

DATE ISSUED: January 23, 2003

REPORT NO. 03-014

ATTENTION: Rules Committee
Agenda of January 29, 2003

SUBJECT: Quarterly Status Report on Community Forest Initiative

SUMMARY

Issue – Shall Rules Committee accept this status report on various aspects of the Community Forest Initiative?

Manager’s Recommendation – Accept this status report.

Other Recommendation – None.

Fiscal Impact – None with this action.

BACKGROUND

Definitions

The “community forest” is comprised of every tree in our environment, including those located on: local, state and federal public land, parks and open space; street rights-of-way; school property; and most of all, the large number of trees on private property. The community forest aggregates the benefits that are provided by individual trees. These aggregate benefits are of enormous value to the residents of San Diego in terms of energy conservation, air quality improvements, reduced heat islands, reduced storm water runoff, decreased soil erosion, reduced glare, and improved community image and aesthetics. Seen in this light, the community forest represents the City’s “green infrastructure.”

A “sustainable community forest” is one in which the trees span a range of ages, from saplings to venerable monarchs, and span a range of species, so that the forest is not vulnerable to decimation by just a few pests. A sustainable forest is also one in which the

wood from a tree that dies is recycled into crafted wood products rather than taken to a landfill.

The Community Forest Advisory Board (CFAB), members of which are appointed by the Mayor and confirmed by City Council, initiated the concept of the Community Forest Initiative. The “Community Forest Initiative” is an umbrella framework for strategies to implement the goal to develop, nurture and protect a sustainable community forest in the City of San Diego.

DISCUSSION

Tree Tally

One aspect of building a community forest is tree planting. A Community Forest Initiative objective which was announced by Mayor Murphy in January 2002, is to plant 5,000 trees on public property each year for 20 years, for a total of 100,000 trees for San Diego. Allowing time for Initiative start up, the target is to plant the first 5,000 trees by the end of Fiscal Year 2003 (by June 30, 2003), and to plant 5,000 trees each fiscal year after that.

The attachment shows that the City is well on its way toward the target of planting 5,000 trees, because over 3,000 trees were planted on public property in Calendar Year 2002. The target should be reached by June 30, 2003 as additional trees are planted with:

- * Fiscal Year 2003 Community Forest Initiative funds authorized by City Council
- * Grants and endowments to the Park and Recreation Department, in combination with Park and Recreation Department Matching Funds
- * Grants to People for Trees and Urban Corps for tree planting
- * City of San Diego Capital Improvement Projects that include tree planting

Planting Trees in Street Right-of-Way Areas that Receive Resurfacing, Slurry Coating or Concrete Work

Consistent with the Mayor’s goal “To create neighborhoods we can be proud of,” the Mayor and City Council recently asked if street trees could be planted in conjunction with resurfacing, slurry coating and concrete work in the street right-of-way. While it is not feasible to plant trees at the same time this work is being done, it is feasible to conduct tree planting education and outreach with residents on such streets around the time the work is done.

To this end, Street Division coordinated with two nonprofit tree planting service providers, People for Trees and Urban Corps, to develop a plan for such education and outreach. The plan’s goal is to continue the beautification of streets which was begun by

resurfacing, slurry coating or concrete work, by planting free street trees, to the extent available, eligible funding permits.

Beginning in February 2003, Street Division will regularly provide to People for Trees and Urban Corps, schedules and associated maps for contract resurfacing, slurry coating and concrete work, plus schedules for sidewalk work performed by Division crews. It will be determined whether these areas are eligible for available funding for street tree planting, such as from City budget allocations and a variety of grants. To the extent areas are eligible for available funding, the service providers will target those areas to offer free street trees. As always, the residents will be asked to sign tree watering agreements and, in the case of one grant, will be asked to have the tree hole pre-dug. To facilitate communication and coordination in this program, liaisons have been identified by Street Division and by each of the service providers.

Written Agreements by Adjacent Property Owners to Water Free Street Trees

Background

Building a community forest requires newly planted trees to be watered for the first three years, after which trees can generally survive on San Diego's limited rainfall. Even with San Diego's scarce water resources, investing in tree watering so that trees can become established, more than pays for itself during the life of trees in terms of reduced energy usage and air/water quality improvements.

Currently, nonprofit organizations such as People for Trees and Urban Corps obtain signed agreements for three years' watering from City residents who live adjacent to where free trees are planted in the City street right-of-way. The nonprofits retain these signed agreements in their files. At previous Rules Committee meetings, the question was raised whether the City itself should execute enforceable tree watering agreements with adjacent property owners.

