



Staff Report

DISCUSSION AND DIRECTION REGARDING MUNICIPAL CODE CHAPTER 25 – TREE ORDINANCE

Honorable Mayor and Council Members:

Summary

One of the Community Development projects on the Council's Priority Calendar for FY08-09 is the review of potential text amendments to Chapter 25 (Tree Ordinance) of the City Municipal Code (See Attachment I). The Planning Commission ranked this issue favorably as part of both their Spring 2007 & 2008 Priority Calendar review and the Council subsequently added the item to the Community Development Department list of "current" projects for commencement during the current fiscal year.

This memo seeks to educate and clarify with the Council the specific issues to be addressed as part of any text amendments (scope, content, applicability) to Chapter 25. From the Council's direction at tonight's meeting, staff will move forward with an action plan for staff work efforts, and preparation of such text amendments for consideration and adoption by the Planning & Park & Recreation Commissions & the City Council.

Background/Ordinance History

Key dates in the crafting, review, and establishment of the Ordinance governing trees/protection are as follows:

- First iteration of Tree Ordinance adopted in September 1989 (derived from Section 1 of Ordinance 819).
- Ordinance 926 adopted in April 1998 – this action amended Chapter 25 in its entirety and enacted similar new provisions.
- Section 25-7 (*Decision on Application Conditions*) of Ordinance amended in February 2004. These changes focused on increasing the replacement size of removed trees from a 15-gallon to 24-inch box size, posting of maintenance bonds for removal of five (5) or more trees, and/or payment of in-lieu fees to the City's Tree Fund.

Since 2006, the City has issued 156 Tree Removal Permits; 52 in 2006, 51 in 2007, and as of the writing of this report, 53 in 2008. The vast majority of the permits issued were due to dead/dying trees on private property; in some cases, public health/welfare issues were imminent unless swift action was taken to remove such hazardous trees. Planting of trees to mitigate the above-described removals is a typical practice in the issuance of such permits.

Discussion

Belmont is a unique and desirable place to live. It retains a small town culture with significant areas that are currently defined with heavily forested open space. Belmont's tree population strongly contributes to the continued aesthetic, natural, and scenic vitality of the community.

The purpose section of the current Tree Ordinance indicates that Belmont “...is forested by pine, oak and other trees indigenous to the San Francisco Peninsula. These trees perform the function of preventing erosion and lessening the danger of floods and landslides. The majority of real property within the city is on hillside and sloping terrain. The wanton and wholesale destruction of trees could cause erosion of topsoil, create flood hazards, risk of landslides, and reduce property values resulting in the encouragement of substandard development and increase the cost of construction and maintenance of drainage systems through the increased flow and diversion of surface waters...the city finds it in the public interest, convenience, necessity and welfare to enact regulations controlling the removal of trees within the city in order to retain as many trees as possible consistent with the reasonable economic use of private property.

Staff has reviewed the current tree ordinance language and has found minor language inconsistencies - these center on:

- Issues and intent to enforce the ordinance for excessive pruning of trees on “non-residential property” (Section 25-4) – there are no specific provisions to address excessive pruning for developed residential property.
- How to treat removal of protected (or other regulated) species trees that are between six (6) & ten (10) inches DBH (Diameter at Breast Height).
- The need to provide a reference in the Ordinance to the current Master Fee Schedule for the collection of tree removal fees for 1) development review projects and 2) general maintenance activities for property.

Specific process/policy questions that staff seeks direction/confirmation from the Council are as follows:

- **Should the purpose statement be modified to encourage the use of natives, species that thrive in Belmont's climate, or that are drought tolerant/water friendly?**
- **Are any of the current definitions used in the Ordinance (Section 25-2) in need of amendment; are new definitions necessary?**

- **Is the current protected tree list adequate? Should other species be added or existing species modified? Is the current size that defines a protected tree adequate?**
- **Should there be different standards or thresholds for developed vs. undeveloped property (or public/City property) in the enforcement of tree regulations/protection?**
- **Should language be added for the Ordinance to confirm the requirement of “posting” of an issued tree permit? (Currently staff is working on minor operational changes to modify the tree permit system to create an electronic record, i.e. similar to issuance of a building permit. These administrative policy changes contemplate the permit posting component.)**

General Plan/Vision Statement

Potential amendments to Chapter 25 (Trees) language further the City’s General Plan Goals as follows:

Goal 1015.2

To preserve and enhance the attractive, family-oriented and tranquil quality of Belmont’s residential neighborhoods.

