

December 14, 2005

Honorable Mayor and Members of
the Hermosa Beach City Council

Regular Meeting of
January 10, 2006

REVISED TREE ORDINANCE

Recommendation:

It is recommended that the City Council waive full reading and introduce proposed Tree Ordinance.

Summary:

The proposed Tree Ordinance (see Attachment 1) would replace the existing Tree Ordinance (Chapter 12.36 of the Municipal Code). The existing Ordinance includes the following basic elements: it places responsibility for administration upon the Director of Parks and Recreation, it requires a permit for the planting, trimming or removal of a parkway tree, and it allows the City to require the adjacent property owner to remove or trim any tree deemed to be a public nuisance.

The City Council appointed a Tree Committee made up of representatives from the Planning Commission, the Public Works Commission, and the Parks Commission to research and make recommendations for this revised Ordinance. They reviewed tree Ordinances from neighboring cities to aid in developing code requirements. They also met with Mike Flaherty and an arborist on several occasions to help them prepare a list of trees that would thrive in this coastal environment as well as minimize potential damage to sidewalks and street pavement.

The City Attorney, incorporating the recommendations of the Tree Committee, prepared the Draft Ordinance. The Draft Ordinance was then presented to and approved by the Public Works Commission at the meeting of September 28, 2005 (see Attachment 2).

The primary elements of the new Ordinance are summarized below:

- The Ordinance assigns responsibility for administration of street trees to the Director of Public Works.
- The Ordinance provides for the issuance of a permit to allow a property owner to plant a parkway tree.
- The Ordinance establishes an official list of approved parkway trees.
- The Ordinance allows a property owner to remove a parkway tree at his or her own expense, with a permit, if it is dead, constitutes a nuisance, or interferes with the use or enjoyment of the adjoining property. Approval by the City for the removal of a tree with a diameter in excess of 12-inches (measured at six feet above the ground) requires a public hearing before the Public Works Commission. Approval to remove a parkway tree shall include the condition that a new "approved" tree will be planted, unless the Director or the Commission finds that replacement is impractical.
- The Ordinance designates the property owner immediately adjacent to the parkway tree as the party responsible for both maintenance of the tree and repair of any damage to the public sidewalk resulting from the tree. For purposes of this section of the Ordinance "tree" also refers to shrubs and other vegetation in the parkway. Maintenance responsibility includes trimming to provide clearance for pedestrian and vehicular access.

- The Ordinance references a separate document designated as "Horticultural Standards" as promulgated by the Director of Public Works, which provides details for planting and maintaining trees. These include details for installation of root barriers, irrigation, tree wells that are provided by American Public Works Association (APWA).

OPTIONS:

The proposed elements listed above received unanimous support from the Tree Committee and the Public Works Commission, although there were differing opinions as to how extensive the property owner's responsibility for damages to public property should be.

The property owner's responsibility options are as follows:

1. No responsibility for parkway trees – The City of Redondo Beach has taken full responsibility for parkway trees and does annual trimming and covers all costs for repair of any damages due to the trees. This option would require the City to budget approximately \$250,000 per year to take on this responsibility. Some cities have formed citywide assessment districts, which fund this work. Neither the Tree Committee nor the Public Works Commission supported this option.
2. Total responsibility for parkway trees – Property owner responsibility for root damage could be applied to all public improvements including sidewalk, curb, gutter, street pavement, and sewer mains. Residents are responsible for their sewer lateral up to and including the point of connection to the sewer main but this Ordinance could extend this responsibility to include the sewer main. Tree roots blocking sewer mains is a common problem throughout the City. Staff could not find any examples of a city that has incorporated this option. Some members of the Tree Committee and the Public Works Commission supported this option.
3. Responsibility for damages to sidewalk only – This option is recommended by staff and included in the Draft Ordinance. The City of Manhattan Beach has taken this approach. What Manhattan has done in the past was implement an annual sidewalk repair project. They would notify affected residents that they have the option of performing the necessary repairs themselves or else they can pay the City to do the work. The latter option being the most economical for the resident in most cases. California Government Code – Streets and Highways, Sections 5610 – 5618 (see Attachment 3), assigns responsibility for maintenance of the sidewalk in the public right-of-way to the adjacent property owner.
4. Including trees on private property within the regulatory requirements of this proposed Tree Ordinance revision – Some members of the Tree Committee and the Public Works Commission supported this option. The City Attorney does not recommend including private property trees in this Ordinance which amends Municipal Code section for Streets, Sidewalks and Public Places. If we are limiting property owner responsibility to sidewalks, as stated in Option 3, then the Government Code section stated therein, covers this issue regardless of whether it's due to a parkway tree or private property tree.

