



CITY COUNCIL AGENDA REPORT

Meeting Date: September 5, 2019

From: John Swiecki, Community Development Director

Subject: Private Tree Regulations – Draft Ordinance No. 638

Community Goal/Result

Ecological Sustainability, Safe Community

Purpose

To amend the Brisbane Municipal Code (BMC) to update the regulations pertaining to trees on private property.

Recommendation

That the City Council introduce Ordinance No. 638 (Attachment 1).

Background

On May 2nd, City Council reviewed draft Ordinance No. 638 amending the City's Tree Removal Ordinance. At the direction of City Council this matter was referred to the Planning Issues Subcommittee (Councilmembers Cunningham and O'Connell) for additional review. The following discussion section of this report provides a summary of the issues and recommendations resulting from the City Council and subcommittee meetings.

Discussion

Scope of Ordinance and "Protected" Trees: City Council discussed whether the proposed definition of a protected tree should be limited to certain native species. Protected species in both the current and the draft ordinance are California Bay, Coast Live Oak and California Buckeye, but both the current and draft ordinance define other species as protected if three or more trees are to be removed. Trees are also protected if designated by City Council resolution or if they were planted to satisfy a condition of approval of a City permit. The subcommittee did not recommend any changes, so the draft ordinance remains as presented on May 2nd.

Enjoyment of Property: On the legal question of "enjoyment of property" as a finding for approving tree removal, property law gives a land owner the right to the full use, and enjoyment of his property, without any substantial interference from others, under reasonable circumstances. There are a series of court decisions defining this property right. Depriving one

from the right to the use and enjoyment of property is a broad category that generally includes four different types of possible harm:

1. physical harm to someone's property;
2. physical harm to a person(s) occupying a property;
3. mental disturbance or annoyance of the person(s) occupying the property; and
4. interference that causes economic loss or depreciation of the property.

In regard to tree removals, the first two types of harm described above have some overlap with other findings related to hazards posed by trees, while the third and fourth types of harm allow for greater latitude other than requiring the owner to demonstrate a hazard. For example, an owner might reasonably make the case, to allow for approval of a removal permit, that due to their tree presenting an obstruction to a Bay view, the tree results in both an annoyance to those occupying the property and that its presence results in depreciation in the value of the property.

In order to provide the City with some leeway in the decision making, the City Attorney suggested that the word "unreasonably" be added to the finding, so it would read, "*the tree unreasonably interferes with the economic or other enjoyment of the property.*"

Fire Hazards: Regarding fire hazards, the draft ordinance included a finding for tree removal, "*The tree poses a risk to the property due to unusual site conditions or fire hazard.*" That finding was carried over from the current ordinance. Additionally, the Fire Department suggested that the following text be added to the standard conditions for replacement trees, in the Planning Director's review of replanting, "*...Consideration is also to be given to placement of trees and species, such that they would not impede fire apparatus access as they mature and avoidance of trees that pose a fire risk due to high oil content*" (Section 12.12.050B.4.iii). In the maintenance section, the following was also suggested, "*Trees planted near driveways, streets, or other fire department access roads shall be maintained such that they do not reduce the required access width or height*" (12.12.070).

Violations: The subcommittee suggested that the City explore setting fines for violations to the tree regulations at the maximum level possible. The ordinance's enforcement provisions indicate that a violation to the tree regulations constitutes an infraction and references BMC Sections 1.14, 1.16 and 1.18, which establishes fines for administrative citations on an escalating scale. The fines for first, second and third citations occurring within a one year period are \$100, \$200 and \$500. In addition, and more significantly, Section 12.12.080.B of the draft ordinance includes provisions whereby the City may require replacement(s) or "*the violator may be charged a fine equal to the value of an unlawfully removed tree*". That would be determined on a case-by-case basis by the Community Development Director, based on the opinion of a qualified arborist or other evidence of value satisfactory to the Director. For example, the monetary value of a large Coast Live Oak could easily run into thousands of dollars, far exceeding the allowable administrative citation fines. Staff believes these provisions

provide a substantial financial penalty for violating the ordinance, and is not recommending further changes to the penalty provisions of the ordinance.

Alternatively, the ordinance could specify that violations to the tree ordinance be treated as misdemeanors. Per BMC Section 1.14.030.A, where a specific penalty is not provided, misdemeanor offenses may be punished by a fine not exceeding \$1,000, or by imprisonment for up to 6 months. While the fine may actually be lower than the replacement value of a tree, the social implications of criminalizing violations to the tree ordinance, which may include imprisonment, would be a significant departure from how other Municipal Code violations are handled.

Tree Removal Notices: No changes were recommended by the subcommittee for public noticing prior to tree removal, so that section has been left as previously drafted.

Estimated Costs for Compliance: Questions were raised at the May 2 City Council meeting regarding the costs for an applicant to comply with the ordinance. It was noted there would be an incremental increase in staff time to process applications. For tree removals requiring a permit it is estimated that the time for processing would average approximately 3 hours per permit. Presumably the cost for staff time would be captured through a new permit application fee which would be approximately \$450 dollars. Currently staff time averages less than an hour per permit and no fee is charged for an application.

Costs to property owners for tree replacements are estimated to average approximately \$500 per tree, assuming 15 gallon size, the minimum replacement size required by the ordinance.

Outreach: Both the City Council and subcommittee stressed the importance of public information and education in maintaining a health urban forest on private land, This includes factors such as species selection and placement, maintaining defensible space, ongoing tree maintenance and 'good neighbor' practices to minimize conflicts regarding trees. Staff is working on preparing these materials, making them available on the City's website, and publicizing them in a forthcoming issue of the Star.

Fiscal Impact

None, assuming the City's fee schedule will be updated to cover the incremental increase in staff time for permit processing.

Measure of Success

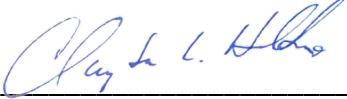
That the adopted ordinance is in alignment with the stated goal of preserving the urban forest in balance with individual property rights.

Attachments

1. Draft Ordinance No. 638 (with redlines as noted above)
2. July 17, 2019 memorandum to City Council Subcommittee
3. May 2, 2019 City Council agenda report and meeting minutes



John A. Swiecki, Community Development Director



Clay Holstine, City Manager

Note: Redlined text indicates updates to the draft ordinance that followed the May 2, 2019 draft to City Council.

Draft - ORDINANCE NO. 638

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING CHAPTER 12.12 OF THE MUNICIPAL CODE ESTABLISHING PRIVATE TREE REGULATIONS

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: This Ordinance is adopted in light of the following facts and circumstances, which are hereby found and declared by the City Council:

- A. Trees contribute to the scenic beauty of the city.
- B. Trees can provide protection against erosion, land instability, flooding, or other hazards.
- C. Trees provide a number of ecological benefits, including such things as reduction of carbon dioxide and other pollutant gases and particulates from the air in exchange for generating oxygen, providing habitat for a variety of animal species and reducing “heat island” effects from developed areas.
- D. In certain cases, privately owned trees encroach into the public right-of-way and maintenance is required to avoid hazardous conditions that could result injury to persons or property.
- E. It is recognized that, despite the many benefits of trees, trees are living organisms that change over time and there are a variety of reasons for landowners to seek to remove them from their property, ranging from invasiveness, size, location suitability, to tree health.
- F. In order to maintain the urban forest and enjoy the benefits of trees, it is in the interest of the City to prevent the indiscriminant removal of trees and to require replacement trees to be planted, as reasonable.
- G. Maintaining the urban forest is consistent with the goals of the City’s Climate Action Plan and General Plan.

SECTION 2: Chapter 12.12 in Title 12 of the Municipal Code is amended in its entirety to read as follows:

Chapter 12.12
PRIVATE TREE REGULATIONS

Sections:

| | |
|-----------|---|
| 12.12.010 | Title |
| 12.12.020 | Purpose of chapter |
| 12.12.030 | Applicability |
| 12.12.040 | Definitions |
| 12.12.050 | Severe Trimming and Tree Removals |
| 12.12.060 | Appeals |
| 12.12.070 | Maintenance of Private Trees Over Public Right-of-Way |
| 12.12.080 | Violation—Penalties |

§12.12.010 Title

This Chapter shall be known as the City of Brisbane Private Tree Regulations Ordinance.

§12.12.020 Purpose of chapter

This chapter is adopted for the following purposes:

- A. To protect certain trees that contribute to the scenic beauty of the city, or are found to be of value or significance as a native tree species, or are required to be planted and maintained as a condition of development approval;
- B. To prevent the indiscriminate removal of trees
- C. To protect trees that provide protection against erosion, land instability, flooding, or other hazards.
- D. To maintain the urban forest consistent with the goals of the City’s Climate Action Plan and General Plan;
- E. To require the maintenance of private trees that may encroach into the public right-of-way, to avoid hazardous conditions that could result in injury to persons or property.

§12.12.030 Applicability

- A. The provisions of this chapter shall apply to the following:
 - 1. Removing or severe trimming of trees on private property.
 - 2. Removing of trees within the public right-of-way that are subject to a maintenance agreement.

