

ORDINANCE NO. 882

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA ADOPTING MUNICIPAL CODE AMENDMENT 18-02 WHICH WOULD ADD, CHAPTER 13.12 "TREE PRESERVATION AND PROTECTION" IN ITS ENTIRETY, TO TITLE 13 "TREES AND VEGETATION" OF THE DUARTE MUNICIPAL CODE, TO ESTABLISH REGULATIONS ADDRESSING TREE PRESERVATION AND PROTECTION APPLICABLE TO PRIVATE PROPERTIES AND DEVELOPMENT SITES

WHEREAS, trees reduce air pollution by keeping the air clean and producing oxygen; and

WHEREAS, property values increase when properties and neighborhoods include well maintained, healthy trees; and

WHEREAS, removing healthy trees displaces wildlife habitat for birds and other types of creatures; and

WHEREAS, the City has determined that it is appropriate to create a Tree Preservation and Protection ordinance to consistently and objectively manage the preservation and protection of trees on all private properties and development sites; and

WHEREAS, the City seeks to protect trees on private property and development sites in order to preserve cultural heritage, maintain and enhance the scenic beauty of the city, preserve and enhance property values; and

WHEREAS, the Ordinance will be consistent with the goals, objectives and policies of the General Plan, specifically Conservation Element Goal 3, which desires to protect Duarte's environment through the proper consideration of the environmental implications of new development in the City; and

WHEREAS, notice of a public hearing of the City Council on the proposed Municipal Code Amendment 18-02 were given in accordance with applicable law; and

WHEREAS, on August 28, 2018, the City Council of the City of Duarte held a duly noticed public hearing on the proposed Municipal Code Amendment 18-02, and related environmental review. At the public hearing the City Council received and independently considered the staff report and all of the information, evidence, and testimony presented in connection with the foregoing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION 1. CHAPTER 13.12 ADDED IN ITS ENTIRETY

Add Chapter 13.12 "Tree Preservation and Protection" in its entirety to Title 13, "Trees and Vegetation" of the Duarte Municipal Code in its entirety, to protect existing and significantly sized native and non-native trees and establish regulations addressing tree preservation and protection applicable to private properties and development sites, as well as, establish a permit process for removal, alterations, and associated replacement tree requirements; and the inclusion of definitions, exemptions, and related penalties.

Chapter 13.12 is depicted on the exhibit attached hereto and made a part of this resolution by reference marked "Exhibit A" for identification.

SECTION 2. CEQA DETERMINATION.

The City Council finds and determines that, pursuant to provisions of the California Environmental Quality Act (CEQA), the addition of Chapter 13.12 to the Duarte Municipal Code to create regulations, to preserve and protect oak, native, and specimen trees on private properties and development sites are categorically exempt under Section 15306, 15307, 15308, and 15321 which exempts information collection, actions taken by regulatory agencies to protect the environment, and enforcing such regulations.

The City Council further finds that the adoption of this Municipal Code Amendment will result in the preservation and protection of oak, native, and specimen trees on private properties and development sites in the City, and will not result in negative impact to the environment; therefore, it is exempt from the provisions of CEQA and no further environmental review is necessary.

SECTION 3. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 4. POSTING OF ORDINANCE.

The City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be posted in the manner provided for in the Duarte Municipal Code.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect thirty (30) days following its second reading.

PASSED, APPROVED, AND ADOPTED after second reading at a regular meeting of the City Council of the City of Duarte this 11th day of September, 2018.

