RESOLUTION NO. 2023-R____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CULVER CITY, CALIFORNIA (1) SETTING ASIDE THE CITY COUNCIL'S OCTOBER 11, 2021 DECISION TO UPHOLD THE APPEAL OF THE FORMER PUBLIC WORKS DIRECTOR'S DECISION TO APPROVE THE REQUEST TO REMOVE TWO CITY-OWNED FICUS TREES LOCATED IN THE GALVIN STREET PARKWAY ADJACENT TO 10729-31 NORTHGATE STREET; AND (2) FOLLOWING RECONSIDERATION OF THE OCTOBER 11, 2021 DECISION, UPHOLDING THE APPEAL AND DENYING THE REQUEST TO REMOVE TWO CITY-OWNED FICUS TREES LOCATED IN THE GALVIN STREET PARKWAY ADJACENT TO 10729-31 NORTHGATE STREET.

WHEREAS, on October 1, 2019 the property owner at 10729-31 Northgate Street (the "Applicant") filed a Request for Parkway Tree Removal ("Request") for removal of two parkway trees (Ficus Microcarpa Nitida) on the Galvin Street side of the property (Attachment 1).

WHEREAS, Culver City Municipal Code ("CCMC") section 9.08.200 et seq. sets forth the City's rules and procedures for the removal of City-owned street trees, including the two parkway trees that are the subject of this appeal and resolution.

WHEREAS, under CCMC section 9.08.210, in determining whether any tree in the parkway shall be removed or replaced, the Public Works Director determines whether the removal or replacement is in the best interest of the City and the public health, safety and welfare. Such determination is based on the criteria set forth in either CCMC section 9.08.210.C.1 or CCMC section 9.09.210.C.2.

WHEREAS, CCMC section 9.08.210.C.2 allows removal if <u>two or more</u> other criteria are met:

a. The tree is a known problem species or is otherwise found to be an undesirable species for its location based on tree size relative to available area for tree growth.
b. The tree **<u>roots</u>** **<u>are creating extensive and repeated damage</u>** to public and/or private infrastructure, including sidewalks, sewer lines, or other utility lines. A history of sewer line blockages from tree roots does not alone provide sufficient

reason for tree removal, but rather suggests the need for sewer repair to stop leaks and the accompanying root intrusion that occurs.

c. The tree **<u>is creating</u>** a public or private nuisance. *(Emphasis added.)*

WHEREAS, CCMC section 9.08.210.D, E, and F provide with respect to removal of parkway trees, and with respect to appeals of tree removal decisions by the Public Works Director:

D. If a Parkway tree is approved for removal, following review of the criteria listed in Subsection 9.08.210.C, such removal shall be accommodated subject to availability of City resources and funds. In the event that the applicant desires the approved removal occur prior to when it can be accommodated by the Public Works Director, the applicant shall be given the option of paying for the removal, in which case the tree will be removed at the first opportunity upon receipt of payment.

E. The decision of the Public Works Director is final, unless appealed by the applicant, a member of the City Council or an interested person. Appeals shall be submitted in writing and filed with the City Clerk within 10 days after the decision date identified in the notice of decision. The notice of decision shall be prepared by the Public Works Director and sent to the applicant and all interested persons with a copy provided to the City Council. The number of days shall be construed as City Hall business days. Time limits will extend to the following City Hall business day, where the last of the specified number of days falls on a weekend, holiday, or other day when City Hall is officially closed. An appeal shall include a general statement, specifying the basis for the appeal, shall be based on an error in fact or dispute of the findings of the decision, and must be accompanied by supporting evidence substantiating the basis for the appeal. Appeals shall be accompanied by a filing fee established by resolution of the City Council.

F. Appeals shall be heard by the City Council, which shall affirm the decision of the Public Works Director, unless the appellant demonstrates, by substantial evidence, that the decision is based on an error in fact or disputed findings. The decision of the City Council on an appeal shall be final.

WHEREAS, in the Request the Applicant asserted that the trees should be removed solely pursuant to CCMC Section 9.08.210.C.2 subsections a, b, and c. The Applicant did not assert that Section 9.08.210.C.1 applied.

WHEREAS, in the Request the Applicant asserted that:

- the subject trees are a known problem species and have outgrown their planting area;
- the tree roots are causing extensive damage to the public street and sidewalk;
- the trees are sitting on a “high priority” natural gas line;
- the tree damage does not allow for parking; and
- tree limbs fall and are dangerous.

WHEREAS, in response to the Request, the City Arborist undertook an assessment that recommended the removal of both trees based on the justification provided by the Applicant in the Request. Based on the Applicant’s justification and the City Arborist’s assessment, the (former) Public Works Director approved the Applicant’s Request to remove both trees.

WHEREAS, on February 25, 2020, the Director’s decision was mailed to the Applicant and interested persons, including neighbors. CCMC section 9.08.210.E allows a formal appeal of the Public Works Director’s decision to be filed within 10 business days after the date set forth in the notice of decision.

WHEREAS, on March 2, 2020, the City received a timely letter (“Appeal”) from the property owner of 10740 Northgate Street (the “Appellant”) appealing the decision to remove the trees (Attachment 2).

