



Agenda Date: 10/28/2014  
Agenda Item: 3.4

## MEMORANDUM

Date: October 28, 2014  
To: Bryan Montgomery, City Manager  
From: Ken Strelo, Senior Planner  
Project: Street Tree Maintenance and Protection Ordinance

Approved and forwarded to City Council

  
Bryan Montgomery, City Manager

### Background

This is a request for the City Council to consider an ordinance proposed as Chapter 12 of Title 6 of the Oakley Municipal Code ("OMC"), titled "Street Tree Maintenance and Protection" for the purpose of promoting and protecting the public health, safety and general welfare by providing for the regulation of planting, maintenance, removal and replacement of street trees within the City of Oakley.

A "street tree" is defined as a tree intentionally planted or growing within a public right-of-way or public easement within the City (typically along streets and roadways within 12 feet from face of curb), whether or not that tree is located within the physical front or corner side yard of a residence or other property.

Street trees provide substantial economic, environmental and aesthetic importance within a community. Throughout the City of Oakley, especially in newer neighborhoods, there are usually two, and as many as four, street trees planted per residential lot. As these trees mature, or even when still young, residents will sometimes either remove the tree without first consenting with City Staff, or request a permit to remove the tree prior to work for reasons such as damage to the sidewalk or driveway, a different desired landscape theme, or a real or perceived threat of falling. Since many street trees are located within the visual front yard of a lot, it is understandable why many residents would not know a tree is within the City right of way. Currently, there is no ordinance to provide standard policy to residents, so Staff treats each incident on a case by case basis. This proposed ordinance would bridge that gap on processing.

## **Fiscal Impact**

Adoption of this ordinance would result in non-recuperated Staff time associated with issuing no-fee encroachment permits for work within the City right of way. The benefits of these encroachment permits are to provide a standardized list of conditions and to release the City of liability associated with work in the right of way. Secondly, a codified ordinance will establish the groundwork for official handouts that can result in less required Staff time on each case. Finally, adoption of this ordinance will establish replacement requirements for removal of street trees, which could result in newly planted trees or in-lieu fees.

## **Analysis**

Since almost all residential street tree maintenance is the responsibility of the property owner, this ordinance will ensure street trees are maintained in a neat, healthy, and safe condition, and at no undo expense to the City. Since residents will not be required to obtain a permit for routine maintenance of a street tree, including minor pruning and trimming, tree feeding, spraying and watering, the ordinance does not result in permit related expenses to the residents. However, if a street tree dies or one is proposed to be removed, it is the property owner's responsibility to replace it with a tree of the same kind or one that is approved by the City.

As a result of this ordinance, City Staff will also provide a list of "approved street trees," which will be a select group from those identified in the City of Oakley Design Guidelines, but that function well for their specific location (e.g. tree near a sidewalk, near overhead utilities, etc.). Any replacement tree will also be encouraged to complement the existing trees in the neighborhood. This will provide guidance on tree selection and help eliminate tree-related damage to sidewalks and utilities in the long-term.

It is important to point out that this ordinance does not replace or supersede the existing Heritage and Protected Trees Ordinance (OMC 9.1.1112) located in the zoning code; however, as stated in the proposed ordinance; "In the event this chapter and the section relating to Heritage and Protected Trees (OMC section 9.1.1112) contradict each other, OMC section 9.1.1112 shall take precedence. Otherwise, it is possible that both this chapter and OMC section 9.1.1112 may apply to a given situation.

## **Recommendation**

City Council waive the first reading and introduce an ordinance adopting Oakley Municipal Code Chapter 6.12 (Street Tree Maintenance and Protection).

