ORDINANCE NO. 3045

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, REPEALING AND REPLACING CHAPTER 12.40 (TREES AND SHRUBS) OF THE WHITTIER MUNICIPAL CODE RELATING TO PROTECTING AND MAINTAINING HEALTHY TREES THROUGHOUT THE CITY

WHEREAS, the City of Whittier is graced by the presence of an urban forest that contributes to long-term aesthetic, environmental, and economic benefits of the City;

WHEREAS, the City desires to safeguard its urban forest by providing for the regulation of the planting, pruning, preservation and removal of all trees on City property and rights-of-way;

WHEREAS, the City desires to protect the visual and aesthetic character of the City;

WHEREAS, the City desires to improve the quality of life for residents, visitors, and wildlife;

WHEREAS, the City desires to maintain and enhance the general health, safety and welfare of the City and its residents by assisting in counteracting air pollution and in minimizing soil erosion and other related environmental damage;

WHEREAS, the City desires to protect and maintain healthy trees throughout the City; and

WHEREAS, the City desires to establish procedures and practices for fulfilling the purposes of this Tree Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 12.40 of the Whittier Municipal Code is repealed and replaced in its entirety with the following:

Chapter 12.40 - TREES AND SHRUBS

12.40.010 - Title.

This chapter shall be known as the "Tree Ordinance" and may be cited by that name.

12.40.020 - Director defined.

"Director" means the Director of the Parks, Recreation and Community Services Department of this City or his or her authorized designee, i.e., certified arborist or manager.

12.40.030 – Planting.

It shall be the duty of the Director to oversee the duties to plant, trim, prune and care for all trees, shrubs, or plants and to authorize removal of all objectionable trees, shrubs or plants in and upon any street, park, alley or public place in the City, subject to the review of the City Manager. Subject to said review, the Director shall have the power to designate the kind or variety of trees, shrubs or plants to be planted upon any street, park, alley or public place of the City; providing, however, that the owners of property fronting on any street, alley or public place may petition the City Council that such trees, shrubs or plants shall be of a certain kind or variety, but the petition shall be advisory to the action of the Council. All trees planted in any public property in a new subdivision shall be in accordance with the rules and regulations of the Director and shall be paid for by the subdivider. The Council may require any subdivider to appropriate money for proper tree planting along the streets of any new subdivision before approving any subdivision map.

12.40.040 - Trimming or removing.

No person shall cut, trim, prune, plant, remove, injure or interfere with any tree, shrub or plant upon any street, park, alley or public place of the City without a permit therefor from the Director. The Director is authorized to grant such permission in his or her discretion, but no such permit shall be valid for a longer period than thirty (30) days after its date of issuance.

12.40.050 - Permits for trimming or removal.

A. Permits required in this chapter shall be issued as outlined in the Parkway Tree Manual by the Director.
B. Any person maintaining any overhead wires or pipes or underground conduits along or across any street, park, boulevard, alley or public place of the City, or owning any property abutting upon any street, park, or public place of the City, desiring to have any tree, shrub or plant cut, trimmed, pruned or removed may file with the Director a written request that the work be done. It shall be within the discretion of the Director to authorize said request and to require the petitioner to meet the guidelines as set forth in the Parkway Tree Manual adhering to the requirements and conditions stipulated therein before the issuance of any permit under this chapter.
C. Such tree policies and guidelines as set forth in the Parkway Tree Manual will be reviewed and revised as appropriate at least every fifth year by the Parks, Recreation and Community Services Commission in cooperation with the Director. Revised pages will reflect date of revision.

D. The Parks, Recreation and Community Services Commission shall advertise for public hearing in the local newspaper ten (10) days prior to the date of the meeting to hear modifications to the Parkway Tree Manual.

12.40.060 - Interfering with city employees prohibited.

No person shall interfere with the Director or persons acting under his authority while engaged in planting, mulching, pruning, trimming, spraying, treating or removing any tree, shrub or plant in any street, park, alley or public place in the City, or in the removing of any stone, cement or other substance from about the trunk of any tree, shrub or plant in any such street, park, alley or public place.

12.40.070 - Injuring trees prohibited.

No person shall cause, authorize or procure any brine water, 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 any tree, shrub, or plant in any street, park, alley or public place of the City or onto any sidewalk, gutter, road, or pavement within the City at a point from which the substance may be lying upon or by flowing, dripping or seeping into the soil injure the tree, shrub or plant, or to otherwise harm or kill any such tree, shrub or plant. No person, without the approval of the Director, shall place or maintain any stone, cement or other substance so that it will impede the free access of water or air to the roots of any tree, shrub or plant in any street, park, alley or public place of the City.

12.40.080 - Protection during construction.

During the erection, repair, alteration or removal of any building, house or structure in the City, no person in charge of such work shall leave any tree, shrub or plant in any street, park, boulevard, alley or public place of the City in the vicinity of the building or structure without such good and sufficient guards or protectors as shall prevent injury to the tree, shrub or plant arising out of or by reason of the erection, repair, alteration or removal.

