



CITY COUNCIL STAFF REPORT

ITEM 5.04

DATE: November 26, 2018

TO: Honorable Mayor and City Council

FROM: Darren Greenwood, Public Works Director
Paul Spence, Community Development Director

SUBJECT: Hearing to introduce an ordinance amending Municipal Code Chapters 12.04 and 12.20 to clarify the maintenance and liability of sidewalks and street trees rests with the adjacent property owner

RECOMMENDED ACTION

Staff recommends the City Council:

1. Introduce an ordinance adding Municipal Code Chapter 12.04 Curbs, Gutters and Sidewalks, Article II Sidewalk Maintenance, to clarify that maintenance and liability responsibility for sidewalks rests with the adjacent property owner consistent with the California Streets and Highways Code and California cases.
2. Introduce an ordinance amending Municipal Code Chapter 12.20 Street Trees and Tree Preservation, Article I Street Trees, establishing and clarifying street tree removal criteria, maintenance responsibilities and obligations, liability, permitting processes, and enforcement actions.

SUMMARY

The City is currently developing a comprehensive asset management program. This program has identified a large funding shortfall for the replacement of assets. An important part of this program is developing policy alternatives which will minimize cost or increase funding for City infrastructure. On June 25, 2018, the City Council approved the 2018 Sidewalk Repair Policy. In order to implement this policy, the City needs to update the Municipal Code Chapters governing Sidewalks and Street Trees. The proposed changes to the Sidewalk and Street Tree Ordinances will help reduce the City's unfunded asset obligations and allow property owners to remove trees that are causing sidewalk damage.

Since 1941 the California Streets and Highways Code has required adjacent property owners to maintain sidewalks. While the City's Municipal Code has been silent about sidewalk maintenance responsibilities, the City has always required the adjacent property owner maintain the front and side yard sidewalk. Consistent with state law and past practice, the proposed Sidewalk Ordinance clarifies that the adjacent property owner is responsible for maintenance and liability of defective sidewalk along the front or side of the property. The City will retain responsibility for both sidewalks and street trees in backing lots and in medians.

The Council directed staff to simplify the permit process to remove and replant a street tree if it is causing a sidewalk defect. While the City's Municipal Code currently requires adjacent property owners maintain street trees, the Municipal Code does not specifically allow adjacent property owners to remove street trees that are causing sidewalk defects. The proposed Street Tree Ordinance adds a provision that a street tree can be removed if it is causing damage to infrastructure (including sidewalks) only if the damage cannot be mitigated by root pruning or other control measures. The proposed Ordinance also aligns street tree ownership with the existing property owner responsibility for maintenance and liability, adds replanting requirements, and adds fines for non-compliance.

The proposed changes should result in quicker and more cost effective repair of sidewalk defects, reduce the City's liability for tree and sidewalk hazards, and streamline the process to remove and replant a street tree, under certain circumstances.

DISCUSSION

City staff is currently working on the development and implementation of a comprehensive asset management program in furtherance of an adopted City Council priority. The goal of this City Council priority is to ensure that the community continues to receive core services through a sustainable infrastructure strategy. To date, staff has identified the need for \$40 million per year in order to replace all of the City's assets on an ongoing basis compared to current spending of about \$10 million per year. Current spending levels are projected to result in a backlog of \$600 million in deferred repair or replacement projects over the next thirty years. In order to close this gap, Council has directed staff to evaluate a variety of potential policy options aimed at protecting the most critical services in a cost-effective manner.

Staff is proposing changes to the City's Municipal Code regarding both sidewalks and street trees to align maintenance responsibility and liability and to clarify that both rest with the adjacent property owner. The proposed changes accomplish a number of specific goals, including:

- Reducing the City's liability for tree and sidewalk hazards
- Reducing the backlog of sidewalk defects
- Streamlining the process to remove and replant a street tree

- Allowing for replanting of trees more appropriate for the soil and location constraints, and
- Providing additional funding to the City's Urban Forestry Fund which is used to promote and increase the City's tree canopy

Sidewalks

2018 Sidewalk Repair Policy

On June 25, 2018, the City Council adopted the 2018 Sidewalk Repair Policy (Attachment 1) to promote the City's sustainable infrastructure strategy and to align City practices with state regulations. The California Streets and Highways Code Section 5610 places the burden of sidewalk maintenance on the adjacent property owner. The 2018 Sidewalk Repair Policy states that the adjacent property owner is responsible for maintenance and liability of sidewalk defects.

The 2018 Sidewalk Repair Policy eliminated the 25 percent City subsidy of sidewalk repairs to property owners and discontinued the practice of the City performing sidewalk repairs on behalf of private property owners beginning June 2018. For property owners on the sidewalk repair list prior to June 2018, the City will continue to reimburse 25 percent of sidewalk repair costs provided the property owner makes the repair before the end of 2019. After this time, all City subsidies will be eliminated. To assist with property owner sidewalk repairs, the City has compiled a pre-qualified contractor list and offers a no-cost encroachment permit process.

The 2018 Sidewalk Repair Policy also requires property owners to complete sidewalk repairs when issued a building permit with a valuation at or over \$50,000. Known sidewalk defects will also be included on the residential building report issued for property sales, but the Policy does not require sidewalk repairs at time-of-sale.

Sidewalk Ordinance Amendments

In order to align the 2018 Sidewalk Repair Policy with the City's Municipal Code Chapter 12.04 Curbs, Gutters and Sidewalks, Council directed staff to return with an ordinance clarifying that maintenance and liability for sidewalk defects rests with the adjacent property owner. While the City's Municipal Code has been silent about sidewalk maintenance responsibilities, the City has always required the adjacent property owner maintain the front and side yard sidewalk. The proposed Sidewalk Ordinance (Attachment 2) adds Article II, Sidewalk Maintenance, which states that the adjacent property owner shall maintain the sidewalk area in good repair and condition that is not dangerous to persons using the sidewalk and does not interfere with the public use of the sidewalk area.