WHEREAS, on August 10, 2020, the City Council conducted a Public Hearing of the Appeal. Upon the conclusion of that hearing, the City Council rendered no decision on the

matter and instead, instructed staff to explore the cost and feasibility of alternatives, whose implementation would allow both trees to remain in place.

WHEREAS, on October 11, 2021, the City Council reopened the Public Hearing for the Appeal, and staff presented a capital improvement project ("Project") option that would preserve the Northgate/Galvin corner tree and remove the inner Galvin Street tree due to its close proximity to the Applicant's concrete wall, which wall had suffered cracking prior to its repair by the Applicant. The Project would eliminate the adjacent curbside parking area on Galvin Street and convert the area into an expanded parkway. The staff report and testimony presented at the hearing established that the Project would significantly lengthen and widen the existing parkway and provide substantially more room for unimpeded tree root growth in the future. The Project also included removal of the sidewalk located along the Applicant's property line on the Galvin Street side, thus eliminating the potential for future sidewalk damage.

WHEREAS, at the October 2021 hearing, as they had at the previous hearing in 2020, neighbors and other City residents appeared and presented their comments and views in strong opposition to both the Request and the proposed Project, and emphatically urged the Council to preserve (and not destroy) both trees. The Applicant and her attorney were the only speakers who expressed support for either the Request or the Project.

WHEREAS, at the October 2021 hearing, the (former) Public Works Director, in response to questions from the Council, acknowledged that both trees could be safely and feasibly saved by another capital project that would address street and sidewalk damage.

WHEREAS, the City Council hereby finds that acknowledgement by the former Public Works Director, along with other substantial evidence presented at the hearings in 2020, 2021 and May 2023, supports the Council's finding and determination herein that the removal of the trees would not satisfy the requirements of CCMC section 9.08.210C.2, and that the initial decision to grant the Request was based on factual errors and disputed findings.

WHEREAS, at the conclusion of the October 11, 2021 Public Hearing, and after deliberations, the City Council voted to grant the Appeal. In so doing, the City Council disputed the former Public Works Director's decision and findings, found factual errors, and directed staff to modify and implement the proposed Galvin Street parkway expansion project to save both trees.

WHEREAS, following the City Council's 2021 decision, the Applicant filed a lawsuit challenging the City Council's decision to grant the Appeal, reject the Request and save the trees. After briefing and oral argument, on March 15, 2023, the Court ruled in favor of the City on certain issues raised by the Applicant, and in favor of the Applicant on her argument that the City Council did not make sufficient written findings to satisfy CCMC 9.08.210.F, and remanded the matter back to the City Council to set aside and reconsider its October 11, 2021 decision. (Attachment 3.)

WHEREAS, on June 27, 2022, the City Council approved staff's request for $100,000 to complete the capital project in the adopted Fiscal Year 2022/2023 budget: PS-022 *Galvin Street Parkway Expansion*. This project would carry out the concept discussed by the Council at the 2021 hearing for safely preserving both trees by eliminating curbside parking on Galvin Street to substantially expand the parkway and removing the adjacent sidewalk.

WHEREAS, on April 13, 2023, the City's Arborist inspected the site and determined the following:

- there is no evidence of new damage;
- the asphalt repairs to the street completed by the City on March 3, 2021 were successful and there is no evidence that the prior damage has reoccurred over the past two years;
- the cracks in the Applicant's concrete wall that were repaired prior to the October 2021 hearing also have not reappeared and no visible damage to the wall is apparent; and
- no additional sidewalk damage or lifting has occurred over the past two years.

As a result of the inspection, the City Arborist concluded that at this point in time, there is no reason to remove either tree.

WHEREAS, as was established at the previous public hearings in 2020 and 2021, Southern California Gas has confirmed on April 11, 2023 that there is no evidence of root intrusion in their natural gas line under the existing roadway on Galvin Street, or any other damage or threat to their gas lines.

WHEREAS, based on the evidence and the goal of preserving trees where possible, the current Public Works Director has determined that the criteria under CCMC 9.08.210.C.2 have not been met and do not exist, and recommends both trees be preserved.

WHEREAS, the City has a strong and longstanding interest in preserving City-owned parkway trees. By way of example, and without limitation, the City's Urban Forest Master Plan (UFMP), which the City Council adopted in 2016 by Resolution No. 2016-R 026, emphasizes that in considering requests for tree removal the City needs to consider the benefits of mature trees, including shading and cooling, enhanced property values, carbon storage, and improved habitat and air quality. The UFMP also encourages consideration of alternatives to removal. (UFMP, page 105/177.)

WHEREAS, the City Council intends by this Resolution to comply with the Court's March 15, 2023 ruling by (1) setting aside the Council's October 11, 2023 decision upholding the Appeal, and (2) after reconsideration of the Appeal and decision, adopting written findings for its new decision on the Appeal.

NOW, THEREFORE, the City Council of the City of Culver City, DOES HEREBY RESOLVE, as follows:

SECTION 1. The City Council finds that foregoing recitals are true and correct and orders that they be, and hereby are, adopted and incorporated herein by this reference as a substantive part of this Resolution.

SECTION 2. The City Council hereby sets aside its October 11, 2021 decision upholding the Appeal.

