



SAN FRANCISCO PLANNING DEPARTMENT

May 15, 2015

Ms. Angela Calvillo, Clerk
Honorable Supervisor Wiener
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

**Re: Transmittal of Planning Department Case Number 2015-003697PCA:
Street Trees
Board File No. 150221
Planning Commission Recommendation: Approval with Modification**

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

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415.558.6378

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415.558.6377

Dear Ms. Calvillo and Supervisor Wiener,

On May 14, 2015, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider a proposed ordinance that amends the Planning Code to shift authority to require street trees in case of certain types of development projects from the Planning Department to the Department of Public Works. At the hearing, the Planning Commission recommended approval with modification.

The Commission recommended modification is:

- 1. Amend Planning Code Section 138.1(c)(1) to explicitly indicate that the project sponsor is the party responsible for the planting and maintenance of any required street tree(s). The modified section would read as follows:**

Project Sponsors shall plant and maintain street trees as set forth in Article 16, Sections 805(a) and (d) and 806(d) of the Public Works Code.

The Department determined that the proposed amendments are not defined as a project under CEQA Guidelines Section 15378 and 15060(c) (2) because they do not result in a physical change in the environment.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Planning Commission.

Please find attached documents relating to the actions of the Planning Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Starr". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Aaron D. Starr
Manager of Legislative Affairs

cc:

John D. Malamut, Deputy City Attorney
Andres Power, Aide to Supervisor Wiener
Andrea Ausberry, Board of Supervisors

Attachments:

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution 19372

HEARING DATE MAY 14, 2015

Project Name: **Street Trees**
Case Number: 2015-003697 PCA [Board File No. 150221]
Initiated by: Supervisor Wiener / Reintroduced April 21, 2015
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE AND PUBLIC WORKS CODE TO SHIFT AUTHORITY TO REQUIRE STREET TREES IN THE CASE OF CERTAIN TYPES OF DEVELOPMENT PROJECTS FROM THE PLANNING DEPARTMENT TO PUBLIC WORKS; TO REQUIRE A PERMIT TO PERFORM MAJOR MAINTENANCE ON STREET TREES WITHIN A SPECIFIED DISTANCE OF GENERAL ADVERTISING SIGNS, ADOPT A FEE FOR SUCH PERMIT, AND IMPOSE PENALTIES FOR VIOLATIONS; TO REQUIRE A TREE PROTECTION PLAN IN ADVANCE OF CONSTRUCTION AND ADOPT A FEE FOR REVIEW AND APPROVAL OF THE PLAN; TO GIVE SPECIFIED PUBLIC WORKS STAFF ENFORCEMENT AUTHORITY; AND AFFIRMING THE PLANNING DEPARTMENTS DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND MAKING OTHER FINDINGS INCLUDING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, PLANNING CODE SECTION 302 AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

WHEREAS, on April 21, 2015, Supervisor Wiener re-introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 150221, which would amend the Planning Code and Public Works Code to shift authority to require street trees in the case of certain types of development projects from the Planning Department to Public Works; to require a permit to perform major maintenance on street trees within a specified distance of general advertising signs, adopt a fee for such permit, and impose penalties for violations; to require a tree protection plan in advance of construction and adopt a fee for review and approval of the plan; and to give specified Public Works staff enforcement authority;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on May 14, 2015; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15060(c)(2) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modification** the proposed ordinance.

The Commission recommended modification is:

Amend Planning Code Section 138.1(c)(1) to explicitly indicate that the project sponsor is the party responsible for the planting and maintenance of any required street tree(s). The modified section would read as follows:

Project Sponsors shall plant and maintain street trees as set forth in Article 16, Sections 805(a) and (d) and 806(d) of the Public Works Code.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. Street trees form the basis of San Francisco's urban forest. They add visual interest, soften the urban environment, provide habitat and remove pollutants from the air and water. In this way they help make San Francisco a more walkable, livable and sustainable city.
2. The Planning Department has been the agency to require the planting of street trees for certain types of development projects. However, because of a lack of expertise in arboriculture as well as jurisdiction over the public right-of-way, the Planning Department relies on the Department of Public Works to assist in the implementation of the street tree requirement.
3. Because of the participation of two public agencies, the implementation of the street tree requirement can be inefficient, time-consuming and burdensome to project applicants.
4. The Department of Public Works, having an expertise in arboriculture as well as jurisdiction over the public right-of-way, is the more appropriate public agency to implement the street tree requirement.
5. **General Plan Compliance.** The proposed amendments to the Planning Code are not addressed in the General Plan; the Commission finds that the proposed Ordinance is not inconsistent with the Objectives and Policies of the General Plan.

RECREATION AND OPEN SPACE ELEMENT

OBJECTIVE 3

IMPROVE ACCESS AND CONNECTIVITY TO OPEN SPACE.

Policy 3.6

Maintain, restore, expand and fund the urban forest.

Shifting authority of the street tree requirement to the Department of Public Works will help expand, fund and maintain San Francisco's urban forest. Because they are the agency with expertise in arboriculture and jurisdiction over the public right-of-way, they are best positioned to steward the urban forest.

URBAN DESIGN ELEMENT

OBJECTIVE 4

IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY.

Policy 4.12

Install, promote and maintain landscaping in public and private areas.

The improvements to the implementation of the street tree requirement as proposed in the Ordinance will help San Francisco to expand and care for its urban forest.

AIR QUALITY ELEMENT

OBJECTIVE 3

DECREASE THE AIR QUALITY IMPACTS OF DEVELOPMENT BY COORDINATION OF LAND USE AND TRANSPORTATION DECISIONS

Policy 3.9

Encourage and require planting of trees in conjunction with new development to enhance the pedestrian environment and select species of trees that optimize achievement of air quality goals.

The proposed Ordinance will ensure that all required street trees are planted or that in-lieu fees are appropriately assessed and collected. This will expand the urban forest, improve the pedestrian environment and help clean pollutants from the air.

6. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on existing neighborhood serving retail uses because the Ordinance concerns itself with the implementation of the street tree requirement and the shifting of authority from the Planning Department to the Department of Public Works.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance will help improve neighborhood character by assuring the City receives all required street trees through an improved street tree implementation process.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance will not have an adverse effect on the City's supply of affordable housing because the Ordinance concerns itself with public agency authority over the street tree requirement.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking because the Ordinance concerns itself with public agency authority over the street tree requirement.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development because the Ordinance is concerned with the regulation of street trees. The proposed Ordinance does not have an effect on future opportunities for resident employment or ownership in these sectors.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance will not have an effect on City's preparedness against injury and loss of life in an earthquake as the Ordinance is concerned with shifting the authority of the street tree requirement from one public agency to another.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance will not have an effect on the City's Landmarks and historic buildings because it shifts authority of the street tree requirement from one public agency to another.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an effect on the City's parks and open space and their access to sunlight and vistas as the Ordinance is concerned with the regulation and public agency authority over street trees.

- 8. Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on May 14, 2015.

Jonas P. Ionin
Commission Secretary

AYES: Commissioners Antonini, Fong, Hillis, Johnson, Moore, Richards, Wu

NOES:

ABSENT:

ADOPTED: May 14, 2015



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: MAY 14, 2015

Project Name: **Street Trees**
Case Number: 2015-003697 PCA [Board File No. 150221]
Initiated by: Supervisor Wiener / Reintroduced April 21, 2015
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Recommend Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Section 138.1 to (1) shift authority to require street trees in the case of certain types of development projects from the Planning Department to the Department of Public Works (DPW) and (2) eliminate the role of the Zoning Administrator in the granting of a modification or waiver of the street tree requirement.

The proposed Ordinance would eliminate Planning Code Section 428 and the authority of the Planning Department for applying an in-lieu fee in the case of a waiver from the street tree requirement.

The proposed Ordinance would amend the Public Works Code to reflect the shift in authority over the street tree requirement and the application of an in-lieu fee in the case of a waiver from the requirement from the Planning Department to DPW.

The Way It Is Now:

1. Planning Code Section 138.1 requires projects to provide a new street tree for each 20 linear feet of subject property frontage when proposing either (1) construction of a new building; (2) the relocation of a building; (3) the addition of gross floor area equal to 20 percent or more of the gross floor area of an existing building; (4) the addition of a new dwelling unit, garage or additional parking; or (5) the paving or repaving of more than 200 square feet of the front setback.
2. Planning Code Section 138.1 outlines the circumstances under which a waiver from the street tree requirement may be granted. The Zoning Administrator may either apply an in-lieu fee or modify the street tree requirement with the installation of alternative landscaping when a waiver or modification is granted.
3. Planning Code Section 428 authorizes the Planning Department to apply an in-lieu fee in the case of a waiver from the street tree requirement.

The Way It Would Be:

1. Planning Code Section 138.1 would indicate that Article 16, Section 806 of the Public Works Code (PWC) establishes the street tree requirement. PWC Section 806 would apply the street tree requirement to projects that propose either (1) the construction of a new building; (2) the addition of a dwelling unit; (3) the addition of a new curb cut; (4) the addition of a garage; or (5) a net addition to an existing building of 500 gross square feet or more.
2. The Planning Code would no longer outline the circumstances under which a waiver from the street tree requirement may be granted. PWC Section 806 would outline the circumstances under which the Director of DPW would grant a waiver or modification from the street tree requirement and whether an in-lieu fee or alternative landscaping is required.
3. Planning Code Section 428 would be removed from the Planning Code. The PWC would authorize the Director of DPW to apply an in-lieu fee.

ISSUES AND CONSIDERATIONS

Current Implementation Practice

Upon receipt of a proposed project's plan set, Planning Department staff review the proposal for compliance with applicable Planning Code requirements. This review includes compliance with Planning Code Section 138.1, where the street tree requirement is found. The street tree requirement applies to projects proposing either (1) construction of a new building; (2) the relocation of a building; (3) the addition of gross floor area equal to 20 percent or more of the gross floor area of an existing building; (4) the addition of a new dwelling unit, garage or additional parking; or (5) the paving or repaving of more than 200 square feet of the front setback. One street tree is required for each 20 linear feet of subject property frontage, with fractions of 0.5 rounded up. Credit toward meeting the street tree requirement is given for existing street trees.

If Planning Department staff confirms that the project is subject to the street tree requirement, Staff requests that the project sponsor provide a completed Tree Planting and Protection Checklist (Checklist). The Checklist requires the project sponsor to (1) confirm the proposed project triggers the street tree requirement; (2) to confirm the number of "Protected Trees" on the subject property; (3) to indicate whether the proposed scope of work will remove or impact a Protected Tree; and (4) to calculate the number of required street trees based on subject property street frontage.¹ The Checklist outlines three distinct "tree schedules" that apply to projects of differing scopes and zoning districts. Project sponsors are required to identify the correct "tree schedule" according to their proposed project and its underlying zoning district. Each "tree schedule" outlines a different tree planting specification.

Planning Department Staff reviews submitted Checklists for completeness and accuracy. Any errors must be corrected before the Planning Department can approve a project. In addition, the Planning Department is required to withhold project approval until the project sponsor provides evidence that DPW reviewed the project scope of work as it pertains to existing trees in the public right of way or on

¹ The Checklist uses the term "Protected Trees" to refer to Landmark Trees, as designated under Public Works Code Section 810, Significant Trees, as designated under Public Works Code Section 810A, and Street Trees as defined in Public Works Code Section 802.

the subject property. Specifically, the Planning Department must withhold approval until the project sponsor provides evidence of DPW consent or approval when (1) a project requires installation of a street tree; (2) a project proposes removal of a Protected Tree; (3) construction related activity impacts a Protected Tree; or (4) if the subject property contains a Landmark Tree.

Waivers or modifications of the street tree requirement due to infeasibility or undesirability require the action of both DPW and the Zoning Administrator. When installing a street tree is technically infeasible the Director of DPW must first make that determination and then the Zoning Administrator may grant a waiver or modification. For a street tree to be found undesirable the Zoning Administrator must find that installation conflicts with General Plan Policies.

Problems with the Existing Street Tree Implementation Practices

The current implementation process unnecessarily involves the participation of two public agencies in a process that really only requires one. Under the current practice, project sponsors are obligated to secure and coordinate the approvals or consent between the DPW and the Planning Department. For many project sponsors, especially those without experience in real estate development or construction, this can be a daunting task. It is also, arguably, one that could be streamlined and internalized.

Permit review and approval delays are often experienced as a result of the effort to successfully coordinate the consent or approval between the two public agencies. This is particularly concerning for projects, including those adding a new dwelling unit within an existing building envelope that could be approved over the counter.

The waiver or modification process is also cumbersome and awkward. Requiring the consent of two high level public officials to grant waivers or modifications on the grounds of technical infeasibility appears overly involved. Determinations on City policy found in the General Plan are typically outside the principal role of the Zoning Administrator, which is to administer and enforce the Planning Code.

Clarifications between Originally Introduced Ordinance and Substitute Ordinance

The proposed Ordinance was originally introduced on March 18, 2015. This version of the proposed Ordinance was based on an older, superseded version of Planning Code Section 138.1. The substitute version (attached as Exhibit B) is based on the current language in Planning Code Section 138.1. As a matter of substance, both versions of the Ordinance propose to eliminate the street tree requirement from the Planning Code and locate it to the Public Works Code.

