

CITY OF OAKLAND
COUNCIL AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2004 JUN 10 PM 1:15

TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Councilmember Jane Brunner
DATE: June 22, 2004

RE: AN ORDINANCE AMMENDING OAKLAND MUNICIPAL CODE SECTIONS 12.36.010 AND 12.36.090 AND ADDING A NEW SECTION 12.04.400 FOR THE PURPOSE OF FURTHER PROTECTING OAKLAND'S CITY-OWNED STREET TREES

SUMMARY

The Council is requested to approve amendments to the Oakland Municipal Code to establish a number of policies pertaining to city-owned trees and the repair of damaged sidewalks and streets.

The intent of the policies outlined here is to maximize the number of street trees in Oakland while ensuring that we have safe, passable sidewalks. Street trees can damage sidewalks, and this damage should be prevented and repaired. At the same time, street trees contribute to the beauty of Oakland and its neighborhoods to such an extent that their preservation should also be a top priority.

The policies outlined in this report attempt to replace the City's current "trees versus sidewalks" perspective with a more holistic approach that recognizes that street trees and sidewalks are part of the same urban streetscape and should be serviced together.

Additionally, this report proposes strategies to increase the number of trees in Oakland, improve the quality of trees that are planted and minimize the negative impacts of necessary tree removals.

FISCAL IMPACT

Council may adopt the changes to the Oakland Municipal Code recommended herein without fiscal impact. Additionally, Council may adopt the recommendations in the section titled "Program Changes for Immediate Implementation" without fiscal impact, as these changes may be incorporated into the existing workload of staff in the Street Tree and Sidewalk Repair Divisions. It is the intent of this report's recommendation that these items be implemented immediately upon passage of this legislation.

Program recommendations in the section titled "Program Changes for Further Analysis" are so grouped because they do have a fiscal impact without an identified funding source. These items are recommended for analysis by staff to determine the costs associated with these items. Approval of this report will constitute a direction to staff to return to Council in the fall with alternative options for funding these recommendations.

7
LIFE ENRICHMENT CMTE.

JUN 22 2004

BACKGROUND

On February 4, 2004, the Public Works Agency issued a draft report entitled *Follow up Report on the City's Sidewalk Repair Program and Recommendations for Improvement* which provided "...new recommendations for improving the tree removal process for sidewalk repairs." In order to reduce the costs of sidewalk repair and the costs of payouts for trip and fall liability claims resulting from tree-damaged sidewalks, the Public Works Agency proposed that the criteria for street tree removal be loosened so that street trees could more easily be removed during sidewalk repairs.

Criteria for Facilitating Tree Removals

Examination of the Public Work's Agency's draft recommendations by Councilmember Brunner's office revealed that the criteria presented by staff to determine whether a tree should be removed were far too general and could lead to literally hundreds of unnecessary tree removals. The goal of making sidewalks easier to repair and avoiding damaged sidewalks instead became a basis for preemptive tree removals which may do neither.

The draft criteria set forth by Public Works included the following. Where the sidewalk is damaged, a tree is to be removed if:

- It has grown within one foot of a utility pole;
- It is leaning to allow less than 14 foot clearance at street level;
- It has grown beyond the base of the curb;
- It has grown within 2 feet of a driveway;
- It creates a "street corner conflict" and hinders drivers' sightlines;
- The tree's position violated Americans with Disabilities Act regulations.

We estimate that there are hundreds, if not thousands of tree removals throughout the City that could result under the above criteria.

Councilmember Brunner held a series of community meetings where more than 150 people attended and received over 1,500 mailed responses to the Public Works proposal.

The Benefits of Street Trees

The primary reason put forward by staff to facilitate the removal of trees is the expense incurred by the City in trip and fall lawsuits involving tree roots uplifting sidewalks. Although the City of Oakland has a policy of encouraging the planting and maintenance of trees, the benefits of street trees go far beyond the environmental and aesthetic. Street trees are vital pieces of the urban fabric that should not be removed without serious justification.