SECTION 3. Pursuant to CCMC section 9.08.210.F, the City Council finds that the Appellant has demonstrated, by substantial evidence, that the decision of the former Public

Works Director was based on an error in fact and disputed findings. Specifically, the City Council finds:

A. The tree roots are not creating extensive and repeated damage to public and/or private infrastructure, including sidewalks, sewer lines, or other utility lines, as required pursuant to CCMC section 9.08.210.C.2.b. As to that finding, the City Council further finds:

1. CCMC section 9.08.210 C.2.b requires not only that there be damage from tree roots, but that such damage must be both “extensive” and “repeated”. Moreover, by its use of the term “are creating”, CCMC 9.08.210C.2.b requires that damage be current and ongoing.
2. The evidence establishes that the damage to the wall, sidewalk and street has not substantially reappeared, recurred or continued following repairs. It is not current and ongoing.
3. With the implementation of the recently-approved *Galvin Street Parkway Expansion* project, the damage will be corrected and repaired and is not likely to repeat, recur or continue as required for removal under 9.08.210.C.2.b.
4. Root damage is not current and ongoing under 9.08.210.C.2.b because the City can and will feasibly address any root problem, and thereby save both trees.
5. Correcting damage while saving trees is the City’s preferred approach.
6. Where necessary, filling lifted sidewalks is routine in nature and low in cost.
7. Southern California Gas has also confirmed that there is no evidence of root intrusion in their natural gas line under Galvin Street.
8. CCMC 9.08.210C.2.b. also requires that root damage from the trees be “extensive”. Because the term “extensive” is not defined in CCMC 9.08.210, the Council considers several factors in determining whether damage is extensive:

- Scope or scale of the damage. More widespread damage that affects a large area or volume are more extensive than localized or limited damage.
- Severity or intensity of the damage. Greater levels of damage, destruction, or negative impacts are more extensive than minor or superficial damages.
- Cost or resources required to repair the damage. Damage that would take significant time and resources to repair are more extensive than damage that could be quickly or easily fixed.
- Functional impact. Damage that seriously impairs or disables a system or process is more extensive than damage that has a minimal functional impact.

9. City staff's previous repairs to the sidewalk and asphalt on Galvin Street have allowed the continued functionality of both.
10. In addition, the previous damage is located on a scarcely-used cul-de-sac, with little foot or automobile traffic. The sidewalk only serves a single parcel. Pedestrian use and parking have not been impacted by any damage.
11. As was discussed above, sidewalk lifting, cracking in the wall, and asphalt damage have not recurred since they were previously repaired prior to 2021.
12. Any additional needed repairs can be easily and inexpensively made to further prevent or minimize ongoing or repeated damage. The evidence supports a finding that the root damage from the trees is neither extensive nor ongoing or repeated.
13. The City Council's interpretation of Section 9.08.210C.2 is also consistent with the City's interest in and goal of preserving City-owned parkway trees, as expressed in the UFMP.
14. Any previous root damage has previously been corrected to the satisfaction of the Public Works Director, and will be further addressed, corrected and mitigated by the *Galvin Street Parkway Expansion* capital project.

B. Pursuant to CCMC Section 9.08.210.C.2.c. the City Council finds there is no substantial evidence that either tree is creating a public or private nuisance. With respect to this finding, the City Council further finds:

1. The Applicant asserted in the Request that the trees constituted a nuisance because the trees sit on a “high priority” natural gas line, that the tree damage does not allow for parking, and that limbs fall and are dangerous. The City Council finds that assertion to be unsupported and false.
2. On April 11, 2023 Southern California Gas Company confirmed to City staff that there is no root intrusion in the natural gas line under Galvin Street. Similar evidence was presented during the previous public hearings in 2020 and 2021.
3. The City repaired damage to the asphalt on Galvin Street in 2021 and no repeat or further damage has occurred.
4. The risk of tree limbs falling can be mitigated through maintenance of the tree.
5. Any prior risk or concerns will be addressed and repaired to the satisfaction of the Public Works Director by the *Galvin Street Parkway Expansion* capital project.

C. In further support for the City Council’s previous findings under CCMC sections 9.08.210.C.2.b and 9.08.210C.2.c, the City Council further finds:

1. The current Public Works Director has determined that the criteria required for removal under CCMC section 9.08.210C.2.b do not exist, that any root damage is neither extensive nor repeated, and that the trees can and should be safely and feasibly saved. The Public Works Director has further determined that the trees do not constitute a nuisance under CCMC section 9.08.210C.2.c.
2. The former Public Works Director reached the same conclusion at the October 2021 hearing, thus tacitly agreeing that his initial determination on the Request was based on factual error and disputed findings.

3. The City Council on that basis, and on the basis of the City Council's contrary findings herein, rejects as error and disputes any inconsistent statements of fact and findings made and adopted by the former Public Works Director in 2020 and 2021.

