



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Harry Freitas
Jim Ortbal

SUBJECT: ILLEGAL TREE REMOVAL FINES **DATE:** May 22, 2015

Approved

Date

5-22-15

RECOMMENDATION

Modify the City's existing fine schedule for the illegal removal of a tree by increasing the range of tree size categories and corresponding fines for both private and street trees. The recommended fine schedule is provided in Attachment B.

BACKGROUND

During the May 6, 2015 Fees and Charges budget study session, Councilmember Oliverio asked staff to return to the City Council as part of this year's budget process with information as to whether the fines for removing trees without a permit are maximized. This memorandum provides information on the current fine schedule for removing a tree without a permit and offers reasonable adjustments to the fine schedule for consideration by the City Council.

ANALYSIS

Property owners are prohibited from removing any tree on private property which has a trunk circumference (measured two feet above grade) of 56 inches or greater (approximately 18 inches in diameter) without a permit issued by the Planning, Building and Code Enforcement (PBCE) Department. Property owners are also prohibited from removing any public (street) tree that exists in the public right-of-way unless a permit for the removal has been issued by the Department of Transportation (DOT). When the City is notified of a situation where a tree might have been removed without permit, PBCE or DOT investigates and responds accordingly, which may include the issuance of an administrative citation and fine. The City's existing fine schedule for illegal tree removals is provided in Attachment A.

In 2014, PBCE issued nine private tree removal citations with fines levied per the existing fine schedule. In addition, on-site replacement trees were required. In FY 2014-2015 to date, DOT has investigated approximately 18 reports of illegally removed street trees, with only three incidents involving the removal of a tree that was greater than 24" in diameter. Due to the infrequent nature of this type of incident and the community's general lack of awareness of the

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illegality of this action, DOT has typically, to this point, worked with the property owners to educate them on their responsibilities per the street tree ordinance and work out agreements to have the trees replaced rather than imposing fines. In these cases, the City achieves willing compliance while the property owners pay for both the cost of replacement and the associated administration fees. Additionally, prior to the recent completion of the street tree inventory, it was often difficult to determine the type and exact size of tree that may have been removed.

From a legal standpoint, the fines for removing a tree without a permit are not at their maximum level. An administrative fine can be set at a level the City Council deems sufficient to achieve the punitive or deterrent purposes of the underlying statute, as long as it is not grossly disproportionate to the gravity of the violation, it is related to the legislative goal, and it is imposed in a procedurally fair manner.

Although staff believes that the current fees are well within the criteria outlined above, based upon a quick comparison of neighboring jurisdictions, the City's fines for illegal tree removals appear to be lower. One of the approaches used by other jurisdictions is to impose a fine of \$5,000 or the replacement value of the illegally removed tree, whichever is higher. The replacement value is determined by a standard formula established by the Council for Tree and Landscape Appraisers, and is typically not higher than \$5,000 because only smaller and less valuable trees are normally available for purchase and replanting. This method may also have limited application because it is often difficult to determine the replacement value of a tree after it has been removed. Other cities have fines or civil penalties of \$25,000, \$50,000 and \$75,000. However, staff was not able to obtain any details as to whether such fines were ever imposed or under what circumstances they were imposed, but it is believed that fines of large amounts are rarely imposed.

While the current number of illegal tree removal cases does not appear to be significant, a reasonable approach would be to modify the City's existing fine schedule by increasing the range of tree size categories and corresponding fines for both street and private trees. This option aligns the fines for private property trees and street trees, and incrementally increases fines for illegally removed trees that are approximately 30-36 inches, 36-40 inches, and 40 inches or greater in diameter, whereas fines are currently the same for any tree over 24 inches. In addition to the consistent imposition of fines, staff would also pursue mitigation remedies beyond a 1:1 replacement on a case-by-case basis, depending on the availability of planting locations and other factors. The revised schedule of illegal tree removal fines recommended for consideration by the City Council is provided in Attachment B.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

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/s/

HARRY FREITAS, Director
Planning Building and Code Enforcement

/s/

JIM ORTBAL
Interim Director of Transportation

For questions regarding private property trees, contact Steve McHarris, Deputy Director of PBCE at (408) 535-7819. For questions regarding street trees, contact Kevin O'Connor, Interim Assistant Director of DOT at (408) 794-1987.

Attachment

ATTACHMENT A – CURRENT FINE SCHEDULE

Type and Size of Tree	Current Fines		
	First violation within a 3 year period	Second violation within 3 years of a previous violation	Third and subsequent violations within 3 years of two previous violations
Street Tree less than 6" diameter	\$500	\$1,000	\$1,500
Street Tree between 6" and 11.99" in diameter	\$750	\$1,500	\$2,500
Street Tree between 12" and 17.99" in diameter	\$1,000	\$2,000	\$3,000
Street tree between 18" and 23.99" in diameter	\$1,500	\$3,000	\$4,500
Private property tree 56" or greater in circumference; (approximately 18" in diameter or greater)	\$1,000	\$1,000	\$1,000
Street tree 24" or greater in diameter	\$2,000	\$4,000	\$6,000
Heritage Tree	\$10,000	\$20,000	\$30,000

ATTACHMENT B – RECOMMENDED MODIFIED FINE SCHEDULE

Change to Existing Fines	Type and Size of Tree	Recommended Fines		
		First violation within a 3 year period	Second violation within 3 years of a previous violation	Third and subsequent violations within 3 years of two previous violations
No Change	Street Tree less than 6” diameter	\$500	\$1,000	\$1,500
No Change	Street Tree between 6” and 11.99” in diameter	\$750	\$1,500	\$2,500
No Change	Street Tree between 12” and 17.99” in diameter	\$1,000	\$2,000	\$3,000
No Change	Street tree between 18” and 23.99” in diameter	\$1,500	\$3,000	\$4,500
Increased	Private property tree 56” to 74.99” in circumference; (approximately 18” to 23.99” in diameter)	\$1,500	\$3,000	\$4,500
No Change	Street tree between 24” and 29.99” in diameter	\$2,000	\$4,000	\$6,000
New	Private Property tree 75” to 93.99” in circumference (approximately 24” to 29.99” in diameter)	\$2,000	\$4,000	\$6,000
New	Street Tree between 30” and 35.99” in diameter	\$3,000	\$6,000	\$9,000
New	Private Property tree 94” to 112.99” in circumference (approximately 30” to 35.99” in diameter)	\$3,000	\$6,000	\$9,000
New	Street Tree between 36” and 39.99” in diameter	\$4,000	\$8,000	\$12,000
New	Private Property tree 113” to 125.49” in circumference (approximately 36” to 39.99” in diameter)	\$4,000	\$8,000	\$12,000
New	Street Tree 40” or greater in diameter	\$5,000	\$10,000	\$15,000
New	Private Property Tree 125.5” or greater in circumference (approximately 40” or greater in diameter)	\$5,000	\$10,000	\$15,000
No Change	Heritage Tree	\$10,000	\$20,000	\$30,000