REPORT TO COUNCIL
City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

CONSENT
May 27, 2008

Honorable Members of the City Council

Title: Ordinance: Amending City Code Sections 12.56.020, 12.60.020, 12.64.020, and 12.64.050 Relating to Trees (PFP)

Location/Council District: Citywide

Recommendation: 1) Review an **Ordinance** amending Sections 12.56.020, 12.60.020, 12.64.020 and 12.64.050 of the City Code relating to trees; 2) **Pass for Publication** the Ordinance title as required by Sacramento City Charter 32(c) to be adopted June 5, 2008

Contact: Joe Benassini, Urban Forest Services Manager, 808-6258

Presenter: Joe Benassini, Urban Forest Services Manager

Department: Department of Transportation

Division: Urban Forest Services

Organization No: 4713

Description/Analysis

Issue: With the City's Urban Forest Services Division recent transition from the Department of Parks and Recreation to the Department of Transportation, it is necessary to amend the City Code to shift responsibility for the administration of Chapters 12.56 (Trees Generally), 12.60 (Dutch Elm Disease), and 12.64 (Heritage Trees) from the Director of the Department of Parks and Recreation and the Director of Neighborhood Services to the Director of Transportation. Where decisions under these chapters are subject to appeal, the Parks and Recreation Commission will continue to hear the appeals. Staff is also introducing language to resolve inconsistencies in the definition of what constitutes a heritage tree and provide additional authority to the Director to pursue other remedies for preserving a heritage tree other than removal. Additionally, staff proposes language to clarify noticing requirements in regards to public hearings and appeals for tree removal permits.

Policy Considerations: The tree ordinance revision is consistent with the City of Sacramento Strategic Plan's three year goals of improving and expanding public safety and achieving sustainability and livability.

Committee/ Commission Action: On April 1, 2008 the Law and Legislation Committee, with a vote of three (3) ayes and one (1) absent, recommended approval and forwarded the amendments to the City Council.

Environmental Considerations: This activity is not subject to the California Environmental Quality Act (CEQA) because it does not constitute a "project" as defined in section 15378 of the CEQA Guidelines.

Rationale for Recommendation: The purpose of the proposed ordinance changes are to: 1) clarify the authority to administer requirements of the Sacramento City Code in regards to trees protected under City ordinances; 2) better define that certain trees must be in good health and condition in order to be considered heritage trees; and, 3) allow the director and the Parks and Recreation Commission further discretion in considering remedies to resolve tree and building conflicts that are less onerous than complete tree removal.

Financial Considerations: There are no financial considerations associated with this action.

Emerging Small Business Development (ESBD): None, since no goods or services are being procured.

Respectfully Submitted by: _____
Joe Benassini
Urban Forest Services Manager

Approved by: _____
Jerry Way
Director of Transportation

Recommendation Approved:

_____
RAY KERRIDGE
for City Manager

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ATTACHMENT 1

BACKGROUND

In August 2007, Urban Forest Section of the Parks and Recreation Department was transferred to the Department of Transportation. Additionally, Urban Forest Services staff is requesting direction to proceed with a more substantive evaluation of the City's tree protection ordinance. In August 2004, Resolution 2004-040, the City Council established the Parks and Recreation Commission and authorized the Commission as the decision body for tree permits appeals. With the exception of 2004, it appears that the tree ordinances have not had any substantive changes since 1993.

Phase One of the Tree Ordinances update, Urban Forest Services seeks minor revisions to Sacramento City Code, Title 12, Chapters 12.56 (Trees Generally), 12.60 (Dutch Elm Disease), and 12.64 (Heritage Trees). Currently, the City Code authorizes the Director of Parks and Recreation to administer Chapters 12.56 (Trees Generally) and 12.60 (Dutch Elm Disease) and the Director of Neighborhood Services to administer Chapter 12.64 (Heritage Trees). In practice, the Director of Parks and Recreation has administered all three chapters. With the recent transition of Urban Forest Services from the Department of Parks and Recreation to the Department of Transportation, the authority for administering these chapters should be transferred to the Director of the Department of Transportation. Where decisions under these chapters are subject to appeal, the Parks and Recreation Commission will continue to hear the appeals.

