

ACTION: Motion and second (Nash/Ordonez) to allow community members to appeal removal permit granted under proposed criterion No.3 (tree health), failed 4-4-1-1 (Combs, Judas, K. LeMieux, T. LeMieux dissenting, Martineau abstaining, Cole absent).

ACTION: Motion and second (Marshall/T. LeMieux) to recommend to the City Council the proposed ordinance and administrative guidelines outline with additional feedback (1) remove example of tree value in ordinance section 13.24.090 (tree replacements), (2) add noticing requirement to ordinance, (3) for criterion No. 3 (tree health) include/refer to tree industry standard (similar to tree risk rating), (4) add collection of data to monitor effectiveness to ordinance, (5) reassess feasibility thresholds outlined in section V of the administrative guidelines under criterion No. 2 (development) to include an amount above assessed value of tree, (6) remove reference to Cal-IPC invasive species list in section V of the administrative guidelines under criterion No. 4 (species) passed 9-0-1 (Cole absent).

D. Reports and Announcements

D1. Staff update and task force member announcements

Sustainability Manager Rebecca Lucky introduced the item.

E. Adjournment

Chair Combs adjourned the meeting at 8:45 p.m.

Candise Almendral, Project Contractor

These meeting minutes reflect the final meeting of the Heritage Tree Task Force.

Menlo Park Heritage Tree Task Force Meeting #11
September 12, 2019
Meeting Notes

Discussion of Draft Ordinance Language

Questions:

- Solar access: concern that it's at the discretion of the City Arborist—why? Solar production/installation is considered an improvement to the property and falls under decision making criteria No.2 when considering a tree removal. In addition, there are competing environmental city policies on this topic, such as the Climate Action Plan that strategizes on reducing greenhouse gas emissions, building electrification requirements, and the need for micro grid development to support a fully electric future for transportation and buildings.
- How will civil fines be calculated? Will be determined by City Council via staff recommendation before the implementation of the ordinance on July 1, 2020.

Draft ordinance language changes approved by the Task Force:

- Ordinance changes:
 - For Section 13.24.090 tree replacement of the draft ordinance, remove example of tree value to leave it flexible and open for applicants to decide.
 - Add noticing requirements similar to what is in the administrative guidelines
 - Include/refer to tree health industry standard (similar to risk rating) that are in the administrative guidelines.
 - Include/refer in the draft ordinance to the collection of data to monitor the effectiveness of the ordinance.
- Administrative guideline changes:
 - For Section V of the administrative guidelines under criteria No.2, need to re-work the value of the tree in comparison to the value of the project. Forty percent of the tree value doesn't seem fitting to capture and compare feasible alternatives. Higher numbers would be preferable, such as XX% amount over the tree value or XX% of project cost. Also, be clear that design includes construction costs of alternative.
 - For Section V of the administrative guidelines under criteria No.4, remove *"In addition, any trees appearing on the Cal-IPC list Invasive species list...as an invasive species shall constitute an invasive species."* Depending on environmental conditions, such as micro-climates, it would be best to allow the City to use Cal-IPC list as a reference and make a determination of what is considered invasive for Menlo Park.

Proposed language changes that were not approved

- Want to see no exceptions for heritage trees with solar access issues; idea of providing an option to get green energy elsewhere (not approved)
- Concerned that tree health criterion may become a loophole and community members can't appeal this. Community members should be able to appeal tree health criterion (not approved)

Other comments:

- Want to leave community member appeal rights in the ordinance (previously voted on).
- Enforcement and violations—explained stop work order versus specific property development moratorium (clarifying comment/question)
- Concerned about the EQC as the appeals body (City Council direction provided)
- Don't want mature trees to replace mature trees

Implementation Issues

- Education: Education and communication is very important because the ordinance is difficult to read and understand.
 - Need education when people buy and sell homes to clarify what is protected and what isn't.
 - Need to be able to find heritage tree information on the City's website.
 - Consider the following ideas to increase awareness/education:
 - Use of Nextdoor
 - Banner on Santa Cruz Ave., signs
 - Booth at the street fair
- Monitoring and notice (including use of an online database): There should be an option to opt-in to notifications from the database. There should be a notice on the tree when a permit has been applied for.
- The implementation plan should indicate that no net loss of canopy is a goal for tree replacement, considering the size of the replacement tree at maturity. There should be a worksheet as part of the replacement guidelines and the applicant's arborist should do a quick analysis.
- Desire to retain "tree ethos" in the City and for the City to hire the right people
- Develop a guide for replacement trees.
- Understanding of acceptable replacement tree species and guidelines, including unacceptable trees, e.g. Redwoods. It should include climate-adapted trees.
- Develop a visual representation of process, e.g., a decision tree, to achieve clarity
- The City needs more staff for implementation. Consider using a nonprofit or volunteers.

Date: 2019-09-07	Document: Staff Rpt. 19-007-HT Summary: pp. 1-6	Project: Revision of Heritage Tree Ordinance #928
------------------	--	---

Source	Page/Attachment [page]	Clause/ Subclause/ Figure/Table	Paragraph/ Line number	Comment or Question	Proposed change (more important changes in bold font)	Observations
Staff Report 2019-09-05	2	Background	2/6-7	" <i>This heritage ordinance update was budgeted at \$170,000, and the funds have been expended.</i> " Has any HTTF member audited the expenditures and judged them to be appropriate or otherwise?	[depends upon what unnecessary charges are revealed]	
Staff Report 2019-09-05	2	Background	4	" <i>The Planning Commission largely agreed with the Task Force and City Council; however, it expressed concern over the removal of the building moratorium as an enforcement measure. The Planning Commission was also concerned with the estimated increase to annual implementation cost, but understand the importance and value of a fully funded program. They provided ideas on obtaining additional revenue for the City Council to consider.</i> " This summary downplays and suppresses some Planning Commission's concerns & interests. Compare with PC minutes: —————> The pertinent minutes of the Planning Committee's meeting, which are almost a transcript, are attached for better appreciation of the breadth and depth of its review.	"ACTION: Motion and second (DeCardy/Barnes) that the Planning Commission supported the Heritage Tree Ordinance Update recommendations, except preferred retaining building moratorium under the section on violations and with additional recommendations of items to consider as listed; passes 4-0-2 with Commissioners Kennedy and Tate absent. • Retain building moratorium • Street tree replacement • Replacing mature trees with mature trees • Education • Funding implementation and budget strategies, such as the Landscape Assessment District fee utilization and potential modification as discussed."	
Source	Page/Attachment [page]	Clause/ Subclause/ Figure/Table	Paragraph/ Line number	Comment or Question	Proposed change (more important changes in bold font)	Observations