## **Attachments**

1. Proposed Ordinance

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY ADDING  
CHAPTER 12 TO TITLE 6 OF THE OAKLEY MUNICIPAL CODE, DEALING WITH  
STREET TREES**

The City Council of the City of Oakley does ordain as follows:

Section 1. Chapter 12 of Title 6 is hereby added to the Oakley Municipal Code, to read as follows:

**CHAPTER 12  
STREET TREE MAINTENANCE AND PROTECTION**

**6.12.002 Purpose.**

- a. The City recognizes the substantial economic, environmental and aesthetic importance of street trees within a community.
- b. It is the purpose of this chapter to promote and protect the public health, safety and general welfare by providing for the regulation of planting, maintenance, removal and replacement of street trees within the city.

**6.12.004 Definitions.**

- a. "Approved street tree" means a street tree planted as the result of an approved project or subdivision or as a replacement to a removed or damaged street tree that conforms to a specie on the City's approved street tree list.
- b. "Director" means Public Works Director or his/her appointed representative.
- c. "Maintaining" or "maintenance" of a tree means and includes pruning, trimming, clipping, topping, spraying or treating for pests, mulching, staking, bracing or cabling, or otherwise caring for the tree to sustain its life.
- d. "Nonconforming tree" means a street tree which is not an approved tree.
- e. "Private tree" means a tree located on property not within a public right-of-way, public easement or on public property.
- f. "Street tree" means a tree intentionally planted or growing within a public right-of-way or public easement within the city (typically along streets and roadways within 12 feet from face of curb), whether or not that tree is located within the physical front or corner side yard of a residence or other property.
- g. "Street tree permit" means a written or printed authorization issued by the city Public Works Department.

- h. "Minor tree pruning" shall refer to the removal of diseased, dead, interfering or obstructing branches, or training of young trees to enhance structure, health and stability. If more than 20% of the overall tree canopy is desired to be removed, a permit is required.

**6.12.006 Administration.**

- a. The Director shall plan, administer, control and regulate the street tree program of the city in accordance with this chapter. The Director may develop policies and procedures to implement this chapter.

**6.12.008 Maintenance – Street Trees.**

- a. All street tree maintenance shall be the responsibility of the property owner and maintained in a neat, healthy, and safe condition, and at no expense to the City. No permit is required for routine maintenance. Routine maintenance includes minor pruning and trimming, tree feeding, spraying and watering. If a street tree dies, it is the property owner's responsibility to replace with a tree of the same kind or one that is approved by the City. All tree maintenance work shall conform to international society of arboriculture guidelines.

**6.12.010 Permit Required.**

- a. No person may plant, injure, remove or interfere with a street tree, or, trim, prune, or do maintenance work on a street tree in a manner that removes more than 20% of the canopy without first obtaining a street tree permit from the Public Works Department. The permit shall be issued only for work to be done in compliance with this chapter, and shall be issued without a fee. The Director has discretion as to whether the work shall be conducted by a licensed arborist or contractor, or may be conducted by the home owner/permit applicant. The Public Works Department shall supervise work done under a permit.
- b. If a person obtains a building permit or entitlement for development from the Community Development Department, and street tree work is required or authorized under that permit, the person need not obtain a separate street tree permit. The Community Development Department shall notify the Public Works Department of any permit requiring street tree work. The Public Works Department shall supervise street tree work under the permit.

**6.12.012 Replacement of Street Tree.**

- a. A person who received a permit to remove a tree shall at the option of the Director either:
  - b. Replace the tree with one (or more, depending on the tree's size), whereas the variety, location and size is subject to the discretion of the Director. The Director shall require a tree of similar size, if possible. Where a tree of similar size is not possible, the Director shall require a reasonable tree or trees in combination with compensation for the value as indicated below; or
  - c. Compensate the City for the value of the tree. The value of the tree shall be provided by an arborist, hired by the permit holder, based on the diameter of the tree's trunk as measured at breast height (4.5 feet above grade) in inches to the nearest 1/10th of an inch, times the average cost of a 15-gallon sized similar tree, including costs for transportation, installation, and irrigation (if necessary).

