

# Trees and Plants in the Neighborhood

## Learn About It

Here in the City of Trees, our urban forest occasionally gives rise to conflicts between neighbors and between citizens and the city. Some of the laws applying to trees are a bit surprising, like the fact that trees can also be a fence, and that property owners are responsible to fix the sidewalk along their property – even if a city tree causes the damage.

- Heritage/Landmark Trees
- Neighbors' Encroaching Plants
- Trees vs, Solar Panels
- Owner Repairs Sidewalk Damage

## Private Protected Trees (“Heritage” or “Landmark” trees) and Other Special Protections

Generally, property owners can plant, prune, and remove trees on their own property without a permit. However, both the city and county of Sacramento protect certain categories of trees, even on private property. ( [City of Sacramento Public Works Department, “Tree Questions.”](http://www.cityofsacramento.org/Public-Works/Questions/Trees) (<http://www.cityofsacramento.org/Public-Works/Questions/Trees>) ) Similar ordinances are in place in Rancho Cordova, Elk Grove, and Citrus Heights, and other cities and counties throughout California.

The City Code of Sacramento includes a special permit requirement to conduct regulated work on or around a city tree or private protected tree (formerly known as “Heritage Trees”). [Chapter 12.56.020 of the City Code](https://codelibrary.amlegal.com/codes/sacramentoca/latest/sacramento_ca/0-0-0-24169) ([https://codelibrary.amlegal.com/codes/sacramentoca/latest/sacramento\\_ca/0-0-0-24169](https://codelibrary.amlegal.com/codes/sacramentoca/latest/sacramento_ca/0-0-0-24169)). These trees include particularly large trees; certain native oaks, sycamores, and buckeyes; and other trees designated by the City Council. Pruning and removal of such trees require a permit from the Urban Forestry Services ([permit information and application](http://www.cityofsacramento.org/Public-Works/Maintenance-Services/Trees/Permits-Ordinances) (<http://www.cityofsacramento.org/Public-Works/Maintenance-Services/Trees/Permits-Ordinances>)).

The county's equivalent code section, protecting native oak trees on public and private land, is [Tree Preservation and Protection, Chapter 19.12 of the County Code](https://ecode360.com/44038090#44038090). (<https://ecode360.com/44038090#44038090>) In addition, large native oak trees are designated “Heritage Trees,” while a “Landmark Tree” is “an especially prominent or stately tree on any land in Sacramento County.” ([Chapter 19.04.050 of the County Code](https://ecode360.com/44038014#44038014) (<https://ecode360.com/44038014#44038014>)). All public trees are also protected. ([Chapter 19.04.100 of the County Code](https://ecode360.com/44038029#44038029). (<https://ecode360.com/44038029#44038029>)) The county's Department of Planning and Environmental Review issues permits for work on and around such trees ([permit information and application](http://www.per.saccounty.net/Programs/Pages/Tree-Permit-Getting-Started.aspx) (<http://www.per.saccounty.net/Programs/Pages/Tree-Permit-Getting-Started.aspx>)).

Do not take the matter into your own hands! Such a violation of the city code is a misdemeanor, punishable under [Chapter 12.56.090 of the City Code](https://codelibrary.amlegal.com/codes/sacramentoca/latest/sacramento_ca/0-0-0-24298#JD_12.56.090) ([https://codelibrary.amlegal.com/codes/sacramentoca/latest/sacramento\\_ca/0-0-0-24298#JD\\_12.56.090](https://codelibrary.amlegal.com/codes/sacramentoca/latest/sacramento_ca/0-0-0-24298#JD_12.56.090)).

. Punishment is a fine of \$1000, up to 6 months in jail, and potential [administrative penalties](#) ([http://qcode.us/codes/sacramento/view.php?topic=1-1\\_28-1\\_28\\_010&frames=on](http://qcode.us/codes/sacramento/view.php?topic=1-1_28-1_28_010&frames=on)) up to \$25,000 for each day the violation continues. [Chapter 19.12.210 of the County Code](#) (<https://ecode360.com/44038196#44038196>) makes a violation both a misdemeanor and a nuisance and imposes similar penalties.

## When Neighbors' Plants Encroach

Branches and roots from plants on one property that encroach on a neighbor's property are generally considered a legal nuisance. The injured party may start a civil action or "abate the nuisance" themselves. In the case of encroaching limbs or roots, abating the nuisance usually means that you can trim them back to the property line. [Cal. Civ. Code § 3502](#) ([https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=3502.&lawCode=CIV](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3502.&lawCode=CIV)).

You cannot enter the neighboring property without giving reasonable notice, even if that means you can't abate the nuisance, [Cal. Civ. Code § 3503](#) ([https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=3503.&lawCode=CIV](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3503.&lawCode=CIV)), and you must not cause a breach of the peace or unnecessary injury to the plant.

If the encroaching plant is a tree, before taking action, make sure that it is not protected by Heritage Tree or similar status— you could be committing a misdemeanor by trimming branches or roots without a permit.

If the encroaching plant is an aggressive, invasive plant, such as bamboo, blackberry, or morning glory, preventing it from entering another yard may require a root barrier, preferably on the plant owner's side of the property line. If the neighbor is not willing to build this barrier, a nuisance case in small claims court may be required to force them to take action. (The barrier, which must be waterproof, may itself cause a nuisance if it diverts water drainage onto a neighbor's property, so anyone installing one should consult an experienced contractor.)

With tall plants such as bamboo, another issue may come into play. If the plants are close enough together to form a barrier, and run along the property line, they might be considered a fence. In [Wilson v. Handley, 97 Cal. App. 4th 1301 \(2002\)](#) ([https://scholar.google.com/scholar\\_case?case=1655196035612442282](https://scholar.google.com/scholar_case?case=1655196035612442282)), an appeals court ruled that "[a] row of trees planted along or near the property line between adjoining parcels to separate or mark the boundary between the parcels is a 'structure in the nature of a fence'" and can be regulated as such.

There may be both state and local laws controlling fences. If the fences are erected maliciously with the intent to annoy neighbors, they are prohibited by state law ([Cal. Civil Code § 841.4](#) ([https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=841.4.&lawCode=CIV](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=841.4.&lawCode=CIV))) and Sacramento City Code ([§ 9.16.070](#) ([http://www.qcode.us/codes/sacramento/view.php?topic=9-9\\_16-9\\_16\\_070&frames=on](http://www.qcode.us/codes/sacramento/view.php?topic=9-9_16-9_16_070&frames=on))). In *Wilson v. Handley*, the court found that a line of trees could be considered a "structure in the nature of a fence" for this purpose. State and local building codes may also regulate the height and placement of fences.

## Trees vs. Solar Panels

Both trees and solar panels provide environmental benefits, but in some cases, they may not easily co-exist. If trees grow to block the sun from reaching solar panels, the panels may be rendered useless. California law attempts to encourage both trees and solar installations by setting out a way to settle such conflicts.

In 1978, California passed the Solar Shade Control Act ([Public Resources Code 25980-25986](http://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=15.&title=&part=&chapter=12.&article=) ([http://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PRC&division=15.&title=&part=&chapter=12.&article=](http://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=15.&title=&part=&chapter=12.&article=))). California is one of the only states in the country with a law specifically governing this topic. The law was intended to encourage the planting of trees and shrubs to create shade and moderate temperature, and to support the use of alternative energy devices such as solar energy collectors.

The Solar Shade Control Act applies only to fixed solar collection devices installed on the roof of a building, or on the ground if rooftop installation is impossible. If installed on the ground, very specific height and set-back restrictions apply. Improperly installed solar devices are not protected by this law.

Under this law, property owners are prohibited from allowing their trees or shrubs to shade more than 10% of a neighbor's existing solar energy system between the hours of 10am and 2pm. Any tree or shrub planted before the installation of the solar collector is exempt. If a pre-existing tree dies, its replacement is also exempt, even if the replacement is planted after the solar collector's installation. The law also exempts trees and shrubs planted on timberland or commercial agricultural land.

The state law also allows local governments to exempt themselves from the Solar Shade Control Act by way of a local ordinance. These exemptions apply only to trees and shrubs planted and maintained by the local government, not to privately owned trees. Sacramento County has [exempted all unincorporated parts of the county](https://ecode360.com/44038022#44038049) (<https://ecode360.com/44038022#44038049>) from this law. Many local cities, including [Sacramento](https://codelibrary.amlegal.com/codes/sacramentoca/latest/sacramento_ca/0-0-0-24303) ([https://codelibrary.amlegal.com/codes/sacramentoca/latest/sacramento\\_ca/0-0-0-24303](https://codelibrary.amlegal.com/codes/sacramentoca/latest/sacramento_ca/0-0-0-24303)), [Rancho Cordova](https://library.municode.com/ca/citrus_heights/codes/code_of_ordinances?nodeId=COOR_CH102VE_ARTIITR_DIV1GE_S102-27EXSTLA) ([https://library.municode.com/ca/citrus\\_heights/codes/code\\_of\\_ordinances?nodeId=COOR\\_CH102VE\\_ARTIITR\\_DIV1GE\\_S102-27EXSTLA](https://library.municode.com/ca/citrus_heights/codes/code_of_ordinances?nodeId=COOR_CH102VE_ARTIITR_DIV1GE_S102-27EXSTLA)), and [Citrus Heights](http://library.municode.com/HTML/13326/level4/COOR_CH102VE_ARTIITR_DIV1GE.html#COOR_CH102VE_ARTIITR_DIV1GE_S102-27EXSTLA) ([http://library.municode.com/HTML/13326/level4/COOR\\_CH102VE\\_ARTIITR\\_DIV1GE.html#COOR\\_CH102VE\\_ARTIITR\\_DIV1GE\\_S102-27EXSTLA](http://library.municode.com/HTML/13326/level4/COOR_CH102VE_ARTIITR_DIV1GE.html#COOR_CH102VE_ARTIITR_DIV1GE_S102-27EXSTLA)) have also exempted themselves from the law. Others, such as [Davis](https://ecode360.com/44653761#44653757) (<https://ecode360.com/44653761#44653757>), have exempted themselves from the state law, and instead adopted a local ordinance on the topic.

