

March 8, 2015

Law and Legislation Committee Members
New City Hall
915 I Street
Sacramento, CA 95814

Re: Tree Ordinance and Tree Related Ordinance Amendments

Dear Council Members Ashby, Harris, Schenirer and Jennings

I am a long time Central City resident and activist. For the past several years, I have watched appalled as the tree canopy in the Central City has been disappearing block by block. As both an individual and a member of the Midtown Neighborhood Association board, I have been actively lobbying for the protection of the City's tree canopy since 2008. I participated in all the meetings of the Public Stake Holder's Committee on the Tree Ordinance and am distressed that so little of the work the Stake Holder's group did is reflected in the draft ordinance that is before you.

The draft ordinance fails to adequately address the need to stop the rapid, ongoing removal of large, healthy canopy and heritage trees and to set clear goals for retaining and expanding canopy. It gets rid of any role for the Parks and Recreation Commission and forces residents to appeal tree removals through the Planning and Design Commission even when such removal is not part of a Title 17 project. It fails to list criteria for evaluating tree health, thus making it easy to label a tree as unhealthy and remove it. Many of the definitions it uses are inadequate or confusing. It addresses the qualifications and standards for professionals hired by private individuals to work on trees "private protected trees", but says nothing about the qualifications and standards the City must meet in hiring staff or contractors to work on City trees. It is silent about the City's responsibility for the maintenance and planting of public trees. It proposes a two-step permit process for work on "private protected trees" that is confusing costly and will likely dissuade property owners from getting permits. It is vague with regard to the mitigations required for removal of public or "private protected trees". It fails to address penalties for property owners who do work (including removal) without permits or who deliberately vandalize or destroy protected trees. It proposes a public notification process that is inadequate and a public appeal process that is inadequate, confusing and likely to be costly. It places responsibility and liability on individual property owners for the maintenance of trees that were previously treated as City trees and maintained by the City. It is silent on the shade trees that are required in surface parking lots and silent about how the City will respond to cases of Dutch Elm disease or other diseases that could threaten the tree canopy.

The following are more specific comments about the various sections of the draft ordinance:

12.56.010: Findings and Purpose:

The benefits of trees should include their role in absorbing carbon and mitigating climate change. It should also include a statement that they are an integral part of 'complete streets' (i.e. streets that work for walkers and bicyclists, not just for cars).

The sentence about optimizing canopy coverage should speak to doing so in each community plan district rather than the city as a whole and it should set canopy goals. If this isn't looked at by district, it is likely that some districts (particularly the Central City because of the push for

new, dense development) will continue to lose trees even if the total number of trees in the City increases

Section 12.56.020 Definitions:

“city street tree”: This definition needs to include a statement that these trees are planted and maintained by the City.

“private protected tree”: For clarity, it should be stated that this category includes trees that were previously classified as “heritage trees”. The criteria *“good condition, free of substantial defects”* are much too vague and leave the door open to exclude any tree that a property owner wants to get rid of. More objective, criteria are needed including the criteria suggested by the Curtis Park Neighborhood Association that: at least 60% of the canopy is live, no more than 40% of the limbs are infested with mistletoe, free of structural or root/root collar defect that would jeopardize the stability of the tree, has a root structure that a structural engineer has determined is not causing damage to any main structure. Trees fifty years old or older should be included as ‘private protected trees’ regardless of diameter so as to protect species that, by nature, have small diameters when fully mature. The criterion *“is in a location that allows for long term preservation”* should be removed. It is vague and can be used to justify denying protection to virtually any tree that might be in the way of anything that an owner might want to build at any time in the future.

“Routine maintenance”: This definition includes application of insecticides or herbicides. Given the toxicity of some of these products, are there any City guidelines as to which are safer and should be used? If so, they should be included here.

“qualified tree pruner”: This is a category that is not currently included in the Definitions Section, but needs to be. The Curtis Park Neighborhood Association has provided a good definition that reads as follows: “Qualified tree pruner means a person who is certified a Tree Worker/Climber Specialist by the International Society of Arboriculture (ISA) with current certification status or a person who has five or more years of demonstrable professional experience as an arborist and who agrees in writing to perform all work in compliance with ANSI A300 standards,”

12.56.030 Inspection, maintenance and removal by City.

This section should include a paragraph stating that staff or contractors hired by the City will meet ANSI A300 standards and meet the definitions of *qualified arborist* and *qualified tree pruner*. This is of tremendous importance because, over and over again, residents have been faced with City contracted pruning crews that clearly don’t know how to prune (examples include cutting out healthy branches and leaving dead branches or branches infested with mistletoe, cutting out so much of the crown that the tree is disfigured and survival is threatened, and doing work on trees that have obvious nests with young birds in them, resulting in injury or death of the birds.)

