



CITY OF SALEM

Written Testimony #1

City Council

555 Liberty St SE
Salem, OR 97301

Monday, October 19, 2020

6:00 PM

Virtual Meeting

City Council Work Session - Salem's Trees and Programs

2.a. [20-412](#)

Work Session: Salem's City Trees and Programs.

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

Result Area(s): Good Governance; Natural Environment Stewardship;

Welcoming and Livable Community

Recommendation:

Information only.

Attachments:

[2019 Tree Report-Summary of Tree Projects.pdf](#)

[SPRAB Urban Forestry Report October 2020.pdf](#)

[SRC 86 - Trees on City Owned Property.pdf](#)

[Administrative Rule 109-500-001 Trees on City-owned Property.pdf](#)

[Public Comments received.pdf](#)

Add - Written Comments.

Amy Johnson

From: Jim Scheppke <jscheppke@comcast.net>
Sent: Friday, October 16, 2020 2:15 PM
To: CityRecorder
Cc: citycouncil
Subject: Testimony for the October 19th Council Work Session

Mayor and Councilors:

First, I would like to admonish whoever set this agenda for leaving out live public comment. This will be the third work session in a row with no live public comment. The pandemic is no excuse, since you have been having live public comment at Council meetings. I can only conclude that whoever set these agendas does not want to hear from the public on potentially contentious issues like policing, Our Salem, and trees in the city. It reminds me of the bad old days when we had a mayor who insisted on "no drama" at Council meetings. Are we going back to that?

Our otherwise totally dysfunctional school board does a good job of public comment that the City of Salem should emulate. They have call-in comment, live video comment — even recorded video comment. They make the City's practice look very bad by comparison.

Speaking to the subject at hand, the public is still waiting to learn what happened to the nine property owners who owed the City \$107,220 in restoration costs, plus fines, for removing city-owned trees without a permit. These assessments were made in March; this is October. Have all the scofflaws paid up?

I live a couple blocks from the Gatti property where six trees were topped. I go by nearly everyday and I see that nothing has happened. I heard by the grapevine that there was an out of court settlement of their assessment. Is that true? Why haven't we heard about it? Was some kind of non-disclosure provision part of the agreement? I would object to that. How are other property owners going to know what a mistake it is to take down city trees if the penalties are not widely disseminated in the media and elsewhere? And how is the public to be assured that justice was done?

Finally, I have to object strongly to the slap on the wrist that the developer of the Wren Heights project received from the City. SRC 86.120c(1) states that "unauthorized City tree removal shall be subject to a civil penalty not to exceed \$2,000.00 per violation in addition to the value of the tree as calculated in accordance with applicable administrative rules (or in the absence of administrative rules, in accordance with the most current edition of Council of Tree and Landscape Appraisers "Guide for Plant Appraisal")."

How can a civil penalty of only \$8,158.30 possibly meet the letter of the law here for removal of three trees, including two significant Oregon White Oaks? I hope this can be explained in the work session.

Here are before and after photos of the White Oak removal for Councilors who have not seen them:



Shameful!

I hope all of my questions can be answered in the work session.

Best,

Jim

Jim Scheppke
jscheppke@comcast.net
503-269-1559

From: [Lora Meisner](#)
To: [citycouncil](#); [Chuck Bennett](#)
Subject: re: public hearing
Date: Sunday, October 11, 2020 12:34:30 PM

Next Monday, October 19th at 6 pm. The Salem City Council will hold a long-awaited work session on **TREES**. We demand that the agenda provide for public comment so that citizens can voice our concerns. Concerned citizens should not be shut out of the discussions of the City Council. Afraid to hear from the citizens? Who do you think voted for you?

Lora Meisner
1347 Spyglass Court SE
Salem, OR 97306
503-588-6924

Amy Johnson

From: RONALD EACHUS <re4869@comcast.net>
Sent: Monday, October 12, 2020 2:24 PM
To: CityRecorder
Subject: Comments for Monday, Oct. 12 Council Meeting
Attachments: City Council Tree Enforcement Comments.docx

The attached are written comments to the City Council for the public comment period at tonight's meeting. I intend to provide oral comment during this period and refer to these written comments. Even if the written comments are not able to be shared with the Council for the meeting, I will be trying to make the oral comments during the period set aside for agenda item 2. Public Comment if that is allowed. (I'm not sure what the phrase "Comment on agenda items other than public hearings and deliberations" actually means.) Is there a sign up process for virtual meetings or do I simply raise the virtual hand once the public comment period arrives. If oral comments on this topic are not appropriate for the public comment period then I'd appreciate being informed of that. Thanks.

Comments on Tree Removal Enforcement and Appeal Process

TO: Salem City Council

FROM: Ron Eachus, 940 Salem Heights Ave S., Salem, Oregon 97302

SUBMITTED: Monday, October 12, 2020

As a resident of the Salem Heights neighborhood and the Southwest Area Neighborhood Association (SWAN), I've participated in the proceedings on the Wren Heights development and the subsequent illegal removal of City right-of-way trees prior to the issuance of the required permit. That participation included working on the SWAN appeal of the tree removal permit and testimony as an individual in the SPRAB hearing on the appeal.

My intent here is not to reargue the decisions that were made at the September 10 SPRAB hearing on the after-the-fact issuance of a permit for the cutting of the already removed trees. It is to provide comment on what I believe I and others who participated in the process learned about the enforcement of the tree code, and about the appeal process itself. These comments are offered in the hope they will provide additional background for the upcoming Council work session on Salem Trees and Programs.

That participation revealed what I believe are some troubling aspects of the enforcement of the tree code and the appeal process. Unless they are addressed, I believe that these problems undermine the confidence the public has in the enforcement of the Tree Code. They also raise serious questions over the validity of any ability to appeal a Tree Removal Permit related to a land use case.