Street trees provide concrete benefits to Oakland's infrastructure, property values and storm water management. According to the Center of Urban Forest Research, a large 40 year-old tree pays back tax payers and homeowners \$60 per year. That same tree provides the following benefits:

- **Storm Water Run Off:** Diverts 2,143 gallons of water per year from our already overtaxed storm water system (\$23/year).
- **Air Pollution:** Removes 2.5 pounds of air pollutants (\$13/year).
- **Electricity Costs:** Conserves 7% of energy bills for cooling (\$8/year).
- **Property Values:** Adds 1% to the resale value of a home.

If we are to evaluate whether a tree is to be removed based exclusively on its financial risk as a trip and fall liability, that cost must be balanced with the benefits that will be lost through that tree's removal. A tree has a clear monetary value that must be weighed against the cost of its removal (\$1,000-\$5,000 depending on the size of the tree).

Current Street Tree Policy

The first modern policy plan for street trees in Oakland is the "Greenstreets" Plan formulated in 1981. This plan was updated in 1998 by a street tree policy task force and revised by City staff. Prior to the Greenstreets Plan there was an "Official Tree Designation List" in 1952. Neither contemporary plan addresses the issue of conflicts between street trees and sidewalk repairs.

Oakland's Municipal Code 12.32.030 gives the City Manager authority to remove "Any tree...which is endangering the security or usefulness of any public street, sewer or sidewalk." While this code affords a certain amount of protection to City-owned street trees it does not address the potential conflicts between sidewalk repair and street trees.

The proposed ordinance clarifies the municipal code as it relates to conflicts between sidewalk repair and street trees. In doing so it establishes stronger protections for street trees in the course of sidewalk repair.

Proposed Changes

This report sets forth a set of policy and programmatic recommendations based on our research of best practices throughout the country, which will preserve our urban forest while maintaining safe sidewalks. Instead of thinking of trees and sidewalks as two separate services, City policy needs to treat them together so that we maximize the number of trees in the City while ensuring safe sidewalks for all our residents.

CHANGES TO THE OAKLAND MUNICIPAL CODE

Proposed amendments to the OMC are included as Attachment A. The following is a summary of the recommended changes/additions:

- 1) Explicitly state that it is the policy of the City of Oakland to "retain as many large, mature trees as possible while repairing damaged sidewalks and streets."
- 2) Amend the procedure for removing City trees to:
 - Require that all feasible alternatives be evaluated before a tree is deemed appropriate for removal.
 - Require that trees that are removed be replaced with the species that is the largest target size appropriate for the site, unless the property owner informs the City that they don't want a tree or would prefer a smaller tree species. Trees should be replanted in alternate locations to avoid utility or ADA conflicts with the goal of no net loss of trees on any block.
 - Restrict removals, except in cases of emergency, to no more than 10% of a block's trees in any one year.
 - Restrict removals, except in cases of emergency or interference with an ADA transition plan, so that trees from two adjacent properties on one block are not removed in the same year.
- 3) Create a new section in the OMC entitled "Sidewalk Repair and Street Trees," which will:

- Require that tree removal, sidewalk repair and tree replanting all occur in coordination at any given sidewalk repair site. Tree planting will occur no later than the next planting season.
- Require that staff use the existing 30-day noticing requirement to neighbors before any sidewalk repair begins to provide additional information to citizens, including a plan for the existing street trees on the block and a tree planting form.
- State that Sidewalk repair and installation will provide for the largest feasible planting area for new or replacement trees.
- State that empty tree wells will not be cemented over by City staff without the property owner's express approval. Tree wells may be relocated to avoid ADA or utility conflicts with the goal of no net loss of tree wells on any block.

