



Memorandum

TO: RULES COMMITTEE

FROM: James R. Helmer

SUBJECT: SEE BELOW

DATE: 08-30-07

Approved

Ray Winer

Date

8/31/07

COUNCIL DISTRICT: 1

SUBJECT: URGENCY ORDINANCE REGARDING DEAD OR DYING TREE REPLACEMENTS

RECOMMENDATION

That an Urgency Ordinance to eliminate the protest waiting period before removal of a Tulip Tree is not recommended by the Administration and that the Municipal Code currently provides for emergency actions to be taken by a property owner or the City if any tree poses a threat to public health or safety.

BACKGROUND

At the August 16, 2007 Rules Committee, Council Member Constant requested that the City Council approve an Urgency Ordinance to eliminate the protest period for removal of diseased Tulip Trees in District 1. The purpose of this memorandum is to provide background information and the current status of the removal of Tulip Trees.

Under Chapter 13.28 of the San Jose Municipal Code (SJMC), when an application for removal of a street tree is received, an inspection of the tree is performed by the City. If the tree is determined to be dead or dying, seriously diseased, the cause of a hazard, a detrimental species, in interference with high tension electrical lines, the cause of extensive concrete damage or the cause of extensive sewer system damage, the tree is posted for removal. Notices of Proposed Tree Removal are then posted within 150 feet on both sides of the tree and on both sides of the street. Any resident who wishes to object to the proposed removal then has 14 days within which to file an objection to the removal with the Director of Transportation (Director). If no timely objection is received, the removal may be carried out 17 calendar days from the date the notices were first posted. If an objection is timely received, a "protest hearing" is scheduled allowing the objector an opportunity to be heard. In instances where a tree is dead or in a serious state of decline, the Director will immediately issue a tree removal permit and the City's Tree

Crew is directed to remove the tree. No protest is accepted and no hearing is held in this instance because the tree is dead or will not recover.

In May 2006, the City Council unanimously adopted an amendment to the SJMC that increased the time within which to file an objection to the removal of a street tree (protest period) from 7 to 14 days to allow more community input before a live tree is removed. The Council also adopted an amendment to the SJMC increasing the time the removal may be carried out from 10 to 17 days from the date the tree was first posted.

ANALYSIS

Many Tulip Trees (*Liriodendron tulipifera*) were planted in San José in the 1950's and 1960's but have been plagued since the early 1990's with Tulip Tree Scale, an insect that causes a heavy deposition of very sticky residue underneath the canopies of the trees and weakens the health of the tree to the point that eventually the tree can die. The City Council previously funded a Tulip Tree Replacement Program from 1999 to 2004 that attempted to treat the trees with a variety of control methods, but also removed and replaced hundreds of declining trees at no cost to the effected homeowners. The program was terminated in 2004 due to a lack of funding.

More recently, the City has received many requests for the removal of diseased Tulip Trees in District 1. The City Arborist's Office estimates that there are about 420 Tulip Trees in District 1, most of which are in various stages of decline due to the insect infestation. Some Tulip Trees are not seriously infested and would do not warrant removal at this time. Others are in an advanced state of decline and many homeowners have applied for permits to remove and replace their Tulip Tree street trees. If the tree is infested, the City typically recommends removal at the owner's expense but allows a protest period before removal as called for in the San José Municipal Code.

The loss of mature shade trees has been a concern from some of the public and in order to prevent the unnecessary and premature removal of Tulip Trees the protest process is utilized unless the tree is severely diseased or dead. The posting period allows the public 17 days to protest the removal of the tree. Only if a valid written protest is received during the specified period will a Protest Hearing be scheduled to hear the concerns of both the homeowner applying to remove the tree and any person(s) filing the protest. If the tree is dead or in a serious state of decline, the removal permit is issued immediately upon inspection and the City's Tree Crew is notified to remove the dead tree.

There are likely over 1,000 Tulip Trees in the City, all in varying conditions of health. Since there are current efforts in the industry to discover an effective treatment for Tulip Trees, the City would be premature to establish an urgency ordinance to remove them at will. The City has responded in a timely manner to the satisfaction of most residents who have submitted permits for their removal of 44 trees in District 1. Of the 44 Tulip Trees posted, the removal of 15 trees was protested. With support of Councilmember Constant, the Arborist's office scheduled a single protest hearing on these Tulip Trees. The hearing was held on August 28, 2007 of which

over 50 people attended. It provided an opportunity for both the homeowners and protestors to provide input on the issue. After more than an hour of discussion pro and con to the issue, the Arborist weighed the evidence and made the decision to grant the permits to remove and replace the 15 protested trees so that new non-susceptible trees can be now planted. As of the writing of this report, 37 of the 44 trees have been approved for removal by the City Arborist. The remaining seven trees have been posted for removal and no protests have been received. We anticipate they will be approved for removal in the next two weeks.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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)**

There has been extensive public outreach regarding the tree removal process in the past 16 months as City Staff met with the public and received input on urban forest policies. In addition, over the next several months, the City will hold four additional public meetings to receive further input from the public regarding the City's tree policies and procedures.

COORDINATION

This memo has been coordinated with City Attorney's Office.


JAMES R. HELMER
Director of Transportation