The City of Salem has some tree enforcement issues it must address. The following is a summary of the issues raised by our experience with the Wren Heights development removal of trees.

◆ **An after-the-fact permit for removal was issued without any mention in the permit approval or the case file that the trees had already been removed.**

The right-of-way trees were removed in April. The permit was issued on June 25. The permit approval did not mention that the trees in question had already been removed or that there had been any potential violation. Anyone reading the permit would not know the trees had been removed without a permit unless they were previously aware of the fact.

There is no mention or acknowledgement of that fact in the full case file provided by the project manager. It wasn't until the staff response to the appeal that it was revealed that the developer had been reminded in March that a permit was needed and he still went ahead and cut the trees in April without a permit.

◆ **There are no records of inspections which the public can access so it is not clear if there are any inspections of approved tree conservation plans or right-of-way tree removal.**

While the urban forester who visited the site was able to confirm that the right-of-way trees were illegally removed in April, there is no record of an inspection of the 75 trees the developer was allowed to cut down in the approved tree conservation plan.

The urban forester responded to calls from the public when neighbors noticed the tree cutting on the property. He visited the site on April 17 and confirmed that the right-of-way trees had been removed.

However, there was no confirmed inspection of whether or not the developer had adhered to the tree conservation plan approved in the land use case. In that plan each tree on the property was identified and designated for either removal or retention. When the project manager assigned to the tree removal permit was asked via email if there was an inspection, her reply was that "The removed trees were inspected by our Urban Forester, but no report was created." Since there was no report filed, it is not clear if the inspection included the entire tree conservation plan or just to the trees in the right-of-way. (See Appendix A)

◆ **There are apparently no records of past violations which the public can access, despite the fact that Section 86.105 and 86.110 of the Tree Code requires the keeping of records regarding costs of enforcement.**

When the project manager was asked if it was possible to request the City to provide information on any past violations of the Tree Code by a developer, we were first told that "all information" had been previously provided to the neighborhood association and that I should contact them. That was not a responsive answer to the question. Subsequently, I was told that past violations were not included in the case and not at issue in the appeal (something of which I was already aware), and that if I wanted that information I needed to file a public records request.

I did file a public records request for violation and enforcement records related to all developments and tree removal permits by the developer, including violations and values of any penalties assessed. I received the following reply from the City (See Appendix B):

“This email is to inform you that the City is not the custodian of the requested record(s).

Sincerely,

City of Salem”

According to this response the City does not have records of past violations and the public has no way of knowing if a developer has a history of violating the Tree Code. This does not make sense, since, under Sec. 86.110, the Public Works Director is required to invoice each property owner the amount due the city for enforcement and “shall” keep an accurate account of the costs of enforcing the Tree Code. Furthermore, funds from penalties are to be forwarded to and deposited into the Salem City Tree Fund, so there should be a record of such penalties.

When I followed up and asked the project manager how we can find out past violations penalties for violations of the City Tree Code by a developer given that the City apparently does not have those records, I received no specific response to the question.

The reply from the City did not say that it would take too long to gather the information. It did not inform me of what it might cost to gather the information. It simply said the City does not have that information.

◆ The complete discretion given the Public Works Director to levy and determine the level of fines does not generate any confidence that violators are being sufficiently held accountable.

Prior to the appeal of the Tree Removal Permit, the neighborhood association was continually reminded by city staff that enforcement was not an issue for the appeal and that any violations and penalties would be determined by the Public Works Director. SWAN disagreed with that assumption based upon the authority of SPRAB to apply conditions or instructions to its decisions regarding the appeal. In its appeal SWAN outlined what it believed was the appropriate enforcement provisions that should apply.

SWAN highlighted enforcement issues in the appeal because indications were that the developer would be allowed to get by with minimum penalty for violating the Tree Code provisions which contained penalties that “shall” be assessed.

The first indication was previous actions by the Public Works Director regarding unauthorized activities by individuals who tampered with City trees. In that enforcement the Director admitted that he unilaterally decided to not levy the required penalties because he thought they were too high.

Then prior to the appeal hearing the City Manager sent out an erroneous email that implied the penalties would be minimal. The initial email in August stated that “Staff has

not decided to retroactively issue a permit for removal of the trees.” That statement was later corrected when confronted with the actual permit issued on June 25.

However, in the email the City Manager also stated “One of the options being presented to SPRAB is whether the trees would have been approved for removal given that the trees were identified for removal in the approved subdivision plans. If that is the case, the developer will be issued a retroactive permit and charged a double permit fee (the standard charge for initiating work without a permit). If SPRAB finds that the tree removal would not have been permitted, then the developer will be issued a civil penalty with the associated tree appraisal fees.”

This implied that no civil penalties would be assessed for violation of the Tree Code if the permit appeal was denied and the retroactive permit was upheld. This contention was concerning because the even if a permit was subsequently issued, the removal was still done without a permit and that is a clear violation.

Since the hearing and the SPRAB decision to uphold the permit, the Public Works Director has apparently assessed penalties on the developer. It is my understanding, and I recognize that I could be mistaken, that the penalties included a fine of \$8,158. This is composed of a civil penalty of \$2,250 plus a determined \$5908 value of the trees to be removed. While this is within the provisions of the Tree Code, it still seems minimal compared to what could have been assessed.

The Tree Code states that the civil penalty for illegally removing a city tree can be as high as \$2,000 per violation and that each tree illegally removed is a separate violation. Since there were three trees illegally removed, the civil penalty could have been, and I maintain should have been, closer to \$6000. The total \$2,250 amounts to a civil penalty of only \$750 per tree.

Furthermore, it is my understanding that the value of the trees was determined based on the fact that they were slated to be removed. In other words, because they were slated to be removed their value was reduced below what it would otherwise have been. This devaluation was applied despite the fact that at the time they were cut there was no permit in place and no official sanction for their removal.

During the appeal hearing staff expressed a belief that the consequences of the removal without a permit would be serious enough to discourage similar incidents of removal before the required Tree Removal permit. The low civil penalty and the devaluation of the trees because they were going to be cut anyway does not seem to rise to the stated objective of a sufficient deterrent.

◆ The process for appeal of the Tree Removal Permit is a sham and the concept that SPRAB can uphold an appeal is an illusion.

The appeal hearing came down to the argument that the Tree Removal Permit’s conclusion that no reasonable alternative exists was correct because that had already been decided and SPRAB couldn’t determine otherwise.

As we were constantly reminded, the issue at hand in the appeal was whether or not there were no reasonable alternatives to removal of the trees. According to the code and SPRAB rules, the burden is on staff to prove that there were no reasonable alternatives. Appellants do not have to determine a better alternative, only that there are reasonable alternatives.

However, we were confronted with what amounted to a closed loop. We could appeal the conclusion in the permit that there were no reasonable alternatives but we had no case because the no reasonable alternative decision had already been made in the land use case that said the developer needed a permit in which the no reasonable alternative conclusion could be appealed. That's the advice given to SPRAB by the City staff.

Essentially staff said SPRAB can't uphold the appeal because it had already been decided in the land use case that went to the City Council and it wasn't SPRAB's place to overturn a City Council decision.

Appendix C is a citation of some of the arguments presented by the city Public Works and legal staff during the hearing. They demonstrate that staff's position is that the no reasonable alternative was a given and it wasn't SPRAB's role to question that.

The Code and the administrative rules provide that it is the applicant that must provide an assessment and documentation of reasonable alternatives required to obtain a permit. The result of staff's position is that it leads to a one page perfunctory analysis provided by the applicant in the appeal that there is no reasonable alternative because the city doesn't allow one. The applicant's assessment and documentation that no reasonable alternative exists consists of a single statement that there are no other alternatives because the city approved street design requires removing the trees. (See Appendix D)

So that begs the question: Why is there an appeal in the first place?

Throughout the land use case the order and staff findings of fact repeat the fact that the removal of the city trees requires the granting of a Tree Removal permit, even though the order granted "tentative approval" for removal of the trees. The Tree Removal permit is based on whether or not there were reasonable alternatives. That conclusion can be appealed to SPRAB.

Staff argued that participants in the case had ample opportunity to challenge the street design in the land use case. However, the land use case and the stated requirement for a Tree Removal permit also implies that the tree removal issue is to be appealed elsewhere.

That process implies that SPRAB has the authority to review the conclusion. But what kind of review is there when the staff says it can't be reviewed because the decision has already been made? Under this framework the only way you could show there were reasonable alternatives is if no street design had been approved.

If the Tree Removal Permit is granted on the basis of no reasonable alternatives, and if that permit can be appealed to SPRAB, then the clear implication is that SPRAB can determine otherwise. If they can't, then there is no real appeal process.

The predicament in which SPRAB found itself was obviously troubling, as evidenced by board member comments during the hearing. I believe SPRAB has also subsequently sent a letter of concern over the process to the City Council.

The City Council needs to clarify the role of SPRAB on appeals of Tree Removal permits or eliminate the appeals altogether because it is disingenuous to hold out the idea that

one can appeal when SPRAB is being told they have no business reviewing a decision that has already been made.

RECOMMENDATIONS

The following are some recommendations based on the previously cited issues:

Tree removal should be inspected and reports filed on adherence to any approved tree conservation plan.

When there are a large number of trees being removed, and especially when City right-of-way trees may be impacted, the developer should be required to have a tree inspector on site during the removal. If an inspector is not able to be on site, an inspection of the tree cutting should be conducted within a reasonable period of time.

An inspection report should be filed with the city, noting any violations of either the Tree Conservation Plan or the Tree Removal Permit. Inspection reports should be available for public access and review.

The City should maintain a data base of violations for construction and tree removal permits and any past violations by a developer should be automatically included as part of the record in any land use case.

While the public may participate in land use and Tree Removal Permit proceedings, they have no access to information about previous practices of the developer. Previous conduct is an indication of future conduct and is relevant to enforcement as well as confidence and credibility associated with the process and initial granting of any permit. Neighborhood Associations and citizens who participate shouldn't have to spend the time it takes to dig into public records of past violations or citations. This is information the City should have and it should automatically be made a part of the record in a land use case.

City Council should either inform staff they should cease and desist from any arguments on a tree removal permit appeal that the issue of reasonable alternatives has already been determined or they should remove the ability to appeal a tree removal permit in a land use case from the code.

If the ability to appeal remains in the code, then any "temporary approval" of a Tree Removal Permit in a land use case should be eliminated.

If the ability to appeal remains in the code, any fees for filing an appeal by a neighborhood association should be waived as they are for any appeal of a land use decision.

As SWAN and SPRAB discovered, the appeals process is basically useless if the staff maintains that the no reasonable alternative conclusion can't be challenged when the permit is issued subsequent to the related land use approval of a street design. Staff

says it is incongruous for SPRAB to overturn a decision that has already been made. Likewise it is incongruous to allow an appeal if the appeal has no meaning.

Either SPRAB can decide that a previous no reasonable alternative conclusion is wrong or it can't. If it can then staff should cease arguing that it can't. If it can't, then there's no reason to allow an appeal in the first place.

