

ORDINANCE NO. 1060

AN ORDINANCE OF THE CITY OF BELMONT AMENDING CHAPTER 25 OF THE BELMONT MUNICIPAL CODE REGARDING THE ASSESSMENT AND PROTECTION OF TREES

WHEREAS, on August 9, 2011, the City Council, following notification in the prescribed manner, conducted a public hearing, at which hearing the Council considered public testimony and a staff report on amendments and text additions for Belmont Municipal Code Chapter 25 (Trees); and,

WHEREAS, the City Council did hear and use their independent judgment and considered all said reports, recommendations and testimony herein above set forth; and,

WHEREAS, the City Council hereby adopts the staff report (dated August 9, 2011) and the facts contained therein as its own findings of fact; and,

WHEREAS, the City Council finds the proposed amendments to be Categorically Exempt pursuant to CEQA Section 15308 – *Actions of Regulatory Agencies for the Protection of the Environment*; and,

WHEREAS, the City Council after consideration of all testimony and reports hereby determines that the proposed amendments for Chapter 25 of the Belmont Municipal Code achieves the objectives of the General Plan and Vision Statement for the City. These amendments would provide for more current and comprehensive tree assessment and protection standards city-wide, and supports protecting and promoting the comfort, convenience, and general welfare of the community. Furthermore, the amendments advance the goal of providing a precise guide for tree preservation, enhancement of the natural environment of the community, and fulfillment of General Plan Goals, Policies, and the City’s Vision Statement.

WHEREAS, the City Council hereby directs staff to prepare a one-year (September 2012) status report documenting the implementation, performance, and effectiveness of the aforementioned Belmont Tree Ordinance amendments.

SECTION 1: NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Belmont that Chapter 25 (Trees) of the Belmont Municipal Code is hereby amended to read as follows:

Chapter 25 TREES

25.01 Findings, Purpose, and Goals.

- A. It is the established policy of the State of California to provide and maintain a high quality environment that at all times is healthful and pleasing to the senses and intellect of all persons, and that all action necessary be taken to provide the people of the State of California with clean air and water, enjoyment of aesthetic, natural, scenic and historic environmental qualities and freedom from excessive noise. All agencies of the government of the State of California which regulate the activities of private individuals, corporations and public agencies have been directed

to regulate such activities so that major consideration is given to preventing environmental damage. The California Urban Forestry Act of 1978 was updated in 2008 and as part of this act the California legislature has found that: (CALIFORNIA PUBLIC RESOURCES CODE SECTION 4799.06-4799.12)

1. *Trees are a vital resource in the urban environment and as an important psychological link with nature for the urban dweller.*
2. *Trees are a valuable economic asset in our cities. They help maintain or increase property values and attract business and new residents in urban areas.*
3. *Trees play an important role in energy conservation by modifying temperature extremes with shade and humidity, and by influencing wind direction and velocity. This role is particularly important in reducing the amount of energy consumed in heating and cooling buildings and homes, and potentially in producing a local fuel and energy source.*
4. *Trees directly reduce air pollution by removing airborne particulates from the atmosphere and helping to purify the air.*
5. *Trees also help reduce noise, provide habitat for songbirds and other wildlife, reduce surface runoff, protect urban water resources, and enhance the aesthetic quality of life in urban communities.*
6. *Trees planted in urban settings play a significant role in meeting the state's greenhouse gas emission reduction targets by sequestering carbon as well as reducing energy consumption.*
7. *Maximizing the benefits of trees through multiple-objective projects that provide environmental services can provide cost-effective solutions to the needs of urban communities and local agencies, including, but not limited to, increased water supply, clean air and water, reduced energy use, flood and storm water management, recreation, and urban revitalization.*
8. *Growing conditions in urban areas for trees and associated plants have worsened so that many of California's urban communities are now losing more trees than are replaced.*

B. The City of Belmont is forested by trees indigenous to the San Francisco Peninsula, as well as non-native species introduced to the area. Many of these trees are large mature trees providing a tree canopy and natural environment which contribute to the uniqueness of our community. Residents benefit from trees economically through energy conservation, air purification, and noise and wind mitigation. The majority of real property within the City is on hillside and sloping terrain, where trees perform the function of preventing erosion and lessening the danger of floods and landslides. Trees help prevent property damage and injuries caused by landslides, and reduce the burden of excess runoff on drainage systems, thereby reducing the need for costly maintenance to these systems. Trees enhance the aesthetic quality of life, as well as the property values of residents.

