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MEMORANDUM

TO: Rules Committee

FROM: Vice Mayor Dave Cortese
Councilmember Nora Campos

SUBJECT: Tree Preservation in San Jose

DATE: January 24, 2007

APPROVED:

Dave Cortese & Nora Campos
RC.

DATE:

January 24, 2007

RECOMMENDATION

It is recommended that the Rules Committee refer the abovementioned council discussion (currently scheduled for the February 6th City Council Meeting) to the Transportation and Environment Committee for their oversight, study and recommendation to the City Council. The framework for discussion on February 6th as provided in a memorandum to the Rules Committee last week (attached for your information) should be expanded to include but not be limited to the following:

1. Possible requirement of on-site display of permit by contractor performing tree removal
2. Possible requirement of enhanced tree protection(s) during construction
3. Possible cancellation of permits of contractors violating tree ordinance(s)
4. Possible cancellation of license(s) of contractors violating tree ordinance(s)
5. Possible incentives provided through the development review process for designs that account for tree preservation
6. Examination of administrative oversight and enforcement of tree policy in San Jose
7. Discussion of an Urban Forestry Task Force (along with associated fiscal and administrative impacts) to review and make recommendations on tree policies
8. Direction to staff to research and report back to the Rules Committee on the possibility (along with associated fiscal and administrative impacts) of a City of San Jose Urban Forestry Commission to oversee tree policy in San Jose.

BACKGROUND

On February 6, 2007, the San Jose City Council will open a discussion on how to improve tree preservation in San Jose. Balancing the depth of this topic with the importance of putting processes in place in a timely manner, it is recommended that oversight of this topic be referred to the Transportation and Environment Committee. This committee can evaluate the input received at the February 6, 2007 City Council Meeting, take stakeholder testimony and determine a course of action that allows for both broad public involvement and staff expertise.

Our common goal is for stronger tree preservation in San Jose. The City Council can demonstrate its commitment to this goal by providing initial oversight via the Transportation and Environment Committee, which has been newly redesigned by Mayor Reed to be more performance-based and whose workplan is still in formation. While the Committee works with staff and the public to improve current policies and put into place new ones, the City Clerk and City Attorney can research and report back on the idea of a new Urban Forestry Commission, which would serve as steward of the new and improved tree policies, amongst other responsibilities.

cc: Mayor & City Council, Jim Helmer (DOT), Joe Horwedel (PBCE), Rick Doyle (CAO), Lee Price (City Clerk)

Despite evidentiary support for the value of a healthy and growing urban forest, San Jose's current regulations seem to fall short of achieving this important vision. The recent events in Willow Glen are only an example of what is occurring across the city, oftentimes without vigilant neighbors and public procedures to alert us to these violations. The City Council should use this as an opportunity to further strengthen our own regulations and add increased protections to our municipal code. This will send a strong signal to individuals and/or companies intending to perform illegal tree removals that such acts will not be tolerated.

Increased Fines for Illegal Tree Removal

Although fines were increased in 2006, this should be revisited for possible sharp increases, tied to the age and condition of the tree. The older the tree, the higher the fine should be. Staff should assess the implications of a fine up to \$2,000 per year of age of the removed tree. This would result in the removal of a 40 year-old tree (commonly found in San Jose's older neighborhoods) costing the remover at least \$80,000 in fines. Such a fine, although high, will act as a true deterrent and would become a lien on the property. Staff should also review how to extend the fine to not just the property owner but anyone who actively participated in the removal process, such as the tree removal company.

True One-to One Mitigation for Illegal Tree Removal

Besides penalties, mitigation should require an exact replacement of the removed tree in terms of size, shape, age and health. A strict replacement policy will act as a true deterrent because it would in essence put a moratorium on development or certain uses of the property until such time as a satisfactory transplant could be located, or a new, younger tree could reach maturity.

Inventorizing San Jose's Urban Forest

Until we undertake a comprehensive documentation of the existing locations of trees we will have a difficult time enforcing tree removal provisions in instances (unlike Willow Glen) where there are not always vigilant neighbors to report the violation and/or there is not a pre-existing record attesting to the tree's health, age, etc. Previous efforts to launch such an inventory were met with resistance due to budgetary constraints. Staff should investigate how to launch an inventorying effort utilizing existing resources and initiatives such as city staff already deployed in the field, vendors (i.e. AT&T Project Lightspeed) undertaking field projects, contractors, Our City Forest, SNI volunteers, and others.

Staffing in the City Arborist's Office

Of continual concern to the City Council is the necessary staffing to protect and grow our urban forest. The Council should review options for increased staffing in this office for further discussion as part of Mayor Reed's Budget Priority Setting Session to be held on February 20, 2007.

Heritage Tree Nomination and Preservation

Section 13.32.140 of the Municipal Code sets forth certain provisions with respect to heritage trees. For trees on private property, it is my understanding that the onus rests on an individual citizen to nominate a tree for heritage status (it could be the property owner or someone who has the consent of the property owner), at which point the city examines the tree and if believed to be worthy of heritage status, will forward the candidate tree to City Council for approval. It is also my understanding that a process does not exist for nominating trees for heritage status that are on public property. Staff should bring forth options for City Council discussion and possible action on improving the proactive nomination of trees for heritage status on public and private properties.

Outreach Plan for Illegal Tree Removal and Protecting San Jose's Urban Forest

Street-lined trees are throughout San Jose, from commercial centers to neighborhoods. Any discussion and possible action on this topic will affect various sectors of our community and therefore a comprehensive outreach plan to key stakeholders must be put in place to make sure the final product reflects the ideas and concerns of all affected.