

September 15, 2005

Honorable Chairman and Members of the
Public Works Commission

Regular Meeting of
September 28, 2005

REVISED TREE ORDINANCE

Recommendation:

It is recommended that the Public Works Commission hold a public hearing to receive public comment and make recommendations to Council regarding recommended revisions to the City's Tree Ordinance.

Summary:

Staff published a Notice of Public Hearing in the Easy Reader on September 15, 2005 advising residents of this meeting. The attached draft ordinance prepared by the City Attorney was taken into consideration along with prior recommendations from the Public Works Commission and the Tree Subcommittee, which at that time consisted of a representative from the Planning, Public Works and Parks & Recreation Commissions. The primary elements of the ordinance are summarized below:

- The ordinance clearly states that trees in the public right-of-way that were not planted by the City are the responsibility of the adjacent property owner.
- The ordinance provides for the issuance of a permit to allow a property owner to plant a parkway tree.
- The ordinance established an official list of approved parkway trees.
- The ordinance also allows a property owner to remove a parkway tree, with a permit, if it is dead, constitutes a nuisance or interferes with the use or enjoyment of the adjoining property. Approval by the City for the removal of a tree with a diameter in excess of 12-inches (measured at six feet above the ground) requires a public hearing before the Public Works Commission.
- The ordinance also clearly designates the adjoining property owner as the party responsible for the abatement of any public nuisance due to a parkway tree, and for this section "tree" also refers to shrubs and other vegetation in the parkway. This includes responsibility for trimming trees to maintain clearance for pedestrian and vehicular access. It also includes responsibility for repairing any root related damages to street pavement, sidewalk, curbing and subterranean piping (i.e. sewers).

Staff wishes to discuss the implications of the final bullet point above regarding abatement of nuisances. The following examples have been included for the Commission to consider the implications of this requirement in the ordinance.

1. The roots of a very large liquid amber tree on Morningside Drive just north of 31st Place have severely raised the curb and gutter, disrupting drainage, and broken the concrete street pavement. Staff has estimated the damages would cost approximately \$5,000 to repair. The tree was planted in a very narrow parkway adjacent to the curb. There is no sidewalk at this location. The tree is very old and

was in place long before the present owner purchased the property. Staff recommends that the tree be removed before doing any repairs.

In accordance with the language in Section 12.36.070 of the proposed tree ordinance, staff would require the property owner to pay for the tree removal and the repair of the damaged pavement and curbing. The total cost will probably be \$6,000 - \$7,000. In the past, the City performed repairs to the public improvements. The only thing the City had success with in the past has been getting the resident to take care of tree trimming.

2. A residence on 4th Street has very large trees on private property and in the public right-of-way. The roots from these trees have penetrated the lateral connections to the sewer main, plugging the sewer mainline. These roots have also penetrated through all of the joints in the sewer mainline. Sewer backups have caused back ups and overflows into the private sewer clean-outs and flooded private property. Again, the language of the proposed ordinance makes the private property owner responsible for any damages as well as repairs to the sewer. In the past, the City would not be responsible for damages if the root problem came from the private lateral or its connection to the mainline. If the roots were coming through the mainline and caused the back up, then the City would take full responsibility for damages.

In the above example, the City would deny any damage claims but would cover the cost of unplugging mainline. The new ordinance would require the property owner to pay these costs, which could amount to several thousand dollars.

In the two examples, staff believes it would be difficult to hold a property owner liable for damages caused by a tree in the public right-of-way that they did not plant. Staff recommends that the Commission consider an option that would only hold the property owner for tree removal costs when determined necessary and only hold them responsible for damages in the case of a newly permitted tree. An agreement to that end could be a requirement of the permit and would be recorded against title to run with the land.

Attachments:

- 1 Notice in Easy Reader
- 2 Draft Revised Tree Ordinance

Respectfully submitted,



Richard D. Morgan, P.E.
Director of Public Works/City Engineer

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF HERMOSA BEACH REGARDING TREES IN PUBLIC RIGHTS OF WAY AND AMENDING THE HERMOSA BEACH MUNICIPAL CODE

The City Council of the City of Hermosa Beach does ordain as follows:

Section 1. Chapter 12.36 of Title 12 of the Hermosa Beach Municipal Code is amended in its entirety to read as follows:

TREES

Sections:

- 12.36.010** **Definitions**
- 12.36.020** **Planting of trees in parkway.**
- 12.36.030** **Maintenance of trees in the parkway.**
- 12.36.040** **Prohibition on damage, destruction or removal of parkway trees.**
- 12.36.050** **Prohibition of attaching objects to parkway trees.**
- 12.36.060** **Protection of parkway trees during construction.**
- 12.36.070** **Abatement of nuisance conditions.**
- 12.36.080** **Remedies.**
- 12.36.090** **Violations.**

12.36.010 **Definitions**

As used in this chapter:

“Director” means the Public Works Director or his/her designee.

“Parkway” means 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.

“Property Owner” means the person or entity that owns the real property abutting and usually extending to the centerline of the immediately adjacent public-right-of-way.

“Public right-of-way” means any area owned by or dedicated to the City for highway purposes.

“Tree” means any perennial plant having a self-supporting woody main stem or trunk measuring at least five inches in circumference at a height of six feet above the ground, usually characterized by the ability to grow to considerable height or size and to develop woody branches.

12.36.020 **Planting of trees in parkway.**

No person other than the City and the Property Owner shall plant a tree on any parkway. The Property Owner requesting to plant a tree in the parkway shall first obtain a permit from the Director. Only those species of trees specified on the City’s official list of approved parkway trees shall be planted in the parkway. Trees planted on the parkway by the Property Owner shall be planted in accordance with horticultural standards promulgated by the Director. All work under a permit shall be performed within thirty days of the issue date of the permit, and shall be performed in accordance with the conditions and requirements set forth in the permit.

12.36.030 **Maintenance of trees in the parkway.**

A. With the exception of those trees maintained by the City (as set forth in an inventory of City-maintained trees published by the Director), it is the duty of the Property Owner at his or her expense to

cultivate, care for and provide for the complete maintenance of all trees on the parkway adjacent to their real property. Trees shall be maintained in accordance with horticultural standards promulgated by the Director, and shall be maintained in a manner as not to cause or constitute a nuisance. The Property Owner shall be liable for all damages or injuries incurred by any person or to any real or personal property arising from his or her failure to maintain parkway trees as required by this Section.

B. No person other than the City and the Property Owner, including but not limited to utility companies and others owning facilities or performing work in the public right-of-way, shall trim, prune or cut a tree without first obtaining a permit from the Director. All work under a permit shall be performed within thirty days of the issue date of the permit, and shall be performed in accordance with the conditions and requirements set forth in the permit.

12.36.040 Prohibition on damage to or destruction of parkway trees.

A. No person, including the Property Owner, shall willfully injure, deface, mutilate, poison or destroy a parkway tree.

B. No person shall place or maintain any stone, concrete, cement, asphalt, brick or other substance or object within the drip-line of a parkway tree so as to impede free access of water and air to the roots of the tree.

C. No person shall cause or allow any substance deleterious to tree life, including but not limited to oil, dye, brine or any other substance, to pour, flow or drip on any parkway tree or around the base of any such tree.

12.36.050 Permit requirement for tree removal

A. No person, including the Property Owner, shall remove a parkway tree without first obtaining a permit from the Director. A permit to replace a tree may be issued if the tree is dead, otherwise constitutes a public nuisance or interferes significantly with the use and enjoyment of the immediately adjoining property. All work under a permit shall be performed within thirty days of the issue date of the permit, and shall be performed in accordance with the conditions and requirements set forth in the permit.

B. Applications for permits to remove a tree with a trunk diameter in excess of twelve inches (measured six feet above the ground) shall be referred to and decided by the Public Works Commission following a public hearing. Notice of the hearing shall be provided to the owners of all real property within a radius of three hundred feet of the subject tree. The decision of the Commission may be appealed to the City Council. Appeals shall be filed in writing within ten days of the final decision of the Commission. The City Council's decision shall be final.

C. A permit to remove a tree shall include imposition of a condition requiring replacement of the tree at the same or a different location with a tree from the City's official list of approved parkway trees, unless the Director or the Commission find that replacement is physically impractical or infeasible.

12.36.060 Prohibition of attaching objects to parkway trees.

No person shall tack, nail, paste or otherwise attach by any means whatsoever any sign, notice, advertisement or any other printed matter, or place any board, platform or other object on a tree. No person shall attach any rope or wire to any tree for the purpose of maintaining or repairing the tree without first receiving a permit from the Director.

12.36.070 Protection of parkway trees during construction.

During the construction, repair or renovation of any structure, utility facility or right-of-way improvement, the person responsible for such activity shall take all necessary precautions to protect parkway trees in the vicinity of the construction project.

12.36.070 Abatement of nuisance conditions.

The Property Owner shall abate any condition of a parkway tree determined by the Director to constitute a public nuisance. For purposes of this section, "tree" shall include shrubs and other vegetation in the parkway. Conditions constituting a nuisance include, but are not limited to, dead or diseased trees, trees constituting a danger to persons or property, trees impairing vehicular visibility, trees endangering utility wires or subterranean pipes or conduits, trees damaging concrete or asphalt, and trees impairing pedestrian use of the sidewalk. The nuisance condition shall be abated in the manner prescribed by the Director. In the event the Property Owner fails or refuses to abate the nuisance, the provisions of Chapter 8.28 pertaining to abatement of public nuisances shall be applicable.

12.36.080 Remedies.

In addition to any other remedies provided for in this Code and State law, a person who damages, mutilates, removes or destroys a parkway tree shall be liable to the City for the full replacement cost of the tree.

12.36.090 Violations.

Violations of the provisions of this Chapter shall be infractions, punishable in accordance with Section 1.12.010 of this Code.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2005.

MAYOR

ATTEST:

City Clerk