



DATE: September 17, 2024

TO: City Council

FROM: Development Services Director

SUBJECT: Tree Preservation Ordinance Update: Work Session on the Proposed Policy Recommendations for the Updated Tree Preservation Ordinance.

RECOMMENDATION

That the Council review the proposed policy recommendations and provide feedback, as necessary, on the development and adoption of an updated Tree Preservation Ordinance.

SUMMARY

In May 2023, the City hired Dudek to assist with updates to the City's Tree Preservation Ordinance, completion of a citywide Tree Canopy Survey, and updates the landscaping guidelines for the Hayward Executive Airport. While work on the Ordinance and the landscaping guidelines for the Airport continue, the Tree Canopy Survey has been completed and staff is looking for additional guidance from Council on several policy recommendations, which are based on best practices and support the more recently adopted environmental and sustainability goals of the City. The City's existing Tree Preservation Ordinance is contained within the Hayward Municipal Code (HMC) and establishes the guidelines for the protection of existing trees in the City of Hayward as well as the establishes the process for removing, replacement, and mitigation for trees which are covered by the Ordinance.

Following review and analysis of the City's existing Tree Preservation Ordinance, in conjunction with best practices and similar approaches from other cities, staff is recommending several policy changes to the existing Ordinance to refine the current processes for preserving the protected trees and tree canopy, while offering creative, flexible and realistic solutions for applicants that need to mitigate the removal of existing trees throughout the City. As part of this analysis, staff has identified several key policy areas of the Ordinance that are important for Council to consider as the City works to achieve its environmental and sustainability goals, including:

- Does the Council support the expansion and protection of *native trees* on private property, as defined by staff?
- Does the Council support the designation of *heritage trees* throughout the City, as defined by staff?

- If so, does the Council support a higher level of *discretionary review* when proposing to remove heritage trees, such as approval from the Planning Commission or City Council?
- Does the Council support mitigation requirements for the loss of *tree canopy*?
- Does the Council support an *in-lieu fee* option for off-site mitigation?
- Does Council support the proposed changes to the *tree removal permit fee* and *time frame* associated the duration of these permits?

Following feedback and direction from Council, staff will continue to update and finalize the draft Ordinance prior to release for public review and feedback, which is expected later this year.

BACKGROUND

Since 1986 for the past thirty-four consecutive years until 2019, Hayward has been recognized as “Tree City USA” by the Arbor Day Foundation. Tree City USA is a nationwide movement established in collaboration with the U.S. Forest Service and the National Association of State Foresters in 1976. The program aims to recognize communities nationwide that are taking steps toward effectively managing and expanding public trees.

The City of Hayward adopted its first tree preservation ordinance in the late 1950s, establishing a need to preserve significant trees based on size and species. There have been two updates since then, in 1971 and 2002. These updates ranged from minor updates to more significant policy changes, with the most substantial update occurring in 2002.

Since the last update in 2002, the city’s population has grown significantly leading to a higher demand for more housing and development. To address the housing crisis in California, the State has recently enacted new legislation intended to streamline development review processes and spur new housing construction. These new laws have required changes and updates to the City’s General Plan, Zoning Ordinance, and related development standards to allow for these higher-density developments. However, many projects located on infill sites require the removal of existing mature trees and a reduction in the amount of landscape area to accommodate the new development. This limits an applicant’s opportunity to mitigate tree removals within the proposed development.

Updates to the Tree Preservation Ordinance and the Hayward Executive Airport Landscape Guidelines are a combined effort that focuses on a comprehensive review and update of the City’s existing Tree Preservation Ordinance, and any related Zoning Regulations, as well as updates to the landscape design guidelines near Hayward Executive Airport to determine what landscaping materials are appropriate to minimize wildlife and ensure public safety within the Airport safety zones. This project also includes the completion of a Tree Canopy analysis for the City, including all trees located on public and private property, open space and natural resource areas, creek and riparian areas and within golf courses.

Since the last major update to the Tree Preservation Ordinance in 2002, the State of California and City of Hayward have adopted subsequent goals and policies that focus on sustainability, climate change, and the environment, including the reduction of greenhouse gas emissions

and the adoption of new hazard mitigation strategies to combat wildfires. Several additional Plans have been adopted to support these initiatives, including adoption of the Shoreline Adaptation Master Plan to combat sea-level rise and updates to the Climate Action Plan to reduce our carbon footprint and greenhouse gas emissions.

Prior to the adoption of the Shoreline Adaptation Master Plan and updates to the Climate Action Plan, the City updated the *Hayward 2040 General Plan*¹ in 2014, which established citywide goals and policies for protecting the environment, including the following:

- Native Wildlife Habitat Protection (NR-1.1)
- Sensitive Habitat Protection (NR-1.2)
- Native Tree Protection (NR-1.7)
- Native Plant Species Protection and Promotion (NR-1.9)
- Community Green House Gas Reduction (NR-2.4)
- Erosion Control (NR-6.5)
- Water Conservation (NR-6.9)
- Native and Drought Tolerant Landscaping (NR-6.14)
- Native Vegetation Planting (NR-6.15)
- Landscape Ordinance Compliance (NR-6.16)
- Hillside Residential Design Standards (NR-8.1)

DISCUSSION

While many of the proposed updates to the Tree Preservation Ordinance are minor and intended to clarify the tree preservation and removal process, staff is recommending several new policies changes in the Tree Preservation Ordinance to clarify which trees are protected throughout the City, establish tree canopy protections, provide an in-lieu fee mitigation option, and update the permit duration and fee amount to ensure greater cost recovery when evaluating these tree removal requests. Additional context on the proposed policy changes is discussed in greater detail below.

Expansion of Protected Trees. For a majority of single-family parcels, only trees within the front yard are covered by this Ordinance as trees located in rear yards are not protected, regardless of their size. Staff is recommending that native trees on single family properties, regardless of location, are protected by this Ordinance update, as defined by staff. This change will help disincentivize native tree removals in existing single-family neighborhoods, help maintain canopy cover citywide while decreasing the urban heat island effect and improving the overall quality of life. Native trees in rear yards make up only a small portion of trees on private property, but their impact on the environment far surpasses non-native trees, providing mature shade canopies, habitat to native wildlife and can grow with minimal water use and maintenance. Native trees recommended for protection on private property include:

1. Big leaf maple (*Acer macrophyllum*)
2. California buckeye (*Aesculus californica*)
3. Pacific madrone (*Arbutus menziesii*)

¹ Hayward General Plan: [Hayward 2040 General Plan FINAL.pdf](#) (hayward-ca.gov)

4. California sycamore (*Platanus racemosa*)
5. Coast live oak (*Quercus agrifolia*)
6. Canyon live oak (*Quercus chrysolepis*)
7. Blue oak (*Quercus douglassii*)
8. Oregon white oak (*Quercus garryana*)
9. California black oak (*Quercus kelloggii*)
10. Valley oak (*Quercus lobata*)
11. Interior live oak (*Quercus wislizenii*)
12. California bay (*Umbellularia californica*)
13. California Black Walnut (*Juglans hindsii*)

For the purposes of this Ordinance, “native” trees are defined as those trees that grow naturally within the City of Hayward without additional maintenance or irrigation required.

Heritage Trees. Heritage Trees are trees recognized for their exceptional qualities, including the following criteria: size, age or form, aesthetic, horticultural, biological, historical or cultural significance. Although some municipalities use the term “Heritage Tree” interchangeably with “Protected Tree,” there is a difference between the definitions. Heritage trees are superior to protected trees due to their age, size and other attributes, and represent the most protected trees in a City.

Currently, the City recognizes and designates Memorial Trees but there are no protections for Heritage Trees, as defined above. Realizing the importance and contribution that heritage trees bring throughout the City, staff recommends that “Heritage Trees” be defined and added to the updated Ordinance. To be considered a “Heritage Tree”, a tree would need to satisfy at least three of the seven criteria listed above to be considered a Heritage Tree, as determined by the City’s Landscape Architect.

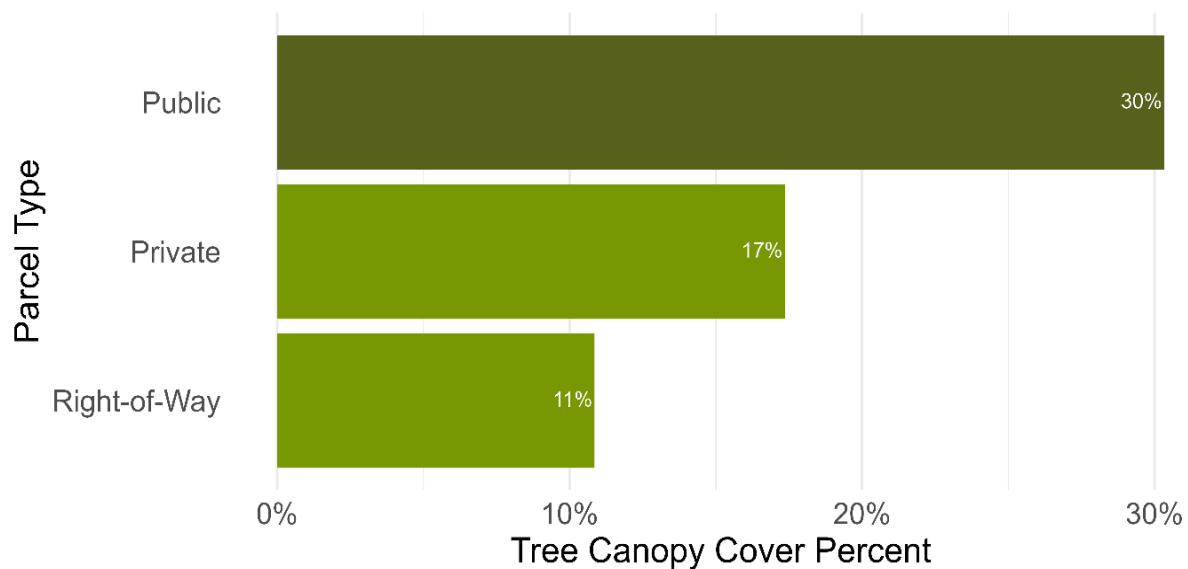
Staff notes that because these trees are typically considered of higher value and importance in the community, staff is recommending a higher level of discretion be used when considering requests to remove these trees, unless the tree is currently unhealthy, damaged or dying. In most cases, this would require Planning Commission or City Council review and approval of the tree removals, which are often tied to redevelopment of a site. Staff believes that requiring a higher level of review for trees that meet this requirement would serve as a deterrent to their removal but would also establish a process by which the Planning Commission or City Council could evaluate the removal in the context of the larger project benefits.

Tree Canopy Survey. As part of the update to the Tree Preservation Ordinance, Dudek completed a city-wide Tree Canopy Survey (Attachment II) using LiDar satellite imagery taken from 2020 to measure the overall canopy coverage of the city and establish a baseline of coverage by census tract. The Survey is a valuable tool that is typically updated every five years and helps provides insight as to how the overall tree canopy is expanding or contracting throughout the City. Maintaining and expanding the tree canopy in Hayward provides significant public benefits (as shown in Attachment III) and supports several key goals and policies found in the City’s Strategic Roadmap, Climate Action Plan and *Hayward 2040 General Plan* by the following:

- Reducing the heat island effect
- Filtering and reducing air pollutants
- Slowing runoff in storm events that overwhelm city drainage systems
- Increasing carbon sequestration
- Beautifying the City
- Improving public health
- Creating a better quality of life to work and live in

Results from the survey show that within the urban boundary of Hayward, the canopy coverage is currently estimated at 14.6% with the overall city-wide canopy coverage, which includes native oak woodlands on the upper hillside areas of Hayward, is estimated at 20.8%. This data demonstrates the importance to protect and maintain the native oak woodland canopy throughout the City as it makes up nearly 30% of the overall canopy citywide. As shown in the graph below, the canopy analysis is broken down between public parcels (city owned land like parks), private parcels and street right of ways. The graph also highlights how public spaces, such as parks, provide more canopy coverage than the privately-owned parcels and right-of-way areas in the City.

City of Hayward - Parcel Type Tree Canopy Cover by Parcel Type

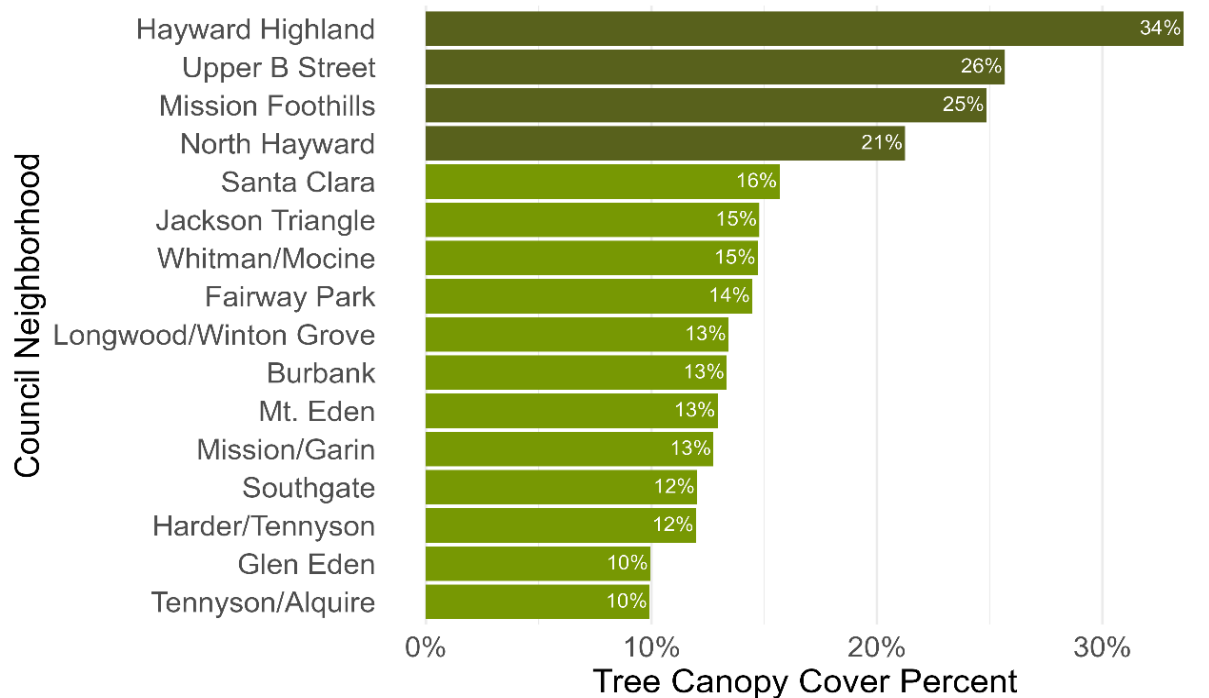


City-wide canopy cover is 20.8%

In addition to understanding the coverage between public, private and within right-of-way areas, the Survey also looked at coverage in different neighborhoods throughout the City, which is reflected in the graph below:

City of Hayward - Council Neighborhoods

Tree Canopy Cover by Council Neighborhoods



It should also be noted that neighborhoods closer to the Baylands have the least amount of canopy coverage as no native trees would have naturally grown in these areas, resulting in far less canopy than other parts of Hayward.

Canopy Coverage in Other Jurisdictions. When comparing Hayward's canopy coverage with other nearby jurisdictions, staff found three nearby cities that have adopted similar canopy goals as summarized below:

- The City of Pleasanton currently has a canopy cover of 25.3% within their urban boundary with a goal to achieve 30% canopy cover in 25 years.
- The City of Alameda currently has canopy cover of 11.2% (ranging from 5.1% to 20.9% by census tract) with a goal to achieve 20% canopy cover in every census tract within 30 years.
- The City of Palo Alto currently has a canopy cover of 23% within their urban boundary with a goal to achieve 30% canopy cover in 20 years.

Based on current estimates provided by Dudek, the timeframe to achieve 20% canopy cover within the urban parts of Hayward is estimated to take approximately 23.3 years, if planting 2,000 trees per year and assuming no losses or replacement of existing trees. Currently the Tree Canopy Survey reflects a 20.8% citywide canopy; however, that number is bolstered by the natural oak woodlands in the hillside areas of Hayward. When factoring only the lowland areas where a majority or residents and businesses are located in Hayward, that average drops to 14.8% coverage. Staff notes that while the findings of the Tree Canopy Survey

support many of staff's recommendations for the Tree Preservation Ordinance, additional goals and policies for trees will be part of the Urban Forestry Management Plan, which is a separate project listed for implementation in the Hayward 2040 General Plan.

Tree Mitigation Overview. Currently, the City protects all trees in undeveloped properties with a trunk diameter of at least eight inches for non-California native trees and four inches for California native trees. The measurement of the diameter is taken at fifty-four inches above natural grade, also known as Diameter at Standard Height or DSH. If existing trees need to be removed to allow reasonable use or redevelopment of a property, applicants are required to mitigate the removal by replacement of new trees by "equal value or size".

Prior to any tree removal, a certified arborist is required to determine the value of the tree by using the latest edition of Guide for Plant Appraisal, established by the International Society of Arboriculture. The valuation is then reviewed by the City's Landscape Architect and used to determine the number and size of replacement trees required, in addition to other landscaping required as part of the Zoning Ordinance. On developed properties, trees are protected and preserved until the time redevelopment occurs, regardless of trunk diameter, and any tree removals, replacements or required mitigations are evaluated as part of the development review process. In addition to trees located on vacant or developed properties, any trees that are planted in memorial are protected after dedication by an entity recognized by the City. These trees can be removed but replacement trees are required.

Given the more recently adopted State legislation to streamline housing projects and the ongoing pressure to develop underutilized parcels, tree replacement on-site is not always feasible due to space limitations and the need for on-site bioretention areas. As such, staff is proposing more flexibility to applicants to allow the option to mitigate on-site or pay an in-lieu fee to replace trees off-site, or some combination thereof.

Existing Mitigation Requirements. As indicated above, the Tree Preservation Ordinance currently requires that any removed protected tree must be replaced with a like-size, like-kind tree or an equal value tree determined by the City Landscape Architect. When on-site replacement is not feasible, another site may be designated that is mutually agreeable. While the current Ordinance requires mitigation be tied to the appraised value of the existing trees to be removed, it does not mitigate the loss of tree canopy, which is an important factor for supporting wildlife habitat, migratory birds, and combating climate change. As such, staff is recommending that tree canopy also be considered when mitigating tree removals on-site as discussed below.

Proposed Mitigation Recommendations. While the current Ordinance allows trees to be replaced with "like-size, like-kind", it does not prescribe mitigation measures that are measurable or flexible as it allows applicants to satisfy the mitigation on a case-by-case basis, which is difficult to track and difficult to administer given that there are limited parameters applicants should adhere to. As part of the Tree Preservation Ordinance update and consistent with providing more specific guidance on tree removals and mitigation, staff is recommending the mitigation be expanded to include an option for on-site mitigation and an option to mitigate off-site through the payment of an in-lieu fee to cover the cost of plant materials and labor costs, or some combination thereof.

- On Site Mitigation. While many large redevelopment projects do provide some trees and shrubs to satisfy the on-site mitigation requirement, current practice allows applicants to satisfy the mitigation requirement through other site improvements, such as installation of permeable pavers, raised planter beds, and smaller ornamental trees that do not support wildlife habitat and provide limited shade. While staff supports the flexibility this approach has provided to applicants, often the trees proposed for removal are mature and the replacement landscaping materials, including the tree canopy is not easily or quickly replaced. In many cases, applicants will remove a mature, native tree and in exchange, plant a series of new ornamental trees or shrubs that never fully replace the canopy of the tree to be removed. Providing options to mitigate trees based on the appraised value of the removed tree with additional requirement to replace the canopy would expand the City's current canopy and help Hayward meet its overall goal to expand tree canopy which supports the City's future goal of adopting an Urban Forestry Management Plan.
- In-Lieu Fee for Off-Site Mitigation. If on-site mitigation is not possible or practical, staff is recommending an In-Lieu Fee option be provided that allows the applicant to pay an in-lieu fee to cover the cost of tree replacement that would be based on the total appraised value of the trees to be removed and would be calculated at a higher rate to pay labor and material costs associated with tree replacement off-site. With this option, the City could utilize these fees to replant trees in neighborhoods of the City which are currently underserved with tree canopy, based on the Tree Canopy Survey, similar to the option to mitigate tree removals off-site.

The installation of on-site plant materials to mitigate for tree removals would be over and above the normal landscaping requirement that would apply to projects during the development review process.

Permit Fee and Duration. The current Ordinance and adopted Master Fee Schedule contain a fixed fee of \$495 to the proposed removal of any trees. While this amount may be sufficient to cover staff review costs of a few trees, many of the larger development projects with numerous tree removals require more staff time and resources, which often require review of an applicant's Arborist Report, a site visit and review of landscaping and site plans to determine appropriate size and location of replacement trees. As a result of this inequity, staff is recommending the permit fee be adjusted, based on the number of trees proposed for removal. Staff is proposing a sliding scale where the amount of the Tree Removal Permit be based on the number and trees that are proposed to be removed. Specifically, staff is recommending a reduced fee rate for Tree Removal Permits requesting to remove up to two trees per site, which usually applies to single family residences, which make up the majority of the permit requests. Higher fees are proposed for projects requesting the removal of three or more trees. In addition, development projects which are required to go through the Site Plan Review discretionary process would be exempt from payment of the Tree Removal Permit fee as staff costs associated with this review would be covered by the project's required deposit, which is based on time and materials. If Council supports this sliding scale for Tree Removal Permits, staff will propose modifications to the Master Fee Schedule to capture staff costs and ensure greater cost recovery.

In addition to the proposed modifications to the Permit fee, staff is also recommending the duration of the permit be reduced from 1 year to 3 months, with an option to extend up to an additional 6 months upon approval of the City's Landscape Architect. While the current Ordinance allows Permits to remain valid for one year, staff believes the reduced time frame will allow those trees which pose public safety hazards to be removed more quickly and allow staff better opportunity to track the compliance with any on or off-site mitigation proposed.

Feedback Requested. As highlighted above, staff is requesting feedback from Council on several major policy issues prior to finalizing the draft Ordinance. Specifically, staff would like direction on the following:

- Does the Council support the expansion of protected *native trees* on private property, as defined by staff?
- Does the Council support the designation of *heritage trees* throughout the City, as defined by staff?
 - If so, does the Council support a higher level of *discretionary review* when proposing to remove heritage trees, such as approval from the Planning Commission or City Council?
- Does the Council support mitigation requirements for the loss of *tree canopy*?
- Does the Council support an *in-lieu fee* option for off-site mitigation?
- Does Council support the proposed changes to the *tree removal permit fee* and *time frame* associated the duration of these permits?

ECONOMIC IMPACT

Economic Impacts associated with the recommended updates to the Tree Preservation Ordinance include a possible increase in a staff position to monitor the increase of permits for tree removal for native trees on private property, which would be offset by better cost recovery by creating a sliding scale for permits based on the number of trees requested to be removed.

FISCAL IMPACT

No fiscal impact to the City's General Fund is anticipated with the update to the Tree Preservation Ordinance. Additional staff resources may be needed to implement the protection of native trees on private property.

STRATEGIC ROADMAP

This agenda item supports the Strategic Roadmap priorities to confront Climate Crisis and Champion Environmental Justice.

- C11: Update the Tree Preservation Ordinance

PUBLIC CONTACT

Public outreach efforts on the updates to the Tree Preservation Ordinance have entailed a series of targeted focus group meetings, an online survey, face-to-face interviews, and creating a project webpage to solicit feedback and provide project updates. Additional details on public outreach efforts to date are provided below:

Targeted Focus Group Meetings. To ensure the updated Tree Preservation Ordinance considers and incorporates the priorities of people who live and work in Hayward, an online survey was distributed to various Focus Groups. The Focus Groups included Developers, Landscape Architects, Arborists, Environmental Groups, Homeowner Associations, Mobile Home Parks, Neighborhood Groups, and other stakeholders, including PG&E. Additionally, staff met with internal stakeholders to discuss the potential impacts and components of the updated Tree Preservation Ordinance. The departments/divisions included staff from Planning, Code Enforcement, Building, Public Works Engineering, Public Works Utilities and Environmental Services, Public Works Transportation, Landscape Maintenance, and the Hayward Executive Airport. Each Focus Group was given two weeks to complete the survey and was invited to a follow-up meeting, which highlighted the issues and opportunities that each group was interested. The summarized feedback received from all the focus groups was to provide more flexibility with mitigating tree removals, provide clear guidelines around tree appraisals, update inconsistencies or ambiguities in the current Ordinance, establish a more equitable fee structure that fluctuates depending on the number of trees to be removed, and establish policies that support habitats for wildlife and migratory birds.

Public Events. In October 2023, staff promoted the Tree Preservation Ordinance update through a series of public events, including the Hayward Farmers Market and Trunk-or-Treat event. Staff discussed the project with interested parties and encouraged residents to complete an online survey as well as participate in a hands-on activity to share their views on the benefits of trees in an urban environment. Staff also conducted two face-to-face interviews with stakeholders interested in taking the survey but unable to take the survey online. Postcards with a QR code linking to the Tree Preservation Ordinance update webpage and online survey were also distributed at these public events. Postcards were provided in English, Spanish and Mandarin.

Project Webpage. In early October 2023, staff launched a webpage² that provides regular project updates as well as information related to the Hayward Tree Preservation Ordinance. The webpage also contains staff contact information, indicates key project milestones, and provide members of the public access to the draft Tree Preservation Ordinance when completed.

Online Survey. In addition to the focus group meetings, a broader public outreach effort took place through an online survey, which was developed to give the public an additional opportunity to give their opinions on the Tree Preservation Ordinance and get a better

² Tree Preservation Ordinance Webpage:

<https://hayward-ca.gov/your-government/departments/planning-division/tree-preservation-ordinance-update-project>.

understanding of interests, opportunities, and concerns tied to the project. The survey was available in English, Spanish, Mandarin and other languages upon request and was open from October 20, 2023, to April 2, 2024, as well as a link was made available on the project webpage and featured in a *Stack Extra* article published in early November 2023. The online survey received a total of 219 responses, which indicates the top three benefits of trees, as ranked by the responses, are: improving the environment (air quality, water and pollution), providing shade and reducing the heat island effect in neighborhoods, and providing habitat for wildlife. A summary of the survey results is included as Attachment IV.

NEXT STEPS

Following review and feedback from City Council and Planning Commission, staff will complete the revised draft of the Tree Protection Ordinance and release it for community and stakeholder review and comment. Statt expects the final Ordinance will be completed and presented to the City Council for consideration in the Spring of 2025.

Prepared by: Peter Jensen, Landscape Architect
Jeremy Lochirco, Planning Manager

Recommended by: Sara Buizer, AICP, Development Services Director

Approved by:



Dustin Claussen, Interim City Manager