PROGRAM CHANGES FOR IMMEDIATE IMPLEMENTATION

In implementing the sidewalk repair and street tree programs staff should do the following:

- Trees are to be assessed prior to sidewalk construction.
- Ensure that all trees planted or replanted are the species with the largest target size appropriate for the site, while accommodating a choice of species by the property owner.
- Conduct an annual public review of the official street tree planting list for potential changes and post an up-to-date tree list on the City of Oakland Website with depictions of each species.
- For Empty tree wells, non-permanent fill is preferable to cement so that tree wells may be planted in the future without costly concrete removal.
- Require the posting of all proposed tree removals, reason for removal and process for appeal on Oaklandnet.com.
- Prior to the removal of any City-owned tree, except in cases of emergency or imminent hazard, City staff must document that they have evaluated alternatives to tree removal to the extent possible within their current allocated budget.
- Develop a process to ensure that penalties are assessed for trees harmed or destroyed during sidewalk repair, garbage collection, pruning for power lines, or private development in instances where the harm was avoidable.
- Coordinate with utility companies to ensure that their tree pruning and removal practices are in line with City of Oakland standards.
- Provide sidewalk cutting services for tree wells.
- Remove tree stumps within three weeks of tree removals.
- Increase planting of new trees.

PROGRAM CHANGES FOR FURTHER ANALYSIS

These items are to be analyzed by staff to determine the costs associated with them and options for funding:

- Prior to the removal of any City-owned tree, except in cases of emergency or imminent hazard, City staff must document that they have evaluated alternatives to tree removal, including but not limited to the use of rubber sidewalks or other sidewalk materials such as decomposed granite, sidewalk grinding, sidewalk ramping, sidewalk meandering (including the possibility of an easement onto private property), curb relocation, utility relocation, and bulb-outs. Such a finding is a requirement for removing a tree.
- Create a computerized tree inventory at the same time as the sidewalk inventory.

- Create a comprehensive sidewalk improvement and street tree preservation plan.
- Develop and implement a routine and consistent sidewalk and tree inspection system.
- Develop and implement a consistent record and retention practice.

The following items are adapted from the 1998 Street Tree Task Force Recommendations. The estimated costs for these items are included as Attachment B, and are to be reviewed by staff in preparation for return to Council in the fall:

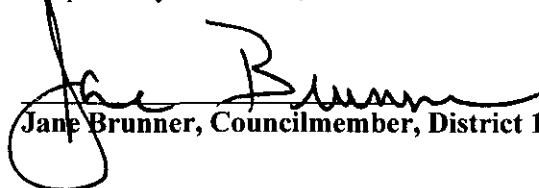
- Plant 2,000 trees per year (versus the current goal of 400)
- Prune official trees on a maximum 5 year cycle as opposed to the current 10 to 15 year cycle
- Maintain computerized tree inventory and utilize a computerized work records and scheduling program

RECOMMENDATIONS:

Approve the attached amendments to the appropriate Municipal Code Sections, including the addition of a new Section titled "Sidewalk Repair and Street Trees." Approve the recommended program changes to the street tree and sidewalk repair program included in the section titled "Program Changes for Immediate Implementation".

Direct staff to analyze the recommended program changes in the Section titled "Program Changes for Further Analysis" and to return to Council in the fall with a strategy to obtain the additional revenues necessary to implement the changes, including the recommendations of the 1998 Street Tree Task Force.

Respectfully Submitted,



Jane Brunner, Councilmember, District 1

Prepared by: Zachary Wald
Aide to Councilmember Brunner

Attachment A:

PROPOSED AMENDMENTS TO THE OAKLAND MUNICIPAL CODE:
(ADDITIONS IN BOLD, DELETIONS WITH STRIKE THROUGH)

OMC-12.04.400 (new section) Sidewalk Repair and Street Trees

The City of Oakland's policy is to provide a comprehensive Sidewalk Program, which is consistent with and which furthers the City's policy of protecting street trees. In furtherance of this policy, the City's practices related to sidewalk repair, installation and replacement (hereafter "sidewalk repair activities") shall include as a mandatory component, consideration of tree-related issues, including the planting, replacement, replanting, and/or removal of street trees. Accordingly, it is the policy of the City of Oakland that repair of sidewalk repair activities include as a mandatory element the planting, maintenance, relocation and/or removal of street trees and that these two activities be performed, budgeted and programmed jointly and as part of the City's comprehensive Sidewalk and Street Tree Program.

