

Agenda Report

January 25, 2010

TO: Honorable Mayor and City Council

FROM: Planning and Development Department

SUBJECT: AMENDMENTS TO THE TREE PROTECTION ORDINANCE - PRIVATE TREE REMOVALS

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the proposed code amendments are categorically exempt from the California Environmental Quality Act (CEQA) under §15061, general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment;
2. Find that the proposed amendments are in conformance with the goals, policies, and objectives of the General Plan and would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City;
3. Approve the proposed amendments to the Tree Protection Ordinance (Title 8 and Title 17) as contained in this report;
4. Authorize the City Manager to draft administrative guidelines consistent with the provisions set forth herein; and
5. Direct the City Attorney to draft an ordinance and return within 60 days consistent with the provisions set forth herein.

PLANNING COMMISSION RECCOMENDATION:

On November 11, 2009, the Planning Commission concurred with recommendations from the Design Commission and Urban Forestry Advisory Committee (UFAC) and recommended that the City Council approve staff's recommendations for revisions to the Tree Protection Ordinance (TPO). The Commission also proposed minor changes to the draft wording of the findings, and these changes are in the proposed amendments.

EXECUTIVE SUMMARY:

Staff's objective was to find ways to strengthen the Tree Protection Ordinance and improve policies to better meet the stated goals of protecting and growing Pasadena's urban forest. These revisions to the TPO have been through an extensive public process and after 15 months of public meetings and workshops, staff is presenting a proposal that has the full endorsement of the Design Commission, UFAC and Planning Commission. (A full discussion of these revisions begins on page 4.)

The recommendations are to:

- Update the protected tree list;¹
- Expand applicability of protections:² Non-protected trees 18" or larger diameter-at-breast height (DBH) would be protected and if proposed for removal be replaced at one-half the established replacement requirements—except for trees on single-family properties subject to the RS development standards or duplexes subject to the RM-12 development standards (no tree removal application to remove non-protected species in RS or RM-12 zones);
- Incentivize on-site retention of existing mature trees: Through the design review process, promote the retention of existing mature trees on a site proposed for new development by providing development waivers or accepting alternative solutions similar to the existing incentives in the zoning code for preserving historic structures in RM development standards, §17.22.080.C.;
- Modify finding for on-site replacement of existing tree canopy to an industry standard and more user-friendly measurement ("replacement matrix"; see Attachment A, page 11) based on DBH (in place of estimated calculations of future canopy coverage); prohibit use of this finding for on-site replacement of trees that meet criteria for designation as landmark trees;
- At the discretion of the decision-making body, allow limited (up to a maximum of 50% of the replacement trees) off-site replacement of protected trees through payment to the City of an alternative replacement fee based on 100% of the appraised value of the removed trees; and
- Require long-term condition monitoring fees (with enforcement by the City's Code Compliance staff) for all projects with protected trees and/or replacement trees.

BACKGROUND:

The City has had a Tree Protection Ordinance (TPO) since 2002. In the past seven years, requests to remove protected trees on private property have gone through a regulatory review process. Pasadena's TPO has been an important tool in protecting

¹ Not in ordinance but referenced in the ordinance. (See Attachment E for full listing.)

² Protected trees are native and specimen species of trees located in the established setbacks of all property located in a single-family residential or RM-12 multifamily residential zone, and in all areas of all other zoning districts within the city; landmark trees and public trees located anywhere in the city.

the City's urban forest by: enabling staff and advisory commission to reconfigure site plans for many projects, saving large numbers of trees that otherwise would have been removed, and requiring the extensive on-site planting of new replacement trees for new development. The City Council and some commissions have expressed the desire to strengthen the ordinance, especially the regulations governing removal of protected trees on private property. Members of the Design Commission and UFAC raised concerns that despite requirements for a replacement canopy in a new project (under Finding 6),³ mature trees were not sufficiently protected and that significant and valuable trees need greater protection. Acting on these suggestions, staff surveyed ordinances from other cities in California and elsewhere and presented this research on "best practices" for regulatory protections of trees to the Design Commission and UFAC.

From October of 2008 to June of this year, the Design Commission and UFAC held a series of four workshops at which a cross-section of the community, including home owners, developers, arborists, architects, members of boards and commissions, neighborhood organizations and community groups, joined in a public discussion about the TPO. In preparation for these workshops, City staff mailed and emailed hundreds of public notices and created a webpage on the City's website to disseminate information and receive comments. Many people offered suggestions and comments both online and at the numerous public meetings. The recommendations in this report are a result of this process. The focus of this report is on policy changes. Minor amendments, technical details, and the codification of practices have been included in Attachment A.

COUNCIL POLICY CONSIDERATION:

Supporting and promoting the quality of life and the local economy is one of the City Council's strategic goals. The amendments to the Tree Protection Ordinance are consistent with this goal because the City's tree canopy is valued highly in the community and contributes "long-term aesthetic, environmental, and economic benefits to the city."⁴ "Increase conservation and sustainability" is also cited as three-year goal.