Goal 1015.4

To maintain and enhance the appearance of the City through controlling the location, timing, design and landscaping of new development and encouraging renovation of older areas.

Belmont Vision Statement - Natural Beauty

- *We choose to make our home among these beautiful hills, trees, parks, views, and open spaces.*
- *Our natural surroundings inspire us to play, create, and contemplate.*
- *Our actions today preserve and enhance Belmont’s beauty to make it even lovelier for our grandchildren.*
- *Our wooded residential areas are diverse, peaceful and well maintained.*

Fiscal Impact

No impact at this time. Significant fiscal impacts are not expected in crafting future ordinance amendments unless wholesale modifications are directed by Council. Staff would then most likely solicit consultant arborist services to assist with the project work plan. In that case, the extent of funds allocated for amendment completion has not been determined at this time.

Public Contact

This matter was placed on the agenda and posted as required by the California Government Code.

Recommendation

Staff recommends that the Council review the issues in this staff report and provide direction as detailed above.

Alternatives

- I. Suspend the *Tree Ordinance* Text Amendments Priority Calendar Project at this time.
- II. Refer back to staff for additional information.

Attachments

- I. Chapter 25 (Tree Ordinance) of the Belmont Municipal Code
- II. 2008-2009 Master Fee Schedule – Tree Removal Fees

Respectfully submitted,

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ATTACHMENT I

Chapter 25 TREES*

***Editor's note:** Section 1 of Ord. No. 926, adopted April, 14, 1998, amended Ch. 25 in its entirety, in effect repealing §§ 25-1--25-13 and enacting similar new provisions in lieu thereof as §§ 25-1--25-12. Formerly, such provisions derived from § 1 of Ord. No. 819, adopted Sept. 26, 1989.

Cross references: Large tree protection, § 9-44; trimming trees along route of house moving, § 22-46.

Sec. 25-1. Findings and purpose.

(a) The city is forested by pine, oak and other trees indigenous to the San Francisco Peninsula. These trees perform the function of preventing erosion and lessening the danger of floods and landslides. The majority of real property within the city is on hillside and sloping terrain. The wanton and wholesale destruction of trees could cause erosion of topsoil, create flood hazards, risk of landslides, and reduce property values resulting in the encouragement of substandard development and increase the cost of construction and maintenance of drainage systems through the increased flow and diversion of surface waters.

(b) It is the established policy of the State of California to provide and maintain a high quality environment that at all times is healthful and pleasing to the senses and intellect of all persons, and that all action necessary be taken to provide the people of the State of California with clean air and water, enjoyment of aesthetic, natural, scenic and historic environmental qualities and freedom from excessive noise. All agencies of the government of the State of California which regulate the activities of private individuals, corporations and public agencies have been directed to regulate such activities so that major consideration is given to preventing environmental damage.

(c) For these reasons the council of the city finds it in the public interest, convenience, necessity and welfare to enact regulations controlling the removal of trees within the city in order to retain as many trees as possible consistent with the reasonable economic use of private property.

(Ord. No. 926, § 1, 4-14-98)

Sec. 25-2. Definitions.

Where used in this chapter:

City means the City of Belmont, California.

Cut means detaching or separating from a tree any limb, branch or root above, at or below ground level excluding pruning as herein defined.

Damage means any action undertaken which causes or may cause injury, death, disfigurement or substantial size reduction to a tree. This includes, but is not limited to, girding, poisoning, over

watering, withholding of water or nutrition as well as trenching, excavating, paving or other harmful incursion within the root system or dripline of a tree.

DBH means the diameter of the tree at breast height; measured at four and one-half (4.5) feet above natural grade. In the case of multiple stemmed trees, the measurement shall be the sum of the diameters of all stems measured at DBH.

Director means director of park and recreation department.

Excessive pruning means removal of more than one-third (1/3) of the crown or foliage of the tree, or more than one-third (1/3) of the root system.

