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From: [Heidi Costello](#) [Heidi Costello](#)

Sent: Friday, March 18, 2022 4:03:19 PM

To: [Heidi Costello](#) [Heidi Costello](#)

Subject: FW: Fines for City's Tree Retention Requirements

Response requested: Yes

Sensitivity: Normal

Attachments:

[20220316 Tree Fines final.pdf](#) 

From: Debbie Tarry

Sent: Thursday, March 17, 2022 5:15 PM

To: Betsy Robertson <brobertson@shorelinewa.gov>; Chris Roberts <croberts@shorelinewa.gov>; Doris McConnell <dmccconnell@shorelinewa.gov>; Eben Pobee <epobee@shorelinewa.gov>; John Norris <jnorris@shorelinewa.gov>; John Ramsdell <jramsdell@shorelinewa.gov>; Keith Scully <kscully@shorelinewa.gov>; Laura Mork <lmork@shorelinewa.gov>; Pollie McCloskey <pmccloskey@shorelinewa.gov>

Cc: Rachael Markle <rmarkle@shorelinewa.gov>; Julie Ainsworth-Taylor <jainsworth-taylor@shorelinewa.gov>; Steve Szafran <sszafran@shorelinewa.gov>; Margaret King <mking@shorelinewa.gov>

Subject: Fines for City's Tree Retention Requirements

Council –

There have been questions from Councilmembers on the provisions in the existing Shoreline Municipal Code for assessing fees and fines for violations to the City's tree retention requirements. As such, I wanted to clarify and provide a couple of examples of how the City has applied those provisions. The attached memorandum contains this information. I am glad to put this in the Green Folder for Monday night if helpful (Tree Development Code amendments). Please let me know if you have any questions.

Debbie Tarry

City Manager | City of Shoreline

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Memorandum

DATE: March 16, 2022

TO: City Councilmembers

FROM: Debbie Tarry, City Manager

RE: Existing Authority for Fees/Fines for Tree Removal Violations

CC: John Norris, Assistant City Manager
Rachael Markle, Planning & Community Development Director
Margaret King, City Attorney
Julie Ainsworth-Taylor, Assistant City Attorney
Steve Szafran, Senior Planner

There have been questions from Councilmembers on the provisions in the existing Shoreline Municipal Code (SMC) for assessing fees and fines for violations to the City's tree retention requirements. As such, I wanted to clarify and provide a couple of examples of how the City has applied those provisions.

SMC 20.30.770(D)(2) provides the language for civil penalties and applies to violations to the City's general development standards for tree conservation and land clearing and site grading standards contained in SMC 20.50 Subchapter 5.

D. Civil Penalties.

2. Any responsible party who has *committed a violation of the provisions of Chapter [20.50](#) SMC, General Development Standards (tree conservation, land clearing and site grading standards), or Chapter [20.80](#) SMC, Critical Areas, will not only be required to restore unlawfully removed trees or damaged critical areas, insofar as that is possible and beneficial, as determined by the Director, but will also be required to pay civil penalties in addition to penalties under subsection (D)(1) of this section, for the redress of ecological, recreation, and economic values lost or damaged due to the violation.* Civil penalties will be assessed according to the following factors:

- a. For *violations within critical areas and required buffers*, an amount determined pursuant to SMC [20.80.130](#)(E); or

b. For violations not located within critical areas and required buffers, an amount determined to be equivalent to the economic benefit that the responsible party derives from the violation measured as the total of:

- i. The resulting increase in market value of the property; and
- ii. The value received by the responsible party; and
- iii. The savings of construction costs realized by the responsible party as a result of performing any act in violation of the chapter; and

c. A penalty of \$2,000 if the violation has severe ecological impacts, including temporary or permanent loss of resource values or functions.

3. An additional penalty of \$2,000 if the violation was deliberate, the result of knowingly false information submitted by the property owner, agent, or contractor, or the result of reckless disregard on the part of the property owner, agent, or their contractor. The property owner shall assume the burden of proof for demonstrating that the violation was not deliberate.

4. A repeat violation means a violation of the same regulation in any location within the City by the same responsible party, for which voluntary compliance previously has been sought or any enforcement action taken, within the immediate preceding 24-consecutive-month period, and will incur double the civil penalties set forth above.

SMC 20.30.770(D)(2) (Emphasis added)

Critical Areas

SMC 20.30.770(D) states that violations within critical areas is governed by SMC 20.80.130(E)(1), as section of the City's Critical Area regulations. This provision provides for the following penalties for violations of the City's critical areas regulations (Emphasis added):

E. **Penalties.** Any responsible party violating of any of the provisions of this chapter may be subject to any applicable penalties per SMC [20.30.770](#) plus the following:

- 1. A square footage cost of \$3.00 per square foot of impacted critical area buffer; and a square footage cost of \$15.00 per square foot of impacted critical area; and
- 2. A per tree penalty in the amount of \$3,000 per nonsignificant tree and \$9,000 per significant tree, for trees removed from a critical area or critical area buffer in violation of the provisions of this chapter.

The Tree Preservation Code Team (TPCT) has not proposed any changes in the penalty language for violations in critical areas, but an example of how this section has been applied may be helpful to the Council. In critical areas, the City is not only concerned with trees but also with the understory vegetation given the role that this vegetation has in protecting the functions and values of the critical areas. This is why the City's penalties in critical areas were amended in 2015 to include calculations for impacted critical area and their buffers. This is one of the key differences between violations in critical and non-critical areas.

Council will recall that the most significant violation of the City's critical area regulations in the last few years occurred in 2016 with the Arden View development removing ten (10) significant trees and 20 non-significant trees in violation of the issued site development permit. Arden View's Notice of Violation and Order to Correct imposed penalties of \$452,000, and the developer appealed the Notice of Violation to the Hearing Examiner. After Arden View's arborist did measurements on impacted square footage, the City adjusted the penalty to \$382,520. Settlement negotiations occurred and the City Council ultimately authorized settlement of \$200,000 plus a requirement for mitigation and restoration.

Non-Critical Areas

SMC 20.30.770(D)(2)(b) provides that for violations not located within critical areas and their buffers, an amount determined to be equivalent to the economic benefit that the responsible party derives from the violation measured as the total of:

- The resulting increase in market value of the property; and
- The value received by the responsible party; and
- The savings of construction costs realized by the responsible party as a result of performing any act in violation of the chapter

City Staff cannot recall an incident where a violation utilized this provision to impose penalties. But, there are times when the valuation of trees were used to provide for restitution of the violation.

A recent example is a property owner who allowed the cutting of three (3) public right-of-way trees in front of their home, potentially unaware that these trees were on public property. This was not a permitted activity as the City would not have authorized this tree removal if the property owner had sought permits for this activity. The value of the trees were calculated by both the property owner and the City's arborist. The appraisal calculations are as follows:

| Tree # | City's Arborist | Property Owner Arborist |
|---------------|------------------------|--------------------------------|
| #1 | \$ 53,000 | \$22,200 |
| #2 | 8,900 | 3,600 |
| #3 | 68,700 | 29,500 |

| | | |
|-------|-----------|----------|
| Total | \$130,600 | \$55,300 |
|-------|-----------|----------|

As Council can see, there is a large disparity between the two appraisals. This is not because of a differing methodology, but rather differing opinions on the condition, health and cost per square inch value of the trees. Regardless of these differences, the appraised valuations are significantly greater than the penalties that would be generated under the language proposed by the TPCT in their proposed Amendment #C5 that the Planning Commission recommended be denied. The TPCT amendment proposed a penalty in the amount of \$9,000 per significant tree plus a square footage cost of \$3.00 per square feet of impacted trees and vegetation at the site (or \$15 per square feet in MUR-35' or MUR-45'). Using those figures, in this situation the base penalty would be \$27,000 for the trees and, assuming that the impacted area was 50'X20' (frontage), the additional impact area penalty would be \$3,000, for a total penalty of \$30,000 which is dramatically less than even the property owner's valuation. And, of course, in addition to compensation for the value of the trees, the property owner is required to restore the property pursuant to an acceptable restoration plan.

Tree Replacement Maintenance Bonding

SMC 20.50.360(L) currently requires a performance bond for tree replacement and site restoration permits to ensure the installation of replacement trees, and/or compliance with other landscaping requirements as identified on the approved site plans. A maintenance bond is required after the installation of the required site improvement and prior to the issuance of a certificate of occupancy or finalization of permit and following required landscape installation or tree replacement. The maintenance bond and associated agreement is to ensure adequate maintenance and protection of retained trees and site improvements. The bond is for the amount that it is estimated to cost for maintenance and protection for 36 months following planting or as determined by the Director. Single-family lots are exempt from this bonding requirement unless a clearing violation has occurred or tree replacement is located within critical areas or critical area buffers.

Summary

Hopefully the examples in this memorandum are helpful in explaining the penalty provisions already existing in the municipal code and how it may compare to the proposal by TPCT. The Planning Commission recommendation was to deny the TPCT proposal for penalties.