



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
Planning and Building



Date: July 18, 2016
Board Meeting Date: July 26, 2016
Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Steve Monowitz, Community Development Director

Subject: MEMORANDUM: Report Back on Request for Urgency Interim Oak Protection Ordinance for Menlo Oaks

RECOMMENDATION:

Accept this report and direct staff to continue implementing measures to ensure compliance with existing tree regulations while updating these regulations.

SUMMARY:

The Board of Supervisors has received a request to adopt an urgency interim ordinance that would place a moratorium on the removal or major trimming of heritage oak trees (Valley and Coast Live Oaks with a diameter above breast height of forty-eight inches or more) in the Menlo Oaks neighborhood. Staff is aware of the concerns that led to this request, and has taken action to respond to these concerns by: improving and supplementing the measures that are used to protect trees during construction; carefully reviewing applications for tree removal using the input of qualified, objective arborists; applying penalties and stop work notices to deter unauthorized tree removals; and initiating an update to the County's tree regulations that will include extensive stakeholder input and involvement.

BACKGROUND:

During the Public Comment period at the Board's July 12, 2016 hearing, Judy Horst of the Menlo Oaks Tree Association (MOTA) submitted a request for the Board to consider adopting an Urgency Interim Oak Protection Ordinance for the Menlo Oaks unincorporated community (see Attachment A). Lennie Roberts of the Committee for Green Foothills (CGF) also spoke in favor of the request, which proposes to establish an interim moratorium on the removal or major pruning of heritage oak trees within the Menlo Oaks area, unless the tree is in imminent danger of falling and causing damage to life of property, as verified by a consulting arborist with sampling and physical testing.

Existing regulations allow for a tree removal permit to be issued based on considerations related to the trees health, its proximity to existing or proposed structures and utilities, and the necessity of the trimming or removal to construct improvements or otherwise allow economic or other enjoyment of the property.

Urgency Interim Ordinances Authorized by State Law

California Government Code Section 65858 authorizes cities and counties in California to adopt, by a four-fifths vote, an urgency measure prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. Such an interim ordinance may be established without following the procedures otherwise required prior to the adoption of a zoning ordinance, to protect the public safety, health and welfare. Any emergency ordinance expires 45 days after adoption, but may be extended by approximately two years. In order to adopt an interim ordinance, the legislative body must find that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare. See Attachment B for more detail on the requirements for adopting urgency interim ordinances.

DISCUSSION:

In response to concerns about tree removal and tree protection associated with new development in unincorporated communities, including Menlo Oaks, the Planning and Building Department has recently implemented a number of measures to improve tree protection during demolition/construction, deter unauthorized tree removal, and engage community members in an update of the County's Significant and Heritage Tree Regulations. These efforts, described further below, provide an effective method for protecting existing significant and heritage trees, while also accommodating reasonable requests for trimming and removal.

Tree Protection Measures

In response to failure by some permittees to implement tree protection requirements that were incorporated into development permit conditions, Planning and Building staff have recently revised their approach to protecting trees that will remain on sites where construction is occurring. We now require applicants seeking Planning, Building, Grading, or Demolition permits to submit an Existing Tree Plan separate from, but consistent with the required site plan, to assess tree impacts associated with proposed demolition or development, and establish tree protection measures when construction activities will occur within the dripline of a significant tree or a heritage tree. Existing Tree Plans are also needed for Heritage and Significant tree removal to ensure existing trees are protected during removal, and so replanting proposals can be properly assessed. The Existing Tree Plan must be consistent with a site survey prepared by a

licensed surveyor with the existing trees plotted with accurate trunk locations and the dripline areas of all trees or groups of trees located on the site.

An Arborist's report is also required when significant or heritage trees are proposed for removal on the basis of poor health, potential hazard, or when a significant or heritage tree(s) is proposed to remain, but new development would encroach within the drip line of the tree. The Arborist's report must assess tree condition for all significant or heritage trees, and identify measures to protect trees on site during demolition or construction. Prior to Issuance of a Building, Grading or Demolition Permit, the Building Official must complete a pre-construction site inspection to verify that all required tree protection and erosion control measures are in place.

Measures to Deter Unauthorized Tree Removal

The Planning Service Fee Schedule, adopted by the Board of Supervisors in 2011, includes a provision specifying that when a violation of County regulations includes or results from the failure to obtain a required permit, the fee for obtaining the permit required to correct the violations shall be double the fee amount shown on the schedule, except for grading and tree cutting violations, for which the fee shall be ten times the amount shown. For example, if a single significant tree is removed without a permit, instead of paying the standard tree removal application fee of \$304.50, the fee for an "after-the-fact" tree removal permit application would be \$3,045. In the past, this provision was not always enforced, but with recent concerns regarding tree-related violations, these penalty fees are being applied on a regular basis. These substantial penalty fees should act as a deterrent to illegal tree removal, and encourage people to proactively obtain the proper permits before removing a live significant or heritage tree.

In addition, for projects under construction where unauthorized tree removal and/or inadequate tree protection is observed by the Building Official, Stop Work Notices are being used to stop all construction activity on-site until adequate steps are taken to correct the situation. Since stopping a job is extremely disruptive and costly for contractors, use of Stop Work Notices is a very effective measure to encourage contractors to prevent violations of tree protection/removal conditions, and to act very quickly to remediate the situation, should violations occur.

Update to County's Tree Removal/Protection Regulations

Staff is also working on updates to the Significant and Heritage Tree ordinances, as well as to the Planned Agricultural and Resource Management Districts zoning ordinances, in order to address concerns about tree removal and to ensure that we are properly managing the County's tree canopy into the future. At present, staff has completed a detailed work plan for the effort, initiated collaboration with stakeholders, and begun to identify potential steering committee members.

Working collaboratively with the steering committee, including a member from MOTA and CGF, staff will craft changes to the existing regulations that promote the protection

and planting of native trees, simplify and streamline procedures for removing hazardous and invasive trees, and address new information and issues related to climate change, water conservation, and natural habitat protection. These updates will be considered by the Planning Commission and then the Board of Supervisors in the summer of 2017.

FISCAL IMPACT:

The recommended course of action will not have a fiscal impact, as the cost of the update to the County's tree regulations, and the actions being taken to implement existing regulations, are covered by the Department's current budget.