Whenever the City undertakes sidewalk repair activities, it shall be the City's policy to achieve the maintenance of the maximum feasible number of street trees reasonably possible at such locations, through planting of new trees and/or replacement and relocation of existing trees required to be removed. Sidewalk repair activities also shall be made to provide the largest tree planting area possible for the specific site.

Property owners at the location where sidewalk repair activities are taking place shall receive a written notice from the Public Works Agency no less than thirty (30) days from the date of the beginning of the repair. This notice will describe the project to be performed and will be accompanied by a Tree Planting form to allow property owners to request a street tree from the City's approved tree list. If feasible, a requested tree shall be planted at the time of the repair or at the latest within the next planting season.

Empty tree wells shall not be covered over in concrete during sidewalk repair unless requested by the adjacent property owner. Tree wells may be relocated to alternate locations where ADA or utility conflicts exist.

OMC-12.36.010 Intent and findings

The ordinance codified in this chapter is enacted in recognition of the following facts and for the following reasons:

A. Among the features that contribute to the attractiveness and livability of the city are its trees, both indigenous and introduced, growing as single specimens, in

clusters, or in woodland situations. These trees have significant psychological and tangible benefits for both residents and visitors to the city.

B. Trees contribute to the visual framework of the city by providing scale, color, silhouette and mass. Trees contribute to the climate of the city by reducing heat buildup and providing shade, moisture, and wind control. Trees contribute to the protection of other natural resources by providing erosion control for the soil, oxygen for the air, replenishment of groundwater, and habitat for wildlife. Trees contribute to the economy of the city by sustaining property values and reducing the cost of drainage systems for surface water. Trees provide screens and buffers to separate land uses, landmarks of the city's history, and a critical element of nature in the midst of urban settlement.

C. For all these reasons, it is in the interest of the public health, safety and welfare of the Oakland community to protect and preserve trees by regulating their removal; to prevent unnecessary tree loss and minimize environmental damage from improper tree removal; to encourage appropriate tree replacement plantings; to effectively enforce tree preservation regulations; **to retain as many large, mature trees as possible while repairing damaged sidewalks and streets**, and to promote the appreciation and understanding of trees. (Prior code § 7-6.01)

OMC-12.36.090 Procedure--City-owned tree removals

A. Prior to the removal of any City-owned tree, except in cases of emergency or imminent hazard, City staff must document that they have evaluated alternatives to tree removal. Such a finding is a requirement for removing a tree.

BA. Tree Posting. Except as exempted in Section 12.36.140, all city-owned trees proposed for removal shall be posted by the Office of Parks and Recreation. A tree tag shall be affixed to each tree proposed for removal in plain view of the street. The tags shall not be removed until such time as tree removal is approved or denied by the city for the tree(s) in question.

CB. Public Notice and Input. The Office of Parks and Recreation shall, within ten working days of tree posting, notify property owners of all parcels located adjacent to the site of proposed tree removal(s) in writing of the fact that city-owned trees have been proposed to be removed, and the closing date for public input. **Such a notice shall include staff's analysis of alternatives, per Sec 12.36.090A above.** The Office of Parks and Recreation shall accept public comment regarding the proposed removal of city-owned trees for a period of not less than twenty (20) working days following proper site posting.

DE. Tree Removal Determinations. The Tree Reviewer of the Office of Parks and Recreation shall review all proposed city-owned tree removals and shall be responsible for making all necessary findings for approval or denial of such

removals **subject to the parameters described in sections E and F below**, including attaching all necessary conditions of approval.

Any telephone calls or written comments received regarding the public input period shall be considered in the preparation of findings, and written records of such calls and/or comments shall be entered into the permanent Tree Reviewer files.

E. Except in cases of emergency or imminent danger, no more than 10% of the trees on any given block shall be removed in one year, nor shall trees be removed from 2 consecutive residences on one block in one year, except where an ADA transition plan requires otherwise. Further, on streets where more than one tree will be removed, tree removal shall be implemented in phases so as to maximize continued canopy coverage.

