



City Council Report

915 I Street, 1st Floor
Sacramento, CA 95814

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File #: 2016-01290

Public Hearing Item 15

Title: Approval of Fees for Tree Permits, Appeals Related to Tree Permits, and Tree Replacement In-lieu fees pursuant to City Code Chapter 12.56 and Requiring Tree Permit Appeals to be heard by a Hearing Examiner (Noticed 11/03/2016 & 11/10/2016)

Recommendation: Conduct a public hearing and upon conclusion 1) pass a Resolution approving fees for tree permits and appeals related to tree permits pursuant to City Code Chapter 12.56; 2) pass a Resolution approving a tree replacement in-lieu fee pursuant to City Code Section 12.56.060 and 3) pass a Resolution requiring that tree permit appeals be heard by a hearing examiner.

Location: Citywide

Contact: Greg Smith, Senior Engineer, (916) 808-8364; Juan Montanez, Streets Manager, (916) 808-2254, Department of Public Works

Presenter: Greg Smith, Senior Engineer, (916) 808-8364, Department of Public Works

Department: Public Works

Attachments:

- 1-Description/Analysis
- 2-Resolution (Tree Fees)
- 3-Resolution (In-Lieu Fee)
- 4-Resolution (Hearing Examiner)

Description/Analysis

Issue Detail: On August 4, 2016, the City Council passed an ordinance adopting Chapter 12.56 of the Sacramento City Code to regulate the planting, maintenance and conservation of trees. Chapter 12.56 provides for a tree application fee, an appeal fee and a tree replacement in-lieu fee in amounts established by city council resolution. Staff is recommending that City Council pass a resolution to establish amounts of the tree application and appeal fee and a resolution to establish the amount of the tree replacement in lieu fee.

City Code Section 12.56.050 establishes the authority for the City to approve or deny tree permit applications. To assist in the process of the tree permit program, it is recommended that the City Council pass a resolution to allow appeals of the approval or denial of tree permit applications to be heard by a hearing examiner, as provided under Chapter 1.24 of the City Code.

Policy Considerations: The recommendations in this report support the City's General Plan goal to manage the City's urban forest as an environmental, economic, and aesthetic resource to improve Sacramento residents' quality of life. The proposed fees are consistent with the City Council's adopted Fees and Charges Policy and support the City's goals of budget sustainability and fiscal responsibility.

Economic Impacts: None.

Environmental Considerations:

California Environmental Quality Act (CEQA): The City Council approved a revised tree ordinance on August 4, 2016. Staff has prepared resolutions that implement the ordinance, as explained in this staff report. Adoption of the resolutions would achieve the same goals as the ordinance itself: maintenance, restoration, enhancement and protection of the environment. Adoption of the proposed resolutions is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15308.

Sustainability: This action is consistent with the City's Sustainability Master Plan goals to maintain and expand the urban forest.

Commission/Committee Action: On November 1, 2016, the Budget and Audit Committee approved and forwarded the proposed fees for Council consideration. The Committee gave direction to City staff to provide alternatives to a proposed flat rate fee for tree permit application associated with development projects. The fee structure for tree permit application

associated with development projects has been updated in the Resolution and the fee amount is now based on a tiered structure.

Rationale for Recommendation: Fees need to be collected to help offset the costs associated with processing tree permit applications and their associated appeals. The revenue generated from in-lieu fees is for the purpose of tree planting and tree replacement and is needed to offset the cost of tree removal. Appeals related to tree permits should be heard before a hearing examiner rather than the City Council due to the lengthy fact finding process.

Financial Considerations: In-lieu fees collected for tree replacement will be deposited into the Tree Planting and Replacement Fund (Fund 2035) and will be used to further tree planting and replacement. The fees collected for tree permit applications and related appeals will be deposited in the Department of Public Works operating budget (General Fund, Fund 1001) to help offset the costs associated with permit processing.

Local Business Enterprise (LBE): Not applicable.

