedge. (Ords. 3-97; 9-66: Prior Code 7910)

12.28.020 Permit-Required for Removal or Planting.

No person shall plant, or remove, any tree or shrub, stakes or tree guards in, or upon, any public street or right-of-way, without having first obtained a permit as required by this Chapter. (Ord. 9-66: Prior Code 7910.1)

12.28.030 Specification-Permits.

The following requirements shall apply to the planting, removal, and landscape maintenance of trees and shrubs within the parkway of a street:

A. The Public Works Director/City Engineer is authorized and directed to prepare and file in his office, standard specifications for the planting, removal and maintenance of street trees within the parkways of public streets;

B. Every person planting or arranging for the planting of street trees shall obtain a permit required by this Chapter from the Director of Public Works/City Engineer and perform the work in accordance with the specifications prepared by the Public Works Director/City Engineer;

C. Every person removing or arranging for the removal of a street tree shall obtain permit required by this Chapter from the Director of Public Works/City Engineer and perform the work in accordance with the specifications prepared by the Public Works Director/City Engineer. (Ords. 3-97; 9-66; 35-81: Prior code 7910.2)

12.28.040 Permit-Fees.

Fees for permits, required by this Chapter shall be fixed by resolution of the City Council. Such resolution shall be on file in the office of the City Clerk for public inspection. The resolution may be amended, modified, altered or repealed at the discretion of the City Council, provided that any modification or new resolution which may be adopted shall likewise be on file with the City Clerk as provided for herein. (Ords. 3-97; 9-66: Prior Code 7910.3)

12.28.050 Permit-Public Utilities and Public Agencies.

Any person doing business as a public utility, subject to the jurisdiction of the Public Utilities Commission of the State, and any duly constituted public agency, authorized to provide and providing utilities service, may be issued a permit, valid for one year from the date of issuance permitting such person to trim, brace, remove or perform other such acts with respect to street trees or trees which grow on private property and encroach upon rights of way or public places as may be necessary to comply with the safety regulations of the Commission and as may be necessary to maintain the safe operation of its business. (Ords. 3-97; 9-66: Prior Code 7910.6)

12.28.060 Public Liability and Property Damage Insurance Required.

Before a permit may be issued under the provisions of the Chapter, to any person engaged in the business of removing trees in the City, the person shall file a certificate showing adequate public liability and property damage insurance; the amount shall be fixed by the Director of Public Works/City Engineer before the permit is issued. Such policies or certificates shall be filed with the City Clerk showing the City as an additional insured. (Ords. 3-97; 35-81; 9-66: Prior Code 7910.7)

12.28.070 Subdivision and Land Division-Tree Planting and Maintenance Required.

As a condition of approval of the tentative map of any subdivision, or the approval of and division of real property, the sub-divider or owner of the property, as the case may be, shall provide for the planting and maintenance of trees in accordance with standards adopted by the Department of Public Works. (Ords. 3-97; 9-66: Prior Code 7911)

12.28.080 Inspection and Correction of Hazards.

An agent of the City may inspect any tree or

shrub adjacent to or overhanging any public street in the City to determine whether the same, or any portion thereof, is in such condition as to constitute a hazard or impediment to the progress of vision of anyone traveling on such public street. Any tree or shrub or part thereof growing upon private property, but overhanging or interfering with use of any right-of-way that endangers the life, health, safety or property of the public, shall be declared a public nuisance. If the owner of such private hedge property does not correct or remove such nuisance within ten days after receipt of written notice thereof from the City, the City shall cause the nuisance to be corrected or removed and the cost shall be assessed to such owner. (Ords. 3-97; 9-66: Prior Code 7912)

12.28.090 Prohibited Acts.

No unauthorized person shall injure, deface or destroy any tree or shrub in the planting strip areas by any means, including but not limited to, the following:

A. Constructing a concrete, brick or other approved sidewalk or otherwise filling the ground area around any tree so as to shut off light, air or water from the roots;

B. Piling building materials, equipment or other substance around any tree so as to cause injury;

C. Pouring any deleterious matter on or around any tree or on the ground, or on any lawn in such a manner as to damage the tree;

D. By cutting, breaking, defacing or damaging in any manner whatsoever. (Ords. 3-97; 9-66: Prior Code 7913)

12.28.100 Recommended Street Trees

The City Council, by resolution, shall establish a list of recommended street trees. This list shall be periodically reviewed by the Director of Public Works/City Engineer and may from time to time be modified by the City Council. Only trees on this recommended list may be planted on any public street, parking strip, public right-of-way, parkway, or where said trees may overhang on any public street. (Ords. 3-97; 35-81; 9-66: Prior Code 7914)

12.28.110 Adoption of a Master Street Tree Plan.

The City Council may, by resolution, adopt a uniform master street tree plan and from and after its adoption said plan shall be adhered to in all future street tree planting improvement projects, and in the removal and replacement of trees or shrubs on streets or rights-of-way. Such resolution shall be in pamphlet form, three copies of which shall be on file in the office of the City Clerk for public inspection. Such resolution may be amended, modified, altered or repealed at the discretion of the City Council; provided, that any modification or new resolution which may be adopted shall likewise be on file with the City Clerk as provided for herein. (Ords. 3-97; 9-66: Prior Code 7915)

12.28.120 Appeal of Decisions.

Any person aggrieved by the action of the Director of Public Works/City Engineer, acting under this Chapter, may appeal, by written application to the Department of Public Works, if such appeal is filed with the Public Work Department within 15 days of the Director of Public Works/City Engineer's decision. If the appeal application is denied by the Director of Public Works/City Engineer, the applicant may appeal the decision to an Ad Hoc Committee composed of the Director of Community Services, Director of Community Development or their designees, a member of the City Manager's office, a certified arborist from the community and a City Council representative, if such appeal is filed within 15 days of the Director of Public Works/City Engineer's decision. If the appeal application is denied by the Ad Hoc Committee, the applicant may appeal the decision to the City Manager, pursuant to the provisions of Section 5.10.045 of this code. The decision of the City Manager shall be final. (Ords. 3-97; 9-66: Prior Code 7916,7916.1)

5.10.045 Appeal of City Manager

Except as may otherwise be provided in any particular chapter of Title 5 of this code, any person aggrieved by any decision of the Business Services Coordinator with respect to Title 5 of this code, may appeal to the City Manager by filing a notice of appeal to the City Manager. The City Manager shall thereupon fix a time, within sixty (60) days of receipt of the notice of appeal, and a place for hearing such appeal. Notice of the hearing is to be given to the appellant not less than five days before such hearing, either be registered or certified mail, postage prepaid, or in the manner required for the service in civil actions. The City Manager shall render a written decision on the appeal within thirty (30) days after such hearing. (Ords. 21-98; Ord. 25-82)

12.28.130 Violation-Misdemeanor.

A violation of this Chapter is considered a misdemeanor punishable as prescribed by Section 1.08.010 of this Code. (Ords. 3-97)

12.28.140 Violation Deemed Nuisance-Abatement.

In addition to the penalties provided in Section 1.08.010, any condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be summarily abated as such by the City, as provided in Section 1.08.020 of this Code. (Ord. 3-97)

Chapter 12.32

TREE PRESERVATION

Sections:

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12.32.040 Undeveloped Property Defined.
12.32.050 Public Interest Property Defined.
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12.32.100 Emergency Removals.
12.32.110 Subdivisions or Grading Plan-Procedure and Requirements.
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12.32.130 Violation-Penalty.

12.32.010 Purpose.

A. The City of Orange, in order to prevent further destruction of its once vast number of majestic trees and orchards, find it necessary to place reasonable restrictions on such acts of removal and destruction. The primary purpose of the subject provisions is to regulate the removal and destruction of trees from undeveloped and public interest property as those terms are defined in Sections 12.32.040 and 12.32.050. (Ord. 35-73)

B. The primary concern of the City Council of the City is the regulation of large scale tree removal from undeveloped property in that large parcels of undeveloped acreage are more likely to have a vast number of trees, the removal of which is more likely to have an adverse affect upon the surrounding environment. Past destruction of trees on such property has not only interfered with the natural scenic beauty and tourism of the City, but also greatly diminished the ecological value of such natural vegetation.

C. Therefore, the City Council finds and determines that the public health, safety, and welfare will be promoted by the preservation of trees for the following reasons:

1. Trees are an important source of oxygen which serves to dilute polluted air;
2. Trees collect dust and solids from the air which are washed to the ground by rainfall;
3. Trees are effective in reducing noise pollution by breaking up sound waves and reducing their intensity;
4. Trees provide a sense of privacy;
5. Trees beautify the unsightly;
6. Trees help temper the land in extremes of weather;
7. Certain trees are of historical value as defined in Section 12.32.060.

D. For the foregoing reasons and in accordance with the mandate of the State set forth in Section 65560 of the Government Code requiring open space planning and Section 65302 requiring a noise element to be included in the General Plan, the City, in order to preserve and protect the best interest of its citizens, does enact the ordinance. (Ord. 35-73: Prior Code 7202.1)

12.32.020 Definition.

As used in this chapter, "tree" means any live plant which has a single trunk measuring 10.5 inches in circumference, measured at a point 24 inches above the ground level. (Ord. 35-73: Prior Code 7202.2)

12.32.030 Removal of Trees Prohibited Without a Permit.

A. It is unlawful for any person, firm, partnership, corporation, or other legal entity whatever, to destroy or remove any tree as defined in Section 12.32.020 from undeveloped or public interest property as defined in Sections 12.32.040 and 12.32.050 without a permit as provided herein.