These amendments support the following objectives of the Conservation Element of the General Plan:

2.4. Retention of Pasadena's image and heritage of mature trees and plant life.

³ PMC § 8.52.075

⁴ PMC § 8.52.015: The economic benefits derived from trees include increased property values, and additional revenue generated by businesses, visitors and new residents attracted to the urban forest image of the city. Trees are a major capital asset to the city and like any valuable asset they require appropriate care and protection.

2.5. Preservation of remaining vestiges of native plant life found within the City.

Proposed revisions are consistent with the purposes outlined in the Tree Protection Ordinance, adopted in 2002 (see Attachment B).

REVISIONS TO TITLE 8, HEALTH AND SAFETY
(City Trees and Tree Protection Ordinance, §8.52 PMC)

Emphasize sustainable tree canopy of the long term

One of the existing findings to permit removal of protected trees is a requirement to replace on site the tree canopy to be removed. This finding (finding #6) in the Tree Protection Ordinance inadvertently causes developers to plant fast-growing replacement trees rather than slower-growing trees which better support the City's long term goal of a sustainable tree canopy. To meet the existing finding of a "landscape design plan which will result in a tree canopy coverage of greater significance than the tree canopy coverage being removed, within a reasonable time⁵ after completion of the project," a landscape architect calculates the existing canopy and then projects the growth of the proposed canopy. Generally the fast-growing trees selected are the more decorative and irrigation dependent species rather than shade trees and other species that contribute significantly to a healthy urban forest. To encourage slower-growing replacement trees, staff recommends changing this finding to a replacement-ratio matrix (see Attachment A), which will be outlined in the associated administrative guidelines. If, however, a tree meets the criteria for designation as a landmark tree, this finding cannot be applied to permit removal of that tree.

Alternative replacement fee

Each protected tree has a replacement requirement—specified in the matrix—based on the diameter-at-breast height. The property owner is responsible for replacing on site the specified number of specimen or native trees. If an arborist or landscape architect determines that the number of required on-site replacement trees results in conditions that would inhibit healthy growth (e.g., overcrowding of new trees)—and there is a report supporting that conclusion—the decision-maker has the discretion to allow off-site replacement with an alternative replacement fee subject to the decision maker being able to make the findings specified in Attachment C. If the decision-maker determines that all reasonable options to permit on-site planting of trees (related to building footprint and/or lot coverage) have been pursued and agrees with the arborist or landscape architect's analysis, an alternative replacement fee of 100% of the appraised value⁶ of the tree/s would be required. This funding would cover the cost for Public Works staff to purchase, plant and maintain new public trees for three years, after which time maintenance would be a city expense, and would be specified for

⁵ Staff has interpreted this to mean five years.

⁶ The appraised value would be calculated by using the most-recent edition of the *Guide for Plant Appraisal*, published by the International Society of Arboriculture.

additional plantings that are above and beyond the City's regular planting programs. Trees that qualify for designation as landmark trees cannot be removed using this replacement finding.

Additionally the off-site option would be available only for a maximum of 50% of the required number of replacement trees and only if the other findings for private-tree removals cannot be made.

Protected Tree List

UFAC considered the proposed revisions to the protected tree list at a special meeting on October 19, 2009 and recommended restoring 21 trees, which had been proposed for removal, to the list (See Attachment E). The Design Commission and Planning Commission did not recommend any further changes, and the revised list attached to this report corresponds to the recommendations from UFAC.

An important change to the current procedure is a recommendation to extend the protections for specimen, native, and landmark trees to *non-protected species* with an 18" or larger diameter-at-breast height. If proposed for removal, these trees would be required to be replaced at one half of the replacement requirements for protected trees or meet one of the other five findings for private tree removals in the municipal code. Non-protected trees of any size on single-family properties subject to the RS development standards or duplexes subject to the RM-12 development standards zone would be exempt from this provision (i.e., no tree removal application required to remove non-protected species in RS or RM-12 zones).

On-site retention

With the existing ordinance, retention of desirable mature trees is often difficult to achieve because the ordinance currently permits removal of all trees if the site proposed for new development permits growth of a replacement tree canopy within a period of time (usually estimated as five years). Specific incentives are, therefore, needed to encourage on-site retention of existing trees.

In addition to the development waivers (discussed below), another tool to encourage reconfiguration of a project to preserve existing trees is the stipulation that if a tree meets landmark tree criteria (as determined by the decision-maker), the replacement finding cannot be used for the removal of that tree. If another finding for removal of a protected tree can be met (e.g., diseased or dying trees), removal would be allowed, but finding #6 (on-site replacement) would not an option when a tree meets landmark criteria⁷ as defined in the Zoning Code (§17.62 Historic Preservation chapter). During preliminary reviews of an application (i.e., tree inventory, site plan, photographs), and during visits to the site of a proposed new development, staff will identify trees that

⁷ PMC §17.62.040: 1. It is one of the largest or oldest trees of the species located in the City; 2. It has historical significance due to an association with a historic event, person, site, street, or structure; or 3. It is a defining landmark or significant outstanding feature of a neighborhood.

qualify for landmark designation. Planning staff will then meet with the development team to discuss the presence of a landmark-eligible tree on the property and ask for an evaluation from an arborist about the health of the tree and the effect of new construction on the long-term growth of the tree. If the footprint of new construction requires removal of the tree or interferes with its survival, the staff will advise the developers to revise the design of their project to protect the landmark-eligible tree. As part of this discussion, the staff may also explore the possibility of development waivers to promote the retention of the tree (or other mature trees).