Person means any natural person, property owner, partnership, firm, corporation, governmental agency or other legal entity.

Protected tree means:

(1) Any of the following species characterized by having at least one trunk of ten (10) inches DBH; or greater.

- a. Oaks--*Quercus* (all species)
- b. Bay--*Umbellularia californica*
- c. Buckeye--*Aesculus californica*
- d. Monterey Cypress--*Cupressus macrocarpa*
- e. Redwood--*Sequoia sempervirens*
- f. Giant Sequoia--*Sequoiadendron giganteum*
- g. Madrone--*Arbutus menziesii*

(2) Any other species of tree with a trunk of eighteen (18) inches DBH or greater, with the exception of the following trees:

- a. Acacia--All species
- b. Eucalyptus--*Eucalyptus globulus*, *Eucalyptus globulus* "Compacta"
- c. Monterey Pine--*Pinus radiata*

(3) A stand of any trees, regardless of size, that are dependent on one another for survival as may be determined by a certified arborist, with the exception of the following trees:

- a. Acacia--All species
- b. Eucalyptus--*Eucalyptus globulus*, *Eucalyptus globulus* "Compacta"
- c. Monterey Pine--*Pinus radiata*

Prune means removal of less than one-third (1/3) of the crown or foliage of the tree, or less than one-third (1/3) of the root system.

Tree means any woody, perennial plant characterized by having a single trunk of six (6) inches DBH or more, or any street tree regardless of size.

(Ord. No. 926, § 1, 4-14-98)

Sec. 25-3. Establishment of tree board.

"Tree board" means the Belmont Park and Recreation Commission. The tree board's responsibilities will include establishing a community forest work plan, recommending public tree care policies, maintaining a list of recommended street trees and processing tree removal applications.

(Ord. No. 926, § 1, 4-14-98)

Sec. 25-4. Removal and excessive pruning without permit prohibited.

(a) It shall be unlawful for any person, firm, partnership, corporation or other legal entity whatsoever, to remove, or cause to be removed, or excessively prune, any tree as defined in section 25-2 from nonresidential property and vacant lots without a permit. Subject to penalties as indicated in section 25-11.

(b) It shall be unlawful for any person, firm, partnership, corporation or other legal entity, whatsoever, to remove, or cause to be removed or excessively prune protected trees from developed residential land without a permit. Subject to penalties as indicated in section 25-11.

(c) It shall be unlawful for any person, firm, partnership, corporation or other legal entity whatsoever, to excessively prune any tree, regardless of size, by topping or in any way that will cause normal tree growth to be impaired on nonresidential property. All trees required to be planted with a project on a nonresidential property shall be maintained in a manner that will insure their proper growth. Subject to penalties in section 25-11.

(Ord. No. 926, § 1, 4-14-98)

Sec. 25-5. Application and processing of permits.

(a) Any person desiring to remove, or cause to be removed or excessively prune a tree or protected tree within the city shall apply for a permit as provided herein prior to such action.

(b) Application shall be made to the director of park and recreation for an administratively issued permit under the following circumstances:

(1) The condition of tree(s) or protected tree(s) is creating imminent danger to persons and/or real/personal property.

(c) Application shall be made to the planning commission if the cutting, moving, removal or excessive pruning is associated with application to the planning commission for a development entitlement, variance, design review, etc. Notice of application to the planning commission shall be noticed in the same manner as other entitlements.

(d) Application shall be made to the tree board for cutting, removal, or excessive pruning associated with residential or commercial construction when no planning commission entitlements are required. Notice of application to the tree board shall be sent to all properties sharing common lot lines with subject property.

(e) The application for a permit shall be made on the form provided by the city for this purpose and shall include the number, location, size and type(s) of the tree(s)/protected tree(s) to be cut, moved, removed or excessively pruned and the reason for such action. The applicant may submit an arborist's report or other expert evidence for consideration. The application shall be accompanied by any required fee to cover the cost of processing as set in the current city fee schedule. Fees shall be waived for applications made by a department of the city on its own behalf.

(f) In considering applications, the city may require an educational conference with the applicant to inform the applicant of potential reduced impact alternatives. The application may be amended in consideration of such alternatives.

(Ord. No. 926, § 1, 4-14-98)

Sec. 25-6. Factors determining whether to issue permit.

The following factors shall determine the decision to issue or deny issuance of a permit:

- (1) The condition of the tree(s)/protected tree(s) with respect to disease, danger of falling, proximity to existing or proposed structures, interference with utility services, or posing a safety hazard.
- (2) The necessity to cut, move, remove or excessively prune the tree(s)/protected tree(s) in order to construct any proposed improvements allowing reasonable and conforming use of the property. Alternative action shall be fully considered and every attempt shall be made to preserve as many trees as possible.
- (3) The topography of the land and the effect of the proposed action on erosion, soil retention, diversion or increased flow of surface waters and storm drainage requirements.
- (4) The number of trees existing in the vicinity.
- (5) The number of trees which the particular parcel can adequately support according to accepted arboricultural practice.

(Ord. No. 926, § 1, 4-14-98)

Sec. 25-7. Decision on application conditions.

Issuance of a permit to remove trees may be conditioned upon:

- (1) Replacement up to a three (3) to one (1) basis with approved twenty-four (24) inch box trees on the subject property or an alternative site identified by the permitting authority thus offsetting the impacts associated with the permitted action.
- (2) When five (5) or more trees are removed, posting of a maintenance bond, letter of credit or cash deposit for a period of two (2) years in an amount equal to the value of the trees being planted. The purpose of the bond, letter of credit or cash deposit is to insure the availability of funds to be drawn on by the city to replace the trees if they do not survive. The bond or letter of credit shall not be released until the owner calls for and the city completes an inspection of the trees to insure their continued survival after two (2) years. The city shall charge a fee, pursuant to its adopted fee schedule for administering the above referenced bond, letter of credit, or cash deposit.
- (3) Payment of an "in lieu" fee, as established by the city in its fee schedule, to the city tree fund for the establishment and maintenance of city trees.

(Ord. No. 926, § 1, 4-14-98; Ord. No. 997, § 1, 2-24-04)

Sec. 25-8. Permit.

- (a) Administrative permits shall be issued in writing and valid for a period of thirty (30) days from issuance.
- (b) All permits issued by the tree board or planning commission shall be valid for one (1) year from the date of issuance.
- (c) If the work to be done under the terms of the permit is not commenced prior to expiration, the permit shall become null and void. If the work is commenced under the terms of the permit, it must be completed within a period of ninety (90) days. If it is not so completed, the city, to

secure the public safety and welfare, may order the work to be completed by city employees or private contractor. All costs incident to such completion shall be due and payable to the city by the permittee upon completion.

(d) Permits issued in conjunction with grading and/or building permits will become valid simultaneously with the issuance of such other permits and the time for completion of the work will commence at that time unless otherwise provided in the permit.

(e) Permits must be available on site throughout the duration of work.

(Ord. No. 926, § 1, 4-14-98)

Sec. 25-9. Exemption.

(a) A permit is not required to cut, move, remove or excessively prune a tree on developed residential property, except for protected trees.

(b) A permit is not required to cut, remove or excessively prune trees on all property under the following circumstances:

(1) Trees with a diameter of less than six (6) inches DBH.

(2) Tree(s)/protected tree(s) damaged by storms, floods, earthquakes, fires or natural disasters or in any instance where it is determined to be dangerous by a peace officer, firefighter or other city official designated to act in their official capacity. The director of parks and recreation shall be promptly notified of the nature of the emergency action taken.

(3) When the cutting or removal is determined necessary by fire department personnel actively engaged in fighting a fire.

(4) Tree(s)/protected trees(s) determined to be injurious to public utilities and facilities for which no alternative action is possible. This determination will be made by public utility or city officials acting in their official capacity. Prompt notification of this determination shall be made to the director of parks and recreation.

(5) Trees planted, grown and/or held for sale as part of a licensed nursery business.

(Ord. No. 926, § 1, 4-14-98)

Sec. 25-10. Appeal of decision to council.

(a) There shall be no appeal from an administratively issued permit.

(b) Appeals from permits issued by the planning commission or the tree board may be appealed to the city council within ten (10) calendar days of the decision to grant or deny a permit under this chapter. All appeals must be in writing and served upon the city clerk within ten (10) days of the planning commission's or parks and recreation commission's action. The council shall schedule the matter for consideration on a regularly scheduled council meeting not more than thirty (30) days thereafter.

(Ord. No. 926, § 1, 4-14-98)

Sec. 25-11. Enforcement.

(a) Any person who cuts, damages, moves, removes or excessively prunes a tree or protected tree within the city in violation of this chapter or the terms of any permit granted under this chapter is guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment for six (6) months or by both such fine and imprisonment. Each and every tree cut, damaged, moved, removed or excessively pruned will be considered a separate violation of this chapter subject to misdemeanor penalty.

(b) In addition to any penalties provided for in this section, any person who cuts, damages, moves, removes or excessively prunes a tree or protected tree in violation of this chapter shall be responsible for proper restitution and may be required to:

(1) Replace the tree(s)/protected tree(s) so damaged or removed with trees of reasonably equivalent size and/or value to the original tree(s). The number, size and location of such replacement trees shall be determined by the director of parks and recreation.

(2) Where replacement is not feasible, make payment of a value equivalent to removed or damaged trees as determined by the director of parks and recreation, to the city tree planting fund to be drawn upon for public tree planting.

(c) The city may also stop work a project pending submittal of an acceptable mitigation plan providing for replacement or payment of an in lieu fee of equivalent value.

(d) The city shall, for all trees replaced per this section, require a bond, letter of credit or cash deposit to be posted for two (2) years. The value shall be equal to the value of the work being done. The bond, letter of credit or cash deposit shall be released only after an inspection call by the property owner.

(Ord. No. 926, § 1, 4-14-98)

Sec. 25-12. Public nuisance.

In addition to the penalties provided in section 25-11 the violation of the provisions of this chapter is a public nuisance. The city attorney, upon order of the city manager, shall commence the necessary action or proceedings for the abatement, removal and enjoinder thereof in the manner prescribed by law in the courts which have jurisdiction to grant such relief as will accomplish such abatement and restraint. The remedies provided for in this section shall be in addition to any other remedy or remedies or penalties provided in the chapter or any other law or ordinance.

(Ord. No. 926, § 1, 4-14-98)

ATTACHMENT II

**CITY OF BELMONT
MASTER FEE SCHEDULE
EFFECTIVE JULY 1, 2008**

8. TREE REMOVAL FEES- DEVELOPMENT PROJECTS OR GENERAL PROPERTY MAINTENANCE

Tree removal fees are assessed for the removal of trees required for the development or general maintenance of property. They are collected to mitigate the loss of trees from the City's tree population. Fees are deposited in the City Tree Planting and Establishment Fund.

FEE BASIS:

<u>Tree Size (DBH)</u>	<u>Protected Trees</u>	<u>All Other Species</u>
24" or greater	\$4,172	\$2,086
18" but less than 24"	\$3,129	\$1,043
10" but less than 18"	\$2,086	\$782
6" but less than 10"	\$1,043	\$521
Less than 6"	No Fee	No Fee

NOTES:

- 1) Protected Trees as defined in Chapter 25 of the City Code include: Oaks (all species), Bay, California Buckeye, Monterey Cypress, Coast Redwood, Giant Sequoia and Madrone.
- 2) All Other Species include all other trees except: Acacia (all species), Eucalyptus globulus, Eucalyptus globulus "Compacta" and Monterey Pine.
- 3) Tree size is defined by diameter at breast height (DBH), which means the diameter (at the widest point) of the tree trunk measured at 4.5 feet above natural grade. In the case of multiple stemmed trees, the measurement shall be the sum of the diameter of all stems measured at DBH.
- 4) Payment shall be made prior to the issuance of a grading permit. If no grading permit is required, payment shall be made prior to the issuance of a building permit. If no building permit is required, payment shall be made prior to removal of any protected tree.

9. TREE PLANTING IN-LIEU FEES - DEVELOPMENT OR GENERAL MAINTENANCE PROJECTS

When a requirement to plant trees on the subject property cannot be met, the applicant shall pay a tree planting in-lieu fee to the City Tree Planting and Establishment Fund.

FEE BASIS:

<u>Size of Tree to be Planted</u>	<u>In-lieu Fee</u>
24" Box	\$417