C. For these reasons the City Council finds it in the public interest, convenience, necessity and welfare to enact regulations promoting the healthy growth of trees, and controlling the removal

of trees within the City. This ordinance is intended to promote the following specific goals:

1. Optimize and appropriately manage the overall tree canopy.
2. Promote the growth and maintenance of healthy trees, with emphasis on native, drought tolerant, and locally adapted species.
3. Encourage the replacement of trees removed by necessity.
4. Develop and sustain the age and species diversity of the City's tree population.
5. Maintain an efficient and cost effective tree removal permit process for unsafe or unhealthy trees.
6. Create public awareness of the Tree Ordinance, the role of trees in our environment, and best practices for tree management.

25.02 Definitions.

Where used in this chapter the following terms are herein defined as:

Certified Arborist – an ASCA (American Society of Consulting Arborists) Registered Consulting Arborist, or an arborist certified by the International Society of Arboriculture.

City - the City of Belmont, California.

City Tree – any woody, perennial plant, regardless of size, located in the City right-of-way, a City park, a designated open space, or on any other City property. A single or multi-stemmed shrub or bush is not a City Tree.

Damage - any action undertaken which causes or may cause injury, death, disfigurement or substantial size reduction to a tree. This includes, but is not limited to:

1. Cutting - detaching or separating from a tree any limb, branch or root above, at or below ground level, including pruning as herein defined;
2. Topping (top) – cutting off the main trunk (or one of the main trunks) of a tree at any point above grade, in such a manner that normal upward growth of the tree is impaired;
3. Trenching, excavating, grading, paving or other harmful incursion within the root system or canopy drip-line;
4. Inappropriate or excessive pruning (see prune/pruning);
5. Poisoning, or leaching of construction related or other damaging materials into the canopy dripline;
6. Overwatering or withholding of water or nutrition.

DBH - the diameter of the tree at breast height; measured across the widest face of the tree trunk, at four and one-half (4.5) feet above natural grade. On a slope, the 4.5 foot height is measured from the

center of the trunk, halfway between the uphill and downhill side. In the case of multiple stemmed trees, the measurement shall be the sum of the diameters of all the stems measured at four and one-half feet above natural grade.

Director - Director of the Parks and Recreation Department.

Dripline (canopy dripline) – diameter of the existing tree canopy, or the estimated diameter of the root system (calculated as DBH inches x 2 feet) whichever is greater.

Person - any natural person, property owner, partnership, firm, corporation, governmental agency or other legal entity.

Protected tree - any woody, perennial plant characterized by having a single main stem or trunk of ten (10) inches or more DBH at four and one-half (4.5) feet above natural grade, or multiple secondary stems totaling ten (10) inches or more DBH at four and one-half (4.5) feet above natural grade, regardless of species. A DBH of ten inches is approximately equivalent to a circumference of 31 (thirty-one) inches. A single or multi-stemmed shrub or bush is not a protected tree.

Pruning – selectively cutting or trimming to enhance the health and structure of a tree, improve balance and aesthetics, promote healthy growth, and prevent damage. For purposes of interpreting this term, the City shall refer to the current American National Standards Institute (ANSI) A300 (Part 1) American National Standard for Tree Care Operations - Tree, Shrub, and Other Woody Plant Maintenance - Standard Practices (Pruning), or Best Management Practices - Tree Pruning published by the International Society of Arboriculture (ISA) as a companion publication to the ANSI A300 pruning standards.

Replacement Tree – any tree, regardless of size, which has been planted as required mitigation for the previous removal of another tree at the same site or elsewhere in the city.

25.03 Regulations Governing Tree Preservation and Tree Management.

A. It is unlawful for any person to:

1. Damage, or cause to be damaged, any Protected Tree, City Tree, or required replacement tree;
2. Remove, or cause to be removed, any Protected Tree, City Tree, or required Replacement Tree without a permit.