D. In further support for the Council's finding herein that the former Public Works Director's decision was based on an error of fact and disputed findings, and that the Request for removal of the subject trees is not in the best interest of the City and the public health, safety and welfare, the Council finds:

1. The trees were not and are not creating an imminent or an ongoing hazard or nuisance, and the roots are not creating extensive or repeated damage. For an extended time after the roadway, sidewalk and garden wall were repaired, and to the present, no new or additional damage, cracking or lifting has appeared or occurred. Moreover, the trees did not and do not threaten the gas line, as the Applicant has asserted in her Request.
2. Both trees can be saved for a reasonable cost with little impact to the neighborhood by the already-approved $100,000 Galvin Street Parkway Expansion capital project which will also address and repair street damage and remove the sidewalk.
3. It was and is unclear (and the Applicant did not establish) whether any or all the problems with the sidewalk, street and wall were caused by the trees. Rather, evidence presented to the City Council supports the conclusion that at least some if not all the problems were instead caused by illegal trimming of the trees by the Applicant herself, as well as over-watering, and/or oil extraction activities.
4. Removal would be inconsistent with the City's Urban Forest Master Plan.
5. The trees mitigate climate change by absorbing substantial CO2, and providing wildlife habitat, shading and cooling.

6. The replacement trees proposed in the 2021 alternate plan (which the Applicant agreed to in coordination with City staff) would not adequately mitigate the loss of the two mature trees for some 10 years.

7. Replacement of mature trees is not always a reliable mitigation because replacement trees sometimes die due to lack of proper maintenance.

8. The trees did not create a substantial or imminent hazard, and the root damage may not be considered to be extensive, because the trees are located on a cul-de-sac, which is a sparsely used street with little automobile and pedestrian traffic.

9. Potential hazards from tree branches can and will be mitigated and avoided by cutting, trimming and pruning.

10. Potential hazards from tree roots causing cracks and lifting in the street and sidewalk can and will be mitigated and avoided (and thus are not extensive, repeated and ongoing) by repair and maintenance and by the already-approved $100,000 Galvin Street Parkway Expansion capital project.

SECTION 4. Substantial Evidence. The City Council finds that substantial evidence for its decision and findings herein are found in the materials and comments presented at and in connection with the public hearings in 2020, 2021 and May 8, 2023, including without limitation the staff reports and related attachments, neighbors' and residents' written submittals and oral comments, staff oral presentations and comments, and City Council members' questions, comments and deliberations.

SECTION 5. Adequacy of Appeal. The City Council rejects the Applicant's argument that the City Council has no power or jurisdiction to consider the Appeal based on the asserted inadequacy of the Appeal. Specifically, the City Council finds:

A. The City Council does not intend or interpret CCMC section 9.08.210.E to require an appellant to specify or prove "error." Rather, by CCMC 9.08.210.E, the Council intends to authorize appeals on the basis of two alternative grounds, either error or a dispute of the Public Works Director's findings.

B. The City Council does not interpret or intend CCMC section 9.08.210.E to impose a rigid, mandatory requirement to provide supporting evidence with the appeal, nor does the City Council interpret or intend Section 9.08.210.E to specify any penalty or consequence for noncompliance, such as dismissal or non-acceptance of the appeal.

C. The City Council further does not intend or interpret the appeal requirements in CCMC section 9.08.210 to create a mandatory requirement that the written appeal must be accompanied by the evidence supporting the appeal. Rather, recognizing that Section 9.08.210.E was enacted to provide a means for non-attorney, "lay" residents to express their concerns to their elected City Council about proposals to remove City trees, that Section 9.08.210.E also requires that appeals be filed in a very short timeframe, and that the public hearings for such appeals would have limited value were all evidence required to be presented only with the appeal letter, the City Council does not intend or interpret Section 9.08.210.E as requiring such residents wishing to appeal a tree removal determination to submit their evidence "up front" with the initial appeal.

D. The notice to the neighbors of the former Public Works Director's decision to remove the trees did not specify that anything other than a written appeal was required, did not mention 9.08.210.E, did not say that the appeal would not be heard if it did not fully satisfy 9.08.210.E, and stated only that if an appeal was filed that the City Council would hear it. Upon receipt of the Appeal, City staff did not instruct the Appellant to submit any additional or missing evidence. The City Council does not intend by Section 9.08.210.E to impose the strict requirements asserted by the Applicant in her lawsuit.

E. The City Council further interprets and intends CCMC section 9.08.210 E and F as allowing and envisioning that substantial evidence in support of an appeal shall include all

evidence presented by an appellant, an applicant and the public at the public hearing on the appeal.

SECTION 6. Based on the foregoing, and having reconsidered the matter as ordered by the Court, the City Council hereby determines and concludes:

A. The City Council hereby sets aside its October 11, 2021 decision upholding the Appeal.

B. Following reconsideration, the City Council hereby upholds the Appeal.

C. The City Council hereby denies the Request to remove the two City-Owned Ficus Trees Located in the Galvin Street parkway adjacent to 10729-31 Northgate Street.

D. The City Council hereby further rejects the alternate recommendation presented by the former Public Works Director at the October 11, 2021 hearing.

APPROVED and ADOPTED this 8th day of May, 2023

_____
ALBERT VERA, Mayor
City of Culver City, California

ATTEST:

_____
JEREMY BOCCHINO, City Clerk

APPROVED AS TO FORM:

for

_____
HEATHER BAKER, City Attorney

EXHIBIT 1

2019-236

Public Works Department
Maintenance Operations Division

CITY OF CULVER CITY

9505 West Jefferson Boulevard, Culver City, California 90232

Request for Parkway Tree Removal

(Pursuant to Culver City Municipal Code Section 9.08.210: See reverse side of this form)

Applicant: Cynthia A Mabus (Name) Telephone [illegible]

[illegible] (Address) [illegible]

Request for removal of 2 tree(s)

Location: ___ In front of, and/or
X On side of property located at 10729/10731 NORTHGATE ST. CULVER CITY 90230 (Street Address)

Reason for removal:
(Criteria set forth in Culver City Municipal Code Section 9.08.210.C must be satisfied. See reverse side of this form.)