Staff is recommending the addition of language under Section 12.64.020(2) to better define "heritage trees", to include the health and structure of the tree. Under SCC 12.64.020 (1), a tree must meet certain criteria in regards to size, as well as be in good health and structure. SCC 12.64.020 (2) refers to native oak trees, buckeye trees, and sycamore trees and also establishes criteria in regards to size, but neglects to state that the trees must be in the same good health. Staff believes that this omission is unintentional, causes owners of certain trees which are irreparably diseased, damaged, or otherwise in very poor condition to abide by a public hearing and appeal process and consumes City resources unnecessarily. Staff recommends that the language requiring that the tree be "of good quality in terms of health, vigor of growth and conformity to generally accepted horticultural standards of shape and location for its species" be added to this sub-section. This action is supported by the Parks and Recreation Commission.

Staff also believes that the ordinance does not provide appropriate remedies for preserving trees short of tree removal. Staff believes additional remedies are necessary when trees conflict with structures. Under SCC 12.64.050 (C) (1) (c), a permit must be issued if the director finds that the "tree or tree roots are causing, or threatening to cause, damage to the main structure on the owners property, but does not allow for remedies such as pruning, root pruning or other less onerous actions that might resolve the issue and also preserve the tree. Staff believes that intent of this section of the ordinance is to ensure that the tree does not cause an undue burden on property

owners or adjacent property owners but also to preserve heritage trees where possible and where the director believes is reasonable, and that the omission of allowing consideration of such actions is unintentional. Staff seeks to insert language to allow such considerations by the director and the Parks and Recreation Commission. This action is supported by the Parks and Recreation Commission.

ATTACHMENT 2

ORDINANCE NO.

Adopted by the Sacramento City Council

AN ORDINANCE AMENDING SECTIONS 12.56.020, 12.60.020, 12.64.020, and 12.64.050 , AND 12.64.060 OF TITLE 12 OF THE SACRAMENTO CITY CODE RELATING TO TREES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 12.56.020 of Title12 of the Sacramento City Code is amended to read as follows:

When used in this chapter, the following words and phrases shall apply:

"City street tree" means and includes any tree growing on a public street right-of-way. City street trees are maintained by the city.

"Director" means the director of the department of transportation or the director's designated representative.

"Maintain" or "maintenance" means and includes trimming, pruning, spraying, injecting, fertilizing, cabling, treating for disease or injury, and any other similar acts which promote the life, growth, health or beauty of trees, excepting only watering, unless specifically so stated.

"Maintenance easement" means a strip of land parallel to a public street right-of-way and adjacent thereto, which is six and one-half feet wide, measured from the front property line, (and the side property line if a corner lot), except that a maintenance easement shall not be deemed to exist on any parcel where the adjacent public street right-of-way provides space for a city street tree.

"Maintenance easement private street tree" means and includes any tree growing within a maintenance easement. No parcel contains more than one maintenance easement private street tree per forty (40) feet of street frontage. If there is more than one tree in the maintenance easement per forty (40) feet of street frontage, only the one closest to the street is a maintenance easement private street tree, and the other(s) are private trees.

"Person" means and includes any individual, partnership, corporation or other private or public entity, including but not limited to the property owner, a tenant, a licensed or unlicensed provider of tree services retained by the property owner or tenant, or a licensed or unlicensed provider of tree services acting without the consent of the property owner or tenant.

"Planting list" is the list of trees which is approved by the director for planting as street trees.

"Private tree" means and includes any tree on private property outside of the maintenance easement. The owner of the parcel is responsible for maintenance of private trees.

"Property owner" means and includes the person listed as the owner of the property on the then current assessor's roll.

"Public tree" means and includes any tree on public property, excepting trees growing on a public street right-of-way.

"Public utility" means and includes every pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof.

"Street tree" means and includes both city street trees and maintenance easement private street trees.

SECTION 2.

Section 12.60.020 of Title12 of the Sacramento City Code is amended to read as follows:

"Administrative regulations" means regulations promulgated jointly by the director and commissioner, and approved by the city council and the board of supervisors of Sacramento County, specifying procedures for the removal and destruction of elm trees or portions thereof.

"Commissioner" means the agricultural commissioner of Sacramento County, his or her assistants, deputies or authorized employees or agents.

"Director" means the director of department of transportation of the city, his or her assistants, deputies, or authorized employees or agents.

"Elm tree" includes any of the following: any living or standing elm (or zelkova) tree or part thereof or any dead elm (or zelkova) tree or dead part of any elm tree, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed.

SECTION 3.

Section 12.64.020 of Title12 of the Sacramento City Code is amended to read as follows:

"Circumference" means circumference measured four and one-half feet above ground level.

