



Addendum A - TMC 9.18, 9.19, & 9.20, Trees in the Right-of-Way Code Update Overview

SUMMARY:

Title 9 “Public Ways” of Tacoma Municipal Code (TMC) contains three Chapters regarding the management of trees in the right-of-way (ROW), all of which contain numerous outdated and unclear requirements and have many inconsistencies with industry standards and City-adopted policies. These Chapters are:

- 9.18: Trees and Shrubs – Trimming and Removal (*Ord. 9071 § 2; passed Jan. 27, 1927*)
- 9.19: Trees and Shrubs – Planting (*Ord. 16610 § 1; passed Jul. 12, 1960*)
- 9.20: Trees and Shrubs – View Blockage (*Ord. 24710 § 1; passed Aug. 28, 1990*)

These Chapters are specific to the rights-of-way and/or City owned property, and do not address private property or regulated critical areas, which are regulated under Title 13 - Land Use Regulatory Code.

A suite of Council adopted policy from the past decade directs the City to address:

- lack of clarity in TMC requirements;
- inconsistency with industry standards;
- protection of safe, healthy and appropriate trees;
- preservation of rare or threatened tree species from the impacts of urbanization;
- reduction of barriers to planting trees in the ROW;
- easing restrictions on food producing trees in the ROW; and,
- consolidating and clarifying authority for tree related decisions.

This memorandum includes an overview of relevant policies and Code directly relating to implementing Council mandates to address trees in the ROW. These proposed changes are in response to requests from Council to address specific tree related issues currently in TMC. Additionally, this memo is a request for IPS to provide feedback and support to update TMC Chapters 9.18, 9.19, and 9.20. For the purposes of this document, these updates are categorized into the following sections, intended to:

1. remove prohibitions on food producing trees in the ROW;
2. clarify protections and update language to industry standards for ROW trees, to reduce illegal removal and damage leading to poor tree health and potential public hazard; as well as,
3. update the antiquated penalties/fines structure (last adopted/updated in 1927) to recover costs of enforcement and replacement of illegally removed or damaged trees in an adaptive way to keep pace with industry best practices.

Addendum 1 presents the proposed changes to TMC 9.18, 9.19, & 9.20 in redline form and contains the suggested text updates to implement these Council directives. These updates do not suggest any changes to the Critical Areas Code (TMC 13.11), Zoning (TMC 13.06), or private property tree regulations. In instances where trees are subject to both Title 9 and Title 13, these Title 9 updates would be supplemental to existing protections or mitigation measures required in Title 13.

ADOPTED POLICY:

City Council has adopted numerous policies directly supporting improved urban forestry outcomes through better tree protections, increased tree planting, fixing broken operational workflows, removing



inconsistencies and contradictions within TMC, and improving community food security through increasing local food access. These policies include:

- **(2010) Urban Forest Policy Element (ORD27892)**
The UFP Element identified a 30% tree canopy cover goal by the year 2030, “30 by 30”. This UFP Element defines core focus areas including changes to regulations and standards to address tree retention.
- **(2016) Environmental Action Plan (RES39427)**
Specific EAP actions include improving regulations to encourage tree preservation and protection on private property and in the City right-of-way, as well as developing an urban forestry implementation strategy that identifies and prioritizes strategic and equitable planting locations, incentives, public engagement and education, retention strategies, and maintenance.
- **(2017) Memorandum of Understanding with Harvest Pierce County (No.SC104536)**
Harvest Pierce County supports and organizes gleaning efforts to harvest surplus produce from fruit trees around the city. Their efforts prevent fallen fruit and distribute it to those experiencing food insecurity.
- **(2019) Urban Forest Management Plan (RES40492)**
Developed through a concerted community engagement effort as directed by City Council, the UFMP was created to serve as the urban forestry implementation strategy, providing a roadmap of specific actions required to reach a healthy, sustainable urban forest, with a focus on addressing historical inequities in urban forestry services.
- **(2019) Climate Emergency Resolution (RES40509)**
The City of Tacoma declared a climate emergency and defined concrete actions to be taken in response. Among the many issues addressed, the City committed to updating the EAP to reflect the urgency of climate change, wherein tree canopy preservation has been inextricably linked to combating climate change and the localized effects of the urban heat island.

PRIOR IPS COMMITTEE PRESENTATIONS INFLUENCING THIS MEMORANDUM

August 12, 2019; Urban Forest Management Plan and Code Update

Staff from the Office of Environmental Policy & Sustainability (OEPS) presented to the IPS Committee a pre-prospectus prepared by our consultant team during the development of the Urban Forest Management Plan, with recommendations for improving Tacoma Municipal Code (TMC) as directed by City policy, public concerns, and Council direction related to urban forestry.

September 9, 2020; Urban Food Security through Trees and Urban Agriculture on Public Lands

OEPS staff presented to the IPS Committee regarding opportunities to leverage public lands, including ROW and publicly owned parcels, for increased urban food security. This included a recommendation from IPS to remove the prohibition on food producing trees in the ROW from TMC Title 9.

December 2, 2020; Climate Change Impacts on Low-Opportunity Neighborhoods

OEPS Staff presented to the IPS committee on the direct correlation between increased tree canopy and better human health outcomes, as influenced by air quality and the urban heat island effect. More tree canopy was recognized as critical to the health of people in Tacoma’s hottest neighborhoods, as they face a future of increasingly intense summers, driven by the climate crisis.



ISSUE #1: FOOD PRODUCING TREES PROHIBITION IN THE ROW

Food access is a chronic issue facing our community, made worse through the disproportionate impacts of the COVID-19 pandemic. While numerous City Council- and community-supported policy initiatives emphasize the importance of expanding food security, under TMC 9.19.030, food producing trees are prohibited from the ROW. This code dates from 1960 and references outdated urban forestry practices which emphasized uniformity over a diverse and healthy urban forest or potential food access. To address this, in 2019 Council adopted the Urban Forest Management Plan which contains this action:

The 2019 UFMP:

- **Action 6F.8** Support Fruit Trees & Gleaning Initiatives, calls for us to identify appropriate parks, rights-of-way, and other public spaces in Tacoma that feasibly can support healthy and safe fruit trees to support gleaning initiatives. Consider the use of vacant City lots and brown-fields for community-oriented orchards in supportive neighborhoods.

Issue #1: Recommendations:

1. Update TMC 9.19.030 to remove fruit and nut trees from the Types of Trees Prohibited list.
2. Regulate fruit and nut trees in ROW through the current process used for street trees, which establishes criteria and allowed species/sizes to diminish the likelihood of infrastructure damage or conflict.
 - a. A ROW tree planting permit will be required.
 - b. Urban Forestry will work with Harvest Pierce County to establish an Approved Fruit and Nut Trees list (see Addendum 2 for an example) as well as a Right Tree, Right Place guide for fruit and nut trees.
 - c. Different pruning allowances would be established for fruit and nut trees in the ROW, as the methods are different than street trees.
 - d. Adjacent property owner continues to assume all responsibility in ensuring the tree and subsequent fruit meets code regulations.

ISSUE #2: CLARIFY PROTECTIONS OF ROW TREES

Tacoma's Comprehensive Plan adopts a tree canopy goal of 30% tree cover by the year 2030, however, our last analysis puts Tacoma at 20% tree cover, which is the lowest tree canopy of all other Cities assessed in the Puget Sound Region. In recognition of this, Council had adopted tree protection policies in several instances, including:

The 2010 Urban Forest Policy Element of the Comprehensive Plan:

- **Policy EN-3.14** Retain as many mature trees as practicable and appropriate during development of City owned land and street rights-of-way.
- **Policy EN-3.16** Protect rare and/or threatened tree species from the impacts of urbanization.

The 2016 EAP:

- **Action N6** Improve regulations to encourage tree preservation and protection on private property and in the right-of-way (ROW).

