



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2671
www.CityofSacramento.org

Consent
May 26, 2009

Honorable Mayor and
Members of the City Council

Title: Change the Appeal Hearing Body for Decisions on Tree Removal and Maintenance Permits (M08-042)

Location/Council District: Citywide

Recommendation: 1) Review a **Resolution** determining the project is exempt from environmental review; 2) Review an **Ordinance** amending Title 12 of the City Code relating to appeals of decisions on tree removal and maintenance permits; and 3) pass for publication the Ordinance titles as required by Sacramento City Charter 32(c) to be adopted June 2, 2009.

Contact: Sandra Yope, Senior Planner, (916) 808-7158; Joy Patterson, Principal Planner, (916) 808-5607, Joe Benassini, Urban Forest Manager, 808-6258

Presenter: Not Applicable

Departments: Community Development and Transportation

Divisions: Current Planning and Urban Forestry

Organization No: 21001010

Description/Analysis:

Issue: In January 2008, the Division of Urban Forestry was moved from the Department of Parks and Recreation to the Department of Transportation. The current process to remove or perform maintenance work (such as pruning) on either a street tree or a heritage tree requires a permit issued by the designated representative of the Director of the Department of Transportation. Any party who objects to the director's decision may appeal the decision to the Parks and Recreation Commission. When a tree is being removed or maintained as part of a development application the current process has the Parks and Recreation Commission make a decision on a tree without knowing the context of the proposed removal in relation to the associated project. Therefore, staff proposes to change the code to have appeals of the Director's tree maintenance/removal decisions associated with development projects be heard by the Planning Commission and follow the appropriate noticing and call up provisions of Title 17,

the Zoning Code, relating to Planning Commission hearings and call up procedures.

Additionally, members of the Parks and Recreation Commission expressed concerns is that under the current provisions, appeals of the decision of the Director related to development projects are appealed to the Parks and Recreation Commission, which does not actively participate in approval of development projects. As a result, decisions regarding development projects are separated from decisions regarding those project's impacts to heritage or street trees.

Staff has prepared an ordinance that proposes amendments to Title 12, Streets, Sidewalks and Public Places, to designate the Planning Commission, rather than the Parks and Recreation Commission, as the appeal hearing body for tree maintenance/removal permit decisions that are associated with development projects. Appeals of all other tree maintenance/removal permits would continue to be heard by the Parks and Recreation Commission. The call up procedures in Title 12 will be changed to mirror the call up procedures in Title 17 to include the ability to rescind a call up. The decision of the Planning Commission, like that of the Parks and Recreation Commission, will be final but subject to call up by the mayor or the council member of the district that the tree is located in.

Policy Considerations: The proposed ordinance is consistent with the City's Strategic Plan goal, to achieve sustainability and livability and foster economic development in the City of Sacramento.

Committee/Commission Action: As presented to the Law and Legislation Committee on January 20, 2009, the proposed ordinance would have made all tree maintenance/removal permits appealable to the Planning Commission, except permits related to heritage trees located in city parks. The Committee forwarded the ordinance to Council for approval by a vote of four ayes with direction to limit the scope of the amendments to apply only to the appeal process for tree maintenance/removal permits associated with development projects. The attached ordinance reflects the requested changes.

The proposed code amendments were presented to the Urban Forestry Advisory Committee on December 8, 2008 and to the Parks and Recreation Commission (PRC) on January 8, 2009.

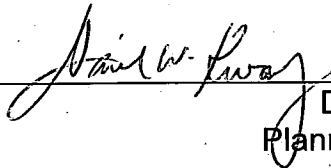
Environmental Considerations: The proposed ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15061(b) (3).

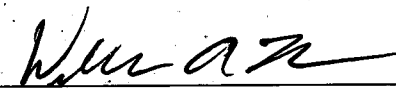
Sustainability Considerations: There are no sustainability considerations applicable to the change of hearing bodies for appeals of the tree removal permit decisions.

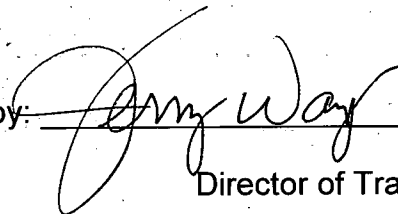
Rationale for Recommendation: The proposed code amendments will align the hearing body for appeals of tree removal permits associated with a development project to the appropriate hearing body also reviewing the associated development project.

Financial Considerations: None.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.

Respectfully Submitted by: 
David Kwong
Planning Director

Approved by: 
William Thomas
Director of Community Development

Approved by: 
Jerry Way
Director of Transportation

Recommendation Approved:

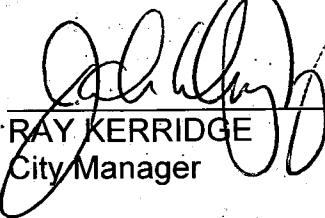

RAY KERRIDGE
City Manager

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**URBAN FORESTRY ADVISORY COMMITTEE
Staff Summary**

MEETING DATE December 8, 2008
SUBJECT: Proposed Ordinance Change for Appeals of Director's
Decision

ISSUE

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 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 and approval process and can potentially put the Planning Commission and the Parks and Recreation Commission's decisions in conflict. Development Services Department staff and Urban Forestry Division staff 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 streamline the tree permit decision process.

BACKGROUND INFORMATION:

Urban Forestry Services, the Development Services Department, and certain members of 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, which does not actively participate in approval of development projects. As a result, decisions regarding development projects are separated from decisions regarding those project's impacts to heritage or street trees.

This process results in a poorly coordinated development review and approval effort and confusion over the final authority in regards to development that impacts protected trees. 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 amended to shift responsibility for those appeals to the City of Sacramento Planning Commission.

Staff Summary

Urban Forestry Services Committee

December 8, 2008

Urban Forestry Services originally included an intention to propose this shift where trees are impacted by development projects as a part of the complete ordinance review. Based on earlier stated concerns by the Parks and Recreation Chair and others, staff supports a separate ordinance amendment to do so under the premise that the approving body should consider all project impacts, including impacts to protected trees. Under the proposed language, however, all appeals, including those that are related to owner-occupant permit applications, would be transferred. The committee may wish to consider whether it wishes to retain the responsibility to hear appeals related to park trees as well as those brought by owner-occupants outside the development review process.

A copy of the ordinance changes are attached for your review, including a clean and marked version. Staff requests that the Parks and Recreation Commission's Urban Forestry Committee review the proposed language and provide comments on this issue.

RESOLUTION NO. 2009-

Adopted by the Sacramento City Council

**DETERMINING PROJECT EXEMPT FROM REVIEW UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT (M08-042)**

BACKGROUND

A. On June 2, 2009, the City Council considered an ORDINANCE 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 (the Project) and received and considered evidence concerning the Project.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

Section 1. Based on the determination and recommendation of the City's Environmental Planning Services Manager and the oral and documentary evidence received on the Project, the City Council finds that the Project is exempt from review under Section 15061(B)(3) of the California Environmental Quality Act Guidelines as follows:

Under section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, an activity is exempt from CEQA when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The proposed ordinance relates to changing the hearing body for appeals of tree removal permits associated with development projects, which applications will be subject to independent environmental review. It can be seen with certainty that the proposed ordinances will not themselves have a significant effect on the environment and, therefore, is not subject to CEQA review.

**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 Parks and Recreation 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 ~~or Section 12.56.070 of this chapter~~ shall be entitled to meet personally with the director to review the permit application or the proposed work. Except as provided in subsection (B), below, aAny person aggrieved by the director's decision may appeal such decision to the parks and recreation commission by filing a written notice of appeal with the city clerk~~secretary~~ of the commission 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 decision of the 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.

