



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: March 9, 2009

Approved

Date

3/10/09

COUNCIL DISTRICT: Citywide
SNI AREA: N/A

**SUBJECT: PROPOSED MODIFICATIONS TO THE PRIVATE PROPERTY TREE
REMOVAL PERMIT PROCESS TO IMPROVE EFFICIENCY AND
ACHIEVE COST RECOVERY**

RECOMMENDATION

Planning Staff recommends that the City Council direct the Administration to develop and bring back to City Council for consideration:

- (a) Amendments to Title 13 of the Municipal Code to streamline the Tree Removal Process for trees located on single-family and duplex private properties;
- (b) Amendments to City Council Policy 6-30: Public Outreach, relating to Tree Removal Permits; and
- (c) A fee to recover the Administration's costs associated with administering that streamlined tree removal process.

OUTCOME

An updated tree removal process would: 1) provide greater clarity to property owners, 2) retain the City's ability to evaluate and decide on the proposed removal of trees located on private property, 3) require the appropriate replacement of trees consistent with the City's Green Vision and San Jose 2020 General Plan Urban Forest Policies, and 4) establish a reasonable fee for the provision of this service.

BACKGROUND

The City of San Jose's urban forest is a community forest that is a vital element of our City's landscape. The urban forest is comprised of trees planted in a variety of locations that include streets, parks, gardens, trails, riparian creek corridors, and public and private land throughout the City. A well-managed urban forest is diverse and sustainable; contributes to a sense of community pride and ownership; and provides social, economic, and environmental benefits. San Jose manages the urban forest in part by regulating the removal of trees on private property.

Currently, City regulations require the approval of a permit by the Director of Planning for the removal of an ordinance size tree from private property. As defined, an ordinance size tree has a circumference of 56 inches or greater when measured two feet above the ground. These regulations dictate the circumstances that allow the removal of trees based on the condition of the tree and impacts to structures and utilities. The permits require the planting of the appropriate size, number, and type of replacement trees, an important consideration in achieving the City's Green Vision tree planting goals. Tree removals on multi-family or non-residential properties are typically considered with a development permit for those sites. The City's Department of Transportation administers the removal process for street trees within the public right-of-way (i.e., park strips). Tree removals from single-family and duplex properties are handled with Tree Removal Permits administered through the Planning Division of the Department of Planning, Building and Code Enforcement.

As a result of a couple of high profile cases where trees were removed from single-family and duplex lots without the benefit of permits, the public is much more aware of the rules for the removal of an ordinance size tree from a property in a single-family neighborhood. In 2007, the Administration (led by the Department of Transportation and the City Manager's Office) held a number of community meetings to establish a comprehensive approach to tree preservation and strengthen City tree services. This resulted in General Plan text amendments (GPT08-05) which the Council approved in May of 2008.

The majority of Tree Removal Permit applications are submitted by single-family and duplex residential property owners. Tree Removal Permit applications have increased from approximately 150 in 2004 to approximately 325 in 2008. Of the 325 Tree Removal Permits, approximately 245 of them involved the removal of live trees and 80 involved the removal of dead trees. The permits for dead trees are processed "over the counter" and are free of charge even though it takes approximately ½ hour of staff time to provide the service.

The permits for removal of live trees involve staff evaluation and a public hearing with noticing of residents within 300 feet of the affected property, per the City Council Policy 6-30 on Public Outreach. The current fee assessed for a Tree Removal Permit is approximately \$120 and is only related to the cost of the required public noticing. Fees are not currently levied to cover staff time involved in the review and processing of the permit. In many instances, property owners are required to submit an arborist report to document the reasons for the proposed removal (estimated to cost to the homeowner of \$500). The staff evaluation consists of:

- Determining if the removal of the tree meets the requirements of the Municipal Code
- Identifying the number, type, and size of replacement tree(s)

March 9, 2009

Subject: Tree Removal Permit Process

Page 3

- Consulting with the City Arborist
- Reviewing the consulting arborist reports, when required
- Communicating with the property owner
- Responding to neighbor concerns
- Conducting the required public hearing
- Issuing (or denying) the permit.