<p>Minutes of Planning Comm. meeting on 2019-08-12</p>	<p>13 17</p>	<p>G1. Revision of Heritage-Tree Ordinance</p>	<p>2/3-4 3/11-16</p>	<p>"She [Ms. Lucky] said the Task Force would meet <i>two more times in September and October</i> providing the opportunity for more public input." "Chair Barnes confirmed that staff could request what a fully funded street replacement program would look like and what net new trees would look like over the course of a year. He said he would like that information and to even take it up separately, but he did not know how to get that into the ordinance update. Ms. Lucky said they could bring that comment back to the Task Force to discuss noting they would meet <i>September 12 and in October.</i>" Agenda for HTTF meeting on 2019-09-12 says this will be last meeting of HTTF, i.e. promised meeting in October has been cancelled.</p>	<p>Restoration of the October meeting of HTTF.</p>	
<p>Staff Report 2019-09-05</p>	<p>2</p>	<p>Background</p>	<p>5</p>	<p>"This meeting will be the Task Force's final opportunity to review the draft ordinance and provide a recommendation to City Council before it is adopted. Per the City Council direction, the ordinance is tentatively scheduled to have the first reading October 29. Therefore, this meeting is anticipated to be the last for the task force." "Therefore,"? This is not a logical reason for canceling a promised meeting in October.</p>	<p>Restoration of the October meeting of HTTF.</p>	

	3	Analysis, Table 1: Decision making criterion[a] for tree removal	#5. Development	<p><i>"The heritage tree interferes with proposed development, repair, alteration or improvement of a site or habitable building (excluding amenities, such as walkways, patios, pools and fire pits) or is causing structural damage to a habitable building(s) and there is no financially feasible and reasonable design alternative that would permit preservation of the heritage tree while achieving the applicant's development objectives or economic enjoyment of the property."</i></p> <p>Previous recommendations ignored or overlooked.</p>	<p>Changing "proposed" to "approved".</p> <p>Inserting "reasonable" twice, before "development objectives" and "economic enjoyment", to obviate trivial or frivolous claims.</p>	
	4	Analysis, Table 1: Appeal filing standards	1-3 8	<p><u>Appeals based on proposed tree removal criteria No. 5 and No. 6 (development and utility interference)</u></p> <p><i>"For healthy trees being removed as a result of development or utility needs, community members and permit applicants have the ability to appeal staff decisions"</i></p> <p><i>".... that align with the removal criterion listed"</i></p>	<p>Changing "ability" to "right"</p> <p>Changing to "that align with the removal criterion or criteria listed"</p>	
	5	Analysis, Table 1: Violations	14-17	<p><i>"Remove building moratorium penalty. To address Planning Commission and community concerns, provisions to issue stop work order or property lien for development-related violations has been added."</i></p> <p>See 13.24.100 for these provisions.</p>	<p>No change. Actually an improvement: New provisions for stop work orders and property liens are not time-limited, unlike a moratorium.</p> <p>Changing "has" to "have".</p>	
	5	Analysis (paragraph below Table 1)	4-5	<p><i>"..... while the administrative guidelines will dictate day-to-day management practices, which can be readily updated."</i></p> <p>Who is authorized to update Admin. Guidelines? Is there appropriate oversight?</p>	??	

Source	Page/Attachment [page]	Clause/Subclause/Figure/Table	Paragraph/Line number	Comment or Question	Proposed change (more important changes in bold font)	Observations
	9/A[2]	13.24.010 Intent & Purpose		The addition of the list of intangible benefits is a distinct improvement; it could provide a basis for valuing these benefits. However, it is insufficient.	Identification & pricing the devices & structures of human origin that confer approximately the same benefits. (See examples)	
	9/A[2]	13.24.010 Intent and purpose.	3/4	"...consistent with the purposes of this chapter, the enjoyment of public and private property, property rights and in alignment with the General Plan."	Inserting "reasonable" before "enjoyment", to obviate trivial or frivolous claims.	
	10/A[3]	13.24.020 Definitions.		A definition of "Appraised Value" should be provided.		
	11/A[4]	13.24.050	#5./1-2 Development. #5/5-6	"The heritage tree interferes with proposed development, repair, alteration or improvement of a site or habitable building ..." "..... while achieving the applicant's development objectives or economic enjoyment of the property."	Changing "proposed" to "approved" Inserting "reasonable" before "development objectives" and "economic enjoyment", to obviate trivial or frivolous claims.	
	12/A[5]	13.24.050	#6./3 Utility Interference.	"The removal is requested by a utility, public transportation agency, or other governmental agency due to a health or safety risk resulting from the heritage tree's interference with existing or planned public infrastructure and there is no financially feasible and reasonable design alternative."	Changing "planned" to "approved".	
	14/A[7]	13.24.090 Tree replacements		An important topic is neglected.	There should be specific consideration of valuation methods of Heritage Trees, including valuation of intangible benefits.	