2a The tree is a known problem species. FICUS. TREE SIZE TO LARGE for SIDEWALK
2b the tree roots cause extensive damage to public street sidewalk + sewer line. the trees are sitting on a high PRIORITY NATURAL GAS LINE.
2c ~~the trees damage does not allow for parking. Limbs fall and are dangerous~~

X **Supporting documentation is attached.**
X **Request for removal (subject to availability of City resources and funds), OR**
___ **Request for priority removal at applicant's expense.**

PROCEDURE FOR TREE REMOVAL:
If applicant's request for tree removal is granted, removal of aforementioned tree(s) will be accommodated on a priority basis subject to availability of City resources and funds. Applicant has the option to be granted priority removal if they agree to pay for the removal at their expense. Applicant will be presented with a quote from City's tree trimming contractor prior to removal. Upon authorization of quote and payment by applicant, tree(s) will be removed by City's tree trimming contractor as their schedule permits.

FILING FEE:
The applicant shall post a non-refundable filing fee in the amount of $ 75 along with this request form.

DECISION AND APPEAL:
The decision of the Public Works Director is final, unless appealed by the Applicant, a member of the City Council or an Interested Person. Appeals shall be submitted in writing and filed with the City Clerk within 10 days after the decision date identified in the notice of decision. (See CCMC Section 9.08.210.E and F for more information.)

Date 10/1/2019 Signature [signature] (Applicant)

FOR CITY USE

Species of tree(s) to be removed: Ficus microcarpa nitida

Tree(s) to be removed: 33 inches (Approx. diameter) 45 feet (Approx. height) ___ feet (Parkway width)

Permission is hereby: X Granted for removal (subject to availability of City resources and funds) Trees #1 & #2
___ Granted for priority removal at applicant's expense
___ Denied

Date 2/4/2020 Signature [signature]

White: Property Owner/Applicant *Yellow: Public Works Director* *Pink: Maintenance Operations Division*

Revised 1/30/14

Both trees exhibit potential for major branch failure. Extensive street & sidewalk damage creating hazards & cannot be repaired without tree removal. History of previous [illegible] low branches from street (8'). Potential to impact high priority gas line.

A Photographic Guide to the Evaluation of Hazard Trees in Urban Areas

TREE HAZARD EVALUATION FORM 2nd Edition

Site/Address: 10731 Norhtgate St Tree # 1

Map/Location: Tract 14843 Lot 112 Block 10000

Owner: public X private ____ unknown ____ other ____

Date: 12/31/2019 Inspector: David Talavera

Date of last inspection: 12/24/2019

HAZARD RATING:

2	+	4	+	3	=	9
Failure Potential	+	Size of part	+	Target Rating	=	Hazard Rating

____ Immediate action needed

✓ Needs further inspection

____ Dead tree

TREE CHARACTERISTICS

Tree #: 1 **Species:** Ficus microcarpa nitida

DBH: 33" **# of trunks:** 1 **Height:** 48' **Spread:** 45'

Form: ☒ generally symmetric ☐ minor asymmetry ☐ major asymmetry ☐ stump sprout ☐ stag-headed

Crown class: ☐ dominant ☒ co-dominant ☐ intermediate ☐ suppressed

Live crown ratio: 85 % **Age class:** ☐ young ☐ semi-mature ☒ mature ☐ over-mature/senescent

Pruning history: ☐ crown cleaned ☒ excessively thinned ☒ topped ☐ crown raised ☐ pollarded ☐ crown reduced ☐ flush cuts ☐ cabled/braced ☐ none ☐ multiple pruning events Approx. dates: illegal trimming

Special Value: ☐ specimen ☐ heritage/historic ☐ wildlife ☐ unusual ☒ street tree ☐ screen ☐ shade ☐ indigenous ☐ protected by gov. agency

TREE HEALTH

Foliage color: ☒ normal ☐ chlorotic ☐ necrotic **Epicormics?** Y N

Foliage density: ☐ normal ☒ sparse **Leaf size:** ☒ normal ☐ small

Annual shoot growth: ☐ excellent ☒ average ☐ poor **Twig Dieback?** Y (N)

Woundwood development: ☐ excellent ☒ average ☐ poor ☐ none

Vigor class: ☐ excellent ☒ average ☐ fair ☐ poor

Growth obstructions: ☐ stakes ☐ wire/ties ☐ signs ☐ cables ☐ curb/pavement ☐ guards ☐ other ____

Major pests/diseases: None pests or diseases

SITE CONDITIONS

Site Character: ☒ residence ☐ commercial ☐ industrial ☐ park ☐ open space ☐ natural ☐ woodland\forest

Landscape type: ☒ parkway ☐ raised bed ☐ container ☐ mound ☐ lawn ☐ shrub border ☐ wind break

Irrigation: ☒ none ☐ adequate ☐ inadequate ☐ excessive ☐ trunk wettled

Recent site disturbance? Y (N) ☐ construction ☐ soil disturbance ☐ grade change ☐ line clearing ☐ site clearing