B. A permit is not required for pruning when done consistent with guidelines of the current American National Standards Institute (ANSI) A300 (Part 1) American National Standard for Tree Care Operations - Tree, Shrub, and Other Woody Plant Maintenance - Standard Practices (Pruning), or Best Management Practices - Tree Pruning published by the

International Society of Arboriculture (ISA) as a companion publication to the ANSI A300 pruning standards. (see section 25.02 of this ordinance, Definitions; *Pruning*).

25.04 Exemptions Governing Tree Removal.

A permit is **not** required to remove trees under the following circumstances:

- A. **Non-protected trees:** Trees on privately owned property with a diameter less than ten (10) inches at breast height (DBH) at four and one-half (4.5) feet above natural grade.
- B. **Emergency:** Protected tree(s), City Tree(s), or required Replacement Tree(s) damaged by storms, floods, earthquakes, fires or natural disasters or in any instance where it is determined to pose an imminent danger to property or persons by a peace officer, firefighter or other City official acting in their official capacity. The Director of Parks and Recreation shall be promptly notified of the nature of the emergency action taken.
- C. **Fire:** When the cutting or removal is determined necessary by fire department personnel actively engaged in fighting a fire.
- D. **Public Utilities:** Protected trees(s), City Trees(s), or required Replacement Tree(s) determined to be hazardous to public utilities for which no alternative action is possible. This determination will be made by City officials. Prompt notification of this determination shall be made to the Director of Parks and Recreation.
- E. **Nursery:** Trees planted, grown and/or held for sale as part of a licensed nursery business.

25.05 Administration of Tree Ordinance.

- A. **Community Development:** The Community Development Department shall administer the tree removal permit(s) when the removal is associated with an application for a building permit, variance, design review, or any other development entitlement.
- B. **Parks and Recreation:** The Parks and Recreation Department shall administer all tree removal permit(s) when not associated with a building permit, variance, design review, or any other development entitlement that is required.
- C. **City Tree Board**
 - 1. The Tree Board's scope of responsibilities are: hearing and ruling on appeals of denied Administrative Permits, establishing a community forest work plan, recommending public tree care policies, maintaining a list of recommended tree species and undesirable tree species, and promoting public awareness of trees and of this City Tree Ordinance.

2. Tree Board has the authority to monitor administrative permits and provide a list of tree species for which staff can grant administrative removal permits provided the other considerations identified in Section 25.06D are satisfied.
3. The Tree Board shall consist of two (2) currently seated Parks and Recreation Commissioners, and two (2) currently seated Planning Commissioners, each appointed by their respective Commissions for a term of one year, plus one member from the community at large, appointed by the City Council to a term of three (3) years. The Tree Board shall elect a chair annually.
4. The Tree Board shall convene in a public meeting bi-monthly (once every two months), or more often as needed.

25.06 Permit Application.

- A. Any person desiring to remove, or cause to be removed, a Protected Tree(s) or City Tree(s), or required Replacement Tree(s) within the City shall apply for a permit as provided herein prior to such action.
- B. **Application Form:** The application for a permit shall be made on the appropriate form provided by the City, and shall include the number, location, size and type(s) of Protected Tree(s) or City Tree(s), or required Replacement Tree(s) to be removed, or caused to be removed, and the reason for such action. The applicant may submit an arborist's report or other expert evidence for consideration.
- C. **Tree Removals in Conjunction with Development Permits:** Applications for tree removal associated with an application for a development entitlement, variance, design review, or any other development permit, shall be processed by the Community Development Department.
- D. **Tree Removals NOT associated with Development Permits:** When no building or development entitlements are required, the application shall be processed by the Parks and Recreation Department.
 1. Administrative Permit: The Parks and Recreation Director or designee may, following a site inspection, grant an Administrative Permit under any of the following circumstances:
 - a. The application is not associated with any other building and/or development permit (see section 25.06.C).
 - b. The tree(s) are determined by the City to be irreparably diseased or irreparably damaged.
 - c. The tree(s) are on the Tree Board approved list of tree species for which staff can grant administrative removal permits.
 - d. Tree removal is part of an infrastructure repair such as sewer lateral replacement.
 - e. The condition of the tree(s) is creating a danger to persons or damaging real/personal property.

- f. The tree(s) meets any of the exemption criteria included in Section 25.04 of this ordinance.
 - g. Removal of the following 10-inch DBH-sized (at four and one-half (4.5) feet above natural grade) or greater species:
 - 1. Acacia--All species
 - 2. Eucalyptus--Eucalyptus globulus, Eucalyptus globulus "Compacta"
 - 3. Monterey Pine--Pinus radiata
2. When an Administrative Permit is denied, appeal may be made to the Tree Board, per section 25.09 of this ordinance. Notice of the appeal shall be sent to all properties within 300 feet of the subject property.
 3. An Administrative Permit that has been granted cannot be appealed.
- E. Before processing an application, the City may require the applicant to explore alternatives to the tree removal proposed in the application.

25.07 Conditions Attached to Permits.

The City, Tree Board, or Planning Commission may impose any or all of the following as conditional requirements for granting a permit:

- A. If replacement plantings are required, they may consist of up to a three (3) to one (1) basis with approved fifteen (15) gallon or twenty-four (24) inch box trees on the subject property or an alternative site approved by the permitting authority thus offsetting the impacts associated with the permitted action.

The size and number of required replacement trees will be based upon the size, number, and species of the tree(s) removed. In addition, replacement requirements will consider the number and density of trees on the subject property including evidence of trees that have been planted in anticipation of the requested removal(s). The intent of replacement plantings is to facilitate a bio-mass and tree canopy equivalent to that lost with the tree removal.

1. Notwithstanding the replacement requirements as outlined above, no more than one replacement tree at either a 15-gallon or 24-inch box size shall be required for any Acacia, Eucalyptus Globulus/Compacta, or Monterey Pine tree removed.
- B. Payment of any required fees, as established by the City Master Fee Schedule.
 - C. All trees required to be planted with a development project or as required replacement or mitigation shall be maintained in a manner that will insure their proper growth.
 - D. When five (5) or more Protected Trees or City Trees are removed, a security deposit will be provided to the City in an amount equal to the value of the trees being planted. The purpose

of the security deposit is to insure the availability of funds to be drawn on by the City to replace the trees if they do not survive. The security deposit shall not be released until the owner calls for, and the City completes, an inspection of the trees to insure their continued survival after two (2) years. The City may charge a fee, pursuant to its adopted fee schedule for administering the security deposit.

25.08 Permit Issuance.

- A. **Permit Approval – Parks and Recreation Department/Tree Board:** Permits approved by the Parks and Recreation Department or the Tree Board shall be issued in writing and remain valid for a period of sixty (60) days from issuance. Permits approved by the Tree Board shall be issued not less than ten (10) days following approval by the Board. If the work to be done under the terms of the permit is not commenced prior to expiration, the permit shall become null and void.
- B. **Permit Approval – Community Development Department/Planning Commission:** Permits approved by the Community Development Department or the Planning Commission for tree removals in conjunction with development shall be valid for one (1) year from the date of issuance. Permits issued in conjunction with grading and/or building permits will become valid simultaneously with the issuance of such other permits and the time for completion of the work will commence at that time unless otherwise provided in the permit.
- C. **Payment of Fees:** Payment of any required fee, as set in the current City Master Fee Schedule, shall be made prior to issuance of any removal permit. Provision of any conditionally required security deposit shall be made prior to issuance of any permit.
- D. **Posting of Permit:** A valid permit must be posted on the subject property in a location visible from, and not more than twenty (20) feet from, the public right-of-way.
 - 1. The permit shall be posted no less than 48 hours in advance of any work and remain posted for not less than one (1) week following completion of all work.
 - 2. For emergency tree removal, the Parks and Recreation Director has the authority to waive the 48 hour posting of permit requirement to allow for immediate removal if the tree is creating a danger to persons or damaging real/personal property.

25.09 Appeals to Tree Board.

- A. When an Administrative Permit application is denied, an appeal may be made to the City Tree Board.
 - 1. The request for appeal shall be submitted in writing to the Director of Parks and Recreation.

2. The Board shall consider the matter at a regularly scheduled Tree Board meeting not more than sixty (60) days thereafter.
- B. Factors considered by Tree Board: The following factors shall be considered by the Tree Board in the decision to issue or deny a permit:
1. The removal of the Protected Tree(s) or City Tree(s) is consistent with the goals of section 25.01(c) of this ordinance.
 2. The condition of the Protected Tree(s) or City Tree(s) with respect to disease, danger of falling, proximity to existing or proposed structures, interference with utility services, or posing a safety hazard.
 3. There are no reasonable alternatives to the proposed application that would preserve the trees under consideration.
 4. The topography of the land and the effect of the proposed action on erosion, soil retention, diversion or increased flow of surface waters, and storm drainage requirements.
 5. The number of trees existing in the vicinity, and possible interdependencies of trees within a stand or a grove.
 6. The number of trees which the particular parcel can adequately support according to accepted arboricultural practice.
- C. Permits approved by the Tree Board shall be issued not less than ten (10) days following approval by the Board.

25.10 Appeal of Permit to City Council.

Decisions of the Planning Commission or the Tree Board may be appealed to the City Council. Such appeals must be submitted in writing to the City Clerk within ten (10) days of the Planning Commission's or Tree Board's action, and shall be accompanied by payment of any required administrative fees. The City Council shall schedule the matter for consideration on a regularly scheduled Council meeting not more than forty-five (45) days thereafter.

25.11 Enforcement.

- A. Any person who removes or damages a Protected Tree, City Tree, or required Replacement Tree within the City in violation of this chapter, or the terms of any permit granted under this chapter, is guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment for six (6) months or by both such fine and imprisonment. Each and every tree removed or damaged will be considered a separate violation of this chapter subject to misdemeanor penalty. The City reserves the right to prosecute such violations as an infraction.

- B. In addition to any penalties provided for in this section, any person who removes or damages a Protected Tree, City Tree, or required Replacement Tree in violation of this Chapter shall be responsible for:
- (1) Payment of any applicable Tree Removal Fee as provided in the City's Master Fee Schedule, and
 - (2) Replacement of the Protected Tree(s), City Trees, or required Replacement Tree(s) removed or damaged, with trees of reasonably equivalent size and/or value to the original tree(s). The number, size and location of such Replacement Trees shall be determined by the Director of Parks and Recreation or their designee.
 - (3) Where replacement is not feasible, payment of a tree planting in lieu fee as determined by the City's Master Fee Schedule, to the City Tree Planting and Establishment Fund.
- C. The City may issue a stop work order on a project, pending submittal of an acceptable mitigation plan providing for Replacement Trees, or payment of an in lieu fee as determined by the City's Master Fee Schedule, to the City Tree Planting and Establishment Fund.
- D. The City shall, for all trees replaced per this section, require a security deposit to be provided for two (2) years. The value shall be equal to the value of the work being done. The security deposit shall be released only after an inspection by a City official, performed at the request of the property owner.

25.12 Public nuisance.

In addition to the penalties provided in section 25-11 the violation of the provisions of this chapter is a public nuisance. The City Attorney may commence the necessary action or proceedings for the abatement, removal and enjoinder thereof in the manner prescribed by law in the courts which have jurisdiction to grant such relief as will accomplish such abatement and restraint. The remedies provided for in this section shall be in addition to any other remedy or remedies or penalties provided in the chapter or any other law or ordinance.

SECTION 2: Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Belmont hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

SECTION 3: Pursuant to Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in full force and effect thirty (30) days after its final passage.

SECTION 4: The City Clerk shall cause this Ordinance to be published and posted in accordance with the requirements of Section 36933 of the Government Code of the State of California.

INTRODUCED this _____ day of _____, 2011.

* * * * *

PASSED AND ADOPTED as an Ordinance of the City of Belmont at a regular meeting thereof held on the _____ day of _____, 2011.

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

RECUSED, COUNCILMEMBERS: _____

MAYOR of the City of Belmont

ATTEST:

CLERK of the City of Belmont