

REVISED



**CITY OF SOUTH PASADENA
NATURAL RESOURCES AND ENVIRONMENTAL COMMISSION
SPECIAL MEETING AGENDA**

MONDAY October 30, 2017 7:00 p.m.

CITY HALL – 2nd FLOOR CONFERENCE ROOM

1424 Mission Street, South Pasadena, CA 91030

Commissioners: Al Benzoni, Kay Findley, William Kelly, Stephen Leider,
Noah Puni, Daniel Snowden-Ifft and Nancy Wilms
City Council Liaison: Council Member Richard D Schneider, MD
Staff Liaison: Jennifer Shimmin

Roll Call

Approval of Minutes from Regular Meeting: September 26, 2017.

PUBLIC COMMENTS AND SUGGESTIONS

Time reserved for those in attendance who wish to address the Commission. All attendees should be aware that the Commission may not discuss details or vote on non-agenda items. Your concerns may be referred to staff or placed on a future agenda. Note: public input will also be taken during all agenda items.

BUSINESS ITEMS

- 1) **Grey Water Ordinance (Benzoni)** – Consider finalized language regarding a grey water ordinance and make a recommendation for City Council approval.
- 2) **Solar Building Ordinance (Kelly)** – Discuss possible recommendation to require solar panels on new homes and buildings and when major remodels are done.
- 3) **Tree Canopy Community Meeting (Kelly)** – Consider organizing and holding a community meeting regarding the state of the city’s tree canopy.
- 4) **Tree Ordinance Update Final Comments (Shimmin)** – Submit any final comments on the Chapter 34 Tree Ordinance draft updates.
- 5) **Water Conservation Programs and Drought Update (Shimmin)** - City had a total water use reduction of 21% for September, 2017 versus the same month in 2013.

INFORMATION ONLY (No Discussion Required) (15 minutes)

- 6) **Urban Forest Update (Shimmin)**
- 7) **Upcoming Events** – General Plan Update Meeting November 8th; Too Toxic to Trash HHW and E-Waste Event Monterey Park November 18th

- CHAIR COMMUNICATIONS**
- COMMISSIONER COMMUNICATIONS**
- STAFF LIAISON COMMUNICATIONS**
- COUNCIL LIAISON COMMUNICATIONS**

ADJOURNMENT – Next Regular Meeting – November 28, 2017

STATE OF CALIFORNIA)
CITY OF SOUTH PASADENA)
COUNTY OF LOS ANGELES)

I declare under penalty of perjury, that I am an employee of the City of South Pasadena, and that I posted this Agenda on the bulletin board in the courtyard of the City Hall at 1414 Mission Street, South Pasadena on 10-26-17, as required by Law.

Date: 10/26/2017 Signature: 

Any disclosable public records related to this meeting distributed to the Commission fewer than 72 hours prior to the meeting shall be available for public inspection at the Public Works Office, 1414 Mission Street, Room #201, prior to the meeting. Copies of the agenda packet and any supplemental documents will be available at the meeting. Any documents distributed at the meeting will be made available following the meeting at the Public Works Office during normal business hours.

**CITY OF SOUTH PASADENA
NATURAL RESOURCES AND ENVIRONMENTAL COMMISSION
MINUTES – September 26, 2017**

Roll Call – The meeting called to order at 7:00 p.m. Present were Commissioners: Chair William Kelly, Vice-Chair Al Benzoni, Kay Findley, Stephen Leider, Daniel Snowden-Ifft, and Nancy Wilms (arrived 8:02pm). Also present were Council Liaison Dr. Schneider, and Staff Liaison Jenna Shimmin.

Minutes – Minutes for August 30, 2017 were approved with no corrections (Findley, Leider; Ayes: All, Nays: 0).

PUBLIC COMMENTS – None.

BUSINESS ITEMS

1. **Tree Removal Permit Hearing: 1446 Oak Crest Avenue** – Staff provided a brief recap regarding this request from Karineh Minassian, the owner of 1446 Oak Crest Avenue, to remove a Canary Island Pine, that she stated was damaging the property. Staff also explained that Commission Wilms was absent during this hearing as she had recused herself from the procedures due to her living in close proximity to this property.

Chair Kelly requested a review of the planned construction plans that were submitted to the planning department regarding this property after the initial hearing before the NREC in August. The applicant handed out a packet to the commissioners that included a letter from a second arborist, a close up of the plans, and pictures of the property.

Commissioner Benzoni stated that the original arborist report states the tree is healthy, balanced and symmetrical. He asked for clarification of the location of the tree described in the arborist's report dated 6-17-2017, as it is difficult to tell how far from the house the report states the tree is located. Commissioner Snowden-Ifft asked what is meant by the northeast corner.

- The applicant had the arborist from McKinley & Associates (William McKinley) respond, and it was determined that northeast is not the correct directional indicator. The arborist showed the commission the correct corner on the plans.

Commissioner Benzoni then asked if the International Society of Arboriculture (ISA) standard is three times the diameter, why most recent arborist's report states that root trimming can't be done.

- Mr. McKinley responded that the roots are damaging more than one area of the home, the garage area and the living quarters. He further explained that even if the roots aren't directly against a structure/foundation their growth nearby would displace soil which would push against the nearest thing, which is the house in this case.
- The applicant presented a photo on her phone of a crack under the stairs that run outside of the living area, not far from the tree in question.

Commissioner Snowden-Ifft asked for clarification regarding how the applicant knows the tree roots are causing the damage to these three areas of the home, in the garage foundation, under the stairs and under the living area, when it isn't apparent from any of the photos provided.

