

## San Francisco's Tree Ordinance: New Rules Helping Property Owners Taking Effect this July 1

In November of 2016, San Francisco residents voted to pass a new law ("Proposition E"), effective July 1, 2017, that transfers back responsibility from private property owners to the City of San Francisco to maintain and care for street trees and surrounding sidewalks damaged by the trees. The City had taken care of trees several decades ago, but then shifted responsibility back to property owners after that (during a time of budget crisis). Now the City has taken back financial and other responsibility for these trees. As of July 1, 2017, it will be the City's responsibility to prune the trees and repair sidewalk damage caused by tree roots. It will categorize and prioritize maintenance of each street tree based on its condition and will prune such trees and repair sidewalks that have the most serious damages first, and then move on to trees that are in less serious conditions. Proposition E does not however change the portions of the existing San Francisco tree ordinance dealing with how and when one can remove trees.

That law, passed on March 1, 2006, governs a property owner's ability to remove trees, whether one is doing new development (such as a garage) on a lot or wishing to improve the view. This law (Section 810 of the San Francisco Public Works Code) ("Ordinance"), creates 2 classes of trees: (1) significant; and (2) landmark. A tree on private property is "significant" if any portion of its trunk is within 10 feet of the public right of way and if one of the following three conditions are true: the tree (1) has a diameter at breast height of over 1 foot ("breast height" means 4.5 feet above the ground); (2) is over 20 feet tall; or (3) has a canopy in excess of 15 feet in width. The "public right of way" means the street area where cars travel.

If a tree is a significant tree, then it cannot be removed without obtaining a tree removal permit from the Director of the Department of Public Works ("DPW").

Neighbors must be notified of any pending tree removal. If objections are made, a hearing is held by the Department of Public Works. An appeal can be made to the Board of Supervisors. If DPW grants a tree removal permit, it requires that another street tree must be planted in its place or a fee will be imposed, unless an acceptable reason is provided to waive these requirements.



by *M. Brett Gladstone & Elisha J. Yang*



If your tree is not significant, it could be regulated as a "landmark" tree. A tree anywhere on a lot could be made a landmark tree, even if obscured from street view.

Unlike significant trees, a "landmark" tree is not specifically defined in the Ordinance. Instead, the Ordinance adopted "uniform criteria" used by the City's Urban Forestry Council in reviewing permits for removal of landmark trees, which include following: (a) size, age and species, (b) visual characteristics, (c) cultural or historic characteristics, (d) ecological characteristics, and (e) locational characteristics, as discussed below. Becoming a landmark tree is a long process. To become a landmark tree, a tree has to be: (1) nominated by the property owner or neighbor, the Board of Supervisors, Planning Commission, Historic Preservation Commission or the Planning Director or Public Works Director; (2) evaluated by the Landmark Tree Committee at an Urban Forestry Council hearing; and, (3) approved by the Board of Supervisors.

A nomination for landmark status entitles the tree to be treated temporarily as a landmark tree. The Director of Public Works also can issue an emergency order that temporarily prevents a tree from being removed (even on private property) to prevent the immediate removal of a tree. This temporary landmark status based on the nomination expires in 215 days if the designation has not been issued, unless the Board of Supervisors adopts a resolution to extend for up to 90 more days. The Zoning Administrator is required to identify designated landmark trees on proposed development or construction sites and to notify city agencies.

A landmark tree can only be removed after a public hearing is held by the Director of Public Works. As in the case of significant trees, DPW can require replacement or payment of a fee to the Adopt-A-Tree Fund. The Director's determination is final, but appealable to the Board of Appeals.

If a tree is designated a hazardous tree by the City, it is easier to remove. In the case of "manifest danger and immediate necessity," the City can require immediate removal by a property owner. A "hazardous" tree is a tree that (1) appears dead, dangerous, or likely to fall, even after proper maintenance activities are performed to eliminate dead or dangerous parts, (2) obstructs or damages a street or sidewalk or other existing structure, (3) harbors a serious disease or infestation threatening the health of other trees, (4) interferes with vehicular or pedestrian traffic, or (5) poses any other significant hazard or potential hazard; provided that reasonable measures have been taken to abate such a hazard, such as certain listed maintenance activities.

## **Summary:**

While a tree is automatically found to be "significant" if certain criteria are met, a tree cannot attain "landmark" status until a number of City agencies adopt the designation based on the above-mentioned criteria. The key thing to remember about the Ordinance is that even if your trees are found to be significant or landmark trees, they can be removed, but removal requires a hearing by DPW and is more difficult, and neighbors who oppose this can appeal.

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