Council Meeting Date: April 10, 2006 **Agenda Item:** 8(a)

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Public Hearing on Adoption of Ordinance 421 Extending Moratorium On Hazardous Tree Exemption
DEPARTMENT:	Planning and Development Services, City Attorney's Office
PRESENTED BY:	Joseph W. Tovar, FAICP, Director Planning and Development Services

PROBLEM/ISSUE STATEMENT: On January 3, 2006 the Council adopted Ordinance No. 407 which established a four month moratorium on that portion of the City's development regulations which exempt the cutting of hazardous trees from the requirement for clearing and grading permit. The moratorium was adopted upon the use or application of the exemption codified in SMC 20.50.310.A.1. Ordinance No. 407 also adopted an interim control in place of the prior exemption provision.

During the moratorium, no land clearing and grading is permitted on private property except as permitted under the interim control. The interim control affirms other code exemptions from clearing permits (*e.g.* cutting six trees per parcel if outside critical areas) and allows cutting of hazardous trees without a permit if authorized by the City prior to removal. See Ordinance N. 407, Section 3.

The City Council conducted a public hearing on Ordinance No. 407 at the regular meeting of February 6, 2006. As a result of public comment at that hearing, the Council adopted Ordinance 411 adding "recreational trails" to the list of "targets" that would be evaluated when a request for a hazardous tree exception is submitted. The Council decided to let the moratorium and interim controls, as amended, continue in effect through May 3, 2006.

In the opinion of the City staff, the moratorium and interim controls have worked well and have served the purpose of preserving the status quo during our work preparing draft permanent tree regulations. People and organizations have taken the opportunity over the past month to provide input directly to the staff about what permanent regulations should look like. In addition, the staff has been in touch with the state resource agencies who review amendments and has researched the actions of other local governments dealing with this issue. For example, the City of Bellevue just recently updated their regulations regarding tree cutting, and we have asked for copies of their ordinance and staff report.

The staff hopes to finish its analysis and final writing of the draft permanent regulations by mid-April, with the objective of getting before the Planning Commission at a public hearing on May 18. That would permit us to get the recommended permanent amendments before Council in the month of June.

Consequently, in order to finish this work, it will be necessary to extend the moratorium and interim controls for two months from May 3, 2006 to July 3, 2006. The attached Ordinance No. 421 would accomplish this change. Notice has been given that the Council will conduct a public hearing on April 10 on this proposed two month extension of the moratorium and interim controls.

For additional background, we have attached the Staff Reports submitted to the Council for the January 3 meeting (Attachment A), and February 13, 2006 meeting (Attachment B). Ordinance No. 421 is Attachment C.

ALTERNATIVES ANALYZED:

The action before the Council is to conduct a public hearing on Ordinance No. 421 required by state law in order to continue this Ordinance in effect for an additional two month term to expire on July 3, 2006.

Alternatively, the Council may decide to amend or repeal Ordinance No. 421. In such a case, the Council would direct staff to prepare amendments to the findings in the ordinance or the provisions of the ordinance itself based on testimony at the public hearing.

FINANCIAL IMPACT: There are no financial impacts of this council action, which is to take public testimonyand continue current regulations.

RECOMMENDATION

Staff recommends that Council conduct the public hearing and adopt Ordinance No. 421 approving a two month extension of the moratoriumand interim controls for removal of hazardous trees to July 3, 2006.

Approved By: City Manager City Attorney

Attachments:

Attachment A: Staff Report for Ordinance No. 407

Attachment B: Staff Report for the February 6, 2006 Public Hearing

Attachment C: Ordinance 421

Council Meeting Date: January 3, 2006 **Agenda Item:**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Moratorium and Interim Controls to regulate tree cutting
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	Joseph W. Tovar, FAICP, Director

The subject of tree cutting and critical areas ordinance (CAO) regulations have been controversial and difficult subjects for this community. The Planning Commission spent a considerable amount of time in 2005 hearing and weighing public testimony and forwarded its recommendations for updated critical areas regulations to the Council. Those recommendations are scheduled for Council review on January 17 and action on February 13, 2006.