F. Property owners adjacent to trees to be removed shall be notified that unless they indicate otherwise, or the site is unsuitable, a replacement tree(s) of the largest species appropriate for the site will be planted immediately following the tree removal(s).

Attachment B:**FISCAL IMPACT:****TREE PLAN TASK FORCE PROPOSAL**

Additional staff and equipment to expand the tree program as outlined by the 1998 Tree Plan Task force.

Annual Expenses:	Cost (FY 2004-05)
Sidewalk Cutting Services (2 tree worker/driver for six months)	\$112,612
Annual Equipment and Materials Charges for Sidewalk Cutting	\$6,600
Stump Removal Services (2 tree worker/driver for six months)	\$112,612
Annual Equipment Charges for Stump Removal	\$10,498
Regular Tree Trimming – 4 additional tree crews	\$1,170,166
Tree Trimming Equipment Annual Costs	\$133,328
Tree Safety Inspections – 2 Arbicultural Inspectors	\$219,480
Tree Safety Inspections Annual Equipment and Vehicle Charges	\$13,970
Plant 2,000 Trees/yr. – Full-time planting crew	\$169,400
Planting 2,000 Trees/Yr. – Annual equipment costs	\$111,100
Tree Inventory Maintenance and computerized maintenance and scheduling program – Office Assistant	\$22,559
***Total Annual Expenses	\$2,082,325
One Time Expenses:	
Truck for Stump/Sidewalk Removal	\$71,500
Jack Hammer for Sidewalk cutting	\$5,500
Concrete saw for Sidewalk cutting	\$4,400
Stump Grinder for Stump Removal	\$40,700
Trucks, Chippers and Equipment for Tree Trimming	\$1,566,400
Tree Safety Inspections Trucks and Equipment	\$56,650
Plant 2,000 Trees/yr. Equipment	\$22,000
Tree Inventory One-Time Project	\$440,000
Computers for inventory management	\$36,080
***Total One Time Expenses	\$2,243,230

DRAFT

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

AN ORDINANCE AMMENDING OAKLAND MUNICIPAL CODE SECTIONS 12.36.010 AND 12.36.090 AND ADDING A NEW SECTION 12.04.400 FOR THE PURPOSE OF FURTHER PROTECTING OAKLAND'S CITY-OWNED STREET TREES

WHEREAS, street trees are vital pieces of the urban fabric that should not be removed without serious justification, and;

WHEREAS, it is the responsibility of the City to provide safe, passable sidewalks for the mobility of its residents, and;

WHEREAS, current city policy and practice must address the conflicts between sidewalk repair and street trees, and;

WHEREAS, street trees provide concrete benefits to Oakland's infrastructure, property values and storm water management;

THEREFORE, the Municipal Code of the City of Oakland is hereby amended in the following sections (additions in bold, deletions with strike through):

1. OMC-12.04.400 (NEW SECTION) SIDEWALK REPAIR AND STREET TREES

The City of Oakland's policy is to provide a comprehensive Sidewalk Program, which is consistent with and which furthers the City's policy of protecting street trees. In furtherance of this policy, the City's practices related to sidewalk repair, installation and replacement (hereafter "sidewalk repair activities") shall include as a mandatory component, consideration of tree-related issues, including the planting, replacement, replanting, and/or removal of street trees. Accordingly, it is the policy of the City of Oakland that sidewalk repair activities include as a mandatory element the planting, maintenance, relocation and/or removal of street trees and that these two activities be performed, budgeted and programmed jointly and as part of the City's comprehensive Sidewalk and Street Tree Program.

Whenever the City undertakes sidewalk repair activities, it shall be the City's policy to achieve the maintenance of the maximum feasible number of street trees reasonably possible at such locations, through planting of new trees and/or replacement and relocation of existing trees required to be removed. Sidewalk

**7
LIFE ENRICHMENT CMTE.**

JUN 22 2004

repair activities also shall be made to provide the largest tree planting area possible for the specific site.