The typical live tree removal permit takes approximately 9.3 hours of staff time. The processing of 245 tree removal permits in 2008 equates to over 1.2 FTE of a Planner I/II that is not covered by fees for their service. As a result, General fund dollars cover a portion of this service. As General Fund resources shrink, other priorities, such as code enforcement or long range land use planning, compete for these resources.

Given that this is not a cost recovery activity, staff has identified below various alternatives that together or separately can improve time and cost efficiencies for the property owner and the City.

ANALYSIS

The private property tree removal controls are an important service to the community because they contribute to the City's ability to manage its urban forest and should continue to be provided. Staff has reviewed the current process and determined that the existing review process for live tree removal could be streamlined to provide better service to the property owner and the overall community. An appropriate fee for service is also proposed to focus limited General Fund dollars in the Department of Planning, Building and Code Enforcement on other Council priorities, such as economic development facilitation, neighborhood planning, and ordinance revisions.

Streamline Permit Process

Staff is proposing to modify and streamline the live tree removal permit process based on the current process used for removal of trees in the public right-of-way, administered by the City Arborist in the Department of Transportation. This process involves a qualified arborist:

- Evaluating the proposed street tree removal,
- Conducting an inspection,
- Posting a notice of the proposed removal on the subject property (should the City Arborist approve the removal), and
- Hand delivering a notice to properties within 150 feet of both sides of the tree and on both sides of the street

If a written objection to the intended removal is received within 14 days of the day when the notice to remove was posted, a public hearing is held by the City Arborist. After the hearing, the City Arborist renders a written decision regarding the proposed removal. The decision is final. This process has served the City well with respect to the removal of street trees.

March 9, 2009

Subject: Tree Removal Permit Process

Page 4

Staff proposes to streamline the private property tree removal permit process by: 1) Requiring the review of the request by a qualified arborist, 2) Changing the public noticing requirement, 3) Limiting public hearings to cases with a protest, and 4) Establishing a fee to cover the costs of the service.

Review by Qualified Arborist. Per the Municipal Code, one of the findings for the removal of a live tree involves a determination that “the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.” Property owners do not always provide information to make this determination and as a result, many are required to pay for a private arborist report to be submitted to the City. To reduce the cost to the homeowner and the time involved in obtaining the report, staff is proposing to have all removal requests reviewed by a qualified arborist. Staff could utilize City Arborist services or be directed to contract/hire an arborist to perform reviews on removal applications.

Change Noticing Requirement. Noticing for a tree removal is also proposed to be streamlined. If the proposed tree removal is in the front yard and in clear view, a notice for removal would be posted on the tree similar to how the City handles street trees. If the tree requested for removal is in the side or rear yard of a property, or obscured from a clear view from the sidewalk, the notice for removal would be posted near the sidewalk (e.g., freestanding or on a fence) to inform neighbors of the proposed removal. Additional notices would be delivered to adjacent properties consistent with the existing Municipal Code requirements. This would reduce costs to the property owner. The current noticing practice (owners and residents within 300 feet) exceeds the Code requirement of noticing only adjacent properties; however, this practice meets the requirements of City Council Policy 6-30: Public Outreach. As a result, this portion of the proposal would require a modification to the City Council Policy.

Modify Public Hearing Requirement. Additionally, staff is proposing that a public hearing would be required only if someone protested the direction of the decision. To facilitate community involvement in this process, a webpage dedicated to removal requests would be set up so interested parties throughout the City would be informed about the requests, pending decisions, and final decisions.

Establish a Fee. As stated earlier, the existing process takes approximately 9.3 hours of staff time to administer, plus the existing \$122 noticing fee. In addition, oftentimes property owners also incur a cost of about \$500 for an arborist report. Under a streamlined process as outlined above, it is estimated that the processing time could be cut by more than half, primarily in the areas of staff review and public hearing support. Additionally, there would be little reason to require that the property owner pay for and submit an arborist report. Any fee established for the streamlined service would be an overall substantial saving to the property owner.

Service Results

The recommended changes to the private property Tree Removal Permit process for single-family and duplex sites should improve service delivery to property owners by reducing the processing time

March 9, 2009

Subject: Tree Removal Permit Process

Page 5

of such applications. The public would retain their ability to participate in the process. Establishing a fee to cover costs and assessing it to the property owner would allow the Department to focus staff efforts supported through the General Fund in areas identified by the Council as priorities such as economic development facilitation, neighborhood planning and ordinance revisions.

