

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
BURBANK AMENDING TITLE 7 (PUBLIC WAYS AND
PROPERTY) CHAPTER 4 (TREES AND VEGETATION) OF
THE BURBANK MUNICIPAL CODE TO PROTECT TREES
IN PUBLIC RIGHT OF WAYS

City Attorney's Synopsis

This ordinance implements amendments to Title 7, Chapter 4 to establish clear definitions of certain terms, clarify review procedures during development review, establish a standard valuation methodology for trees to be removed, and to ensure that public trees are appropriately protected during construction activities.

THE COUNCIL OF THE CITY OF BURBANK FINDS, DETERMINES, AND
DECLARES THAT:

A. Title 7, Chapter 4 of the Burbank Municipal Code sets for the regulations for the maintenance and protection of public trees; and

B. The City has maintained a vibrant and beautiful urban forest of over 33,000 public trees and 125 acres of parkland; and

C. The designation of "Tree City" by the Arbor Day Foundation for more than 40 years is one in which the City takes pride and wishes to see expressed in the actions and attitudes taken toward trees in the public rights of way; and

D. Trees are valued for the social, economic, and environmental benefits they provide, such as carbon sequestration, providing shade, contributing to the character and walkability of neighborhoods, reducing energy costs, addressing public health issues, and promoting social equity; and

E. The selection, planting, maintenance, protection and removal of public trees substantially affect matters such as pedestrian safety, vehicular safety, location and maintenance of utility services and quality of life for residents of the City; and

F. The proposed amendments are being carried out in response to the public request to protect public trees during construction activities as they are significant aesthetic and ecological resources in the City. This Ordinance would not be detrimental to the public interest, health, safety, convenience or welfare; and

G. This Ordinance will be consistent with the objectives, policies and programs of the Burbank 2035 General Plan; and

H. This Ordinance is not subject to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") pursuant to Sections

15060(c)(2), 15060(c)(3), and 15061(b)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, because there is no possibility that it may have a significant effect on the environment, and because it is not a "project" as that term is defined in Section 15378 of the State CEQA Guidelines. Further, the project is categorically exempt from CEQA pursuant to Section 15308, Class 8, of the CEQA Guidelines pertaining to actions taken by regulatory agencies for the protection of the environment to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. This project involves the adoption of amendments to the BMC, including new objective standards intended to protect public trees during construction activities

THE COUNCIL OF THE CITY OF BURBANK DOES ORDAIN AS FOLLOWS:

Section 1. Findings. All the findings set forth above are true and correct and are incorporated herein as if restated in their entirety.

Section 2. Amendment to Burbank Municipal Code (BMC) 7-4-101
Definitions. Section 7-4-101 is hereby amended to add definitions and amend the definitions of "TREE" and "PUBLIC TREE" as follows (additions to the BMC are underlined and deletions are marked in ~~strikeout~~):

DEVELOPMENT: Any work upon any property in the City that requires a building permit, demolition permit, encroachment permit or other City approval or permit or which involves grading, excavation, landscaping or construction within the dripline area of a public tree.

DRIPLINE: The area directly located between and under the outer circumference of the outer edges of tree branches and the trunk.

PROFESSIONALLY ACCEPTED STANDARDS: Those standards established by the International Society of Arboriculture, National Arborists Association or American National Standards Institute, and such other standards as may be subsequently amended, for the care, maintenance, preservation, protection, removal and planting of trees, including tree trunks, branches, roots. Tree protective measures shall not damage irrigation outlets or piping or affect tree roots. Such standards may include, but are not limited to:

a. Chain link or high visibility flexible fencing with a minimum height of four feet and supported by a rigid frame that is maintained throughout the duration of development activities.

b. For public trees, ground surfaces covered by existing public paving, such as streets and sidewalks, do not have to be secured within a Tree Protection

Zone. Only those ground surfaces not covered by existing paving shall be protected.

PUBLIC TREE: Any tree ~~planted~~ located in a ~~public place~~ street or public area.

TREE⁴: Any woody perennial plant, normally having one stem or trunk bearing the foliage or crown well above ground level and which attains a minimum ~~to~~ heights of sixteen feet (16') ~~or more~~ upon maturity.

TREE PROTECTION ZONE: A specifically defined area totally encompassing a public tree within which activities are strictly controlled. When depicted on plans, the outermost edge of the protected zone will appear as an irregular shaped circle that extends 10 feet beyond and follows the contour of the drip line of the public tree. In no case shall the protected zone be less than ten (10) feet from the trunk of the public tree or exclude the known root structure in the case of irregularly shaped trees or trees with known atypical root structures.

TRUNK FORMULA: The Trunk Formula, based on the latest edition of the Guide for Plant Appraisal authored by The Council of Tree and Landscape Appraisers, published by the International Society of Arboriculture, is as follows:

Tree Value = Base Value x Cross-sectional Area x Species Class x Condition Class x Location Class

Section 3. Amendment to Burbank Municipal Code (BMC) 7-4-102:
Jurisdiction and Control. Section 7-4-102 is hereby amended as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

Except as otherwise provided in this article, the Department and the Director shall have exclusive jurisdiction and control over the planting, care and removal of trees, shrubs, and plants in the streets and on other property under the control of the City, and any work incidental thereto; and in exercising such control shall:

A. Selection of Species: Determine the species of kinds of trees, shrubs, and plants that may be planted and the distance apart and exact location at which such trees shall be planted;

B. Promotion of Street Tree Program: Encourage the planting, care and preservation of shade or ornamental trees in the streets, and elsewhere in the City;

C. Inspection: Inspect all trees, shrubs, and plants in the public areas and streets or which, standing on any private property, overhang or project into the street, at such times and upon such occasions as may be deemed appropriate by the Department; and have charge of enforcing and carrying out the regulations prescribed in this Chapter; and

D. Remedial Action: Take such remedial action as may be necessary under this article.

E. Development Review: Review all landscaping, construction or development plans as said plans may affect public trees and require changes to such plans to ensure consistency with the Master Street Tree Plan.

Section 4. Amendment to Burbank Municipal Code (BMC) 7-4-105:
Determination of Tree Values. Subsection 7-4-105 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

In the case of any public tree removed or destroyed, defaced, or injured, as provided for in Section 7-4-111 of this article, or as a result of a violation of Sections 7-4-113, 7-4-115, or 7-4-117 of this article, but not replaced, the City shall be reimbursed the value of the tree removed, destroyed, defaced, or injured, as determined by an arborist certified by the International Society of Arboriculture or another nationally recognized tree research, care, and preservation using the "Trunk Formula" method of valuation. ~~the most current valuation table established by the International Shade Tree Conference.~~

Section 5. Amendment to Burbank Municipal Code (BMC) 7-4-108:
Restricted Removal of Certain Trees. Subsection 7-4-108 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

The Director shall have the authority and responsibility to develop and maintain a restricted list of public trees in the City⁶. This list shall include landmark trees, trees of outstanding size and beauty, dedicated trees, etc. These trees shall be identified, mapped and recorded. Subsequent to this they shall be given all types of special treatment mutually approved by the Department and the Public Works Department to retain and protect them.

Section 5. Amendment to Burbank Municipal Code (BMC) 7-4-111:
Removal for the Purpose of Construction. Subsection 7-4-111 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

A. Street Public Trees: A public tree removal permit is required to remove any public tree. Any ~~street~~ public tree requested by any person or property owner to be removed for the purpose of any type of construction shall be replaced by the permittee with a tree of the nearest a size available, of a species and in the location to be determined by the Director, consistent with the Master Street Tree Plan. The ~~person or property owner~~ permittee shall pay the total cost of the valuation of the public trees being removed and of the replacement tree to the City ~~of removal~~ prior to any such action being undertaken. If such tree, or trees, are not replaced, by the permittee, the City shall be reimbursed the value of the tree(s) being removed and the replacement tree(s) as established in Section

7-4-105 of this article, in addition to the cost to the City of removal. ~~The provisions of this section requiring payment of the cost of removal and replacement or reimbursement to the City shall not apply to property located in an R-1 single family residential zone~~

~~B. Private Trees: Any tree removed for the purpose of any type of construction in accordance with Subsection 10-1-1113S of this code shall be replaced with a tree of equal size, of the same species or an appropriate alternative, and in a location to be approved by the Park, Recreation and Community Services Director and the Community Development Director. Alternately, the City shall be reimbursed the value of the trees, pursuant to this section and Section 7-4-105 of this article; or, the project's landscaping shall be improved above what is required by Subsection 10-1-1113E of this code, and in an amount equal to the value of the removed trees, or if the excess landscaping does not equal the value of the removed trees, then a fee for the shortfall shall be paid to the City; or, the tree(s) shall be moved elsewhere to the satisfaction of the Park, Recreation and Community Services Director; or a combination of moving or replacing the trees pursuant to Section 7-4-105 and this section shall be followed. The fees obtained from private development will be placed in the Urban Reforestation Fund which will be devoted to the replacement of City trees.~~

Section 6. Amendment to Burbank Municipal Code (BMC) 7-4-113:
Unlawful to Destroy, Deface, or Injure Tree. Subsection 7-4-113 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

It shall be unlawful for any person to destroy, injure, or deface, by any means, any public tree in the street, or take any action foreseeably leading to the death of a public tree or permanent damage to its health, including, but not limited to, the following:

- A. Pouring any toxic material on any tree or on the ground near any tree.
- B. Attaching any light, mirror, sign, poster, notice, or other object on any tree, or fastening any guy wire, cable, rope, nails, screws, or other device to any tree; except that the City may tie temporary "no parking" signs to trees when necessary in conjunction with street improvement work, tree maintenance work, parades, etc.
- C. Causing or encouraging any fire or burning near or around any tree.
- D. Unauthorized digging, trenching, cutting, excavating, or otherwise injuring the roots within the dripline area of a public tree.
- E. Unauthorized pruning/trimming, cutting, topping, or shaping the branches of a public tree.
- F. Overwatering or underwatering

Section 7. Amendment to Burbank Municipal Code (BMC) 7-4-115:

ATTACHMENT 1 - 5

Protection of Trees. Subsection 7-4-115 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

~~All trees~~ Those responsible for any development activities or excavation or construction of any building, structure, or street work, shall protect the Tree Protection Zone of any public tree. ~~on any street or other publicly owned property near any excavation or construction of any building, structure, or street work,~~ All public trees shall be protected using professionally accepted standards by those responsible for such work so as to prevent any injury to said any public trees prior to the commencement of any development activity until the end of said development activity. No person shall perform any development, or excavate any ditches, tunnels, trenches, or install pavement ~~within a radius of ten feet (10')~~ within the Tree Protection Zone ~~from the dripline any public tree~~ without prior written approval from ~~to~~ the Director.

Section 8. Amendment to Burbank Municipal Code (BMC) 7-4-116: Placing Materials on Public Property. Subsection 7-4-116 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

No person shall install, deposit, place, store, or maintain upon any public place of the City, any stone, brick, sand, concrete, or other materials which may impede the free, unobstructed growth or passage of water, air, and fertilizer to the roots of any tree therein, without first obtaining required written permits from the Director ~~City~~.

Section 9. Amendment to Burbank Municipal Code (BMC) 7-4-117: A, and B: Cooperation Between City Departments and Agencies. Subsection 7-4-117 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

There shall be close cooperation between the Department and other City departments and agencies in the enforcement of the provisions of this article which shall include, but not be limited to, the following:

A. All plans for development, building, grading, excavation, or other permits covering work which would in any way result in injury to or removal of public trees shall be first submitted routed to the Department for approval a review to ensure consistency with this chapter. During such review the Department shall:

1. Identify if any public trees shall be protected, or removed and replaced; and
2. Verify that the Tree Protection Zone is identified on the plans and that the appropriate professionally accepted standards are clearly specified on the plans; and

B. The Public Works Department shall notify the Department of any applications for new paving, curb, gutter, sidewalk or driveway installation, or other improvement which

might require the removal of or cause injury to any ~~street~~ public tree, or interfere with the fulfillment of the Master Street Tree Plan.

C. Any public utility installing or maintaining any overhead wires or underground lines, conduits or pipes shall first obtain the approval of its plans and procedures from the Director, or their representative, before performing any such installation or maintenance if, in the opinion of the Director, such work would grossly deform or cause injury to street trees. During the performance of such work, if, in the opinion of the Director, or their representative, it would cause excessive or unnecessary injury to any street tree, they shall have the authority to stop said work and arrange with the public utility another method of performing said work mutually satisfactory to all departments of the City; except that the provisions of this section shall not apply to emergency public utility maintenance work or work done in compliance with mandated safety and health regulations.

Section 10. Amendment to Burbank Municipal Code (BMC) 7-4-118: Tree Well Covers. Subsection 7-4-118 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

Whenever any parkway or planting strip is paved, openings at intervals and sizes designated by the Director, or their representative, shall be left unpaved, but covered in a manner acceptable to the Director to facilitate the fulfillment of the Master Street Tree Plan.

Section 11. Severability. If any provision of this Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end each phrase, section, sentence, or word is declared to be severable.

Section 12. Environmental Assessment This Ordinance is not subject to the California Environmental Quality Act (Public Resources Code Section 21000 et seq,) ("CEQA") pursuant to Sections 15060(c)(2), 15060(c)(3), and 15061(b)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, because there is no possibility that it may have a significant effect on the environment, and because it is not a "project" as that term is defined in Section 15378 of the State CEQA Guidelines. Further, the project is categorically exempt from CEQA pursuant to Section 15308, Class 8, of the CEQA Guidelines pertaining to actions taken by regulatory agencies for the protection of the environment to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. This project involves the adoption of amendments to the BMC, including new objective standards intended to protect public trees during construction activities.

Section 13. Effective Date This Ordinance shall become effective at 12:01 a.m. on the thirty-first (31st) day after the date of adoption.

PASSED AND ADOPTED this ____ day of _____, 2023.

Konstantine Anthony
Mayor of the City of Burbank

Attest:

Approved as to Form
Office of the City Attorney

Kimberley Clark, City Clerk

Iain MacMillan
Senior Assistant City Attorney

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

I, Kimberley Clark, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. _____ was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the ____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

I further certify that said Synopsis was published as required by law in a newspaper of general circulation in the City of Burbank, California within 14 days following its __, 2023 adoption.

Kimberley Clark, City Clerk