	19/B[3]	V. Permits. C. Decision-Making Criteria	#5/9-10	<p><i>"If the cost of alternative design is more than 40% of the appraised value of the tree, the cost will be presumed to be financially unfeasible."</i></p> <ul style="list-style-type: none"> <i>• If the cost of alternative design is less than 10% of the appraised value of the tree, the cost will be presumed to be financially feasible</i> <i>• If the cost of alternative design is between 10 and 40%,"</i> <p>Where did 40% and 10% come from?</p>	<p>Changing "40%" to "140%" or more to include some of the value of intangible benefits of Heritage Trees listed in 13.24.010 Intent and purpose of the Ordinance.</p> <p>Changing "10%" to "100%"</p> <p>Changing "10 and 40%" to "100% and 140% or more.</p>	
	19/B[3]	V. Permits. D.		<p><i>"The City Arborist may expedite dead or invasive tree permit processes and shall have authority to reasonably waive permit application requirements and fees."</i></p> <p>This 'Guideline' invests far too much power in a single city official, operating as a sole expert with no significant oversight that I'm aware of, who would be authorized to nullify the work and decisions of the HTTF, PC, EQC, and City Council. Recalling that "Absolute power corrupts!", this clause is a blatant INVITATION TO CORRUPTION.</p>	<p>Deleting all words after "dead". (There is no need for expedition of removal permits for "invasive species")</p>	

	20/B[4]	VI. Appeals B. Conflict Resolution.	4-10	<p><i>"In many circumstances, conflict resolution mediated by a third party will help to educate or provide a different perspective to potential appellants that might affect the appellant's decision about filing an appeal.</i></p> <p><i>To implement this option, the City shall engage and pay for a mediator for the applicant and appellant. Note that participating in non-binding mediation does not preclude the appellant from subsequently filing an appeal."</i></p> <p>Mediation takes time. Time from initiation until completion of mediation should be excluded from 15-day periods for filing an appeal."</p>	Adding: "All time from initiation until completion of mediation shall not be counted in determining any 15-day period allowed for submitting an appeal."	
	20/B[4]	VIII. Heritage tree replacements E.	1	<p>1"<i>[Insert tree replacement matrix based on trunk diameter]</i>"</p> <p>Disclosure of this matrix is essential for adequate review.</p>	Inserting the matrix.	
	20/B[4]	X. Notice and reporting B.	1-2	<p><i>"To the extent permitted by law, open access and community-wide notice of all heritage tree removal applications, permits, and appeals."</i></p> <p>Incomplete sentence.</p>	Completing the sentence.	

Needs for editing 19-007-HT:

	2	Analysis, Table 1: Definition of a heritage tree	1	<p><i>"Change the of the definition order to (2, 3, 1) to emphasize protection of heritage and native trees."</i></p>	Inserting "sequence" in first line.	
	3	Analysis, Table 1: Appeal filing standards	1 6	<p><u>Appeals based on proposed tree removal criteria No.1-4 (death, risk rating and tree health)</u></p> <p><i>"Tree removal criterion No.1-4 is related to risk and tree health,"</i></p> <p><i>"Note: Added criteria No.3 (tree health) as it requires"</i></p>	<p>Changing to: "Tree removal criteria No.1-4 are related to risk and tree health,"</p> <p>Changing "criteria No.3" to "criterion No.3"</p>	

	4	Analysis, Table 1: Development-related appeal process	1-2	"Appeal process for projects which require Planning Commission approval that involve heritage tree(s) removal." Antecedent noun for both relative pronouns is "projects".	Improving heading style: "Appeal process for projects that require Planning Commission approval and that involve heritage-tree(s) removal:"	
	7	Impact on City Resources	1	"To implementation the approved changes,"	Changing "implementation" to "implement"	
	15/A[8]	SECTION 6. EFFECTIVE DATE AND PUBLISHING.	2-4	"The City Clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posted in at least three public places in the city."	Changing "posted" to "posting" [..... shall causethe posting...]	
	18/B[2]	V. Permits.	1	"A. The decision-making criteria described below is closely tied to industry standards and requires the provision of evidence" Sentence subject is plural ("criteria"); verbs should match	Changing "is" to "are". Changing "requires" to "require"	
	18/B[2]	V. Permits. C. Decision-Making Criteria	#2/9	"o Trees in excellent health and condition have a health rating of 100-81% with excellent from , dense healthy foliage, and free from pests and diseases."	Changing "from" to "form"	
	18/B[2]	V. Permits. C. Decision-Making Criteria	#3/1	"For Criteria 3 (Tree Health), ..." Style is inconsistent with others in list	Changing to "3. Tree Health (Criterion 3)"	

Good evening, Mr. Chairman and Commissioners. I am Peter Edmonds, a resident of Menlo Park, District 3. I already submitted a written critique of this staff report, which your received either Saturday or this morning. I'm here now to draw your attention to proposed changes in order of my perceived priorities. I will not have time to speak to all my distributed text but I hope you will read it.

Change violations the assessed value of the tree, or in cases where there is not enough of the tree left to appraise, the violator would be charged a flat fee base which will be increased to \$10,000. Punitive or administrative penalty fines can be assessed in addition to the assessed value or flat fee base violations for the following:
<ul style="list-style-type: none"> Total tree removed Pruning that impacts tree health Not planning or maintaining replacement trees Damage during construction Repeated offenses resulting in escalating fine amounts
Punitive or administrative penalties will be established by City Council through a resolution. The Task Force strongly advises that the City Council set these penalties high enough to deter violations that they have witnessed regularly or to avoid the permitting process that would create developing their property challenging.
Remove building moratorium penalty. It is currently not used in practice and the City Attorney advises against using this practice for violations due to legal challenges.

First, I strongly recommend opposition to "Remove the building moratorium penalty", which was slipped into the table as the last item of *Violations* without adequate justification. Provided that the City Attorney does not advertise his advice against actually using this existing penalty, its presence serves the very valuable purpose of deterring developers from ignoring related regulations. Please consider a recommendation to keep it. I think it's the strongest leverage the city has to ensure compliance.