% dripline paved:	0%	10-25%	25-50%	50-75%	75-100%	**Pavement lifted?** Y N
% dripline w/ fill soil:	0%	10-25%	25-50%	50-75%	75-100%	
% dripline grade lowered:	0%	10-25%	25-50%	50-75%	75-100%	

Soil problems: ☐ drainage ☐ shallow ☒ compacted ☐ droughty ☐ saline ☐ alkaline ☐ acidic ☐ small volume ☐ disease center ☐ history of fail ☐ clay ☐ expansive ☐ slope ____° aspect: ____

Obstructions: ☐ lights ☐ signage ☐ line-of-sight ☐ view ☐ overhead lines ☒ underground utilities ☐ traffic ☐ adjacent veg. ☐ ____

Exposure to wind: ☐ single tree ☐ below canopy ☐ above canopy ☐ recently exposed ☐ windward, canopy edge ☒ area prone to windthrow

Prevailing wind direction: N/E Occurrence of snow/ice storms ☐ never ☐ seldom ☐ regularly

TARGET

Use Under Tree: ☐ building ☒ parking ☐ traffic ☒ pedestrian ☐ recreation ☐ landscape ☐ hardscape ☒ small features ☐ utility lines

Can target be moved? Y (N) **Can use be restricted?** Y (N)

Occupancy: ☐ occasional use ☒ intermittent use ☐ frequent use ☐ constant use

The International Society of Arboriculture assumes no responsibility for conclusions or recommendations derived from use of this form.

TREE DEFECTS

ROOT DEFECTS:

Suspect root rot: Y [N] **Mushroom/conk/bracket present:** Y [N] **ID:** _____

Exposed roots: ☐ severe ☒ moderate ☐ low **Undermined:** ☐ severe ☐ moderate ☐ low

Root pruned: 2' distance from trunk **Root area affected:** 50 % **Buttress wounded:** Y [N] **When:** _____

Restricted root area: ☒ severe ☐ moderate ☐ low **Potential for root failure:** ☐ severe ☐ moderate ☐ low

LEAN: 0 deg. from vertical ☒ natural ☐ unnatural ☐ self-corrected **Soil heaving:** Y [N]

Decay in plane of lean: Y N **Roots broken** Y N **Soil cracking:** Y N

Compounding factors: unbalance canopy by illegal trimming, **Lean severity:** ☐ severe ☒ moderate ☐ low

CROWN DEFECTS: Indicate presence of individual defects and rate their severity (s = severe, m = moderate, l = low) N= Negative

DEFECT	ROOT CROWN	TRUNK	SCAFFOLDS	BRANCHES
Poor taper				S
Bow, sweep				I
Codominants/forks			S	
Multiple attachments			S	S
Included bark			M	
Excessive end weight			L	L
Cracks/splits			N	N
Hangers			N	
Girdling	N			
Wounds/seam	S	S	S	S
Decay	M			
Cavity	N	N		
Conks/mushrooms/bracket	N	N	N	
Bleeding/sap flow	N		N	
Loose/cracked bark	N		N	
Nesting hole/bee hive			N	
Deadwood/stubs	M	S	S	S
Borers/termites/ants	N	N		
Cankers/galls/burls	N	N		
Previous failure				Several

HAZARD RATING

Tree part most likely to fail: Big Scaffold

Inspection period: X annual ____ biannual ____ other ____

Failure Potential + Size of Part + Target Rating = Hazard Rating

2 + 4 + 3 = 9

Failure potential: 1 - low; 2 - medium; 3 - high; 4 - severe
Size of part: 1 - <6" (15 cm); 2 - 6-18" (15-45 cm); 3 - 18-30" (45-75 cm); 4 - >30" (75 cm)
Target rating: 1 - occasional use; 2 intermittent use; 3 - frequent use; 4 - constant use

HAZARD ABATEMENT

Prune: ☐ remove defective part ☐ reduce end weight ☐ crown clean ☐ thin ☐ raise canopy ☒ crown reduce ☒ restructure ☐ shape

Cable/Brace: _____ **Inspect further:** ☐ root crown ☐ decay ☐ aerial ☐ monitor

Remove tree: [Y] N **Replace?** [Y] N **Move target:** Y [N] **Other:** _____

Effect on adjacent trees: ☐ none ☒ evaluate Illegal pruning create unbalance crown canopy