3. Maintaining trees on private property that encroach into the public right-of-way.
- B. This chapter shall not apply to the following:
1. Juvenile Trees. A juvenile tree, as defined in Section 12.12.040.E, may be removed without a notice or permit to the City, unless it is a protected tree as defined in section 12.12.040.I.2 or 12.12.040.I.3 (resolution protected or permit protected).
 2. Trees on public property. Trees on public property may be removed from public property as determined by the city engineer, except as provided in Section 12.12.030.A.2.
 3. Trees affected by Public Utilities. Trees within such areas as public utility easements or public rights of way where the public utilities are subject to the jurisdiction of the State Public Utilities Commission may be removed if necessary to comply with the safety regulations of the Commission and if necessary to remove a direct and immediate hazard to the utilities.
 4. Trees removed when authorized by the City. Trees may be removed where removal has been authorized by a City approved development project, other discretionary permit or building permit.

§12.12.040 Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings:

- A. "Adjacent Property" means a property that is abutting the subject property.
- B. "Design Size" means the anticipated size range at the tree's maturity.
- C. "Director" means the community development director of the City of Brisbane or other person as the community development director may designate from time to time to perform the responsibilities assigned to the community development director under the provisions of this chapter.
- D. "Invasive Species" means any species of tree listed as invasive to the area by a community development director-approved professional organization, such as the Invasive Species Council of California (ISCC) or the California Invasive Plant Council (CAL –ICP).
- E. "Juvenile Tree" means a tree whose trunk measures less than thirty (30) inches in circumference at twenty-four (24) inches above grade for a standard tree form, or the equivalent trunk cross-sectional area for multi-trunked trees.
 1. "Mature Tree" means a tree whose trunk measures thirty (30) inches in circumference or more at twenty-four (24) inches above grade for a standard tree form, or the equivalent cross sectional area of trunks for multi-trunked trees.

- F. "Multi-trunked Tree" means a tree with more than one trunk sharing a single root system. Multi-trunked trees are distinguished from shrubs in that they are usually larger than 15 feet at maturity.
- G. "Non-protected Mature Tree" means any tree that fits the size criteria for a mature tree and is not listed under the definition of protected tree in this section. This includes any number of invasive species (see the definition of invasive species in Section 12.12.040.D) and up to two non-invasive mature trees that are not protected by city council resolution or by city permit, per Sections 12.12.040.I.2 and 12.12.040.I.3.
- H. "Protected tree" means each of the following:
1. Species protected: Any California Bay (*Umbellularia californica*), Coast Live Oak (*Quercus agrifolia*), or California Buckeye (*Aesculus californica*) that is a mature tree and is not otherwise defined as protected tree.
 2. Resolution Protected: Any tree designated as a protected tree by resolution of the city council.
 3. Permit Protected: Any tree, regardless of size, originally required by the city to be planted as a condition for the granting of a permit, license, or other approval, or any tree that existed at the time of the granting of such permit, license, or other approval and required by the city to be preserved as part of such approval. This includes any tree protected by a maintenance agreement, whether on private or public land. This also includes any tree, regardless of size, required by the city to be planted as a replacement for an unlawfully removed tree.
 4. Multiple Non-invasive Species: Three (3) or more mature trees of any one or more non-invasive species that are proposed to be removed from the same property or from adjacent property under common ownership.
- I. "Public right-of-way" means a strip or area of land owned by the city or other public entity which is used, or reserved or intended for use, as a street, road, alley, driveway, or pedestrian walkway, or to provide public utility service, or any combination thereof, and includes all and any part of the entire width or other area of a designated right-of-way, whether or not such entire width or area is actually used for any of such purposes.
- J. "Removal" means the cutting off, or breaking off, the canopy of a tree. This includes leaving the trunk(s) or complete removal of the tree trunk to below ground.
- K. "Serial removal" means removal of trees by separate permits within a 1 year period of each other.
- L. "Severe trimming" means the removal of more than fifty percent (50%) of the foliage crown or more than thirty percent (30%) of the height of a tree.

- M. "Shrub" means a bushy, woody plant, usually with several permanent stems, and usually not over fifteen (15) feet in height at maturity. The community development director shall have the authority to determine whether any specific woody plant shall be considered a tree or a shrub.
- N. "Size" means the measurement of a tree in circumference at a height of 24 inches above grade immediately surrounding the tree. For multi-trunked trees, the measurement shall be taken collectively for the trunks.
- O. "Tree" means a woody perennial plant characterized by having a main stem or trunk, or a multi-stemmed trunk system with a more or less definitely formed crown, and is usually over fifteen (15) feet high at maturity.

§12.12.050 Severe Trimming and Tree Removals

It is unlawful for any person to remove or severely trim, or cause to be removed or severely trimmed, any tree that is not specifically exempted in Section 12.12.030.B, except as provided in this section. This section shall apply to trees whether alive or dead. Such activities shall also comply with federal and state law protecting nesting or migratory birds as provided in the federal Migratory Bird Treaty Act and the California Fish and Wildlife Code. Section 3503 and following, as amended.

- A. Notice Required - Severe Trimming or Removal of Non-protected Mature Trees: Any person or that person's agent (such as a landscaper or tree trimmer) must provide written notice to, and in a form prescribed by, the Director at least seven (7) calendar days prior to the following proposed actions:
 - 1. Severe Trimming of a Protected Tree or a Non-protected Mature tree. Notwithstanding the notice to the City, the property owner shall be responsible for the health of the tree and if trimming results in the death of the tree, the property owner shall become subject to the tree removal provisions of this Chapter.
 - 2. Removal of a Non-protected Mature Tree. Following notice to the Director, no more than two (2) non-protected mature trees may be removed in any consecutive 12 month period.
- B. Permit Required - Protected Tree Removal: Removal of a protected tree or removal of three or more non-protected mature trees in a consecutive 12 month period shall require submitting an application and a discretionary tree removal permit by the Director. The Director shall have the authority to determine whether a plant requires a permit for removal, such as in making the distinction between a multi-trunked tree or a shrub and measurement of tree size in unusual cases.
 - 1. Content of Application: The application shall include the following:
 - a. The species, size and location of each tree to be removed, and the reason for removal. The application shall be accompanied by a processing fee in such amount as may be established from time to time by resolution of the city council.

- b. The Director may, at the sole expense of the applicant, require the applicant to furnish a written report, from an independent and qualified arborist approved by the City, documenting the health of the tree.
 - c. A tree planting plan, which shall include the species, size and location of replacement tree(s) and a schedule for planting.
 - d. Such other information that the Director deems necessary in order to make an informed decision whether to grant or deny the permit.
2. Findings for Granting a Permit: The Director's granting a permit for removal of a tree or trees shall be based on at least one of the following findings:
- a. The tree is dead or is diseased such that it poses an imminent danger of falling or dropping limbs.
 - b. The tree is in close proximity to a structure, or would be in close proximity following city-approved construction, such as a building, retaining wall, utilities, etc., such that it would pose a likelihood of damage to such structures.
 - ~~c.~~ Removal of the tree is necessary for economic or other enjoyment of the property.
 - ~~d.~~c. That removal of the tree is necessary for good forestry practices, due to such factors as crowding with other trees or the spread of pests or pathogens.
 - d. The tree poses a risk to the property due to unusual site conditions or fire hazard.
 - e. The tree unreasonably interferes with the economic or other enjoyment of the property.
3. Decision on the Application and Notification: Once the Director determines the application is complete, the Director shall either grant or deny the application.
- a. Notice: If the Director grants the permit, the Director shall mail a notice to the property owner and to the property owner(s) within 300 feet of the subject property. The notice will generally describe the approved action, including identification and location of the tree. If the application is denied, the Director shall mail the denial to the property owner. The notice shall also advise the property owner and the adjacent property owners (if the permit has been granted) that the decision may be appealed to city manager within seven (7) calendar days from the mailing date of the notice.
 - b. Expiration: A tree removal permit shall expire six (6) months following the effective date of the permit. For good cause shown, the Director may grant an extension upon written request received prior to the expiration of the permit.

4. Standard Conditions: Standard conditions of approval in connection with the granting of a permit are provided below. Additional conditions may be applied at the Director's discretion.
- a. Replacement trees shall be required to be planted on the subject property at the property owner's expense in compliance with the following:
 - i. Replacement trees shall be on at least a 1:1 basis.
 - ii. Replacement size shall be of a standard 15 gallon nursery container, or larger.
 - iii. The replacement species and location shall be approved by the Director prior to planting. Where consistent with the context of the site, the design size of the replacement should be similar to that being removed. Consideration is also to be given to placement of trees and species, such that they would not impede fire apparatus access as they mature and avoidance of trees that pose a fire risk due to high oil content
 - iv. Replacement trees are generally to be planted within ninety (90) days of removal. The Director may allow deferment of the planting of replacement trees upon written request. Such deferments would typically be to allow trees to be planted at the optimum time of the year for healthy establishment, or where the planned replacements are part of a larger landscape replacement program.
 - b. The foregoing conditions are considered minimal. Where a large protected tree is to be removed, or where the site has, or will be, largely denuded of landscaping, the Director may require re-planting on more than a 1:1 basis, and/or require a larger tree replacement size.
 - c. The Director may require that a tree stump be removed to at or below ground level, based on such factors as visibility or a tripping hazard.
 - d. Noise from removal and trimming activities shall comply with the Noise Ordinance as provided in Chapter 8.28 of this Code.
 - e. All removal and severe trimming activities shall comply with applicable federal and state provisions protecting nesting or migratory birds as provided in the federal Migratory Bird Treaty Act and the California Fish and Wildlife Code, Section 3503 and following, as amended.
5. Emergency Approval: If the condition of a protected tree presents an immediate hazard to life or property, it may be removed without the foregoing notice and permit procedures, provided, however, thereafter the Director shall have authority to impose on the property owner the standard conditions of approval provided in Section 12.12.050.B.4.

6. Exceptions. Upon written request, the Director may approve the following exceptions to on-site tree replacement:
- a. In-lieu payment: Imposition of an in-lieu payment rather than replacement planting on-site, to fund planting of a tree elsewhere in the city. The amount of the in-lieu fee shall be based on the cost for the city to plant and maintain the equivalent tree for at least one year, with such cost calculated by the Director at the time of the request.
 - b. Off-site planting: Planting of an equivalent tree elsewhere within the City, in lieu of on-site planting. The tree species, size, and location shall be determined by the Director.
 - c. Financial hardship: Any person who is financially unable to comply with the tree planting or in-lieu fee requirements may submit to the Director a written request for a hardship waiver along with supporting documents, demonstrating to the satisfaction of the Director the person's financial inability to comply. Financial inability can be established by showing such conditions as, that the applicant has qualified, or would be qualified, for participation in a public or private assistance program available only to persons having low or very low income, such as subsidized housing, food stamps, SSI, Medi-Cal, or California LifeLine. Such waiver does not relieve the applicant from the requirement to provide required documentation in support of the tree removal permit application.

§12.12.060 Appeals

A. A decision of the Director either to approve or deny a tree removal permit may be appealed to the city manager within the seven (7) calendar days of the date of the notice approving or denying the permit by filing a notice of appeal with the city clerk. The notice of appeal shall be accompanied by a filing fee in such amount as established from time to time by resolution of the city council.

B. The city manager shall conduct a review of the application and may affirm, reverse or modify the decision of the Director, or refer the matter to the Director for such further consideration as may be directed by the city manager.

§12.12.070 Maintenance of Private Trees Over Public Right-of-Way

A. Trees located on private property that encroach into the public right-of-way shall be maintained or removed at the expense of the property owner, as may be required by the city engineer. Any acts of maintenance which may be performed by the city on such trees, regardless of the frequency of such actions, shall not constitute an assumption by the city of responsibility for regular maintenance nor an assumption of any liability for the condition thereof.

B. No person shall plant or maintain any tree which (i) creates a dangerous condition, hazard or unreasonably interferes with the public's use of any public street, sidewalk, or other public right-of-way, or (ii) causes damage or threat of damage to any public facilities constructed or installed within the

public right-of-way. Additionally, trees planted near driveways, streets, or other fire department access roads shall be maintained such that they do not reduce the required access width or height.

C. The existence of any such condition identified in subsection B of this Section is hereby declared to constitute a public nuisance. Upon a determination by the city engineer that any such condition exists, the city engineer may serve upon the property owner a notice to perform corrective work in the manner and within the time as may be specified in the notice, and upon any failure or refusal by the property owner to perform the corrective work, the city engineer may initiate proceedings to abate the nuisance in the manner provided by law and to charge all abatement costs to the property owner.

§12.12.080 Violation—Penalties

A. The violation of any provision of this chapter is hereby declared to be unlawful and shall constitute an infraction and a public nuisance, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this code.

B. In addition to any other penalties prescribed by law for an infraction offense, any person unlawfully removing or destroying a protected tree may be penalized as follows:

1. Replacing the unlawfully removed or destroyed tree with a new tree as similar thereto as reasonably feasible, or if such replacement is not feasible because of the size or age of the removed tree, with such number of similar trees as will, to the extent reasonably possible, mitigate the loss of aesthetic quality and environmental benefit caused by the unlawful removal or destruction, as determined by the Director. All such replacement trees shall be maintained by the property owner under a five (5) year maintenance agreement with the city. The city may require that a bond or other security satisfactory to the city be posted to guaranty the performance of the owner's obligations under the maintenance agreement.

2. In addition to any other penalty that may be imposed for violation of this chapter, the violator may be charged a fine in an amount equal to the value of the unlawfully removed or destroyed tree, as determined by the Director, based upon the opinion by a qualified arborist or other evidence of value satisfactory to the Director.

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 4: This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption.

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


City Attorney



MEMORANDUM

DATE: 17 July 2019

TO: Planning Issues Subcommittee

FROM:  John Swiecki, Community Development Director

SUBJECT: **Update of Private Tree Regulations – Draft Ordinance No. 638**

On May 2nd, City Council held a public hearing on the draft ordinance to update the City's Tree Removal Ordinance. At the direction of the City Council this matter was referred to the Planning Issues Subcommittee for additional review. The May 2nd Council report and minutes may be referenced with the following links: https://brisbaneca.org/sites/default/files/CCAR20190502_PrivateTrees_Ord638-CH2.pdf and <https://brisbaneca.org/sites/default/files/cc050219CityCouncilMinutes.pdf>.

Concerns raised by the City Council included:

- i. Recognition of the value of trees and trying to balance that with concerns that they pose;
- ii. The potential loss of private property rights and how much discretion the City wants to have over an owner's decision to remove trees from their own property;
- iii. Whether the denial of a tree removal permit or a requirement for one-to-one replacement might have unintended consequences, especially related to fire hazards and other physical hazards;
- iv. A request to the City Attorney to clarify what "enjoyment of the property" means as applied as a finding for approval of a tree removal permit;
- v. Reconsider the criteria for what constitutes a protected tree subject to a removal permit (ie whether only certain native species of trees should be designated as protected);
- vi. Consider whether the proposed 300 foot radius for public notice is appropriate, and if physically posting on trees proposed for removal is appropriate, especially in cases where trees proposed for removal are located in a rear yard;
- vii. Cost to applicants to comply with new permit requirements; and
- viii. Whether the requirements imposed under the ordinance would discourage property owners from addressing tree problems.

The subcommittee's input on these issues and any other provisions of the ordinance will be provided to the full City Council when the ordinance is scheduled for further Council consideration.

NEW BUSINESS

A. Consider Introduction of Ordinance No. 638 Amending Chapter 12.12 of the Municipal Code Establishing Private Tree Regulations

Community Development Director Swiecki reported that draft Ordinance No. 638 is as provided by the Planning Commission/ Open Space and Ecology Committee (OSEC) Subcommittee and the purpose is to amend the Brisbane Municipal Code to update the regulations pertaining to trees on private property. Some of the amendments to the code include the following:

- Require a notice to the City of intended action for non-protected trees, instead requiring a ministerial permit. For the non-protected trees, the ordinance would require the filing of a notice of intended action with the City at least 7 days before the commencement of work.
- Add invasive trees and severe trimming to activities that require notice.
- For protected trees, require a minimum of one-to-one tree replacement with a minimum 15-gallon nursery container tree size. For a large protected tree or removal of a protected tree on a site that has been largely denuded of landscaping, the Planning Director may require even more trees or larger replacements.
- Add procedural requirements, including an expanded subsection on contents of an application, adding required findings and establishing notice of approval to be sent by the City to all property owners within 300 feet of the subject property at least 7 days before the permit is effective.

Secondly, Community Development Director Swiecki reported that the Open Space and Ecology Committee provided additional proposed revisions to the tree removal ordinance.

OSEC was especially concerned with early removals of the trees protected by species, Coast Live Oak, California Bay and California Buckeye, given their apparent slow rates of growth. OSEC suggested that the permit required size threshold should be reduced from 30 inches in trunk circumference to 24 inches in circumference. Additionally, they indicated that for all other species, removal of any one or more trees (versus three or more of those trees) of 30 inches in circumference or more, including invasive trees, should be in the permit required class.

Councilmember Cunningham wanted more input from the Fire Department regarding the draft Ordinance. She expressed concern about how these amendments will impact homeowners insurance. She also wanted to more resources on the City's website about tree species that are appropriate for planting.

Mayor Davis expressed concern about the ordinance possibly discouraging residents to apply for tree removal permits due to increase in regulations. She also expressed concern about the open definition of enjoyment of property in the tree removal permit application and directed Interim City Attorney McMorrow to provide Council with a more detailed definition.

After further Council questions of staff and Council discussion, the motion to introduce Ordinance No. 638 Amending Chapter 12.12 of the Municipal Code Establishing Private Tree Regulations

failed on CM O'Connell's motion, CM Conway second on a 2-3 vote. Those members voting aye were: Councilmembers O'Connell and Conway. Those voting nay were: Councilmembers Cunningham, Lentz, and Mayor Davis.

Council discussed forming an ad hoc subcommittee that would consist of two Councilmembers and potentially representation from the Planning Commission and OSEC. City Manager Holstine agreed to schedule the discussion for the next City Council Meeting on June 6, 2019. Councilmember O'Connell and Mayor Davis conveyed interest in being members.

