

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 627, Clarifying the Process for Obtaining a Right-Of-Way Use Permit for the Planting, Pruning or Removing of Street Trees in the City Of Shoreline
DEPARTMENT:	City Manager's Office City Attorney's Office
PRESENTED BY:	John Norris, CMO Management Analyst Ian Sievers, City Attorney
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion

PROBLEM/ISSUE STATEMENT:

Currently, Shoreline Municipal Code section 12.15.030.C, *Right-of-way Site Permit*, allows for the planting, pruning or removing of street trees if a resident is issued a right-of-way site permit to perform this work in the right-of-way. Given that no specific criteria existed in the code regarding how a right-of-way site permit would be approved, the City Manager, after Council review, adopted an administrative rule in October 2011, titled *Right-of-way Site Permits – Street Trees*, to explain the process for obtaining a permit to plant, prune or remove street trees under this section of the code. Staff is now recommending that the criteria described in this administrative rule be codified by Ordinance No. 627.

The content of Ordinance No. 627 was initially provided for in Ordinance No. 617, Public Tree Management, which was reviewed by the Council on November 7 and January 9. However, the Mayor and Deputy Mayor thought it made the most sense to separate these two ordinances and discuss the policy considerations of the two ordinances individually.

RESOURCE/FINANCIAL IMPACT:

There is no fiscal impact to adopting Ordinance No. 627.

RECOMMENDATION:

Staff recommends that Council adopt Ordinance No. 627 which proposes to clarify the process and criteria for obtaining a right-of-way use permit for the planting, pruning or removing of street trees in the City of Shoreline.

Approved by: City Manager JU City Attorney IS

BACKGROUND:

Currently, Shoreline Municipal Code section 12.15.030.C, *Right-of-way Site Permit*, allows for the planting, pruning or removing of street trees if a resident is issued a permit to perform this work in the right-of-way. Given that no criteria existed in the code regarding how a right-of-way site permit for street tree planting, pruning or removal would be approved, the City Manager, after Council review, adopted an administrative rule in October 2011, titled *Right-of-way Site Permits – Street Trees*, to explain the process for obtaining a permit to plant, prune or remove street trees under this section of the code. This administrative rule is attached to this staff report as Attachment A.

Proposed Ordinance No. 627 (Attachment B) creates a new section (SMC 12.30.040) of the newly proposed SMC Chapter 12.30, *Public Tree Management*, to codify the criteria described in the administrative order. This ordinance also amends the code by moving the requirement to obtain a permit for planting, pruning or removing street trees from SMC 12.15.030 to this newly proposed code section and that applicants obtain a right-of-way *use* permit, not a right-of-way *site* permit, as this is the more appropriate permitting tool.

The content of Ordinance No. 627 was initially provided for in Ordinance No. 617, Public Tree Management, which was reviewed by the Council on November 7 and January 9. However, the Mayor and Deputy Mayor thought it made more sense to separate these two ordinances and discuss the policy considerations of the two ordinances individually.

PERMIT REGULATIONS:

As noted in the January 9 study session staff report on Ordinance No. 617, the following information was provided to Council on the proposed code language regarding right-of-way street tree permits:

- The proposed code does not allow the removal of any tree within the City's rights-of-way that have not been opened with public improvements. As well, removal of street trees must follow the regulations established for critical areas.
- The proposed code also does not allow the removal of any "approved" trees, regardless of size, unless the tree is removed by the City as hazardous or causing damage to public or private infrastructure. Approved street trees are acceptable for the right-of-way as their height, girth, and root structure should minimize any potential damage to public infrastructure such as sidewalks and utilities as the trees grow and mature.
- The proposed code does allow the removal of non-approved street trees from the right-of-way with a right-of-way use permit. If the trees being removed are considered "significant," based on their diameter as specified within SMC 20.20.048, then there are replanting requirements with trees that are on the City's approved list. The tree replanting requirements, contained in SMC 20.50.360C(1-3), are as follows:

1. One existing significant tree of eight inches in diameter at breast height for conifers or 12 inches in diameter at breast height for all others equals one new tree.
 2. Each additional three inches in diameter at breast height equals one additional new tree, up to three trees per significant tree removed.
 3. Minimum size requirements for trees replaced under this provision: deciduous trees shall be at least 1.5 inches in caliper and evergreens six feet in height.
- The Parks Director will have the ability to determine if the required replanting can fully be done within the right-of-way or in another public space such as a park. The code will also allow an applicant to pay a fee in lieu of replanting of \$285 per required replacement tree to the City.
 - The City's fee schedule (SMC 3.01.030) for parks, recreation and cultural services fees is being amended to add the fee in lieu of street tree replacement amount of \$285 per tree. This fee in lieu amount of \$285 was determined by the Public Works Department based off the cost of many of the trees purchased and installed during the Aurora Corridor project. This amount was also cross checked by the Planning and Community Development Department against a recent arborist report. As well, given that this fee amount would be in the City's fee schedule, the amount will be reviewed annually and can be adjusted as appropriate through the budget process.

Staff has received a few additional Council and/or public questions and suggestions that are summarized below:

- How many ROW permits for removing trees have been issued in the past?
 - According to staff's review, since 2003 twelve permits have been issued.
- Do the "new" permit requirements for removing street trees require SEPA review?
 - The ordinance adopting the permitting requirements for removal of street trees is exempt from SEPA review. SEPA review is not required for all governmental actions - certain actions are "categorically exempt" from SEPA review. The categorical exemption that applies here is the "procedural action" found under WAC 197-11-800(19), which exempts from SEPA review any "proposal or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment." Here, the changes between the existing code and the new code are procedural, not substantive.

First, the existing code already requires a permit for removal of street trees. The procedural change is renaming the permit from a right-of-way "site" permit to a right-of-way "use" permit. The "use" permit is the more appropriate permitting tool since it is for activities of short duration, rather than the site permit which is

for activities of extended duration. Second, more detail has been added to the code for when the permit is issued, but it really just follows existing code. The critical areas regulations have always applied to removal of street trees; this change just states it affirmatively in the code. There were also always replanting requirements; the revised permit regulation points to specific replanting requirements in the code.

Furthermore, the new ordinance is a codification of an existing administrative policy. As noted above, the purpose of the administrative policy was to provide more detail for existing regulations that allowed removal of street trees. This is a common practice in the Planning and Community Development Department, where administrative orders are adopted in order to clarify code sections. These do not go through SEPA review and are authorized for adoption under SMC 20.10.050.

- How was the 'approved street list' developed?
 - The current City approved street tree list is an adaptation of a list originally maintained by the City of Seattle. The concept behind the list is that it identifies trees that are best suited for use within the right-of-way. Incorporated into this list are trees preferred by Seattle Public Utilities for installation under power lines. The street tree list was formally established for use in conjunction with development and frontage improvements in the 2005 Engineering Development Guide (EDG).

Public Works staff has reviewed the list from time to time as part of the EDG annual update to verify that the list is still viable and consistent with the maintenance and operation of the public right-of-way. The list has not been changed substantively since its application in 2005. However, the list employed by Seattle has been modified more recently. Staff would recommend that the Tree Board, if enacted, review and potentially make a recommendation to update the approved street tree list as part of their work plan.

The following are questions and suggestions from the Innis Arden Board:

- Will the City allow for replanting of trees in any right-of-way? Can a tree be replanted in another area of the City such in parks or other approved sites?
 - If possible, the replanting of the tree needs to be done in the same location or vicinity of the previous tree. However, staff did add some flexibility for replanting in parks or other rights-of-way as determined by the director.
- The fees and costs associated with removal and replanting can be very costly, is there a way for this cost not to be borne solely by the adjacent property owner?
 - In response staff changed the language in the code from "property owner" to "applicant," which would allow for co-applicants, who may want to share in the costs.