Additionally, the Ordinance states that the adjacent property owner shall be liable for damage or injury if the sidewalk is not maintained in good repair. The City retains the authority to perform sidewalk maintenance and charge the costs to the adjacent property owner if the property owner refuses to mitigate known hazards. And, the Ordinance

requires sidewalk repairs prior to issuing a building permits with a valuation at or over \$50,000.

As mentioned previously, the California Streets and Highways Code places the responsibility to maintain public sidewalk on the adjacent property owners. This responsibility applies to all sidewalks adjacent to the property, including along the frontage and side of the property, and even behind the property in areas with backing lot sidewalks along arterial or collector roadways. Staff initially recommended that the Sidewalk Policy include all sidewalks, including backing lots. However, Council was hesitant to transfer responsibility for backing lot sidewalks to adjacent property owners at the June 2018 meeting, and directed staff to further research the implications of this action. Council also requested that staff confirm the estimated cost to complete a one-time repair of existing backing lot sidewalk defects prior to transferring responsibility.

After completing additional research, staff found no other agencies or jurisdictions that transfer backing lot maintenance responsibility to adjacent property owners despite the ability to do so under the Streets and Highways Code. Additionally, staff completed a more detailed assessment of backing lot defects and determined the one-time repair cost for existing backing lot sidewalk repairs is estimated at \$2 million, including the cost to remove and replace trees causing damage.

Staff also further discussed and explored how private repairs in backing lot areas might work in practice and concluded that additional City implementation costs would outweigh the potential savings from shifting maintenance responsibility. Therefore, staff recommends the City maintain responsibility for backing lot sidewalks.

The Future of the City's Sidewalk Responsibilities

The 2018 Sidewalk Repair Policy and proposed Sidewalk Ordinance strive to create a compliance-driven program, timely repair of sidewalks by adjacent property owners, and promote the safe and comfortable use of sidewalks in the City. The City will continue to be responsible for all sidewalk repairs adjacent to City owned property, along backing lots, in medians, and at pedestrian access ramps. Additionally, the City will continue to implement an inspection program and provide notification, as well as enforcement, to property owners with sidewalk defects, the City will include outstanding sidewalk repair notifications on the Residential Building Report, and require adjacent sidewalk repairs with any construction activity exceeding \$50,000.

Street Trees

Street Tree Ordinance Amendments

On June 25, 2018, Council directed staff to update the City's Street Tree Ordinance to ensure procedures are in place to allow property owners sufficient flexibility to remove or control trees that are impacting sidewalks. Specifically, the Council directed staff to simplify the permit process to remove and replant a street tree if it is causing a sidewalk defect. The proposed Street Tree Ordinance (Attachment 3), as described in detail below, accomplishes a number of goals, including but not limited to:

- Aligning ownership, maintenance, and liability elements
- Updating the street tree permit process
- Allowing street tree removal under specific circumstances
- Mandating replanting requirements
- Including fines for non-compliance, and
- Mandating new irrigation within existing landscape area with new residential or commercial construction or improvements greater than 50 percent of the current replacement cost

These changes will maintain the urban forest which provides tangible benefits to the community, including reducing air and noise pollution, providing energy-saving shade and cooling, furnishing habitat for wildlife, enhancing aesthetics and property values, and contributing to community image, pride, and quality of life. The proposed Street Tree Ordinance does not amend Municipal Code Chapter 12.20, Article II, governing tree preservation on private property.

Ownership, Maintenance, and Liability

The City's Municipal Code currently requires that the adjacent property owner maintain street trees. The proposed Street Tree Ordinance clarifies that the City owns street trees in medians, adjacent to City property, and in backing lots, and that private property owners own street trees adjacent to their front and side yard. This aligns ownership with maintenance and liability responsibilities. While this change results in Street Trees being private assets in the public right of way, the City retains the authority to regulate street trees. Adjacent property owners are only allowed to remove and replant street trees with a City approved permit. The adjacent property owner continues to be fully responsible for street tree maintenance, but the City can perform street tree maintenance and charge the costs to the adjacent property owner if the property owner refuses to mitigate known hazards.

Street Tree Removal

The City's Municipal Code states that with an approved permit an adjacent property owner can remove a street tree if the tree is dead, damaged beyond repair, having an inadequate root system, damaging storm drains or sanitary sewer lines, causing structural damage, hazardous to public safety or welfare, or part of a planned street-tree removal program. Currently, the Municipal Code does not specifically allow adjacent property owners to remove street trees that are causing sidewalk defects. However, in some situations staff has approved permits to remove street trees causing infrastructure damage.

Because the 2018 Sidewalk Repair Policy and the proposed Sidewalk Ordinance clarify that maintenance of and liability for sidewalk defects rests with the adjacent property owner, and because a significant portion of sidewalk defects result from street trees, the Council directed staff to return with an Street Tree Ordinance providing the adjacent property owner flexibility to remove street trees that are impacting infrastructure (including sidewalks).

The proposed Street Tree Ordinance adds a provision that a street tree can be removed if it is causing damage to infrastructure (including sidewalks) only if the damage cannot be mitigated by root pruning or other control measures. To remove a street tree, the adjacent property owner must have an approved Street Tree Permit and comply with replanting requirements as discussed below.