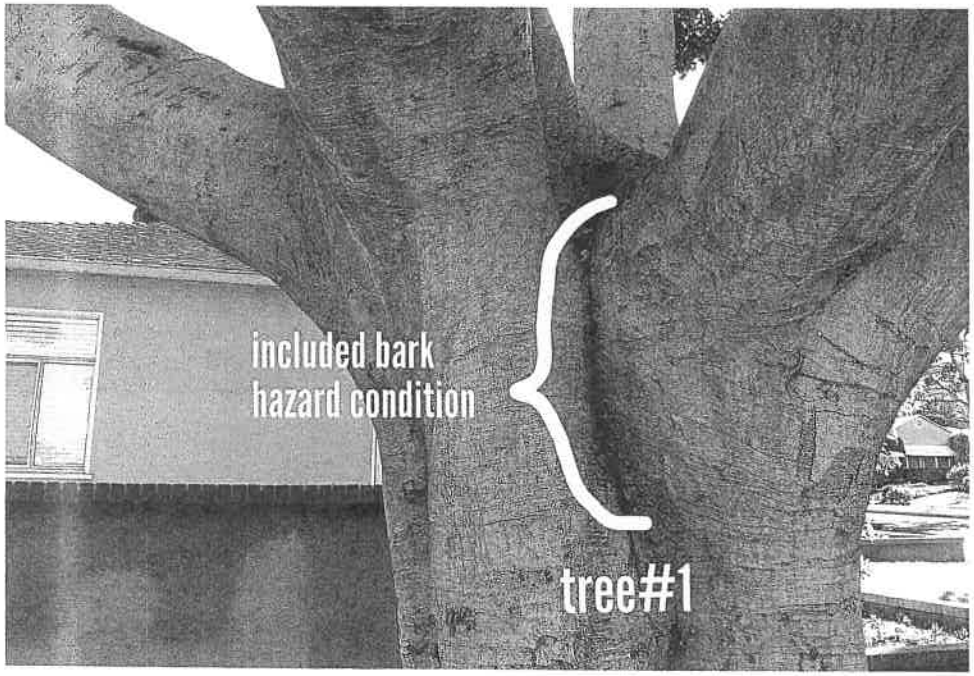
Notification: ☒ owner ☐ manager ☒ governing agency **Date:** low scaffol hit by traffic (8feet hight)

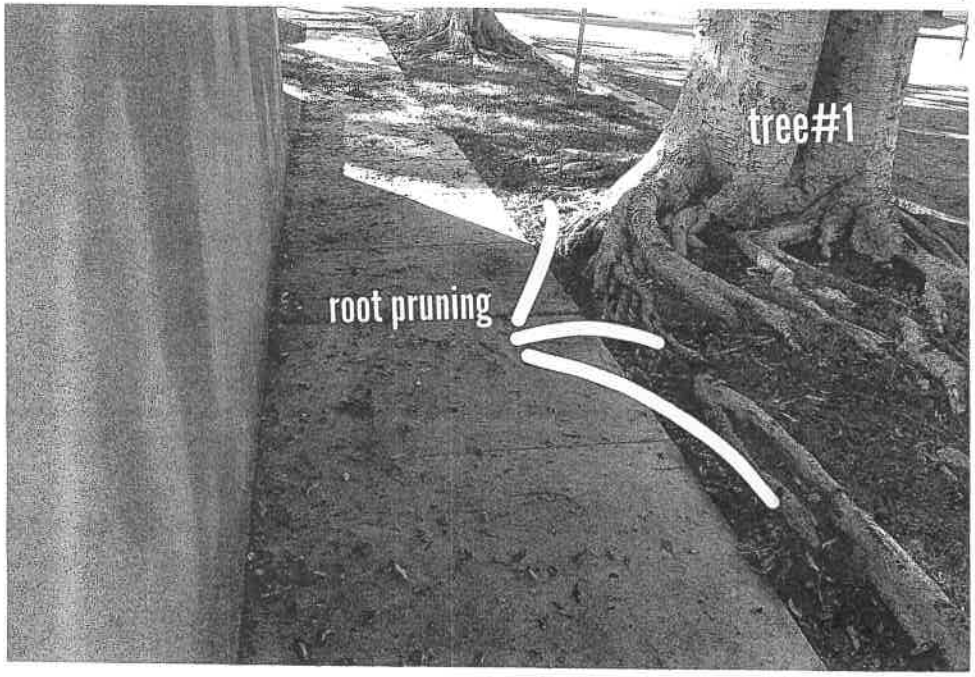
COMMENTS

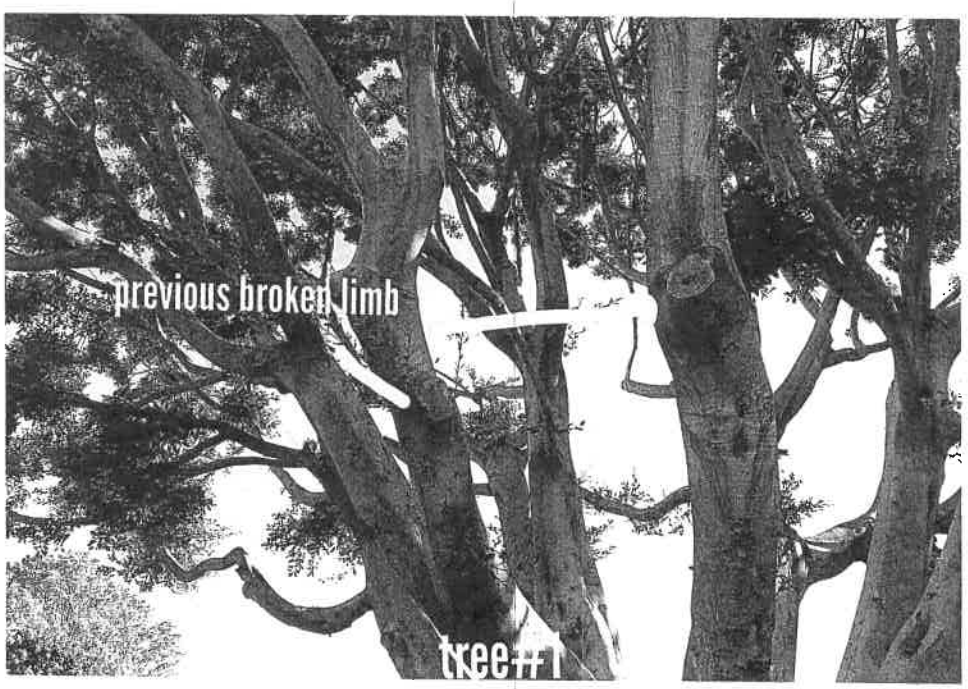
tree will be affected by wind efects if tree#2 ben remove

tree damadge the entire street, and curb
history of previous broken limb
recomendation tree remove and replace