Staff is interested in Council's direction regarding these proposed streamlining concepts. If directed, the Administration would prepare the necessary Municipal Code and City Council Policy changes to implement these improvements.

Further Streamlining

If it is the desire of the Council, deregulation of certain Tree Removal Permits could be examined by the Administration. For example, the Code could be modified to only require Tree Removal Permits for native species (e.g., oaks). Alternatively, "nuisance trees" could be defined in the Code and not require Tree Removal Permits if the property owner plants appropriate replacement trees. These additional proposals require more outreach with interested parties to develop workable regulations, if directed by Council.

EVALUATION AND FOLLOW-UP

Based on direction from the City Council, the Administration will prepare the appropriate Municipal Code and Fee Resolution amendments, conduct public outreach, and return to the Council within 90 days.

POLICY ALTERNATIVES

Alternative #1: Establish a fee for service to cover the cost of evaluating tree removal applications under the existing process by City staff.

Pros: Based on an analysis of the existing process, a fee of approximately \$1,112 per application would cover the typical services provided by staff. By causing this process to become cost recovery, General Fund supported planning efforts could be focused on economic development and development process streamlining.

Cons: This alternative would implement a fee which would be borne by the single-family and duplex owners for a process that up until now has been essentially free. Even with a fee, this process would remain inefficient and the cost would discourage the public from obtaining permission to remove trees.

Reason for not recommending: Implementing a fee to cover staff time as a means to cost recovery without streamlining the process is not an efficient or effective service delivery model.

Alternative #2: Amend the tree removal regulations to require a permit only for native trees and include more flexibility in the findings to facilitate the removal of trees in nuisance situations. Appropriate replacement trees would be required.

Pros: This alternative would vastly reduce the number of tree removal proposals requiring staff review. It would eliminate from consideration non-native trees planted as the City urbanized and which may have marginal habitat value. The City would still require replacement on and off-site.

Cons: This alternative would require clear definitions of native species and nuisance situations. Verification of species would require expertise and there would be difficulty with documentation of trees removed.

Reason for not recommending: Staff is not recommending this alternative given the estimated time it would take to conduct outreach, develop the proposed regulations, and conduct the appropriate hearings. Implementation of this alternative may require enforcement and expertise beyond the City's resources to ensure compliance.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

As part of the work related to the City's Tree Preservation Policy headed up by the Department of Transportation in 2007, several community meetings were held to solicit community input on the management of the City's urban forest. Input on the Tree Removal Permit process for private property was part of the discussion. Planning staff also presented the proposed streamlining process and fee for service at the PBCE Neighborhood Roundtable on Tuesday, February 17, 2009, and discussed this proposal with Our City Forest at an Urban Forest Management meeting in February. If the Council initiates the proposed ordinance, additional outreach will occur through the Neighborhood Roundtable, the website, and required public hearings.

Both in 2007 and more recently in 2009, the feedback supports the proposed changes. There is recognition of the need to create a more efficient process in response to the budget reductions facing the Department of Planning, Building and Code Enforcement. There was support for the potential involvement of the City Arborist in the process. There was concern expressed that an upfront fee may discourage people from seeking a permit, even though under the current process they face the same or more costs. At the more recent Roundtable meeting, the participants indicated that additional

HONORABLE MAYOR AND CITY COUNCIL

March 9, 2009

Subject: Tree Removal Permit Process

Page 7

outreach would be needed if the City moves forward with the further streamlining ideas (e.g., permits for native trees only and no permits for "nuisance" situations). Staff responded in agreement, explaining that this is the intention of staff if the Council directs the Administration to pursue those additional ideas.

COORDINATION

This memorandum and the proposed process changes were coordinated with the City Arborist, Department of Transportation, and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

The proposal contained in this memorandum is consistent with the San Jose 2020 General Plan policies associated with the Urban Forest. The proposal advances the City's Green Vision and the City's goal of fiscal responsibility.

CEQA

Not a project.


for JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Jeannie Hamilton, Division Manager at 408-535-7850