B. Consider Adoption of Resolution HA 2019-01 Adopting Amendments to the Brisbane Housing Authority First Time Homebuyer Loan Program

This item was pulled from the agenda and will be brought forward to the Council at a future City Council meeting.

STAFF REPORTS

A. City Manager's Report on upcoming activities

City Manager Holstine reported on the upcoming city activities for the month of May as well as the upcoming presentations for upcoming City Council Meetings.

MAYOR/COUNCIL MATTERS

A. Countywide Assignments/Subcommittee Reports

Mayor Davis and Councilmembers reported on their activities in the following County assignments and City Council subcommittees:

- Economic Development Committee
- Cannabis Issues Ad Hoc
- Public Art Subcommittee
- Infrastructure, Franchise & Utilities Subcommittee
- Peninsula Clean Energy Board
- Caliva Tour
- MTC/ABAG's Housing Bill Legislative Task Force
- Council of Cities Dinner hosted by City of Daly City
- Airport Land Use Committee
- Sierra Point Design Guidelines Ad Hoc

B. City Council Meeting Schedule

Mayor Davis reported that the City Council Meeting of May 16, 2019 is cancelled. Secondly, the City Council has scheduled a Special Meeting on Monday, June 3, 2019 in the Large Conference Room, to interview applicants to fill committee vacancies. The next Regular City Council Meeting



CITY COUNCIL AGENDA REPORT

Meeting Date: May 2, 2019

From: John Swiecki, Community Development Director

Subject: Private Tree Regulations – Draft Ordinance No. 638

Community Goal/Result

Ecological Sustainability, Safe Community

Purpose

To amend the Brisbane Municipal Code (BMC) to update the regulations pertaining to trees on private property.

Recommendation

That the City Council introduce Ordinance No. 638 (Attachment 1).

Background

Tree regulations are challenging in that trees vary in regard to life span, size, root structure and other characteristics. In a built-out environment, failing, poorly placed and invasive trees can have a number of negative impacts and in some cases even pose risks to life and property. On the other hand, a healthy and robust urban forest provides a great number of benefits to a community and the environment ranging from improvement of the aesthetics of an urban area to greenhouse gas reduction.

The current city tree ordinance is found in BMC Chapter 12.12 (Attachment 7). The basic premise of the current ordinance is to achieve a balance between property rights and perpetuation of the urban forest. General provisions include requiring a tree removal permit for severe trimming and removal of a protected tree (any single mature Coast Live Oak, California Buckeye, or California Bay, or three or more mature trees of any other species proposed for removal). Trees of any size that have been planted as a requirement of a City permit or City Council resolution are also designated as protected. When one or two mature trees, not otherwise defined as protected of a type not listed above, are to be removed a permit is required, but they are not defined as “protected”.

The current ordinance regulations further specify findings/ criteria for removal, except for the removal of non-protected trees which is considered ministerial and no findings are required. The existing ordinance leaves it to the City’s discretion on a case-by-case basis as to whether or

not an arborist's report is required and whether tree replacement is required. The ordinance further identifies exceptions to the tree permit requirements, including emergencies, city employees removing trees from city-owned property, public utilities and tree removals tied to another city permit as part of a development approval.

On November 16, 2017, the Open Space and Ecology Committee (OSEC) sent a letter to the City Council indicating their concern about the number of trees that had recently been removed from private property and requested that Council consider an update to the ordinance regulating tree removals (Attachment 6).

At the direction of Council, a joint Planning Commission/OSEC subcommittee was formed to review the ordinance and to provide recommendations for revisions. The subcommittee met in August 2018 and February 2019 to provide suggested updates to the ordinance. The draft ordinance was then subject to advisory review by both the Planning Commission and OSEC prior to it being presented for City Council consideration. The memorandum that was provided to the Planning Commission and OSEC and minutes from those meetings are included herein (Attachments 4 and 5).

While both the Planning Commission and OSEC expressed support of the draft ordinance, OSEC has additional recommendations for the draft ordinance. These additional recommendations are found in the attached letter to Council, dated April 8, 2019 (Attachment 3), and are also reflected in their meeting minutes. The Planning Commission discussed a number of the draft provisions, including a concern as to whether the proposed finding allowing for removal of a tree being necessary for economic or other enjoyment of the property might be too broad or permissive, but after some discussion it was suggested that this finding remain to allow property owners the ability to manage their landscaping for reasons other than tree health or safety concerns. A copy of the memorandum, dated February 21, 2019, to the Planning Commission and OSEC, their February 28th and April 8th meeting minutes and OSEC's April 8th letter are attached for Council's reference.

Discussion

Draft Ordinance: The recommended Ordinance No. 638 is as provided by the Planning Commission/OSEC subcommittee (Attachment 1). Given the substantial reorganization of the ordinance it is not provided as a redlined version of BMC Chapter 12.12, but rather would amend that ordinance in its entirety. An outline of the major changes, by section, is provided with the attached February 21, 2019 memorandum and briefly summarized as follows:

§12.12.010 – Title: The title of the Chapter is changed from “Tree Regulations” to “Private Tree Regulations”, consistent with its applicability.

§12.12.020 – Purpose of Chapter: This section is updated to reference the Climate Action Plan and the General Plan and for consistency on maintenance of trees referenced in a later section.

§12.12.030 – Applicability: This section would be added to the ordinance for clarity.

§12.12.040 – Definitions: A number of definitions have been included for clarity and the definition of “Protected Tree” has been refined.

§12.12.050 - Severe Trimming and Tree Removals: This section has been extensively restructured in the draft ordinance. One of the key structural changes would be to require a notice to the City of intended action for non-protected trees, instead requiring a ministerial permit. For the non-protected trees, the ordinance would require the filing of a notice of intended action with the City at least 7 days before the commencement of work. The ordinance would also add invasive trees and severe trimming to activities that require notice.

For protected trees, the ordinance would add a number of notable requirements.

The proposed ordinance requires a minimum of one-to-one tree replacement with a minimum 15-gallon nursery container tree size. For a large protected tree or removal of a protected tree on a site that have been largely denuded of landscaping, the Planning Director may require even more trees or larger replacements. Procedural requirements would also be added, including an expanded subsection on contents of an application, adding required findings and establishing notice of approval to be sent by the City to all property owners within 300 feet of the subject property at least 7 days before the permit is effective.

Emergency approvals and exceptions are also addressed in this section. Exceptions would allow for in-lieu payment or off-site planting instead of replanting, or a financial hardship waiver may be granted to a property owner who can demonstrate financial inability to comply with the tree planting requirements.

§12.12.060 – Appeals: This section would be relocated and revised to follow the discretionary approval process detailed in Section 12.12.050.

§12.12.070 – Maintenance of Trees Over Public Right-of-Way: This section would be revised to more accurately reflect the requirements for maintenance of private trees encroaching over the public right-of-way and to remove language that would imply that private parties may plant trees in the public right-of-way without specific city approval.

§12.12.080 – Violation- Penalties: This section has been revised to remove the reference to revocation of a business license for a tree removal violation. Penalties are established in Title 1 of the Municipal Code as cross-referenced in the section.

Additional OSEC Suggestions: As indicated above, both the Planning Commission and OSEC indicated general support for the ordinance. However, OSEC indicated that they still had concerns that were not fully addressed with the subcommittee’s recommendation. OSEC was especially concerned with early removals of the trees protected by species, Coast Live Oak, California Bay and California Buckeye, given their apparent slow rates of growth. OSEC suggested that the permit required size threshold should be reduced from 30 inches in trunk circumference to 24 inches in circumference. Additionally, they indicated that for all other species, removal of any one or more trees of 30 inches in circumference or more, including invasive trees, should be in the permit required class, versus three or more of those trees. Again, in both the existing ordinance and the draft ordinance, one or two trees that are not protected by species or city permit are not considered as protected trees and would not require replacement. If the City Council decides to incorporate OSEC’s suggestions, it would leave only severe trimming of trees in the proposed notice required class.

Following the meeting with OSEC, staff prepared a redlined version for Council’s reference that reflects these two OSEC recommendations (Attachment 2). That redline is as compared with the draft ordinance, Attachment 1, not to the current ordinance. Should Council decide to incorporate OSEC’s comments, staff recommends that an exception be added allowing for the Planning Director to grant less than one-to-one replacements for removal of an invasive species to a non-invasive species. This would be to help encourage removal of invasive species and is in consideration of the propensity of these species to colonize a site. Otherwise, the one-to-one replacement requirement could have the unintended consequence of discouraging removal of invasive trees.

Additionally, OSEC recommended that City Council allocate the necessary resources for staff to conduct replanting inspections “after 90 days and one year to verify all replanted and/or replacement trees”. As a practice, staff verifies the required tree replacement planting in order to finalize a given tree removal permit. The timing would be dependent on the completion of the replanting, which would be 90 days or less. With regards to a one year follow-up, enforcement in Brisbane is typically complaint based, and a one-year inspection would create an administrative burden. Note that the requirement to maintain replacement trees is inherent in the draft ordinance, as such, replacement trees would be “permit protected” as defined in the ordinance. However, in response to OSEC’s comment, a clarifying provision has also been added to the redlined supplement (Attachment 2), indicating that there is an ongoing duty to maintain replacement trees.