- The applicant had the arborist from Pasadena Concrete Works, Inc. (Peter Harnisch) respond, and he advised the commission that even if this tree wasn't causing the damage currently, its roots would inevitably cause the same damage.

Commissioner Benzoni stated that there appears to be another pine in front of the house that is just as close to the property as the tree in question. He asked the applicant why she doesn't feel this is a threat to the property in the same respect.

- The applicant responded that the arborist assessed that tree as well and stated it wasn't a threat.

Commissioner Benzoni asked the applicant if there is a tree replacement plan available.

- The applicant responded that she did have one where she will be planting three 24" box trees. She also advised the commission that she obtained a quote to remove the pine, but was unable to obtain a quote to root trim the tree and replace the concrete. She stated that of the companies she contacted they either told her they wouldn't take on the project, or didn't contact her back at all.

Chair Kelly made a motion to approve the tree removal with no second.

Commissioner Benzoni stated that because of the other tree on the property that is in close proximity to the structure, and other similar trees in the neighborhood that are similarly located on their properties, he doesn't see any backing for the imminent harm claim being used as ground to remove this tree.

Commissioner Snowden-Ifft stated that to him the issue lies with whether or not the roots of this tree are causing the damage to the property. The engineer's report states that there are cracks on the property, and there is a pine tree present, but he doesn't see where it specifically says that the pine tree is causing the damage.

- The applicant explained that at the start of the report it states that the purpose for being at the property is to assess the effects of the pine tree on the property.

Commissioner Leider made a motion to deny the request due to a lack of evidence to support the applicants claim that there is imminent harm to her property being caused by the Canary Island Pine in question, with Commissioner Findley seconding the motion.

Roll call vote: Findley – Yes, Benzoni – Yes, Snowden-Ifft – Yes, Puni – Yes, Leider – Yes, Kelly – Yes (Commissioner Wilms was recused at the time of the vote)

2. **Tree Ordinance** – Commissioner Findley suggested that the commission go through the document and review the comments and markups in order.

- It was decided that ISA would be spelled out as International Association of Arboriculture every use.
- 34.5(a) need to add language that trees less than 4" in diameter do not need to be on the tree replacement plan.
- 34.7(a)(1) the commission is ok with the words "imminent" and "feasible".
- 34.7(a)(2) need to add the following language "The presence of proposed development plans does not constitute an unreasonable hardship on their own".
- On construction related removals, there is a one 24" box for 6" of diameter replacement requirement, versus the current code language of every 10".
 - o Staff will need to determine a threshold of what constitutes "construction", as the intent is to capture major development and not small residential construction.
- There was discussion on whether to include language that requires residents to water trees on the parkway and penalize those who don't. Chair Kelly mentioned that it would be a good idea to work into the rates a way to incentive residents to water trees, and to find a way to fund tree maintenance through a fee similar to the Water Efficiency Fee. The commission discussed the potential penalties for not watering trees, and whether the city should require the watering with or without a penalty. It was decided to hold off on adding any language of this nature at this time in lieu of future alternatives.

A motion was made to approve the edits to Chapter 34 Tree Ordinance and recommend that council adopt them as an update the city's municipal code (Snowden-Ifft, Puni; Ayes: All, Nays: None).

3. **Tree Removal Hearing Discussion** – Commissioner Findley stated that in the past the NREC didn't approve any tree removal requests, and she's concerned with how and why requests are being approved now. She is also concerned that the Public Works Director has too much approval authority, and wanted to see how the rest of the commission felt. The commission reached a consensus that going forward there would be more consistency and standards thanks to the revisions to Chapter 34 that were approved earlier tonight.
4. **Trees & Climate Change** – Chair Kelly advised the commission that he has spent the last few months investigating the affect climate change is having on our trees. He has interviewed scientists and came across a study on climate ready trees in urban areas of Southern California. The city's list of approved trees only has 2 of the trees recommended by this study, there are 10 additional trees that are missing.

To summarize the study, he stated that trees planted 100 years ago may not be appropriate for 100 years from now. Because of this we need to consider the urban heat island effect with planting new trees. He is purposing the city hold a "tree summit" of sorts to engage the community on the impacts of climate change on our tree canopy. Maintaining our tree canopy could potentially be funded by some sort of carbon sequestration fee in the future.

Chair Kelly also suggested that it would be a good idea to update the city's approved tree list to eliminate species that are specifically susceptible to pests. Chair Kelly explained that Dr. Turney, a

South Pasadena resident and expert on the subject matter currently working for Los Angeles County, stated that there are 49 species of trees susceptible shot hole bore beetle. Dr. Turney recommends not planting trees such sycamores, crepe myrtles, and island oaks in order to prevent the spread of this pest.

Chair Kelly made a motion to direct Public Works to work with West Coast Arborist to remove pest prone trees from the City's drought tolerant/native tree list that the city and the public utilizes, and to add the recommended climate ready trees (Kelly, Leider; Ayes: All, Nays: None).

5. **Water Conservation Programs and Drought Update** – Jenna Shimmin updated the commission that there was a 21% reduction in water use for August 2017 versus 2013 usage.
6. **October Meeting Date Change** – A motion was approved to cancel the regular meeting scheduled for October 24th and hold a special meeting October 30th (Benzoni, Kelly; Ayes: All, Nays: None).

