



**Parks and Recreation Commission
January 8, 2009**

AGENDA ITEM 7

DEPARTMENT OF
TRANSPORTATION
Urban Forestry Services

**CITY OF SACRAMENTO
CALIFORNIA**

5730 24th Street
Building 12A
SACRAMENTO, CA
95822

PH: 916-808-6345

December 26, 2008

Parks and Recreation Commission
Sacramento, California

Honorable Members in Session:

**SUBJECT: Ordinance Amendments Revising Sections 12.56.120, and 12.64.060,
of Title 12 of the Sacramento City Code Relating to Appeals of
Decisions on Tree Removals and Maintenance Permits**

LOCATION AND COUNCIL DISTRICT: City-wide

RECOMMENDATION: Staff recommends that the Parks and Recreation Commission review and comment on ordinance changes affecting Sections 12.56.120, and 12.64.060, of Title 12 of the Sacramento City Code relating to Appeals of Decisions on Tree Removals and Maintenance Permits.

CONTACT PERSON: Joe Benassini, Urban Forest Services Mgr. (916) 808-6258

FOR COMMISSION MEETING: January 8, 2009

SUMMARY:

Sacramento City Code 12.56.120 (Trees Generally, Appeals) and 12.64.060 (Heritage Trees, Appeals) require that any appeal to a decision of the Director regarding permits affecting protected trees be heard by the Parks and Recreation Commission. In many cases, appeals regarding decisions are related to development projects which are approved by a separate body, most often the Planning Commission. This separation of authority results in an uncoordinated development review process and can potentially put the Planning Commission and the Parks and Recreation Commission's decisions in conflict. Planning for and working around City trees are important considerations when reviewing proposed development projects. Staffs from both the Development Services Department and the Urban Forestry Division propose to amend SCC 12.56.120 and 12.64.060 to assign appeals of decisions of the Director to the Planning Commission in an effort to integrate tree-related considerations and decisions into the project review process. In addition, the proposed language also allows for a fee specified in the City fee and charge report for an appeal to the Planning Commission.

BACKGROUND INFORMATION:

Urban Forestry Services, the Development Services Department, and the Parks and Recreation Commission have expressed a need to review and revise Sacramento City Code 12.56 – Trees Generally, and 12.64 – Heritage Trees, in order to streamline permitting processes, rectify inconsistencies and gaps, add clarity, and ensure that they meet the current needs of the City's various communities. Chief among concerns is that under the current provisions, appeals of the decision of the Director in regards to tree impacts related to development projects are appealed to the Parks and Recreation Commission. As a result, decisions regarding development projects are separated from decisions regarding the project's impacts to heritage or street trees. This process results in a poorly coordinated development review process and confusion over the final authority in regards to development. The Parks and Recreation Commission Chair has expressed that the Commission does not generally have the technical experience to review development projects and does not actively participate in the process of development review from the outset (Attachment 1).

In an effort to rectify these inconsistencies while the balance of the ordinances are revised, the Development Services Department has proposed that SCC 12.56.120 – (Trees Generally) Appeals, and SCC 12.64.060 – (Heritage Trees) Appeals, be separately amended to shift responsibility for those appeals to the City of Sacramento Planning Commission (Attachments 2 and 3). Urban Forestry Services originally included an intention to propose this transfer of authority as a part of the complete ordinance review, now underway. However, based on earlier stated concerns by the Parks and Recreation Chair and others, staff supports a separate ordinance amendment to do so.

Under the current practices, the cost for appeals is currently absorbed by Urban Forest Services. The proposed language allows that an appeal be accompanied by a fee specified in the City's Fee and Charge Report for an appeal to the Planning Commission.

This item was heard by the Urban Forestry Committee on December 8, 2008, and a motion was passed to send the item to the Parks and Recreation Commission.

FINANCIAL CONSIDERATIONS:

The Urban Forestry division bears the administrative costs associated with tree permit hearings and appeals. If the current proposal is adopted, a fee will be established by resolution of the City Council to partially offset the cost of appeals for tree permits.

ENVIRONMENTAL CONSIDERATIONS:

This report concerns administrative activities that will not have a significant effect on the environment, and does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) [CEQA Guidelines Sections 15061(b) (3); 15378(b) (2)].

POLICY CONSIDERATIONS:

The proposed amendments to SCC 12.56 and 12.64 are consistent with the City's strategic plan to achieve sustainability and liveability and to expand economic development throughout the City.

ESBD CONSIDERATIONS:

No goods or services are being purchased in association with this report.