Again, staff recommends Option 3 above. This is reasonable regulation that many cities have adopted and will be a significant improvement in the City's ability to maintain safe sidewalks.

Fiscal Impact:

None

Attachments:

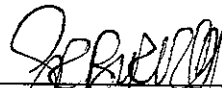
1. Draft Ordinance
2. PWC Meeting Minutes 9/21/05
3. Government Code - Sidewalks

Respectfully submitted,

Concur:



Richard D. Morgan, P.E.
Director of Public Works/City Engineer



Stephen R. Burrell
City Manager

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Draft

AN ORDINANCE OF THE CITY OF HERMOSA
BEACH REGARDING TREES IN PUBLIC RIGHTS
OF WAY AND AMENDING THE HERMOSA
BEACH MUNICIPAL CODE

The City Council of the City of Hermosa Beach does ordain as follows:

Section 1. Chapter 12.36 of Title 12 of the Hermosa Beach Municipal Code is amended in its entirety to read as follows:

TREES

Sections:

- 12.36.010 Definitions**
- 12.36.020 Planting of trees in parkway.**
- 12.36.030 Maintenance of trees in the parkway.**
- 12.36.040 Prohibition of damage, destruction or removal of parkway trees.**
- 12.36.050 Permit requirement for tree removal.**
- 12.36.060 Prohibition of attaching objects to parkway trees.**
- 12.36.070 Protection of parkway trees during construction.**
- 12.36.075 Abatement of nuisance conditions.**
- 12.36.080 Remedies.**
- 12.36.090 Violations.**
- 12.36.010 Definitions**

As used in this chapter:

"Director" means the Public Works Director or his/her designee.

"Parkway" means that portion of the public right-of-way that is not paved as a street or sidewalk, including encroachment areas used as yards by abutting property owners.

"Property Owner" means the person or entity that owns the real property abutting and usually extending to the centerline of the immediately adjacent public-right-of-way, where a parkway tree is located. In the case where the parkway tree is located on the property line between two properties, then the "Property Owner" shall refer to both property owners.

"Public right-of-way" means any area owned by or dedicated to the City for highway purposes.

"Tree" means any perennial plant having a self-supporting woody main stem or trunk measuring at least five inches in circumference at a height of six

feet above the ground, usually characterized by the ability to grow to considerable height or size and to develop woody branches.

12.36.020 Planting of trees in parkway.

No person other than the City and the Property Owner shall plant a tree on any parkway. The Property Owner requesting to plant a tree in the parkway shall first obtain a permit from the Director. Only those species of trees specified on the City's official list of approved parkway trees shall be planted in the parkway. Trees planted on the parkway by the Property Owner shall be planted in accordance with horticultural standards promulgated by the Director. All work under a permit shall be performed within thirty days of the issue date of the permit, and shall be performed in accordance with the conditions and requirements set forth in the permit.

12.36.030 Maintenance of trees in the parkway.

A. With the exception of those trees maintained by the City (as set forth in an inventory of City-maintained trees published by the Director), it is the duty of the Property Owner at his or her expense to cultivate, care for and provide for the complete maintenance of all trees on the parkway adjacent to their real property. Trees shall be maintained in accordance with horticultural standards promulgated by the Director, and shall be maintained in a manner as not to cause or constitute a nuisance. The Property Owner shall be liable for all damages or injuries incurred by any person or to any real or personal property arising from his or her failure to maintain parkway trees as required by this Section.

B. No person other than the City and the Property Owner, including but not limited to utility companies and others owning facilities or performing work in the public right-of-way, shall trim, prune or cut a tree without first obtaining a permit from the Director. All work under a permit shall be performed within thirty days of the issue date of the permit, and shall be performed in accordance with the conditions and requirements set forth in the permit.

12.36.040 Prohibition of damage to or destruction of parkway trees.

A. No person, including the Property Owner, shall willfully injure, deface, mutilate, poison or destroy a parkway tree.

B. No person shall place or maintain any stone, concrete, cement, asphalt, brick or other substance or object within the drip-line of a parkway tree so as to impede free access of water and air to the roots of the tree.

C. No person shall cause or allow any substance deleterious to tree life, including but not limited to oil, dye, brine or any other substance, to pour, flow or drip on any parkway tree or around the base of any such tree.

12.36.050 Permit requirement for tree removal.

A. No person, including the Property Owner, shall remove a parkway tree without first obtaining a permit from the Director except under exigent or emergency services. A permit to replace a tree may be issued if the tree is dead, otherwise constitutes a public nuisance or interferes significantly with the use and enjoyment of the immediately adjoining property. All work under a permit shall be performed within thirty days of the issue date of the permit, and shall be performed in accordance with the conditions and requirements set forth in the permit.