INFORMATION ONLY

7. **Urban Forest Update** – Staff explained that because Public Works is still updating the landscape maintenance RFP and tree maintenance RFP tree trimming activity is limited to emergency trimming. Public Works staff are also planning fall tree plantings.
8. **AB 1530 -**
9. **Upcoming Events** – Water and Sewer Rate Community Meeting – September 28th; Our Resilient Community General Plan Update Community Meeting – October 10th; Dumpster Day – October 14th; Upper District Waterfest – October 14th; Garfield Reservoir Open House – October 21st

Chair Communications – Chair Kelly advised the commission that he spoke with the chair of the Design Review Board and the Planning Department regarding 629 Alta Vista Circle. He learned that per the zoning code because of the location of the street to the garage the driveway had to be arranged in such a way that the trees in question would be in its path. There is no alternative design and so the trees will have to be removed.

Commission Communications –

Commissioner Benzoni – Stated he was glad to see trees and climate change item on the agenda because the heat island effect is a real and ongoing issue with roofs and construction.

Commissioner Findley – Mentioned a LA Time article regarding palm trees dyeing in mass throughout Los Angeles, thus changing the skyline of the area.

Commission Wilms – Requested that staff provide the commission updates on the progress of the Chapter 34, Tree Ordinance update. She also advised the commission that she attended her first Golf Course Subcommittee meeting where they mainly discussed finances, not really any environmentally related issues.

Staff Liaison Communications – Advised commission that the Senior Planner, John Mayer, was no longer with the city, which may cause a slight slowdown with the speed building plans are processed.

Council Liaison Communications – None at this time.

Adjournment – Commissioner Leider motioned to adjourn the meeting at 9:34 p.m., Commissioner Benzoni seconded. Ayes: All, Nays: None.

NEXT MEETING – The next meeting of the Natural Resources and Environmental Commission will be held on October 30, 2017 at 7:00 p.m.

William Kelly, Chair

NREC MEMORANDUM

Date: October 30, 2017

To: NREC Commissioners

From: Jenna Shimmin

RE: Potential Recommendation for South Pasadena Graywater Ordinance

Staff has been working with Craig Melicher to finalize draft language regarding a graywater ordinance. At this time, we feel it is best to only require the installation of the graywater system for new one- and two-family dwelling builds. It is difficult for the Building Department to set a minimum threshold for remodels/construction that would be aligned with the goals the NREC has for this ordinance. There are only a few jurisdictions that have a similar ordinance adopted, and we would like to see how they address the issue of remodels versus new construction, as they have the staff size to properly address this issue. A review will be built into the ordinance requiring the language be reassessed in order to expand the scope of the ordinance once more data is available.

In regards to outside codes that govern the fixtures allowed in a graywater system, the following language basically says that an applicant has to install a method of diverting graywater from a permitted fixture based on the requirements in effect on the date the builder wants to build the house. By using this language, if the rules change later on, no changes will need to be made to the municipal code.

Where graywater disposal systems are permitted, three-way diverter valves for future graywater systems shall be installed in all one- and two-family dwelling units. At a minimum, three-way diverter valves shall be installed downstream of each plumbing fixture permitted to receive graywater. Three-way diverter valves may serve multiple plumbing fixtures. Location and installation of three-way diverter valves shall specifically provide for the ability to install a partial or complete graywater system at a future date.

Exceptions: *1) Installation of three-way diverter valves shall not be required under any of the following conditions:*

- a. Where the three-way diverter valve is located beneath a slab on grade floor or similar location where access is not otherwise required by any code;*
- b. Where the three-way diverter valve, when installed at the highest feasible elevation, is incapable of discharging graywater at not less than 6 inches above adjacent exterior grade at the nearest feasible point of discharge without the use of a pump.*

2) Three-way diverter valves shall not be required where the Building Official has determined that the minimum area and percolation requirements of the Plumbing Code in effect cannot be satisfied. To comply with this exception, the applicant shall bear the sole burden for collecting

and preparing supporting documentation to be submitted to the Building Official for determination.

Discretionary hardscape shall not be installed where such discretionary hardscape is used as a justification for not installing three-way diverter valves.

At no time shall access to any three-way diverter valves be obstructed, and minimum working space shall be continuously maintained adjacent to each valve to allow installation of the future system.

NREC MEMORANDUM**Date:** October 30, 2017**To:** NREC Commissioners
Councilmember Richard Schneider
Jenna Shimmin**From:** Bill Kelly, NREC Chair**RE:** Potential Recommendation for South Pasadena Solar Building Ordinance

California has set a goal of seeing that all new homes built beginning in 2020 are “zero net energy” structures that on a net balance use no more energy than they produce. The California Energy Commission is developing building standards for its 2019 update of Title 24 regulations, which establish energy efficiency requirements for new construction. The rationale behind the zero net energy concept is that while it will cost more to build homes, over their lifetime occupants will save money on a net basis by paying less for their energy utility bills.

Up and down the state, from the small Sonoma County city of Sebastopol to Santa Monica, an increasing number of cities have set energy efficiency standards for buildings that are stronger than current state requirements. These standards range from a relatively simple solar requirement in Sebastopol, to more complicated requirements in Santa Monica and San Francisco that specify overall efficiency levels met by using both rooftop solar systems and highly efficient design and construction features.

South Pasadena has the opportunity to help new home builders and owners who substantially remodel or expand their homes to save energy and dramatically lower utility bills by adopting a solar building ordinance similar to the one adopted in 2013 in Sebastopol. The Sebastopol ordinance requires solar systems on new residential and commercial buildings. It also requires solar systems on home remodels that either increase the square footage by 75 or more or involve demolition, remodeling, or repairing more than 75 percent of the existing structure. Additions and substantial remodels of commercial buildings also trigger the requirement for installing a solar system.