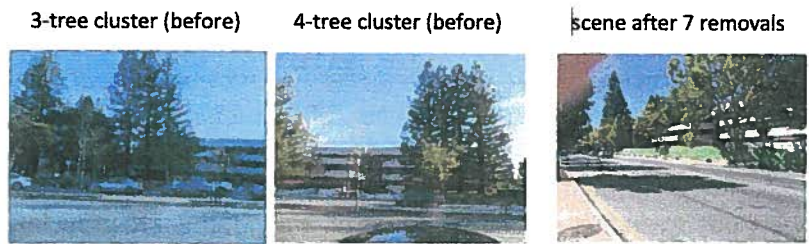
This chapter is adopted with the intent and purpose of promoting the preservation and development of a healthy, diverse tree canopy in Menlo Park, which is highly valued by our community and is vital to the character and health of our city. Trees are valued for their many contributions to the environment, public health and quality of life of the Menlo Park community. Examples of those benefits include:

- provide shade
 - enhance resilience to climate change
 - improve air quality
 - provide shelter from wind
 - prevent erosion and landslides
 - protect against flood hazards
 - add to the city's scenic beauty and character
 - recognize historical significance to our city
 - create natural gathering places
 - reduce noise pollution
 - enhance privacy
 - enhance neighborhood property values
 - provide habitat for wildlife
- Examples of man-made devices providing approximately equivalent benefits*
- sunshades, awnings, umbrellas
 - side curbs, wind barriers, heat pumps (high capital cost)
 - CO₂-reduction burners, chemical filters & fans (high capital cost)
 - refrigerators, water walls
 - integrated/attached terracing, e.g., Asten rock terraces (high capital cost)
 - trellises, awnings (high capital cost)
 - skylights, vent-catchment, awnings (according to preferences)
 - monuments, fountains (high capital cost)
 - glazes, carls (high capital cost)
 - acoustic barriers
 - vents, boxes
 - underground power & cable-TV lines and fiber-optic cables, sidewalks
 - nesting boxes, bird feeders

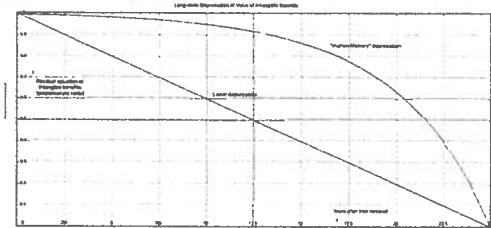
The HT-Task Force identified many Intangible Benefits of Heritage Trees but stopped short of valuing them because it's not easy. In the Annex and First Proposal of my email, I provide suggestions and examples for assigning valuations, namely, the cost of man-made devices or structures that would provide equivalent benefits. Some of these costs entail high initial, capital outlays, so the corresponding valuations would be substantial. The conclusion is obvious that neglecting to assign values to intangible benefits, which is what the revised Ordinance before you does, results in substantial under-valuations. Hence, the revised Ordinance is grossly incomplete.



In the Annex and Second Proposal of my email, I addressed the long-term losses from Heritage-Tree removals. As an analogy, consider your likely feelings, if your grand-daughter came home from kindergarten with her primary teeth bashed in by the schoolyard bully. She will suffer pain, embarrassment and difficulty eating for many months until her secondary teeth grow into place. You will be aware of her loss every time she smiles at you.



The loss of Heritage Trees is analogous, if not so personal, for those who value them, which is ~90% of the pedestrians on El Camino Real in my recent experience of soliciting public support for protecting the seven coast redwoods removed from 1000 ECR 7 weeks ago. Let's take note at this point that complying with the current and proposed Ordinance by buying saplings in planters and calling them "replacement trees" is an insult to our intelligence. They have merely the *potential* to become replacement trees, like replacement teeth, after many months or years of growth. During that growth period, beholders are reminded of their losses every time they look at the site, just like every time your grand-daughter smiles at you.



Mitigating the long-term loss to our community of Heritage Trees, such as those that once stood at 1000 El Camino Real, calls for long-term compensation while the loss depreciates with passage of time – the saplings grow and the memory fades, gradually. In this slide I suggest that annual compensation over one generation, say ~25 years, is appropriate for a depreciation period properly associated with mature, healthy Heritage Trees that are removed for commercial reasons. Without such a provision, then I don't find claims for effectiveness of this Ordinance to be credible.

Fourth, every mention of "*economic enjoyment of property*" or the like in "*Decision making criteria for tree removal*" and elsewhere should be qualified by the word "reasonable", to preclude trivial or frivolous claims. This may be the intent but the drafting needs improvement. Furthermore, I recommend opposition to granting or issuing a removal permit merely on the basis of a proposal that claims "*interference with proposed development, repair*" etc. Such a proposal should first be approved at all stages before a permit for the irrevocable act of tree removal is issued.

Fifth, on that last point, the "*Development-related appeal process*" lacks protection against premature issuance of removal permits. A real case in point is the premature issuance of the removal permit for felling the 7 Heritage Coast Redwood Trees at 1000 El Camino Real. The permit #00223-HTR was issued to the Applicant by the City Arborist, with 3 conditions as specified by the Council, by letter dated June 4, 2019. The trees were felled on Sunday, June 23 by employees of the Commercial Tree Care Co., [sic] Santa Clara, with no visible supervision whatsoever by city authorities. Coincidentally, I witnessed acts of vandalism, a felony for value greater than \$400 under Sec. 594 of the Penal Code, in the early afternoon: Condition 3 of the permit, which specified that "*the owner shall process the saw-log portions of the 7 (seven) coast redwood central stems into primary wood products to be used directly for domestic/residential/local purposes and donated to a local affordable-housing provider*" (Councilor Nash's provision) was flagrantly violated, when the employees fed trunk portions equivalent of one entire central stem into their chipper, reducing them to mulch. I have photographic evidence of these violations.

Four days later, on June 27, I discovered at the Permits Desk that 11 aspects of the still-pending application for the Building Permit to commence the repair work at 1000 ECR were on hold, pending submission, review and acceptance of further information from the Applicant. So why was the Tree Removal Permit for the irrevocable acts of tree-felling issued so expeditiously?

Sixth, the HTTF debated the frequency of inspections after planting of what are called "replacement trees" but are in fact saplings with merely the potential to grow into true replacements over many years. The recommendation of two inspections, one after planting and the second after 2 years, was the result of compromise on the issue of the cost of staff to conduct inspections. An option that was not explored is recruitment of a group of unpaid volunteers, who could alert city arborists to the need for attention to saplings exhibiting signs of obvious stress or damage. They need not be experts, they just need to be willing and organized, also by a volunteer. Canopy provides a model that could be emulated. I do not recommend direct engagement of Canopy, because its terms of service for volunteers include overly broad liability-waiver and hold-harmless clauses, in imitation of the worst commercial practice.

