PLANNING COMMISSION MINUTES OF MARCH 13, 2006

2005-0028 - City of Sunnyvale Study Issue – Tree Preservation Ordinance Update Study Issue: This study explores opportunities for change to the current ordinance and make recommendations on whether or not the ordinance should be modified in order to meet the needs of the City's residents and other city goals. SL

Steve Lynch, Associate Planner, presented the staff report. He said the purpose of the study is to consider potential changes to the 1991 Tree Preservation Ordinance. The report reviews only trees on private property. Staff is recommending Alternative 1 which is to adopt the attached ordinance.

Comm. Babcock asked for clarification of Alternative 1.A.2 on page 17 of the report that reads, "Adding a finding to allow removal of overgrown, but healthy, trees." Mr. Lynch explained that the overlandscaped finding refers to potential removal in overgrown areas that may involve protected trees, but as good arborist practice it may be appropriate to remove them. Comm. Babcock and staff further discussed the finding including, location of trees, tree litter, tree maintenance, trees growing so large that the tree is no longer valuable and different tree species. Comm. Babcock commented that the finding may be too loosely worded and referred to Attachment A, page 3 stating that the language here is more specific and suggested the finding should possibly have this more specific language. Mr. Lynch said that Alternative1 is to adopt the ordinance, which has three sections, Tree Preservation, Solar Access and General Procedures. These are individually shown as Attachment A (Tree Preservation-Revised), Attachment B (Solar Access – Revised) and Attachment C (General Procedures – Revised). **Trudi Ryan**, Planning Officer, said the actual Draft Ordinance which contains all three sections is in Attachment E.

Comm. Sulser commented that staff is recommending a change on where a tree trunk is measured by changing the current measurement height from 4 to 4 ½ feet high from the adjacent grade around the tree. He asked if the change will lower the threshold since trees taper. Mr. Lynch said yes. Comm. Sulser asked if there are any limitations on how much a tree can be pruned since someone could over prune a tree and kill it. Mr. Lynch said that it is extremely difficult to determine what is over-pruning, but that staff retained the original definition which relies on the City arborist to determine if someone has intentionally damaged, killed or disfigured a tree.

Comm. Klein referred to information in the report about tree permit applications, approvals and appeals. He asked over the past 15 years of the 24 appeals that have been filed and heard by the Planning Commission, how many of the appeals have been approved. Ms. Ryan said this rate has varied over the years,

but her estimate is that possibly 10 of the 24 appeals were granted. Comm. Klein said the report addresses the possibility of requiring a fee for tree removal permits to recoup the time staff spends to process the permit which is almost four hours per permit between the Planning staff and the arborist. Staff said that the possibility of establishing a tree removal permit fee has been discussed at length and that in 1991 it was thought that not having a fee might encourage people to come in an discuss whether a tree could be removed. She said it could cost several hundred dollars to fully cover the costs of processing the tree removal permit and that this amount could be burdensome to the applicants. She said if the Planning Commission and City Council feel differently that the subject of considering a fee can be further addressed.

Chair Hungerford referred to Attachment E of page 3, Section 4, item 7, which reads "The tree has outgrown its useful landscape value due to its inappropriate species, size and location, relative to the existing structure." He asked how broadly the definition of structure is, i.e. homes, buildings, power lines. Mr. Lynch said the definition of structure is intended to apply to buildings above ground. He said it could apply to power lines, but power lines would be considered a hazard and are already considered by the arborist. Chair Hungerford referred to Attachment E, page 4 regarding penalties for chopping down a tree without a permit and said that the penalty appears minimal by just having to replace the tree. He asked for staff's reaction. Ms. Ryan explained that the aesthetic value of a tree can be very high. She said that the City arborist can determine the value of the tree. Staff has worked with property owners to have a combination of landscape improvements including replacement trees and other landscape features to equal the value of the lost tree. Mr. Lynch said there could be a combination of fines in addition to replacing the aesthetic value and the value determined will be put back into the City. Chair Hungerford asked if there is any provision made for emergency tree removal situations. Mr. Lynch said when a permit is applied for that the City arborist usually addresses it either the same day or the next day.

Comm. Simons asked if replacement tree language could be added to the ordinance to include that "Replacement trees should preferably be large species, native trees as appropriate to the site." Ms. Ryan said that adding this language might be another issue to be considered and that putting an advisory like this in an ordinance is difficult and vague. Comm. Simons and **Leonard Dunn**, City Arborist, discussed the possibility of adding language to the ordinance and what might be appropriate and discussed items that would need to be considered i.e. genetic size of trees, location, native trees, and appropriateness of trees with building architecture. Ms. Ryan said that she is not comfortable adding an element to the ordinance that has not been fully researched, but that staff could look further at this issue before the ordinance is heard by Council. Ms. Ryan said that this issue would be a whole new policy. Mr. Lynch said staff did explore the idea of suggesting tree species for replacement, but based on the feedback received from the public that what the public would like to see is for the the

findings to make it easier to remove trees and and to make the ordinance less punitive.

Comm. Simons asked staff to comment on older slow growing large trees and younger fast growing large trees and how to evaluate them. Mr. Dunn discussed the issue and said that it would be almost impossible for staff to make an equitable judgment. Comm. Simons and staff discussed multiple issues related to the study issue including whether different tree species might require tree removal permits and others would not, whether particular changes to the ordinance would be equitable in the long term or whether they would cost the City more, a discussion about heritage protected trees, tree litter, terminology in the report regarding the damage of trees in particular types of pruning or horticultural artistic topiary, and mitigation measures to bring back landscape value. Comm. Simons asked additional questions and discussed with staff solar access in relation to impairment of vegetation and discussed how the solar access regulations and the tree ordinance need to work together. Ms. Ryan clarified that the suggested regulations for solar access are to clarify the regulations on shading of trees from neighboring property. Comm. Simons asked if stump removal was addressed in the tree removal process. Staff said that this ordinance will define tree removal, but that the City does not regulate stump removal.

Chair Hungerford opened the public hearing.

James Bell, a Sunnyvale resident, said he is the "sole survivor" of the Cherry Chase development. He said until a few months ago he did not know a tree removal permit was required. He said he has now applied for a tree removal permit to remove a large magnolia tree on his property and is waiting for the City's determination. He commented on his experience of going through the permit process and his frustration with all the other trees that have been replaced with cement. He said he has tried to protect trees, but feels that what he does in his backyard is his own business. He feels the City is over extending itself on the tree removal process. Comm. Simons asked Mr. Bell several questions about the planning processes and historical information over his many years of living in Sunnyvale.

Arthur Schwartz, a Sunnyvale resident, referred to the definition of hazard on page 9 of the report and said that a healthy tree can still be a hazard and thinks that the definition of hazard should be independent of the health of the tree. He said he thinks a penalty of $5000 per tree seems excessive to a homeowner. Mr. Schwartz said he thinks the history of a property ought to be a mitigating measure when requesting the removal of a tree and that the report is not clear to him whether a replacement tree is 15 or 24 gallons.

Harriet Rowe, a Sunnyvale resident, referred to a letter from a homeowner saying that he did not want to be the guardian of large trees due to liability or

damage. She said that it has always bothered her that homeowners are required to maintain a tree by cleaning up tree litter and pruning and that this is often difficult physically and financially. She said it is especially frustrating if the homeowner has denied permission to remove the tree and has to continually maintain it. She said Mr. Bell commented about the problem of raised cement being both a burden and danger. Ms. Rowe said that the homeowner's letter said that the homeowner considers the ordinance an invasion of their privacy. Ms. Rowe said she feels that the City should not be telling homeowners how they can use their yard by preventing the removal of a tree.

Chair Hungerford closed the public hearing.

Comm. Simons asked if there would be value in creating a brochure that would explain how to prevent root intrution. Mr. Lynch said there is an existing brochure and it could be expanded to include new information.

Chair Hungerford asked about a civil penalty versus an administrative penalty. Mr. Lynch addressed the issue and said that the City has never actually levied a fine to a violator. Ms. Ryan said that staff has used an informal administrative procedure to indicate to someone that they could be taken to court, but through conversation that the situation could be resolved and the landscape value replaced. Chair Hungerford and staff further discussed that a protected tree is a tree with a 38 inch circumference and that the code requires that a replacement tree be a 24 gallon size, with the Director of Community Development having the discretion to require either a larger or smaller size tree. The circumference of the tree should now be measured at 4 ½ feet above the ground. Chair Hungerford asked for clarification of the definition of tree removal. Staff confirmed that the new definition of removing a tree can include any dramatic pruning, or tree topping that damages the tree severely, which effectively removes the tree. **Rebecca Moon,** Assistant City Attorney, said that the ordinance clarifies if a tree is pruned so excessively, that it is killed that that is a violation of the tree removal process.

Comm. Simons asked that the Commission discuss possible issues that may be considered in the motion prior to making the motion. The Commissioners discussed issues including the creation and use of lists of desireable and undesireable trees, tree valuation, the value of a list to be added to the Sunnyvale Code, restorative fees, the effects of some of the suggested changes on staff time and cost, and the possibility of establishing a tree removal permit application fee.

Comm. Simons made a motion for Alternative 1 with modification. He said the motion includes the addition of B of Alternative 2 regarding "Tree Species Priority." He said that the lists of protected and unprotected trees would be a guide and not an absolute requirement. He said if staff is concerned with the addition of the Tree Species Priority list that it could be reviewed after two years

to determine whether the list should still be used. He commented that the Tree Species Priority list should save staff time in determining the protected and undesireable trees. Comm. Simons and Mr. Dunn further discussed the potential value of having a guideline list and that the list helps determine the value of trees. Mr. Dunn said there is a list from the Western Chapter of the International Society of Arboriculturalists (ISA), the Species Classification and Group Assignment Booklet. Comm. Simons and staff discussed how the list could be used and possible percentage cut-off lines that Sunnyvale might consider. Ms. Ryan said she would recommend that a copy of the list should be reviewed by the Planning Commission at a later time to assure that this is the list that the Planning Commission would like to use. Mr. Lynch commented that the ISA list is an exhaustive spreadsheet and that it helps arborists set priorities and values of trees in specific areas. He said if this list is to be used that an upper end an lower end of protected and unprotected species needs to be determined. Mr. Lynch suggested, instead, a small list of protected or unprotected trees. Comm. Simons said he would like to see a list that would potentially aide in a few additional trees that could be eliminated on an administrative level. Ms. Moon said that it would be difficult to write the ordinance, having not seen list. Ms. Ryan noted that the motion did not yet have a second. **Comm. Klein seconded.** Ms. Ryan commented that it would be preferable to see the list before making a motion including the list. Comm. Simons said he would like to review the list at a future Planning Commission meeting. Comm. Babcock said she would like to vote on the motion and have the list issue separate and ask that the list to be brought back to the Planning Commission at a future date. **Comm. Simons confirmed that the motion is for Alternative 1 to adopt the attached ordinance with the recommendation and that at a future date, as staff is available, that staff return to the Planning Commission for consideration of a potential Tree Species List including potential protected trees and undesirable trees.**

Comm. Simons said he had received a lot of comments and concerns from Sunnyvale residents and friends about trees and the question of value. He expressed concern about the difficulty of the task of improving the tree removal and said that hopefully the proposed changes will take the existing tree removal process and make it better.

Comm. Klein said staff has put a lot of time into this issue and in general this is a good move forward. He said that when staff returns to the Planning Commission with a potential Tree Species List that it will be helpful to clarify what are good and bad trees in the eyes of the arborist.

Final Action:

Comm. Simons made a motion on 2005-0028 to adopt the attached Tree Preservation Ordinance and that staff will return to the Planning Commission for consideration of a potential Tree Species List including potential protected trees and undesirable trees. Comm. Klein seconded.

Motion carried unanimously, 6-0.

This item is scheduled to be heard by the City Council on April 4, 2006.