B. To "destroy" a tree means to cut or mutilate a tree in such a manner as to destroy its character as live vegetation. (Ord. 35-73: Prior Code 7202.3)

12.32.040 Undeveloped Property Defined.

As used in this chapter, an "undeveloped parcel of land" means any real property which has not been caused to progress to a more improved, advanced state of development. This category shall be deemed to be undeveloped when the following conditions exist:

A. The particular parcel of real property either before or after any proposed real property division contains more than one-half acre after dedication of all public rights-of-way.

B. More than six trees, as defined in Section 12.32.020, exist on the real property either before or after any proposed division of such real property. (Ord. 35-73: Prior Code 7202.4)

12.32.050 Public Interest Property Defined.

"Public interest property", as referred to in this chapter, shall be any property, privately owned or otherwise, whether developed or undeveloped, which has, because of the presence of certain trees of historical value in such property, become property endowed with a public interest. Such classification of public interest property is based not only on aesthetic factors, but also on the public interest to the City of retaining historic trees as defined in Section 12.32.060 and those factors affecting the public interest more particularly set forth in Section 12.32.010. (Ord. 35-73: Prior Code 7202.5)

12.32.060 Historical Trees Defined.

For the purposes of this chapter, "historical trees" are those which by virtue of their origin, size, uniqueness and/or national or regional rarity are now or are likely to be of historical value. Trees so classified are determined by reference to a master list compiled and maintained by the Community Services Department and approved by resolution of the City Council. This master list, attached to the ordinance codified in this chapter and incorporated herein, may be revised by resolution at the discretion of the City Council subject to the above standards for classification as historical. (Ords. 1-82; 35-73: Prior Code 7202.6)

12.32.070 Criteria for Permits.

The Director of Community Services, in determining whether or not to issue a permit, shall base his decision upon the following:

A. The condition of the tree with respect to disease, general health, danger of falling, proximity to existing or proposed structures, and interference with utility service;

B. The topography of land and the effect of the tree removal on erosion, soil retention and the diversion or increased flow of surface waters;

C. The number of trees existing in the neighborhood, the standards, if any, in the neighborhood relating to the existence and distribution of trees, and the effect of tree removal upon property values in the area, and upon the public health, safety, prosperity, beauty and general welfare of the area.

D. The number of healthy trees that the parcel of land upon which such tree is growing will support and other good forestry practices. (Ords. 1-82; 35-73: Prior Code 7202.7)

12.32.080 Permit Conditions.

In granting a permit, the Director of Community Services may attach reasonable conditions to ensure compliance with the intent and purpose of the chapter, including conditions to ensure the planting of replacement trees. Standards for trees to replace those trees for which a removal permit has been issued in the course of residential development shall be established form time to time by resolution of the City Council. The granting of a permit to remove any tree or trees may be conditioned upon compliance with said resolution. (Ords. 1-82; 35-73: Prior Code 7202.8)

12.32.090 Referral to Other Departments.

The Director of Community Services may refer an application to any other department, or commission or committee for a report and recommendation. (Ords. 1-82; 35-73: Prior Code 7202.9)

12.32.100 Emergency Removals.

In case of emergency caused by a tree being

in a hazardous or dangerous condition posing an immediate threat to person or property, any member of the Police Department of Fire Department may authorize removal of such tree. (Ord. 35-73: Prior Code 7202.10)

12.32.110 Subdivisions or Grading Plan-Procedure and Requirements.

A. In the case of a subdivision, or grading plan, the grading plan shall show the location of each tree proposed to be removed. If the City approves the subdivision map, or grading permit, the Director of Community Services may, in his discretion, relieve the applicant of the necessity to apply for a separate permit for tree removal. In cases which the Director to constitute a permit to remove the trees designated on the subdivision map or grading plan subject to any conditions which the Director may attach to the issuance of the permit.

B. No permit shall be granted to remove healthy non-hazardous trees form any real property unless another use is to be commenced on the real property within ninety days after removal of such trees. (Ords. 1-82; 35-73: Prior Code 7202.11)

12.32.120 Appeal of Decisions.

Any decision made by the City Manager, or his designated representative, may be appealed to the City Council. An appeal may be taken by the applicant or by any member of the City Council. Such appeal must be submitted in writing within ten days of the decision or, in the case of an appeal by any member of the City Council, within seven days after the City Manager informs the City Council of his decision by a written report delivered to each member of the City Council following the decision. The Notice of Appeal shall state briefly the grounds of appeal and be signed by the appealing party. (Ord. 35-73: Prior Code 7202.12)

12.32.130 Violation - Penalty.

A person who removes a tree without a permit to do so, or in violation of the terms or conditions of the permit, is guilty of a misdemeanor and upon conviction is subject to a fine of not more than $500, imprisonment in the County jail for six months, or both. (Ords. 1-80; 35-73: Prior Code 7202.13)