The substitute version of the proposed Ordinance also eliminates Planning Code Section 428, Street Trees In-Lieu Fee. The in-lieu fee is proposed to be transferred to the Public Works Code and administered by DPW. Other proposed changes to the Public Works Code embodied in the substitute version of the Ordinance include (1) requiring a permit to perform major maintenance on street trees within 150 feet of a general advertising sign; and (2) requiring a tree protection plan in advance of construction and adopting a fee for review and approval of the plan.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Amend Planning Code Section 138.1(c)(1) to explicitly indicate that the project sponsor is the party responsible for the planting and maintenance of any required street tree(s). The modified section would read as follows:

Project Sponsors shall plant and maintain street trees as set forth in Article 16, Sections 805(a) and (d) and 806(d) of the Public Works Code.

BASIS FOR RECOMMENDATION

The Department supports the proposed Ordinance because it will create a less burdensome and confusing street tree implementation process for project sponsors. By reducing the number of public agencies involved in the regulation of street trees the Department believes that the requirement will be applied with greater accuracy and consistency, and collection of any applicable in-lieu fees will improve. In all, it is anticipated that the proposed Ordinance will help expand San Francisco's street tree population in a more efficient and fair manner.

Jurisdiction, the Public Right-of-Way and Street Trees

The Planning Department and DPW implement different bodies of law with different jurisdictional limits. The Planning Department implements the Planning Code. As outlined in Planning Code Section 101, one of the purposes of the Planning Code is the regulation of the location of buildings and the use of buildings and land adjacent to streets and thoroughfares is one of those purposes. Privately owned lots are typically adjacent to the City's streets and the activity on these lots is the primary concern of the most of the Planning Code. A December 1991 Zoning Administrator Interpretation of the Planning Code on catering trucks and push carts further clarifies that the Planning Code does not have jurisdiction over uses in the street rights-of-way.

The Public Works Code is one body of law that DPW implements. The Public Works Code explicitly outlines duties and responsibilities of the Director of DPW. Article 2 of the Public Works Code indicates that the Director of DPW is responsible for managing the public right-of-way, including sidewalks.² These responsibilities include oversight of any excavation and improvements in the City's sidewalks. The Public Works Code also outlines the jurisdictional extent of DPW. Article 16, the Urban Forestry Ordinance, indicates that DPW is provided with jurisdiction over the planning, planting, maintenance, and removal of trees in any street or other public right-of-way.³ This jurisdiction extends to Landmark and Significant Trees as well.

² Public Works Code, Article 2, Sections 2.4.1 and 2.4.4.

³ Public Works Code, Article 16, Section 804.

Street Tree Planting and Maintenance and Departmental Staffing Expertise

Planting and maintaining trees in an urban environment requires expertise in the fields of arboriculture, urban forestry, landscape architecture and street environmental services. The Planning Department does not have staff with expertise in these areas, making the Planning Department staff ill equipped to determine if proposed locations for street trees are appropriate and suitable to the health of the trees. DPW staff does include arborists and urban foresters, with expertise in the area of tree planting and maintenance as well as with sidewalk utility coordination, making DPW the agency best equipped to implement street tree requirements.

Improvement to Current Implementation Practices / Proposed Procedural Improvements

The proposed Ordinance would dramatically improve the current street tree implementation practices. Prior to the Planning Department receiving a permit application, the Department of Building Inspection (DBI) would screen all applications to determine if the street tree requirement is applicable. If the street tree requirement is applicable, DBI would include DPW as one of the agencies that would review the permit. The Planning Department would conduct its review and approve the permit application independent of the DPW determination. Once the Planning Department completes its review, the permit would then be routed to DPW, which would apply the street tree requirements. This new process will reduce delays in Planning Department review; the Planning Department would not have to wait for approval of the street planting plan from DPW before releasing the permit and it would allow for more projects to be approved over the counter, completely avoiding the Planning Department's backlog. Importantly, this reduction in Planning Department review is also in line with Mayor Lee's Executive Directive on Accelerating Housing Production.

Recommendation 1: Amend Planning Code Section 138.1(c)(1) to explicitly indicate that the project sponsor is the party responsible for the planting and maintenance of any required street tree(s).

The recommended modification clarifies the responsibility of project sponsors in the planting and maintenance of required street trees. It also adds reference to an additional, relevant section in the Public Works Code which further avoids confusion about responsibility of over street tree maintenance. In all, the recommended modification provides clarity from the outset of the

ENVIRONMENTAL REVIEW

The proposed Ordinance is not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received not received any input from the public regarding the proposed Ordinance.

RECOMMENDATION: Recommendation of Approval
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 150221