MEMORANDUM

TO: Mayor and Council

FROM: Howard S. Lazarus, PE, PWLF, Director, Public Works Department

Greg Guernsey, Director, Planning and Development Review Department

DATE: October 24, 2014

SUBJECT: Resolution No. 20140626-084 – Tree Houses

On June 26, 2014, City Council passed Resolution No. 20140626-084 directing the City Manager to work with stakeholders to make recommendations on a process for permitting tree houses in public rights of way, including exploring the feasibility of setback waivers in certain circumstances. Furthermore, the City Manager is to look at how other cities communicate municipal requirements for the construction of tree houses to the public so that the process is clear and simple. Each aspect of the Council resolution is addressed in the paragraphs below:

Permitting of Tree Houses in the Right-of-Way

The Texas Transportation Code Section 316.021 allows for the private use of a public right-of-way, provided that the private use meets two requirements;

1. The use cannot "interfere with the public use of the street or sidewalk," and
2. It cannot "create a dangerous condition on the street or sidewalk."

Consistent with State Statute, Chapter 14-11 of the City Code regulates the use of a right-of-way for private purposes and would require the owner of the tree house to pay a fee, obtain a license agreement, and maintain insurance. It is noted that the liability portion of a homeowner's insurance policy will respond as long as the tree house or play house is within the ownership structure of the plot owned by the homeowner. Tree houses constructed in the right of way would therefore not be covered under a typical homeowner's insurance policy and a separate policy, if commercially available, would be required. In order to avoid creating a dangerous condition on the street or sidewalk, the City should require a set of plans sealed by

an engineer. Additionally, the City should conduct an annual inspection of the structure. In accordance with the license agreement, the licensee would be required to maintain the structure in a safe and sound condition, or be required to remove it from the right-of-way.

While these conditions may appear to be burdensome on the licensee, the use of the public right-of-way for a private use imposes a potential liability on the City. In reviewing these requirements, Public Works staff did confirm that both the City of Dallas and the City of Fort Worth do not allow tree houses in the public right of way.

Setback Waivers

The City of Austin's Zoning Code (Chapter 25-2) has provisions for what can go into a zoning setback which is also called a required yard. Section 25-2-513 requires that "a required yard must be open and unobstructed from finished grade to the sky." The section lists the items that may be placed in the setback/required yard, but does not include tree houses as allowable, and therefore a variance from the Board of Adjustment would be required to allow a tree house to be constructed within the setback/required yard. The process for obtaining a variance is described in Section 2-1-111 of the City Code.

In response to the Council request to research how other municipalities are addressing this matter, staff contacted Wilmette, IL. They provided insight on a new zoning ordinance which was adopted in April 2014. The ordinance includes specific regulations associated with tree houses and play houses where it had previously applied general accessory structure restrictions (i.e. setbacks and height). The change was affected due to people talking about tree houses, but what they actually had was a play house in, or, surrounding a tree which was often supported by posts to the ground rather than the tree. These were often built with a deck or platform in addition to the enclosed area of the structure. In zoning terms, they considered the platforms a raised deck rather than just part of a tree house. Ultimately, tree houses and play houses are only permitted encroachments into a rear yard, maintaining a minimum 3' side and rear setback, and are limited to 15' in height above the adjacent grade. A building permit is required to document zoning limitations and how residents are affected by the new zoning ordinance. Residents interested in building a tree house or play house call to confirm how the ordinance requirements apply to their property and their project. A link to the agency's tree house page is also provided to its citizens.

Other jurisdictions with specific requirements related to treehouses are provided below:

- In Fairfax County, Virginia no permit is required, but accessory structures must be less than 7 feet in height or they will be subject to setback requirements. The accessory structure must not be in the front yard and must be less than 100 square feet.

- In Highland Village, Texas; tree houses are considered accessory buildings and require a permit which follows the setback ordinance.

Additionally, structures such as a treehouse do not require a permit in accordance with the 2012 International Residential Code. The exemption from permit requirements shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

Recommendations

The regulation of treehouses that are entirely or partially within the public-right-of-way is adequately addressed under Section 14-11 of the City Code pertaining to License Agreements. No changes in code are required or recommended.

Changes to the Zoning Code to allow placing tree houses in setbacks/required yards to adopt an approach similar to that developed in Wilmette would require changes to the code. Planning and Development Review Department (PDRD) staff does not recommend amending the residential zoning district's zoning setbacks or required yards. The primary reason for establishing zoning setbacks or required yards is as follows:

1. Provide adequate light and air
2. Safety
3. Reduction of fire hazards by providing separation between structures
4. Privacy

In addition, the PDRD's recommendation would be to not locally amend the adopted 2012 International Residential Code because of the following reasons:

1. Liability (imposed through the contractual nature of a building permit)
2. Structures such as a treehouse are exempt from building permit requirements under the currently adopted 2012 International Residential Code

Public Works and Planning and Development Review will continue to process requests for setback/required yard variances for tree houses through the Board of Adjustment under the purview granted by the Texas Local Government Code.

cc: Marc A. Ott, City Manager
Robert D. Goode, Assistant City Manager
Sue Edwards, Assistant City Manager