12.40.090 - Making attachments or planting vegetation.

A. No person, without the permission of the Director, shall attach or keep attached to any tree, shrub or plant in any street, park, pleasure ground, boulevard, alley or other public place of the City, or to the guard or stake intended for the protection thereof, any wire, rope, sign or any other device whatsoever.

B. No person, without the permission of the superintendent, shall plant or grow or permit to be planted or grown, any ivy, geranium or other vegetation on, against or around any street tree to a height of more than six (6) inches above the surface of the ground or curbline, whichever is lower, and the director is authorized to remove or cut back any such vegetation exceeding six (6) inches in height.

12.40.100 - Inspection.

A. The Director may inspect any tree, shrub or plant upon any street, park, alley or public place of the City or any tree, shrub or plant standing on any private property which overhangs or projects into any street, park, alley or public place of the City, to determine whether it or any part of it is in such condition as to constitute a hazard or an impediment to the progress or vision of anyone traveling on the street, park, alley or public place.
B. If, in the opinion of the Director, any such tree, shrub or plant is hazardous to the traveling public or impedes the progress or the vision of the public on any street, park, alley or public place as outlined in the Parkway Tree Manual, he or she may cause it or such part or parts thereof as are hazardous or an impediment to be trimmed or removed so as to remedy the condition. However, no such tree, shrub or plant standing on any private property shall be cut down or removed unless ten (10) day notice in writing of this intention is given by the Director to the owner(s), occupant(s) or agent(s) of the property upon which the described condition exists. The only exception to the notice requirement is for a tree that is verified as dead by the City's certified arborist. It may be removed with no notice.
C. If the owner(s), occupant(s), or agent(s) of the private property within seven (7) days after receipt of the notice files his objection to the removal with the Director, the tree, shrub or plant shall not be cut down or removed unless the Director gives the owner(s), occupant(s) or agent(s) a reasonable opportunity to be heard in support of the objection. If the objection is not sustained, the Director shall thereafter approve in writing the cutting down or removal of the tree, plant or shrub.
D. The city will give a thirty (30)-day written notice of this intention to remove a healthy or diseased parkway tree and post a notice upon the affected tree upon which the described condition exists as stipulated in the Parkway Tree Manual.
E. If any other entity has a need to remove a parkway or public tree in the course of upgrade, renovation or new construction, they must have approval from the Director and adhere to the requirements and conditions stipulated in the Parkway Tree Manual.
F. Nothing contained in this section shall be deemed to impose any liability upon the City, its officers or employees, nor to relieve the owner of any private property from the duty to keep any tree, shrub or plant upon his property or under his control in such a condition as to prevent it from constituting a hazard or an impediment to travel or vision upon any street, park, alley or public place within the City.

12.40.110 - Scenic Corridor.

The City's General Plan (Section 5) identifies a plan for scenic corridors. It states that "the scenic qualities of the City may be enhanced by the adoption of a program for positive identification of these resources." These corridors must strictly adhere to the requirements and conditions stipulated in the Parkway Tree Manual.

In keeping with the City's policy to preserve and protect healthy trees the rules contained in the Parkway Tree Manual will be strictly adhered to relative to scenic corridors and entryways into the City.

12.040.120 - Bird and Wildlife Protection.

The Migratory Bird Treaty Act (MBTA) of 1918 was implemented for the protection of migratory birds. Interaction with wildlife must adhere to the requirements and conditions stipulated in the Parkway Tree Manual.

12.40.130 - Penalties.

Non-compliance with permit specifications will result in penalties calculated as stipulated in the Parkway Tree Manual.

12.40.140 - Appeals.

All appeals shall be made pursuant to the Parkway Tree Manual.

SECTION 2. If any section, subsection, sentence, clause, provision or phrase of this Ordinance is for any reason be held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, provisions or phrases of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, provision and phrase hereof without regard to whether any other section, subsection, sentence, clause, provision or phrase of this Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 3. Any provision of the Whittier Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, are hereby repealed or modified to the extent necessary to effect the provisions of this Ordinance.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published in the official newspaper within fifteen (15) days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AND ADOPTED this 12th day of January 2016.

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FERNANDO DUTRA, Mayor

ATTEST:

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KATHRYN A. MARSHALL
City Clerk-Treasurer
CITY OF WHITTIER)

) SS

STATE OF CALIFORNIA)

I, Kathryn A. Marshall, City Clerk-Treasurer in and for the City of Whittier, California, hereby certify that the foregoing ordinance was duly introduced at a regular meeting of the City Council of the City of Whittier on the 8th day of December 2015, and adopted at a regular meeting of the City Council of the City of Whittier on the 12th day of January 2016 by the following roll call vote:

AYES:	O. Newcomer	C. Warner	R.L. Henderson
	J.A. Vinatieri	F. Dutra	
NOES:	None		
ABSENT:	None		

WITNESS my hand and the official seal of the City of Whittier, California, this _____ day of _____ 2016.

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KATHRYN A. MARSHALL
City Clerk-Treasurer

Published as required by law: January 26, 2016.