Joe Benassini
Urban Forest Services Manager

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DEPARTMENT OF
PARKS AND RECREATION

CITY OF SACRAMENTO
CALIFORNIA

915 I STREET, 5th Floor
SACRAMENTO, CA
95814-2997

PARKS AND RECREATION COMMISSION
FOR PARKS AND RECREATION

(916) 808-5200
FAX: 808-7643

February 14, 2008

Ray Kerridge
City Manager
City Hall, 5th Floor
Sacramento, CA 95814

Dear Mr. Kerridge,

On behalf of the City of Sacramento's Parks and Recreation Commission (PRC), I am writing to express our Commission's concerns over the City's current Heritage Tree Ordinance (City Code, Title 12.64). As you may know, the PRC is charged with the responsibility of hearing all heritage tree removal appeals. As such, the PRC has become aware of several serious issues with the current Heritage Tree Ordinance. To be blunt, the ordinance is poorly written and desperately needs to be revised. Due to the ordinance's vaugeity, not only are city residents poorly served, but so are our trees. Quality "customer service" is being compromised. We encourage you to identify funding and authorize staff to begin rewriting this ordinance immediately.

The Heritage Tree Ordinance has technical issues that need to be clarified, such as specifying a concrete time frame for the timely filing of appeals (the current ordinance says 10 days from the date of the Director's decision - - not "ten business" days.) The commission has had two appeals come forward where the timeliness issue has been raised. In the most recent case, the tenth day fell on a Sunday. The tree owner successfully argued that the appeal was not filed until late on the eleventh day and as such, was not timely. A majority of the commissioners agreed with her because the ordinance did in fact state "ten days" and did not spell out how the ten days should be calculated. There are also concerns that the current Heritage Tree Ordinance makes little distinction in the variety of trees the City is seeking to protect.

In addition, the language regarding damage to the "primary structure" is vague and difficult to determine. This should be of concern to the City because it leaves the City vulnerable to lawsuits. The current tree ordinance gives no guidance in determining what constitutes a "primary structure" nor does it spell out what qualifies as a threat or how imminent the threat to the "primary structure" needs to be. All it says is if a tree has caused damage or threatens to cause damage to a primary



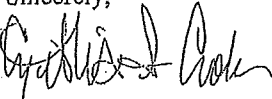
structure, then the tree shall be removed. The Commission has really struggled with interpreting this part of the ordinance. The current ordinance is silent as to what type of proof is needed to determine if a tree is "causing damage or threatening to cause damage". The Commission has now had two cases where we have denied property owners permits to remove heritage trees despite evidence presented by property owners that suggested damage to primary structures could have resulted from the roots of large Heritage trees. In one of these recent cases, the property owner took the City to Superior Court and she prevailed. This successful lawsuit gives credence to our concerns that the existing ordinance needs to be redrafted.

Park and Recreation Commissioners are also concerned that that the PRC may not be the body best suited to hear tree appeal cases. Almost every appeal (except for the Crocker Art Museum expansion) that has come before the PRC has involved a tree on private property. In several cases, there are structural or design issues that are pivotal in the appeal. The PRC is provided no technical guidance on this area -- there is not a City structural engineer or architect assigned to the PRC to help us sort through the issues. Many of us are frustrated with having to decide if a homeowner should be allowed to add another bedroom on to his house or whether a new school can be built on privately owned land. Often, the issue surfaces of redesigning a project to save a tree, but we have no expertise in evaluating whether this is a viable option. We are Park and Recreation Commissioners, not Planning Commissioners or Design and Review Board members. Clearly, if there is tree appeal pertaining to a tree located in a public park that would be within our domain to hear. But having to render decisions on private developments on private property that have no impact on public parks or open space appears to be unfair to the PRC and to the public. We do not feel qualified to make such decisions and we are beginning to resent how much time we are spending focusing on private property tree appeals rather than delving into park and recreation policies and issues, which is actually our primary responsibility. We would strongly encourage that the privilege of hearing private property tree appeals be assigned to another hearing body, perhaps one that has more of a nexus to the development process.

The PRC has been approached by several tree policy experts who are eager to help the City craft its next ordinance. We believe that the City needs to have a clearer and more comprehensive Heritage Tree ordinance and we hope that the re-drafting of the current ordinance begins very soon.

Thank you for considering our concerns.

Sincerely,



Cynthia A. Cooke
Chair, Parks and Recreation Commission

cc: Mayor Heather Fargo and Councilmembers
Jim Combs, Director of the Department of Parks and Recreation
Jerry Way, Director of the Department of Transportation

**Redlined
ORDINANCE NO.**

Adopted by the Sacramento City Council

Date Adopted

**AMENDING SECTIONS 12.56.120 AND 12.64.060 OF THE
SACRAMENTO CITY CODE RELATING TO APPEALS
OF DECISIONS ON TREE REMOVAL AND
MAINTENANCE PERMITS**

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

SECTION 1. Section 12.56.120 of the Sacramento City Code is amended to read as follows;

12.56.120 Appeals.

A. Appeal to City Planning Commission.

Any person who is denied a permit to remove or maintain a city street tree pursuant to Section 12.56.070 or who objects to the removal of a street tree pursuant to Section 12.56.040 shall be entitled to meet personally with the director to review the permit application or proposed work and may appeal the director's decision to the city planning commission by filing a written notice of appeal with the city planning commission secretary within ten (10) days of the date of the director's final decision. The notice shall clearly specify the action or determination appealed from, and the reasons for which a hearing is requested. The filing of the notice of appeal shall be accompanied by the fee specified in the city fee and charge report for an appeal to the city planning commission.

Deleted: or Section 12.56.070 of this chapter
Deleted: Any person aggrieved by the director's decision
Deleted: such
Deleted: parks and recreation
Deleted: city clerk

B. Appeal Hearing and Decision.

Except as expressly provided otherwise in this section, the appeal hearing before, and the decision of, the city planning commission on an appeal under this chapter shall be governed in all respects by Chapter 17.200 of this code.

C. Notice of Appeal Hearing.

Notice of the appeal hearing shall be given by posting and by mail pursuant to subsection (C)(2)(d) of Section 17.200.010, except that the notice by mail required by subsection (C)(2)(d)(ii)(C) of Section 17.200.010 shall be given to the owners of real property located within five hundred (500) feet of the subject real property.

D. Decision.

Ordinance No.

Adopted on

1

The decision of the city planning commission shall be final and shall not be subject to appeal, but shall be reported to and shall be subject to call-up for consideration by the city council as provided in Section 17.200.040.

Deleted: The decision of the commission shall be final.

SECTION 2. Section 12.64.060 of the Sacramento City Code is amended to read as follows:

Deleted: The secretary of the commission shall be 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 no

12.64.060 Appeal of decision of director.

A. Appeal to City Planning Commission.

Any person dissatisfied with the decision of the director taken under this chapter may appeal such decision to the city planning commission. Such appeal shall be in writing, shall state the reasons for the appeal, and shall be filed with the secretary of the city planning commission not later than ten (10) days after the date of the director's decision. The filing of the notice of appeal shall be accompanied by the fee specified in the city fee and charge report for an appeal to the city planning commission.

Deleted: Maintenance responsibility—

Deleted: parks and recreation

Deleted: ing

Deleted: therefor

Deleted: calendar

B. Appeal Hearing and Decision.

Except as expressly provided otherwise in this section, the appeal hearing before, and the decision of, the city planning commission on an appeal under this chapter shall be governed in all respects by Chapter 17.200 of this code.

C. Notice of Appeal Hearing.

Deleted: 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.

1. Notice of an appeal hearing on a decision of the director for a tree removal permit under section 12.64.050(C)(1) shall be given by posting and by mail pursuant to subsection (C)(2)(d) of Section 17.200.010, except that the notice by mail required by subsection (C)(2)(d)(ii)(C) of Section 17.200.010 shall be given to the owners of real property located within five hundred (500) feet of the subject real property.

2. Notice of an appeal hearing on a decision of the director not subject to subsection (C)(1), above, shall be given by mail pursuant to subsection (C)(2)(d)(ii) of Section 17.200.010, except that notice shall be given only to the appellant, the owner of the property affected where the owner is not the appellant, those persons who appeared and identified themselves for the record before the person before which the original hearing was held, and those persons who request in writing to be notified of any further proceedings on the matter or who otherwise have requested notice in writing of the hearing.

Deleted: 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.

D. Decision.

Ordinance No.

Adopted on

2

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Ordinance No.

Adopted on

3

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AMENDING SECTIONS 12.56.120 AND 12.64.060 OF THE SACRAMENTO CITY CODE RELATING TO APPEALS OF DECISIONS ON TREE REMOVAL AND MAINTENANCE PERMITS

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Ordinance No.

Adopted on

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12.64.060 Appeal of decision of director.

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Any person dissatisfied with the decision of the director taken under this chapter may appeal such decision to the city planning commission. Such appeal shall be in writing, shall state the reasons for the appeal, and shall be filed with the secretary of the city planning commission not later than ten (10) days after the date of the director's decision. The filing of the notice of appeal shall be accompanied by the fee specified in the city fee and charge report for an appeal to the city planning commission.

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Ordinance No.

Adopted on

2

D. Decision.

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Ordinance No.

Adopted on

3