Since a new construction or major remodeling project generally is expensive and is financed and adding solar systems consists of only a fraction of the cost, solar can be rolled into a project with a small increase in monthly loan payments relative to the cost of electricity. As an example, at \$250 a square foot for construction costs, adding 1,125 square feet to an existing 1,500 square foot home would cost \$281,250. Adding a 5 kW solar system would add about \$16,600 to that total cost of construction, marking about a 6 percent increase in overall cost. Financed at 4% for 15 years, the monthly repayment for the project without a solar system would run \$2,080, while the payment with a solar system would run \$2,203, about \$123 more a month, which would be offset by a lower electric utility bill.

Accordingly, the commission should consider recommending that the city of South Pasadena join the growing number of cities that are requiring solar systems as part of new construction projects.

Sebastopol Ordinance:

Chapter 15.72

MANDATORY PHOTOVOLTAIC SYSTEM REQUIREMENTS

Sections:

15.72.010 Findings.

15.72.020 Purpose.

15.72.030 When required.

15.72.040 Size.

15.72.050 Exceptions.

15.72.060 Proof of compliance.

15.72.070 Effective date.

15.72.010 Findings.

A. Reduction of greenhouse gases is a stated goal of the City of Sebastopol. As a responsible environmental steward the City of Sebastopol is committed to policies and programs that conserve and use natural resources wisely.

B. Solar photovoltaic technology and equipment have become reasonably available.

C. Therefore, consistent with its authority as a municipal corporation and its responsibility to protect the public health, safety and welfare, the City hereby enacts requirements for new construction and specified additions to existing structures to increase energy conservation and reduce greenhouse gas emissions.

15.72.020 Purpose.

This chapter addresses installation of solar photovoltaic systems for all new commercial and residential building construction and specified additions to existing structures.

15.72.030 When required.

New commercial or residential buildings, and specific alterations, additions and remodels require the installation of a photovoltaic energy generation system. Any addition to an existing commercial building which increases the square footage by 1,800 square feet or greater and all commercial remodels, alterations or repairs that are made involving demolition, remodel or repair of more than 50 percent of the structure.

Any addition to an existing residential building which increases the square footage by 75 percent or greater and all residential remodels, alterations or repairs that are made involving demolition, remodel or repair of more than 75 percent of the structure.

At the time of submittal of a building permit application for a new commercial building or addition over 1,800 square feet or alterations, remodel or repairs over 50 percent or more of the structure or new residential building or residential addition, alteration, remodel or repairs of 75 percent or more of the structure, an applicant shall be required to submit plans and specifications for a solar photovoltaic system included in the submittal application.

Buildings and structures of an accessory character as defined in the California Building and Residential Code as Group U occupancies and residential buildings 840 square feet or less are not regulated by this chapter.

15.72.040 Size.

A. Minimum system size may be calculated by either of two methods, prescriptive or performance.

1. Prescriptive Method. The minimum system size utilizing the prescriptive method is two watts per square foot of conditioned building area including existing, remodeled and new conditioned space. Watts are calculated by using the nameplate rating of the photovoltaic system. There are no considerations for performance such as tilt, orientation shading or tariffs.

2. Performance Method. The system sizing requirement for the performance method shall be calculated using modeling software or other methods approved by the Building Official. The total building load including conditioned and unconditioned space is calculated in kilowatt hours. The photovoltaic system annual output is calculated by factoring in system orientation, tilt, shading, local weather conditions and equipment efficiency. The photovoltaic system must offset 75 percent of the electrical load of the building on an annual basis.

B. Incentives, to be determined by the Official, shall be instituted for installations which exceed the minimum size required.

C. Methods of electrical energy production through renewable sources other than photovoltaic systems shall be considered when calculating the total requirement for any specific project.

15.72.050 Exceptions.

The Building Official may exempt facilities from the provisions of this chapter, and impose reasonable conditions in lieu of full compliance herewith, if the Official determines that there are practical difficulties involved in carrying out the provisions of this chapter. Practical difficulties may be the result of the building site location, shading resulting from topography or other conditions. Reasonable conditions may include the use of alternate energy systems, exceeding mandatory energy compliance standards by 10 percent or other methods as determined. the Official may require that sufficient evidence or proof be submitted to substantiate any exception or acceptance of alternatives.

The City Council may establish an in-lieu fee as an acceptable alternative for full compliance.

The in-lieu fee shall be 90 percent of the permit valuation amount for a similar sized system and shall be based upon historical data collected by the Building Department for the previous 12 calendar months.

Owners of multiple properties may install a single photovoltaic system meeting the aggregate energy generation requirement for all owned properties which require compliance with this chapter.

Properties which have a previously installed photovoltaic system are required to increase the size of any existing system to meet the current minimum standards.

15.72.060 Proof of compliance.

Prior to the issuance of a certificate of occupancy for new construction or a final inspection for specified additions the owner of record or his agent shall certify in writing that the solar photovoltaic system is operational.

15.72.070 Effective date.

The ordinance codified in this chapter shall take effect 60 days after its passage, but shall not be applicable to complete applications for plan check filed with the Sebastopol Building and Safety Department as of the effective date of the ordinance codified in this chapter, except at the election of the applicant.

NREC and Staff markups 10-17-2017

CHAPTER 34

TREES AND SHRUBS*

Sections:

- 34.1 Definitions.
- 34.2 Tree and Protected Shrubs Health, Trimming and Removal – Violations.
- 34.3 Protection in Anticipation of and During Development Activity.
- 34.4 Tree and Protected Shrub Permit Applications.
- 34.5 Tree Removal and Replacement Plans.
- 34.6 Permit Issuance and Denial of Tree Removal Permit Applications.
- 34.7 Criteria for Approving Tree Removal Permits.
- 34.7-5 Replacement Tree Requirements.
- 34.8 Appeals of Tree Trimming and Removal ~~of~~ Permit Decisions.
- 34.9 Exemptions for Trimming and Removal of Trees.
- 34.10 Obstruction.
- 34.11 Maintenance of Trees on Public Property.
- 34.12 Penalties.

* For state law as to "Tree Planting Act of 1931," see Sts. & H C.A., §§ 22000 to 22202. As to "Park and Playground Act of 1909," see Gov. C.A., §§ 38000 to 38213.

As to hitching animals to trees, see § 5.12 of this Code. As to collection of brush, tree, etc., trimmings and stumps, see § 16.14. As to removal of trees from parks, see § 21.7.

34.1 Definitions.

As used in this chapter:

- (a) "Caliper" is the diameter of the trunk of a tree measured at four feet above natural grade. In the case of multi-trunked trees, "caliper" is the sum of each trunk measured at four feet above the grade.
- (b) "Commission" means Natural Resources and Environmental Commission (NREC)
- (c) "Damage" means any action taken which causes injury, disfigurement or death of a tree. This includes, but is not limited to, cutting, poisoning, overwatering, not watering, relocating or transplanting, suffocation from grade changes, excessive soil compaction, or trenching, excavating or paving within the dripline.

- (d) "Deadwood" means limbs, branches or a portion of a tree void of green leaves during a season of the year when green leaves should be present.
- (e) "Development activity" means property development or construction occurring from City approved permitted activity as well as development not requiring a permit.
- (f) "Director" means Public Works Director
- (g) "Dripline" means a series of points formed by the vertical dripping of water from the outermost branches and leaves of a tree.
- (h) "Front yard" means that portion of private property as designated in the city zoning code.
- (i) "Heritage tree" is a tree of historical value because of its association with a place, building, natural feature of the land, or an event of local, regional or national historic significance. It could be found on private or public property.
Please find list and add to Arbor Access DB - Jenna Action Item
- (j) "Intentional violation" means a violation of Chapter 34 that is committed by any person or entity who has actual or presumed knowledge of the requirements of Chapter 34 or who has previously violated the provisions of Chapter 34. A commercial arborist/tree trimmer, a real estate developer, a general contractor, or anyone who has previously filed an application for a tree trimming or removal permit in the city shall be presumed to know the provisions of Chapter 34.
- (k) "Mature tree" is any variety of tree that has a caliper of at least four inches.
- (l) "Native species tree" means any species of tree native to Southern California as defined by Resolution No. 7360 adopted by the city council.
- (m) "Oak tree" shall mean species of tree of the genus Quercus.
- (n) "Protected Shrub" means a woody plant that is over 16 feet in height which has one or more trunk(s) equal to or greater than 4" diameter.
- (o) "Protected Tree" means a heritage tree, mature oak tree, mature native species, significant tree or protected shrub.
- (pe) "Protection" means the safeguarding of trees through proper treatment.
- (qp) "Real estate developer" means a person or entity that is engaged in the business of constructing or rehabilitating commercial or residential structures within the city for sale or lease to third parties. (Ord. No. 1991, § 2; Ord. No. 2051, § 5; Ord. No. 2126, § 2; Ord. No. 2237, § 3, 2012.)
- (rq) "Removal" means uprooting, cutting or severing of the main trunk of a tree.
- (sf) "Shrub" means a woody plant that is less than or equal to 16 feet tall and may be multi-stemmed.
- (ts) "Significant tree" is a tree that has a caliper of one foot or more.

34.2 Tree and Protected Shrubs Health, Trimming and Removal – Violations.

- (a) It is unlawful for any person to harm by any means, damage or cause to be damaged or to die any heritage tree, mature oak tree, mature native species tree, significant tree or protected shrub located within the city. Sufficient
moisture for trees and shrubs must be provided in order for the trees to remain healthy.

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(b) It is unlawful for any person to remove or transplant any heritage tree, a mature native species tree (~~see list in Resolution No. 7360~~), a mature oak tree, ~~or any other significant trees~~ and or protected shrubs from any property within the city unless a tree removal permit is first obtained from the city.

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(c) It is unlawful for any person to trim or prune more than ten percent of the live foliage and/or limbs of any mature oak or a mature native species tree ~~as defined in Resolution No. 7360, or protected shrub~~ located within the city within any twelve-month period, or cause the same to be done, without first obtaining a tree trimming permit from the city.

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(d) Excluding a mature oak or mature native species tree which are governed by 34.2(c), it is unlawful for any person to trim or prune more than twenty percent of the live foliage and/or limbs of any heritage tree, significant tree or protected shrub located within the city within any twelve-month period, or cause the same to be done, without first obtaining a tree trimming permit from the city.

(e) It is unlawful to remove any tree or protected shrub that is part of a watershed, wildlife habitat, and/or erosion control on hillsides without first obtaining a tree removal permit from the city.

(f) It is unlawful for any person to remove any tree or shrub from the parkway area between a sidewalk or private property line and street curb, without the written permission of the Public Works Director or designee. (Ord. No. 1991, § 6; Ord. No. 2126, § 3; Ord. No. 2237, § 5, 2012, ~~see section 31.48 (b)(4)~~.)

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34.3 Protection in Anticipation of and During Development Activity.

(a) Irrigation of trees is important and construction/development must not interfere with normal tree care. Irrigation should be administered to replace any soil moisture lost due to site excavation and a tree should continue to receive the amount of irrigation needed to thrive.

(b) Trees shall not have physical damage to the limbs, bark or crown, or where roots join the stem, at any time before or during development or construction.

(c) No grading shall occur within the dripline of a significant or heritage tree. All work conducted within the protected dripline area should be accomplished only with hand tools and all activity within this area should be kept to a minimum to minimize soil compaction. This area should not be subjected to flooding incidental to construction work or to disposal of construction debris, including but not limited to paint, plaster or chemical solutions.

(d) Natural or preconstruction grade should be maintained for as great a distance from the trunk of each tree as construction permits. At no time during or after construction should soil be in contact with the trunk of any tree above natural grade.

(e) No structure shall be located nor shall any construction requiring a permit occur within six feet of the trunk of a significant or heritage tree. (Ord. No. 1991, § 4; Ord. No. 2126,) and no building, structure, wall or impervious paving shall be constructed within the dripline of any oak tree. Limited exceptions may be allowed and documented on the permit by the Director.

(f) Any required trenching should be routed to minimize root damage and cutting of roots should be avoided by placing pipes and cables above or below uncut roots.

(g) Pruning or trimming of oak trees and other trees should be limited to the removal of dead wood and the correction of potentially hazardous conditions as evaluated by a qualified arborist and approved by the Director through the City's tree trimming permitting process. All pruning should be done in accordance with accepted pruning standards of International Association of Arboriculture (ISA).

Commented [JS3]: Need to spell out at every use.

34.4 Permit Applications.

(a) Any person applying for a tree removal permit or tree trimming permit shall file with the Public Works Director an application in writing on a form furnished by the Director. Such application form shall contain the following information:

- (1) The name and residence or business address of the applicant;
- (2) The location or description of the property on which the proposed trees are to be removed or trimmed;
- (3) A tree plan, as in Section 34.5, if the application is for a tree removal permit.
- (4) The name and state contractor's license number of the person who will perform the work. Permits shall only be issued to persons possessing a C-27 or C-61 (D-49) state contracting license;
- (5) Additional information as the Public Works Director may require. This information may include, but is not limited to, a list obtained from the county assessor of the names of the owners of all parcels within a one hundred-foot radius of the property upon which the trees are to be removed or trimmed.

(b) The application shall be accompanied by a nonrefundable fee in an amount established by resolution of the city council. (Ord. No. 1991, § 8; Ord. No. 2051, §§ 1—4; Ord. No. 2126, § 4.)

34.5 Tree ~~plan~~ Removal and Replacement Plans.

A tree plan to be submitted with an application for a tree removal permit shall contain the following information:

(a) A drawing of the property which shows the location and species of all existing trees on the property with all heritage, native species, oak, mature and significant trees individually identified. ~~The tree(s) proposed for removal must be clearly indicated on the plan. Trees with a trunk caliper less than 4" do not need to be identified on the plan.~~

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(b) The tree species and trunk caliper of all trees to be removed ~~must be identified.~~

(c) The reason for removal. Any trees proposed for removal due to poor health or condition shall have the condition of the tree documented in a report prepared and signed by an arborist certified by the International Society of Arboriculture ~~(ISA).~~

(d) A second drawing of the property ~~post~~ ~~after~~ approved tree removal which shows all existing/remaining trees and all proposed replacement trees.

Commented [K4]: Language change

(e) An arborist review of the tree plan may be required per the determination of the Public Works Director or his/her designee or by the Commission. The arborist shall be contracted and managed by the city and all fees incurred shall be the responsibility of the property owner. (Ord. No. 1991, § 10; Ord. No. 2126, § 5.)

34.6 Permit ~~issuance or Denial for T~~ree ~~R~~emoval ~~Permit Applications.~~

Upon receipt of the application, the Director shall cause notice to be sent by first-class mail to property owners and tenants of property located within a one hundred-foot radius of the subject property. Such property owners shall be given fifteen calendar days from the date of mailing within which to comment on the application. All comments shall be made in writing to the Director. Upon expiration of the fifteen-day period, the application shall be reviewed by the Director after considering the application pursuant to the criteria set forth in Section 34.7 and all comments received

from interested parties. The Director may refer any application to the Commission for consideration. If the comments received do not contest the application, the Director may approve, conditionally approve, or deny the application. The decision of the Director shall take effect fifteen days after the date of mailing of the decision to the applicant and any interested parties. (Ord. No. 1991, § 12; Ord. No. 2126, § 6.)

Commented [AB5]: Jenna - please double check these ordinances

Commented [JS6R5]: Will have city attorney review.

If any of the comments contest the tree removal, the Director shall refer the application to the NREC to be heard at a noticed public meeting. The applicant and contesting parties shall be notified of the hearing date. The NREC will then approve, conditionally approve, deny the application or continue the hearing. The decision of the NREC shall be made in writing and provided to the applicant and to any interested parties who commented on the application. The decision of the NREC shall take effect fifteen calendar days after the date of mailing of the decision to the applicant and any interested parties. (Ord. No. 1991, § 12; Ord. No. 2126, § 6.)

34.7 Criteria for Approving Tree Removal Permit Applications.

(a) Subject to the imposition of conditions pursuant to subsection (b) of this section, a tree removal permit may be issued in any one of the following instances:

(1) Where the tree itself, its excess foliage or its limbs poses a reasonable ~~and imminent~~ risk of injury or harm to any persons or property, or is interfering with an existing structure or building, and there is no feasible ~~and~~ reasonable alternative to mitigate the interference.

Commented [JS7]: NREC suggested imminent, but that word is used for emergency situations in 34.7(4).

(2) Where, upon taking into account the size, shape, and topography of existing trees upon the lot, the denial of the permit would create an unreasonable hardship on the property owner. The existence of proposed development plans do not necessarily constitute an unreasonable hardship on their own.

Commented [JS8]: The word "necessarily" was added per staff consensus.

(3) Where a written determination has been made by an International Association of Arboriculture ISA-certified arborist, after a visual inspection and evaluation that the tree is so diseased or damaged that it is no longer viable or is a threat to property.

Commented [JS9]: NREC recommendation.

(4) The Director or Commission may waive the requirement for an arborist's statement when the Director determines and documents that the tree can reasonably be determined to be dead by a lay person's visual inspection, or when, after conducting an inspection of the tree, the Director determines that the tree poses an obvious or imminent threat to life or property. If approval is granted for a tree on the basis of imminent threat to life or property the decision will be considered final, and is not appealable.

(5) For the removal of mature trees, where the proposed replacement tree planting provides greater benefits than the existing tree's value, benefits or species.

(b) A tree removal permit may be issued that is conditional upon the replacement or transplanting of the tree(s) either on-site or off-site. Such replacement shall be subject to the following provisions:

(1) Designation by the Director or the Commission of the number, size, species and location of replacement tree(s) based on: the consideration of the size and species of the established tree(s) proposed for removal; the significance the tree(s) proposed to be removed has on the landscaping as seen from neighboring properties and the public view; the size of the lot and the number of existing trees on the lot.

(2) Any tree removal will require complete removal or grinding of the stump and backfilling of any hole.

(3) Because of their size and/or significance, single trees that have been removed may be required to be replaced with multiple trees, subject to review and approval by the Director or his/her designee. If the subject

property cannot accommodate multiple trees, alternative locations within the city (public right-of-way, park, etc.) may be designated or the fees paid will fund the future planting of city trees.

(4) If replacement trees are required, the property owner must agree to accept the conditions of replacement by his or her signature on the application before issuance of the permit.

(5) When the work designated in the permit is completed, the applicant shall contact the Public Works Department for an inspection of the work.

(6) Should the replacement tree located on owner's property not survive for a period of at least two years, further replacement shall be required.

(7) Where the permit allows the removal, replacement, or transplanting of tree(s), the Director or Commission may, in its discretion, require the applicant to post a bond or surety to replace the tree(s) that do not survive a five-year period. The amount of the bond or surety shall be in accordance with the "Guide for Plant Appraisal" (ISA publication, most recent edition).

(8) Unless otherwise stated in the conditions of approval, the permit shall be valid for a period of one year with planting of new trees on applicant's property to occur during the next planting season as determined by [the International Association of Arboriculture ISA and local climate conditions](#). (Ord. No. 1991, § 14; amended during 4/04 supplement; Ord. No. 2126, § 7; Ord. No. 2188, § 1, 2009; Ord. No. 2191, § 1, 2009; Ord. No. 2237, § 2, 2012.)

34.7-5 Replacement trees.

The number of replacement trees is determined by the size of the existing tree(s) requested to be removed.

Two twenty-four-inch box native species replacement trees shall be required for each ten-inch increment of the diameter, or portion thereof, for oak, native species and heritage trees. For example a 15" diameter oak tree requires four native replacement trees.

For significant trees other than oak, native species and heritage trees, one twenty-four-inch box replacement tree shall be required for each ten-inch increment of the diameter, or portion thereof of the existing tree. For example a 15" diameter tree would require two replacement (preferably native) trees. (Ord. No. 2237, § 2, 2012.)

One twenty-four-inch box native species replacement trees shall be required for each six-inch increment of the diameter, or portion thereof, for all tree removals associated with construction and development. For example a 15" diameter tree would require 3 replacement (preferably native) trees.

Commented [JS10]: What are we defining this as? Or what is the threshold to trigger the higher replacement value.

34.8 Appeals of Tree Trimming and Removal Permit Decisions.

(a) Tree Removal _The applicant or any interested party may appeal the decision of the Director to the NREC by filing an appeal in writing submitted to the secretary of the Commission within fifteen days after the date of decision of the Director. The applicant or any interested party may appeal the decision of the Commission to the city council by filing such appeal in writing submitted to the City Clerk within fifteen days after the date of decision of the Commission. The appeal shall specifically identify the grounds upon which the appeal will be taken and summarize the facts and points of law in support of the appeal. (Ord. No. 1991, § 16; Ord. No. 2126, § 8.)

(1) When approval is given by the Director for construction/development, the only trees that may be appealed are protected trees. Approval on all other tree types will be considered final.

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(b) Tree Trimming _The applicant or any interested party may appeal the decision of the Director to the NREC by filing an appeal in writing submitted to the secretary of the Commission within fifteen days after the date of decision of the Director. The applicant or any interested party may appeal the decision of the Commission to the city council by filing such appeal in writing submitted to the city clerk within fifteen days after the date of decision of the Commission. The appeal shall specifically identify the grounds upon which the appeal will be taken and summarize the facts and points of law in support of the appeal. (Ord. No. 1991, § 16; Ord. No. 2126, § 8.)

(c) Applicant shall be responsible for all actual costs, including staff time, associated with any appeals of the decision of the Director or the Commission.

Commented [JS11]: Need to ask CA if this extra language is necessary.

Commented [JS12R11]: Need to look at Fee Schedule

34.9 Exemptions.

- (a) No permit is required for the removal or trimming or pruning of a tree damaged by a storm, fire, or other natural disaster and determined to be dangerous by the Public Works Director, police chief, fire chief or code enforcement officer.
- (b) No permit is required when the fire department has deemed the removal of the tree(s) is critical to providing an effective firebreak.
- (c) Public utility companies required to remove or trim trees, upon submittal of a letter to the Public Works Director outlining the specific trees along with reasons for removal or trimming, shall be exempt from the provisions of this chapter.
- (d) The city and its contractors will not be required to obtain permits but shall otherwise comply with this chapter.
- (e) No permit is required for the removal or trimming or pruning of hedges. (Ord. No. 1991, § 17; Ord. No. 2126, § 9.)

34.10 Obstruction.

- (a) It is unlawful for any person, firm or corporation owning, leasing, occupying, having charge or control of any lot or premises in the city, to keep or maintain thereon any tree, shrub or plant, or portion thereof, that interferes with or obstructs the free passage of pedestrians along or upon adjacent public sidewalks or of vehicles along or upon adjacent public rights-of-way.
- (b) Every fence, sign, wall, hedge, tree, shrub or planting located within seventy-five feet of the point of intersection of the centerlines of streets or within seventy-five feet of the point of intersection of the centerline of a street and a railroad right-of-way, that is more than thirty-six inches in height measured from the nearest adjacent public street level and that, in the opinion of the Director constitutes an obstruction to the clear view of motorists on the streets is declared to be a public nuisance; provided, however, that nothing in this section shall be deemed to apply to a wall, building or structure that has been or that may be constructed under a permit issued by the building department of the city. (Ord. No. 1991, § 18; Ord. No. 2126, § 10.)

34.11 Maintenance of ~~T~~rees on ~~P~~ublic ~~P~~roperty.

The Public Works Department shall be responsible for the maintenance of trees on public property including but not limited to public rights-of-way and public parks. The Public Works Department shall prepare and implement the annual work plan for the maintenance of trees on public property. (Ord. No. 2051, § 6.)

The adjoining property owner is required to provide sufficient moisture for trees and shrubs in the parkway ~~(which is a public right-of-way)~~, the area between the curb and the sidewalk, to remain healthy. (Reference Sec. 31.48, (a) – (d) Landscaping Standards – Parkway Improvements.)

34.12 Penalties.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor, except, at the discretion of the city prosecutor, the violation may be reduced to an infraction. Persons violating any of the provisions of this chapter shall be subject to the following:

(a) Penalties for any person who unintentionally violates the provisions of this chapter shall be as follows: the standard inspection fee; double the required tree removal or trimming permit fee; and planting double the number of replacement trees required pursuant to section 34.7-5.

(b) Penalties for an intentional violation shall be as follows: the penalties described in subsection a of this section plus payment of a tree replacement fee in an amount up to, but not to exceed double the value of the destroyed, removed, or damaged tree. The city arborist shall determine the value of the destroyed, removed, or damaged tree by using the most recent edition of the International Society of Arboriculture ~~(ISA)~~ Guide for Plant Appraisal.

(c) Penalties for an intentional violation in connection with development or anticipated future development on the property shall be as follows: the penalties described in subsections a and b plus the city manager may refer the violation to the city prosecutor for criminal charges. The city manager may also refer the violation to the planning commission for public hearing. The burden of proof shall be on the city to demonstrate ~~that there is by~~ a preponderance of the evidence that there is an intentional violation. The planning commission, after considering all of the evidence, may impose the additional penalty of prohibiting the issuance of building or construction-related permits for a period up to ten years from the date of the violation for the property upon which the violation occurred.

In determining whether a building permit may be issued with regard to the aforementioned prohibition, the planning commission shall consider whether the tree violation appears to be in furtherance of a development, as evidenced in the extent of tree damage, removal, damage to the root system, and/or excessive trimming of trees within the buildable area of a property; oral or written admissions or repeated actions taken in spite of prior warnings; notices of violations; and the number and size of the damaged and/or removed trees.

Intentional violations in the context of development or anticipated development of property shall require the planning commission to determine whether restitution trees are to be planted on the property on which the violation occurred, public land with costs paid to the city for tree selection, planting and maintenance, or a combination of both. The restitution trees shall be subject to a survival guarantee pursuant to section 34.7(b) (6) and (7).

For purposes of this section, the violation shall be presumed to have occurred on the date the city has actual knowledge of the violation, and the violator shall have the burden of proving an earlier commencement date, if entitlement to an earlier date is claimed.

Notwithstanding the aforementioned prohibition, building or construction-related permits may be issued if in the opinion of the Director of planning and building, they are necessary for the preservation of public health, safety or welfare.

Payment of any penalty and planting of replacement trees shall occur within sixty calendar days (climate permitting) of the date the violator was directed to take such action, except the Public Works Director shall have discretion to grant an

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extension for replacement tree planting upon the violator's showing of good cause. If the violator does not complete planting of replacement trees within the allotted time, the Public Works Director may procure and plant the requisite replacement trees, and the violator shall be responsible for reimbursing the city for such additional costs within thirty days of the city's issuance of a billing statement.

If the costs are not recovered by the city in sixty calendar days, the city manager can instruct that the outstanding obligation be collected in any of the following manners:

- (1) A civil action in the name of the city, in any court of competent jurisdiction; or
 - (2) Use of a debt collection agency; or
 - (3) A lien on the subject property.
- (d) All penalties and additional costs related to a tree violation must be paid to the city prior to its issuance of building or construction-related permits unless, in the opinion of the Director of planning and building, such permits are necessary for the preservation of public health, safety or welfare. (Ord. No. 2126, § 11; Ord. No. 2237, § 4, 2012.)