/s/ John Fasana
Mayor John Fasana

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Ordinance No. 882 was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the 11th day of September, 2018, by the following Roll Call vote:

- AYES: Councilmembers: Finlay, Kang, Paras-Caracci, Reilly, Fasana
NOES: Councilmembers: None
ABSENT: Councilmembers: None

/s/ Marla Akana
City Clerk Marla Akana
City of Duarte, California

Exhibit A

Chapter 13.12 - TREE PROTECTION AND PRESERVATION**13.12.010 - Purpose**

The purpose of this chapter is to protect certain trees in order to preserve cultural heritage, maintain and enhance the scenic beauty of the city, improve air quality, abate soil and slope erosion, preserve and enhance property values, and thereby promote public health, safety and welfare by:

- A. Identifying native and specimen trees and establishing procedures to encourage their conservation;
- B. Including consideration of existing trees and their protection in the review and implementation of development proposals;
- C. Requiring permits for the removal and alteration of native and specimen trees except in emergencies; and
- D. Requiring replacement plantings when native and specimen trees are removed.

13.12.020 - Applicability

The provisions of this chapter shall apply to all the following with respect to the removal and maintenance of native and specimen trees:

- A. *Trees subject to this Chapter.* Any of the following tree types are subject to the provisions of this Chapter. For the purposes of this Chapter, the word “tree(s)” shall refer to:
 - 1. Native trees 12” inches in diameter or greater, as measured from DBH; and
 - 2. Specimen trees 24” inches in diameter or greater, as measured from DBH.
- B. *Properties subject to this Chapter.*
 - 1. Developed, single-family residential zoned properties with trees in the front or street-facing side yard(s);
 - 2. Undeveloped, single-family residential zoned properties with trees on the property;
 - 3. Developed or undeveloped properties in multiple-family residential, commercial, industrial, hospital, and open space zones, with trees on the property; and
 - 4. Developed or undeveloped properties in specific plan zones, with trees on the property, unless otherwise regulated by the individual specific plan.
- C. *Activities subject to this Chapter.*
 - 1. Tree removal; and
 - 2. Tree alteration

13.12.030 - Definitions

The following words and phrases as used in this Chapter are defined as follows:

- A. *Diameter at breast height (DBH).* The measurement of tree diameter measured at 4.5 ft above ground level. In the situation where measurement of DBH is unclear, DBH shall be calculated using recognized arboricultural resources, such as: A Simplified Guide to Measuring DBH by the International Society of Arboriculture (<http://www.isa-arbor.com/Portals/0/Assets/PDF/Certification/Tree-Ordinance-Guidelines.pdf>); and/or Measuring Guidelines Handbook by American Forests (www.americanforests.org/wp-content/uploads/2014/12/AF-Tree-Measuring-Guidelines_LR.pdf).
- B. *Native tree.* Trees indigenous to the desert, foothills or canyons of southern California prior to the California Mission Period. For the purposes of this Chapter, native trees are defined as: all endemic California oak species, (including but not limited to: *Quercus agrifolia*, *chrysolepis*, *engelmannii*, *kelloggii*, *lobata*, and *wislizeni*); California bay laurel (*Umbellularia californica*); California black walnut (*Juglans californica*); California sycamore (*Platanus racemosa*); and Toyon (*Heteromeles arbutifolia*).
- C. *Specimen tree.* Generally larger and/or older trees (except Native trees) that make a significant aesthetic or environmental contribution to their immediate surroundings.
- D. *Tree alteration.* Actions taken by cutting or pruning any branch, trunk or root of a tree, or by filling, surfacing, grading, compacting or changing the drainage pattern of the soil around any tree in a manner that threatens to diminish the vigor of the tree; provided that, as used in this chapter, the term *alteration* does not include:

1. Normal seasonal trimming, shaping, thinning or pruning of a tree necessary to its health and growth on less than one-fourth of the tree's foliage, and within national pruning standards as defined in the ANSI 300A Standards;
 2. Trimming, pruning or clearance of tree branches, performed by a utility company or their contractors, from lines of any public utility necessary to the maintenance of the lines; and
 3. Trimming, clearing or pruning by the Community Development Director or their designee of any tree necessary for:
 - a. The clearance of streets for pedestrian or vehicular traffic; or
 - b. Compliance with fire, building and wildland urban interface codes and/or requirements.
- E. *Tree removal.* Complete or partial removal of a tree or any other actions including but not limited to acts which inflict damage upon the roots systems or other parts of the tree by fire, cutting, application of toxic substances, operation of equipment or machinery, or by changing the natural grade of land by excavation or filling the drip line area around the trunk resulting in the death of a tree or permanent damage to its health, or removal of more than one-fourth of the tree's foliage in any 12-month period.

13.12.040 - Permits

No person shall remove or cause the removal of, or alter any native or specimen tree unless a tree permit is first obtained from the Community Development Department.

13.12.050 - Permit Process

Prior to the granting of a tree permit, an application for alteration and/or removal shall be submitted to the Community Development Department. The application shall be in the form required by the Community Development Department and shall be accompanied by any fees established by the City Council.

13.12.060 - Review Required

An application for a tree permit for the removal or alteration of a native or specimen tree shall be made to the Community Development Department. The content, form, instructions, procedures, and requirements of the application package deemed necessary and appropriate for the proper enforcement of this Chapter shall be established by the Community Development Department.

As a part of any development application, the Community Development Director may require that the applicant submit a tree report which shall include, as a minimum: data regarding genus and/or species, age, size (including canopy, caliper, trunk and height), relative health, and any preservation proposals for all protected trees on the site. The tree report shall be prepared by a certified Arborist approved by the City, and funded by the applicant. The application shall also include, but not be limited to the following:

- A. An explanation as to why the tree's removal is necessary;
- B. The location of all trees on the site, including those to be removed, shall be identified on a plan or map indicating species and trunk diameter;
- C. Photographs of the proposed trees to be removed or relocated shall be included; and
- D. Any fees (established by the City Council).

13.12.070 - Review Authority

The Community Development Director or their designee shall review and have authority to approve, conditionally approve, or deny tree permit applications. Pursuant to Duarte Development Code, Chapter 19.122.050, if any tree permit application is filed concurrently with another discretionary land use application, the decision to approve, conditionally approve, or deny the tree permit shall be made by the authority responsible for reviewing the other discretionary land use application.

13.12.080 - Replacement Required

Tree permit applications which approve tree removal(s) shall provide replacement tree(s) in the following manner:

- A. *Native tree(s) removed*
 1. The aggregate replacement tree(s) box container size shall be equivalent to the DBH of the tree(s) removed.

2. An individual replacement tree container size shall be no less than a 24" box, irrespective of the DBH removed.
 3. Replacement tree(s) shall be a native tree species.
- B. *Specimen tree(s) removed*
1. The aggregate replacement tree(s) box container size shall be equivalent to the DBH of the tree removed.
 2. An individual replacement tree container size shall be no less than a 24" box.
- C. *Off-site planting*
1. A minimum of fifty percent (50%) of required replacement trees shall be planted on-site. The remaining balance of required replacement trees may be planted off-site, subject to the applicable review authority.
- D. *In-lieu fee payment*
1. A maximum of fifty percent (50%) of required replacement trees may be substituted with an in-lieu fee payment, subject to the applicable review authority.
 2. The value of each replacement tree, including the cost of installation, shall be established by a certified Arborist, selected by the City and paid for by the applicant. All in-lieu fees shall be dedicated to an urban forestry program administered by the City of Duarte or its approved urban forestry partner.
- E. *Replacement tree details*
1. The applicable review authority shall have the ability to regulate the details of the replacement tree(s) planted, including but not limited to: container size, species, location, appropriateness of irrigation, amount of off-site planting (up to 50%), and amount of in-lieu fee payment (up to 50%).
- F. *Replacement tree maintenance and survivability*
1. Any required replacement tree must be maintained and/or irrigated by the property owner.
 2. On-site replacement tree(s) that do not survive a minimum of 12 months from the date of planting shall be replaced by the applicant at their own cost.

13.12.090 - Exceptions

All trees should be protected, but there are a few cases where this Chapter does not apply, as follows:

- A. Trees planted, grown, and/or held for sale by licensed nurseries and/or tree farms or the removal or transplanting of such trees pursuant to the operation of licensed nursery and/or farm;
- B. Any trees or parts thereof growing upon private property, that due to health, condition, shape, or growth habits that interfere with the use of any public street, parkway, sidewalk, improvement, utility or public place of the City which endangers the life, health, safety or property of the public, as determined by the Director of Community Development;
- C. Trees where their removal or relocation is necessary to obtain adequate line-of-site distances as required by the Director of Community Development;
- D. Trees which, in the opinion of the Director of Community Development, will cause damage to existing public improvements or infrastructure;
- E. Trees which require maintenance or removal for the protection of existing public utility electrical power or communication lines or other property of a public utility;
- F. Trees damaged by thunderstorms, windstorms, flood, earthquakes, fire, widespread organic disease or insect infestation, or other natural disaster and determined to be dangerous by any of the following Departments: Sheriff, Fire, Public Safety, or Community Development;
- G. Minor trimming and/or pruning of trees on developed property within the scope of typical and reasonable tree maintenance, as further described under the definition of Tree Alteration in this Chapter;
- H. Trees declared by the Director of Community Development to be dead, diseased, or dying. The Community Development Director may require that the applicant submit a tree report prepared by a certified Arborist approved by the City, and funded by the applicant;
- I. Trees declared by the Director of Community Development to be known to reproduce itself excessively, thus becoming weedlike;
- J. Fruit trees, including: citrus, plum, nectarine, cherry, apricot, peach, pear, pomegranate, persimmon, loquat, fig, avocado and other species determined similar by the Director of Community Development; and

- K. In case of emergency when a tree is hazardous or dangerous to life or property, it may be removed by order of any member of the Sheriff, Fire, Public Safety, or Community Development Departments; provided, further, that any franchised public utility or representative of the city may remove trees which interfere with the safe and efficient operation of the public service for which they are responsible.

13.12.100 - Prohibited Activities

It is prohibited and unlawful for any person to do, cause or allow the following activities or conditions to occur:

- A. No person shall cause, authorize or permit any brine, oil, liquid dye or other substance deleterious to tree life to lie, leak, pour, flow or drip upon or into the soil about the base of protected trees at a point from which such substance may flow, drip or seep into such soil, injure such protected tree, or to otherwise harm or kill any such protected tree.
- B. Cause or allow irrigation on or close proximity in such a manner as to cause harm, decline or death to a protected tree.

13.12.110 - Appeals

Any interested party may appeal any determination of the Community Development Director, Architectural Review Board, or Planning Commission made under this chapter to the City Council by filing a written notice of appeal with the City Clerk within fifteen (15) days following the actual date the decision is rendered. The City Council shall hold a public hearing within sixty (60) days after its receipt of such written appeal, giving to the appellant at least ten days written notice of the date of such hearing, by first class mail. At such hearing, the appellant shall have the right to be heard and to present witnesses in his behalf. The City Council shall make its determination and shall mail written notice thereof to the appellant within twenty-one (21) days of the date of the hearing. The decision and determination of the City Council shall be final.

13.12.120 - Penalty for Violation

Anyone found in violation of this Chapter is subject to the following:

- A. Violations of this Chapter shall be governed by Chapter 1.04.100 of the Duarte Municipal Code and Chapter 19.154 of the Duarte Development Code.
- B. Tree(s) removed without approval of a City tree permit shall be replaced at a time established by the Director of Community Development. The aggregate replacement tree(s) box container size shall be equivalent to triple the DBH of the tree(s) removed. All other regulations promulgated by section 13.12.080 remain.

13.12.130 - "Non-liability of city"

Nothing in this ordinance shall be deemed to impose any liability for damages or a duty of care and maintenance upon the City or upon any of its officers or employees. The person in possession of public property or the owner of any private property shall have a duty to keep native and specimen trees upon the property and under their control in a safe, healthy condition. Except as provided in the Exceptions Section, any person who feels a tree located on property possessed, owned or controlled by them is a danger to the safety of themselves, others or structural improvements on-site or off-site shall have an obligation to secure the area around the tree or support the tree, as appropriate to safeguard both persons and improvements from harm.