Finally, OSEC recommended that permits be required to be “posted and visible on site for each specific tree”. It is unclear as to the public purpose that would be served by such a posting. The proposed 300 foot noticing procedure provides public notice. Given that, this additional suggestion has not been addressed in the supplemental redlined attachment.

Fiscal Impact

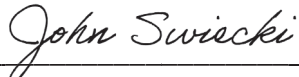
None, assuming the City's fee schedule will be updated to cover the incremental increase in staff time for permit processing.

Measure of Success

That the adopted ordinance is in alignment with the stated goal of preserving the urban forest in balance with individual property rights.

Attachments

1. ~~Draft Ordinance No. 638~~ Updated, and attached separately
2. Supplemental Redlined Additional Amendments Suggested in OSEC's April 8th, 2019 letter (Items 1, 2 & 3)
3. OSEC's letter to City Council, dated April 8th, 2019
4. Memorandum to Planning Commission and OSEC from staff, dated February 21, 2019
5. Planning Commission and OSEC minutes, February 28th and March 20th
6. OSEC's letter to City Council, dated November 16, 2017
7. Current BMC Chapter 12.12



John A. Swiecki, Community Development Director



Clay Holstine, City Manager

Draft - ORDINANCE NO. 638 –

Excerpts Only with Supplemental Redlined Additional Amendments Suggested in OSEC’s April 8th, 2019 letter (Items 1, 2 & 3)

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§12.12.040 Definitions

F. “Mature Tree” means the following:

- 1. For a species protected tree, mature tree means a tree whose trunk measures twenty-four (24) inches in circumference or more measured twenty-four (24) inches above grade for a standard tree form, or the equivalent cross sectional area of trunks for multi-trunked trees.
- ~~2.~~ For all other species, that are not species protected, mature tree means a tree whose trunk measures thirty (30) inches in circumference or more at twenty-four (24) inches above grade for a standard tree form, or the equivalent cross sectional area of trunks for multi-trunked trees.

~~F.G.~~ “Multi-trunked Tree” means a tree with more than one trunk sharing a single root system. Multi-trunked trees are distinguished from shrubs in that they are usually larger than 15 feet at maturity.

~~G.~~ “~~Non-protected Mature Tree~~” ~~means any tree that fits the size criteria for a mature tree and is not listed under the definition of protected tree in this section. This includes any number of invasive species (see the definition of invasive species in Section 12.12.040.D) and up to two non-invasive mature trees that are not protected by city council resolution or by city permit, per Sections 12.12.040.I.2 and 12.12.040.I.3.~~

H. "Protected tree" means each of the following:

- 1. Species protected: Any California Bay (Umbellularia californica), Coast Live Oak (Quercus agrifolia), or California Buckeye (Aesculus californica) that is a mature tree and is not otherwise defined as protected tree.
- 2. Resolution Protected: Any tree designated as a protected tree by resolution of the city council.
- 3. Permit Protected: Any tree, regardless of size, originally required by the city to be planted as a condition for the granting of a permit, license, or other approval, or any

tree that existed at the time of the granting of such permit, license, or other approval and required by the city to be preserved as part of such approval. This includes any tree protected by a maintenance agreement, whether on private or public land. This also includes any tree, regardless of size, required by the city to be planted as a replacement for an unlawfully removed tree.

4. ~~Multiple Non-invasive Species~~ Mature Tree: Any one or more tree defined as a mature tree in Section 12.12.040.F. Three (3) or more mature trees of any one or more non-invasive species that are proposed to be removed from the same property or from adjacent property under common ownership.

I. "Public right-of-way" means a strip or area of land owned by the city or other public entity which is used, or reserved or intended for use, as a street, road, alley, driveway, or pedestrian walkway, or to provide public utility service, or any combination thereof, and includes all and any part of the entire width or other area of a designated right-of-way, whether or not such entire width or area is actually used for any of such purposes.

J. "Removal" means the cutting off, or breaking off, the canopy of a tree. This includes leaving the trunk(s) or complete removal of the tree trunk to below ground.

~~K. "Serial removal" means removal of trees by separate permits within a 1 year period of each other.~~

~~L-K.~~ "Severe trimming" means the removal of more than fifty percent (50%) of the foliage crown or more than thirty percent (30%) of the height of a tree.

~~M-L.~~ "Shrub" means a bushy, woody plant, usually with several permanent stems, and usually not over fifteen (15) feet in height at maturity. The community development director shall have the authority to determine whether any specific woody plant shall be considered a tree or a shrub.

~~N-M.~~ "Size" means the measurement of a tree in circumference at a height of 24 inches above grade immediately surrounding the tree. For multi-trunked trees, the measurement shall be taken collectively for the trunks.

~~O-N.~~ "Tree" means a woody perennial plant characterized by having a main stem or trunk, or a multi-stemmed trunk system with a more or less definitely formed crown, and is usually over fifteen (15) feet high at maturity.

§12.12.050 Severe Trimming and Tree Removals

It is unlawful for any person to remove or severely trim, or cause to be removed or severely trimmed, any tree that is not specifically exempted in Section 12.12.030.B, except as provided in this section. This section shall apply to trees whether alive or dead. Such activities shall also comply with federal and state law protecting nesting or migratory birds as provided in the federal Migratory Bird Treaty Act and the California Fish and Wildlife Code. Section 3503 and following, as amended.

A. Notice Required - Severe Trimming ~~or Removal of Non-protected Mature Trees~~: Any person or that person's agent (such as a landscaper or tree trimmer) must provide written notice to, and in a form prescribed by, the Director at least seven (7) calendar days prior to the following proposed actions:

1. Severe Trimming of a Protected Tree ~~or a Non-protected Mature tree~~. Notwithstanding the notice to the City, the property owner shall be responsible for the health of the tree and if trimming results in the death of the tree, the property owner shall become subject to the tree removal provisions of this Chapter.

~~2. Removal of a Non-protected Mature Tree. Following notice to the Director, no more than two (2) non-protected mature trees may be removed in any consecutive 12 month period.~~

B. Permit Required - Protected Tree Removal: Removal of a protected tree ~~or removal of three or more non-protected mature trees in a consecutive 12 month period~~ shall require submitting an application and a discretionary tree removal permit by the Director. The Director shall have the authority to determine whether a plant requires a permit for removal, such as in making the distinction between a multi-trunked tree or a shrub and measurement of tree size in unusual cases.

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1. Standard Conditions: Standard conditions of approval in connection with the granting of a permit are provided below. Additional conditions may be applied at the Director's discretion.

a. Replacement trees shall be required to be planted on the subject property at the property owner's expense in compliance with the following:

i. Replacement trees shall be on at least a 1:1 basis.

ii. Replacement size shall be of a standard 15 gallon nursery container, or larger.

iii. The replacement species and location shall be approved by the Director prior to planting. Where consistent with the context of the site, the design size of the replacement should be similar to that being removed.

iv. Replacement trees are generally to be planted within ninety (90) days of removal. The Director may allow deferment of the planting of replacement trees upon written request. Such deferments would typically be to allow trees to be planted at the optimum time of the year for healthy establishment, or where the planned replacements are part of a larger landscape replacement program.

- b. The foregoing conditions are considered minimal. Where a large protected tree is to be removed, or where the site has, or will be, largely denuded of landscaping, the Director may require re-planting on more than a 1:1 basis, and/or require a larger tree replacement size.
- c. The Director may require that a tree stump be removed to at or below ground level, based on such factors as visibility or a tripping hazard.
- d. Noise from removal and trimming activities shall comply with the Noise Ordinance as provided in Chapter 8.28 of this Code.

e. All removal and severe trimming activities shall comply with applicable federal and state provisions protecting nesting or migratory birds as provided in the federal Migratory Bird Treaty Act and the California Fish and Wildlife Code, Section 3503 and following, as amended.

e.f. The property owner shall have an ongoing duty to maintain any replacement tree required in this Section. Such replacement tree shall be considered permit protected, as defined in Section 12.12.040.H.3.

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2. Exceptions. Upon written request, the Director may approve the following exceptions to on-site tree replacement:

a. Invasive species: The Director may authorize less than 1:1 replacements where invasive species are being removed.

~~a.b.~~ In-lieu payment: Imposition of an in-lieu payment rather than replacement planting on-site, to fund planting of a tree elsewhere in the city. The amount of the in-lieu fee shall be based on the cost for the city to plant and maintain the equivalent tree for at least one year, with such cost calculated by the Director at the time of the request.


~~b.c.~~ Off-site planting: Planting of an equivalent tree elsewhere within the City, in lieu of on-site planting. The tree species, size, and location shall be determined by the Director.

~~c.d.~~ Financial hardship: Any person who is financially unable to comply with the tree planting or in-lieu fee requirements may submit to the Director a written request for a hardship waiver along with supporting documents, demonstrating to the satisfaction of the Director the person's financial inability to comply. Financial inability can be established by showing such conditions as, that the applicant has

qualified, or would be qualified, for participation in a public or private assistance program available only to persons having low or very low income, such as subsidized housing, food stamps, SSI, Medi-Cal, or California LifeLine. Such waiver does not relieve the applicant from the requirement to provide required documentation in support of the tree removal permit application.

Memorandum

To: Ken Johnson, Senior Planner

From: Open Space and Ecology Committee (OSEC)
via Karen Kinser, Deputy Director of Public Works 

Subject: Comments on Proposed Revisions to Tree Removal Ordinance

Date: April 8, 2019

At the March 20, 2019 OSEC meeting, you presented proposed changes to the Tree Removal Ordinance, Chapter 12.12 Tree Regulations, of the Brisbane Municipal Code. Review of the ordinance was requested by City Council liaisons last year after review of a letter from OSEC to Council dated November 16, 2017.

OSEC requested the following modifications to the revised ordinance presented, reflecting their wishes in the 2017 letter to Council.

1. Non-protected mature trees of 30” circumference should be subject to the review/permitting process for protected trees.
2. Mature trees should be defined by a circumference of 20” or greater, rather than the 30” originally proposed. The concern is that some species, such as coast live oak trees, grow very slowly and require greater protection.
3. Allocate necessary staff resources to follow up after 90 days and one year to verify all replanted and/or replacement trees.
4. Include provisions that require an issued tree removal permits to be posted and visible on site for each specific tree.

Please keep me informed so that I can let OSEC know how you will proceed.

Thank you.



MEMORANDUM

DATE: 2/21/2019

TO: Planning Commission/Open Space and Ecology Committee

FROM: Ken Johnson, Senior Planner, via John Swiecki, Community Development Director

SUBJECT: Private Tree Regulations – Draft Ordinance No. 638

As discussed in the background section of this memo, the City Council directed staff to consider updating the City's tree removal ordinance. The proposed draft updated ordinance (No. 683) is attached. Both the Planning Commission and the Open Space and Ecology Committee (OSEC) are being provided the opportunity to review the draft ordinance and provide advisory comments to City Council in advance of City Council's review of this matter. As an informational item, no formal action is required on the part of the Planning Commission or OSEC. The draft ordinance would replace the existing Tree Regulations, Brisbane Municipal Code (BMC) Chapter 12.12 in its entirety. Since it represents a substantial re-write of that ordinance a redline/strikeout version is not provided, although staff has summarized the most significant changes in this memo and both the existing ordinance and the proposed draft are attached for reference.

Background

In late 2017, the Open Space and Ecology Committee (OSEC) provided a letter to City Council indicating their concern about the number of trees that had recently been removed from private property in Brisbane and requested that Council consider an update to the ordinance regulating tree removals. A copy of OSEC's letter is attached for reference.

At the direction of City Council, a joint Planning Commission/OSEC subcommittee was formed to review the ordinance and provide guidance on proposed revisions. The subcommittee met last August to review the existing ordinance and outline suggested changes. A draft update to the ordinance was then prepared by staff and circulated to the subcommittee for comment. The subcommittee reconvened in February to further discuss the draft. The attached draft ordinance represents the consensus of the subcommittee and is now provided to both the Planning Commission and OSEC for comment. The draft ordinance and any advisory comments from the Commission and Committee will be presented to the City Council this spring.

The draft ordinance has also been forwarded to the City Attorney for review, and a number of recommended clarifying edits are reflected in the attached draft ordinance.

While there was general consensus regarding the overall ordinance, there were some differences of opinion among subcommittee members particularly related to further restricting tree removals and adding more replacement trees as described. There was also some discussion in the subcommittee regarding larger issues related to greenhouse gas reduction through urban forestation that might be best addressed through other City Council directed, non-regulatory initiatives.

Summary of Draft Ordinance

The draft ordinance represents a substantial re-write of BMC Chapter 12.12. The key changes to the ordinance are outlined by draft BMC section and they are as follows:

- **§12.12.010 – Title:** The title of the Chapter has been changed from “Tree Regulations“ to “Private Tree Regulations”, to reflect that the ordinance is applicable to privately owned trees, which are defined as trees on private property or in the public right-of-way subject to private maintenance under a maintenance agreement.
- **§12.12.020 – Purpose of Chapter:** This section has been updated to indicate that one of the purposes is to maintain the urban forest consistent with the goals of the Climate Action Plan and the General Plan. Also, the statement regarding maintenance of private trees that may encroach into the public right-of-way has been revised to be consistent with that the provisions that come later in the ordinance.
- **§12.12.030 – Applicability:** This is an entirely new section. It has been added to the ordinance, to state up front what the chapter does and does not apply to. It applies to “private trees” as described above. Other trees in the public-right-of-way are not subject to the ordinance, but are under the jurisdiction of the City Engineer. This is a point of internal conflict in the current ordinance. Other categories to which the ordinance does not apply include juvenile non-protected trees, certain trees subject to state public utilities jurisdiction and trees otherwise addressed by a separate development permit. These non-applicable categories are not new, but have been moved to this section of the ordinance for clarity.
- **§12.12.040 – Definitions:** A number of definitions have been added for clarity and the definition of “Protected Tree” has been refined.
- **§12.12.050 - Severe Trimming and Tree Removals:** This section has been extensively restructured to clearly define and delineate which actions require a notice to the City versus those wherein a permit is required. .

Notice Required: This subsection has been added to draw a clear distinction between trees that require a discretionary action by the City and those that do not. Under the

proposed draft, trees that are neither in a protected class nor outright excluded from the ordinance in Section 12.12.030 (such as invasive trees), would require a 7-day notice to the City prior to removal. Severe tree trimming has been included in this category, with the caveat that the owner assumes responsibility if such trimming results in the loss of the tree. If that occurs, the City would require tree replacement(s), per the standard conditions provided in the Permit Required subsection. The proposed 7-day notice would provide an opportunity for the City to verify that the subject tree(s) are in fact only subject to noticing and are not protected under the terms of the ordinance.

Permit Required: Under the Permit Required subsection, a permitting process has been defined, including provisions for Content of Application and Findings For Granting a Permit. The findings replaced the criteria for evaluation of the proposed removal of a protected tree found in the current ordinance. Subsections for Decision on Application and Notification requirements have also been added, along with a Standard Conditions subsection. Most notably under the conditions subsection, tree removals requiring a permit would have at least one-to-one replacement requirements. In the current ordinance tree replacement is not mandatory. Emergency approvals and exceptions for in-lieu payment, off-site planting and financial hardship are also addressed in the respective subsections.

Other comments on permitting and replacements: As previously noted, there were some differences of opinion among subcommittee members related to further restricting tree removals and adding more replacement trees. These points are mentioned since they were a departure from the consensus of the group.

It was advocated by one of the subcommittee members, that the findings for granting a permit for removal of a tree should be narrowed, by eliminating the finding in Section 12.12.050.B.2.c, “*Removal of the tree is necessary for economic or other enjoyment of the property.*” This is one of the criteria that was carried forward from the current ordinance and allows for discretion on the part of the City, to allow removal of a tree that, for example, may be a poorly suited species in an ill-advised location, but does not yet rise to the level of one of the other findings. The other findings are all hazard related and include disease, proximity to structures, spread of pests or pathogens and fire.

On the topic of replacement trees, the proposed ordinance adds a mandatory provision for replacement trees for permit required tree removals, but for the classes of trees that require only a notice or those that are exempt from the ordinance replacement trees would not be required. The subcommittee member advocated for requiring replacements for these other classes of trees as well. Note that under the current ordinance, replacement may be required for a “protected tree” but that is left to the discretion of the approving authority without criteria for when to apply that condition of approval. While the proposed ordinance would not go as far as one subcommittee member wanted in requiring replacements, it would be more rigorous than the current ordinance by expanding the replacements to be mandatory for all permit required tree removals.

- **§12.12.060 – Appeals:** This section has been relocated and revised to follow the discretionary approval process detailed in Section 12.12.050.
- **§12.12.070 – Maintenance of Trees Over Public Right-of-Way:** This section has been revised to more accurately reflect the requirements for maintenance of private trees encroaching over the public right-of-way and to remove language that would imply that private parties may plant trees in the public right-of-way without city approval. Note that the initial planting of private trees in the public right-of-way is addressed separate from this ordinance and may be required by conditions of approval imposed as part of a planning permit. In such relatively rare cases, those trees are treated as privately owned trees and would be subject to this ordinance, as indicated in Section, BMC Section 12.12.030 - Applicability.
- **§12.12.080 – Violation- Penalties:** This section has been revised to remove the reference to revocation of a business license for a tree removal violation. Penalties are established in Title 1 of the Municipal Code as cross-referenced in the section.

Attachments

- A. Draft Ordinance No. 638
- B. Adopted BMC Chapter 12.12 (Current Ordinance)
- C. OSEC’s letter to City Council, dated November 16, 2017

Brisbane Planning Commission Minutes
February 28, 2019
Page 2

1. Tree Ordinance Update.

Senior Planner Johnson reviewed the draft tree ordinance. Subcommittee members Commissioners Gooding and Gomez described the revision process and priorities identified by the subcommittee. Staff indicated that the Commission's comments on the criteria for protected tree removal regarding a property owner's enjoyment of the property would be shared with the City Council.