Thank you. July 12, 2019

Planning Commission

City of Menlo Park 701 Laurel St., Menlo Park, CA 94025 tel 650-330-6600 www.menlopark.org

REGULAR MEETING MINUTES – DRAFT

Date:8/12/2019 Time:7:00 p.m. City Council Chambers
701 Laurel St., Menlo Park, CA 94025

Draft Minutes Page 11 City of Menlo Park 701 Laurel St., Menlo Park, CA 94025 tel 650-330-6600 www.menlopark.org

G. Regular Business

G1. Heritage Tree Ordinance Update/City of Menlo Park:

Review the background of the Heritage Tree Ordinance Update, consider proposed modifications to the Ordinance, and provide recommendations to the City Council. (Staff Report #19-061-PC)

Staff Comment: Sustainability Manager Rebecca Lucky presented the staff report and provided background on the existing Heritage Tree Ordinance (Ordinance). She said an update was desired due to concerns raised for years regarding development related appeals, unpermitted removals and inadequate code enforcement of unpermitted removals. She said the Environmental Quality Commission (EQC) provided recommendations to the City Council in 2012 regarding issues with the Ordinance including that it was time to revisit the Ordinance to improve it. She said the Task Force was appointed by the City Council in August 2018 and held multiple community meetings between then and June 2019. She said the Task Force presented 16 recommendations for the Ordinance to the City Council in July. She said at the start of the project the City Council had identified objectives for updating the Ordinance with a desired outcome to ensure a significant and thriving population of large, healthy trees in Menlo Park for public enjoyment and environmental sustainability while respecting property values and rights and implementation of efficiencies related to staff's time to enforce the ordinance. She said Council also directed that any options that would be explored were evidence-based best practices in other communities. She said this required a full policy analysis of almost all areas of the Ordinance. She described what the Task Force did in Phase 1 and Phase 2 of the project.

Ms. Lucky said in interviewing past applicants and appellants they found that those people did not necessarily disagree with the process rather that they found the decision-making criteria was unclear. She said the Task Force selected three weighted criteria for the update. She said one was clarity of the ordinance so that people understood what the process for the decision making

was and was weighted at 20%. She said the next criteria(on) was to increase or maintain tree canopy of the forest in Menlo Park and that was weighted at 60%. She said the last criteria(on) was to improve the effectiveness of the Ordinance and that was weighted at 20%. She said 26 options were explored and sixteen of those emerged as a preferred option.

Ms. Lucky said the Task Force provided language around the intent and purpose of updating the Ordinance. She said they next looked at the definition of a heritage tree. She said that remained mainly unchanged except as to how multi-trunk trees were evaluated and the new language

Draft Minutes Page 12 City of Menlo Park 701 Laurel St., Menlo Park, CA 94025 tel 650-330-6600 www.menlopark.org

proposed a clear way of measuring those trees that was easy to understand. She said the decision-making process of the Ordinance was overhauled the most. She said they looked at the existing eight decision-making criteria, took the good parts of what was there and enhanced to include industry standards and what to expect when submitting a permit request for removal. She said for example if an application to remove a heritage tree was development-related that the City could now require submitting alternative designs that would preserve the tree. She said other bigger changes were in the appeal area to clean up process to make it easier to understand. She said there were specific standards for filing an appeal with a given timeline and communications between City staff and an appellant. She said often applicants and appellants now did not speak to one another about the issue until the appeal hearing before the EQC. She said the City wanted to offer conflict resolution as a way to resolve issues among neighbors and the community regarding a tree that was being removed. She said another area addressed was when an appeal was filed after a Planning Commission decision as that was the most contentious as it usually involved removing a healthy tree for development. She said the change was now if a tree was tentatively approved by the City Arborist for removal for a project that required Planning Commission approval that the appeal process would occur before the Planning Commission made a decision. She said if the appeal body the EQC decided the tree should remain and not be removed that decision would then be immediately appealable to the City Council. She said if the EQC found the tree should be removed then the project would go to the Planning Commission for decision and both decisions would be appealable to the City Council.

Ms. Lucky said other changes were made related to requirements for mitigation and replacement. She said if a tree that was healthy and not high risk was approved for removal and it was development-related the value of the tree being removed would be replace onsite using an industry standard plant

appraisal guide. She said if there was not enough space to plant the full value of the tree being replaced that the balance of the unreplaced value would be paid into a tree fund the City could use to plant more trees or implement the Ordinance. She said for nondevelopment removals there would be replacement requirement onsite and if not enough room the value would go to the City's tree fund. She said there was a recommendation to expand the use of that fund. She said currently violations paid go into the General Fund. She said the Task Force would like that money to go back into implementing the Ordinance.

Ms. Lucky said there was much concern raised about enforcement of unpermitted heritage tree removals. She said one of the recommendations was to increase the fine from \$5,000 to \$10,000. She said the Task Force was still concerned that was not enough to deter people from removing trees, so they wanted to assess punitive or administrative penalties in addition to the \$10,000 fine. She said depending on how egregious the violation was and that it was clearly a violation the City Council could set additional penalties to address.

She said there was also a recommendation to remove the building-moratorium penalty. She said that said if a tree was removed without permit that building could not occur on the property for six months to a year. She said the City had never used that provision and the City Attorney was recommending removing that and not co-mingle those two different activities.

Ms. Lucky said that the notification process for heritage tree removal was changed so when a permit was applied for there would be notification similar to how Planning permit notifications were done except to a greater area than 300-foot radius. She said also the recommendation was to have open access to all heritage tree removal permits and appeals.

Ms. Lucky said the consultant in doing the policy analysis found the City did not have enough

Draft Minutes Page 13 City of Menlo Park 701 Laurel St., Menlo Park, CA 94025 tel 650-330-6600 www.menlopark.org

budgeted to even enforce the current status quo Ordinance. She said the updated policy would require inspection of replacement trees at the initial planting and to inspect again in two years to verify the tree was still there and thriving. She said this was in response to concern that replacement trees were removed or not taken care of well and never grew to heritage tree size. She said the cost of \$185,000 to \$200,000 annually was to pay for inspection work that had never been done previously. She said that could be recovered by increasing the permit fees and also looking at how the mitigation fund was

used as well as reviewing if there was general fund money that could supplement. She said when staff presented this information to the City Council last month it requested staff to look at ways to reduce the cost by at least half when the updated Ordinance was brought back to Council. She said staff was researching things that could be done to reduce the cost.

Ms. Lucky said next steps were to have a draft ordinance for public review by September 12. She said Council directed staff to bring that to the Planning Commission and EQC. She said the Task Force would meet two more times in September and October providing the opportunity for more public input. She said it was anticipated they would return to City Council in October for an updated Ordinance adoption. She said the effective date of the updated Ordinance likely would not occur until July 1, 2020 to allow time to put processes and logistics in place.

Ms. Lucky said this evening the Commission had the option to approve of the proposed recommendations and advise City Council on them. She said the Commission could also provide additional feedback for consideration as the final changes were made moving forward to October.

Chair Barnes opened public comment.

Public Comment:

- Peter Edmonds, Menlo Park, District 3, said he had submitted a written critique of the staff report. He said he wanted to emphasize certain points and made a slide presentation. He said the proposal recommended that the building moratorium for an unpermitted heritage tree removal be removed. He said he thought it was a strong deterrent to keep in the Ordinance. He said regarding the valuation of trees that the [e] proposed recommended Ordinance was desirable.

[Note: This description of Edmonds' Public Comment was revised at the Planning Commission's meeting on 2019-08-26; minutes at E1 of 2019-09-9: "ACTION: Motion and second (DeCardy/Michael Doran) to approve the minutes with the following modification; passes 4-0-2 with Commissioners Camille Kennedy and Michele Tate abstaining:

- Page 13, under Public Comment:

Replace "He said he thought it was a strong deterrent to keep in the Ordinance. He said regarding the valuation of trees that the e proposed recommended Ordinance was desirable."

with:

“He disagreed and said he thought it was a strong deterrent to keep the penalty in the Ordinance. He said regarding the valuation of trees that the proposed and recommended section of the Ordinance was desirable but insufficient, because it neglected valuation of intangible benefits.””]

Chair Barnes closed public comment.

Commission Comment:

Commissioner DeCardy noted for the record that Chair Barnes had also served on the EQC and had direct experience with these hearings as well. He said he applauded the effort to get clarity between when a heritage-tree issue would come before the Planning Commission and the EQC. He said the recommendation seemed a plan that would address that well to get the sequencing right. He said he wholeheartedly supported the EQC as the main body for the appeal process. He referred to the section on appeal-filing standards and the section on mitigation and tree-replacement requirement. He said a familiar moment at the EQC was the desire to remove a mature and healthy tree relatively soon after a property sold and there was a new owner who wanted to use the property for other purposes. He asked if the Task Force looked explicitly at disclosure requirements around heritage trees at the time of deed transfer to make it much more explicit than it was now. Ms. Lucky said that was discussed a few times throughout the meetings. She said there were a lot of areas where implementation could be improved but that was not necessarily policy language that went into the Ordinance itself. She said the Task Force

Draft Minutes Page 14 City of Menlo Park 701 Laurel St., Menlo Park, CA 94025 tel 650-330-6600 www.menlopark.org discussed education and people at the point of sale might be better engaged to understand what the requirements were.

Commissioner DeCardy said he supported that going forward and supported a disclosure document that new owners actually had to sign acknowledging the heritage trees and their conditions at that point of sale.

Commissioner DeCardy said the frequent reason for the removal of a tree was the differing opinions about the risk of failure of the tree. He said in the section of mitigation and tree-replacement requirements it was noted the City would identify an approved list of tree appraisers to reduce appraisal conflicts between the City Arborist and the applicant’s arborist. He said that was a good idea. He asked if the Task Force for the appeal filing standards had considered similarly the same for a qualified tree risk assessor. He said without similar language there his concern was to continue to have much different assessments by different certified arborists. Ms. Lucky said their

intent was to expand it to a list of approved arborists that could perform work in the City. She said there was a lot of interaction now where assessments were not matching up or skill levels were different among arborists. She said having the approved list was to reduce conflicts or misunderstanding among staff, permit applicant and arborist. She said that would go into the implementation items and not necessarily in the Ordinance. She said the City would make a staff ruling that only a certain list of arborists could be used that could perform arborists' report and she confirmed for Commissioner DeCardy that would include the upfront tree assessments he referenced.

Commissioner DeCardy noted the community benefit from heritage trees but the disparity related to the costs of maintaining heritage trees on a property versus not having any to maintain. He said a mature oak tree in the City was actually irreplaceable in their lifetimes and had an infinite value on one level to the overall benefit of the City. He said he appreciated having the punitive costs in addition to the \$10,000 fine for illegally removing a heritage tree, but he thought it would still be difficult to work through. He said he would like to see more money going into the tree fund and an increase in the replacement ratio requirement. He said there were opportunities for tree plantings just along the streets if the City had the capacity to plant those. He said a way to reduce the costs of implementation was to have a heritage-tree cost assessed to every parcel in the City and make it a property owner's responsibility to certify that their property had a heritage tree they maintained to have that cost removed. He said it would be more equitable than how it was structured now. He asked if they had seen this used as a best practice in cities they had interviewed. Ms. Lucky said they did not find it as a practice in other communities. She said they found other communities struggled and were challenged with verifying replacement trees. **She said they could explore and bring forward Commissioner DeCardy's idea.**

Commissioner DeCardy said he had concerns not only with the costs of enforcement but also with the value of enforcement given the ease with which that could be worked around. He said overall, he was supportive of the proposed update and an improvement especially about the process between the Planning Commission and EQC.

Commissioner Doran said the staff report listed two reasons to support removing the building moratorium as a punitive measure. He said the first was that it was not used in practice and the second that the City Attorney advised against the practice due to the legal challenges. He asked under the current Ordinance what was the method to implement that building moratorium in

instances where a person had blatantly violated the Ordinance. Ms. Lucky said she had no direct experience with moratoriums. She said when the City Attorney reviewed this section that there were two different activities involved. She said one was removal of a tree that might or might not be

Draft Minutes Page 15 City of Menlo Park 701 Laurel St., Menlo Park, CA 94025 tel 650-330-6600 www.menlopark.org

connected to the development so there was not a clear nexus that would be difficult to defend in court. Commissioner Doran said he thought a building moratorium was a valuable tool even if it had never been used. He said the value of property in development was enormous. He said they were making progress on what the economic sanctions, the fines, would be. He said the ultimate sanction was not allowing people to develop the property and he would like that retained.

Commissioner Riggs said he agreed with Commissioner Doran. He said if there was enough certainty to impose a \$10,000 or \$20,000 fine that a level of certainty could be reached to delay a project. He said ultimately it would be how well enforcement was implemented. He said regarding enforcement he would like to see a method where the City would not have to wait for a neighbor to report a tree removal violation as that was uncomfortable for people. He said there was technology to report a gunshot within 50 feet and suggested something that would identify chain saws operating on Saturday (he had noted previously that Code Enforcement hours were Monday through Friday, 8 a.m. to 5 p.m.). He said as mentioned a mature oak was irreplaceable. He described a project wherein unintentionally a backhoe operator dug a trench across the front of two sixty-year-old oak trees on a hillside impacting roots that then had to be removed. He said mature oak trees about 40 years of age were purchased near Watsonville, transported and lowered into the ground by cranes to replace those trees. He said the total cost for that was around \$100,000. He said the City should consider that.

Commissioner Riggs said he was very pleased that the Ordinance update was happening. He said on page 5 were enumerated decision-making criteria for tree removal. He suggested either to include an item 7 or allow an administrative process that acknowledged a similar condition. He said depending on the heritage tree species some were approved for removal more readily than others. He said it might be useful to have a combination factor where if the tree was considered low value that that by itself would not justify tree removal. Ms. Lucky confirmed that if it was a low value tree that other criteria was required for removal and not just based on the low value. Commissioner Riggs said justification for removal because of utilities was not enough justification alone to warrant removal either. He referred to page 7

under violations that read: “The Task Force strongly advises (advises) that the City Council set these penalties high enough to deter violations that they have witnessed regularly or to avoid the permitting process that would create developing their property challenging.” He said that sentence’s meaning was unclear and suggested it be reworded for clarity. He referred to page 8 and the need for additional funding to support the processes of the Ordinance but he was concerned with doing that through increasing permit application costs.

Chair Barnes asked where street trees were within the context of the Ordinance. Ms. Lucky said if the street tree was heritage it fell under the Ordinance. Chair Barnes said he lived in the Willows and the problem he saw there were street trees aging out and not being replaced. He said improvement to the urban tree canopy would be a program to ensure replacement when street trees aged out. He thought that loss of street trees was a much greater issue than trees impacted by development. He asked if that was discussed and if so, what was discussed. Ms. Lucky said the EQC for a long time worried that trees were the same age in the community and that trees needed to be planted at different ages to maintain the canopy. She said in an ideal world they would have done the Urban Forest Master Plan first and then completed the Heritage Tree Ordinance Update. She said so many problems had emerged with the Ordinance that it became the priority to update before the Urban Forest Master Plan. She said the latter would look at street trees and trees on private property and develop strategies and ways to increase canopy to address issues of aging and how to strategically replant those. Chair Barnes said attention had to be put to replacing street trees as that was not happening now. He said other neighborhoods the same vintage as his must

Draft Minutes Page 16 City of Menlo Park 701 Laurel St., Menlo Park, CA 94025 tel 650-330-6600 www.menlopark.org

be experiencing the loss of street trees too. He reasserted that trees lost to development paled in comparison to what was being lost with street trees aging out and not being replaced. He asked if there was data related to that. Ms. Lucky said there was, and she could have the City Arborist provide that information. Chair Barnes noted the update was wonderful. He asked if there was a path to address his concern in the update and what that might look like. Ms. Lucky said street trees were required to comply with the Ordinance so they would be required to have the same replacement ratio if removed. She said she would need to talk with the City Arborist as to why replacement street trees had not been planted. She said there were a lot of vacant spots as mentioned by Commissioner DeCardy. She said they would need to investigate.

Chair Barnes said he liked Commissioner DeCardy's idea about assessing each parcel for heritage tree maintenance and a mechanism for property owners to be exempt by certifying heritage trees on their properties. He said if \$185,000 to \$200,000 annually was needed to implement the Ordinance that should be supported. He noted decision making criteria for tree removal and the third paragraph that said a tree-removal permit could be granted if the decision maker was able to make one of the following findings. He asked who approved tree-removal permits. Ms. Lucky said the City Arborist. Chair Barnes said 2a called out providing schematic diagrams that demonstrated the feasibility / livability of all alternative designs including utilizing zoning ordinance variances. He questioned the City Arborist making decisions about feasibility and livability of project plans. Ms. Lucky said that was in consultation with planners. She said the current practice was a consulting arborist firm reviewed many of the development-related heritage-tree removal permits and they communicated with planners to assess whether the development alternative was livable and feasible. She said that there would be administrative rules and requirements that would be a companion to the ordinance around feasibility, documentation, and making those decision. Chair Barnes said he had some concern with what that meant in terms of workload, skill sets and judgment calls associated with that. He said it referred to utilizing zoning ordinance variances to preserve a tree. Interim Director Chow said if a heritage tree removal permit was denied and the tree had to remain then an option could be to seek a variance from the Planning Commission with the hardship being the physical hardship with the location of the tree.

Chair Barnes noted the update indicated the appeal body was the EQC, but the City Council could appoint another body. He said that filling vacancies on existing commissions was tough and he did not think the City Council needed that additional power to create another body. He requested that be removed. He referred to violations and instances in which property owners deliberately harmed heritage trees for one motivation or another so there was no choice except to remove the tree. He asked if that was discussed. Ms. Lucky said after last month's meeting with the City Council they discussed the responsibility of property owners to maintain trees and what were the penalties if they did not do so or they did something intentionally that led to needing to remove a tree. She said the current ordinance had a section on maintenance and preservation of heritage trees on a property. She said the connection needed to be clearer between how the property owner was responsible for maintaining the tree and not killing it and how that was linked to violations if the property owner did do that. She said the City Attorney was working on language for that. Chair Barnes referred to mitigations and tree-

replacement requirements. He said under the second paragraph it said that appraised tree value would be required for all tree removals and protected trees for a development project. Ms. Lucky said this was for heritage trees and it was to have the value information upfront. Chair Barnes noted the establishment of a tree fund and the need for street-tree plantings. He said to overlook that was a disservice to the community as people did not know about street trees and how to replace those.

Draft Minutes Page 17 City of Menlo Park 701 Laurel St., Menlo Park, CA 94025 tel 650-330-6600 www.menlopark.org

Commissioner DeCardy said if they were moving to recommendations that he would concur with leaving in the building moratorium penalty. He noted Commissioner Riggs' comments on replacing mature oak trees. He said that on the EQC the Arborist recommended the 15-gallon box replacement trees as those had better likelihood of thriving than 24-inch box trees. He said regarding the street-tree replacement that was a combination of not having the budget to do that and agreement with the property owner to water and take care of the tree. He said he wanted to pursue the idea when development removed a heritage tree of requiring a mature-tree replacement elsewhere on the property. He said it was frustrating that heritage trees were replaced with 15-gallon trees and he wished there was some way to get more money into a fund to get a greater ratio of replacement trees in the City or to get larger trees planted in replacement. He said he agreed with Chair Barnes' observations about the loss of street trees. He said with development there were significant financial advantages to ensure tree canopies were taken care of.

Commissioner Riggs said a 15-gallon tree would catch up to a 24-inch box tree in three to four years but would take decades to catch up with the mature tree that had been removed. He suggested they request mature trees for replacement.

Chair Barnes asked who was responsible for maintenance of street trees when they were replanted. Ms. Lucky said she would need to confirm with the City Arborist. Interim Director Chow said it would be best to clarify with the City Arborist, but she understood that property owners were responsible for maintaining street trees. Chair Barnes asked if the City could compel a homeowner to take responsibility for a replacement tree. Ms. Lucky said that was accurate. Chair Barnes asked how street trees were funded. Ms. Lucky said those were funded from the fees collected under the Landscape Assessment District. She said the last time she looked the fund had \$300,000 and \$700,000 was needed to cover street trees. Interim Director Chow said during development projects they worked with the City Arborist and the

consulting arborist to look at trees that might be removed as part of the project either as a result of development or because of bad health and looked at opportunities to replace street trees. Chair Barnes confirmed that staff could request what a fully funded street replacement program would look like and what net new trees would look like over the course of a year. He said he would like that information and to even take it up separately, but he did not know how to get that into the ordinance update. Ms. Lucky said they could bring that comment back to the Task Force to discuss noting they would meet September 12 and in October.

Replying to Commission DeCardy, Ms. Lucky said she would need to ask the City Attorney how the fee for the Landscape Assessment District might be increased. Commissioner DeCardy said that would work with his idea of an assessment. He suggested increasing the fee for the District per parcel and then property owners maintaining heritage trees on their properties could get certification to have their parcel fee reduced. He said that fee now disadvantaged property owners who had the costs of maintaining their heritage trees.

Chair Barnes said that funding education to make information on planting street streets accessible was important.

Commissioner Doran restated that he wanted the building moratorium kept in the Ordinance.

Chair Barnes confirmed with staff and Commissioners that they were comfortable with the recommendations the Commission was making. Ms. Lucky said she had outlined all the Commissioner comments. She said it would be helpful for her if the Commission could take action

Draft Minutes Page 18 City of Menlo Park 701 Laurel St., Menlo Park, CA 94025 tel 650-330-6600 www.menlopark.org

to approve the updated Ordinance with the recommendations it had made tonight to include keeping the building moratorium, street trees, planting larger replacement trees, education, and fee assessment.

Commissioner DeCardy moved to recommend through to the City Council and the Task Force to continue to finalize the Ordinance Update based on the overall recommendations except under violations to maintain the building moratorium and request exploration of the general discussion items brought forward by the Planning Commission. Chair Barnes suggested the building moratorium might not be legally possible. Commissioner Doran said he wanted the building moratorium kept now and later unless there was more

justification for its removal. Chair Barnes said he could not support that. Commissioner Riggs said they were being asked for their opinions and not their legal advice as they were not attorneys. He said it was not unreasonable to offer an opinion knowing that it would be overruled by the City Attorney if legality was the basis for its removal. He said the building moratorium however served a purpose by just being in the Ordinance and he supported that. Chair Barnes said the motion was that the Commission approved the Ordinance Update and for the Task Force to further the recommendations except the Commission had a preference to keep the building moratorium and in addition look at street tree replacement, planting larger replacement trees, education and budget strategies discussed. He said the Council had directed to reduce the anticipated implementation budget by about half and suggested the Commission recommend not reducing the cost. Commissioner DeCardy said he could support that. He said the sentiment was to actually have a program that would allow them to have the canopy they wanted to have in Menlo Park. He said the cost of implementation would be enough to deliver that program and be ideally and equitably distributed across residents of Menlo Park. Chair Barnes said the recommendation was to fully fund the development of an urban canopy throughout Menlo Park as a spending and revenue collection priority for the City. Commissioner Riggs said that replacement of larger sizes meant replacement of a mature tree by a mature tree. Chair Barnes seconded Commissioner DeCardy's motion.

ACTION: Motion and second (DeCardy/Barnes) that the Planning Commission supported the Heritage Tree Ordinance Update recommendations except preferred retaining building moratorium under the section on violations and with additional recommendations of items to consider as listed; passes 4-0 -2 with Commissioners Kennedy and Tate absent.

- Retain building moratorium
- Street tree replacement
- Replacing mature trees with mature trees
- Education
- Funding implementation and budget strategies such as the Landscape Assessment District fee utilization and potential modification as discussed.