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REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2604

STAFF REPORT
April 1, 2008

Honorable Members of the
Law and Legislation Committee

Title: An Ordinance Amending Sections 12.56.020, 12.60.020, 12.64.020, 12.64.050, and 12.64.060 of the Sacramento City Code which transfers the decision authority to the Director of Transportation, modifies the definition of heritage trees, provides remedies of the preservation of heritage trees other than removal and addresses noticing requirements.

Location/Council District: Citywide

Recommendation: Staff recommends that the Law and Legislation Committee : 1) approve and forward to the full City Council for adoption an ordinance amending Sections 12.56.020, 12.60.020, 12.64.020, 12.64.050, and 12.64.060 of the City Code that will transfer the decision authority to the Director of Transportation, provide an enhanced definition for heritage trees; provide remedies for the preservation of heritage trees, other than removal, and address noticing requirements; and 2) direct staff to return to the Law and Legislation Committee with proposed revisions to Title 12, Section 12.56, 12.60 and 12. 64, relating to trees, to improve the City's tree processes consistent with the City's three year goal of achieving sustainability and livability.

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

Presenters: 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 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 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.

Lastly, Urban Forest Services staff is seeking direction to proceed with a more substantive evaluation of the City's tree protection ordinances and, where necessary, provide recommendations on code amendments to ensure that the ordinances are clear, transparent and consistent with the City's three year goal of achieving sustainability and livability.

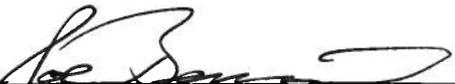
Policy Considerations: The tree ordinance revision is consistent with the City of Sacramento Strategic Plan's three year goals of improving and expanding public safety and achieving sustainability and livability.

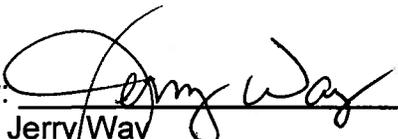
Environmental Considerations: This activity is not subject to the California Environmental Quality Act (CEQA) because it does not constitute a "project" as defined in section 15378 of the CEQA Guidelines.

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; 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; and, 4) direct staff to further examine the City's tree ordinances to ensure that they preserve and protect trees as intended and are aligned with the City's goals of sustainability and livability.

Financial Considerations: Not applicable.

Emerging Small Business Development (ESBD): Not applicable.

Respectfully Submitted by: 
Joe Benassini
Urban Forest Services Manager

Approved by: 
Jerry Way
Director of Transportation

Recommendation Approved:


MARTY HANNEMAN
Assistant City Manager

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Attachment 1**BACKGROUND**

In August 2007, the 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 permit appeals. It appears that the tree ordinances have not had substantive changes since 1993.

For phase one of the Tree Ordinance 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.

Urban Forest staff has identified several issues relating to the current trees ordinances SCC 12.56 (Trees Generally) and 12.64 (Heritage Trees) that requires review and possible revision. Urban Forest Services seeks the authority to proceed with a more substantive evaluation of the City's tree protection ordinances relating to heritage and other City trees and, where necessary, provide recommendations to ensure that the ordinances are clear, transparent, and consistent with the City's three-year goal of achieving sustainability and livability. Staff has indentified several areas of concern that may warrant consideration, including the following:

1. Tree Permits Related to Development: Impacts to protected trees and related permits currently are considered separately from the development approval process, with tree related impacts considered by a separate body and outside the development project as a whole.
2. Processes and Enforcement: Current permit processes and enforcement measures for heritage and street tree requests are separate and different. The authority to enforce the provisions of the ordinances has not been directly assigned to a responsible City agency.
3. Adding protection to trees planted as a mitigation measure and to parking lot shade trees.
4. Permit Fees: The current ordinance does not provide for any permit fees. Urban Forest Services currently absorbs the cost incurred for processing all permits, as well as any costs associated with hearings and appeals.
5. Mitigation: The current ordinance does not quantify or qualify mitigation measures or consider collection of in-lieu fees to offset impacts to protected trees by development or other projects.
6. Prohibition of tree-topping as a practice to reduce tree size
7. Assigning permanent maintenance responsibility for maintenance easement trees to property owners. Certain trees located on private property but within 6-1/2 feet of the public right of way were formerly maintained by the City. Maintenance was suspended in the early 1990's due to funding limitations.

If approved, review of the ordinances will include a public participation component that will allow Sacramento's urban forest stakeholders opportunity to provide input regarding areas of community concern.

Attachment 2

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

**AN ORDINANCE AMENDING SECTIONS 12.56.020,
12.60.020, 12.64.020, and 12.64.050 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 Title 12 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 Title 12 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.

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“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.