~~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 novo.~~

B. Appeal to City Planning Commission.

1. If the subject of the director's decision under subsection (A), above, is a tree located on property for which an application for a discretionary development entitlement under Title 16 or Title 17 of this code is then currently pending or has been approved and is not expired, and the purpose of the proposed maintenance or removal is to facilitate development of the property consistent with the pending application or approved entitlement, then any person aggrieved by the director's decision may appeal such decision to the city planning commission by filing a written notice of appeal with the secretary of the planning commission 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. The director shall determine whether the appeal shall be heard by the planning commission under this subsection (B)(1), and the director's decision on this issue shall be final and shall not be subject to appeal.

2. 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.

3. 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.

4. Except as otherwise specified in this section, the 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.

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

12.64.060 ~~Maintenance responsibility~~—Appeal of decision of director.

A. Appeal to Parks and Recreation Commission.

1. Except as provided in subsection (B), below, any person dissatisfied with the decision of the director taken under this chapter may appeal such decision to the parks and recreation commission. Such appeal shall be in writing, stating the reasons therefore, and shall be filed with the secretary of the commission not later than ten (10) calendar days after the date of the director's decision. 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. 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. The decision of the 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.

~~_____ The secretary of the commission shall 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 novo.~~

B. Appeal to City Planning Commission.

1. If the subject of the director's decision under subsection (A), above, is a tree located on a property for which an application for a discretionary development entitlement under Title 16 or Title 17 of this code is then currently pending or has been approved and is not expired, and the purpose of the proposed maintenance or removal is to facilitate development of the property consistent with the pending application or approved entitlement, then any person aggrieved by the director's decision may appeal such decision to the city planning commission by filing a written notice of appeal with the secretary of the planning commission 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. The director shall determine whether the appeal shall be heard by the planning commission under this subsection (B)(1), and the director's decision on this issue shall be final and shall not be subject to appeal.

2. Notice of Appeal Hearing.

a. 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.

b. 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 to the person before which the original proceeding 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.

3. 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.

4. Except as otherwise specified in this section, the 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.

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12.56.120 Appeals.

A. Appeal to Parks and Recreation 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 the proposed work. Except as provided in subsection (B), below, any person aggrieved by the director's decision may appeal such decision to the parks and recreation commission by filing a written notice of appeal with the secretary of the commission 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 decision of the 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.

B. Appeal to City Planning Commission.

1. If the subject of the director's decision under subsection (A), above, is a tree located on property for which an application for a discretionary development entitlement under Title 16 or Title 17 of this code is then currently pending or has been approved and is not expired, and the purpose of the proposed maintenance or removal is to facilitate development of the property consistent with the pending application or approved entitlement, then any person aggrieved by the director's decision may appeal such decision to the city planning commission by filing a written notice of appeal with the secretary of the planning commission 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. The director shall determine whether the appeal shall be heard by the planning commission under this subsection (B)(1), and the director's decision on this issue shall be final and shall not be subject to appeal.

2. 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.

3. 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.

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

12.64.060 Appeal of decision of director.

A. Appeal to Parks and Recreation Commission.

1. Except as provided in subsection (B), below, any person dissatisfied with the decision of the director taken under this chapter may appeal such decision to the parks and recreation commission. Such appeal shall be in writing, stating the reasons therefore, and shall be filed with the secretary of the commission not later than ten (10) calendar days after the date of the director's decision. 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. 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. The decision of the 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.

B. Appeal to City Planning Commission.

1. If the subject of the director's decision under subsection (A), above, is a tree located on a property for which an application for a discretionary development entitlement under Title 16 or Title 17 of this code is then currently pending or has been

approved and is not expired, and the purpose of the proposed maintenance or removal is to facilitate development of the property consistent with the pending application or approved entitlement, then any person aggrieved by the director's decision may appeal such decision to the city planning commission by filing a written notice of appeal with the secretary of the planning commission 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. The director shall determine whether the appeal shall be heard by the planning commission under this subsection (B)(1), and the director's decision on this issue shall be final and shall not be subject to appeal.

2. Notice of Appeal Hearing.

a. 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.

b. 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 to the person before which the original proceeding 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.

3. 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.

4. Except as otherwise specified in this section, the 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.