"Director" means the director of the department of transportation or the director's authorized representative.

"Drip line area" means the area measured from the trunk of the tree outward to a point at the perimeter of the outermost branch structure of the tree.

"Heritage tree" means:

1. Any tree of any species with a trunk circumference of one hundred (100) inches or more, which is of good quality in terms of health, vigor of growth and conformity to generally, accepted horticultural standards of shape and location for its species.

2. Any native Quercus species, Aesculus California or Platanus Racemosa, having a circumference of thirty-six (36) inches or greater when a single trunk, or a cumulative circumference of thirty-six (36) inches or greater when a multi-trunk which is of good quality in terms of health, vigor of growth and conformity to generally accepted horticultural standards of shape and location for its species.

3. Any tree thirty-six (36) inches in circumference or greater in a riparian zone. The riparian zone is measured from the center line of the water course to thirty (30) feet beyond the high water line.

4. Any tree, grove of trees or woodland trees designated by resolution of the city council to be of special historical or environmental value or of significant community benefit.

SECTION 4.

Section 12.64.050 of Title12 of the Sacramento City Code is amended to read as follows:

A. A property owner shall be responsible for maintaining all heritage trees on the property owner's property.

B. None of the following activities shall be performed by any person unless a permit therefor is first applied for by the property owner and granted by the director, subject to appeal provisions in Section 12.64.060 of this chapter.

1. The removal of any heritage tree;

2. Pruning of any heritage tree segment greater than twelve (12) inches in circumference or the placement of any chemical or other deleterious substance by spray or otherwise on any heritage tree;

3. Disturbing the soil or placing any chemical or other deleterious substance or material on the soil within the drip line area of any heritage tree.

C. The permit shall be granted by the director if he or she finds:

1. In the case of removal, (a) that the heritage tree must be removed in order for the applicant to use the property for any use permitted as of right or by special permit under the city zoning ordinance for the zoning district in which the property is located and that such use could not be made of the property unless the tree is removed; or (b) that the condition of the tree with respect to disease, danger of falling or interference with utility services is such that the public health, safety or welfare require its removal; or (c) that the tree or tree roots are causing, or threatening to cause, damage to any main structure on the owner's property and there are no reasonable alternative means to mitigate the damage or threatened damage while minimizing the impact on the tree. Reasonable alternative means of mitigation include, but are not limited to, cutting tree roots, trimming the tree canopy, or installing a root barrier. Removing, relocating, or in any way altering any main structure on the owner's property shall not be considered a reasonable alternative means of mitigation; or (d) that the tree no longer meets the criteria for a heritage tree set forth in Section 12.64.020 of this chapter;

2. In the case of any other activity for which a permit is required, that such activity is necessary either to preserve the heritage tree or to engage in construction activity on the property.

D. In the case of removal of any heritage tree under subsection (C) (1) of this section, the director shall not act on such an application until a hearing is held thereon. Notice of the time and place of the hearing shall be posted in a conspicuous place on the real property upon which the heritage tree is located and shall be mailed to the applicant and to all owners of real property located within a five hundred (500) foot radius of the real property upon which the heritage tree is located. Notices shall be posted and mailed at least ten (10) calendar days in advance of the hearing. As used herein, "owner" means the person to whom the property was assessed in the latest equalized assessment roll of the county of Sacramento unless the director has knowledge of a person other than such assessee claiming record ownership of the property.

E. The director shall not act on any permit application unless the director has first given the permit applicant an opportunity to be heard thereon. Notice of the time and place at which the applicant may be heard shall be given to the applicant by mail, postage prepaid, at the address shown for the purpose in the application at least ten (10) business days in advance thereof.

F. The decision of the director may be to grant, grant with conditions or deny any permit applied for and shall be rendered within fifteen (15) business days after the application is filed. It shall be in writing and shall state the reasons therefor. Such decision shall be mailed postage prepaid to the property owner.

Section 5.

Section 12.64.060 of Title12 of the Sacramento City Code is amended to read as follows:

12.64.060 Maintenance responsibility—Appeal of decision.

Any person dissatisfied with the decision of the director taken under this chapter may appeal such decision to the parks and recreation commission. Such appeal shall be in writing, stating the reasons therefor, and shall be filed with the secretary of the commission not later than ten (10) calendar days after the date of the director's decision. The secretary shall set the appeal for hearing at the next regular commission meeting that is no less than fifteen (15) business days after the appeal is filed. Notice of time and place of the hearing shall be given to the appellant at least ten (10) calendar days in advance thereof by mail, postage prepaid. The decision of the commission shall be final.

The secretary of the commission shall forthwith make a report of its decision to the city council. The decision may be called up for city council review by any member of the city council. To initiate a call-up of a decision, the member shall file a written request with the secretary of the commission within ten (10) calendar days of the date of the secretary's report to the city council. Upon the filing of a request by the member, the city council shall notice and set the matter for hearing before it. Notice of the hearing shall be given in the same manner as notice was given for the hearing before the commission. The hearing before the city council shall be de novo.

ATTACHMENT 3

ORDINANCE NO.

Adopted by the Sacramento City Council

AN ORDINANCE AMENDING SECTIONS 12.56.020, 12.60.020, 12.64.020, and 12.64.050, AND 12.64. 060 OF TITLE 12 OF THE SACRAMENTO CITY CODE RELATING TO TREES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 12.56.020 of the Sacramento City Code is amended to read as follows:

When used in this chapter, the following words and phrases shall apply:

"City street tree" means and includes any tree growing on a public street right-of-way. City street trees are maintained by the city.

"Director" means the director of the department of ~~parks and recreation~~ **transportation** or the director's designated representative.

"Maintain" or "maintenance" means and includes trimming, pruning, spraying, injecting, fertilizing, cabling, treating for disease or injury, and any other similar acts which promote the life, growth, health or beauty of trees, excepting only watering, unless specifically so stated.

"Maintenance easement" means a strip of land parallel to a public street right-of-way and adjacent thereto, which is six and one-half feet wide, measured from the front property line, (and the side property line if a corner lot), except that a maintenance easement shall not be deemed to exist on any parcel where the adjacent public street right-of-way provides space for a city street tree.

"Maintenance easement private street tree" means and includes any tree growing within a maintenance easement. No parcel contains more than one maintenance easement private street tree per forty (40) feet of street frontage. If there is more than one tree in the maintenance easement per forty (40) feet of street frontage, only the one

closest to the street is a maintenance easement private street tree, and the other(s) are private trees.

"Person" means and includes any individual, partnership, corporation or other private or public entity, including but not limited to the property owner, a tenant, a licensed or unlicensed provider of tree services retained by the property owner or tenant, or a licensed or unlicensed provider of tree services acting without the consent of the property owner or tenant.

"Planting list" is the list of trees which is approved by the director for planting as street trees.

"Private tree" means and includes any tree on private property outside of the maintenance easement. The owner of the parcel is responsible for maintenance of private trees.

"Property owner" means and includes the person listed as the owner of the property on the then current assessor's roll.

"Public tree" means and includes any tree on public property, excepting trees growing on a public street right-of-way.

"Public utility" means and includes every pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof.

"Street tree" means and includes both city street trees and maintenance easement private street trees.

SECTION 2.

Section 12.60.020 of the Sacramento City Code is amended to read as follows:

"Administrative regulations" means regulations promulgated jointly by the director and commissioner, and approved by the city council and the board of supervisors of Sacramento County, specifying procedures for the removal and destruction of elm trees or portions thereof.

"Commissioner" means the agricultural commissioner of Sacramento County, his or her assistants, deputies or authorized employees or agents.

"Director" means the director of the department of ~~parks and recreation~~ **transportation** of the city, his or her assistants, deputies, or authorized employees or agents.

"Elm tree" includes any of the following: any living or standing elm (or zelkova) tree or part thereof or any dead elm (or zelkova) tree or dead part of any elm tree, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed.

SECTION 3.

Section 12.64.020 of the Sacramento City Code is amended to read as follows:

"Circumference" means circumference measured four and one-half feet above ground level.

"Director" means the director of the department of ~~neighborhood services~~ **transportation** or the director's authorized representative.

"Drip line area" means the area measured from the trunk of the tree outward to a point at the perimeter of the outermost branch structure of the tree.

"Heritage tree" means:

1. Any tree of any species with a trunk circumference of one hundred (100) inches or more, which is of good quality in terms of health, vigor of growth and conformity to generally, accepted horticultural standards of shape and location for its species.

2. Any native Quercus species, Aesculus California or Platanus Racemosa, having a circumference of thirty-six (36) inches or greater when a single trunk, or a cumulative circumference of thirty-six (36) inches or greater when a multi-**trunk and which is of good quality in terms of health, vigor of growth and conformity to generally accepted horticultural standards of shape and location for it's species.**

3. Any tree thirty-six (36) inches in circumference or greater in a riparian zone. The riparian zone is measured from the center line of the water course to thirty (30) feet beyond the high water line.

4. Any tree, grove of trees or woodland trees designated by resolution of the city council to be of special historical or environmental value or of significant community benefit.

SECTION 4.

Section 12.64.050 of the Sacramento City Code is amended to read as follows:

A. A property owner shall be responsible for maintaining all heritage trees on the property owner's property.

B. None of the following activities shall be performed by any person unless a permit therefor is first applied for by the property owner and granted by the director, subject to appeal provisions in Section 12.64.060 of this chapter.

1. The removal of any heritage tree;

2. Pruning of any heritage tree segment greater than twelve (12) inches in circumference or the placement of any chemical or other deleterious substance by spray or otherwise on any heritage tree;

3. Disturbing the soil or placing any chemical or other deleterious substance or material on the soil within the drip line area of any heritage tree.

C. The permit shall be granted by the director if he or she finds:

1. In the case of removal:

(a) that the heritage tree must be removed in order for the applicant to use the property for any use permitted as of right or by special permit under the city zoning ordinance for the zoning district in which the property is located and that such use could not be made of the property unless the tree is removed; or

(b) that the condition of the tree with respect to disease, danger of falling or interference with utility services is such that the public health, safety or welfare require its removal; or

(c) that the tree or tree roots are causing, or threatening to cause, damage to any main structure on the owner's property **and there are no reasonable alternative means to mitigate the damage or threatened damage while minimizing the impact to the tree.**

(1) Reasonable alternative means of mitigation include, but are not limited to, cutting tree roots, trimming the tree crown, or installing a root barrier.

(2) Removing relocating, or in any way altering any main structure on the owner's property is not a reasonable alternative means of mitigation; or

(d) That the tree no longer meets the criteria for a heritage tree set forth in Section 12.64.020 of this chapter;

2. In the case of any other activity for which a permit is required, that such activity is necessary either to preserve the heritage tree or to engage in construction activity on the property.

D. In the case of removal of any heritage tree under subsection (C) (1) of this section, the director shall not act on such an application until a hearing is held thereon. Notice of the time and place of the hearing shall be posted in a conspicuous place on the real property upon which the heritage tree is located and shall be mailed to the applicant and to all owners of real property located within a five hundred (500) foot radius of the real property upon which the heritage tree is located. Notices shall be posted and mailed at least ten (10) **calendar** days in advance of the hearing. As used herein, "owner" means the person to whom the property was assessed in the latest equalized assessment roll of the county of Sacramento unless the director has knowledge of a person other than such assessee claiming record ownership of the property.

E. The director shall not act on any permit application unless the director has first given the permit applicant an opportunity to be heard thereon. Notice of the time and place at which the applicant may be heard shall be given to the applicant by mail, postage prepaid, at the address shown for the purpose in the application at least ten (10) **business** days in advance thereof.

F. The decision of the director may be to grant, grant with conditions or deny any permit applied for and shall be rendered within fifteen (15) **business** days after the application is filed. It shall be in writing and shall state the reasons therefor. Such decision shall be mailed postage prepaid to the property owner.

Section 5.

Section 12.64.060 of Title12 of the Sacramento City Code is amended to read as follows:

12.64.060 Maintenance responsibility—Appeal of decision.

Any person dissatisfied with the decision of the director taken under this chapter may appeal such decision to the parks and recreation commission. Such appeal shall be in writing, stating the reasons therefor, and shall be filed with the secretary of the commission not later than ten (10) **calendar** days after the date of the director's decision. The secretary shall set the appeal for hearing at the next regular commission meeting that is no less than fifteen (15) **business** days after the appeal is filed. Notice of time and place of the hearing shall be given to the appellant at least ten (10) **calendar** days in advance thereof by mail, postage prepaid. The decision of the commission shall be final.

The secretary of the commission shall forthwith make a report of its decision to the city council. The decision may be called up for city council review by any member of the city council. To initiate a call-up of a decision, the member shall file a written request with the secretary of the commission within ten (10) calendar days of the date of the secretary's report to the city council. Upon the filing of a request by the member, the city council shall notice and set the matter for hearing before it. Notice of the hearing shall

be given in the same manner as notice was given for the hearing before the commission. The hearing before the city council shall be de novo.