Because of the problems cited above, there needs to be a mechanism whereby members of the public can ask that contract work be stopped until a City staff person with the necessary experience and training can come out and inspect..

12.56.040 Public Projects:

The public must be able to appeal a decision by City staff to remove public street trees. Notice should be for thirty (not ten) days as used to be the case. It should be posted at the site of the tree or trees and on the Urban Forest Services portion of the City website and should be sent to the relevant neighborhood association(s). Notice should include: reason for removal, date notice was posted, date the thirty day appeal period ends and how to file an appeal. Appeals should continue to be heard by the Parks and Recreation Commission (Item E of Section 2.62.030 should not be repealed as is currently proposed) or, alternatively, a Tree Commission should be established to hear all tree appeals except those that are part of the Title 17 entitlement process. (Members of the Public Stake Holders Committee suggested these things and were ignored.)

There should be a paragraph added to this section that speaks to the responsibility of City staff to protect City trees and, where necessary, consult with Urban Forest staff when working on projects that might negatively impact such trees. The need for this paragraph became apparent after a city water meter crew killed a street tree in the 1300 block of 26th Street. The tree would probably still be alive if the crew had sought consultation.

12.56.050 Determination of Private Protected Tree and 12.56.060 Tree Permits

As currently written, it appears that property owners wanting to do anything but minor maintenance on a tree that may qualify as a “private protected tree” must go through a cumbersome two step process in which they pay a qualified arborist to determine whether a tree is or is not a “private protected tree” and, if it is, pay the arborist to prepare a second report about the impacts of whatever they want to do on the tree and the mitigation required. This process needs to be streamlined. Otherwise, people are likely to become so frustrated that they will just do what they want to do without getting any evaluation or permit.

Additional Comments on 12.56.060

Section B: Issuance:

Part 1 of this section deals with work on or removal of a city street tree and part 2 deals with the same issues for “private protected tree”. Both contain vague language, ‘health’ and ‘desirable species’ that create loopholes and both need to be clearly defined. My comments under 12.56.020 include a recommended definition of ‘health’. With regard to ‘desirable’ species’ there need to be clear criteria as to what makes a species ‘desirable’ or ‘undesirable’ and in what settings. What about trees that are members of an ‘undesirable species’, but are healthy, not causing problems and providing shade? Given the seriousness of global warming and drought, is being a member of a particular species reasonable grounds for removing a tree? ‘Roots causing damage to a structure’ needs to be confirmed by a licensed structural engineer.

Mitigation for the removal of a tree or trees includes planting replacement trees or paying the city compensation. There need to be guidelines about the minimum size of replacement trees and about how financial compensation is calculated. When compensation is in the form of replacement trees, those trees should be planted as close as possible to the site from which the trees they are replacing were removed. The loss of a tree in one area is not mitigated by the planting of a tree in another area.

It is unclear what item 3 in this section is talking about.

Items 4 and 5 are discussed under 12.56.070, Appeals, below.

12.56.070 Appeals:

This is an extremely important issue. Sacramento residents care deeply about trees. The right to appeal the removal of healthy trees is critical to the public process. It should not be forgotten that residents pay for trees through the landscape and lighting assessment included in their property taxes and that, in the 1990's, residents voted to tax themselves specifically to provide better care for trees.

I have already discussed what I view as the appropriate noticing process in my comments about section 12.56.040 and there is no need to repeat those comments here. If the application to remove a street tree or private protected tree or trees is part of an application for a discretionary permit under Title 17 then it makes sense that appeals regarding those trees be handled through the planning process. With the exception of Title 17 projects, there is no reason for the Planning and Design Commission to add tree appeals to its already full agenda. The Parks and Recreation Commission handled these appeals in the past and should continue to do so. (Item E of Code Section 2.26.030 should not be repealed.) The only other alternative is to create a Tree Commission to handle such appeals.

12.56.080 Maintenance responsibility and liability of property owner and public utilities:

This section of the proposed ordinance needs to be eliminated. Historically the City has been responsible for the maintenance of and assumed liability for these trees and should continue to do so. Placing maintenance responsibility and liability on property owners runs the risk of these trees not receiving adequate maintenance and of owners choosing to remove them (likely without permits) because they don't want the cost or the liability. Like everyone else, these property owners pay taxes for landscape (including tree maintenance) and lighting and should get the services they are paying for.

This concludes my comments on the draft ordinance. As a participant in the Public Stake Holder Committee, I'm deeply disappointed that so many of our legitimate concerns were ignored and that the draft ordinance does little or nothing to increase the protection of our urban forest while making it extremely difficult for the public's voice to be heard with regard to trees.

Sincerely,

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