Current Situation

For developments after 1987, the Municipal Code says that all landscaping which is required as a condition of the Development Permit must be irrigated and must be replaced if it dies. If the permit is issued to a developer, this responsibility is transferred from the developer to the property owner when parcels are sold. For these areas, and for all other areas throughout the City, State law says that a property owner whose land fronts a public parkway or strip maintained between the owner's property line and a public street, already owes a duty to the City (not to users of the right-of-way) to maintain street trees so as not to endanger persons or property. This duty may include watering and fertilizing trees, if not doing so creates an unsafe condition. Because the adjoining property owner's duty is to the City, that property owner's failure to maintain a street tree does not give rise to liability to someone injured while using the public right-of-way by a hazardous condition associated with the street tree.

Although the City does not separately categorize claims and lawsuits associated with street trees, staff estimates that the City identifies the adjacent property owner as a co-defendant in approximately 10% of the claims and lawsuits against the City involving street trees. Staff further estimates that the cost borne by adjacent property owners in these claims does not normally exceed \$100,000 a year.

While an adjacent property owner's maintenance of a street tree does not confer liability for street users, if an adjoining property owner does anything more in the parkway than water, fertilize, sweep leaves and mow, then that additional action, combined with the watering/fertilizing, etc., may constitute sufficient "control" of the parkway to give rise to liability to users of the public right-of-way for a known dangerous condition associated with the street tree. Therefore, a property owner may prefer the risk of liability to the City for simple failure to maintain a street tree, to the potential risk of liability to an injured user of the public right-of-way for maintaining the parkway to the point of having control of it.

Consequently, receipt of a free street tree may not be sufficient incentive for a property owner to agree in writing to water a street tree if the City has enforceable remedies for failure to water it, unless the City offers the property owner some form of limited indemnity. Any limited indemnity agreement between the City and the property owner should probably be notarized and recorded. Cost estimates for these services are \$10 for notarization and \$12 for recordation.

Options

1. If it is legal, and doesn't constitute preemption, codify in the Municipal Code that portion of Council Policy 200-05 that assigns to the adjacent property owner the responsibility for street tree watering and fertilization. Failure by the property owner to water and fertilize a street tree would be a code violation subject to Code Enforcement. Such an amendment to the Municipal Code requires further research by the City Attorney into the issues of legality, liability and preemption.
2. Develop a limited liability street tree watering agreement for the City to execute with adjacent property owners who receive free street trees. Failure by the property owner to water and fertilize a street tree would create a cause of action for breach of agreement.
3. Continue to require nonprofit organizations who plant free street trees to obtain signed watering agreements from the adjacent property owners.
4. Avoid the need for watering agreements with adjacent property owners through City funding of street tree watering. The status of considering City funding for street tree watering is included in the next section, "City Organizational Structure and Budgetary Elements for Trees."
5. Use a combination of Options # 3 and 4 to water street trees.

City Organizational Structure and Budgetary Elements for Trees

Building a community forest also requires organizational focus and a level of funding consistent with the objectives. At a previous Rules Committee meeting, the City Manager was asked to return to Rules Committee prior to preparation of the Proposed FY 2004 Budget with recommendations about implementation processes for the City's tree program, including: 1) which City department should be in charge of trees; and 2) a plan to include funds in future proposed budgets to replace, water, prune and track trees. Due to the recently proposed reductions in the State budget, as well as the City's own revenue outlook, the City Manager will not be prepared to make recommendations on these issues prior to considering all of the City's needs during preparation of the Proposed FY 2004 Budget.

Tree and Community Forest Ordinance

To develop, nurture and protect a sustainable community forest, public policies need to be in place to support these objectives. The Community Forest Advisory Board (CFAB) is working on recommending such policies. In October 2002, CFAB requested City staff to: 1) separate the Board's draft ordinance into: a) policies, which they propose to be adopted by ordinance, and b) technical manuals to be referenced in the ordinance, and 2) recommend language to address several areas of concern. A draft is expected to be returned to CFAB, after which it will be presented to the Rules Committee where, if approved in concept, it will be sent to the Community Planners Committee and individual Community Planning Groups for 45-day review/comment before being docketed at City Council in Summer 2003.

ALTERNATIVE

Direct the City Manager to proceed with one of the options described in this report for watering street trees.

Respectfully submitted,

Terri Williams
Assistant to Senior Deputy City Manager

George I. Loveland
Senior Deputy City Manager

Attachment: [Calendar Year 2002 Tree Tally](#)