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Council Bill Number: 116404

AN ORDINANCE relating to tree protection, amending Sections 25.11.020, 25.11.030, 25.11.040, and 25.11.100 of the Seattle Municipal Code to implement interim tree protection regulations.

Date introduced/referred: November 24, 2008
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Committee: Environment, Emergency Management and Utilities
Sponsor: CONLIN

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Text

AN ORDINANCE relating to tree protection, amending Sections 25.11.020, 25.11.030, 25.11.040, and 25.11.100 of the Seattle Municipal Code to implement interim tree protection regulations.

WHEREAS, it is in the public interest to maximize the retention of large and exceptional trees as these trees provide considerable benefit to the city in reducing storm water runoff and pollution, absorbing air pollutants, providing wildlife habitat, absorbing carbon dioxide, providing shade, stabilizing soil, and enhancing property value; and

WHEREAS, the City is aware of ongoing tree removal on sites that are not undergoing development, which is inconsistent with Comprehensive Plan goals concerning no-net loss of tree canopy, tree retention to enhance Seattle's historic, cultural, environmental and aesthetic character, and general land use policies calling for the retention and protection of trees; and

WHEREAS, the lack of sufficient regulations on sites not undergoing development undermines the long-term goals for tree retention and preservation and encourages tree removal prior to the application of a development permit; and

WHEREAS, it is necessary for the City to adopt interim regulations that temporarily reduce or limit the removal of certain trees prior to the adoption of permanent regulations that address existing tree removal practices that compromise the City's ability to achieve its stated goals for tree protection; and

WHEREAS, while the City is currently studying permanent changes to Chapter 25.11, Tree Protection, of the Seattle Municipal Code to implement the City's Urban Forest Management Plan (UFMP), the UFMP has not been completed at the time of this legislation; and

WHEREAS, the City has legal authority to establish interim measures pursuant to the authority granted by, among other authority, Article 11, Section 11 of the Washington State Constitution, and the Growth Management Act, Chapter 36.70A, RCW; NOW THEREFORE

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 25.11.020 of the Seattle Municipal Code, which Section was last amended by Ordinance 121276, is amended as follows:

25.11.020 Definitions.

"Exceptional tree" means a tree or group of trees that because of its unique historical, ecological, or aesthetic value constitutes an important community resource, and is designated deemed as such by the

Director according to standards and procedures promulgated by the Department of Planning and Development.

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Section 2. Section 25.11.030 of the Seattle Municipal Code, which Section was established by Ordinance 120410, is amended as follows:

25.11.030 Exemptions.

The following activities are exempt from the provisions of this chapter:

- A. Normal and routine pruning operations and maintenance;
- B. Abatement of hazardous tree or tree part, when approved by the Director;
- C. Emergency activities necessary to remedy an immediate threat to public health, safety, or welfare;
- D Tree removal undertaken as part of tree and vegetation management and revegetation of public parkland and open spaces by responsible public agencies or departments;
- E. Tree removal approved as part of an Environmentally Critical Area revegetation plan as provided in Section 25.09.320;
- F. Tree removal shown as part of an issued building or grading permit as provided in Sections 25.11.060, 25.11.070, and 25.11.080;
- G. Removal of street trees as regulated by Title 15 of the SMC, and
- H. Additions to existing structures, shown as part of an issued building or grading permit as provided in Sections 25.11.060, 25.11.070 and 25.11.080.

Section 3. Section 25.11.040 of the Seattle Municipal Code, which Section was established by Ordinance 120410, is amended as follows:

25.11.040 Restrictions on tree removal.

A. Tree removal or topping is prohibited in the following cases, except as provided in Section 25.11.030, or where the tree removal is required for the construction of a new structure, retaining wall, rockery or other similar improvement that is approved as part of an issued building or grading permit as provided in Sections 25.11.060, 25.11.070, and 25.11.080:

- 1. All trees six (6) inches or greater in diameter, measured four and one-half (4.5) feet above the ground, on undeveloped land; and
- 2. Exceptional trees on undeveloped land or on a lot developed with a single family house located in a zone other than Single-family; and
- 3. Exceptional trees on lots in Lowrise, Midrise and Commercial zones or on lots 5,000 square feet or greater in a Single- family or Residential Small Lot zone

B. Limits on Tree Removal. No more than three (3) trees six (6) inches or greater in diameter, measured four and one-half (4.5) feet above the ground, may be removed in any one (1) year period on lots in Lowrise, Midrise and Commercial zones or on lots 5,000 square feet or greater in a Single-family or Residential Small Lot zone, except when the tree removal is required for the construction of a new structure, retaining wall, rockery or other similar improvement that is approved as part of an issued building or grading permit as provided in Sections 25.11.060, 25.11.070, and 25.11.080.

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B. Tree removal in Environmentally Critical Areas shall follow comply with the provisions of Section 25.09.320.

Section 4. Section 25.11.100 of the Seattle Municipal Code, which Section was established by Ordinance 120410, is amended as follows:

25.11.100 Enforcement and penalties.

A. Authority. The Director shall have authority to enforce the provisions of this chapter, to issue permits, impose conditions, and establish administrative procedures and guidelines, conduct inspections, and prepare the forms necessary to carry out the purposes of this chapter.

B. It shall be a violation of this chapter for any person, firm or corporation to remove, clear or take any action detrimental to trees contrary to or in violation of any provision of this chapter. It shall be a violation of this chapter for any person, firm or corporation to knowingly aid and abet, counsel, encourage, hire, commend, induce or otherwise procure another to violate or fail to comply with this chapter.

C. Notice of Violation.

1. Issuance. The Director is authorized to issue a Notice of Violation to a responsible party, whenever the Director determines that a violation of this subtitle has occurred or is occurring. The Notice of Violation shall be considered an order of the Director.

2. Contents.

a. The Notice of Violation shall include the following information:

i. A description of the violation and the action necessary to correct it;

ii. The date of the notice; and

iii. A deadline by which the action necessary to correct the violation must be completed.

b. A Notice of Violation may be amended at any time to correct clerical errors, add citations of authority, or modify required corrective action.

3. Service. The Director shall serve the notice upon a responsible party either by personal service or by first class mail to the party's last known address. If the address of the responsible party is unknown and cannot be found after a reasonable search, the notice may be served by posting a copy of the notice at a conspicuous place on the property. Alternatively, if the whereabouts of the responsible party is unknown and cannot be ascertained in the exercise of reasonable diligence, and the Director makes an affidavit to that effect, then service may be accomplished by publishing the notice once each week for two consecutive weeks in the City official newspaper.

4. Nothing in this subtitle shall be deemed to obligate or require the Director to issue a Notice of Violation or order prior to the initiation of enforcement action by the City Attorney's Office pursuant to SMC 22.808.030.E.

CD. Stop-work Order. Whenever a continuing violation of this chapter will materially impair the Director's ability to secure compliance with this chapter, when the continuing violation threatens the health or safety of the public, or when the continuing violation threatens or harms the environment, the Director may issue a stop-work order specifying the violation and prohibiting any work or other activity at the site. The posting of the stop-work order on the site shall be deemed adequate notice of the stop-work order. A failure to comply with a stop-work order shall constitute a violation of this chapter.

E. Review by Director and Judicial Appeal.

1. A Notice of Violation, Director's order, or invoice issued pursuant to this subtitle shall be final and

not subject to further appeal unless an aggrieved party requests in writing a review by the Director within ten (10) days after service of the Notice of Violation, order or invoice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until five (5:00) p.m. on the next business day.

2. Following receipt of a request for review, the Director shall notify the requesting party, any persons served the Notice of Violation, order or invoice, and any person who has requested notice of the review, that the request for review has been received by the Director. Additional information for consideration as part of the review shall be submitted to the Director no later than fifteen (15) days after the written request for a review is mailed.

3. The Director will review the basis for issuance of the Notice of Violation, order, or invoice and all information received by the deadline for submission of additional information for consideration as part of the review. The Director may request clarification of information received and a site visit. After the review is completed, the Director may:

- a. Sustain the Notice of Violation, order or invoice; or
- b. Withdraw the Notice of Violation, order or invoice; or
- c. Continue the review to a date certain for receipt of additional information; or
- d. Modify or amend the Notice of Violation, order, or invoice.

4. The Director's decision shall become final and not subject to further appeal unless an aggrieved party appeals the decision to the Municipal Court within ten (10) days after the Director issues the decision. Appeal hearings in Municipal Court shall be de novo.

F. Referral to City Attorney for Enforcement. If a responsible party fails to correct a violation or pay a penalty as required by a Notice of Violation, or fails to comply with a Director's order, the Director may refer the matter to the City Attorney's Office for civil or criminal enforcement action. Judicial enforcement of a violation of this subtitle shall be by de novo review in Municipal Court.

G. Filing Notice or Order. A Notice of Violation, voluntary compliance agreement or an order issued by the Director or court, may be filed with the King County Department of Records and Elections.

H. Change of Ownership. When a Notice of Violation, voluntary compliance agreement or an order issued by the Director or court has been filed with the King County Department of Records and Elections, a Notice of Violation or an order regarding the same violations need not be served upon a new owner of the property where the violation occurred. If no Notice of Violation or order is served upon the new owner, the Director may grant the new owner the same number of days to comply as was given the previous owner. The compliance period for the new owner shall begin on the date that the conveyance of title to the new owner is completed.

DI. Civil Penalties.

1. Any person, firm or corporation who is responsible for the removal, topping, or other action detrimental to removes a tree in violation of this chapter or any notice, decision or order issued by the Director pursuant to this chapter shall be subject to a civil penalty in the amount equal to the appraised value of the tree(s) affected in accordance with the Guide for Plant Appraisal, 9th Edition, or successor. If the violation is found to have been willful or malicious, the amount of the penalty may be trebled as punitive damages.

2. Any person who fails to comply with Section 23.11.100 C25.11.100 D shall be subject to a civil penalty in an amount not to exceed Five Hundred Dollars (\$500) a day.

3. The Director shall notify the City Attorney in writing of the name of any person subject to the penalty, and shall assist the City Attorney in collecting the penalty.

EJ. Restoration. In addition to any other remedies available, violators of this chapter shall be

responsible for restoring unlawfully damaged areas in conformance with a plan, approved by the Director, which provides for repair of any environmental and property damage, and restoration of the site; and which results in a site condition that, to the greatest extent practicable, equals the site condition that would have existed in the absence of the violation(s).

FK. Criminal Penalty.

1. Anyone violating or failing to comply with any order issued by the Director pursuant to this chapter shall, upon conviction thereof, be punished by a fine of not more than One Thousand Dollars (\$1,000) or by imprisonment for not more than three hundred sixty (360)ninety (90) days, or by both such fine and imprisonment. Each day's violation or failure to comply shall constitute a separate offense.

2. Anyone violating or failing to comply with any of the provisions of this chapter and who within timethe past five (5) years has had a judgementjudgment against them pursuitpursuant to subsection B shall upon conviction thereof, be fined in a sum not to exceed Five Hundred Dollars (\$500)Five Thousand Dollars (\$5,000) or by imprisonment for not more than one hundred and eighty (180)three hundred sixty five (365) days, or by both such fine and imprisonment. Each day's violation or failure to comply shall constitute a separate offense.

Section 5. The provisions of this ordinance are declared to be separate and severable. The invalidity of any particular provision shall not affect the validity of any other provision.

Section 6. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2009, and signed by me in open session in authentication of its passage this ____ day of _____, 2009.

President _____ of the City Council

Approved by me this ____ day of _____, 2009.

Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2009.

City Clerk

(Seal)

Michael Jenkins

Interim Tree Protection ord.doc

January 14,, 2009

Version #6