Under [Public Resources Code section 25983](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC&sectionNum=25983) ([http://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PRC&sectionNum=25983](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC&sectionNum=25983)), a tree owner who fails to remove or alter a tree or shrub after receiving a written request from the owner of the affected solar collector is committing a private nuisance, as defined in [California Civil Code section 3481](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=3481) ([https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CIV&sectionNum=3481](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=3481)). The solar collector's owner may pursue a civil suit against the tree owner for abatement of the nuisance.

## Who Repairs Tree Damage to Sidewalks?

People are often surprised to learn that property owners are responsible for repairing defective sidewalks adjacent to their property, even if the damage is caused by publicly-owned trees ([Cal. Streets and Highways Code section 5610](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5610.&lawCode=SHC) ([http://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=5610.&lawCode=SHC](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5610.&lawCode=SHC))). Usually they learn this when they receive a notice from the city or county ordering them to repair the sidewalk.

This law is based on a Depression-era measure ([Stats. 1935 Ch. 771, § 2, p. 2148](https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1935/35Vol1_Chapters.pdf#page=2) ([https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1935/35Vol1\\_Chapters.pdf#page=2](https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1935/35Vol1_Chapters.pdf#page=2))) shifting the cost of repairs from cash-strapped governments to the owners of land "fronting on any portion of a public street, avenue, alley, court, or lane, or place" to maintain "any sidewalk, curbing or park or parking strip, bulkheads, retaining walls, or other works" in a non-dangerous condition that does not interfere with public convenience in using the

space. (If the condition is lawfully created by another party, that party is responsible instead.) The current law provides for the same, in less florid language. Most states and major cities have similar laws.



Not all cities take advantage of this law, and some cities voluntarily take on either part or all of the cost, particularly when the damage is caused by city trees. The City of Sacramento, however, imposes the entire repair cost on the property owner regardless of the cause of any damage or displacement. ([Sacramento City Code 12.32.020 Owner's duty to repair defective sidewalk](#) ([https://codelibrary.amlegal.com/codes/sacramentoca/latest/sacramento\\_ca/0-0-0-23667#JD\\_12.32.020](https://codelibrary.amlegal.com/codes/sacramentoca/latest/sacramento_ca/0-0-0-23667#JD_12.32.020))).

Part of the reasoning is that although homeowners do not pay (directly) for the cost of installing and maintaining city trees, they do receive the benefits of aesthetics, cooling and increased property value from the trees. Thus it is fair to place the cost of maintaining sidewalks on them.

For more on property owners' obligation to repair sidewalks, see Sacramento Deputy City Attorney Gerald Hick's presentation at the 2014 League of California Cities Spring Conference: [Hicks, G. \(2014\). But It's Your Sidewalk! Sidewalk Repair and Liability](#). ([http://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2014/Spring-Conf/5-2014-Spring-Gerald-Hicks-But-Its-Your-Sidewalk\\_S.aspx](http://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2014/Spring-Conf/5-2014-Spring-Gerald-Hicks-But-Its-Your-Sidewalk_S.aspx))

*update 6/22 rmm*

## Useful Resources

 [Neighbor Law: Fences, Trees, Boundaries and Noise](https://catalog.saclaw.org/cgi-bin/koha/opac-detail.pl?biblionumber=10113) (<https://catalog.saclaw.org/cgi-bin/koha/opac-detail.pl?biblionumber=10113>)   
[Neighbor Disputes: Law and Litigation](https://catalog.saclaw.org/cgi-bin/koha/opac-detail.pl?biblionumber=2297) (<https://catalog.saclaw.org/cgi-bin/koha/opac-detail.pl?biblionumber=2297>)  [Understanding Tree Law: A Handbook for Practitioners](https://catalog.saclaw.org/cgi-bin/koha/opac-detail.pl?biblionumber=3145) (<https://catalog.saclaw.org/cgi-bin/koha/opac-detail.pl?biblionumber=3145>)