Property owners at the location where sidewalk repair activities are taking place shall receive a written notice from the Public Works Agency no less than thirty (30) days from the date of the beginning of the repair. This notice will describe the project to be performed and will be accompanied by a Tree Planting form to allow property owners to request a street tree from the City's approved tree list. If feasible, a requested tree shall be planted at the time of the repair or at the latest within the next planting season.

Empty tree wells shall not be covered over in concrete during sidewalk repair unless requested by the adjacent property owner. Tree wells may be relocated to alternate locations where ADA or utility conflicts exist.

2. OMC-12.36.010 INTENT AND FINDINGS

The ordinance codified in this chapter is enacted in recognition of the following facts and for the following reasons:

A. Among the features that contribute to the attractiveness and livability of the city are its trees, both indigenous and introduced, growing as single specimens, in clusters, or in woodland situations. These trees have significant psychological and tangible benefits for both residents and visitors to the city.

B. Trees contribute to the visual framework of the city by providing scale, color, silhouette and mass. Trees contribute to the climate of the city by reducing heat buildup and providing shade, moisture, and wind control. Trees contribute to the protection of other natural resources by providing erosion control for the soil, oxygen for the air, replenishment of groundwater, and habitat for wildlife. Trees contribute to the economy of the city by sustaining property values and reducing the cost of drainage systems for surface water. Trees provide screens and buffers to separate land uses, landmarks of the city's history, and a critical element of nature in the midst of urban settlement.

C. For all these reasons, it is in the interest of the public health, safety and welfare of the Oakland community to protect and preserve trees by regulating their removal; to prevent unnecessary tree loss and minimize environmental damage from improper tree removal; to encourage appropriate tree replacement plantings; to effectively enforce tree preservation regulations; **to retain as many large, mature trees as possible while repairing damaged sidewalks and streets**, and to promote the appreciation and understanding of trees. (Prior code § 7-6.01)

3. OMC-12.36.090 PROCEDURE--CITY-OWNED TREE REMOVALS

A. Prior to the removal of any City-owned tree, except in cases of emergency or imminent hazard, City staff must document that they have evaluated alternatives to tree removal. Such a finding is a requirement for removing a tree.

BA. Tree Posting. Except as exempted in Section 12.36.140, all city-owned trees proposed for removal shall be posted by the Office of Parks and Recreation. A tree tag shall be affixed to each tree proposed for removal in plain view of the street. The tags shall not be removed until such time as tree removal is approved or denied by the city for the tree(s) in question.

CB. Public Notice and Input. The Office of Parks and Recreation shall, within ten working days of tree posting, notify property owners of all parcels located adjacent to the site of proposed tree removal(s) in writing of the fact that city-owned trees have been proposed to be removed, and the closing date for public input. ~~Such a notice shall include staff's analysis of alternatives per Sec. 12.36.090A above.~~ The Office of Parks and Recreation shall accept public comment regarding the proposed removal of city-owned trees for a period of not less than twenty (20) working days following proper site posting.

DC. Tree Removal Determinations. The Tree Reviewer of the Office of Parks and Recreation shall review all proposed city-owned tree removals and shall be responsible for making all necessary findings for approval or denial of such removals **subject to the parameters described in sections E and F below**, including attaching all necessary conditions of approval.

Any telephone calls or written comments received regarding the public input period shall be considered in the preparation of findings, and written records of such calls and/or comments shall be entered into the permanent Tree Reviewer files.

E. Except in cases of emergency or imminent danger, no more than 10% of the trees on any given block shall be removed in one year, nor shall trees be removed from 2 consecutive residences on one block in one year, except where an ADA transition plan requires otherwise. Further, on streets where more than one tree will be removed, tree removal shall be implemented in phases so as to maximize continued canopy coverage.

F. Property owners adjacent to trees to be removed shall be notified that unless they indicate otherwise, or the site is unsuitable, a replacement tree(s) of the largest species appropriate for the site will be planted immediately following the tree removal(s).

In Council, Oakland, California, _____

Passed By The Following Vote:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND
 PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

 CEDA FLOYD
 City Clerk and Clerk of the Council
 of the City of Oakland, California

7
LIFE ENRICHMENT CMTE.
JUN 22 2004