Background:

On August 4, 2016, the Sacramento City Council adopted Chapter 12.56 (Tree Planting, Maintenance, and Conservation) of the Sacramento City Code. This ordinance replaced the prior City Code chapters 12.56 (Trees Generally), 12.60 (Dutch Elm Disease) and 12.64 (Heritage Trees) by adding revised language that combined existing and new code language. As part of this ordinance update, staff has prepared resolutions to establish amounts of the authorized fees for permit applications, their associated appeals, and a tree replacement in-lieu fee. Additionally, a resolution has been developed to allow appeals related to tree permits to be heard by a hearing examiner.

Section 12.56.050 establishes procedures for obtaining a permit to perform regulated work on trees and authorizes the establishment of a fee by resolution to process tree permit applications. The fee amount varies depending if the application is associated with a discretionary permit under Title 17 (development project) or not. Staff is recommending a fee of \$50 for tree permit applications not associated with development projects which is a partial reimbursement for the labor to process the application. This amount is the same as the related fee in the previously deleted chapter 12.56 (Trees Generally). The amount of this fee has been compared to neighboring jurisdictions and found to be similar. Staff is recommending a tiered fee for tree permit applications based on the project development land use. A single-unit dwelling or duplex would have a \$750 flat rate fee. Projects with three or more dwelling units would have a \$1,400 flat rate fee. All other mixed use and commercial projects would have a

\$2,000 flat rate fee. These planning tree permit fees reflect the estimated staff hours associated with taking the permit through the Title 17 development review process. The flat rate fees are based upon the time it takes for staff to conduct the necessary work to take the average tree removal request to a public hearing. The staff time is related to review of the tree(s) proposed to be removed and their relation to new development proposed on the property, discussion and review of how the project may be redesigned to avoid tree removal, coordination between the property owner and City staff, reviewing the arborist report, writing the section of the staff report related to the tree permit, including findings of fact to support or deny the request. There is no additional cost to the applicant if the tree permit decision is subsequently appealed by a third party.

Section 12.56.070.A provides that any person aggrieved by the decision of the director under section 12.56.050 may appeal the decision to the City Council in accordance with chapter 1.24. This section also authorizes the establishment of a fee by resolution for the purpose of processing the appeals. Staff recommends a fee of \$298 for these appeals which is a partial reimbursement for the costs associated with the program administration. Costs include the hearing examiner and staff time for processing. The amount of this fee is similar to other City appeals such as appeals of a discretionary (development) permit by a third party. Section 1.24.100 allows the City Clerk to waive the appeal fee if the appellant is financially incapable of paying.

Section 12.56.050.B requires an approved tree replacement plan before any permit for removal of private protected trees is issued and section 12.56.050.C requires an approved tree replacement plan before any permit for removal of city trees is issued. Section 12.56.060 provides that one of the options for a tree replacement plan is payment of an in-lieu fee as adopted by resolution of the City Council. The proposed fee is different for palm trees than other trees because palm trees acquire their full diameter at standard height\ (DBH) within a short period of their life span. The value of a palm tree is more appropriately determined by its height rather than its width. For trees other than palm trees, staff is recommending an in-lieu fee of \$325.00 for each inch DBH of tree removed. This amount is based on the labor and material costs of planting a one inch DBH tree. The amount of this in-lieu fee has been compared to neighboring jurisdictions and found to be similar. For palm trees, staff is recommending an in-lieu fee of \$100.00 for each linear foot in height of clear trunk removed. This amount is based on the labor and material costs of planting a similar sized palm tree.

Appeals filed under Chapter 1.24 are made to the City Council, unless the City Council directs the appeal to a hearing examiner. Section 1.24.060.B authorizes the City Council by resolution to specify categories of appeal which routinely involve a lengthy fact finding process, and to instruct the City Clerk to schedule such appeal hearings before a hearing examiner without further action of the City Council. The resolution also must include criteria for the

selection of a hearing examiner. Appeals filed pursuant Section 12.56.070.A are likely to involve a lengthy fact finding process, and should be scheduled for hearing before a hearing examiner rather than the City Council. Staff is recommending that the hearing examiner be selected from the panel of hearing examiners appointed by the City Council pursuant to Section 8.04.070 of the Sacramento City Code. Staff is currently developing new criteria for the hiring of replacement hearing examiners for this panel so that the needs of different departments are achieved. The new criteria will be brought before City Council at a later date for approval.

RESOLUTION NO. 2016-XXXX

Adopted by the Sacramento City Council

November 15, 2016

**AMENDING PUBLIC WORKS AND COMMUNITY DEVELOPMENT DEPARTMENT
FEES AND CHARGES TO ESTABLISH FEES FOR THE TREE PROGRAM**

BACKGROUND

- A. On August 4, 2016, the Sacramento City Council enacted Chapter 12.56 (Tree Planting, Maintenance, and Conservation) of the Sacramento City Code. This ordinance replaced the prior city code chapters 12.56 (Trees Generally), 12.60 (Dutch Elm Disease) and 12.64 (Heritage Trees) by adding revised language that combined existing and new code language.
- B. Section 12.56.050 establishes procedures for obtaining a permit to perform regulated work on trees and authorizes the establishment of a fee by resolution for the purpose of processing applications for tree permits.
- C. Section 12.56.070.A provides that any person aggrieved by the decision of the director under section 12.56.050 may appeal the decision to the City Council in accordance with chapter 1.24 and authorizes the establishment of a fee by resolution for the purpose of processing the appeals.
- D. Proposed new fees, and deleted fees are set forth in Exhibit A

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

Section 1. The City of Sacramento Fee and Charge Report is hereby amended as set forth in Exhibit A, to establish the fees authorized by Section 12.56.050, and 12.56.070 of the Sacramento City Code.

Section 2. Exhibit A forms part of this resolution.

Table of Contents:

Exhibit A: Tree Program Fees

EXHIBIT A TREE PROGRAM FEES

Fee Name: Tree Permit Application Fee (Non Development Projects)
Department: Public Works
Action: New
Current Fee: \$0.00
Proposed Fee: \$50.00
Justification for Fee: Recover costs associated with the program administration and inspection costs and imposed for each new tree permit application.

Proposition 26: This charge is not a tax under Proposition 26; it is a regulatory fee under Exception 3. The proposed fee will offset the department's cost of administering the program.

Fee Name: Tree Permit Application Fee (Development Projects)
Department: Community Development Department
Action: New
Current Fee: \$0.00
Proposed Fee: Single Unit and Duplex Dwelling - \$750.00
Multi-Unit Dwellings - \$1,400
Commercial - \$2,000

Justification for Fee: Average estimated cost of service to process a tree permit application and take to a public hearing.

Proposition 26: This charge is not a tax under Proposition 26; it is a regulatory fee under Exception 3. The proposed fee will offset the department's cost of administering the program.

Fee Name: Tree Permit Application Fee (Deleted Chapter 12.56)
Department: Public Works
Action: Delete
Current Fee: \$50.00
Proposed Fee: N/A

Justification for Fee: Obsolete; not required due to deletion of chapter 12.56 (Trees Generally). The fee is reinstated in the adopted chapter 12.56 (Tree Planting, Maintenance, and Conservation).

Proposition 26: N/A

Fee Name: Tree Permit Appeal Fee
Department: Public Works
Action: New
Current Fee: \$0.00

Proposed Fee: \$298.00

Justification for Fee: Recover costs associated with the program administration and inspection costs and imposed for each new tree permit appeal.

Proposition 26: This charge is not a tax under Proposition 26; it is a regulatory fee under Exception 3. The proposed fee will offset the department's cost of administering the program.

RESOLUTION NO. 2016-XXXX

Adopted by the Sacramento City Council

November 15, 2016

**ESTABLISHING AN IN-LIEU FEE FOR TREE REPLACEMENT PLANS PURSUANT
TO CITY CODE SECTION 12.56.060**

BACKGROUND

- A. On August 4, 2016, the Sacramento City Council enacted Chapter 12.56 (Tree Planting, Maintenance, and Conservation) of the Sacramento City Code. This ordinance replaced the prior city code chapters 12.56 (Trees Generally), 12.60 (Dutch Elm Disease) and 12.64 (Heritage Trees) by adding revised language that combined existing and new code language.
- B. Section 12.56.050.B requires an approved tree replacement plan before any permit for removal of private protected trees is issued and section 12.56.050.C requires an approved tree replacement plan before any permit for removal of city trees is issued.
- C. Section 12.56.060 provides that one of the options for a tree replacement plan is payment of an in-lieu fee as adopted by resolution of the city council.
- E. The in-lieu fee for trees other than palm trees has been determined based on the labor and material costs of planting a one inch DSH (diameter at standard height) tree for each inch DSH of tree removed. The amount of this in-lieu fee has been compared to neighboring jurisdictions and found to be similar.
- F. The fee amount for palm trees are treated differently since they acquire their full DBH within a short period of their life. The value of a palm tree is more appropriately determined by its height rather than its width. The in-lieu fee for palm trees has been determined based on the labor and material costs of planting a similar sized palm tree.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

- Section 1. The tree replacement plan in-lieu fee authorized by city code section 12.56.060.B is established as provided in the attached Exhibit A.

Section 3. Exhibit A is part of this resolution.

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Exhibit A: In-Lieu Tree Replacement Fee

**EXHIBIT A
IN-LIEU TREE REPLACEMENT FEE**

Fee Name:	Tree Replacement In-Lieu Fee
Department:	Public Works
Action:	New
Current Fee:	\$0.00
Proposed Fee:	Trees other than palm trees - \$325.00 for each inch DSH (diameter at standard height) of tree removed based on the material and labor cost to plant a one inch tree. Palm Tree - \$100.00 for each linear foot in height of clear trunk removed based on the material and labor cost to plant similar sized palm tree.
Justification for Fee:	Sacramento City Code section 12.56.050 requires a tree replacement plan as a condition of issuance of a tree permit to remove city trees or private protected trees and provides replacement standards. Section 12.56.060 provides for the payment of an in-lieu fee as an option for a tree replacement. The revenue generated is for the purpose of furthering tree planting and tree replacement to offset the effects of the tree removal.
Proposition 26:	This is an in-lieu fee that is an alternative to tree replacement as a condition of issuance of a tree permit and is not a tax under Proposition 26; this in lieu-fee falls under exception 1 (fees for benefit and privileges) and exception 6 (fees for development of property).

RESOLUTION NO. 2016-XXXX

Adopted by the Sacramento City Council

November 15, 2016

REQUIRING APPEALS OF DECISIONS ISSUED FOR TREE PERMITS, UNDER CITY CODE SECTION 12.56.070, TO BE HEARD BY A HEARING EXAMINER

BACKGROUND

- A. On August 4, 2016, the Sacramento City Council adopted Chapter 12.56 (Tree Planting, Maintenance, and Conservation) of the Sacramento City Code. This ordinance replaced the prior city code chapter 12.56 (Trees Generally), 12.60 (Dutch Elm Disease) and 12.64 (Heritage Trees) by adding revised language that combined existing and new code language.
- B. Section 12.56.050 establishes procedures for obtaining a permit to perform regulated work on trees. Section 12.56.070.A provides that any person aggrieved by the decision of the director under section 12.56.050 may appeal the decision to the City Council in accordance with chapter 1.24 by filing a written notice of appeal with the city clerk within 15 days of the director's decision.
- C. Appeals filed under Chapter 1.24 are made to the City Council, unless the City Council directs the appeal to a hearing examiner. Section 1.24.060.B authorizes the City Council by resolution to specify categories of appeal which routinely involve a lengthy fact finding process, and to instruct the city clerk to schedule such appeal hearings before a hearing examiner without further action of the City Council. The resolution also must include criteria for the selection of a hearing examiner.
- D. Appeals filed pursuant Section 12.56.070.A are likely to involve a lengthy fact finding process, and should be scheduled for hearing before a hearing examiner rather than the City Council.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Clerk shall schedule appeal hearings for all appeals filed pursuant to Section 12.56.070.A of the Sacramento City Code before a hearing examiner instead of the City Council. The hearing examiner shall be selected from the panel of hearing examiners appointed by the City

Council pursuant to Section 8.04.070 of the Sacramento City Code.