As staff earlier reported, the vast majority of public testimony that the Planning Commission heard on the CAO focused on the question of tree cutting and much of that comment focused on historical and current events in the Innis Arden area of Shoreline. In October of 2005, the Council decided to segregate out those portions of the Planning Commission's CAO recommendations that addressed the subjects of tree cutting, clearing and grading. The Council directed the city staff to engage the primary disputants in Innis Arden, namely the Innis Arden Club and the Association for the Responsible Management of Innis Arden (ARM), in a mediated discussion of the subject.

The staff had several preliminary discussions with both the Club and ARM, and retained a professional mediator to assist with the effort. As Council heard at its December 27, 2005 special meeting, ARM has withdrawn from the mediation effort and it is therefore for all intents and purposes ended.

In recent months the staff has been notified by the Innis Arden Club of its intent to cut dozens of "hazardous trees" in the Reserves. These requests were made pursuant to the provisions of SMC 20.50.310.A.1, which appears in Attachment C to this memo. This section of the code describes actions exempt from permit requirements. As written, it grants broad discretion for a property owner to determine what trees, including significant trees, are "hazardous" and to cut and remove any number of them without a permit or city oversight. In my judgment, the present exemptions language allows far more trees to be cut under the rubric of "hazardous" than actual circumstances warrant. This is particularly

problematic when such tree cutting and clearing occurs within environmentally sensitive areas, such as wetlands, creek setbacks, and steep slopes.

The subject of tree cutting and vegetation removal continues to be an active controversy consuming much of the attention of the city staff, including the Community Response Team and Code Enforcement Officer. Among activities within the past several weeks are cutting and clearing that occurred in the Blue Heron Reserve of Innis Arden. Attached are two photographs depicting recent cutting in the upper portion of the Blue Heron Reserve adjacent to NW 186th St.

Attachment A, photographed in December of 2005 shows the cutting activities that have taken place in the past several months under the exemptions granted by the existing Shoreline Municipal Code. This area of the Blue Heron Reserve contains both a wetland and a stream.

Attachment B is an aerial photograph from mid 2005. This photograph also shows the upper portion of the Blue Heron Reserve. In this photograph, you can see the end of the cul-de-sac where the previous picture was taken, located on the left center of the page. The home and yard that are visible in the previous photograph are located easterly of the Blue Heron Reserve, on the right hand side of the page. As you can see, the canopy and tree cover that was once present in the upper portion of this reserve has been fully removed allowing an unobstructed view from the cul-de-sac on NW 186th through to the adjoining properties on Springdale Ct. NW.

Please note that the staff is not asserting that the above described cutting in Blue Heron Reserve violates the City's codes as it presently reads. We can neither prove nor disprove a violation because city staff has been specifically barred from entering the property. We are attempting to ascertain all the facts before a final determination of whether a violation has occurred. Significantly, however, even were we to assume that no violation of present code language (i.e., exemptions under SMC 20.50.310.A.1) has occurred, such a premise makes the case for setting aside that code language immediately. As noted above, Blue Heron Reserve is a critical area, containing both a wetland and a stream. Removal of vegetation from a critical area on the scale of what is illustrated in Attachments A and B does not, on its face, meet the City's duty to protect critical areas under state law.

In my professional opinion, the existing code provisions undercut the City's ability to meet its statutory mandates to protect critical areas and to provide clear, fair, and enforceable rules for the Department to administer. It is necessary to immediately set aside the exemption language of SMC 20.50.310.A.1, adopt interim regulations to govern hazardous tree cutting activities, and to direct that the City staff and Planning Commission revisit this policy question.

The Planning Commission's previous recommendations dealing with parts this issue should be the starting point. However, the staff believes that additional alternatives should be presented for the Commission's consideration and public testimony. Both ARM and the Innis Arden Club, as well as other interested groups and citizens, should be invited to work with the City staff and Planning Commission in an open public process to craft permanent regulations that protect critical areas while also giving due consideration to private property rights and need to protect life and property. Staff believes that four months should be sufficient time for the Planning Commission to present a final recommendation to the City Council regarding permanent regulations. In order to protect the City's options during that review, it is important to adopt a moratorium and adopt interim regulations.