While there will be circumstances where street tree removal may be the best option to promote the safe and comfortable use of the sidewalk, there will also be situations where the property owner can employ other control measures to eliminate or reduce sidewalk impacts without removing the street tree. For street trees where other control measures can be employed, the City may suggest modifying or "jogging" the sidewalk around the street tree/roots, root pruning and/or installing a root barrier and shaving the sidewalk, using new sidewalk materials that better accommodate root lifting, and/or periodically replacing the sidewalk on an as-needed basis. For all situations, the City will provide property owners with education about the value of street trees, and methods to properly plant, water, and maintain street trees.

Street Tree Replanting

Currently there are no requirements to replant a street tree if removed; replanting requirements in Municipal Code 12.20 Article II pertain to trees on private property and the City has been using these requirements to determine street tree replacement ratios.

The proposed Street Tree Ordinance adds a street tree replanting requirement and directs staff to draft a Street Tree replanting policy. Staff recommends for every street tree removed, the adjacent property owner must plant a 15-gallon or larger replacement tree and pay \$100 to the Urban Forestry Fund. The ordinance also requires that new street trees be planted in accordance with City standard details. The city's arborist will suggest a few appropriate trees for the specific site and soil conditions, and may require the adjacent property owner institute additional measures to alleviate future sidewalk/root problems such as, deep watering holes, bubble-based irrigation, and/or selecting a more appropriate location to plant with higher likelihood of success.

Requiring the adjacent property owner to replant and pay a fee to the City's Urban Forestry Fund will help to maintain and diversify the City's tree canopy.

Other Changes

The proposed Street Tree Ordinance also adds fines for trees removed without a permit, and these fines can apply to both the property owner and the tree removal company. This will help to increase tree permit compliance which provides an opportunity for the City to provide information to property owners on the importance of street trees and alternatives to tree removal.

Additionally, the proposed Ordinance requires adjacent property owners to install irrigation within existing landscape areas for new commercial or residential construction,

or for improvements that exceed 50 percent of the value of replacing the existing development.

The proposed Street Tree Ordinance also removes references to a “tree plan” and replaces it with references to the approved “street tree list” which is document in the City’s Standard Details. This list only includes trees that are suitable to Livermore’s climate and soil conditions, and details each tree’s characteristics (deciduous, evergreen, etc.), cultural preferences (sun, part shade, etc.), tolerances (well drained, alkaline soils, etc.), growth information (height in 10 years, spread in 10 years, etc.), and planting information (minimum planter size, sidewalk damage potential, pruning frequency). The City arborist will recommend replacement trees from this list specific to site and soil conditions.

Finally, while not delineated in the proposed Street Tree Ordinance, the City will also streamline the street tree permit process by making it available for online submittal, eliminating unnecessary requirements, and adjusting the permit to include any changes made with the adoption of this ordinance. In order to encourage a high level of compliance with the Street Tree Ordinance, the Street Tree Permit will continue to be a no-cost permit.

CAMP Committee

City staff reviewed the proposed ordinance changes with the Community Asset Management Program (CAMP) committee for their input and comments. Overall, the CAMP members agreed with the recommended changes. CAMP members emphasized the need to begin citywide education regarding the ordinance changes and tips on successful tree planting and maintenance.

CAMP members also discussed the possibility of the City providing a street tree to the property owner with an approved street tree removal permit. While not addressed in the proposed Street Tree ordinance, staff proposes a trial program to implement the CAMP suggestion for the City to supply a replacement street tree for several years to determine the cost and success of such a replacement program.

Community Education

The City will initiate a public education effort about sidewalk maintenance and liability responsibilities. This education will include outreach via social media, on the City’s website, in the City’s newsletter, and other resources to ensure that businesses and residents are updated on the new rules. The City will also provide this information to arborists and tree services licensed to do business in Livermore. Additionally, the City will create and distribute educational materials with tips on successful tree planting and maintenance information. Finally, the City will begin community education about the City’s infrastructure obligations and asset management efforts.

ENVIRONMENTAL DETERMINATION

The proposed Sidewalk Ordinance and Street Tree Ordinance are exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3), a general rule that CEQA applies only to projects that have a potential for causing a significant effect on the environment. The proposed amendments to the Municipal Code Chapters governing Sidewalks and Street Trees are technical changes and clarifications that if approved help reduce the City's unfunded asset obligations.

FISCAL AND ADMINISTRATIVE IMPACTS

The City will continue to be responsible to maintain sidewalks adjacent to City owned property, backing lots, and at pedestrian access ramps, and to implement an annual inspection program and provide notification as well as enforcement to property owners with sidewalk defects. These efforts can be completed within current sidewalk repair budgets of approximately \$300,000 per year.

Street Tree permit applications will continue to be processed at no cost to the applicant. Tree permits cost the City approximately \$400 each in staff time. At approximately 200 street tree permits per year, this will cost approximately \$80,000 per year in staff time and is included in existing budgets. If the City supplies a replacement street tree to property owners with approved removal permits, the city anticipates spending approximately \$10,000 per year for street trees.

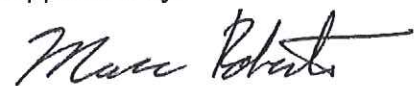
ATTACHMENTS

1. 2018 Sidewalk Repair Policy
2. Proposed Amendments to Livermore Municipal Code Chapter 12.04, Curbs, Gutters and Sidewalks
3. Proposed Amendments to Livermore Municipal Code Chapter 12.20, Street Trees and Tree Preservation

Prepared by:

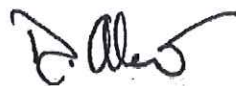
Debbie Bell
Management Analyst

Approved by:



Marc Roberts
City Manager

Fiscal Review by:



Douglas Alessio
Administrative Services Director

2018 SIDEWALK REPAIR POLICY

Adopted on June 25, 2018
Resolution 2018-105

Purpose

The purpose of the City's Sidewalk Repair Policy is to encourage the timely repair of sidewalks by property owners in order to promote the safe and comfortable use of sidewalks in the City of Livermore.

