



Staff Report

TREE ORDINANCE REVIEW AND UPDATE

Honorable Mayor and Council Members:

Summary

The purpose of this staff report is to provide background on the existing Tree Ordinance, to identify the reasons it is being updated, and to illuminate the policy changes the ad hoc committee is proposing. Following Council direction, an updated Tree Ordinance will be circulated through the Parks and Recreation Commission and the Planning Commission and come back to the City Council for a full reading.

Background

Belmont's existing Tree Ordinance was adopted in 1989. The purpose of the Tree Ordinance is stated as "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. (Sec 25-1c)." The reason for controlling the removal of trees is to preserve the beneficial impacts that trees provide including preventing erosion, maintaining property values, and for the aesthetic, natural, and historic value provided by trees.

The existing Tree Ordinance regulates trees based on the size, species, location (public or private), and type of project proposed. The Tree Ordinance defines the difference between a "tree" and a "protected tree" and proceeds to provide protection for trees on non-residential property and protected trees on private property. The Tree Ordinance identifies seven tree species that are protected on private property once the diameter of the trunk reaches ten inches while providing protection for all other tree species with a trunk that is 18 inches in diameter. In addition, it identifies three species (Acacia, Eucalyptus, and Monterey Pine) that are never afforded protection no matter what the size.

Differing regulations and fee structure for tree size, species, location, and project has led to confusion. Often the public is neither able to identify tree species nor evaluate trunk diameter. The fees for removing trees vary greatly depending upon the type of project-- Planning Commission Development Review fees and requirements reach into the thousands of dollars while a tree permit for an individual tree removal is currently free of charge.

The existing Tree Ordinance establishes a Tree Board that consists of the Parks and Recreation Commission that is tasked with "establishing a community forest work plan, recommending

public tree care policies, and maintaining a list of recommended street trees.”

Since 2008, staff has been working with an ad-hoc committee made up of members of the Parks and Recreation Commission and Planning Commission to revise the Ordinance. The goals of revisions include:

- Maintaining a healthy urban forest
- Establishing an efficient tree permit process that reduces confusion
- Promoting public awareness of the Tree Ordinance
- Improving compliance with the Tree Ordinance
- Ensuring that removed trees are replaced

Discussion

The following presents the policy questions and discussion of the committee.

What size of tree should be regulated?

As per the current Ordinance, the following trees are regulated based on the diameter of the trunk:

Non-residential

- Trees with trunks greater than six inches in diameter

Residential

- Seven species of trees are protected at ten inches in diameter
- Other species of trees are regulated at 18 inches in diameter
- Three “Exempt” species of trees can be removed no matter what the diameter size.

The size distinctions have created confusion. The committee is proposing to create a standard diameter size of ten inches that will apply to all trees to reduce confusion and improve city assessment of tree removals. The change is expected to increase the number of permits because more tree species will be added into the residential regulatory “bucket” (see next question). The exemption for Acacia, Eucalyptus, and Monterey Pine would be discontinued and removal of these trees on private property over ten inches in diameter would require a permit. Staff would readily issue administrative permits for removal of these tree species but require modest tree replacement to account for the loss of biomass.

What tree species should be in the regulatory “bucket”?

Currently, different tree species are treated differently based on their status as “trees”, “protected trees”, or “exempt trees”. Seven species are considered protected, others are protected when they reach a certain size, and three species are exempt. Many homeowners are unclear on what tree species are on their property when they call the Parks and Recreation Department. In addition, the distinctions in tree species can be subjective, based partly on the native status of the trees but

also upon the current public opinion.

It appears that the ad-hoc committee is generally in agreement that the “Protected Tree” category should be expanded to include all big trees (over ten inches in diameter) and the “exempt” category should be removed. The change is expected to take the guesswork out of removing trees on private property. The change would likely result in more residential property visits for homeowners wanting to remove trees, greater compliance with the Tree Ordinance, and more permits issued. The committee also recommends requiring that permits be displayed at the site to improve compliance.

There is significant discussion related to the idea of what tree species should be regulated and a member of the committee felt strongly that certain species, such as Eucalyptus, should remain excluded from regulation.

Should tree removal requirements be different depending upon the type of project?

The committee reached consensus that individual tree removal should be treated differently than tree removal that is part of a development project.

Should the City charge a cost recovery fee for issuing individual tree permits?

Currently, no fee is charged for issuance of an individual tree removal permit and about 50 of these permits are issued per year. Charging a fee would allow the City to recover the costs of visiting the property, confirming the status of the tree, and issuing a permit. The estimated cost of this service is about \$50 per permit; the ad-hoc committee recommending this fee be added to the Master Fee Schedule. However, it is possible that the fee will result in a disincentive to citizens calling the City for tree removal and may result in an increase in clandestine tree removals.

A regular fee schedule applies for trees removed in conjunction with a development project and the committee recommends leaving that cost recovery process in place.

Who should make up the Tree Board?

Currently the Tree Board is made up of the Parks and Recreation Commission. The committee is proposing a change to two currently seated Parks and Recreation Commissioners, two currently seated Planning Commissioners, each appointed by their respective Commissions for a term of one year, plus one member from the community at large, appointed by the Tree Board to a term of three years. Public meetings would be proposed on a bi-monthly (once every two months), or more often as needed. The purpose of this change is to reflect the reality of tree regulation falling under both the Parks and Recreation and Community Development departments. Both departments and hence both Commissions have a role in managing the urban forest in Belmont.

What is the role of the Tree Board?

The committee suggests expanding the Tree Board's scope of responsibilities to include hearing and ruling on appeals of denied Administrative Permits, establishing a community forest work

plan, recommending public tree care policies, maintaining a list of recommended trees and undesirable trees, and promoting public awareness of trees and of the Ordinance. The committee also suggested that the Tree Board could become more of an advocate for proper maintenance, care, and expansion of Belmont’s urban forest.

General Plan/Vision Statement

Review of this matter is consistent with the following goals and objectives:

- *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

Depending on the changes that are made to the Tree Ordinance, there may be a fiscal impact related to staff time. Changes may result in the need for increased site visits and issuance of permits. These costs may be off-set if a fee is implemented for the issuance of individual tree removal permits.

Public Contact

The City Council last updated the Tree Ordinance in 2003 including addressing questions related to the scope of the Ordinance and the replacement requirements for trees (link: [Minutes 11-25-03](#)). The Ordinance was subsequently amended in 2004 to reflect changes to the replacement requirements for trees and fees required for removal of trees. Out of that review, the Tree Board recommended that the entire Tree Ordinance undergo a review to “address issues which have arisen over the years.” (link: [Staff Report 2-10-04](#)) The item was placed on the Priority Calendar and subsequently led to this effort.

The idea of a blended Tree Board was discussed at a joint meeting of the City Council and the Parks and Recreation Commission on November 5, 2008 (link: [Minutes 11-5-08](#)) and at a Tree Board meeting on December 3, 2008 (link: [Staff Report 12-3-08](#)). The Tree Board generally reached consensus that changing the composition of the Board would be acceptable.

Recommendation

The purpose of this staff report is to provide background on the existing Tree Ordinance, to identify the reasons it is being updated, and to illuminate the policy changes the ad hoc committee is proposing. Council can provide direction at this point or defer comments until the Tree Ordinance comes back to the Council for a review and adoption.

Alternatives

1. Refer back to staff

2. Table the item

Attachments

A. Current Tree Ordinance- Municipal Code Section 25

Respectfully submitted,

Jonathan Gervais
Parks and Recreation Director

Carlos deMelo
Community Development Director

Greg D. Scoles
City Manager

Staff Contact:

Jonathan Gervais, Parks and Recreation Director
(650) 595-7441
jgervais@blemont.gov

ATTACHMENT A

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)