B. Applications for permits to remove a tree with a trunk diameter in excess of twelve inches (measured six feet above the ground) shall be referred to and decided by the Public Works Commission following a public hearing. Notice of the hearing shall be provided to the owners of all real property within a radius of three hundred feet of the subject tree. The decision of the Commission may be appealed to the City Council. Appeals shall be filed in writing within ten days of the final decision of the Commission. The City Council's decision shall be final.

C. A permit to remove a tree shall include imposition of a condition requiring replacement of the tree at the same or a different location with a tree from the City's official list of approved parkway trees, unless the Director or the Commission find that replacement is physically impractical or infeasible.

12.36.060 Prohibition of attaching objects to parkway trees.

No person shall tack, nail, paste or otherwise attach by any means whatsoever any sign, notice, advertisement or any other printed matter, or place any board, platform or other object on a tree. No person shall attach any rope or wire to any tree for the purpose of maintaining or repairing the tree without first receiving a permit from the Director.

12.36.070 Protection of parkway trees during construction.

During the construction, repair or renovation of any structure, utility facility or right-of-way improvement, the person responsible for such activity shall take all necessary precautions to protect parkway trees in the vicinity of the construction project.

12.36.070 Abatement of nuisance conditions.

The Property Owner shall abate any condition of a parkway tree determined by the Director to constitute a public nuisance. For purposes of this section, "tree" shall include shrubs and other vegetation in the parkway. Conditions constituting a nuisance include, but are not limited to, dead or diseased trees, trees constituting a danger to persons or property, trees impairing vehicular visibility, trees endangering utility wires, trees damaging the

sidewalk pavement, or trees impairing pedestrian use of the sidewalk. The nuisance condition shall be abated in the manner prescribed by the Director. In the event the Property Owner fails or refuses to abate the nuisance, the provisions of Chapter 8.28 pertaining to abatement of public nuisances shall be applicable.

12.36.080 Remedies.

In addition to any other remedies provided for in this Code and State law, a person who damages, mutilates, removes or destroys a parkway tree shall be liable to the City for the full replacement cost of the tree.

12.36.090 Violations.

Violations of the provisions of this Chapter shall be infractions, punishable in accordance with Section 1.12.010 of this Code.

PASSED, APPROVED AND ADOPTED this day of , 2006.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

b. Revised Tree Ordinance

DRAFT

Mr. Morgan presented the item, noting that quite a bit of time has been expended working on this ordinance revision. The Sub-Committee, consisting of a member of each commission, worked diligently compiling the information and presenting it to the department.

The City Attorney took all the information they'd compiled and created a new document which primarily addresses trees in the parkway.

Highlights of the discussion regarding the ordinance included the following:

- The committee's original report was focused on trees throughout the City, on private as well as public property.
- There are approximately a dozen locations currently where tree roots are buckling sidewalks and enforcing owner responsibility to repair was not a simple matter.
- Mr. Flaherty was thanked for all his help in the creation of the approved tree list.
- Enforcing property owner responsibility can be difficult, especially when tree was planted by a previous owner.

Public comments included:

Sean Krajewski, 46 10th Street

Mr. Krajewski suggested that if a methodical, step-by-step plan would be put in place asking the property owner to take responsibility, it could take care of the problem.

Further discussion included:

- The property owner should have the right to remove a tree in the parkway but it would require a hearing. If, through the hearing process the City says cannot remove the tree it means the City takes responsibility for potential branch damage, sewer line damage, etc.
- Trees on a property go with the title, new owner responsible for property when title transferred.
- Staff would support any of several suggested nuisance abatement issues:
 - Leave the ordinance as it is – property owner responsible for all damages concerning liability and damages.
 - Leave the ordinance as it is but eliminate the responsibility for sewer line damage.
 - Hold the property owner only responsible for the buckling sidewalk repair.
 - Hold the property owner responsible only when he or she comes in for a permit to plant the tree thereby making tree responsibility run with the property for future damages unless becomes damaging or a nuisance.
 - If a property owner wants to keep a problematic tree, can bring to commission to appeal director's decision.
- Very little has been mentioned about trees on private property where sidewalk could have been put in. These trees can create as many problems as parkway trees.
- Modifications to the ordinance included
 - Section 12.36.050, Paragraph A, first sentence should read: A. No person, including the Property Owner, shall remove a parkway tree without first obtaining a permit from the Director except under exigent or emergency circumstances.
 - **Abatement of nuisance conditions.** Section should be re-numbered from 12.36.70 to 12.36.75 to allow for duplicate section numbering.

MOTION by Commissioner Winnek to recommend the revised Tree Ordinance be forwarded to the City Council for approval. Seconded by Commissioner DiVirgilio.