2. Director Swiecki announced a "Community Conversation" about community goals, aspirations, and values related to housing and quality of life in Brisbane on March 21 at the Mission Blue center.

I. ITEMS INITIATED BY THE COMMISSION

There was additional discussion about the draft tree ordinance to clarify the proposed noticing provisions.

J. SELECTION OF PLANNING COMMISSION OFFICERS

Chairperson Mackin nominated Commissioner Sayasane be appointed Chairperson. Commissioner Gomez seconded the motion and it was approved 5-0.

Commissioner Patel nominated Commissioner Gooding be appointed Vice Chairperson. Commissioner Gomez seconded the motion and it was approved 5-0.

K. ADJOURNMENT

Commissioner Gomez moved to adjourn to the regular meeting of Thursday, March 14, 2019. Commissioner Gooding seconded the motion and the meeting adjourned at 9:00 p.m.

Attest:



John A. Swiecki, Community Development Director

NOTE: A full video record of this meeting can be found on DVD at City Hall and the City's website at www.brisbaneca.org.

**OPEN SPACE & ECOLOGY COMMITTEE
MINUTES**

March 20, 2019 6:30 PM
Community Meeting Room
Brisbane City Hall
50 Park Place, Brisbane, CA 94005

Called to order at 6:33 PM.

| | |
|-----------------------------------|--|
| Committee members present: | Ebel, Rogers, Ankenbruck, Salmon, Fieldman |
| Committee members absent: | Dykes |
| Staff members present: | Deputy Director of Public Works Kinser Sustainability Management Analyst Etherton Engineering Technician Sage Senior Planner Johnson (through item 4) |

1. Roll call

2. Adoption of the agenda
Adopted.

3. Oral Communications (public comment)*
None.

4. Tree Ordinance – Senior Planner Ken Johnson

Johnson noted that this draft revision has been presented to the Planning Commission and is scheduled to go to Council at their second April meeting; it is an informational item not requiring OSEC action. Johnson detailed the revised ordinance sections and various conditions of tree removal.

Committee members inquired about how residents would know about the ordinance and whether they have a protected tree; Johnson explained that he intends to provide education through the Star newsletter as well as have handouts at the building counter and information on the city website. Members expressed concerns about the “protected tree” definition—that the circumference of 30” or more for the listed species was too large to capture some slow growing trees and that larger non-protected species were not covered. The committee also suggested posting notices on the tree.

Salmon moved, Ebel seconded and the committee unanimously agreed that OSEC recommend:

- that the species-protected mature tree definition be reduced to 20” circumference;

- that any tree with a circumference of 30" or larger, regardless of species, require a permit;
- that staff follow-up be performed at 90 days and 1 year after permit;
- that the permit be posted and visible on site for each tree, so that the tree remover has confirmation that the permit has been received.

Kinser will draft the OSEC recommendation memo and deliver it to Planning staff.

5. Approval of the February minutes

Approved.

6. Subcommittee reports

- Open Space** – Kinser will schedule a meeting.
- Climate Action Plan** – Etherton requested to reschedule the committee's upcoming meeting.
- Events** – Sage noted that there will be an article in the Star about the Earth Day Habitat Restoration event April 27.
- Education & Outreach** – Rogers planned to update the library display and the committee will work to schedule a meeting.
- Invasive Species Ordinance** – Etherton shared an update on the Oughta Be a Law application; Senator Hill's staff will research submissions later in the year to move forward feasible suggestions in 2020 and should any related bills come forward in this legislative session they may work to integrate bill suggestion.
- Festival Tree Replacement** – Ackenbruck and Salmon met with Walter from the tree farm who has offered a free Sierra Sequoia or species of Cedar (different from the current tree) to the city, though the city would have to pay to move it. Walter encouraged moving it quickly, as the recent rains have made conditions ideal. Kinser noted that the next step would be to reconvene with the Park & Rec Commissioners to determine a spot.
- PCA Grant Application** – Staff reported that the letter of intent was submitted.
- 280 South Hill Funds** – The Crocker Trail Master Plan proposal will be considered by Council with the Capital Improvement Plan (CIP) in June. Rogers noted two locations, one across from Amazon and one currently used as a dog training, which should be considered during the plan development.
- Signboard Replacement** – Park and Rec staff are going to bring this to Council with the CIP.

7. Calendar items

Members asked about whether we will have a compost giveaway; Etherton shared that we hope to and she will coordinate with SSF Scavenger. Kinser will check on the Earth Day flags on Visitacion. Rogers volunteered for Bike to Work Day.

8. Chair and committee member matters

November 16, 2017

Dear Members of the City Council,

We are writing to express our concern about a number of recent permitted tree removals from private property in Brisbane. Cutting mature trees with significant canopies will result in diminished shade and habitat in the city for years, even decades to come.

The several heat waves we experienced during the summer just past are a harbinger of the “new normal” we will experience as a result of climate change. Cities are normally hotter than undeveloped, vegetated areas; this is the well documented “urban heat island effect.” It is exacerbated by the absence of shade, which shields built surfaces from the sun. Because human health, not to mention quality of life, are threatened by the sort of extreme and unrelenting heat that will occur more frequently as the climate warms, trees assume importance beyond their aesthetic and habitat value.

We ask that the Council review the city’s tree ordinance and consider taking additional steps to protect the city’s tree canopy in view of the benefits trees provide to all residents. Specifically, we recommend the following changes for consideration in the ordinance review:

1. Consider height above surrounding buildings as well as trunk circumference in assigning “protected” status to trees.
2. Require one-to-one replacements of upper story trees (tall trees should be replaced with trees that will be of roughly equal height when mature, as opposed to mid- or lower-story trees).
3. Reword the ordinance to clarify that the value of a tree to the local microclimate (shade) and the tree’s habitat and aesthetic value must be weighed against enjoyment or economic use of the property before a removal permit is granted; tree removal requests should not be granted *pro forma*.
4. Require a certified arborist to confirm that a protected tree is unhealthy or presents a hazard before its removal is authorized for those reasons.
5. Improve the public notification and comment process.

Revising the ordinance to encourage a more complete analysis of the shade and climate change mitigation value against the other factors is important and consistent with Brisbane’s values and goals. We therefore hope that the Council will consider amending the ordinance as we have suggested.

We realize that ordinances alone are not enough to protect the city’s tree cover; the recent drought has left many trees in poor condition, and OSEC will do what it can to educate homeowners about tree care, including pruning, thinning, and watering, especially during

drought. We recently worked with staff to include a mention in the Brisbane Star article for the annual yard waste cleanup in November regarding the need for regular tree maintenance.

We appreciate your taking the time to consider our request to review the ordinance. Thank you.

Sincerely yours,

A handwritten signature in cursive script that reads "Glenn Fieldman". The signature is written in black ink and is positioned above a horizontal line.

Glenn Fieldman
Chair, Open Space and Ecology Committee

Current Ordinance

Chapter 12.12 - TREE REGULATIONS

Sections:

12.12.010 - Purpose of chapter.

This chapter is adopted for the following purposes:

- A. To protect certain trees that contribute greatly to the scenic beauty of the city, or are found to be of special value or significance as a native tree species, or are required to be planted and maintained as a condition of development approval;
- B. To require the proper care and maintenance of trees located within the public right-of-way in order to avoid hazardous conditions that could result injury to persons or property;
- C. To prevent the indiscriminate removal of trees where such trees provide protection against erosion, land instability, flooding, or other hazard, or where the tree removal is otherwise found to be detrimental to the public health, safety and welfare;
- D. To assure that any removal or severe trimming of a protected tree, when authorized by the terms of this chapter, is performed in a proper and safe manner with appropriate measures to mitigate the impacts caused by the removal or trimming.

(Ord. 504 § 1, 2005: Ord. 413 § 1(part), 1997).

12.12.020 - Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section, unless the context or the provision clearly requires otherwise:

"City manager" means the city manager of the city or such other person as the city manager may designate from time to time to perform the responsibilities assigned to the city manager under the provisions of this chapter.

"Protected tree" means each of the following:

1. Any California Bay (*Umbellularia californica*), Coast Live Oak (*Quercus agrifolia*), or California Buckeye (*Aesculus californica*) having a main stem or trunk which measures thirty (30) inches or greater in circumference at a height of twenty-four (24) inches above natural grade.
2. Any species of native or nonnative tree, in addition to those identified in subsection (1) above, designated as a protected tree on recommendation of the parks and recreation commission as adopted by resolution of the city council, based upon its finding and determination that such species uniquely contributes to the scenic beauty of the city or provides special benefits to the natural environment or wildlife.

3. Any tree designated as a protected tree by resolution of the city council.
4. Any tree, regardless of size, originally required by the city to be planted as a condition for the granting of a permit, license, or other approval, or any tree that existed at the time of the granting of such permit, license, or other approval and required by the city to be preserved as part of such approval.
5. Any tree, regardless of size, required by the city to be planted as a replacement for an unlawfully removed tree.
6. Any tree, regardless of size, planted or maintained by the city.
7. Any street tree which is not otherwise described in subsections (1) through (6) above, having a main stem or trunk which measures thirty (30) inches or greater in circumference at a height of twenty-four (24) inches above natural grade.
8. Where three (3) or more trees of any one or more species, each having a main stem or trunk which measures thirty (30) inches or greater in circumference at a height of twenty-four (24) inches above natural grade, are proposed to be removed at the same time from the same property or from contiguous properties under common ownership, such trees shall collectively be regarded as a protected tree.

"Public right-of-way" means a strip or area of land owned by the city or other public entity which is used, or reserved or intended for use, as a street, road, alley, driveway, or pedestrian walkway, or to provide public utility service, or any combination thereof, and includes all and any part of the entire width or other area of a designated right-of-way, whether or not such entire width or area is actually used for any of such purposes.

"Severe trimming" means the removal of more than fifty percent (50%) of the foliage crown or more than thirty percent (30%) of the height of a tree.

"Shrub" means a bushy, woody plant, usually with several permanent stems, and usually not over fifteen (15) feet in height at maturity. The city manager shall have the authority to determine whether any specific woody plant shall be considered a tree or a shrub.

"Street tree" means any tree located within a public right-of-way.

"Tree" means a woody perennial plant characterized by having a main stem or trunk, or a multistemmed trunk system with a more or less definitely formed crown, and is usually over ten (10) feet high at maturity.

(Ord. 504 § 2, 2005; Ord. 413 § 1(part), 1997).

(Ord. No. 559, § 5, 5-16-11)

12.12.040 - Requirement for tree removal permit—Exceptions.

A. Permit Requirement. Except as otherwise provided in subsection B of this section, it is unlawful for any person to destroy, remove, or severely trim, or cause to be destroyed, removed, or severely trimmed:

1. Any protected tree; or
2. Any other tree having a main stem or trunk which measures thirty (30) inches or greater in circumference at a height of twenty-four (24) inches above natural grade, without first having obtained a permit to do so pursuant to this chapter. This requirement shall apply to every owner or occupant of real property within the city, and to every person responsible for destroying, removing, or severely trimming a tree for which a tree removal permit is required under this chapter, regardless of whether such person is engaged in a tree removal business.

B. Exceptions. The permit requirement set forth in subsection A of this section shall not apply to any of the following:

1. Emergencies. If the condition of a protected tree presents an immediate hazard to life or property, it may be removed without a permit on order of the city manager, the city engineer, the planning director, the chief of police, or the fire chief.
2. City Employees. This chapter shall not apply to the removal of any trees on city-owned property by city employees or any person retained by the city for the purpose of removing such trees.
3. Public Utilities. Public utilities subject to the jurisdiction of the State Public Utilities Commission may without a permit take such action as may be necessary to comply with the safety regulations of the commission and as may be necessary to remove a direct and immediate hazard to their facilities within the public utility lands or easement areas in which the same may be located.
4. Project Approval. Where removal of a protected tree has been authorized as part of a development approval granted by the city, no permit shall be required under this chapter for removal of such tree.

(Ord. 504 § 4, 2005; Ord. 413 § 1(part), 1997).

12.12.050 - Application for tree removal permit.

A. Content of Application. Application for a tree removal permit shall be made to the city manager on such form as he or she may prescribe. The application shall contain the number and location of each tree to be removed, the type and approximate size of each tree, the reason for removal, and such additional information as the city manager may require. The application shall be accompanied by a processing fee in such amount as established from time to time by resolution of the city council.

B. Ministerial Permit for Nonprotected Tree. If the application is for removal of a tree which is not a protected tree, as defined in [Section 12.12.020\(B\)](#), the permit shall be granted as a ministerial act and no further review or findings by the city manager shall be required.

C. Notice of Intent to Remove Protected Street Tree. Where the application is for removal of any protected street tree, a notice of such application shall be posted on or near the tree in question indicating that any person may file a written protest with the city manager or appeal a decision by the city manager to grant the tree removal permit. The notice shall be posted not less than ten (10) days prior to any decision being rendered on the application by the city manager.

D. Additional Recommendations for Protected Trees. The city manager may refer the application for removal of a protected tree to any other city official or commission for review and recommendation. The city manager may also require the applicant to furnish a written report from an independent tree expert, acceptable to the city manager, such report to be obtained at the expense of the applicant.

E. Criteria for Removal of Protected Trees. Each application for removal of a protected tree shall be evaluated and determined on the basis of the following criteria:

1. The condition of the tree with respect to disease, imminent danger of falling, proximity to existing or proposed structures and interference with utility services.
2. The necessity to remove the tree for economic or other enjoyment of the property.
3. The topography of the land and the effect of the tree removal upon erosion, soil retention, and the diversion or increased flow of surface waters.
4. The number, species, size, and location of existing trees in the area and the effect the removal would have upon shade, privacy impact, and scenic beauty of the area.
5. The number of healthy trees the property is able to support according to good forestry practices.

F. Decision on Application. The city manager may grant or deny the application for removal of a protected tree or grant the same subject to conditions, including but not limited to, the condition that one or more replacement trees be planted of a species and size and at locations as designated by the city manager. Such replacement trees shall be obtained and planted at the expense of the applicant. The permit shall require the applicant to either remove the tree stump or lower it to ground level.

(Ord. 504 § 5, 2005; Ord. 413 § 1(part), 1997).

12.12.060 - Maintenance of street trees—Hazardous condition.

A. Any person who plants a tree or other landscaping within the public right-of-way abutting or adjacent to that person's property, and the successors in interest of that person, shall be responsible for the care and maintenance of such tree and landscaping. The city shall have no obligation or responsibility for maintenance of any street tree or other landscaping which was not planted by the city within the public right-of-way, nor shall the city have any obligation or responsibility for maintenance of a street tree or other landscaping which is required to be maintained by any private party under the terms of a landscape maintenance agreement with the city or as a condition of any permit or approval granted by the city. Any acts of maintenance which may be performed by the city on any of the trees referred to in this subsection, regardless of the frequency of such actions, shall not constitute an assumption by the city of responsibility for regular maintenance of such trees nor an assumption of any liability for the condition thereof.

B. No person shall plant or maintain any tree, shrub, or other landscaping within the public right-of-way or on such person's private property which creates a dangerous obstruction or hazard to the visibility on, or free use of, any public street, sidewalk, or other public right-of-way, or causes damage or threat of damage to any public facilities constructed or installed within the public right-of-way, and the existence of any such condition is hereby declared to constitute a public nuisance. Upon a determination by the city engineer that any such condition exists, the city engineer may serve upon the property owner a notice to perform corrective work in the manner and within the time as may be specified in the notice, and upon any failure or refusal by the property owner to perform the corrective work, the city engineer may initiate proceedings to abate the nuisance in the manner provided by law and to charge all abatement costs to the property owner.

(Ord. 413 § 1(part), 1997).

12.12.070 - Appeals.

A. Any applicant objecting to a decision by the city manager made pursuant to any of the provisions of this chapter, or any person objecting to the granting of by the city manager of a permit for removal of a protected street tree for which a notice of intent to remove has been posted pursuant to [Section 12.12.050\(C\)](#) of this chapter, may appeal such decision to the city council by filing a notice of appeal with the city clerk not later than ten (10) days after the date on which a written decision is issued.

B. The notice of appeal shall be accompanied by a filing fee in such amount as established from time to time by resolution of the city council. The city council shall conduct a de novo review of the appeal and may affirm, reverse or modify the decision of the city manager, or refer the matter back to the city manager for such further action as may be directed by the city council.

C. Notwithstanding the provisions of subsection A of this section, where an application for a tree removal permit has been granted and the city manager determines that the tree in question presents a clear and immediate threat of causing injury to persons or property, the city manager may issue the tree removal permit prior to expiration of the appeal period specified in subsection A of this section.

(Ord. 504 § 6, 2005; Ord. 413 § 1(part), 1997).

12.12.080 - Violation—Penalties.

A. The violation of any provision of this chapter is hereby declared to be unlawful and shall constitute an infraction and a public nuisance, punishable by the fines, penalties and enforcement provisions set forth in Chapters [1.14](#), [1.16](#) and [1.18](#) of this code.

B. In addition to any other penalties prescribed by law for an infraction offense, any person unlawfully removing or destroying a protected tree may be penalized as follows:

1. Replacing the unlawfully removed tree with a new tree as similar thereto as reasonably feasible, or if such replacement is not feasible because of the size or age of the removed tree, with such number of similar trees as will, to the extent reasonably possible, mitigate the loss of aesthetic quality caused by the unlawful removal, as determined by the city manager. All such replacement trees shall be maintained by the property owner under a five (5) year maintenance agreement with the city. The city may require that a bond or other security satisfactory to the city be posted to guaranty the performance of the owner's obligations under the maintenance agreement.
2. In addition to any other penalty that may be imposed for violation of this chapter, the violator may be charged a fine in an amount equal to the value of the unlawfully removed tree, as determined by the city manager, based upon the opinion by a qualified arborist or other evidence of value satisfactory to the city manager.
3. The violation of any provision of this chapter during the conduct by any person of a tree removal, landscaping, construction or other business in the city shall constitute grounds for revocation of any business license issued to such person.

(Ord. 504 § 7, 2005; Ord. 413 § 1(part), 1997).

(Ord. No. 554, § 40, 1-18-11)