- d. Where replacement of a tree of similar size is not possible, the Director shall require a reasonably sized tree or trees in combination with compensation for the value for the remaining unmitigated size.

**6.12.014 Damage of Street Trees.**

- a. No person may:
  - 1) Abuse, mutilate or destroy a street tree;
  - 2) Attach or place a rope or wire (other than a rope or wire customarily used to support a young or broken tree), toy, sign, poster, handbill, paint or other substance, structure or thing to or on a street tree; or
  - 3) Allow a gaseous liquid or solid substance which is harmful to come in contact with a street tree.

**6.12.016 Dead Street Trees.**

- a. No person may remove, prune, trim, clip, top, or otherwise further damage a tree thought to be dead without first contacting the Public Works Department to obtain a street tree permit.

**6.12.018 Open Ground for Trees.**

- a. No person may place or maintain a stone, cement or other substance so that it impedes the free access of water or air to a street tree. At least 12 square feet of open ground shall be maintained around a street tree unless the Director or specific conditions of approval specifically permit or require otherwise.

**6.12.020 Interference with Work of Public Works Director.**

- a. No person may interfere with the Public Works Director or other employee or contractor while the employee or contractor is planting, maintaining, treating or removing a street tree or is removing a stone, cement or other substance from around the trunk of a street tree. For the purposes of this chapter, "interfere" shall apply to both physical and verbal interference.

**6.12.022 Erection, Alteration or Removal of Structures.**

- a. When the erection, repair, alteration or removal of a structure necessitates the trimming, pruning, or removal of a street tree, such tree work may be done only after a written permit is issued by the Community Development Department and at the expense of the applicant. Tree work shall be supervised by the Public Works Department. As a condition to granting a permit for the removal of a tree under this section the applicant shall replace the removed tree with an approved tree. Before this permit is issued, the applicant shall deposit security (cash or a bond) with the City in an amount to cover the cost of replacing the tree. The City may use the security to defray its cost of replacing the tree if the applicant fails to do so within a reasonable time.

**6.12.024 New Development.**

- a. Trees required to be planted per approved plans, or as a condition of approval of a tentative parcel map, tentative map, conditional use permit, design review, variance, sign permit, or building permit inherently become approved trees.

**6.12.026 Public Utilities.**

- a. When a tree interferes with and interrupts service of a public utility company providing gas, water, electricity, telephone, telegraph or cable service within the city, the City may, without first obtaining a permit, trim or remove branches of trees to the extent necessary to restore service.

**6.12.028 Abatement by Pruning on Public Right-of-Way.**

- a. The Public Works Director shall be empowered to authorize the pruning of any Street Tree, unapproved Street Tree, or other planting in the public right-of-way or easement without prior notice to the property owner, if the Public Works Director or his designee determines in his or her sole discretion that the Street Tree, unapproved Street Tree, or other plantings constitute an immediate danger to public health, safety, or property. All pruning costs incurred shall be charged to the property owner.

**6.12.030 Heritage and Protected Trees.**

- a. In the event this chapter and the section relating to Heritage and Protected Trees (OMC section 9.1.1112) contradict each other, OMC section 9.1.1112 shall take precedence. Otherwise, it is possible that both this chapter and OMC section 9.1.1112 may apply to a given situation.

**6.12.032 Non-Liability of City.**

- a. Nothing in this chapter shall be deemed to impose any liability for damages or a duty of care or maintenance upon the City or its officers or employees. The person(s) who owns the property in which the City right-of-way is located shall have a duty to keep all trees located on his or her or their property in a safe and healthy condition.

Section 2. California Environmental Quality Act (CEQA) Finding.

This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore the project is not subject to CEQA.

Section 3. Severability.

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 4. Effective Date and Publication.

This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk's Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on \_\_\_\_\_, 2014 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

\_\_\_\_\_  
Randy Pope, Mayor

ATTEST:

\_\_\_\_\_  
Libby Vreonis, City Clerk

\_\_\_\_\_  
Date