The 2019 UFMP:



- **Action 1A.5** Use Code Recommendation Prospectus (Addendum 3) to submit TMC updates which align urban forestry policy with One Tacoma, update antiquated language and inconsistencies, and require the use of industry best practices and standards.
- **Action 1C.7** Update TMC with a Heritage Tree Ordinance.
- **Action 1D.8** Develop standard operating procedures and permitting processes for urban forest management that are aligned with TMC.
- **Action 1D.10** Align tree protection and design standards in TMC 13.06.502.E with a no-net-loss policy to achieve tree canopy goals.

Title 9.18 was initially adopted in 1927 explicitly for the purposes of:

1. protecting trees within the ROW from illegal removal, destruction, and cutting;
2. guarding trees against damage from construction work; and,
3. addressing public safety through requiring the removal of trees and shrubs obstructing the sidewalk or street.

However, in 1927 when Title 9.18 was written, pruning and protection standards were based on aesthetics and not the health of the tree. The language in TMC 9.18 reads: [the permit] “shall in no case be granted where the removal, destruction, or cutting of any such tree or shrub will destroy the symmetry of the tree or shrub plantings upon the street or alley where located, unless such tree or shrub is dead, unsightly or a menace to the public or to public utilities”. Pruning based on symmetry can result in significant harm to trees, e.g., topping of the tree, which can cause structural issues and lead to potentially hazardous conditions. Therefore, City Code regarding tree pruning should focus on the health of the tree and preventing hazardous conditions based on scientifically proven pruning practices.

Issue #2 Recommendations:

1. Update TMC Title 9 to amend inconsistencies and provide more clarity on protections of ROW trees consistent with adopted policy and science-based industry best practices and standards including:
 - a. Update discrepancies in authority.
 - b. Explicit prohibition of “tree topping”, with specific exemptions for fruit trees.
 - c. Protection of trees during construction and infrastructure repair/replacement/installation to prevent damage to trees which could otherwise cause tree decline, need for removal, and potential public hazard.
2. Create a Heritage Tree Program with the following characteristics:
 - a. The City of Tacoma’s Heritage Tree Program should be a voluntary, nomination-based program that allows members of the public to identify invaluable trees in our community on both public and private property, with property owner consent. Once a tree has been accepted into the Heritage Tree Program, it should remain protected by the program until such a time as disease, damage, or old age warrants its removal.

Tacoma’s historically underserved neighborhoods could especially benefit from a Heritage Tree Program as it has the potential to protect highly beneficial trees in areas of the city with the lowest overall canopy cover. See detailed research of Heritage Tree Programs in the attached white paper (Addendum 4)

ISSUE #3: PENALTIES FOR ILLEGAL TREE DAMAGE, REMOVAL, NUISANCE VIOLATIONS, AND PLANTING IN THE ROW



Penalty structures for trees throughout Title 9 are grossly outdated. Current penalty not-to-exceed amounts for illegal tree pruning, removal, and failure to abate a nuisance were set in 1927 (9.18.040) and 1949 (9.18.110). The exception is 9.20.070 Trees & Shrubs-View Blockage, where the penalty structure was updated in 2010 in a way that more closely follows industry best management practices. Because the penalties in 9.18 were set between 60 and nearly 100 years ago, without any process to account for inflation, the costs to enforce illegal tree pruning and removal far outweigh the amount recouped from the penalties. This has created an environment where the penalties no longer deter illegal removal and malpruning of trees.

If the penalty structures in 9.18 were left intact and simply adjusted for inflation:

- illegal pruning/removals (9.18.040) would go from \$100 to \$1,400;
- nuisance violations (9.18.110) would go from \$300 to \$3,280;

At the time these penalties were set, it was at a level which represented a significant fine, and thus a significant deterrent. Currently, these amount are nominal. Instead of utilizing a static penalty structure, a more dynamic structure is recommended to prevent the penalties within the Code to need regular adjustment for inflation. Additionally, it is proposed that all penalties account for the staff time associated with administering the violation.

Note: The penalty structure for enforcing violations of Title 9.19.090, Trees and Shrubs-Planting, dates from 1960 and carries a not-to-exceed penalty of \$300 for planting a tree without a permit. We are not proposing any changes to 9.19.090.

Please see the attached comparison of tree penalty structures from peer municipalities around the country (Addendum 5)

Illegal Tree Removal and Damage: Industry best management practices utilize the most recent edition of the Guide for Plant Appraisal published by the International Society of Arboriculture to determine value of trees for replacement and/or penalty amounts. This structure allows for the industry to set the value of the trees based on the size, species, cultural significance, etc., and has also proven to be defensible in court.

Note: illegal removals or pruning for the purpose of view enhancement (9.20.070 circa 1990, updated 2010) has already adopted a fee structure that includes “the value of the vegetation pruned or removed plus \$1,000.00”. Adjusting the violations for non-view related illegal pruning/removals (9.18.040 circa 1927) would add consistency between codes as well as with industry standards.

Nuisance Abatement Violations: Under 9.18.090 when nuisance conditions have not been remedied and the City must take action to prune or remove the vegetation to abate the nuisance, “said costs shall become a charge against the owner and a lien against the property.” However there are no standard methods for determining those costs. Additionally, the penalty structure of 9.18.050 Removal of Trees and Shrubs Obstructing the Sidewalk or Street, was set in 1949 and calls for a resolution from City Council every time vegetation needs to be removed to abate a nuisance, excepting cases of immediate public hazard (9.18.060).

Issue #3: Recommendations:

1. Adopt accepted plant appraisal methods as set forth in the most current edition of the Guide for Plant Appraisal, published by the International Society of Arboriculture.



2. Use tree appraisal value to determine penalty amount, and replacement when required in Code. Penalty is commensurate with the full appraisal value of the tree(s) removed or damaged, costs to perform an assessment, and replacement when applicable. If replacement is required and no suitable location exists in the vicinity of the tree removed or if the replacement trees are of lesser value, the person causing the tree to be removed shall make a compensatory payment to the City equal to the difference in value between the tree removed and any replacement tree. Any ROW tree that is determined by the Urban Forester, or a delegated Arborist, to be damaged, but not sufficiently to justify its removal, shall be considered to be devalued. The amount of devaluation, as determined by the Guide for Plant Appraisal, shall be paid to the City by the person causing the damage. Compensatory payments shall be paid into the urban forestry fund.
3. For instances of illegal pruning or removal, adopt "Violation Review Criteria" similar to Title 13.05.150, which empowers Code enforcement staff to "resolve violations without resorting to formal enforcement" in circumstances when trees were pruned or removed without an intent to do so outside of the law. This reserves the harshest penalties for the greatest offenders by considering factors such as: severity, compliance history, economic benefit gained, intent or negligence, and other circumstances.
4. Instead of an arbitrary range of fees, the penalty structure should cover the cost of enforcement. So, in addition to the determined value of the tree, the person subject to the penalty would also have to pay the cost of an Arborist to perform an assessment and staff to administer the violation.
5. For instances of nuisance abatement when the City, or its designee, has to perform the pruning or removal, the abutting property owner should be charged the full cost of the assessment, pruning or removal, and replacement planting when required in Code.

GENERAL CODE CLEAN-UP

- Within the above issue categories, there are numerous inconsistencies and contradictions in the current TMC Chapters 9.18, 9.19, and 9.20. Many of the inconsistencies relate to irrelevant authority structures, non-existent review committees, or derelict permitting processed dating to the 1930s. Recommended changes to address these issues, and comments justifying the suggested changes, can be found in the Title 9 Code Redline Addendum 1.

ALTERNATIVES:

This is an informational briefing. Staff will present recommended TMC updates to the Committee in order to implement existing adopted policy. Where there are options or ranges of recommendations to consider, staff will make note of the decision point, as well as the pros and cons of the alternatives.

Continuing to move forward with no changes to the TMC Titles 9.18, 9.19, and 9.20 as they exist today will result in a continued poor level of service to our community regarding tree management, inconsistent expectations between the City and the community on how to comply with the code, and poorer outcomes for the urban forest.

FISCAL IMPACT:

This is an informational briefing. There are no fiscal impacts as a result of these recommended TMC updates.