



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: November 27, 2012

SUBJECT: AN ORDINANCE TO AMEND TITLE 13 AND TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE AMENDING CHAPTER 13.32 (TREE REMOVAL CONTROLS), AND SECTIONS 20.100.140 AND 20.100.220 OF CHAPTER 20.100 (ADMINISTRATION AND PERMITS) TO AMEND THE TREE REMOVAL REQUIREMENTS FOR SINGLE-FAMILY RESIDENCES, IN ORDER TO STREAMLINE PERMITTING PROCESSES AND TO FURTHER IMPLEMENT THE COMMUNITY FOREST GOAL AND POLICIES SET FORTH WITHIN THE ENVISION SAN JOSÉ 2040 GENERAL PLAN, TO MODIFY PERMIT RECORDATION REQUIREMENTS FOR TREE REMOVAL AND CERTAIN OTHER PERMITS, AND TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN THOSE CHAPTERS AND SECTIONS OF TITLE 13 AND TITLE 20 AND A RESOLUTION SETTING FORTH THE TREE SPECIES THAT ARE IDENTIFIED AS UNSUITABLE TREES. FILE NO. PP12-098.

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend to the City Council to:

1. Approve an Ordinance of the City of San José amending Chapter 13.32 of Title 13 of the San José Municipal Code, and amending Sections 20.100.140 and 20.100.220 of Chapter 20.100 of Title 20, to amend the tree removal requirements for single-family residences in order to streamline permitting processes and to further implement the Community Forest Goal and Policies set forth within the Envision San José 2040 General Plan, to modify permit recordation requirements for tree removal and certain other permits, and to make other technical, non-substantive, or formatting changes within those chapters and sections of Title 13 and Title 20; and
2. Adopt a Resolution setting forth the tree species that are identified as Unsuitable Trees.

OUTCOME

Approval of these ordinance amendments will: 1) create a streamlined tree removal process for the majority of tree removal permit applications for properties used for single-family detached residences while retaining the City's ability to evaluate the proposed removal of trees and mitigation measures for tree removals located on private property, and 2) clarify that certain permits including Tree Removal Permits, a subset of Administrative Permits, and a subset of Special Use Permits (e.g., permits tied to a specific operator and/or which generally do not result in permanent improvements to a property) do not require recordation with the County of Santa Clara Recorder's Office.

Adoption of the accompanying Resolution will establish a list of specific tree species which will generally be considered as Unsuitable Trees and which may be removed upon issuance of a Tree Removal Permit through the above-mentioned streamlined tree removal process.

BACKGROUND

The City of San José has more than a million trees on public and private property that constitute the City's Community Forest, and provide a sense of community pride and ownership. Because of the environmental benefits that trees provide, the City's Green Vision has a goal of planting an additional 100,000 trees by 2022. The Envision San José 2040 General Plan includes a Community Forest Goal and several accompanying Policies:

Goal MS-21 – Community Forest

Preserve and protect existing trees and increase planting of new trees within San José to create and maintain a thriving Community Forest that contributes to the City's quality of life, its sense of community, and its economic and environmental well being.

San José manages its Community Forest in part by regulating the removal of trees on private property. City regulations require the approval of a permit by the Director of Planning for the removal of an ordinance-size tree from private property. As defined in the San José Municipal Code, an ordinance-size tree has a circumference of 56 inches or greater when measured two feet above the ground. The City's regulations may allow the removal of trees based on the condition of the tree or on the tree's impacts to structures and utilities. A standard condition for issuance of Tree Removal Permits is to require the planting of replacement trees, which can be street trees.

Tree Removal Permit applications for single-family detached residential properties are administered by the Planning Division of the Department of Planning, Building and Code Enforcement (the current application form for removal of live ordinance-size trees is available at <http://www.sanjoseca.gov/DocumentCenter/Home/View/601>). Tree removals on multi-family or non-residential properties are typically considered through a development permit process (e.g., Site Development Permit) for those sites because the subject trees are part of the development's overall landscape plan. The City's Department of Transportation administers a separate tree removal process for street trees within the public right-of-way (i.e., park strips) that is distinct from the process for trees on private property.

On April 21, 2009, per City Council direction to streamline the tree removal permit process for single-family property owners, Planning staff presented potential amendments to the Municipal Code (Title 13 and Title 20), to the City Council Public Outreach Policy (6-30) and to the Planning Application Filing Fee Schedule. The City Council then accepted staff's recommendation and directed staff to return to Council with an analysis of the following specific modifications of the private property tree removal permit process: 1) provide residents with the option of performing or identifying reasonable mitigation in lieu of a permit; 2) set a reasonable cap on the permit cost; 3) allow for removal of nuisance trees without a permit; and 4) do not require an arborist report to remove a tree from private property. The April 21, 2009 Council memos, presentation, and meeting minutes are available at the following web links:

http://www3.sanjoseca.gov/clerk/Agenda/20090324/20090324_0402.pdf

http://www3.sanjoseca.gov/clerk/Agenda/20090421/20090421_0402att.pdf

http://www3.sanjoseca.gov/clerk/Agenda/20090421/20090421_0402pres.pdf

<http://www3.sanjoseca.gov/clerk/Agenda/20090421/20090421min.pdf>

Subsequently, the City Council included in its top 10 ordinance amendment priorities for 2012 the streamlining of the Tree Removal Permit process for single-family residential properties. The proposed ordinance would implement changes to the City's procedures for Tree Removal Permits corresponding to the four items listed above and included in the City Council's adopted motion from April 21, 2009, and also implement the City Council's direction establishing changes to the ordinances governing single-family residential Tree Removal Permits as a priority for 2012.

ANALYSIS

The Tree Removal Permit process has been a generally effective tool by which the City can regulate the removal of trees from private properties within San José and require the planting of an equal or greater number of new trees to maintain or increase the City's Community Forest. However, the current Tree Removal Permit process also creates administrative and financial costs for both the City and applicants, which are in particular a concern for single-family property owners. To minimize the costs for single-family property owners, the City uses General Fund resources rather than operate the current Tree Removal Permit process as a full cost-recovery program. Streamlining the Tree Removal Permit process will help to reduce the time and cost burdens borne by both applicants and the City.

More than 1,300 Tree Removal Permit applications were submitted in the last six years for removal of trees from single-family residential properties. Of these applications only ten were denied (less than 1%). There has been little interest from the public concerning the majority of Tree Removal Permit applications that the City has approved. Based upon the high volume of Permits processed, it is possible to identify several categories of tree removals and identify specific types of trees for which the current level of review is not merited.

One of the main purposes of the City's ordinances, which implement the Community Forest Goal and Policies, is to grow and maintain healthy trees that enrich the surrounding urban environment. By continuing to require the planting of replacement trees, while also creating a streamlined administrative Tree Removal Permit process for single-family property owners, the proposed ordinance would continue to support the City's Community Forest Goal but also reduce the time and

financial costs to single-family property owners as well as the City. To reflect current community concerns, the proposed ordinance would maintain the existing process for considering removal of native trees that are ordinance size, or identified as Heritage Trees or candidates for Heritage Tree status.

The proposed ordinance would thus create a streamlined, administrative Permit process for “Unsuitable Trees”, maintain the City’s ability to require planting of replacement trees, and remove the requirement for recordation of specific Permit types.

Streamlining the Tree Removal Permit Process for “Unsuitable” Trees

The proposed ordinance amendment would allow for the removal of “Unsuitable Trees” from single-family residential properties through a streamlined administrative Tree Removal Permit process. Unsuitable Trees are defined either by species (e.g., a non-native, invasive species of tree or a species of tree prone to disease) or by placement on site (e.g., a tree planted at a location too close to a structure for the tree’s mature size). As observed by staff or as suggested by community members, Unsuitable Trees typically include tree species such as eucalyptus, liquidamber, palm, pine, tree-of-heaven, and tulip trees, or trees that were planted at a location that cannot adequately support their long-term viability in a manner compatible with the ongoing use of the property. Examples of the latter include trees that are planted too close to an existing residence to avoid structural conflicts or that are planted below overhead utility lines so that their mature height is in conflict with the utility lines. The majority of Tree Removal Permits are issued for such Unsuitable Trees (also in the past referred to as “nuisance” trees).

During the past decades, as the City developed with single-family detached residences, a number of trees were planted by property owners or developers to achieve near-term landscaping goals in locations close to residences or utility lines without due consideration for the consequences of how the trees would expand their roots and canopies over time. Because of the legacy of this approach to tree planting, the private property Tree Removal Permit process is used primarily by single-family residential property owners to allow the removal of trees that over the long-term have become incompatible with their immediate environment either because they were planted with inadequate space for their growth, or because they were species that are invasive, and non-native to the San José region, or susceptible to disease.

In the proposed ordinance, Unsuitable Trees are defined as those which have the nearest part of their trunks either within five (5) feet of the nearest part of a single-family residence or within five (5) feet of the center line of underground utility pipes or lines or which are listed as a species that are “non-native, invasive or subject to disease” on a list adopted through a City Council Resolution (draft attached). As proposed, Unsuitable Trees would be eligible for a more streamlined, administrative Tree Removal Permit process that would be done over-the-counter by Planning Division staff, without the need for a public hearing. Maintaining a requirement for a Permit for these types of tree removals allows the City to continue to monitor the removal of these trees and the planting of mitigation replacement trees. Changing the process from a public hearing to an administrative approval provides more predictability, faster processing, and lowers administrative costs for the City and the applicant.

Under the existing Title 13 provisions, one of the findings for the removal of a live tree involves a determination that “the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.” Property owners often have to pay for an arborist report to document that these findings can be made. As proposed by staff, Unsuitable Trees, by definition, meet the findings in Title 13, thereby eliminating a need for an arborist report for most applications.

Mitigation Planting of Replacement Trees

Because mitigation planting of replacement trees is a standard permit condition for Tree Removal Permits, issuance of a Tree Removal Permit through either a standard or expedited process allows the City to maintain or potentially enhance its achievement of the City’s Community Forest Goals and Policies. The standard procedure for issuance of Tree Removal Permits for single-family properties is to require one-to-one replacement. An administrative Permit process, by reducing financial and time costs, maintains the City’s ability to require replacement trees and should encourage greater compliance with the City’s regulatory process by allowing single-family property owners to dedicate resources toward the planting of more trees rather than the permitting process.

While the City’s practice has not been to specify a particular replacement tree, the City Arborist provides advice to property owners who request guidance on the selection of a suitable tree. Typically, replacement tree planting for a tree removed from a single-family residential lot is conditioned in the Tree Removal Permit as follows:

Within 30 days of removal of the tree, the applicant shall replace the tree with **one (1)** 15-gallon tree planted on the same property as the tree that is removed. The replacement tree may be a street tree planted in the public right-of-way along the project frontage, if street trees do not currently exist. (Contact the City Arborist at 408-794-1901 or arborist@sanjoseca.gov for the designated street trees.) Alternatively, the replacement tree requirement may be satisfied by donation of \$300.00 per replacement tree to the “Our City Forest” non-profit organization, (408) 998-7337 or www.ourcityforest.org. The applicant shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager, to verify compliance with the mitigation requirements. Such evidence should be labeled **TR12-XX** and sent to the Planning Project Manager, within 30 days of the replacement of the subject tree. A donation receipt to “Our City Forest” for offsite tree planting shall be provided to the Planning Project Manager prior to removal of the subject tree.

This condition provides flexibility for the applicant to plant the replacement tree or to pay an in-lieu fee to Our City Forest, thereby outsourcing the mitigation planting, consistent with Council recommendations from 2009.

Addressing the Council’s direction to streamline the City’s tree removal process for single-family property owners by establishing an administrative Tree Removal Permit process meets the intent of the Council direction while also retaining the City’s ability to keep record of ongoing efforts to promote the Community Forest, consistent with the General Plan and the Green Vision. The administrative process also provides for monitoring of the planting of replacement trees, thereby allowing the City to avoid the need to consider the potential environmental impacts of a broad potential loss of the Community Forest. Staff also considered an alternative to eliminate the

requirement for any type of permit for the removal of ordinance-size trees from single-family residential properties, but determined that such an approach would raise additional complex challenges related to finding consistency with the City's Community Forest Goal and the analysis of potential environmental impacts.

Permit Recordation

To further streamline permitting processes for tree removals and other minor permits that do not result in the placement of new structures on a project site, staff is proposing to eliminate the requirement to record all Tree Removal Permits, a subset of Administrative Permits, and a subset of Special Use Permits with the County of Santa Clara. Specifically, the proposed ordinance will exempt these four permit types from the recordation requirement:

1. Administrative Permits that do not include the installation of utility structures
2. Tree Removal Permits
3. Special Use Permits that only include demolition of existing buildings or structures
4. Planned Development Permits that only include demolition of existing buildings or structures.

Recordation is not necessary for these four permit types because they do not allow for physical improvements to a property or they permit short-term activities tied to a single operator. Issuance of a permit for a tree removal or demolition of a structure does not need to be recorded as the absence of a tree or structure does not need to be recorded on an on-going basis. Eliminating this requirement will reduce unnecessary costs for property and business owners.

General Plan Conformance

As proposed by Planning staff, streamlining the Tree Removal Permit process is consistent with the General Plan Community Forest Goal and Policies to preserve and protect existing trees and to increase planting of new trees within San José to maintain a thriving Community Forest that contributes to the City's quality of life, its sense of community, and its economic and environmental well-being.

The Envision San José 2040 General Plan identifies San José's Community Forest as an environmentally beneficial asset to be maintained and enhanced by preserving large-specimen and heritage trees, especially native oaks and sycamores, and by planting a diverse array of water-conserving, non-invasive, and native tree species in locations where they can thrive. When tree preservation is not feasible, General Plan Policies support removing existing invasive, non-native trees and replacing such trees, in number and spread of canopy, by planting new trees in locations that avoid conflicts with nearby power lines or conflicts between tree roots and developed areas. Staff's proposed ordinance is intended to help implement the Goal and Policies in conformance with the General Plan.

Conclusion

The staff-recommended changes to the private-property tree removal permit process for single-family residential lots should improve service delivery to property owners by reducing the processing time and total costs of such applications, consistent with Council direction.

EVALUATION AND FOLLOW-UP

Future Streamlining of Tree Removals

After facilitating more public engagement, staff intends to return to Council with additional options for streamlining Tree Removal Permits during the first part of 2013 to ensure the regulations are providing benefit to the maintenance of the City's Community Forest in balance with the time and financial costs associated with the administrative Tree Removal Permit process for single-family property owners.

PUBLIC OUTREACH/INTEREST

Staff posted information about the proposed ordinance on the Planning Division website and presented the proposed amendments at a community meeting on November 15, 2012 held at City Hall and facilitated by Planning staff. Twenty people attended. Staff has also corresponded with the public by e-mail and by telephone.

Members of the public emphasized that there are benefits to everyone in San José when trees are planted and maintained. Public comments include the following suggestions and observations regarding the tree removal permit process:

1. Add liquidamber and tulip trees to the proposed list of Unsuitable Trees that would be eligible for administrative approval.

The proposed draft Resolution now includes these two types of trees.

2. A follow-up inspection after six months is important to assure that the required replacement trees are planted and maintained.

Staff can do this with a subset of permits on a case-by-case basis as resources allow.

3. If a tree is small, it just affects the individual landowner, and he or she is free to deal with it as he/she wishes. However, larger trees impact larger areas: they provide cooling shade for neighboring properties and they add beauty to the area, and thus they affect the value of those properties. The current permit process with a public hearing protects trees over 56 inches in circumference to make sure that those neighbors who would be most affected by the removal of a tree have some say on the matter.

Staff's proposal would maintain the public hearing process for trees that the City values consistent with the General Plan Community Forest Goal and Policies.

4. We hope the City Arborist has an extensive list of trees suitable for the area.

Planning staff is working with the City Arborist to provide links on the Planning Division web page for several local resources for guidance on planting suitable trees.

5. The “urban forest” adds significantly to the community: the tree-lined streets are the most walkable, and large trees in private yards enhance the environment and the aesthetics in the surrounding area. The City’s tree ordinance just needs enforcement, and a little enhancing, in order to properly balance property rights with the needs of the community.

Staff’s proposal is intended to facilitate compliance with the City’s tree regulations and encourage people to plant and maintain trees.

6. Street trees are not consistently watered or maintained by some property owners. Many olive trees have become diseased and should be removed. Replacement trees should reflect the history of the previous tree that was removed.

The proposal ordinance and resolution addresses trees that are subject to disease. Other diseased trees will continue to be subject to a Tree Removal Permit process. Replacement trees would be selected from approved lists of street trees or non-invasive species.

7. The Santa Clara County Association of Realtors supports streamlining the Tree Removal Permit process and would like to see streamlining of street tree maintenance also.

The City is working to streamline all tree regulations.

8. 9:00 a.m. public hearings for Tree Removals are challenging to attend by working residents, which is why there are not a lot of people showing up for the public hearings on Tree Removals now.

In 2013, staff will propose additional streamlining measures to more effectively address public interest in tree removals.

9. Approved permits for tree removals should be posted on-site to prove that the trees that are removed have been done legally.

This approach is currently being implemented.

10. The City should provide guidance on identification of recommended and Unsuitable Trees that includes pictures to help residents determine whether or not they meet the criteria for the streamlined process before they submit an application for a Tree Removal.

Staff can provide such guidance on the Planning Division webpage.

COORDINATION

Preparation of this report, the proposed ordinance and resolution were coordinated with the City Attorney’s Office.

PLANNING COMMISSION

November 27, 2012

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CEQA

Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the Envision San José 2040 General Plan Program approved previously. The Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan entitled, "Envision San José 2040 General Plan," for which findings were adopted by City Council Resolution No. 76041 on November 1, 2011, adequately describes the activity for the purposes of CEQA. The project does not involve new significant effects beyond those analyzed in this Final EIR. Therefore, the City of San José may take action on the project as being within the scope of the Final EIR, File No. PP12-098.

/s/

JOSEPH HORWEDEL, DIRECTOR

Planning, Building and Code Enforcement

For questions, please contact Jenny Nusbaum, Senior Planner at 408-535-7872.

Attachments: Draft Ordinance Amendment
Draft Resolution
Public Correspondence

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 13.32 OF TITLE 13 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTIONS 13.32.020, 13.32.070, 13.32.090, 13.32.100, 13.32.110 AND 13.32.120, AND ADD SECTIONS 13.32.041 AND 13.32.095, AND AMENDING SECTIONS 20.100.140, 20.100.220 AND 20.100.300 OF CHAPTER 20.100 OF TITLE 20, ALL TO MODIFY THE TREE REMOVAL REQUIREMENTS FOR SINGLE-FAMILY RESIDENCES TO STREAMLINE THE PERMITTING PROCESS AND TO MODIFY THE PERMIT RECORDATION REQUIREMENTS FOR TREE REMOVAL AND CERTAIN OTHER PERMITS

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 13.32.020 of Chapter 13.32 of Title 13 of the San José Municipal Code is amended to read as follows:

13.32.020 Definitions

Except where the context otherwise requires, the definitions contained in this Section shall govern the construction of this Chapter:

- A. “Certified arborist” means an individual who has demonstrated knowledge and competency of arboriculture through the obtainment of an arborist certification from the International Society of Arboriculture, or its successor organization if that organization no longer exists, or who is a member of the American Society of Consulting Arborists, or its successor organization if that organization no longer exists.

- B. “Dead tree” means a tree that is no longer alive, has been removed beyond repair, or is in an advanced state of decline (where an insufficient amount of live tissue, green leaves, limbs or branches exists to sustain life) and has been determined to be in such a state by a certified arborist during a non-dormant or

other natural stage of the tree that would minimize the likelihood that the tree would be mistakenly identified as being in such a dead state.

- C. “Director” means the Director of Planning, Building and Code Enforcement of the City of San José or such other person designated by the City Manager to administer and enforce the provisions of this Chapter.
- D. “Dripline” means the area around the base of a tree directly under the canopy cover of the tree and extending out as far as the canopy.
- E. “Live tree” means any tree that is not a dead tree.
- F. “Ordinance tree” means a tree defined in this section hereinbelow and whose removal or topping is covered by and subject to the provisions of this Chapter.
- G. “Remove” means eliminate, take away, uproot or destroy. For purposes of this Chapter, “remove” also means taking any action that reasonably and foreseeably will lead to the death of a tree or to permanent significant damage to the health or structural integrity of a tree. Such actions can include, without limitation and by way of example, excessive pruning, cutting, girding, poisoning, or watering of a tree; the unauthorized relocation or transportation of a tree; excessive excavation, alteration, or grading of the soil within the dripline of a tree, or excessively bruising, tearing or breaking the roots, bark, trunk or branches of a tree.
- H. “Topping” means cutting the branches of an ordinance tree in a manner that destroys the existing symmetrical appearance or natural shape of the tree and involves the removal of main lateral branches and leaving the trunk of the tree or major branches of the tree with a stub appearance.

I. “Tree” means any live or dead woody perennial plant characterized by having a main stem or trunk which measures fifty-six (56) inches or more in circumference at a height of twenty-four (24) inches above natural grade slope. For purposes of this Chapter, a multi-trunk tree shall be considered a single tree and measurement of that tree shall include the sum of the circumference of the trunks of that tree at a height of twenty-four inches above natural grade slope. “Tree” shall include the plural of that term.

J. “Unsuitable Tree” means a live tree or dead tree on a lot that is used for a one-family dwelling as defined in Section 20.200.320, where the tree is not a heritage tree as defined in Section 13.32.140, a candidate for heritage tree status, or a palm tree in the Palm Haven Conservation Area and meets at least one of the following criteria:

1. The part of the tree trunk nearest to a one-family dwelling is five (5) feet or less from the nearest above-grade part of that one-family dwelling; or
2. The part of the tree trunk nearest to a below-grade utility pipe or line of a one-family dwelling is five (5) feet or less from the centerline of that below-grade utility pipe or below-grade utility line of a one-family dwelling; or
3. The tree belongs to a species that has been found by the City Council to be uniquely less compatible with the immediate environment because the species is invasive or non-native to the San José region or is susceptible to disease. Such tree species shall be placed on an Unsuitable Tree species list which shall be adopted by the City Council by resolution, which resolution may be amended from time to time to add or delete certain tree species.

SECTION 2. Chapter 13.32 of Title 13 of the San José Municipal Code is amended to add a new section, to be numbered, entitled and to read as follows:

13.32.041 Removal of Unsuitable Tree

It shall be unlawful for any person to remove, or cause to be removed, any Unsuitable Tree, as defined in Section 13.32.020, from any private parcel of land in the City unless a tree removal permit that allows the removal of that Unsuitable Tree has first been issued and accepted by the applicant pursuant to the provisions of this Chapter.

SECTION 3. Section 13.32.070 of Chapter 13.32 of Title 13 of the San José Municipal Code is amended to read as follows:

13.32.070 Permit application

- A. Any person, unless required to do so by the provisions of Chapter 13.28, desiring to remove any live tree that is not an Unsuitable Tree from any private parcel of land in the City, as set forth in Section 13.32.030, shall file a written application on a form provided by the Director, setting forth therein, among other things, the number, type, size and location of each tree and the reason for removal of each tree.

- B. Any person, unless required to do so by the provisions of Chapter 13.28, desiring to remove any dead tree that is not an Unsuitable Tree from any private parcel of land in the City, as set forth in Section 13.32.040, shall file a written application on a form provided by the Director, setting forth therein, among other things, the number, type, size and location of each tree, the reason for removal of each tree, and the certified arborist's report assessing the condition of tree and the time frame in which the assessment occurred.

C. Any person, unless required to do so by the provisions of Chapter 13.28, desiring to remove any Unsuitable Tree from any private parcel of land in the City, as set forth in Section 13.32.041, shall file a written application on a form provided by the Director, setting forth therein, among other things, the number, type, size and location of each Unsuitable Tree, and information clearly establishing that the tree qualifies as an Unsuitable Tree.

SECTION 4. Section 13.32.090 of Chapter 13.32 of Title 13 of the San José Municipal Code is amended to read as follows:

13.32.090 Review of Permit Application - General

A. The provisions of this Section shall apply to tree removal permit applications for trees that are not Unsuitable Trees as defined in Section 13.32.200, subject to the provisions of Section 13.32.095.D below.

A.B. The Director shall conduct an investigation on each application for a tree removal permit accepted for filing.

B.C. Each such investigation shall include an opportunity for the following persons to appear before and be heard by the Director on the condition of the tree and whether it should be removed: (1) the applicant, and (2) the owners and occupants of property contiguous to the parcel upon which the tree or trees proposed to be removed is or are located or directly across a public street which abuts such parcel.

C.D. The Director shall not act upon any tree removal permit application until and unless the Director has first given the applicant, owners and occupants an opportunity to be heard thereon.

D.E. Notice of the time and place at which the applicant, owners and occupants may appear before the Director and be heard on the application shall be given by mailing the same to the applicant, postage prepaid at the address shown for such purposes on the application, to such owners postage prepaid at their last known address as the same appears upon the last equalized assessment rolls of the County of Santa Clara, and to such occupants postage prepaid at the address of the parcel on which the said tree or trees to be removed is or are located and at the address of the parcel directly across the public street which abuts such parcel on which said tree or trees is or are located. All such notices shall be mailed at least five (5) days before the date on which the applicant, owners and occupants will be heard.

E.F. The form of the notice shall be as prescribed by the Director.

SECTION 5. Chapter 13.32 of Title 13 of the San José Municipal Code is amended to add a new section, to be numbered, entitled and to read as follows:

13.32.095 Review of Permit Application – Administrative Procedures for Unsuitable Trees

- A. The Director shall review each application for a tree removal permit for an Unsuitable Tree accepted for filing.
- B. The Director may, in the Director's sole discretion, approve a tree removal permit for an Unsuitable Tree.
- C. The Director's decision pursuant to this Section is an administrative determination and requires no hearing or notice.

D. The action of the Director is final. If the application is denied, nothing in this Section shall preclude the applicant from filing, and such applicant may file, an application for a tree removal permit for live trees or dead trees that are not Unsuitable Trees pursuant to this Chapter.

SECTION 6. Section 13.32.100 of Chapter 13.32 of Title 13 of the San José Municipal Code is amended to read as follows:

13.32.100 Permit Findings

A. Neither the Director nor the Planning Commission on appeal shall issue a permit for the removal of any tree, other than an Unsuitable Tree, on any private parcel of land in the City unless the Director or the Commission on appeal makes at least one of the following findings:

1. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this Chapter as set forth in Section 13.32.010; or
2. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or
3. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal; or

B. In connection with an application to remove a dead tree, the Director or the Planning Commission on appeal shall consider whether the subject tree was in

any way injured, removed or caused to be injured or removed by the applicant, in addition to the findings required to be set forth pursuant to the provisions hereinabove.

C. The Planning Director shall not issue a permit for the removal of an Unsuitable Tree on any private parcel of land in the City unless the Director finds that the tree is an Unsuitable Tree as defined in Section 13.32.200.

SECTION 7. Section 13.32.110 of Chapter 13.32 of Title 13 of the San José Municipal Code is amended to read as follows:

13.32.110 Action on a Permit

- A. In taking action on a tree removal permit application, the Director or the Planning Commission on appeal, if applicable, may deny the application or issue a tree removal permit for one or more trees and concurrently deny removal for one or more trees.
- B. The Director or the Planning Commission on appeal, if applicable, may make any permit that they issue subject to such terms, provisions and conditions as they may deem reasonably necessary to secure the general purposes of this Chapter.
- C. The Director or the Planning Commission on appeal, if applicable, shall impose as a condition on the issuance of any permit for the removal of any tree the requirement that a suitable replacement tree or trees as determined by the Director or the Planning Commission on appeal be or cause to be provided, installed and maintained by the permittee at no cost to the City.
- D. The replacement tree requirement set forth in this Section shall be roughly proportionate to the tree replacement needed to alleviate and address the

burdens and other impacts created by allowing the removal of the tree or trees under the permit, except that the Director or the Planning Commission on appeal may increase by a reasonable amount the number of replacement trees to be provided, installed and maintained by the permittee where it is specifically found based upon evidence in the record that the permittee injured or removed or caused the injury or removal of a dead tree that is a subject of the permit without first obtaining a tree removal permit.

SECTION 8. Section 13.32.120 of Chapter 13.32 of Title 13 of the San José Municipal Code is amended to read as follows:

13.32.120 Appeal Procedures

- A. Except for actions of the Director on Unsuitable Trees, any action of the Director may be appealed to the Planning Commission by the applicant or by any of the property owners or occupants of the parcels of land adjacent to or across the street from the property upon which the tree or trees proposed for removal are located. The person making the appeal shall do so by filing a written notice of appeal within ten (10) days after notice of such action is mailed to the applicant at the address shown for such purpose on his application and to such owners mentioned in Section 13.32.090 at their last known address as the same appears upon the last equalized assessment rolls of the County and to such occupants mentioned in Section 13.32.090 at the address of the parcel on which the tree or trees to be removed is or are located and at the address of the parcel directly across the public street which abuts such parcel on which said tree or trees is or are located.
- B. Such notice of appeal shall be filed with the Director on a form furnished by the Director. The information and data required to be set forth in the form shall be as prescribed by the Director. The Director may refuse to accept any such notice of

appeal unless the notice is signed and all data is set forth and shown as required by the form.

- C. When such notice of appeal has been accepted and filed by the Director, within the time provided, the Director shall, subject to the applicable rules of the Planning Commission, set a date of hearing thereon by the Planning Commission and notify the Planning Commission of such setting. Such date of hearing shall be not less than fifteen (15) days nor more than thirty (30) days after the notice of appeal was accepted and filed.
- D. The Director shall give notice of the hearing to the appellant or appellants, and the applicant, owners and occupants by mailing same at least five (5) days before the date set for hearing, to the appellant or appellants at the address shown for such purpose on his or their notice of appeal, and to the applicant, owners and occupants at the address to which the Director's action was mailed and said director shall also file with the Planning Commission at its hearing on appeal the application, notice of appeal, the action appealed from, and all other things filed with the Director in connection with the application.
- E. The Planning Commission shall hear all matters on appeal de novo and shall take action within a reasonable time after conclusion of its hearing.

SECTION 9. Section 20.100.140 of Chapter 20.100 of Title 20 of the San José Municipal Code is amended to read as follows:

20.100.140 Concurrent Review

- A. Whenever applications, for the same site have been filed for one or more development permits or approvals required by this title, such development permit or approvals may be reviewed and acted on in a unified process. Determinations

of public convenience or necessity governed by Chapter 6.84 of Title 6 of the San José Municipal Code may be included in the unified process. Tree removal permits governed by Chapter 13.32 of Title 13 of the San José Municipal Code may be included in the unified process. Subdivision approvals governed by Title 19 of the San José Municipal Code may be included in the unified process.

- B. The unified process shall use the procedures required for the highest level permit or approval. Permits and approvals are ranked as follows with the highest level permit or approval listed first: Rezoning, Conditional Use Permit; Subdivisions; Determination of Public Convenience or Necessity; Planned Development Permit; Special Use Permit; Site Development Permit; Single-Family House Permit-Director's Decision; Development Exception; Development Variance; Sidewalk Café Permit; tree removal permit-Director's Decision; Single-Family House Permit-Administrative Decision; and tree removal permit-Administrative Decision.
- C. The hearing body shall make the findings, if any, applicable to each permit or approval.

SECTION 10. Section 20.100.220 of Chapter 20.100 of Title 20 of the San José Municipal Code is amended to read as follows:

20.100.220 Appeal - Hearing Body

Decisions on permits or approvals pursuant to this chapter are subject to appeal as set forth in Table 20-260 which lists the initial decision maker and the decision making body which will hear any appeal.

Table 20-260 Appeal Hearing Body		
Application	Initial Decision	Appeal Decision

	Making Body	Making Body
Administrative Permit	Director of Planning	No Appeal
Site Development Permit	Director of Planning	Planning Commission
Site Development Permit - Projects within Downtown Districts and exceeding 150 feet and FAR of 6:1	Director of Planning	City Council
Single-Family House Permit	Director of Planning	
Administrative Decision	Director of Planning	No Appeal
Director's Hearing	Director of Planning	Planning Commission
Planned Development Permit	Director of Planning	Planning Commission
Special Use Permit	Director of Planning	Planning Commission
Conditional Use Permit	Planning Commission	City Council
Conditional Use Permit - Drinking Establishments with an approved maximum occupancy load of over 250 persons that operate between 12:00 midnight and 6:00 a.m.	City Council	No Appeal
Conditional Use Permit involving off-premises sale of alcoholic beverages requiring a determination under Chapter 6.84 where findings required by Planning Commission under Section 6.84.030.B.1. through 4. cannot be made	City Council	No Appeal
Variance	Director of Planning	Planning Commission
Exception	Director of Planning	Planning Commission
Sidewalk Café Permit	Director of Planning	City Council
tree removal permit	Director of Planning	Planning Commission
<u>Administrative Decision</u>	<u>Director of Planning</u>	<u>No Appeal</u>
<u>Director's Hearing</u>	<u>Director of Planning</u>	<u>Planning Commission</u>
Zoning Code Verification Certificate	Director of Planning	No Appeal

SECTION 11. Section 20.100.300 of Chapter 20.100 of Title 20 of the San José Municipal Code is amended to read as follows:

20.100.300 Recordation

- A. Within thirty (30) days of the permit or other approval becoming effective, in accordance with the provisions of Section 20.100.290, fulfillment of all conditions precedent to release pursuant to this Chapter and the payment of fees, a certificate identifying the permit or other approval shall be recorded by the City. The permit or other approval and the rights and restrictions therein shall run with the land to the fullest extent allowed by law.
- B. If any permit or other approval is revoked after a hearing on an order to show cause pursuant to this Chapter, a certificate of revocation shall be recorded with the County Recorder's Office.
- C. The provisions of Subsection 20.100.300.A and B above shall not apply to the following permits:
 - 1. Administrative Permits that do not include the installation of utility structures; or
 - 2. tree removal permits; or
 - 3. Special Use Permits that only include demolition of existing buildings or structures; or
 - 4. Planned Development Permits that only include demolition of existing buildings or structures.

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE PLACING CERTAIN TREE SPECIES ON THE LIST OF UNSUITABLE TREE SPECIES

WHEREAS, Section 13.32.020(J) of Chapter 13.32 of Title 13 of the San José Municipal Code provides that certain trees located on lots used for detached single family residences (one-family dwellings), which are not heritage trees as defined in Section 13.32.140 or candidate heritage trees, may be designated on an Unsuitable Tree Species List as generally incompatible with their immediate environment by being of a species that is invasive, non-native to the San José region and/or susceptible to disease, which Unsuitable Tree Species List shall be adopted by the City Council of the City of San José (“City Council”) by resolution; and

WHEREAS, the purpose of the Unsuitable Tree Species List is to identify those species that may be permitted for removal through the administrative permit process for Unsuitable Trees as described in Section 13.32.095 and other provisions of Chapter 13.32 of the San José Municipal Code; and

WHEREAS, to be an Unsuitable Tree, the tree must not only belong to one of the species enumerated on the Unsuitable Tree List but also must meet the other criteria for an Unsuitable Tree as defined in Section 13.32.020(J); and

WHEREAS, the City Council desires to establish the Unsuitable Tree Species List;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

1. Pursuant to Section 13.32.020(J) of the San José Municipal Code, the following trees, as the term "tree" is defined in Section 13.28.020(I), which are located on lots used for one-family dwellings and are not heritage trees or candidate heritage trees, are hereby found to be uniquely less compatible with their immediate environment because they belong to species that are invasive, non-native to the San José region and/or susceptible to disease, and are hereby designated and placed on the Unsuitable Tree Species List. Said tree species are:

Eucalyptus

Liquidambar

Palm (except those in the Palm Haven Conservation Area)

Pine

Tree of heaven

Tulip

2. The effective date of this Resolution shall be concurrent with the effective date of the Ordinance amending Chapter 13.32 of Title 13 of the San José Municipal Code modifying the tree removal permit process for Unsuitable Trees, which the City Council approved for publication at the same meeting that it adopted this Resolution.

ADOPTED this _____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk

From: Lori Kahn [mailto:lkahn_pna@sbcglobal.net]

Sent: Tuesday, November 13, 2012 2:09 AM

To: Guzman, Ernest

Cc: Mauricio Astacio; Hugh Graham; Larry Ames2; Larry Ames2; Livezey, Doris; Steve Landau; Nusbaum, Jenny; Rhonda Berry

Subject: Re: ADMIN DRAFT Tree Removal Ordinance to streamline tree removals for single-family residential parcels

Hi Ernest,

I reviewed this proposal and am confused by what's being proposed. First off, I don't understand their definition of a nuisance tree. My specific definition would be a liquidamber which drops balls or diseased tulips which drop sticky sap. This definition states that as long as it is not a heritage tree, it can be either a eucalyptus, palm, pine, or tree of heaven. I've never known these types of trees to be nuisance. The update continues to note that it is illegal to remove without a permit, but then a permit isn't required if it is declared a nuisance. I don't understand.

Unfortunately I am leaving out of town on Tuesday and won't return till Friday so I can't attend the Thurs meeting. I would appreciate a reply to my email instead.

I'm also interested to know if there is any status on the tree ordinance recommendations the Neighborhoods Commission submitted a year ago September. This nuisance tree update doesn't seem to address any of our concerns, unless I am just not interpreting things correctly.

Thanks,

Lori

Nusbaum, Jenny

From: LAmes@aol.com
Sent: Thursday, November 15, 2012 10:31 PM
To: Nusbaum, Jenny
Cc: larry@l-ames.com
Subject: trees

Hi, Jenny,

I've found my comments on the tree removal policy: they're from 5 years ago, and are posted on the web:
http://wgna.net/tree_preservation.htm

~Larry
408/742-1798