APPENDIX A

WREN HEIGHTS TREE REMOVAL INSPECTIONS

On Jul 22, 2020, at 11:38 AM, Jennifer Scott <JRScott@cityofsalem.net> wrote:

-
The removed trees were inspected by our Urban Forester, but no report was created. Is there specific information you are looking for? The tree species, sizes, and locations were included on the site plan previously sent. The inspection confirmed that the trees were removed.

Jennifer Scott

Program Manager

City of Salem | Public Works Department

555 Liberty Street SE, Suite 325, Salem Oregon 97301-3513

jrscott@cityofsalem.net | [503-871-2823](tel:503-871-2823)

On Jul 22, 2020, at 2:30 PM, Jennifer Scott <JRScott@cityofsalem.net> wrote:

Ronald,

Public Works was notified via email on April 15th by a City Planner that ROW trees may have been removed. The inspection was conducted on the 17th by the Urban Forester and confirmed trees had been removed. Communications have occurred via email, on the phone, and in person.

Jennifer Scott

Program Manager

City of Salem | Public Works Department

555 Liberty Street SE, Suite 325, Salem Oregon 97301-3513

jrscott@cityofsalem.net | [503-871-2823](tel:503-871-2823)

APPENDIX B

CITY REPLY TO REQUEST FOR PAST TREE CODE VIOLATIONS AND PENALTIES



RE: PUBLIC RECORDS REQUEST of August 12, 2020, Reference # R000075-081220

Dear Ron Eachus,

The City of Salem received your public records request dated August 12, 2020, for the following:

I am seeking Code violations and enforcement records related to all developments and tree removal permits by Thomas Kay and Co in the past decade (2010 through 2020). This would include any violations for unauthorized tree removal as well as the value of any penalties assessed for the violations. If possible, I would like the information before Sept. 9, 2020. It is related to an appeal hearing which will be held on Sept. 10.

This email is to inform you that the City is not the custodian of the requested record(s).

Sincerely,

City of Salem

To monitor the progress or update this request please log into the [Public Records Center](#)



APPENDIX C

CITY STAFF COMMENTS AT SEPTEMBER 10 SPRAB HEARING

Glenn Davis, Public Works Department:

“in our mind that’s [City approved street design] a given. The alternatives analysis process we believed happened with the subdivision...To us that’s just a given because the Council has already given us that direction.”

Thomas Cupani, City Legal Department:

“All the alternatives, all the speculation about what the street could have been or should be, those things are correctly the purview of the land use process and it’s not SPRAB’s purview to redesign the street. It’s presented with a street design that has been approved and they need to accept that as a given.”

“...it is incongruous to suggest that SPRAB would be able to undo a decision that was made by the duly elected Board.”

“The street design is now static and it’s that design that SPRAB has to consider in light of the permit application.”

“This particular circumstance probably wasn’t contemplated by the code and by the people who drafted the code. What the tree code is really geared toward is this idea of somebody who hasn’t gone through any land use process cuts down a city tree or cuts or wants to cut down a tree that doesn’t warrant being cut down. “

APPENDIX C

APPLICANTS REASONABLE ALTERNATIVES ANALYSIS SUBMITTED JUNE 23



WREN HEIGHTS SUBDIVISION

Supplemental information

Removal of Street Trees in Salem Heights Right-of-Way

REASONABLE ALTERNATIVES ANALYSIS

There are currently nine (9) trees located within the proposed road right-of-way that must be removed for construction of the required street improvements.

Pursuant to the City of Salem Department of Public Works Administrative Rule, Chapter 109, Division 500, Section 002- 2.4(b) Reasonable Alternative Analysis, ***“Where no reasonable alternatives exist, the Applicant for a permit shall document the basis for that conclusion as part of the permit application.”***

Applicant’s Response: There are currently five (5) trees located within the required city right-of- way. Construction of the required street improvements including curb, gutter and utilities, necessitate their removal. There are 5 trees within the Salem heights right-of-way and 4 trees within the proposed Doughton Street right-of-way. There are no other alternatives to avoid their removal.

Pursuant to Chapter 86 – Trees on City Owned Property – Section 86.090 (a)(8) ***“The Director may permit the removal of a City tree if there is no reasonable alternative.”*** As stated previously, there is no reasonable alternative as the trees are within the Salem Heights and Doughton Street right-of-way and must be removed to construct the city-required improvements. Please see the attached plans showing the location of the trees to be removed attached.

Amy Johnson

From: Cory Poole <robotopdx@gmail.com>
Sent: Monday, October 19, 2020 2:29 PM
To: CityRecorder
Subject: Letter from SEMCA Board regarding Salem's Trees and Programs
Attachments: SEMCA Neighborhood Association letter to council for 10_19_2020 worksession.docx

Please submit this attached letter to tonight's council work session regarding Salem's Trees and Programs.

Thank you!
Cory Poole
SEMCA Chair.

SEMCA Neighborhood Association
Salem Oregon.

Attn: Salem City Council.

Regarding the health of trees in Salem parks.

We the board of the SEMCA Neighborhood Association are deeply concerned for the future health of the trees in Cascades Gateway and Wallace Marine Parks.

Since allowing for unsupervised, unregulated homeless camping in these parks we have seen significant damage done to the trees of the parks.

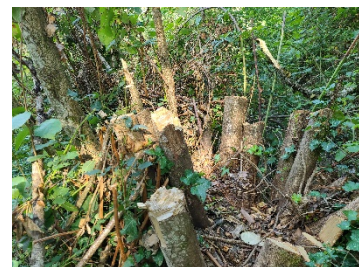
We have documented dozens of trees that have been cut down by homeless campers for use as firewood and structural components for campsites. There have also been several fires that have spread to trees and other plant life in the parks. The damage being done will take decades to repair. Some homeless campers are even using chainsaws to fell large trees.

We the SEMCA board call on Salem city council to immediately rescind the emergency parks camping ordinance.

Please save the park that we have worked so hard to make a wonderful place for all Salem residents to enjoy.

Cory Poole

SEMCA Chair. Photos below taken in Cascades Gateway Park and Wallace Marine Park between September 30th 2020 and October 1st 2020



Amy Johnson

From: noreply@cityofsalem.net on behalf of michael.k.slater@gmail.com
Sent: Sunday, October 18, 2020 6:43 PM
To: citycouncil
Subject: Contact the City of Salem
Attachments: Slater Tree Comments for 8-19-2020.pdf

Your Name	Michael Slater
Your Email	michael.k.slater@gmail.com
Street	4833 Fir Dell DR SE
City	Salem
State	OR
Zip	97302
Message	Attached please find my comments for the Council work session of October 19, 2020

This email was generated by the dynamic web forms contact us form on 10/18/2020.

Salem City Council
555 Liberty Street
Salem, Oregon 97301

October 18, 2020

RE: City Tree Program

Dear Mayor Bennett and Councilors:

Thank you for willingness to hold a Council work session on Salem's tree program. As you know, this work session was called to address the Council's concerns that City staff (1) were not enforcing the City's ordinance prohibiting removal of a City tree without a permit and (2) were not making sufficient progress towards the goals in the Council-adopted "Salem Community Forestry Strategic Plan."

I hope you find my comments and suggestions useful.

Salem's tree program has improved considerably over the past several years, thanks in part to leadership by the Council and city staff, the attention of the media, and the engagement of Salem residents. I think it's important to recognize these improvements so we don't lose sight of the City's positive accomplishments while we wrestle with some of the remaining problems.

Positive accomplishments include:

- The City reached its goal of increasing the tree canopy from 18% in 2010 to 23% in 2020. Salem's canopy coverage now stands at 24%. While some of these changes likely resulted in different approaches from the 2010 survey¹, it is still significant accomplishment.
- The City went to considerable lengths to conduct a national search and hire a well-qualified urban forester.
- The City increased its tree-planting efforts considerably in the past few years.
- In 2018 and again 2019, the city undertook a sampling of our street tree population to assess its size, health, and species diversity. This sampling project was a reasonable and cost-effective method to gain critical insight into our street tree population. This year, the City is expanding that work by taking a full census of Salem street trees.

¹ See "Salem Exceeds Tree Canopy Goal." City Of Salem. Accessed on 10/18/2020 at <https://www.cityofsalem.net/Pages/salem-exceeds-tree-canopy-goal.aspx>

There are, however, still several problems that need to be addressed in order to improve the quality of the City's tree program.

The biggest problem, I believe, is the City's failure to appreciate the value of mature trees. The City seems to take the approach that a young tree has the same value as a mature tree. Therefore, the harm caused by removing a mature tree can be easily be remedied by replacing the mature tree with one or two young trees. This is not at all the case.

Mature trees provide considerably more benefits than a small tree.² Mature trees sequester more carbon, better reduce air particulate matter, provide better wildlife habit, better reduce stormwater runoff, and provide greater reduction in the heat island effect. In addition, it takes approximately 40 years for a tree, once planted, to sequester the carbon that was produced by growing, transporting, planting, and maintaining that tree.³

A related problem, or a resulting problem, is the City's failure to consistently and rigorously enforce its ordinance (Chapter 86) against unauthorized City tree removals. The current City ordinance has three consequences, all of which must be applied, when a property owner removes a tree without a permit: a fee, entering into and implementing a restoration plan, and a payment based on the value of the tree. From the time when this ordinance was implemented until February 2020, when the issue came to public light, the City has assessed but did not collected the penalties it has applied, signed restoration agreements but not enforced them, and chose not to assess and recover the tree's value. There is not much more to say other than note the City needs to recognize its error, apologize to the public, and enforce its own ordinance.

Separately, the City has made only modest progress on achieving its urban forestry goals. In 2013, the Council created a taskforce to write an Urban Forestry Strategic Plan, which it released in 2014. The plan set 6 goals. To date, the City achieved the first goal, which is to increase the tree canopy. This is significant and I do not want to diminish that result. To my knowledge, however, the other 5 goals remain largely unmet.⁴ Ironically, if the goals related to public education (goal 2) and better coordination, communications, and codes related to trees (goal 4) had been met, the City might have done a better job protecting mature trees from unlawful removal.

² See "The Large Trees argument: The case for Large-Statured Trees vs. Small Statured Trees. Center for Urban forest Research. U.S. Department of Forestry. Accessed on 10/18/2020 at https://www.fs.fed.us/psw/topics/urban_forestry/products/cufr_511_large_tree_argument.pdf

³ See "Shades of Green: The Hidden Carbon Cost of Tree Planting and Care." Green Infrastructure for Your Community. Deep Roots. Accessed on 10/18/2020 at <https://www.deeprout.com/blog/blog-entries/shades-of-green-the-hidden-carbon-cost-of-tree-planting-and-care>.

⁴ Page 3. Salem Community Forestry Strategic Plan. City of Salem, 2014.

In order to address these and other problems, I would like to recommend the City take the following actions:

- Create an urban forest commission to provide meaningful public oversight of, and lend support to, the City's tree program. Responsibilities should include assisting staff in the development of annual goals, monitoring the program, educating the public, making determinations on tree removal permits, and ensuring the program is implementing up-to-date best practices in urban arboriculture.
- Improve the existing ordinance (Chapter 808) to better protect mature shade trees during development and construction and provide the Community Development Department the resources and training they need to ensure the ordinance is followed.
- Establish a long-term goal of a forty percent minimum tree canopy coverage in residential areas. Recent research indicates that a forty percent tree canopy coverage is the tipping point for reducing ambient daytime air temperature. A forty percent tree canopy coverage can reduce summer daytime temperatures by two to three degrees Celsius.⁵ This reduction aligns well with current climate change models that suggest Salem's summer daytime temperature will increase by two to three degrees Celsius.
- Assign the Planning Commission the authority to act on tree removal permits when the application is related to a land use case within the Planning Commission's jurisdiction. Currently, appeals of all street tree removal permits are heard by the Salem Parks and Recreation Advisory Board (SPRAB). This puts SPRAB in the no-win position of second-guessing land use decisions made by the Planning Commission and the City Council. SPRAB recently approved a letter to the City Council that raises this concern.

Finally, I want to express my disappointment that neither the City Manager nor the Public Works Director has accepted responsibility for their failure to enforce the City tree code. I have heard the City Manager say on several occasions that it is up to the public to hold the staff accountable for meeting their responsibilities. Please consider this letter an attempt to do just that.

Thank You,

Michael Slater

⁵ See "Scale Dependent Interactions Between Tree Canopy Coverage and Impervious Surfaces Reduce Daytime Heat During Summer." Carly D. Ziter et al. Proceedings of the National Academy of Science of the United States

October 19, 2020

TO: Mayor and City Council

SUBJECT: Tree Removal Permits and Land Use Process

The Salem Parks and Recreation Advisory Board (SPRAB) recently found itself in an uncomfortable position during recent deliberations over an appeal of a tree removal permit. The applicant, a neighborhood association, was appealing to set aside a tree removal permit issued by the Public Works Director to remove five City trees (street trees) to allow a half-street improvement as part of a subdivision development. The permit was issued to the developer two months after unauthorized removal of the trees. After the filing of the appeal, it was determined from a follow-up survey, that two of the subject trees were actually on private property. Unfortunately, two of the remaining three trees were significant Oregon white oaks.

Prior to the appeal, the Board was informed that the question of fines or penalties for violation of SRC 86.090 was not within the purview of the appeal consideration, yet City staff reported that a decision on penalties was being deferred pending the appeal. If a violation had occurred, the Board questioned, why was there a five-month delay for a penalty determination. The Board also wondered if the issuance of an ex-post-facto tree removal permit somehow lessened the severity of the violation.

The Board was also informed that the focus of the appeal should be on whether there were reasonable alternatives to the required street improvement design that would allow saving the affected trees. However, the staff report and the “after-the-fact” tree permit state that “no reasonable alternatives” were available. Part of this determination was based on Council affirmation of the Planning Administrator’s approval of the subdivision design; therefore, requiring the tree removal to satisfy street improvements. This placed the Board in the awkward situation of reviewing a decision by the Council, who in turn, appoint the Board members.

SPRAB strongly supports the City’s tree programs and individual members have specific training and experience with tree health and preservation. The appeal sought to overturn the Public Works Director’s approval of Tree Removal Permit No. 20-109684. The permit was issued well after the trees were cut down and cites SRC 86.090[a][8] allowing removal of City trees if there is no reasonable alternative. The neighborhood association contended, through their

detailed and well-organized appeal material, that there were alternatives. Board members, to be effective and fair during the appeal hearing, had to be cognizant of City development codes and street design requirements to better determine if there were realistic alternatives. Such a determination requiring road design and engineering knowledge was a challenge for Board members. In the end, and seeking a practical solution, the Board, by a very close vote, took on faith the Public Works Director's finding that there were no reasonable alternatives and denied the neighborhood association's appeal.

The Board made the following observations:

1. The following timeline of events that occurred:
 - a. February—Permit issued to developer, which included an approval to remove the trees after issuance of a Tree Removal Permit.
 - b. March 10—City sent the developer a notice that a Tree Removal Permit must be issued prior to removal of the trees.
 - c. April 15—The trees were removed.
 - d. April 17—Site visit by the City's Urban Forester, Milan Davis.
 - e. June 25—Developer applied for a Tree Removal Permit.
 - f. July 27—Appeal by Southwest Association of Neighbors.
 - g. July 28—Tree Removal Permit would have become effective.
2. The issuance of after-the-fact permits casts a pall of suspicion on City policies and procedures. Once a City violation is determined, appropriate action should be taken. In this case, City staff provided several notices that a tree removal permit was required. If a later permit application is required as part of that corrective action, it should be well documented.
3. When a permit requirement violation occurs, the remedy should be enough to discourage other developers from such activities.
4. Even though this situation only involved three trees, City staff would do well to more fully document their analysis if "no reasonable alternative" is determined when dealing with neighborhood issues as they can be contentious.
5. Public trust of City officials and staff is built over time and shared experiences. Transparency and constructive communication are key components of the trust process. Such trust provides for smoother governance and community well-being and pays dividends when the City is seeking public support of bond measures.

We recommend Council review the processes around land use plans and tree permitting to ensure that potential conflict is minimized, and clarity is enhanced.

Mayor and City Council

October 19, 2020

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In conclusion, the Board feels it is imperative to address this issue now to avoid setting a precedent for future after-the-fact tree removals and conflicts with pre-approved land use decisions. While the Board ultimately affirmed the permit approval, we recommend that the City assess fines and penalties to the maximum amount for this violation in accordance with City Code. The Board takes its responsibilities seriously and looks forward to continued collaboration with Council and other commissions to ensure a fair process that also supports City codes and policies for tree preservation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dylan McDowell', written in a cursive style.

Dylan McDowell

Chair, Parks and Recreation Advisory Board

Amy Johnson

From: Ted Burney <burney.ted.tb@gmail.com>
Sent: Sunday, October 18, 2020 11:11 PM
To: CityRecorder
Cc: Connie Jones; Jeanine Stice; RONALD EACHUS; Bill Dixon
Subject: SWAN Comments for Council for Tree Work Session
Attachments: SWAN comments for city council tree workshop.doc

On behalf of the Southwest Association of Neighbors we would like to have the following public comments included in the packets for Council's Oct. 19th Work Session on Trees.

There are two files attached. One a word document and the other a jpg reference document.

If you have questions regarding the files please contact me.

Thank you,

Ted Burney
SWAN Land Use Chair
503-428-0625

To: Mayor Chuck Bennett and Salem City Councilors

October 16, 2020

Subject: Public Comments for Consideration for Council Tree Work Session on Oct.19

From: Southwest Association of Neighbors

Background:

The Southwest Association of Neighbors has recent experience with the “Tree Appeal” process and would like to bring some items to the table for Council to consider dealing with when it comes to the application of City tree code and enforcement actions.

SWAN was involved in appealing the illegal removal of three City owned street trees along the 500 block of Salem Heights Avenue. These trees, including two significant white oaks were removed without a permit. The Public Works Director then issued an after the fact permit allowing the removal of the trees based on the finding that there was no reasonable alternative for construction of a half collector street mandated by the city as part of a new sub-division development.

SWAN appealed the decision to approve the removal of the trees even though the trees were now gone. SWAN was informed of the fact that for our appeal hearing to the Salem Parks and Recreation Advisory Board we needed to show reasonable design alternatives were available to avoid removal of the trees.

SWAN presented the appeal on this basis. But during the hearing the City Staff informed SPRAB that the land use decision providing approval for the development gave “tentative approval” for the trees’ removal because the street improvements approved in the case were found to have no reasonable alternatives. Our appeal was not part of the land use process.

We went to SPRAB with our appeal because the code and the order approving the development provided for an appeal of the tree removal. Instead City staff said in essence the decision for the tree removal had already been granted by City Council during land use approval and SPRAB could not overturn a decision made by the Council.

If that is the case, then why is tentative approval given when it apparently cannot be withdrawn? And why is there an appeal process if the required basis for appealing (the no reasonable alternative conclusion) can’t be challenged?

Summary list of action items for Council to consider:

1. Examine City Code dealing with conflicts between the land use approval process and the tree removal appeal process
2. Recommendation for addition of “Tree Inspectors” to Public Works or Parks staff.
3. Provide a list of “reasonable alternatives” discussed by development design teams and city staff when “no reasonable alternative” decisions are made. Make this list available to the public. Note: See Reference Document 1 for current process.

Summary list of action items to consider: (continued)

4. Create and maintain a database of a developer's business record with reference to construction permit, land use, or tree code violations. Make this database available to the public.
5. Develop and examine options for the urban forester to be given staff and resources to ensure protection and enhancement of Salem's tree canopy.

Detail of Action Items for Council to Consider:

1.

We ask that you examine City Code dealing with conflicts between the land use process and the tree removal appeal process. SPRAB can either act as an appeal board for those contesting removal of trees or the appeal process for trees destined for removal must be included and noted as being a part of the land use process where Council determines the outcome of a land use (development) ruling. It does not benefit SPRAB or those making an appeal if the decision is considered as having been made in advance of the appeal hearing and erodes citizen confidence in the intended process.

2.

SWAN recommends the addition of a sufficient number of "tree inspectors" to the City staff to assure that all tree removal is consistent with approved plans and permits. SWAN would like Council to consider tree inspection in a pending development as important as an electrical inspection during a remodel or new building construction. Permits must be issued for work to be done and inspections must occur and be recorded.

In the case of the Wren Heights development, in addition to the three right of way trees, the developer was allowed to remove 75 trees under the approved Tree Conservation Plan. This plan specifically identified all trees on the property for either removal or preservation. But there was no tree inspection based on the Tree Conservation Plan at the time of, or even after, the cutting. The urban forester who later visited the site and confirmed the illegal removal of right-of-way trees did not conduct an inspection of the other trees.

If a qualified inspector had been on site during the Salem Heights illegal tree removal the inspector could have referred to the specific tree plan and kept the trees from being removed until a permit was issued. This action of having a tree inspector on staff would have saved considerable time and expense for the City, the developer, and SWAN.

The position of tree inspector does not seem like one to hand off to a permit or construction specialist but rather to a staff member with knowledge of trees and land use. This staff member would be responsible for signing off on tree inspections prior to development, during development and after development occurs to ensure the City Tree Code was followed and enforced.

This inspection could include site assessment of tree canopy prior to grading. Check in and approval by a city tree inspector of trees to be removed and follow up confirmation of the correct trees being removed by a qualified tree inspector would be required. The work of a contractor involved with tree removal – especially significant trees - should be inspected by a qualified individual within the city under the direction of the Urban Forester.

The staffing of tree inspectors might be a cooperative effort between the City, OSU, Willamette University or other organizations as internships, or if budget allows, as full time staffing. A tree removal fee or enforcement penalties could possibly fund the positions.

3.

The concept of “no reasonable alternatives” seems to be weighted in the favor of the developer with little information given to the public as to what alternatives were considered. In the case of the tree appeal for Salem Heights Avenue we were given a statement from the developer stating ‘no reasonable alternatives” other than removal of the trees in question existed.

SWAN was not given a list of alternatives considered or presented with any options Public Works may have suggested. SWAN was told during the appeal hearing many options were examined. The options that were examined were never presented. This demonstrates a lack of transparency for the public in the process.

SWAN would like Council to ask for these “no reasonable alternatives” options that are considered be listed or made available in documents prior to any appeal dealing with tree removal when the concept of “no reasonable alternative” is presented.

Reference Document 1 for an example of the current process.

4.

When a public records request was filed for information on past City Tree Code and construction permit violations, the City replied that it did not keep that information. SWAN would like Council to require the creation and maintenance of a database of a developers track record in regards to construction permit, land use or tree code violations. Public access to this database should be allowed.

Past performance could be an indicator of future actions. There is no reason the City should not be a custodian of such data. The Code requires the Public Works Director to keep track of enforcement costs and funds from enforcement action for violation of City Tree Code are deposited in the City Tree Fund.

So there is no reason there should not be an avenue for tracking violations and providing access for the public to a record of enforcement actions. This database could also assist with administrative code that provides for civil penalties to be assessed if an enforcement officer finds a violation is a repeat of a similar violation.

Detail of Action Items to Consider:

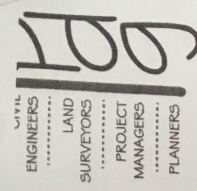
5.

SWAN asks that you also develop and examine options for the urban forester to be given staff and resources necessary to ensure protection of Salem's trees and the maintenance and enhancement of an urban canopy that Salem, "a tree city" deserves.

Respectfully submitted on behalf of the Southwest Association of Neighbors

Jeanine Stice, Chair

Ted Burney, Land Use Chair



WREN HEIGHTS SUBDIVISION
Supplemental Information
Removal of Street Trees in Salem Heights Right-of-Way

REASONABLE ALTERNATIVES ANALYSIS

There are currently nine (9) trees located within the proposed road right-of-way that must be removed for construction of the required street improvements.

Pursuant to the City of Salem Department of Public Works Administrative Rule, Chapter 109, Division 500, Section 002- 2.4(b) Reasonable Alternative Analysis, "Where no reasonable alternatives exist, the Applicant for a permit shall document the basis for that conclusion as part of the permit application."

Applicant's Response: There are currently five (5) trees located within the required city right-of-way. Construction of the required street improvements including curb, gutter and utilities, necessitate their removal. There are 5 trees within the Salem heights right-of-way and 4 trees within the proposed Doughton Street right-of-way. There are no other alternatives to avoid their removal.

Pursuant to Chapter 86 – Trees on City Owned Property – Section 86.090 (a)(8) "The Director may permit the removal of a City tree if there is no reasonable alternative." As stated previously, there is no reasonable alternative as the trees are within the Salem Heights and Doughton Street right-of-way and must be removed to construct the city-required improvements. Please see the attached plans showing the location of the trees to be removed attached.

TREES TO BE REMOVED:

Number	Tree Species	DBH
10001	White Oak	32"
10002	White Oak	32"
10003	Locust	15"
10004	Locust	15"

200 HAWTHORNE AVE SE
SUITE 100
Salem, OR 97302

pdg@pdg.com
503.595.1000

1850 PARK MARINA DRIVE
SUITE 100
Salem, OR 97302

Amy Johnson

From: Jeanine <nutritionetcetera@gmail.com>
Sent: Monday, October 12, 2020 4:12 PM
To: Vanessa Nordyke; citycouncil; Chuck Bennett
Cc: burney ted tb
Subject: Upcoming Tree Workshop- Association Request
Attachments: SWAN Work Session Request.pdf

Councilor Nordyke,

Thank you for attending our recent association meeting and providing an update on the upcoming tree workshop among other items. We discussed the importance of considering public participation in the workshop and would like to submit the attached letter to the council to consider allowing public participation in the agenda and workshop.

Sincerely,
Jeanine Stice
SWAN Board Chair

October 12, 2020

Dear Councilor Nordyke, fellow City Councilors & Mayor Bennett,

We are pleased to see that the City Council will be conducting a work session on Salem Trees and Programs on October 19. However, we have not seen an agenda for the workshop and are concerned about the ability of the public or neighborhood associations to participate. SWAN requests that rather than relying solely on submitted written comments, some form of public participation be included as part of the workshop and agenda.

The tree canopy and its impact on the character, quality, and safety of neighborhoods is a primary concern of SWAN, and we believe, other neighborhood associations as well. As participants in planning, land use and code enforcement issues, SWAN and other neighborhood associations have a strong vested interest in how the tree canopy is managed in the city. The effectiveness and enforcement of the tree code is a critical element for tree canopy management in the public interest. And the degree of enforcement and the credibility of the city's processes are critical to the level of confidence citizens have in the city's commitment to protect and enhance the tree canopy and neighborhood quality.

We believe recent incidents involving tree code violations and appeals of planning decisions have highlighted some serious deficiencies in the enforcement process and undermined that confidence. The work session provides an opportunity for the Council to include the public in assessing the tree programs and policies. Otherwise there is a danger that the perspectives received by the Council will be dominated by city staff. Because of their responsibilities, staff's perspective is essential, but it may be very different than that of others who have participated in tree programs, tree code enforcement, and development of overall policies.

For these reasons we believe some form of public participation would enhance the work session by providing the Council with citizens' perspectives they might not otherwise receive. This could be accommodated in several ways. There could be a period of public comment allowed. Or neighborhood associations could be invited to send representatives who would be allowed to add comments, ask questions or otherwise become participants in the work session.

We believe it is imperative that the tree programs and enforcement be reviewed by the Council and therefore we hope that when the agenda for the work session is compiled it will include some form of public participation beyond the submission of written comments prior to the meeting.

Thank you for considering the request to allow public participation in the workshop.

Sincerely,

Jeanine Stice

SWAN Board Chair on behalf of the SWAN Board & Association