



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Tree Removal Ordinance
Amendments

DATE: February 1, 2007

RECOMMENDATION

Consideration of amendments to Chapters 13.28 and 13.32 of Title 13 of the San Jose Municipal Code (1) to require any persons who trim, prune, cut, or remove or cause the same to be done to a street tree to show the permit upon request, and (2) to require any persons who remove or cause to be removed a tree from a private parcel to show the permit upon request and to post the permit.

OUTCOME

The Department of Planning, Building and Code Enforcement (PBCE), the Department of Transportation (DOT), and the San Jose Police Department (SJPD) and their designees would have additional grounds to stop the trimming, pruning, cutting, or removal of a street tree and the removal of a tree from a private parcel while the activity is in progress if the permit allowing this activity cannot be provided upon request and the permit is not posted. A copy of the proposed ordinance is enclosed.

BACKGROUND

In response to recent concerns about the illegal removal of trees in the City, PBCE and DOT asked our office to amend Chapters 13.28 and 13.32 to require cessation of the activity unless and until a permit can be verified. Currently, the City requires that any persons who trim, prune, cut, or remove a street tree or cause the same to be done to a street tree and any persons who remove or cause to be removed a tree from a private parcel to obtain a permit. (San Jose Municipal Code Chapters 13.28 and 13.32 (SJMC)) For a street tree, a permit is required to trim, prune, cut, or remove the tree. On a private parcel, however, a permit is only required if the tree will be removed. "Removal" of a tree can include without limitation excessive pruning resulting in permanent damage to the tree or the tree's death.

DOT enforces Chapter 13.28 which regulates the trimming, pruning, cutting, and removal of street trees while PBCE enforces Chapter 13.32 which regulates the removal of trees on private parcels. SJPD also has the authority to enforce against any violation

of the Municipal Code. (SJMC § 1.08.040) Under the current tree permit provisions, the obligation to show the permit or cease the activity is implicit.

As noted in the May 15, 2006 memorandum to Council regarding the increase in fine for illegal tree removal, most of the illegal tree removals are performed by smaller tree service companies, contractors, unlicensed workers, or property owners. Staff determined that many property owners claimed ignorance of the requirements and appear to rely on the tree removal companies to secure the necessary permits. The permit requirements for both street trees and private parcel trees are enforced against any person responsible for the work including any person or entity engaged in the business of tree care or tree removal.

ANALYSIS

The proposed ordinance would provide PBCE, DOT, and SJPD additional grounds to enforce the tree protection code provisions by requiring any person who has a permit to do work on the tree (1) to show the permit upon the request of PBCE, DOT, SJPD, and their designee and (2) to post the permit on-site while removing a tree from a private parcel. The requirement to post the permit for the removal of a tree from a private parcel would enable the public to determine whether a tree removal in progress is allowed. The City Council would need to adopt by resolution the fine amounts for a violation of these provisions or the default amount of \$25 from the administrative schedule of fines would apply.

COORDINATION

This memorandum was coordinated with the Department of Planning, Building and Code Enforcement, and the Department of Transportation.

CEQA

CEQA: Exempt PP07-016

By 
RICHARD DOYLE
City Attorney

cc: Les White
Joe Horwedel
Jim Helmer

Enclosure

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 13.28 AND CHAPTER 13.32 OF TITLE 13 OF THE SAN JOSE MUNICIPAL CODE TO ADD NEW SECTIONS TO REQUIRE ANY PERSON WHO TRIMS, PRUNES, CUTS, OR REMOVES OR CAUSES THE SAME TO BE DONE TO A STREET TREE TO SHOW THE PERMIT FOR THIS ACTIVITY UPON REQUEST, AND TO REQUIRE ANY PERSON WHO REMOVES OR CAUSES TO BE REMOVED A TREE FROM A PRIVATE PARCEL TO SHOW THE PERMIT UPON REQUEST AND TO POST THE PERMIT

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Chapter 13.28 of Title 13 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

13.28.150 Presentation of Permit on Request

- A. No person shall trim, prune, cut, or remove or cause the same to be done to a street tree unless the permit allowing for this activity is maintained on the site where the tree to be trimmed, pruned, cut, or removed is located.
- B. No person shall trim, prune, cut, or remove or cause the same to be done to a street tree unless the permit can immediately be presented upon request to the Director of Planning, Building, and Code Enforcement, Director of Transportation, Police Officers, and their designee.
- C. No person shall engage in any work on the street tree or allow any work on the tree that is the subject of the permit to occur unless and until: (1) the permit is located on the site where the subject tree is located, and (2) the permit is readily available for presentation upon request as described in this Section.

SECTION 2. Chapter 13.32 of Title 13 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

13.32.045 Presentation of Permit on Request

- A. No person shall remove or cause to be removed a live tree or dead tree from any private parcel of land in the City unless the permit is maintained on the site where the tree to be removed is located.

- B. No person shall remove or cause to be removed a live tree or dead tree from any private parcel of land in the City unless the tree removal permit can immediately be presented upon request to the Director of Planning, Building, and Code Enforcement, Police Officers, and their designee.

- C. No person shall engage in any tree removal activity or allow any activity to remove the tree that is the subject of the tree removal permit to occur unless and until: (1) the permit is located on the site where the subject tree is located, and (2) the permit is readily available for presentation upon request as described in this Section.

SECTION 3. Chapter 13.32 of Title 13 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

13.32.047 Posting of Permit

A. No person shall remove or cause to be removed a live tree or dead tree from any private parcel of land in the City unless a copy of the tree removal permit is posted on the parcel on which the subject tree is located prior to commencement of and during any actions involving removal of the tree as follows:

1. The copy of the permit shall be a minimum size of 8.5 by 11.0 inches, posted at each public street frontage within 2 feet from the public right-of-way, and posted in such a manner that the permit is readable from the public right-of-way; or
2. If the parcel that is the subject of the permit does not have a public street frontage, a copy of the permit shall be posted at a location where the permit is readable from a common access driveway or roadway.

B. No person shall engage in any tree removal activity or allow any activity to remove the tree that is the subject of the permit to occur unless and until the permit is posted as described in this Section.

PASSED FOR PUBLICATION of title this _____ day of _____, 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk