

STAFF REPORT

DATE: October 6, 2011
TO: Trees and Views Committee
FROM: Alison Thornberry-Assef, Assistant Planner
SUBJECT: **Enforcement and Penalties for Illegal Tree Removals/Alterations**

Discussion

At the last meeting on September 1, 2011, Staff informed the committee that we are working on the process to start enforcement actions against the illegal removal or alteration of protected trees. Since two committee members were absent at the meeting, discussion of this item was pushed to the next fully attended meeting.

Since the last meeting Staff has been investigating two possible illegal tree removals and one possible illegal alteration. Staff has found:

1. 2 Bulkley Avenue: The property owner has recently informed Staff that two trees were removed on her property as part of an approved building permit to renovate the existing residence. She has stated the removal without permit was on accident and a misunderstanding on her part. Staff is in the process of researching the approved building permit, and other previous approvals at the property. The property owner did have an Arborist Report prepared, and Staff is reviewing the report and working with the Arborist to ensure that both trees removed were, in fact, Protected.
2. 626 Sunshine Avenue: Staff has started the initial investigation of the removal of possible protected trees. Staff has been to the site and is working to determine whether the trees are protected due to their large size, or if the trees are of an undesirable species.
3. 56/58 Rodeo Avenue: Staff has investigated and determined that one Red Cedar located on the property was illegally altered by topping. Staff is working to determine if the other tree on site, a Coast Live Oak, has also been illegally altered or if the property owner has just performed a routine pruning. Staff will be notifying the property owner of the investigation and findings over the next few weeks to start the enforcement and penalty process.

Any outcome of these investigations, that shows illegal tree activity, will be presented to the Trees and Views Committee (TVC) in the upcoming months for review and action.

A copy of the Ordinance Number 1146, An Ordinance of the City of Sausalito Amending Chapter 11.12 of the Sausalito Municipal Code Pertaining to Enforcement and Penalties for the Trees and Views Ordinance, is attached for your review.

Recommendation

Staff recommends each TVC member be review the ordinance and be prepared to discuss the roles and responsibilities of the TVC regarding Enforcement and Penalties.

Exhibit: Ordinance No. 1146

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ORDINANCE NO. 1146

AN ORDINANCE OF THE CITY OF SAUSALITO AMENDING CHAPTER 11.12 OF
THE SAUSALITO MUNICIPAL CODE PERTAINING TO ENFORCEMENT AND
PENALTIES FOR THE TREES AND VIEWS ORDINANCE

The City Council of the City of Sausalito does hereby ordain as follows:

Section 1. Findings and Purpose.

a. This Ordinance is enacted pursuant to the authority granted by Government Code Section 53069.4, which provides in pertinent part: "The legislative body of a local agency . . . may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties."

b. The City Council finds and determines that effective enforcement of the Sausalito Trees and Views Ordinance is essential to achieving its objectives. In recent years, the City has encountered situations where private property owners illegally remove or alter protected trees, to the detriment of the Sausalito community. The City's current enforcement mechanisms have proven to be an insufficient deterrent to such unauthorized activities, which if allowed to continue would threaten to adversely affect the character and scenic beauty of the City and increase the risk of erosion, earth movement and drainage problems.

Section 2. Section 11.12.050, entitled "Enforcement," of Chapter 11.12, entitled "Preservation of Trees and Views," of the Sausalito Municipal Code is hereby amended, to read in full as follows:

A. Stop Work Order.

The enforcement officer is authorized to issue a stop work order to any person found to be removing or altering a protected tree without proper authorization pursuant to Chapter 11.12..

B. Administrative Fines and Remedial Orders.

In addition to all other civil and criminal remedies available to the City to address violations of this Chapter, the City may impose an administrative fine and/or a remedial order upon any person who is found to have committed a violation of any provision of Section 11.12.030 pursuant to the administrative procedures set forth in this Section. The determination whether to impose an administrative fine and/or remedial order shall be at the sole discretion of the City and shall not preclude the City from pursuing other available legal remedies.

1. Definitions. As used in this Section, the following terms shall have the meanings set forth below, unless the context clearly indicates otherwise:

Person: Any individual or entity found to be responsible for a violation, including but not limited to the owner or lessee of the property upon which the violation takes place, as well as any contractor or employee who is hired to perform alteration or removal of any tree.

Enforcement Officer: Any employee or agent of the City with the authority to enforce any provision of this Chapter, as designated by Section 1.05.060B or by the City Manager.

2. Administrative Citations. When an enforcement officer determines that there has been an unauthorized removal or alteration of a protected tree in violation of any provision of Section 11.12.030, the enforcement officer is authorized to issue an administrative citation to the person responsible for the violation.

3. Documentation. To the extent feasible, the enforcement officer issuing the citation shall document the circumstances surrounding the violation and assemble relevant information such as photographic evidence, witness statements, and notes regarding the enforcement officer's observations.

4. Contents of Citation. The administrative citation shall contain the following information:

- (i) The date of the violation;
- (ii) The address or other description of the location where the violation occurred;
- (iii) A brief description of the administrative citation process as set forth in this subsection, including a statement informing the violator of the potential penalties and that a decision regarding the citation will be made by either the Trees and Views Committee or the Planning Commission, subject to appeal to the City Council;
- (iv) A statement that judicial review of a final decision following an administrative appeal regarding the citation must occur within the twenty-day time frame set forth in Government Code Section 53069.4(b); and
- (v) The name and signature of the enforcement officer.

5. Scheduling of Public Hearing; Notice; Dismissal of Citation. The enforcement officer shall schedule a public hearing to take place not earlier than twenty-one (21) and not later than sixty (60) days after the date of the citation. If the citation concerns activities on private property and the owner of the affected property has a development application pending before the City, the Planning Commission or City Council shall conduct the public hearing depending to

whom the development application is before. If not, the Trees and Views Committee shall conduct the public hearing. The person cited with the violation shall be given at least twenty-one (21) days prior notice of the public hearing. If the person cited for the violation fails to appear at the hearing, an administrative fine and/or order to perform remedial work may be imposed in the person's absence.

6. Method of Service. All notices required pursuant to this Section shall be served as follows:

a. Notice shall be served by personal service or by certified mail, return receipt requested. Notice shall be effective upon mailing.

b. If personal service or service by certified mail is unsuccessful, notice shall be provided by posting at the property where the violation occurred. Notice shall be effective upon posting.

7. Conduct of Public Hearing. During the hearing, relevant evidence regarding the unauthorized tree alteration or removal and the tree's value may be presented by the person cited with the violation, the enforcement officer, a certified arborist, and any other persons with knowledge or information regarding the violation or the tree's value. The tree's value may be determined with reference to standards established by the International Society of Arborists. The appropriate decision-making body, as determined pursuant to Section 11.12.050(B)(5), shall hear the evidence and determine whether the violation occurred. If it is determined that a violation occurred, the decision-making body may impose an appropriate administrative fine and/or issue an order to perform remedial work.

8. Imposition of Administrative Fine; Remedial Order.

a. The decision-making body may impose an administrative fine for the violation of any provision of Section 11.12.030, in an amount not to exceed a maximum of one thousand dollars (\$1,000) for each illegal removal or alteration.

b. The decision-making body may order the violator to perform appropriate remedial work to mitigate the impact of the violation on the Sausalito community and affected property owners. Such remedial work may include installation of one or more trees or shrubs to replace those illegally altered or removed. The remedial work shall include installation and maintenance of trees of such size and number necessary to substantially restore the loss of privacy, environmental degradation and other damages which resulted from the unauthorized alteration or removal. The decision-making body may fashion an appropriate remedial order setting forth the location, number, size and species of replacement trees or shrubs, a schedule for completion of remedial work, and such other matters determined to be necessary and appropriate to mitigate the impact of the violation. A performance bond issued by a surety admitted in California shall be required at the violator's sole expense and shall serve as security for the benefit of the City in an amount equal to 100 percent of the estimated cost of the remedial work. A maintenance bond issued by a surety admitted in California shall be required at the violator's sole expense upon completion of the remedial work and shall serve as security for the benefit of the City for the violator's obligation to maintain the remedial work for a period of ten (10) years. The bond shall

be in an amount equal to 15 percent of the actual cost of the remedial work. The City may also require a maintenance agreement between the violator and the City to set forth the terms of maintaining the remedial work.

c. In determining the amount of an administrative fine and the scope and contents of a remedial order, the decision-making body may take any or all of the following factors into consideration:

- (i) The seriousness of the violation, including the value of the tree;
- (ii) The impact of the violation on the Sausalito community, environment and affected property owners;
- (iii) The duration of the violation;
- (iv) The frequency, recurrence and number of violations by the same violator;
- (v) The economic impact of the fine and/or remedial order on the violator;
- (vi) The good faith efforts of the violator to come into compliance, if applicable; and
- (vii) Such other factors as fairness and justice may dictate.

d. The decision-making body shall have the authority to impose an administrative fine, remedial order, or both, as determined appropriate after considering the factors set forth in Section 11.12.050B(8)(c).

e. If the violation concerns activities on private property and while the owner of the affected property has a development application pending before the City, the Planning Commission, or the City Council as the case may be, may suspend processing of the development application to the extent permitted under Government Code Section 65950 *et seq.* and other state law governing the processing of development applications, and defer any final decision on the merits of the application until the violating party agrees to pay any administrative fine and comply with any remedial order issued by the Planning Commission or City Council. If the development application requires review by the Planning Commission or City Council, they may also attach conditions of approval as determined necessary to ensure compliance.

f. The decision of the Planning Commission or the Trees and Views Committee regarding whether a violation has occurred and the imposition of any administrative fine and/or remedial order shall be appealable to the City Council by any interested person. Any such appeal shall be in writing and shall be filed with the City Clerk no later than ten (10) days following the date of the decision, stating the reasons for the appeal and providing the appeal fee as established by the City.

9. Collection of Administrative Fines; Enforcement of Compliance Orders.

a. Unless otherwise specified by the decision-making body or by the City Council on appeal, an administrative fine shall be due and payable thirty (30) days following the date of the final administrative decision. Unpaid amounts shall accrue interest at the rate of ten percent (10%) per annum from that date forward. The amount of the administrative fine shall be deemed to be increased by the amount of accrued interest and any recoverable administrative costs, as specified in Section 11.12.050(B)(10). All monies collected shall be deposited in a separate account to be designated for tree purposes by the City Council.

b. The City shall collect administrative fines and enforce remedial orders by utilizing any and all available legal remedies, including but not limited to the following:

- (i) Administrative fines are a debt owed to the City and are enforceable as a personal obligation of the violator.
- (ii) If the violator is a property owner, the City may invoke the lien procedures specified in Section 11.12.050(C)(11) against the property on which the violation occurred.
- (iii) The City may pursue any available legal action to enforce compliance with a remedial order or fine including without limitation seeking declaratory and/or injunctive relief.

10. Administrative Costs. The City may collect its administrative costs from any violator who fails to pay all administrative fines when due or fails to comply with any provision contained in a remedial order. The administrative costs shall include all expenses reasonably incurred in the City's efforts to collect administrative fines and/or enforce a remedial order, including but not limited to staff time, legal fees, and out-of-pocket costs.

11. Lien Procedures.

a. Whenever the amount of any administrative fine, together with accrued interest and administrative costs, has not been satisfied in full within ninety (90) days after following the date of the final administrative decision and has not been successfully challenged by a timely writ of mandate, the unpaid amount shall constitute a lien against the real property on which the violation occurred. The lien provided herein shall have no force and effect until recorded with the office of the Marin County Recorder.

b. Prior to recording a lien, the Community Development Director shall file with the City Clerk a report stating the amounts due and owing. The City Clerk shall fix a time, date and place for hearing the report and any protests or objections thereto before the City Council. The property owner shall be given at least ten (10) days prior notice of the public hearing. Notice shall be served as provided in Section 11.12.050(B)(6). The notice shall, at a minimum, set forth the record owner or possessor of the property, the last known address of the record owner or possessor, the date upon which the lien was created, a description of the property subject to the lien and the amount of the lien. The property owner may protest the imposition of the lien either in writing or orally. After the hearing, the City Council shall adopt a resolution order confirming, discharging or modifying the amount of the lien.

c. A City Council resolution confirming or modifying the amount of a lien shall be filed in the office of the Marin County Recorder and shall have the same force and effect as a judgment lien pursuant to Section 697.340 of the Code of Civil Procedure. Upon receipt of payment in full pursuant to the lien, a notice of satisfaction of the lien shall either be recorded by the City or provided to the property owner to record. The notice of satisfaction shall cancel the City's lien.

~~12. Judicial Review. Any person aggrieved by a decision imposing an administrative fine may obtain judicial review pursuant to the procedures set forth in Section 53069.4(b) of the Government Code. Any person aggrieved by a decision imposing a remedial order may obtain judicial review by filing a petition for writ of administrative mandate within the time limits set forth in Section 1094.6 of the Code of Civil Procedure.~~

Section 3. Severability Clause. The City Council declares that each section, subsection, paragraph, subparagraph, sentence, clause and phrase of this Ordinance is severable and independent of every other section, subsection, paragraph, subparagraph, sentence, clause or phrase of this Ordinance. If any section, subsection, paragraph, subparagraph, sentence, clause or phrase of this Ordinance is held invalid, the City Council declares that it would have adopted the remaining provisions irrespective of the portion held invalid and further declares its express intent that the remaining portions of this Ordinance should remain in effect after the invalid portion has been eliminated.

Section 4. Publication and Effective Date. Pursuant to Government Code 36937, this Ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after its adoption, this Ordinance shall be published in a newspaper of general circulation, published and circulated in the City of Sausalito.

The foregoing Ordinance was duly introduced with reading waived at a meeting of the City Council of the City of Sausalito held on the 2nd day of May, 2000, and thereafter was adopted at a regular meeting of the City Council held on the 16th day of May, 2000, by the following vote:

AYES: Councilmembers: Albritton, Belser, Roberts, Stratigos, Mayor Bushmaker
NOES: Councilmembers: None
ABSENT: Councilmembers: None
ABSTAIN: Councilmembers: None

/s/ Sandra J. Bushmaker
MAYOR OF THE CITY OF SAUSALITO

ATTEST:
/s/ Debbie Pagliaro
DEPUTY CITY CLERK