RECOMMENDATION

Staff recommends that the City Council adopt the enclosed ordinance to declare a moratorium on SMC 20.50.310.A.1 and adopt interim controls for a period of four months regulating the cutting of hazardous vegetation. Since the City needs to complete the CAO revisions by the end of April, and any final revisions to tree cutting in critical areas should be incorporated in the new CAO, a four month moratorium should prove adequate.

Approved By: City Manager _____ City Attorney _____

Council Meeting Date: February 6, 2006 **Agenda Item: 7(a)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Public Hearing on Four Month Moratorium on Hazardous Tree Exemption to Clearing Permits
DEPARTMENT:	Planning and Development Services, City Attorney's Office
PRESENTED BY:	Joseph W. Tovar, FAICP Director of Planning and Development Services

PROBLEM/ISSUE STATEMENT: On January 3, 2006 the Council adopted Ordinance No. 407 which established a four month moratorium on that portion of the City's development regulations which exempt the cutting of hazardous trees from the requirement for clearing and grading permit. This moratorium is adopted upon the use or application of the exemption codified in SMC 20.50.310.A.1. Ordinance No. 407 also adopted an interim control in place of the prior exemption provision.

During the moratorium, no land clearing and grading shall be permitted on private property except as permitted under the interim control. The interim control affirms other code exemptions from clearing permits (*e.g.* cutting six trees per parcel if outside critical areas) and allows cutting of hazardous trees without a permit if authorized by the City prior to removal. See Ordinance N. 407 Section 3.

Public comment expressed by some citizens at the January 3, 2006 Council meeting questioned the rationale and legal basis for adopting Ordinance No. 407 with no notice and prior to a public hearing. The short answer is that to announce the council's intention to consider adoption of a moratorium would very likely hasten a rush to the permit counter by people attempting to take advantage of the prior rules. A longer answer, including the legal basis for not providing notice and hearing before the adoption of such moratoria, follows.

The statute authorizing land use moratoria is RCW 35A.63.220 and under the Growth Management Act, RCW 36.70A.390. The key features are adoption of an ordinance without public hearing notice or recommendation from the Planning Commission. The moratorium ordinance must be scheduled for a public hearing and adoption of findings within 60 days from its initial passage. It may remain in effect for up to six months, but may be extended after a second public hearing.

Given a liberal vesting rule for development of property in this state, Washington courts have expressly endorsed the use of moratoria to freeze the status quo quickly to prevent owners from securing a vested right by filing an application

before a deliberative review of land use changes can be completed. This well-established legal principle was summed up by a legal scholar as follows:

> " Moratoriums and interim zoning are generally recognized techniques designed to preserve the status quo so that new plans and regulations will not be rendered moot by intervening development. Recognizing the emergency, temporary, and expedient nature of such regulations, the courts have tended to be more deferential than usual to the local legislative body."
>
> Richard L. Settle, *Washington Land Use and Environmental Law and Practice* §23, at 72 (ed.1983).

Some people have expressed the belief that the Ordinance has established a moratorium on tree cutting, per se, and that even hazardous trees may not be cut. This is incorrect. The moratorium is a moratorium on the prior exemption regarding hazardous tree cutting. The interim control sets forth new, interim rules to govern hazardous tree cutting.

Some have construed the phrase "utilizing hand implements only" in Section 3 of Ordinance No. 407 to suggest that chainsaws are not permitted tools in removing hazardous trees, or portions of such trees. The staff did not intend and does not interpret this phrase to prohibit the use of chainsaws when the cutting of a hazardous tree as authorized pursuant to the other provisions of the interim controls. A chainsaw is a hand implement. A Bobcat, trackhoe, or other vehicle would be prohibited by this phrase.

There has also been some question about how the timing and scope of the Feb. 6 hearing on Ordinance No. 407, relates to either (a) the preparation of proposed permanent development regulations for tree cutting, including provisions dealing with hazardous trees; and (b) the hearing on Feb. 13 when the Council will consider all the other aspects of the Planning Commission-recommended CAO.

If people wish to comment on what the permanent development regulations should say about tree cutting provisions, they will have two opportunities to do so. First, since the staff is now drafting proposed permanent regulations, I would encourage them to contact me directly with their ideas and suggestions. A number of people have already done so. Second, they are invited to provide written and/or oral comments to the Planning Commission when that group conducts public hearings on the proposed permanent development regulations in March. Notice of the hearing and the draft permanent regulations will be published well in advance of the public hearing.

As to the subject of the rest of the CAO (the Planning Commission recommendation less the hazardous trees piece) the City Council will conduct a public hearing on that subject on February 13. In addition, potential amendatory language drafted by Councilmembers Fimia and Way have been posted on the

City's website and the public has been invited to review those proposals prior to providing comment on February 13. Council may be able to take action on the CAO that evening, or carry it over for action on Feb. 27 (which seems more likely).

The Staff Report submitted on January 3, 2006 in support of the moratorium and interim control is attached to this report as Attachment A; Ordinance No .407 is Attachment B.

ALTERNATIVES ANALYZED:

The action before the Council is to conduct a public hearing on Ordinance No. 407 required by state law in order to continue this Ordinance in effect for the full four month term. If the Council is satisfied with the ordinance as passed, no further action need be taken. Staff recommends no further action at this time.

Alternatively, the Council may decide to amend or repeal Ordinance No. 407. In such a case, the Council would direct staff to prepare amendments to the findings in the ordinance or the provisions of the ordinance itself based on testimony at the public hearing.

FINANCIAL IMPACT: There are no financial impacts of this council action, which is to take public testimony.

RECOMMENDATION

Staff recommends that Council hold a public hearing for Ordinance No. 407. No additional action is required to keep this moratorium and interim control in effect, and the staff recommends no additional Council action.

Approved By: City Manager ____ City Attorney ___

Attachments:

Attachment A: Staff Report for Ordinance No. 407

Attachment B: Ordinance No. 407

ORDINANCE NO. 421

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, EXTENDING A MORATORIUM AND INTERIM CONTROL PURSUANT TO RCW 35A.63.220 PROHIBITING THE CUTTING OF TREES IN CRITICAL AREAS AND PROHIBITING LAND CLEARING OR GRADING IN CRITICAL AREAS UNTIL JULY 3, 2006

WHEREAS, under the provisions of the Growth Management Act the City is required to adopt development regulations to designate and protect critical areas; and

WHEREAS, the City of Shoreline City Council enacted an emergency moratorium on the cutting of hazardous trees on January 3, 2006 with Ordinance No. 407 as amended by Ordinance No. 411; and

WHEREAS, the City of Shoreline has four months from the original date of passage to either let the moratorium expire or enact permanent regulations; and

WHEREAS, an interim control for two additional months will allow the City to preserve planning options and prevent substantial change to critical areas while the Planning Commission and city staff engage the public and various stakeholder groups in crafting permanent development regulations, including but not limited to such alternatives as a vegetation management plan; and

WHEREAS, the City Council has determined from recent public correspondence and comment that the City's ability to protect its critical areas will suffer irreparable harm unless interim controls are placed on the cutting of trees and the modification of land surfaces within such areas; and

WHEREAS, pursuant to SEPA regulations, Washington Administrative Code Section 197-11-800, the City Council finds that the purpose of the moratorium and interim controls relates to procedures for authorizing removal of hazardous trees rather than substantive standards that modify the environment and are there for exempt from SEPA review.; now, therefore,

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

Section 1. Finding of Fact. Based upon the public hearing held on the extension of Ordinance No. 407 as amended by Ordinance No. 411 for two months to July 3, 2006, the recitals set forth above are hereby adopted as findings of the City Council.

Section 2. Moratorium Extended. The expiration date of Sections 2 of Ordinance 407 and 3 of Ordinance 411 shall be extended to July 3, 2006.

Section 3. Effective Date. This ordinance shall take effect and be in full force five days following passage and publication of a summary consisting of its title.

PASSED BY THE CITY COUNCIL ON APRIL 10, 2006

_____
Mayor Robert L. Ransom

ATTEST:

APPROVED AS TO FORM:

_____
Scott Passey
City Clerk

_____
Ian Sievers
City Attorney

Date of Publication:
Effective Date: