



## LEGISLATIVE ANALYST REPORT

**From:** Andrew Murray, Office of the Legislative Analyst  
**Date:** October 5, 2005  
**Re:** **Financial Incentives for Maintaining Landmark Trees** (OLA No. 059-05)

### SUMMARY OF REQUESTED ACTION

Report on all possible financial incentives - including but not limited to tax credits, rebates, and subsidized tree care - for residents on whose property landmark trees are maintained.

### EXECUTIVE SUMMARY

Urban trees provide numerous benefits to communities. Some cities have recognized specific trees as particularly meritorious and granted them special protections. The Board of Supervisors is considering two pieces of legislation that would designate some trees as landmarks and offer them protections, even if they are located on private property. Both pieces of legislation would make it illegal for any person to injure or destroy a landmark tree.

The presence of a landmark tree can create a financial burden for a property owner, particularly if the tree's protection limits site development options. In addition, many landmark trees will be large and, if unhealthy, capable of collapsing and damaging property or injuring people. Therefore, property owners will also be responsible for properly maintaining the trees, which can be expensive. To gain the enthusiastic participation of property owners in the landmark tree program the City could provide support to offset some of the burden of maintaining these trees. A number of options, ranging from property tax exemptions to subsidized tree care, are discussed below.

### BACKGROUND

Urban trees provide economic, environmental, and social benefits to communities. Because the benefits extend beyond the property on which the trees are situated, local government agencies have acted to grow and safeguard this resource. The Board of Supervisors is currently considering two pieces of legislation addressing tree protection<sup>1</sup>. Both pieces would make it illegal for any person to injure (including through negligence) or destroy any street tree or any tree recognized as a landmark, except if granted a permit to remove the tree by the Department of Public Works. Depending on how lenient the granting of such permits is, the presence of a landmark tree could significantly restrict the freedom of a property owner to develop their site, and thereby reduce the value of the property. In addition, to limit

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<sup>1</sup> Board of Supervisors file numbers 051458 and 050689.

liability relating to the collapse of a large tree and to avoid claims of negligence in caring for the tree, property owners will likely be obligated to engage in regular maintenance, which can be expensive<sup>2</sup>.

The City should cultivate the participation of private property owners in a landmark tree program, potentially through mechanisms such as public education on the benefits of landmark and urban trees, technical assistance on proper tree care, and programs that publicly recognize significant and well-maintained trees and their owners. Many cities have created such programs in connection with their tree ordinances. In addition, nonprofit organizations based in cities throughout the country also provide financial and technical assistance to residents that want to plant or maintain urban trees. San Francisco's Friends of the Urban Forest, for example, helps residents plant street trees by obtaining the necessary permits, providing the supplies, selecting and purchasing the trees, and overseeing actual planting. It also educates residents about tree care through online information, pruning workshops, and other vehicles. Some nonprofit organizations, including California ReLeaf, provide grants to community based organizations to plant trees in publicly accessible areas.

In addition, the City should consider providing financial support to offset some of the burden of maintaining protected trees. The City has few financial incentive programs from which to borrow lessons. Two programs that do provide financial incentives or support to promote desired behavior or offset the burden of regulatory requirements are the residential recycling program and the graffiti abatement program. The recycling program allows residents to reduce their refuse rates by diverting for free an unlimited amount of material for recycling, and under the abatement program the City provides free paint to residents and business owners that are required to remove graffiti from their property.

### **FINANCIAL INCENTIVES/COMPENSATION**

There are a number of threats to the success of the landmark tree program<sup>3</sup>. Many are addressed by the permitting process and the deterrent of the enforcement provisions in the proposed legislation. Positive financial incentives could also play a role. A well-designed incentive or compensation program directly rewards people for performing the desired activity or compensates them for a discrete burden. In addition, it minimizes the ability of nefarious actors to game or defraud the system.

### **Examples from Other Jurisdictions**

Most California cities have adopted ordinances to manage trees on public property or right-of-ways. However, few cities have programs addressing the management of trees on private property, or offering financial support for the maintenance of these trees. The Office of the Legislative Analyst (OLA) was not able to uncover any cases in which cities compensated property owners for development restrictions due to landmark tree programs. The OLA identified two rare cases, described below, in which cities subsidized maintenance activities.

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<sup>2</sup> Annual maintenance costs vary depending on the intensity of care and the tree species and maturity.

<sup>3</sup> There are four main threats to the success of the landmark tree program. Property owners might not comply with prohibitions on injuring or destroying trees; they might resist designation of their landmark trees; the process of permitting the removal of the trees might be too lenient; and property owners might not sufficiently maintain the trees.

## City of Santa Cruz

The City of Santa Cruz operates a heritage tree grant program through which it pays 50% of the cost of maintenance (primarily pruning and disease control) of significant trees located on private property. A number of residents have made use of the program, which requires that the property owner solicit bids from three qualified tree care firms to perform the work. The program, which was funded by a special appropriation from the city council in the amount of \$50,000 per year, has been temporarily suspended due to recent budget constraints, but is expected to resume in the future.

## City of Visalia

A City of Visalia ordinance requires that residents hire tree care professionals to trim their oak trees. To compensate for this burden, the City operates a program through which it contracts directly with a qualified tree care firm and pays the full cost of maintenance activities for oak trees on the property of low-income homeowners. The budget of this program is modest, approximately \$5,000 annually, which is derived from fines and penalties assessed for violations of the tree ordinance.

## **Possible Incentives**

Because the definition of a landmark tree has not yet been established, it is unclear how many such trees there are in the City, and therefore hard to project the costs associated with the financial incentives described below. By definition, landmark trees are supposed to be unusual, so it is reasonable to assume that the number will be modest. Paul Sacamano of the Department of Public Works, which is responsible for maintaining many of the City's street trees, estimates that there might be as many as 1,000 landmark trees on private property throughout the City. If the program is successful in promoting the longevity of these trees, it is reasonable to expect that the number will grow over time.

If the City desires to provide financial support, it should explore revenue sources beyond the General Fund. Unfortunately, most federal and state support for tree planting is designated specifically for trees on public lands, and therefore would not likely be available to assist private property owners. The City or a nonprofit could establish a donor fund to collect revenues specifically to offset costs of maintaining landmark trees for private property owners. A species-specific advocacy organization might also be willing to provide funding to support tree maintenance. One incentive described below would require the establishment of a new property tax assessment to provide financial support to the urban forest. As in the case of Visalia, the City could limit its financial support through any of the mechanisms described below by making them need based.

## Subsidize Maintenance

As illustrated in the cases of Santa Cruz and Visalia, cities can subsidize tree maintenance. Not only would this reduce the cost born by the tree owner, but ensuring proper care would also result in increased tree life, a community benefit. In both cases described above, private companies provide the tree care services. An alternative is to instead direct the same monetary resources to augment the

capacity of city crews that already care for street or park trees such that they could maintain trees on private property. Because this approach might create a potentially significant liability for the City and crowd out maintenance of trees on public property, it would have to be carefully examined. Short of actually paying for tree maintenance, the City might be able to help secure lower cost services from private tree care firms on behalf of landmark tree owners if it represented all owners in negotiating group rates. The City could also try to secure reduced rate services on behalf of landmark tree owners by designating a small number of tree care firms as the City's "preferred providers", which would presumably have spillover benefits for the firm beyond business in landmark trees.

### Rebate Property Tax

Depending on how difficult it is to secure a permit to remove a landmark tree for site redevelopment, the presence of a landmark tree could substantially reduce a property owner's site use options, and therefore the value of the site. An annual reduction in property taxes is a mechanism through which the City could compensate property owners for this loss, although it is unclear what amount of rebate would be appropriate. One shortcoming of this approach is that if eligibility for the rebate were granted based simply on the presence of a landmark tree, it would provide compensation to people who have no ambition of redeveloping their lot, and therefore might be an inefficient use of resources. An alternative to a substantial rebate meant to partially offset the reduction in property value due to limited development options is a small but meaningful rebate intended primarily to build goodwill with program participants. This might be more appropriately implemented, however, through the department overseeing the landmark tree registration, rather than the assessor or treasurer/tax collector.

### Assess New Tax for Landmark Trees

In its April 1, 2005 Recommendations for Strengthening San Francisco's Landmark Tree Ordinance, the Urban Forest Council proposed a new property tax assessment for the urban forest. Property owners would be exempted from the tax to the extent that they have significant trees on their property. This is similar in many regards to the property tax exemption, except that as a new tax it would generate new revenue, opposed to the rebate, which would reduce current revenue.

### Subsidize Maintenance Supplies

Beyond maintenance by tree service professionals, homeowners can take many steps to promote the health of their landmark trees. The City could provide subsidized water and fertilizer to landmark tree owners. Regarding fertilizer, if that provided by the City were nontoxic, encouraging its use by residents would have the added benefit of reducing stormwater pollution loading. Bulk purchasing by the City could allow it to provide residents with supplies at a lower cost to the City than if it were to simply reimburse residents for purchases of supplies from normal retail outlets, assuming the cost of storing the material was not too high. Providing water bill credits would require inspection and monitoring, which might be costly.

### Eliminate Fees for Permitted Removal

One potential cost of having a landmark tree is that of undertaking its removal. The pending pieces of legislation authorize the removal permit to have conditions that could include fees for the replacement value of the tree, administrative costs, and a contribution to the Adopt-A-Tree Fund. If the approval process is well tuned to appropriately allow and disallow landmark tree removals, the fees associated with removal might be of limited value as a deterrent and an undue financial burden. Fines associated with violating the provisions of the proposed legislation should not be reduced if already appropriately set, of course.

### Exempt Property Owners from other Requirements

One means of remunerating property owners for reduced flexibility in site development is to provide compensating flexibility regarding other site development restrictions, such as setbacks, etc. However, policies that provide indirect compensation such as this are prone to distortions that might lead to unintended negative consequences that exceed the initial benefit the program was intended to provide.

### Facilitate Tax Deduction through Conservation Land Trust

One form of financial compensation that the City could help facilitate but would not have to fund is an income tax deduction. The City could work with a local nonprofit to establish a conservation land trust to which private property owners could donate an easement to their landmark tree and the land immediately surrounding it. The property owner might then be able to deduct the value of the easement (equal to the loss of property value due to restricted development opportunities) from their property taxes. Additional consultation with a land use and tax attorney and appraiser would be required to explore the feasibility of this option, as the assessment of the value of the easement would be challenging. The nonprofit would bear some costs as it would be required to regularly monitor the easement to make sure that it has not been infringed upon.

## CONCLUSION

A number of options are described above to subsidize routine maintenance activities. If it is difficult to secure a permit to remove a landmark tree, the primary financial cost to property owners, whether it is realized or not, will likely be the restricted freedom to redevelop their site. Rather than develop financial incentives to compensate for this, a more effective and direct remedy would be a carefully designed permitting process that is appropriately challenging, coupled with a requirement that the property owner take appropriate measures to compensate for a landmark tree's removal through new plantings or in lieu fees, as incorporated in the pending legislation.