Obligation of Adjacent Property Owner

In accordance with section 5610 of the California Streets and Highways Code, the owners of real property shall maintain and repair any sidewalk adjacent to their property in a safe and non-dangerous condition. The property owner shall be solely responsible for the financial cost of maintaining or repairing such sidewalk.

The owner of any real property shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and non-dangerous condition. If, as a result of the failure of the property owner to maintain the sidewalk area in a non-dangerous condition, any person suffers injury or damage to person or property, the property owner shall be liable to such person for the resulting damages or injury. This responsibility shall be detailed in a future ordinance.

Compliance Notifications

Upon notification of a defective sidewalk area, City staff shall send a notice to the property owner stating that the property owner is responsible to make repairs to the sidewalk and shall make such repairs within 30 days.

Building Permits

As a condition of the issuance of any building permit with a valuation over \$50,000, the applicant shall cause any defective sidewalk adjacent to their property to be repaired.

Transition to new policy

In the past, the City offered both a subsidy for property owners (25% of construction cost) and the option to have the City perform the work. Over the past six years, the City has compiled a growing list of locations that need repair. Property owners that are already on this list will be offered the 25% construction cost subsidy as reimbursement (not to exceed \$12 per square foot) but will have to arrange for the work to be completed themselves.

Chapter 12.04

CURBS, GUTTERS AND SIDEWALKS

Article I. Construction

- 12.04.010 Unimproved curbs, gutters and sidewalks - Findings
- 12.04.020 Construction – Location and specifications.
- 12.04.030 Sidewalk width.
- 12.04.040 Construction – Approval by building official prerequisite to utility connections when.
- 12.04.050 Exception – Rural residential subdivisions with lots over 10 acres.

Article II. Sidewalk Maintenance

- 12.04.060 Maintenance and repair of sidewalks.
- 12.04.070 Inspection required for permit clearance.
- 12.04.080 Notice to repair – Manner in which given.
- 12.04.090 Notice to repair – Information required posting.
- 12.04.100 Failure of abutting property owner to repair.
- 12.04.110 Report by City Engineer after completion of repairs.
- 12.04.120 Completion of repairs. Notice of cost and hearing by council.
- 12.04.130 Hearing by City Council.
- 12.04.140 Assessments on property.
- 12.04.150 No mandatory duty of City created.

Article II. Sidewalk Maintenance

12.04.060 Maintenance and repair of sidewalks.

A. Except as provided herein, the maintenance and repair of sidewalk areas and the making, confirming and collecting of assessments for the cost and expenses of said maintenance and repair, may be done and the proceedings may be had and taken in accordance with this Chapter 12.04 and the procedure provided in Chapter 22 of Division 7, Part 3, of the California Streets and Highways Code as the same is now in effect or may hereafter be amended. In the event of any conflict between the provisions

of said Chapter 22 of Division 7, Part 3, of the California Streets and Highways Code and this Chapter 12.04, the provisions of Chapter 12.04 shall control.

B. As used in this Article “sidewalk area” includes the sidewalk, any park or parking strip maintained in the area between the property line and the street line, and the curbing, gutter, driveway, bulkheads, retaining walls or other works for the protection of any sidewalk or of any park or parking strip.

C. The owner of a lot or portion of a lot fronting on, or adjacent from the side yard to, any portion of sidewalk area, shall maintain such sidewalk area in good repair and condition. This duty includes but is not limited to, maintenance and repair of surfaces including grinding, removal and replacement of sidewalks, repair and maintenance of curb and gutters, removal or filling or replacement of parking strips, removal of weeds and/or debris, tree root pruning and installing root barriers, trimming of shrubs and/or ground cover, so that the sidewalk area will remain in a condition that is not dangerous to property or to persons using the sidewalk area in a reasonable manner and will be in a condition that will not interfere with the public convenience in the use of the sidewalk area.

D. An owner required by this section to maintain a sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and nondangerous condition. If as a result an owner’s failure to maintain a sidewalk area in a safe and nondangerous condition, any person suffers injury or damage to person or property, the owner shall be liable to the person for the resulting damage or injury. If more than one party is an owner, the responsibilities, duties, and liabilities established by this Article are joint and several to each party.

E. The City shall have a cause of action for indemnity against a property owner for any damages it may be required to pay as satisfaction of any judgment or settlement of any claim that results from injury to persons or property as a legal result of the owner’s failure to maintain a sidewalk area in accordance with this section.

12.04.070 Inspection required for permit clearance.

The City shall inspect the condition of the sidewalk area fronting on, or adjacent from the side yard to, any portion of the property prior to the issuance of any building permit for work in excess of \$50,000 pertaining to occupancy or construction on that property. All such permits, prior to final issuance, shall require a notation that a sidewalk inspection was completed and that the sidewalk area is not in need of repair, that the repair has been completed, or that the repair has been bonded to the satisfaction of the City Engineer.

12.04.080 Notice to repair – Manner in which given.

When any portion of a sidewalk area is out of repair or pending reconstruction and in condition to endanger persons or property or interfere with the public convenience in the use of such sidewalk area, the City Engineer shall notify the owner or person in possession of the property fronting on, or adjacent from the side yard to, such sidewalk area that the sidewalk area is out of repair and it must be repaired. Notice may be given by one of the following: (1) delivering written notice personally to owner or to person in possession of the property fronting on, or adjacent from the side yard to, the sidewalk out of repair; (2) mailing a postal card, postage prepaid, to the person in possession of such property, or to the owner thereof at his/her last known address, as the same appears on the last equalized assessment rolls of the City, or to the name and address of the person owning such property, as shown in the records of the City Clerk.

12.04.090 Notice to repair – Information required posting.

The postal card provided for in LMC 12.04.080 shall contain a notice to repair the sidewalk area out of repair, and the City Engineer shall, upon the mailing of the notice, cause a copy thereof printed on a card of not less than eight inches by ten inches in size, to be posted in a conspicuous place on the property.

The notice shall particularly specify what work is required to be done, how it is to be done, what materials shall be used in the repair and shall further specify that if the repair is not commenced within a reasonable time after notice is given, and diligently and without interruption prosecuted to completion, the City Engineer may make such repair and seek recovery for the costs of the repair.

12.04.100 Failure of abutting property owner to repair.

If repair of a sidewalk area is not commenced and completed with due diligence, by the property owner or person in possession of the property, as required by the notice provided in LMC 12.04.080 or 12.04.090, the City Engineer may repair the sidewalk area and seek recovery for the costs of the repair.

12.04.110 Report by City Engineer after completion of repairs.

Upon completion of the repair to a sidewalk area pursuant to LMC 12.04.100, the City Engineer shall prepare and file with the City Council a report specifying the repairs which have been made, the cost of the repairs, the description of the real property in front of, or adjacent to the side yard, where the repairs have been made and the assessment against each lot or parcel of land proposed to be levied to pay the cost thereof.

12.04.120 Completion of repairs. Notice of cost and hearing by council.

Upon completion of the repairs or construction to a sidewalk area pursuant to LMC 12.04.100 and 12.04.110, the City Engineer shall cause notice of the cost of the repairs

or construction to be given to the property owner. The notice shall specify the date, time, and place when the City Council will hear and pass on the report of the costs of the repair, together with any written objections or protests which may be raised by any property owner liable to be assessed for the cost of such repair or construction and any other interested persons. The notice shall also describe the procedure to be followed for such written objections or protests. In no event, shall the hearing provided in this section be sooner than 10 days after giving of notice.

12.04.130 Hearing by City Council.

The City Council, on the date and time fixed for hearing, shall hear and pass upon the report of the City Engineer, together with any written protests or objections, which have not been withdrawn prior to the hearing, from property owners liable to be assessed for the work of making such repairs in accordance with the procedure provided in Chapter 22 of Division 7, Part 3 of the California Streets and Highway Code.

12.04.140 Assessments on property.

If the property owner fails to pay for the costs and expenses of maintenance and repair to the sidewalk area, within 10 days of written notice of the City Council decision by the City Engineer, the City may collect assessments for the costs and expenses of such maintenance and repair, including but not limited to placing a lien on the owner's property, having the assessment placed on the property tax rolls, or any other method of collection legally available to the City.

12.04.150 No mandatory duty of City created.

Nothing in this chapter is intended to create a mandatory duty on the part of the City to protect persons or property from a violation of the provisions of this chapter.



INTEROFFICE MEMORANDUM

Date: November 26, 2018

To: Honorable Mayor and City Council Members

From: Darren Greenwood, Public Works Director

Subject: Agenda Item 5.04 – Revised Attachment 3 to Staff Report/Exhibit A to Ordinance for LMC 12.20

Attached is a revised Attachment 3 to the staff report/Exhibit A to Ordinance 2 amending Municipal Code Chapter 12.20 for Item 5.04 in your agenda packet.

Additional changes to Municipal Code Chapter 12.20 were made to add a definition for landscaping, amend the definition of street tree, adjust the paragraph formatting for street tree ownership, and remove permit requirements to plant shrubs or plants within the public right-of-way, per the following language (added language indicated by underlined text and stricken language indicated by ~~interlined text~~):

12.20.010 Definitions.

D. "Landscaping" means any plant form planted within the public right-of-way other than a tree.

...

HG. "Street tree" means any tree ~~plant form planted and maintained~~ within the public right-of-way.

12.20.020 Ownership of street trees.

A. Street trees and landscaping located in the public right-of-way, adjacent to the rear yard of private property, ~~and/or~~ in the median are the property of the City.

B. Street trees and landscaping located in the public right-of-way, along the street frontage, or adjacent from the side yard, to private property, are the property of the adjacent property owner.

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12.20.050 Planting street trees – Permit required.

No tree, ~~plant or shrub~~ shall be planted or placed in or upon any public right-of-way without a permit ~~therefore~~ having first been issued by the ~~superintendent~~ Director, or as part of an approved development plan. Such permit shall not require the payment of any application fee or other cost to the applicant, and will only be issued if it is found that such proposed planting or placing is in accordance with the ~~approved~~ master street tree planlist.

Attachments:

Attachment 3 to staff report/Exhibit A to Ordinance 2 – Amended Municipal Code Chapter 12.20, Article I, *Street Trees*

Chapter 12.20

STREET TREES AND TREE PRESERVATION

Article I. Street Trees

- 12.20.010 Definitions.
- 12.20.020 ~~Street trees are city property.~~Ownership of street trees.
- 12.20.030 Planting, removing or injuring trees—~~Conformity with requirements.~~
- 12.20.040 ~~Street tree plan~~Master street tree list – City ~~engineer~~Engineer authority.
- 12.20.050 Planting street trees – Permit required.
- 12.20.060 Planting street trees – Agreement prerequisite to building permit issuance.
- 12.20.070 ~~Tree trimming restrictions.~~Maintenance of street trees.
- 12.20.080 ~~Trimming, root pruning or removal—Application to City required—~~
~~Superintendent authority.~~ Application for street tree removal permit –
Director authority.
- 12.20.090 Criteria for street tree removal.
- 12.20.~~090~~100 Removal of trees – Notice posting required.
- 12.20.~~400~~110 Emergency removal of trees.
- 12.20.~~140~~115 Appeal procedure.
- 12.20.120 Parkway paving restrictions.
- 12.20.121 Violations.
- 12.20.122 Penalties and administrative proceedings.
- 12.20.123 Remedies not exclusive.

Article I. Street Trees

12.20.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless otherwise specifically defined:

- A. “City ~~engineer~~Engineer” means the ~~city engineer~~City Engineer of the City of Livermore.

B. "Days," unless otherwise provided, always means calendar days.

C. "Director" means the Director of Public Works or his/her designee.

D. "Landscaping" means any plant form planted within the public right-of-way other than a tree.

ED. "Parkway," "parkway strip," or "planter strip" means that area within the public right-of-way lying between the curb and sidewalk.

FE. "Person" means individuals, corporations, associations, partnerships and, to the extent of the City's jurisdiction, public entities.

GF. "Street/public right-of-way" means all property dedicated to public use and includes, but is not limited to, streets from property line to property line, alleys, easements, dedicated bike paths, or open spaces.

HG. "Street tree" means any tree plant form planted and maintained within the public right-of-way.

H. "Superintendent" means the maintenance superintendent or his successor or designee.

12.20.020 ~~Street trees are city property~~Ownership of street trees.

A. Street trees and landscaping located in the public right-of-way, adjacent to the rear yard of private property, and or in the median are the property of the City.

B. Street trees and landscaping located in the public right-of-way, along the street frontage, or adjacent from the side yard, to private property, are the property of the adjacent property owner.

All street trees within the City are the property of the City. The Director shall have the exclusive authority and responsibility, except as hereinafter provided, to plant, remove, prune, inspect, maintain, root-prune, or otherwise alter such street trees.

12.20.030 Planting, removing or injuring trees –Conformity with requirements.

It is unlawful, and a public nuisance, for any person to plant, remove, prune, injure or destroy any street tree, as defined in LMC 12.20.010, except in conformance with the provisions of this chapter.

12.20.040 ~~Street tree plan~~ Master street tree list – City ~~engineer~~Engineer authority.

The ~~city engineer~~City Engineer is authorized and directed to maintain a master list of trees that may be planted in the public right-of-way. ~~precise plan for the establishment and maintenance of street trees within the City. The plan will include designation of particular species or varieties of trees that may be planted on certain streets, together with a statement of such plants, shrubs or trees as shall not be planted within the public right-of-way. Such plan will be approved by the City Council.~~

12.20.050 Planting street trees – Permit required.

No tree, ~~plant or shrub~~ shall be planted or placed in or upon any public right-of-way without a permit ~~therefor~~ having first been issued by the ~~superintendent~~Director, or as part of an approved development plan. Such permit shall not require the payment of any application fee or other cost to the applicant, and will only be issued if it is found that such proposed planting or placing is in accordance with the ~~approved~~master street tree ~~plan~~list.

12.20.060 Planting street trees – Agreement prerequisite to building permit issuance.

A building permit for the construction of any new residential or commercial building or improvement to any existing residential or commercial building in an amount exceeding 50 percent of the current replacement cost of the existing building shall not be issued unless the applicant ~~therefor~~ shall agree to cause street trees to be planted within the ~~city~~public right-of-way adjacent to the property upon which the proposed building is located, in accordance with the ~~adopted~~master street tree ~~plan for the particular streets~~list, and /or irrigation installed along existing landscape areas to the specifications of the ~~city engineer~~City Engineer.

~~12.20.070 Tree trimming restrictions.~~

~~A. It is unlawful for the owner or occupant of any premises having street trees in front of or adjacent to such premises to fail or neglect to keep such street trees trimmed so that no limbs, branches or leaves thereon are more than two feet, measured horizontally from the trunk of the tree, adjacent to a sidewalk or bike path, or lower than eight feet above the normal grade of the sidewalk or bike path, or lower than 10 feet above the official curb grade on the street side of the tree.~~

~~B. If, and/or when the superintendent becomes aware of such condition, he may:~~

~~1. Cause the work to be done immediately if such condition poses an extreme hazard to the safe use of the street or sidewalk;~~

~~2. Place a notice of such condition on the tree in question and simultaneously notify the owner or occupant responsible for trimming such street tree of such hazard, and requiring such owner or occupant to take action to mitigate such hazardous condition within 10 days of such notice. If the owner of such noticed property fails to complete the required remedial work within the time limit, the superintendent will cause the work to be done, and all costs for such work will be charged to the noticed property owner.
(1960 code § 23B.6)~~

12.20.070 Maintenance of street trees.

~~-A. The owner of a lot fronting on, or adjacent from the side yard to, any portion of a street must maintain the street trees and other landscaping growing along the frontage or in the public right-of-way adjacent to the side yard, including in any park or parking strip between the property line and the street line.~~

~~B. The owner's obligations under subsection (A) of this section include at a minimum all of the following:~~

~~1. Maintaining the street trees and other landscaping in a safe and nondangerous condition as will not interfere with the public convenience or safety in the use of the public street and sidewalk in accordance with the International Society of Arboriculture Standards or the American National Standard Institute, including:~~

- a. Ensuring sufficient passage of light from any public street light to the street;
- b. Ensuring a minimum 8 foot vertical pedestrian clearance from the top of the sidewalk and a minimum 12 foot vehicular clearance from the top of the pavement, unless greater clearance is needed for unimpeded vehicular traffic, to any part of a street tree;
- c. Ensuring street signs, parking restriction signs, bus stop signs, and other directional and regulatory signs are not obstructed;
- d. Removing dead, decayed, or broken limbs or branches that overhang the public right-of way.
- e. Deep root watering, root pruning, installing root barriers, fertilizing, and pest control.
- f. Clearance, structural, and safety pruning.
- g. Removal of fallen leaves, branches, and other debris.

2. Replacing any removed or otherwise missing street tree as may be required by this chapter.

3. Replacing any removed or otherwise missing landscaping if the landscaping was required to be planted by this code or an approved development plan.

C. Although property owners are not required to obtain a permit for trimming or maintenance of street trees, all trimming and maintenance of street trees must be conducted in accordance with the International Society of Arboriculture Standards or the American National Standard Institute and may not be excessive or cause harm to the street tree which negatively affects its growth.

D. If any property owner fails to maintain any trees, shrubs, or other landscaping along the street frontage, or in the public right-of-way adjacent from the side yard, to the owner's property in a safe and nondangerous manner as required by this section, and

as a result any person suffers damage or injury to person or property, the property owner shall be liable to such person for the resulting damages or injury.

E. The City shall have a cause of action for indemnity against a property owner for any damages it may be required to pay as satisfaction of any judgment or settlement of any claim from injury to persons or property as a legal result of the owner's failure to maintain a street tree, shrub, or other landscaping in accordance with this section.

F. If the Director becomes aware that a property owner has failed to properly maintain a street tree, he/she may:

1. Cause the work to be done immediately if such condition poses an imminent hazard to the safe use of the street or sidewalk.

2. Place a notice of such condition on the tree in question and notify the owner or occupant responsible for trimming street tree of such hazard and require the owner to take action to mitigate the hazardous condition within 10 days of such notice. If the owner fails to complete the required remedial work within the time limit, the Director may cause the work to be done and all costs for such work will be charged to the property owner.

12.20.080 ~~Trimming, root pruning or removal – Application to City required – Superintendent authority~~ Application for street tree removal permit – Director authority.

A. It is unlawful for any person to intentionally ~~cut, trim, prune branches or roots,~~ remove or cause injury by the use of chemicals such as salt, oil, herbicide or any other material deleterious to growth or health ~~of~~to street trees, ~~in or upon any street right-of-way, parkway strip, sidewalk, park, landscaped area, playground, or other public area in the City,~~ or to cause or permit the same to be done, without first obtaining a valid street tree removal permit.

B. ~~Provided, however, that permission to cut, prune branches or roots, remove or otherwise impair the natural growth of any such street tree may be had by the owner of the property upon approval of an application to do so.~~ Upon submission of a street tree removal application to the Director, the Director may permit the removal of a street tree

if the criteria set forth in LMC 12.20.090 is satisfied. Such application will be made to the ~~superintendent,~~Director who ~~will cause~~may require an inspection to be made ~~of the circumstances described in the application,~~ and may thereafter recommend approval or denial of such application, with specific reference to the ~~approved~~master street-tree planting plan~~list~~ and the provisions of this chapter. There shall be no fee for such application or inspection.

C. For any street tree removal permit granted by the Director, the Director shall require as a condition of approval that a replacement tree or trees be planted by the applicant per the Street Tree Replanting Policy. Failure to plant the required tree(s) or pay the required payment within one hundred twenty days of tree removal shall constitute a violation of this chapter and shall be punished in accordance with LMC 12.20.121 and LMC 12.20.122.

D. Upon approval of the application, the property owner, or his/her representative, may do or cause to be done such work as is described on the ~~approved application~~street tree removal permit. Any such work contemplated which may cause a hazard or nuisance to vehicular or pedestrian traffic, or threaten the integrity or continuous operation of electric, gas, telephone, drinking water, sanitary sewer, or cable ~~TV~~television systems or structures, or to any public utilities or public or private structures, may only be undertaken after the ~~superintendent~~Director has certified that he/she is satisfied that proper and sufficient measures will be carried out by the applicant to mitigate against such hazards or nuisances, and in the event of such damage, that the applicant will bear full responsibility or the repair or replacement of such damaged facilities.

~~D. If such application is denied by the superintendent, the applicant may appeal such denial to the Livermore Beautification Committee within 10 working days.~~

12.20.090 Criteria for street tree removal.

A. ~~The decision of the committee will be final, and will be made in writing to the applicant.~~

~~E. The superintendent~~Director, in his/her discretion, may ~~remove or cause~~permit the removal of any street tree which he/she finds to be:

1. ____ Dead;
2. ____ Damaged beyond repair;
3. ____ Having a root system not adequate to reliably support continued growth;
4. ____ Causing documented storm drainage or sanitary sewer stoppages;
5. ____ Part of a planned street-tree removal program;
6. ____ The obvious cause of continuing structural damage or damage to infrastructure which cannot be mitigated by pruning limbs or roots or other reasonable measures;
7. ____ Hazardous to public safety or welfare, or where unusual circumstances require action to be taken by the City. (~~Ord. 2065 § 1(A), 2018; 1960 code § 23B.7~~)
8. Creating a hazard to utilities such as electrical, gas, telephone, drinking water, sanitary sewer, or cable television services;
9. Part of a land use entitlement.

12.20.090100 Removal of trees – Notice posting required.

A. ~~Whenever it is determined, under the provisions of LMC 12.20.080, that a street tree is to be removed, the superintendent shall cause a notice of such action to be prominently posted on the tree to be removed. Such notice shall include the date following which the tree will be removed, the reason(s) for such removal, the person responsible for removal, the name, address and telephone number of the agent of or person responsible for such removal, and the approximate date of such removal. Notice shall be required as a condition of approval for any permit to remove a street tree. The notice shall be made in a form approved and provided by the Director and shall be prominently displayed on or immediately adjacent to the tree that is proposed to be removed. Photographic evidence of posting of said notice shall be submitted to the Director prior to the approval of any street tree removal permit. Any street tree removal permit issued shall be displayed near the tree during the removal process.~~

B. The notice required by this section shall be posted at least five working days in advance of the proposed removal date so that any person wishing to comment on the proposed removal may have the opportunity to respond in writing to such notice to the ~~superintendent~~Director. All ~~such~~ comments ~~as are~~ received before the end of such posting period will be considered by the ~~superintendent~~Director, who will have authority to proceed at his discretion.

12.20.110 Emergency removal of trees.

Notwithstanding the provisions of LMC ~~12.20.090~~12.20.080 and 12.20.100, the ~~superintendent~~Director, at his/her discretion, may proceed to remove or alter, or permit another entity to remove or alter, to any extent he/she deems necessary, any street tree found to be an imminent threat to the public safety or likely to cause injury or damage to persons, structures or utilities ~~if the provisions of LMC 12.20.090 are followed.~~

12.20.115 Appeal procedure.

Any person ~~taking exception to any~~ may appeal the denial, suspension or revocation by the ~~public works department~~Director of a permit applied for or held by such person pursuant to the provisions of this ~~chapter may appeal in writing~~article to the Council~~Beautification Committee~~ by filing ~~with the city clerk~~ a written notice of ~~such~~ appeal, with the Director setting forth the specific grounds thereof. Such notice shall be filed within 14 working days after ~~notice~~the decision of ~~such action appealed from, but in no event later than 30 days after the date of such action.~~the Director. The ~~city clerk~~Director shall ~~forthwith~~ set such matter for hearing before the Council~~Beautification Committee~~, and cause notice ~~thereof~~ to be given to the applicant not less than three working days prior to such hearing. At such hearing, the applicant shall show cause, on the grounds specified in the notice of appeal, why the action ~~excepted to~~ should ~~not~~ be approved. ~~The Council may continue such hearing from time to time, and its~~ Any person choosing to challenge the determination made by the Beautification Committee shall file a written appeal to the City Council. The findings and decision of the appealCity Council shall be final ~~and conclusive in the matter.~~

12.20.120 Parkway paving restrictions.

A. The ~~city engineer~~City Engineer shall forthwith cause rules and regulations to be established governing the paving of parkways or parkway strips within the public right-

of-way. Such rules and regulations shall be based on the area involved, the number of trees, shrubs or plants to be located therein, and the existence or nonexistence of public utilities and materials to be used.

B.- It is unlawful for any person to pave any parkway strip in any manner or with any material whatsoever without having first secured permission there to do so from the ~~public works department.~~Public Works Department. Such department shall grant permission to pave only when the proposal therefor shows that the work to be done shall be in accordance with the rules and regulations therefor as established by the ~~city engineer.~~City Engineer.

12.20.121 Violations.

A violation of any provision of this article or chapter shall be prosecuted as a misdemeanor or infraction at the option of the City Attorney and as further set forth in LMC 12.20.122 with respect to penalties and administrative proceedings.

12.20.122 Penalties and administrative proceedings.

A. Misdemeanors. Any person who violates any provision of this chapter and is convicted of a misdemeanor shall be punished by a fine of not more than \$1,000 or by imprisonment for a period of not more than 6 months or by both such fine and imprisonment.

B. Infractions. Any person who violates any provision of this chapter and is convicted of an infraction shall be punished by a fine as established in LMC 1.16.010. Each person convicted may be deemed guilty of a separate offense for every day during any portion of which any violation is committed or permitted.

C. In addition to the penalty provisions of subsections A and B of this section, violations of LMC 12.20.080 and LMC 12.20.100 may be subject to the administrative proceedings set forth in Chapter 1.2 of the LMC, including, but without limitation, civil penalties, late payment penalties, administrative fees, other related charges and, to the maximum extent permitted by law, tree replacement costs as determined using the most recent edition of the Guide for Plant Appraisal, published by the International Society of Arboriculture.

D. Civil Penalties. In addition to the penalty provisions of subsections A, B and C of this section, the City may bring a civil action against any person who commits, allows or maintains a violation of any provision of this chapter. As part of such civil action, a court may assess against any person who commits, allows or maintains a violation of any provision of this article or chapter a civil penalty in an amount up to five thousand dollars (\$5,000) per violation or in an amount as set forth below:

1. Where the violation has resulted in irreparable injury to or removal of a tree, the civil penalty shall be in an amount up to five thousand dollars (\$5,000) per tree unlawfully injured or removed, or in the full amount of the replacement value of each such tree, whichever amount is higher. Such amount shall be payable to the City. Replacement value shall be determined using the most recent edition of the Guide for Plant Appraisal, published by the International Society of Arboriculture.

2. Injunctive Relief. A civil action may be commenced to abate, enjoin, or otherwise compel the cessation of such violation.

3. Costs. In any civil action brought pursuant to this chapter in which the City prevails, the court shall award to the City all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action, and reasonable attorney fees.

12.20.123 Remedies not exclusive.

To the maximum extent permitted by law, administrative remedies specified in this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided herein shall be cumulative and not exclusive.