PROPOSED AMENDMENT TO TITLE 17, ZONING CODE

Development waivers

The existing zoning code (§17.61.080) has findings for a variance to permit a deviation from development standards to retain existing trees. The process, however, is lengthy and expensive and specifies that the Hearing Officer acts as the decision maker. The proposed code amendment allows the Hearing Officer, Board of Zoning Appeal, Design Commission or Director of Planning and Development to approve development waivers—or to approve alternative solutions—through design review (or other entitlements) subject to the decision maker being able to make the findings in Attachment C, mirroring the existing allowances for preserving historic structures (RM development standards, §17.22.080.C). Currently, by code, the Design Commission (or Planning Director) may reduce the size of the required main garden (courtyard) up to 50% or waive some or all of the architectural elements or modulation requirements if an existing historic structure remains as part of the new project. This has proven to be a successful tool for the retention of historic structures.

A similar provision for trees would give architects the flexibility to respond to the existing mature trees. Architects would potentially have the option to reconfigure the main garden to include existing mature trees, offering the necessary flexibility to maintain trees at natural grade. It is generally acknowledged that planting trees on podiums, such as above underground parking, will result in smaller trees and less sustainable canopy coverage. Rather than requiring projects to adhere to a predetermined footprint, projects could respond to the unique conditions of each site. Such flexibility would recognize the need to apply adaptable standards rather than one-size-fits-all solutions onto diverse sites. Discussion of development waivers⁸ would occur during preliminary meetings with staff and when applicants file an application for pre-development plan review and—for multi-unit residential projects—preliminary plan check. A tree inventory is required with this application as well as a list (and site plan) detailing which trees are proposed for retention and which trees are proposed for removal. In the preliminary reviews of the application, staff would identify opportunities for possibly reconfiguring a site design to save protected trees or staff could identify a modification of a development standard that might promote the retention of protection trees. As with the existing provision for historic structures, staff would evaluate the

⁸ See Attachment D for examples of standards proposed for flexibility.

merits of each request for a development waiver to save mature trees and evaluate the impact of the waiver on the site and the surrounding neighborhood (e.g., parking, scale, views from nearby properties). To date, the waivers for historic structures have been limited to reducing the required area of the central garden (courtyard) in multi-unit projects, but the Zoning Administrator has determined that the intent was “to allow for the waiver of any particular development standards that may assist in the preservation.”

ENVIRONMENTAL ANALYSIS:


The change in the ordinance proposed in this report strengthens the City’s options to protect the City’s canopy (see the paragraph directly below) and does not have the potential for a significant environmental effect. The City conducts an individual CEQA analysis on each project. If a project has a net loss of protected trees that, despite the changes to the ordinance, still cannot be mitigated by the replacement matrix or replacement fund, additional mitigation measures can be proposed by City staff managing the project or by the decision-making body which acts on the environmental clearance for a project.

In developing this recommendation, staff contracted with a landscape architect to compare the existing and the proposed methods for replacing canopy using several sample projects. This evaluation confirmed that the replacement matrix is the preferable method for a long-term increase to the urban forest and minimizing the loss of canopy. The matrix also promotes the goal of sustainability by requiring that replacement trees be native or specimen trees (the current provision for replacement canopy does not have any requirements over the selection of replacement trees). The trees in the matrix favor native species that require lower water consumption, eliminate invasive species and increase bio-diversity to combat the loss of trees by virus or infestation.

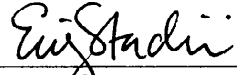
FISCAL IMPACT:

The proposed amendments will not likely have a major fiscal impact. Developers and property owners proposing to remove protected trees already pay fees to the City for these applications, and the City already has mitigation-monitoring fees to ensure compliance with conditions of approval and environmental mitigations. Some changes to the General Fee Schedule may occur after adoption of these code amendments.


Respectfully submitted,


for RICHARD J. BRUCKNER
Director of Planning and Development

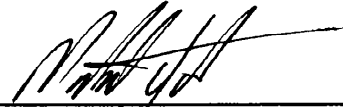
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Approved by:


MICHAEL J. BECK
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Attachment A: *Minor amendments, technical details, and the codification of practices (including the Replacement Matrix)*

Attachment B: *Purposes of the Tree Protection Ordinance*

Attachment C: *Recommended findings*

1. Recommended findings for development waivers
2. Recommended findings for alternative replacement fee

Attachment D: *Examples of development waivers*

Attachment E: *Recommendations for updated list of protected native and specimen trees*