



Legislation Text

File #: 2024-0059, **Version:** 1

To: Sonoma County Board of Supervisors

Department or Agency Name(s): Permit Sonoma

Staff Name and Phone Number: Robert Aguero, Senior Environmental Specialist (707) 565-3718

Vote Requirement: 4/5th

Supervisorial District(s): Countywide

Title:

10:15 A.M. Urgency Ordinance Extending a Temporary Moratorium Prohibiting, With Limited Exceptions: (1) The Removal of Protected Trees; And (2) Type Conversion of Oak Woodland, in Unincorporated Sonoma County (Excluding The Coastal Zone), Until May 31, 2024.

Recommended Action:

Conduct a public hearing to consider adoption of an urgency ordinance extending the temporary moratorium on Protected Tree removal and Oak Woodland conversion adopted by the Board on December 12, 2023, with limited exceptions, to prohibit: (1) the removal of Protected Trees greater than six inches (6") diameter at breast height (DBH); and (2) any Type Conversion of Oak Woodland throughout the unincorporated county, excluding the Coastal Zone until May 31, 2024, pursuant to and consistent with Government Code Sections 65858 and 25123; and find the action exempt from the California Environmental Quality Act (CEQA).

Executive Summary:

Trees and woodlands are essential elements of Sonoma County, that provide a range of fundamental ecosystem and community services. Climate change, natural disasters and development continue to threaten the health, diversity and distribution of local trees and the benefits they provide. On December 12, 2023, the Board of Supervisors held a public hearing, continued from November 28, 2023, to consider proposed updates to existing tree and woodland protections and a temporary moratorium to limit tree removal. The Board directed staff to conduct additional outreach and engagement with the forestry community and return at a date uncertain with updates to tree and woodland protections in the zoning code. To prevent further unregulated tree removal and oak woodland conversion while staff develop additional policy options, the Board adopted an urgency ordinance (Ordinance No. 6460) that prohibits Protected Tree removal and Oak Woodland conversion, with limited exceptions, for a period of 45 days, expiring January 26, 2024, unless extended. The extension of the urgency ordinance to May 31, 2024 would allow staff to develop additional policy considerations and prepare applicable materials and reports for a future Board of Supervisors meeting at which it may consider updates to tree and woodland protections. Staff are planning to bring back materials and ordinance changes for the Board's consideration in early spring 2024.

Discussion:

On December 12, 2023, the Board of Supervisors held a public hearing, continued from November 28, 2023, to consider proposed updates to existing tree and woodland protections and consider a temporary moratorium that would limit tree removal. The Board adopted an urgency ordinance that prohibits certain

tree removal, with limited exceptions, for a period of 45 days, expiring January 26, 2024, unless extended by subsequent action of the Board of Supervisors.

The moratorium applies to any and all properties in unincorporated Sonoma County, except for the Coastal Zone.

The urgency ordinance prohibits:

- 1) The Removal of Protected Trees, as defined in the ordinance, 6" diameter at breast height (DBH) or larger.
- 2) Type Conversion of Oak Woodlands, as defined in the ordinance.
- 3) Issuance of VESCO permits that involve the Removal of Protected Trees or Type Conversion of Oak Woodlands.

The urgency ordinance allows for Protected Tree removal and Oak Woodland conversion under the following limited circumstances:

- 1) To avoid immediate danger;
- 2) To maintain evacuation routes and emergency activities;
- 3) Fire safety activities including maintenance of defensible space;
- 4) To maintain existing or development of new utilities and Rights-of-Way;
- 5) Trimming and pruning or removal related to residential maintenance
- 6) Existing or previously approved development permits or entitlements;
- 7) Development of by-right housing within designated Urban Service Areas;
- 8) Tree removal approved under an existing Timber Harvest permit; and,
- 9) Removal of dead, dying, or diseased trees.

Permit Sonoma staff recommend the inclusion of language that would exempt from the moratorium tree removal associated with applications for development permits and entitlements that were determined to be complete prior to the effective date of the adoption of the urgency ordinance (December 12, 2023).

Urgency Measures

There are two provisions supporting urgency ordinances, depending on the underlying policies. Under the more general provision, California Government Code 25123(d), the Board may pass an ordinance that takes effect immediately by a four-fifths vote for "the immediate preservation of the public peace, health, or safety," where the ordinance contains "a declaration of the facts constituting the urgency[.]" Under the land use specific provision, the Board may also pass an urgency ordinance that is effective immediately under Government Code Section 65858, "to protect the public safety, health, and welfare," "prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time."

Under Government Code Section 65858 (a), the urgency ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and

public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted. Alternatively, under Government Code Section 65858(b), the legislative body may vote to extend the interim ordinance once for 22 months and 15 days.

Here, staff propose one extension of the moratorium to May 31, 2024, which would be an extension of 4 months and 5 days.

Additionally, under Section 65858 (c) certain findings must be made by the Board to extend an urgency ordinance. Specifically, these statutory findings are:

“[T]hat there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.”

“In addition, any interim ordinance adopted pursuant to this section that has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing may not be extended except upon written findings adopted by the legislative body, supported by substantial evidence on the record, that all of the following conditions exist:

(1) The continued approval of the development of multifamily housing projects would have a specific, adverse impact upon the public health or safety. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date that the ordinance is adopted by the legislative body.

(2) The interim ordinance is necessary to mitigate or avoid the specific, adverse impact identified pursuant to paragraph (1).

(3) There is no feasible alternative to satisfactorily mitigate or avoid the specific, adverse impact identified pursuant to paragraph (1) as well or better, with a less burdensome or restrictive effect, than the adoption of the proposed interim ordinance.”

Among other exclusions, the proposed draft extension of the moratorium excludes from its prohibitions tree removal that is associated with by right housing development in an urban service area and has been clarified to include an exclusion for tree removal resulting from development of projects with a significant component of multifamily housing. As a result, the urgency ordinance will not have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing, and the additional findings for such prohibitions are not required.

Additionally, the proposed draft extension articulates the circumstances showing the “immediate preservation of the public peace, health, or safety,” (Section 25123) and “a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building

permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.” (Section 65858). The findings are articulated in Section II “Findings” of the proposed Urgency Ordinance extension and support the extension of the urgency measure’s moratorium under the stated authorities. The findings include, for example, that Sonoma County has historically experienced a rush on permit or development activity on the eve of regulations that would significantly limit, regulate, or prohibit the activity to avoid the new regulations, to the detriment of the public health, safety, or welfare. The adoption of the County’s Vineyard Erosion and Sediment Control Ordinance and Well Ordinance provide examples.

Finally, as required by California Government Code section 65858(d), a report describing the measures taken to alleviate the condition which led to the adoption of the urgency ordinance must be issued 10 days prior to expiration of the urgency ordinance or any extension. This report is included in the Board materials.

Outreach and Next Steps:

Staff are engaging in additional stakeholder outreach. Staff intend to have policy options for proposed updates to the existing tree protections and proposed Oak Woodland Ordinance to present to the Board before May 31, 2024. If circumstances warrant a further extension of the urgency ordinance moratorium, staff would return to your board with a proposed extension consistent with Government Code Sections 25123 and 65858.

Strategic Plan:

Updating tree protection regulations will increase climate resiliency by preserving the County’s tree and forest resources, which act as the County’s most important carbon sinks. The proposed land use policies provide flexibility and adaptability to reflect the diversity of ecosystems across the County. These policies will help achieve the objective of maximizing carbon sequestration and minimizing the loss of the County’s forest carbon sinks.

This item directly supports the County’s Five-year Strategic Plan and is aligned with the following pillar, goal, and objective.

Pillar: Climate Action and Resiliency

Goal: Goal 5: Maximize opportunities for mitigation of climate change and adaptation through land conservation work and land use policies

Objective: Objective 2: Develop policies to maximize carbon sequestration and minimize loss of natural carbon sinks including old growth forests, the Laguna de Santa Rosa, and rangelands. Encourage agricultural and open space land management to maximize sequestration

Racial Equity:

Was this item identified as an opportunity to apply the Racial Equity Toolkit?

No

Prior Board Actions:

11/28/2023 - Board considered updates to tree and woodland protections, continued hearing to December 12, 2023, and directed staff to return with an urgency ordinance establishing a temporary moratorium on tree removal.

12/12/2023 - Board adopted an urgency ordinance (Ordinance No. 6460) establishing a temporary

moratorium on tree removal for 45 days, expiring January 26, 2024.

FISCAL SUMMARY

Narrative Explanation of Fiscal Impacts:

N/A

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Att 1 - Urgency Ordinance

Att 2- Staff PowerPoint

Att 3 - 10 Day Report Required by Government Code 65858(d)

Related Items "On File" with the Clerk of the Board:

N/A.