

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Permanent Hazardous Tree Regulations: Ordinance 434
DEPARTMENT: Planning and Development Services
PRESENTED BY: Joseph W. Tovar, FAICP, Director
Matthew Torpey, Planner II

PROBLEM/ISSUE STATEMENT:

On July 10, 2006 the Shoreline City Council heard public comment related to the Planning Commission's recommendation to adopt Ordinance No. 434. It is anticipated that the Council will conduct deliberations regarding the proposed ordinance and if necessary, ask questions of staff regarding the proposed code amendments.

Attached is the staff report from July 10. This document includes the Planning Commission Findings of Fact as well as a brief analysis of the existing (pre-moratorium) code language and the proposed code changes.

As the Council deliberations and decision making runs its course, should the Council choose to make amendments to the Planning Commission recommended draft, staff will make the proper adjustments to the code language and bring Ordinance No. 434 before the Council for final consideration on July 24, 2006.

FINANCIAL IMPACT:

There would be no financial impact to the City by adopting Ordinance No. 434.

RECOMMENDATION

The Planning Commission recommends that Council approves Ordinance No. 434.

ATTACHMENTS

Attachment A: July 10, 2006 Ordinance No. 434 Staff Report.

Approved By: City Manager  City Attorney __

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

<p>AGENDA TITLE: Permanent Hazardous Tree Regulations: Ordinance 434 DEPARTMENT: Planning and Development Services PRESENTED BY: Matthew Torpey, Planner II Joseph W. Tovar, FAICP, Director</p>

PROBLEM/ISSUE STATEMENT:

The proposed Ordinance No. 434 repeals SMC 25.50.310.A.1 (Attachment A), which is the City's existing exemption from permit requirements for the cutting of hazardous trees. This text has been set aside since January 3, 2006 when the City Council adopted Ordinance No. 407 adopting a moratorium on this language. By that same ordinance, the City Council adopted interim controls that have been utilized during the period of moratorium. The City Council subsequently conducted a public hearing on the moratorium and interim controls, slightly amending the provisions of the critical areas regulations, and on April 10, 2006 adopted Ordinance No. 422 that extended the moratorium and interim controls to July 3, 2006. On June 26, 2006 the moratorium and interim controls were again extended to September 3, 2006 by Ordinance No. 429.

The proposed Ordinance adopts permanent regulations to replace the interim controls. The proposed permanent language is patterned on the language of the interim controls, but has been augmented with a "Statement of Purpose" section, definition of certain terms, and clarification of the procedures necessary for the City to evaluate and authorize the abatement of hazardous situations.

The provisions of the Ordinance apply to all properties in the City, including non-critical areas. However, because the code already allows property owners to entirely remove up to six healthy trees every 18 months per SMC 20.50.310.B, in most instances there would be no need for a property owner to invoke this exemption language for hazardous tree removal in non-critical areas. This text would come into play on non-critical area properties only if a property owner had reached the limit for cutting trees and was then faced with a hazardous tree situation.

FINANCIAL IMPACT:

There would be no financial impact to the City by adopting Ordinance No. 434.

PLANNING COMMISSION FINDINGS OF FACT:

On June 1, following the public hearing, the Planning Commission developed the following findings of fact:

- Some members of the public expressed support of the staff proposal, and some opposed it. Some indicated they would support the proposal if it had more stringent conditions for removal of a hazardous tree. Others indicated they would support it if it had less stringent conditions.
- The record supports the finding that removing hazardous trees has the potential to reduce hazards to human life, health and property.
- The record also supports the finding that cutting trees in steep slopes has the potential to reduce slope stability and possibly create a hazard to human life, health and property.
- The Director did communicate with and meet several times with individual citizens as well as stakeholder groups in order to hear their suggestions and concerns regarding the City's tree regulations.
- The Director broadly disseminated public notice of the availability for public review of the proposed permanent tree regulations at City Hall and on the City's website, and likewise gave public notice of scheduled review and public hearings before the Shoreline Planning Commission.
- Cutting trees anywhere in the City, inside or outside of critical areas, has the potential to degrade ecosystems and the natural environment and to alter the character of Shoreline and its treescape.
- The City of Shoreline has an obligation to develop regulations regarding tree cutting in critical areas.

The Planning Commission voted 8-1 to recommend the passage of Ordinance 434.

DISCUSSION:

The proposed code amendments, as recommended by the Planning Commission would institute several changes from the existing (pre-moratorium) hazard tree exemption. The existing hazardous tree exemption states that an applicant is to provide to a hazardous tree evaluation form and contact the City prior to tree removal, if practical. As written, there is no indication of what constitutes a hazard (i.e. target of the hazardous tree), nor is there a process that allows the City to review the proposed exemption. The proposed code amendments establish a list of targets that a tree would have to strike in order to determine whether the tree is hazardous. Additionally, the ordinance proposes provisions that allow for the Director to review the hazard tree evaluation form, conduct a site inspection, issue approval or denial of the exemption, and establish a list of City approved arborists.

The Planning Commission conducted a workshop and public hearings on May 4, May 18 and June 1, 2006 to solicit public comment on the staff proposed changes to the existing hazardous tree regulations. All three meetings were televised on the City's channel 21. During the written public comment period, the Planning Commission received 81 written comments and heard from 24 citizens during oral comment.

Many of the comments received were directed to the staff proposed Critical Areas Stewardship Plan, as opposed to the provisions for hazardous trees. The Planning Commission was unanimous in its recommendation for denial of the proposed Critical Area Stewardship Plan amendments. Accordingly, the staff has placed in abeyance the Critical Areas Stewardship Plan provisions and will review that matter with the Council later this summer. Note that the scope of the public hearing before Council on July 10 is the hazardous tree provisions described in Ordinance 434 **only** – no public comment on the Critical Areas Stewardship Plan is timely or appropriate on July 10.

Attachment B to this report includes the minutes from the three Planning Commission meetings where the hazardous tree issue was discussed. There was a great volume of public comment. The public and Planning Commission discussion involving the hazardous tree provisions are highlighted in Attachment B for ease of Council reading.

If Ordinance 434 is adopted by Council, two administrative steps would be required of implement the approved ordinance. First, the staff is directed by Subsections 1.e of the proposed code (SMC 20.50.310) to prepare a permit exemption request form and a risk assessment form. Second, Subsection 1.h of the proposed code (SMC 20.50.310) requires an applicant for a hazardous tree exemption to use a City approved arborist. Staff intends to utilize a "request for qualifications" process in order to solicit and select a list of arborists "acceptable to the City" to conduct reviews of hazardous trees. In the interim time between passage of the ordinance and the issuance of the approved arborist list, staff will utilize the City's on-call arborist, Brian Gilles. In addition to being an arborist, Mr. Gilles is also a professional forester.

RECOMMENDATION

The Planning Commission recommends that Council approves Ordinance No. 434.

ATTACHMENTS

Attachment A: Ordinance 434

Attachment B: Planning Commission minutes from May 4, May 18, and June 1, 2006

Approved By: City Manager _____ City Attorney ____

ORDINANCE NO. 434

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING THE SHORELINE MUNICIPAL CODE TO UPDATE REGULATIONS RELATING TO TREE CUTTING, AMENDING SMC 20.50.310 REGARDING EXEMPTIONS FROM PERMIT REQUIREMENTS FOR HAZARDOUS TREES

WHEREAS, the City of Shoreline is a jurisdiction planning under the Growth Management Act and is therefore subject to the goals and requirements of Chapter 36.70A. RCW during the preparation and adoption of development regulations, including those that pertain to the cutting of trees, whether or not those trees are in a critical area designated pursuant to RCW 36.70A.170; and

WHEREAS, the Shoreline City Council adopted Ordinance No. 407 on January 3, 2006 which placed a moratorium on the use and application of SMC 20.50.310.A.1 (hazardous vegetation exemption for clearing and grading permits on private property) and adopted interim regulations to govern hazardous tree abatement; and

WHEREAS, the Shoreline City Council conducted a public hearing on February 6, 2006 to hear comment on Ordinance No. 407, after which hearing the City Council adopted Ordinance No. 411, amending Ordinance No. 407 by adding "recreational trails" to the list of potential targets to be considered when evaluating requests to cut hazardous trees; and

WHEREAS, by its terms, Ordinance 407, as amended, would have expired on May 3, 2006; and

WHEREAS, the Shoreline City Council has directed the Director of the Department of Planning and Development Services (the Director) to work with various stakeholders and interested citizens in the preparation of proposed permanent regulations to deal not only with the subject of hazardous trees, but to create a regulatory mechanism for the City to consider and potentially authorize the limited cutting of trees for the purpose of view preservation; and

WHEREAS, the Director did communicate with and meet several times with individual citizens as well as stakeholder groups in order to hear their suggestions and concerns regarding the City's tree regulations; and

WHEREAS, in preparing the proposed permanent tree regulations, it became apparent to the Director that additional time would be necessary to circulate the proposal for public review and comment prior to a public hearing before the Shoreline Planning Commission; and

WHEREAS, the Shoreline City Council conducted a public hearing on April 10, 2006 on the subject of whether to extend for an additional two months the moratorium adopted by Ordinance 407, as amended, after which the City Council adopted Ordinance No. 422 to extend the effective date of the moratorium to July 3, 2006; and

WHEREAS, the Director broadly disseminated public notice of the availability for public review the proposed permanent tree regulations at City Hall and on the City's website, and likewise gave public notice of scheduled review and public hearings before the Shoreline Planning Commission; and

WHEREAS, the Shoreline City Council conducted a public hearing on June 26 2006 on the subject of whether to extend the moratorium adopted by Ordinance No. 407, as amended, after which the City Council adopted Ordinance No. 429 to extend the effective date of the moratorium to September 2, 2006

WHEREAS, the Shoreline Planning Commission conducted a study session workshop on the proposed permanent regulations on May 4, 2006 and conducted a public hearing on May 18, 2006 and June 1, 2006; after which the Commission forwarded a recommendation to the City Council;

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

Section 1. Amendment. SMC 20.50.310. is hereby amended to read as follows:

20.50.310 Exemptions from permit.

A. Complete Exemptions. The following activities are exempt from the provisions of this subchapter and do not require a permit:

1. Emergency situation on private property involving danger to life or property or substantial fire hazards. ~~Any tree or vegetation which is an immediate threat to public health, safety, or welfare, or property may be removed without first obtaining a permit regardless of any other provision contained in this subchapter. If possible, trees should be evaluated prior to removal using the International Society of Arboriculture method, Hazard Tree Analysis for Urban Areas, in its most recent adopted form. The party removing the tree will contact the City regarding the emergency, if practicable, prior to removing the tree.~~
- a. Statement of Purpose – Retention of significant trees and vegetation is necessary in order to utilize natural systems to control surface water runoff, reduce erosion and associated water quality impacts, reduce the risk of floods and landslides, maintain fish and wildlife habitat and preserve the City's natural, wooded character. Nevertheless, when certain trees become unstable or damaged, they may constitute a

- hazard requiring cutting in whole or part. Therefore, it is the purpose of this section to provide a reasonable and effective mechanism to minimize the risk to human health and property while preventing needless loss of healthy, significant trees and vegetation.
- b. For purposes of this section, "Director" means the Director of the Department of Planning and Development Services and his or her designee.
 - c. In addition to other exemptions of Subchapter 5 of the Development Code, SMC 20.50.290-.370, a permit exemption request for the cutting of any tree that is an active and imminent hazard (i.e., an immediate threat to public health and safety) shall be granted if it is evaluated and authorized by the Director under the procedures and criteria set forth in this section.
 - d. For trees that pose an active and imminent hazard to life or property, such as tree limbs or trunks that are demonstrably cracked, leaning toward overhead utility lines, or are uprooted by flooding, heavy winds or storm events, the Director may verbally authorize immediate abatement by any means necessary.
 - e. For hazardous circumstances that are not active and imminent, such as suspected tree rot or diseased trees or less obvious structural wind damage to limbs or trunks, a permit exemption request form must be submitted by the property owner together with a risk assessment form. Both the permit exemption request form and risk assessment form shall be provided by the Director.
 - f. The permit exemption request form shall include a grant of permission for the Director and/or his qualified professionals to enter the subject property to evaluate the circumstances. Attached to the permit exemption request form shall be a risk assessment form that documents the hazard and which must be signed by a certified arborist or professional forester.
 - g. No permit exemption request shall be approved until the Director reviews the submitted forms and conducts a site visit. The Director may direct that a peer review of the request be performed at the applicant's cost, and may require that the subject tree(s) vegetation be cordoned off with yellow warning tape during the review of the request for exemption.
 - h. Approval to cut or clear trees may only be given upon recommendation of the City approved arborist that the condition constitutes an actual threat to life or property in homes, private yards, buildings, public or private streets and driveways, sidewalks, recreational trails, improved utility corridors, or access for emergency vehicles and any trail as proposed by the property owner and approved by the Director for purposes of this section.
 - i. The Director shall authorize only such alteration to existing trees and vegetation as may be necessary to eliminate the hazard and shall condition authorization on means and methods of removal necessary to

minimize environmental impacts, including replacement of any significant trees. All work shall be done utilizing hand-held implements only, unless the property owner requests and the Director approves otherwise in writing. The Director may require that all or a portion of cut materials be left on-site.

2. Removal of trees and/or ground cover by the City and/or utility provider in situations involving immediate danger to life or property, substantial fire hazards, or interruption of services provided by a utility. The City retains the right to dispute the emergency and require that the party obtain a clearing permit and/or require that replacement trees be replanted as mitigation.
 3. Installation and regular maintenance of public utilities, under direction of the Director, except substation construction and installation or construction of utilities in parks or environmentally sensitive areas.
 4. Cemetery graves involving less than 50 cubic yards of excavation, and related fill per each cemetery plot.
 5. Removal of trees from property zoned RB and I, CB and NCBD, and NB and O, unless within a critical area of critical area buffer.
- B. Partial Exemptions. With the exception of the general requirements listed in SMC 20.50.300, the following are exempt from the provisions of this subchapter, provided the development activity does not occur in a critical area or critical area buffer. For those exemptions that refer to size or number, the thresholds are cumulative during a 36-month period for any given parcel:
1. The removal of up to six significant trees (see Chapter 20.20 SMC, Definitions) and associated removal of understory vegetation from any property.
 2. Landscape maintenance and alterations on any property that involves the clearing of less than 3,000 square feet, or less than 1,500 square feet if located in a critical drainage area, provided the tree removal threshold listed above is not exceeded.

Section 2. Repeal. Ordinance No. 429 extending a moratorium and interim controls on hazardous tree removal is repealed upon the effective date of this ordinance.

Section 3. Effective date. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City and the ordinance shall take effect and be in full force five (5) days after the publication date.

APPROVED BY THE CITY COUNCIL THIS _____ DAY OF JULY, 2006.

Robert L. Ransom, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott Passey, CMC
City Clerk

Ian Sievers
City Attorney

Date of Publication: July ____, 2006
Effective Date: July ____, 2006

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