



Staff Report

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**Honorable Mayor and Members of the Hermosa Beach City Council
Regular Meeting of September 24, 2019**

CONSIDERATION OF AMENDMENTS TO THE CITY'S TREE ORDINANCE

(Acting Director of Public Works Lucho Rodriguez)

Recommended Action:

Staff recommends that the City Council

1. Introduce on first reading an ordinance amending Chapter 12.36 of the Hermosa Beach Municipal Code, the City's tree ordinance (Attachment 1); and
2. Adopt a resolution amending the City's master fee schedule to include administrative fines for tree ordinance violations and application fees for tree removal permits (Attachment 2).

Executive Summary:

On January 16 and March 20, 2019, during two regular meetings of the Public Works Commission, Commissioners engaged in tree policy study sessions with the Director of Public Works and the City Attorney's office. The aim was to provide policy direction on issues respecting parkway trees and to amend the City's tree ordinance. In the process, Commissioners also considered PLAN Hermosa's mandate to preserve and protect trees in the City's urban forest. The proposed ordinance adopts the resulting tree management policy recommended by the Public Works Commission and staff.

Background:

The City's tree ordinance, codified in Chapter 12.36 of the Hermosa Beach Municipal Code ("HBMC"), governs the maintenance of parkway trees. The parkway refers to "that portion of the public right-of-way that is not paved as a street or sidewalk, including encroachment areas used as yards by abutting property owners."¹

In general, the ordinance assigns to the owner of property immediately adjacent to a parkway the duty to maintain all trees therein. Property owners' maintenance obligations include the duty to abate any condition of a parkway tree that constitutes a public nuisance. Nuisance conditions include dead or diseased trees, trees endangering utility wires, and trees damaging the sidewalk pavement.² The ordinance also provides that no person, including the adjacent property owner, may remove a parkway tree without first obtaining a permit from the Director of Public Works or, depending on the tree's size, the Public Works Commission.³

In recent years the Director and Commission have faced a number of issues respecting the extent of owners' maintenance obligations, the circumstances warranting tree removal, and the penalties for ordinance violations. These issues involve questions of policy that the current ordinance, adopted in 2006, does not address. PLAN Hermosa, adopted in 2017, also mandates that the City review its tree ordinance to ensure the protection of existing parkway trees and the adequate replacement of mature trees when preservation is infeasible.

Analysis:

The substantive amendments to the existing ordinance are as follows:

1. Statement of Purpose (HBMC 12.36.010). The statement reflects the policy direction from PLAN Hermosa and serves to guide the Public Works Commission and the Director in their consideration of residents' tree removal requests. Under the current ordinance, a permit to remove a tree "may be issued" if a tree is "dead, otherwise constitutes a public nuisance, or interferes significantly with the use and enjoyment of the immediately adjoining property."⁴ These are the only circumstances in which a tree removal permit may be issued. However, the approval is not as a matter of right, and the Commission or Director may determine that a permit should not be issued despite the existence of a qualifying circumstance. A tree management policy serves to guide the exercise of this discretion, directing how the relevant factors—tree preservation, public safety, damage to public or private property, etc.—should be considered in a particular case.

The proposed ordinance states that the policy priority is tree preservation as consistent with public health, safety, and welfare. Therefore, a request to remove a tree should not be granted if an ailing tree can reasonably be revived or if a damaged sidewalk can be repaired without tree removal. Any interference with the use of property warranting a removal permit should also be "significant" and irreconcilable with tree preservation.

2. Application Fees (HBMC 12.36.060(A)). The City incurs significant costs to properly review an application for a tree removal permit. Determining whether a permit should be issued typically requires the City to hire an arborist to inspect the subject tree and, if the tree is greater than 12 inches in diameter, to notify surrounding residents of the relevant public hearing. To recover some of these costs, staff and the Commission recommend that the City charge a permit application fee in the amount of its reasonable costs to obtain an arborist opinion (\$200). At present, the City has a Public Tree Installation Review permit, which is issued for a fee of \$193, reflecting the costs in City staff time to ensure that permitted work in the parkway is completed properly. Staff recommends using the installation permit for all activity under the tree ordinance that requires a permit other than tree removal (e.g., planting a tree, HBMC 12.36.030, and abating a nuisance condition, HBMC 12.36.090(B)).
3. Owners' Maintenance Obligations HBMC 12.36.040. The California Streets and Highways Code imposes a duty on property owners to maintain and repair the public sidewalk adjacent

to their property.⁵ State law further provides that a city may undertake any necessary repairs to remove dangerous sidewalk conditions and recover its costs from adjacent owners.⁶ When, however, the damage to a sidewalk is caused by the roots of a parkway tree, state law allows, and the Commission recommends, that the City assume the costs of repairs to public property.

The existing tree ordinance identifies damaged sidewalk pavement as a nuisance condition of parkway trees, which property owners are required to abate.⁷ Property owners may abate the nuisance condition *of the tree* by pruning back tree roots or, depending on the circumstances, securing the tree's removal and replacement at owner expense. While the ordinance does not otherwise assign responsibility for the costs of sidewalk repair, the background state law provides that property owners are responsible for such repairs by default. This was also the recommendation of the Tree Committee appointed by the City Council in 2005 to revise the former tree ordinance. While there were differing opinions on the issue, the Committee ultimately framed the policy options respecting owners' obligations as follows:

- No responsibility for parkway trees-The City would undertake all maintenance duties for parkway trees, including annual trimming and repairs for damages. As this option likely would have required the City to form citywide assessment districts, it was not favored.
- Total responsibility for parkway trees-Property owners would be responsible for root damage to all public improvements, including sidewalk, curb, gutter, street pavement, and sewer mains. As no city at the time had adopted this option, it was also not favored.
- Responsibility for damage to sidewalks only-Staff recommended this option as implemented by the City of Manhattan Beach and supported by state law.

In 2005, assigning property owners responsibility for sidewalk repair presented a balanced option between two cost extremes. The City's current policy to encourage the planting of trees and to prioritize the preservation of mature trees, which in many cases will not have been planted by the current property owner and may not be a species from the City's approved tree list, warrants adjusting owners' obligations to support the City's current goals.

Under the proposed ordinance, property owners remain responsible for the costs of repairing sidewalk pavement damaged by a tree located on private property.

4. Onsite Tree Replacement_ HBMC 12.36.060(E). Tree removal permits are conditioned on replacement of the tree at the same or a different location with a tree from the City's approved tree list.⁸ Consistent with the City's vision of creating and maintaining a citywide urban forest, the Commission recommends establishing a policy preference for onsite replacement of parkway trees, in order to avoid displacing trees in the parkway with a concentration of trees in City parks. The proposed ordinance also requires replacement of removed trees at a minimum 2:1 ratio. While this ratio was not considered by the Public Works Commission, staff recommends the provision for consistency with PLAN Hermosa's Implementation Actions, Action PARKS-26.

5. Scope of Director's Determination HBMC 12.36.060(C). Under the existing ordinance, any request to remove a tree that measures greater than 12 inches in diameter requires a public hearing before the Public Works Commission. As the Commission meets every other month, a request to remove a dead tree may be subject to material delays. To expedite the abatement of a potential nuisance, the proposed ordinance authorizes the Public Works Director to review and decide removal requests made on the grounds that the subject tree is dead. This authorization is conditioned on confirmation that the tree is dead, through an arborist's report, and replacement of the tree onsite. The Director also retains discretion to refer the application to the Commission.
6. Coordinating with Planning Approvals HBMC 12.36.060(F). In 2018, the plan check process was changed to ensure that development proposals are sent to the Department of Public Works and the Department of Planning at the same time. Proposals were previously cleared by Planning ahead of Public Works review, and, occasionally, developers would raze trees onsite upon receiving a demolition permit. To buttress the change in plan check procedures, the proposed tree ordinance states that a demolition permit does not authorize removal of parkway trees, for which property owners must obtain a tree removal permit.
7. Penalties for Violations HBMC 12.36.110. Existing penalties for violations of the tree ordinance are limited to the full replacement costs of a tree, when one is unlawfully removed or destroyed, and the fine for an infraction, which is \$100. To enable the City to impose greater fines for egregious ordinance violations, including the willful removal or destruction of a parkway tree, the proposed ordinance is subject to the City's procedures for administrative penalties and the schedule of administrative fines adopted by resolution of the City Council.

General Plan Consistency:

PLAN Hermosa (the City's integrated General Plan and Coastal Land Use Plan) was adopted in August 2017. The PLAN recognizes multiple benefits to the community from increased tree canopy and green space. To these ends, the PLAN sets forth a number of goals relating to expanding and maintaining the City's urban forest, including the preservation of parkway trees. The proposed ordinance is consistent with these goals as detailed in Chapter 5 of the PLAN (Parks & Open Space) and accompanying PLAN Implementation Actions:

Parks + Open Space

Urban Forest. As the biggest plants on the planet, trees have many essential qualities that protect health and safety. They produce oxygen, store carbon, stabilize the soil and provide a home for wildlife. The canopies of trees act as a physical filter, trapping dust and absorbing pollutants from the air - annually removing up to four pounds per tree, and also provide shade from solar radiation and reduce noise.

Landscaping and trees in Hermosa Beach are located in parks and open space settings, within street parkways, and on private property. The Hermosa Beach Municipal Code regulates the provision and maintenance standards for trees. To prevent the installation of invasive or water intensive tree species, the City has established a master tree list.⁹

Goal 9: Protecting critical habitats. Habitat areas and wildlife can be negatively affected by certain types of development and human activity. The City seeks to protect and restore these spaces that are fundamental components of Hermosa Beach's environment and that help define its identity.

- Policy 9.6 Tree protection. Protect existing trees and tree copses that may provide temporary or permanent bird habitat and encourage replacement with specimen trees whenever they are lost or removed.

Goal 10: Providing abundant landscaping, trees, and green space throughout the community. Increased tree canopy and green space, paired with proper maintenance, has the ability to provide a myriad of environmental, social, and economic benefits. Because of the numerous benefits of green space, the City is committed to creating, maintaining and promoting a safe, healthy and environmentally sound urban forest.

- Policy 10.1 Urban forest. Expand the urban forest and green spaces citywide on public and private property.
- Policy 10.3 Green space co-benefits. Recognize the many positive qualities provided by landscaping, trees, and green space including reduced heat gain, controlled stormwater runoff, absorbed noise, reduced soil erosion, improved aesthetic character, and absorption of air pollution.

Implementation Actions.

- PARKS-23. Review and revise as needed, the City's tree ordinance to ensure protection of existing parkway trees, and update the master tree list.
- PARKS-26. Amend the municipal code to incorporate tree removal and replacement requirements in the public right of way. If preservation of existing mature trees is not feasible, removed trees shall be replaced at a minimum 2:1 ratio either on-site, or elsewhere as prescribed by the City.

Fiscal Impact:

The proposed ordinance provides that the City will incur the costs of repairing sidewalks damaged by parkway trees. As the City has informally incurred these costs in recent history, by not requiring tree removal applicants to pay the costs of sidewalk repair, the proposed obligation is not expected to exceed the City's current resources. The proposed ordinance also enables the City to recover the costs of issuing tree removal permits and all other parkway tree permits, previously incurred by the City, through application fees in the amounts of \$200 and \$193, respectively.

Attachments:

1. Tree Policy Ordinance
2. Resolution Amending the City's Master Fee Schedule

Footnotes:

¹ HBMC § 12.36.010.

² HBMC § 12.36.075.

³ HBMC § 12.36.050.

⁴ HBMC § 12.36.050(A).

⁵ Str. & Hwy Code, § 5610.

⁶ See generally, Str. & Hwy Code, §§ 5600-5630.

⁷ HBMC § 12.36.075.

⁸ HBMC § 12.36.050(C); Proposed HBMC § 12.36.060(E).

⁹ PLAN Hermosa, p. 174.

Respectfully Submitted by: Kathy Shin, Assistant City Attorney

Concur: Lucho Rodriguez, Acting Public Works Director

Fiscal Review: Viki Copeland, Finance Director

Legal Review: Michael Jenkins, City Attorney

Approved: Suja Lowenthal, City Manager