- Has the City considered applying the development code’s clearing and grading regulations to the right-of-way?
 - Staff determined that this would not work because these permits apply to private property only. Right-of-way use permits apply to right-of-way and we believe this is the regulation for this particular right-of-way use permit. Under the development code any property owner may remove up to six trees per three years without a permit and without a replant requirement. However, under the exceptions an applicant would have to get a permit for any activity in the right-of-way and we are requiring replanting or in lieu of fees for all trees regardless of the six tree exemption under the development regulations. The development code allowance for additional tree removal beyond six with a permit and replanting is the same in the right-of-way under the exception as stated in section 12.30.030(B)(3).

- Would the City consider allowing the removal of trees for “amenities”?
 - Since this language is vague and could be a use of the private property, we did not include it.

- If the trees in the right-of-way get too large, whether it’s on the approved street tree list or not, can the tree be removed? Can the City require specific trees on the approved list be restricted in certain areas?
 - Since this code would be applied citywide, staff did not include these suggestions. Staff suggested that the Innis Arden Board control for tree size by limiting their Club members to replanting certain approved street trees as part of their covenant.

- Will the City consider an in lieu of fee as part of the fee schedule?
 - Staff included the fee as Council’s adopted fee schedule rather than set by the director. The fee schedule is adopted annually through the budget process.

- There should be an opportunity for the public to comment on administrative procedures that implement this chapter.
 - Staff agreed and included a public notice and opportunity for public comment as part of rulemaking in section 12.30.040.

RESOURCE/FINANCIAL IMPACT:

There is no fiscal impact to adopting Ordinance No. 627.

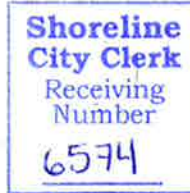
RECOMMENDATION:

Staff recommends that Council adopt Ordinance No. 627 which proposes to clarify the process for obtaining a right-of-way use permit for the planting, pruning or removing of street trees in the City of Shoreline.

ATTACHMENTS:



- A: Shoreline Administrative Rules: Right of Way Site Permits – Street Trees
- B: Ordinance No. 627, Right-of-way street trees

PP-11-004





Shoreline Administrative Rules – 12.111025

Right of Way Site Permits - Street Trees

Category and Number: Public Works 12. 111025	Receiving Number: 6574
Code and statutory authority: SMC 12.15.210 SMC12.15.030	Authorized: Effective Date: 10/25/11 By: Julie Underwood, City Manager   Mark Relph, Public Works Director
Supersedes: N/A	

Right of Way Site Permits - Street Trees

<p>Category and Number: Public Works 12. 111025</p>	<p>Receiving Number: 6574</p>
<p>Code and statutory authority: SMC 12.15.210 SMC12.15.030</p>	<p>Authorized: Effective Date: 10/25/11 By: Julie Underwood, City Manager  Mark Relph, Public Works Director</p>
<p>Supersedes: N/A</p>	<p></p>

1.0 PURPOSE

This document explains the approval process for removing street trees under SMC 12.15.030(C)(1)(k). This policy does not address the procedure or criteria for removing hazardous trees or trees causing damage to private improvements. The City has legal control of rights-of-way and has a duty to investigate and remove or mitigate hazardous or damaging trees at its expense. Removing trees under a right-of-way site permit is at the adjacent owner’s request subject to conditions to protect the right of way and its users.

2.0 DEPARTMENTS AFFECTED

Public Works

3.0 AUTHORITY

SMC 12.15.030 allows for a permit for private uses in the right of way of extended duration “which will not further physically disturb the existing or planned public use of the right-of-way once in place.” The use must be allowed in the nearest land use zone. Among the private uses allowed in the right-of-way with this permit are “planting, pruning or removing street trees.” Private planters are also allowed and ordinary maintenance of landscaping is allowed without permit so long as the right-of-way is not blocked. SMC 12.15.060D.

The right to remove street trees under Chapter 12.15 should be reconciled with street trees as an existing or planned use of the right of way. The Director of Public Works is authorized to prepare and adopt policies and procedures to implement Chapter 12.15 *Use of Right of Way*. SMC 12.15.210.

4.0 ANALYSIS

Trees are regulated on private property with particular clearing and grading permit regulations. As a starting point, removing trees outside of critical areas as a form of

clearing is exempt for trees that are “non significant,” that is, with a trunk diameter 8” or 12” for conifer and deciduous species respectively. SMC 210.20.048.

Tree removal of even significant trees are exempt if fewer than six are removed during a three year period, and may be removed with replacement trees planted if needed for property development.

Street tree planting is required as a frontage improvement for new private development, and may be placed in the right of way. Trees must be spaced according to the Engineering Development Guide and be of an approved variety included in the street tree list. SMC 20.50.480. Since this use of the right of way is expressly permitted by the adjacent zoning, a right of way site permit may be approved for an indefinite duration and is exempt from compensation. SMC 12.15.030 C(3).

Tree species not approved for planting in the right-of-way are likely to damage street improvements and utilities. Right of way uses should not “obstruct, hinder, jeopardize, injure, or delay the use of the right-of-way for its primary functions: vehicular and pedestrian travel.” SMC 12.15.030(D).

5.0 INTERPRETATION

A. The rights to maintain landscaping including planting or removal of trees in the right of way should be available to the adjacent owner through a right-of-way site permit process to the extent allowed by the development code on the adjacent parcel so long as it does not adversely interfere with the public use of the right-of-way .

B. Therefore, the same limits on removing trees or clearing on the adjacent parcel extend to the right of way and are enforced through the right-of-way site permit. Restrictions imposed by critical areas apply. The exemption for removal of six significant trees every three years should include a count of trees cut on the adjacent parcel in determining whether a right-of-way site permit for additional cutting will be issued. Trees of any species that are not significant may be removed without permit as part of extended landscaping allowed in the right of way so long as pedestrian or vehicular traffic is not blocked.

C. Establishing street tree plantings of approved species are an existing and planned public use of the right-of-way, and private activity may not interfere with this use. Therefore, no permit shall issue for removal of frontage trees required under a development permit or trees planted by the County or City regardless of size unless hazardous or damaging. Significant trees that are included on the approved street tree list may not be approved for removal regardless of how they were planted unless hazardous or damaging.

D. Significant trees that are not approved for street tree plantings may be removed if the owner is otherwise allowed to remove the tree under subsection B and the permit is conditioned and bonded for replanting approved street trees according to the Engineering Development Guide, with numbers of replacement trees established under SMC 20.50.360C(1)-(3). A payment in lieu of replacement street trees to be used for other

public trees shall be made to the extent suitable planting space in the vicinity of removal is unavailable.

Attachment B

ORDINANCE NO. 627

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON CLARIFYING THE PROCESS FOR OBTAINING RIGHT-OF-WAY USE PERMITS FOR THE PLANTING, PRUNING OR REMOVING OF STREET TREES IN THE CITY OF SHORELINE

WHEREAS, it is currently required to obtain a right-of-way site permit for the planting, pruning or removing of streets trees; and

WHEREAS, there is no additional criteria for processing a right-of-way permit relating to planting, pruning or removing of street trees; and

WHEREAS, a right-of-way use permit is the more appropriate permitting tool for the planting, pruning or removing of street trees, given that use permits are typically issued for short term private use of the right-of-way; and

WHEREAS, clear criteria will provide predictability and fair administration of the permit request, will avoid futile permit applications, and will avoid legal disputes over permit decisions; and

WHEREAS, the responsibility for issuing right-of-way site permits for planting, pruning or removing streets trees has heretofore been under the direction of Director of Public Works but will now transfer to the Director of the Parks, Recreation and Cultural Services Department, given the Council's intent to consolidate management of all public trees under a single department with an advisory tree board.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON DO ORDAIN AS FOLLOWS:**

Section 1. New Section. A new section, Section 12.30.040, *Right-of-way street trees*, is hereby added to Chapter 12.30, *Public Tree Management*:

12.30.040 Right-of-way street trees.

A. A right-of-way use permit shall be required and issued by the Director of the Parks, Recreation and Cultural Services Department (hereafter "director") for planting street trees in rights-of-way adjacent to the applicant's property according to the variety and spacing approved in the Engineering Development Guide if such activity does not physically disturb the existing or planned public use of the right-of-way. Planted street trees shall be maintained by the applicant in accordance with the issued right-of-way use permit.

B. A right-of-way use permit shall be required and shall only be issued by the director for the pruning or removal of trees in rights-of-way adjacent to the applicant's property in compliance with the following:

- 1) Limits on removal under critical area regulations.
- 2) No permit shall be issued for removal of trees on rights-of-way that have not been opened with public improvements, including, but not limited to, streets, sidewalks, pathways, and underground or overhead utilities.

3) No trees listed in the Engineering Development Guide as approved street tree varieties shall be removed regardless of size unless the tree is removed by the City as hazardous or causing damage to public or private infrastructure.

4) All significant trees, as defined in SMC 20.20.048, allowed to be removed under clearing and grading regulations shall be replaced with an approved variety of street tree in the area of removal according to the replacement formula in SMC 20.50.360C(1-3). Replacement trees shall be maintained by the applicant in accordance with the issued right-of-way use permit. If the director determines there is no suitable space for replanting street trees in the vicinity of removal, the applicant shall replant at public sites approved by the director or pay a fee in lieu of replacement according to the current City fee schedule to be used exclusively for planting public trees in rights-of-way, parks or other public places.

5) All removed trees or pruned material shall be removed from the right-of-way and the right-of-way shall be restored in accordance with the issued right-of-way use permit.

Section 2. Amendment. SMC 12.15.030(C) is hereby amended as follows:

SMC 12.15.030 Right-of-way permit issuance.

(A and B unchanged)

C. Right-of-Way Site Permit. Right-of-way site permit is a specific class of right-of-way permit that may be available for utilities or other parties who do not hold a valid city franchise in accordance with Chapter 12.25 SMC for activities of extended duration which will not further physically disturb the existing or planned public use of the right-of-way once in place. This may include structures, facilities, and uses that involve capital expenditures.

1. Right-of-way site permits, if allowed in the nearest classified land use zone may be issued for:
 - a. Accessory uses permitted to the adjacent property such as parking, displays, and signage, provided the proposed use is not required to meet city development standards for any private property development;
 - b. Air rights;
 - c. Bus shelters/stops;
 - d. Construction site/haul roads;
 - e. Fences, retaining walls, terracing, and similar structures;
 - f. Litter and recycle receptacles placed by private parties;
 - g. Special and unique structures such as benches, fountains, clocks, flagpoles, kiosks, banners, street furniture, decorations, bicycle racks, private planters, or any other obstruction to be placed in the right-of-way by an entity other than the city;
 - h. Sales structures, including sidewalk cafes, telephone booths or the usage of the right-of-way for the sale of flowers, food, or beverages, newspapers, or other items
 - i. Underground rights
 - j. Utility facilities;
 - ~~k. Planting pruning or removing of street trees.~~

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(remainder of section unchanged)

Section 3. Fee Schedule Amendment. SMC 3.01.030, Parks, recreation and cultural services, is amended to add a Fee in lieu of street tree replacement - \$285.

Section 4. Effective Date and Publication. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. The ordinance shall take effect and be in full force five days after passage and publication.

ADOPTED BY THE CITY COUNCIL ON FEBRUARY 13, 2011.

Mayor Keith A. McGlashan

ATTEST:

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian Sievers
City Attorney

Publication Date:
Effective Date: