

Legislation Details (With Text)

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On agenda: 3/23/2020 **Final action:** 3/23/2020
Title: Salem Revised Code Chapter 86 - Trees on City Owned Property.

Ward(s): All Wards
 Councilor(s): All Councilors
 Neighborhood(s): All Neighborhoods
 Result Area(s): Good Governance; Natural Environment Stewardship; Welcoming and Livable Community.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Attachment 1 - Admin Rule-109-100 Public Works Enforcement, 2. Attachment 2 - Violations+Civil Penalties+Appraised Values, 3. Attachment 3 - Enforcement Order+Notice and Assessment of Civil Penalty

Date	Ver.	Action By	Action	Result
3/23/2020	1	City Council	received and filed	

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Peter Fernandez, PE, Public Works Director

SUBJECT:

Salem Revised Code Chapter 86 - Trees on City Owned Property.

Ward(s): All Wards
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ISSUE:

Enforcing *Salem Revised Code Chapter 86 - Trees on City Owned Property.*

RECOMMENDATION:

Information only.

SUMMARY:

A Council work session is scheduled for May 18, 2020 to discuss issues related to SRC Chapter 86, Salem's *Community Forestry Strategic Plan's* goals and actions, tree planting programs, tree canopy equity, and other items of interest related to urban forestry and City owned trees. This information report is responding to City Council's concerns with implementation of SRC Chapter 86. SRC Chapter 86 applies to trees located on City rights-of-way, parks, and other City owned properties within Salem's jurisdictional limits.

At the Salem City Council meeting of February 10, 2020, the Public Works Director informed City Council that between May 2016 and January 2020 there have been ten SRC Chapter 86 code violations resulting in civil penalties totaling \$8,750. Of the ten, all but two have been paid in full. The final two penalties were issued in January 2020 and remain open because the appeal period has not expired. The ten violations resulted in a loss of 19 trees.

Any person violating SRC Chapter 86 is subject to a civil penalty not to exceed \$2,000 and each violation of SRC Chapter 86 results in a separate civil fine. In addition to civil penalties, SRC Chapter 86.105(c) states that persons who remove a tree in violation of SRC Chapter 86 must restore the damaged area in conformance with a plan approved by the Public Works Director. The cost of restoration is in addition to the civil penalties and cannot be less than the appraised monetary value of the removed tree(s).

The Director informed Council that provisions of SRC Chapter 86.105(c) have not been met. Property owners violating SRC Chapter 86 were informed in writing by the Public Works Enforcement Officer of the assessed Civil Penalty and notified of their responsibility to submit a restoration plan and restore the damaged area(s) at a cost not less than the appraised value of the removed tree(s). None of the cited property owners have met the restoration requirement.

Since the February 10, 2020, City Council meeting, the roles, responsibilities, and reporting requirements have been clarified and improved to ensure SRC Chapter 86 is implemented, including a tree appraisal methodology. Using a methodology consistent with SRC Chapter 86, the Urban Forester has determined the total value of the 19 trees lost as a result of the ten violations is \$107,220. Public Works will be notifying the property owners of their still-pending obligation to the community.

To strengthen the implementation requirements of SRC Chapter 86, an administrative rule will be promulgated, or an existing administrative rule amended, to include submittal requirements for a restoration plan and the appraisal methodology for determining the value of the removed tree(s).

FACTS AND FINDINGS:

An audit found that an appraised value of each removed tree had not been determined, property owners who violated SRC 86 have not followed up and completed the restoration requirement, and notices were not sent reminding owners of their remaining compliance obligations.

Administrative Rule Chapter 109 Division 100-1 (Attachment 1) provides the methodology for determining the civil penalty. The penalty is based on the degree the violation meets five specific criterion and the gravity or magnitude of the violation.

The Urban Forester has determined the tree with the highest appraised value (\$16,820) was a Douglas fir (*Pseudotsuga menziesii*), with a dbh of 38 inches. The tree with the lowest appraised value (\$1,370) was a cherry tree (*Prunus sp.*) with a dbh of three inches. See Attachment 2 for additional details.

SRC Chapter 86.120(c)(1) states that in the absence of an administrative rule, the value of a tree shall be calculated per the most current edition of the "*Guide for Plant Appraisal*." This book, now in its tenth edition (2019) and authored by the Council of Tree and Landscape Appraisers, provides several approaches for calculating the value of trees. The Trunk Formula Technique estimates how much it would cost to replace or replicate the lost tree and is the most commonly used method for trees that have been "...destroyed, removed, or significantly damaged" (*Guide for Plant Appraisals*, page 57). This methodology has a long history of use and acceptance by arborists, landscape professionals, and for legal applications. Using this method, the appraised value depends on the species, pre-damaged or pre-loss condition, trunk diameter at breast height (dbh, measured at 4.5 feet above the ground), and site replanting conditions.

All persons violating SRC Chapter 86 were issued an "Enforcement Order/Notice and Assessment of Civil Penalty" (Attachment 3). In addition to indicating the amount of civil penalty, the document includes:

IN ADDITION TO THE CIVIL PENALTY, RESTORATION IS REQUIRED PURSUANT TO SRC CHAPTER 86.105(C), WHICH STATES. "PERSONS VIOLATING THIS CHAPTER, OR A PERMIT ISSUED HEREUNDER, SHALL BE RESPONSIBLE FOR RESTORING DAMAGED AREAS IN CONFORMANCE WITH A PLAN APPROVED BY THE DIRECTOR THAT PROVIDES FOR REPAIR OF ANY ENVIRONMENTAL OR PROPERTY DAMAGE AND RESTORATION OF THE SITE. COSTS OF RESTORATION SHALL BE NOT LESS THAN THOSE DETERMINED EQUAL TO THE MONETARY VALUE OF THE REGULATED TREES REMOVED IN VIOLATION OF THIS CHAPTER, OR PERMIT ISSUED HEREUNDER, AS SET FORTH IN AN APPRAISAL ACCEPTABLE TO THE DIRECTOR AND BASED UPON APPLICABLE ADMINISTRATIVE RULES. EACH REMOVAL OF A REGULATED TREE IN VIOLATION OF THIS CHAPTER SHALL RESULT IN A SEPARATE CIVIL FINE IN ADDITION TO COSTS OF RESTORATION.

BACKGROUND:

The Public Works Department administers *Salem Revised Code* (SRC) Chapter 86 and Administrative Rule Chapter 109 Division 500 Section 002, both titled "Trees on City Owned Property."

In October 2015, Council adopted major revisions to SRC Chapter 86, Trees on City Owned Property. The amendments:

- Renamed SRC Chapter 86 from "Trees and Shrubs" to "Trees on City Owned Property;"

- Provided specific criteria for removing trees on City owned property;
- Clarified prohibited activities related to trees on City owned property;
- Established an application process for a variance to the requirements contained in the chapter;
- Established permitting, notification, and appeals processes;
- Established standing for appeals of decisions issued by the Director; and
- Provided for promulgating administrative rules regarding trees on City owned property, such as permit application submittal requirements, appeal processes, and *Public Works Design Standards*.

The purpose of SRC Chapter 86, as stated in SRC Chapter 86.005 is:

to provide a unified, consistent, and efficient means for the planning, planting, maintenance, and removal of trees located on City property and to limit the adverse impacts to City trees and City infrastructure.

Robert D. Chandler, PhD, PE
Assistant Public Works Director

Attachments:

1. Administrative Rule Chapter 109 Division 100-1
2. Violations, Civil Penalties, and Appraised Values of Lost Trees: 2015-2020
3. Enforcement Order/Notice and Assessment of Civil Penalty