AYES: Beste, DiVirgilio, Marinelli, Winnek
NAYS: None
ABSENT: None
ABSTAIN: Lombardo

CALIFORNIA CODES
STREETS AND HIGHWAYS CODE
SECTION 5610-5618

5610. The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a park or parking strip, shall maintain any **sidewalk** in such condition that the **sidewalk** will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas save and except as to those conditions created or maintained in, upon, along, or in connection with such **sidewalk** by any person other than the owner, under and by virtue of any permit or right granted to him by law or by the city authorities in charge thereof, and such persons shall be under a like duty in relation thereto.

5611. When any portion of the **sidewalk** is out of **repair** or pending reconstruction and in condition to endanger persons or property or in condition to interfere with the public convenience in the use of such **sidewalk**, the superintendent of streets shall notify the owner or person in possession of the property fronting on that portion of such **sidewalk** so out of **repair**, to **repair** the **sidewalk**.

5612. Notice to **repair** may be given by delivering a written notice personally to the owner or to the person in possession of the property facing upon the **sidewalk** so out of **repair**, or by mailing a postal card, postage prepaid, to the person in possession of such property, or to the owner thereof at his last known address as the same appears on the last equalized assessment rolls of such city or to the name and address of the person owning such property as shown in the records of the office of the clerk.

5613. The postal card shall contain a notice to **repair** the **sidewalk** so out of **repair**, and the superintendent of streets shall, immediately upon the mailing of the notice, cause a copy thereof printed on a card of not less than 8 inches by 10 inches in size, to be posted in a conspicuous place on the property. In lieu of posting a copy of the mailed notice on the property as provided in this section, the superintendent of streets may, not less than seven days nor more than 10 days after the mailing of the first postal card notice, mail an additional postal card, postage prepaid, marked "Second Notice," to the person to whom the first postal card notice was addressed. The second notice shall otherwise contain the material required by this article, but shall not extend the time for commencing repairs specified in Section 5614.

5614. The notice shall particularly specify what work is required

to be done, and how it is to be done, and what materials shall be used in the **repair** and shall further specify that if the **repair** is not commenced within two weeks after notice is given and diligently and without interruption prosecuted to completion, the superintendent of streets shall make such **repair**, and the cost of the same shall be a lien on the property.

5614.1. The legislative body may adopt a resolution determining that bonds shall be issued and assessments collected and enforced pursuant to Part 5 of this division. In such event, the notice to **repair** shall specify that bonds shall be issued to represent the security of the unpaid assessments, payable over a period of not to exceed six years, and shall further recite a maximum rate of interest to be paid on the indebtedness, which shall not exceed 7 percent a year, payable semiannually.

5615. If the **repair** is not commenced and prosecuted to completion with due diligence, as required by the notice, the superintendent of streets shall forthwith **repair** the **sidewalk**. Upon the written request of the owner of the property facing the **sidewalk** so out of **repair**, as ascertained from the last equalized assessment roll of the city, or as shown in the records of the office of the clerk, the superintendent may **repair** any other portion of the **sidewalk** fronting on the property that is designated by the owner. The superintendent shall have power to prescribe the form of the written request. The cost of **repair** work done by request pursuant to this section shall be a part of the cost of repairs for which, pursuant to this chapter, subsequent notices are given, hearings held and assessment and collection procedures are conducted.

5616. Upon the completion of the **repair**, the superintendent of streets shall cause notice of the cost of the **repair** to be given in the manner specified in this article for the giving of notice to **repair**, which notice shall specify the day, hour and place when the legislative body will hear and pass upon a report by the superintendent of streets of the cost of the **repair** together with any objections or protests, if any, which may be raised by any property owner liable to be assessed for the cost of such **repair** and any other interested persons. If bonds are to be issued, the notice shall also contain the information required by Section 5614.1.

5617. Upon the completion of the **repair**, the superintendent of streets shall prepare and file with the legislative body a report specifying the repairs which have been made, the cost of the repairs, a description of the real property in front of which the repairs have been made and the assessment against each lot or parcel of land proposed to be levied to pay the cost thereof. Any such report may include repairs to any number of parcels of property, whether contiguous to each other or not.

5618. Upon the day and hour fixed for the hearing the legislative body shall hear and pass upon the report of the superintendent of streets, together with any objections or protests which may be raised by any of the property owners liable to be assessed for the work of making such **repair** and any other interested persons. Thereupon the legislative body may make such revision, correction or modifications in the report as it may deem just, after which, by motion or resolution, the report as submitted, or as revised, corrected or modified, shall be confirmed. The legislative body may adjourn the hearings from time to time. The decisions of the legislative body on all protests and objections which may be made, shall be final and conclusive.