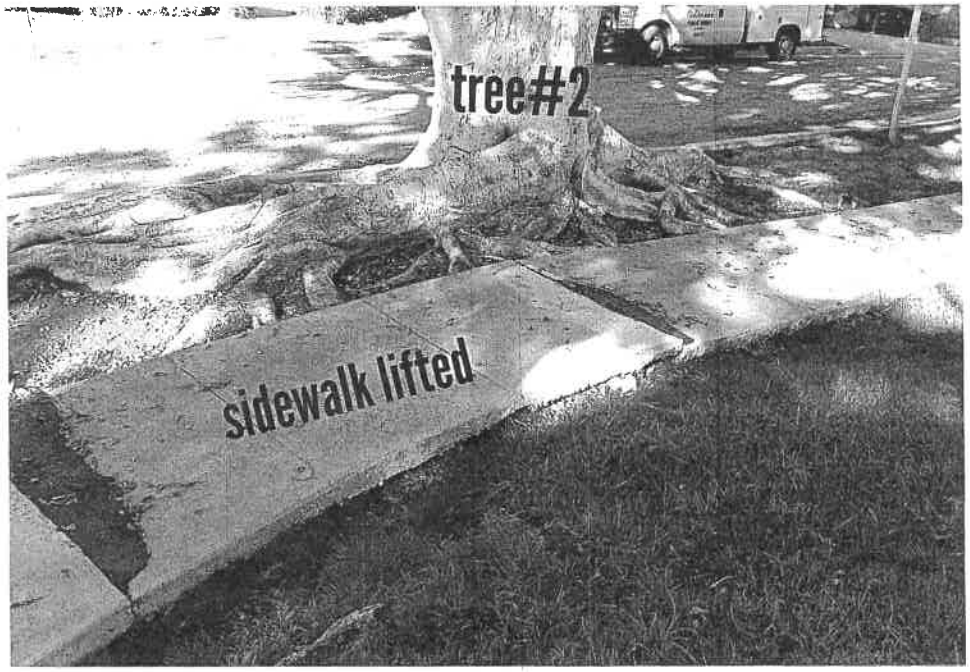
Note; Approximmately 6 years back the City have a sidewalk improvement on this location we recommended tree remove ,but a city resident from this address complain and regard to save this trees , so we decided to skip this improvement.

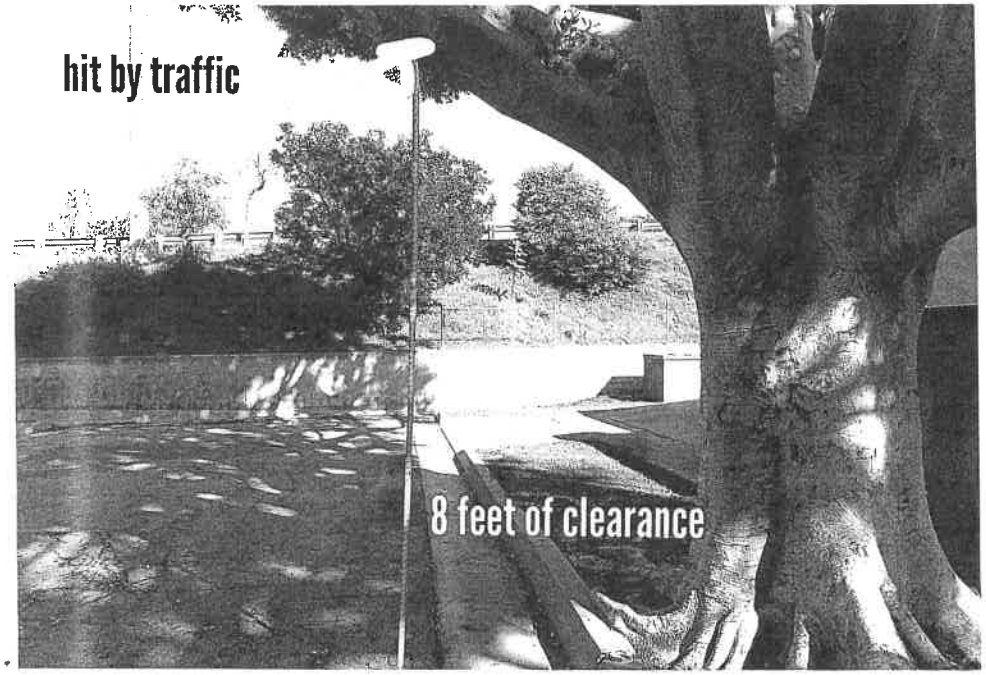

included bark
hazard condition
tree#1

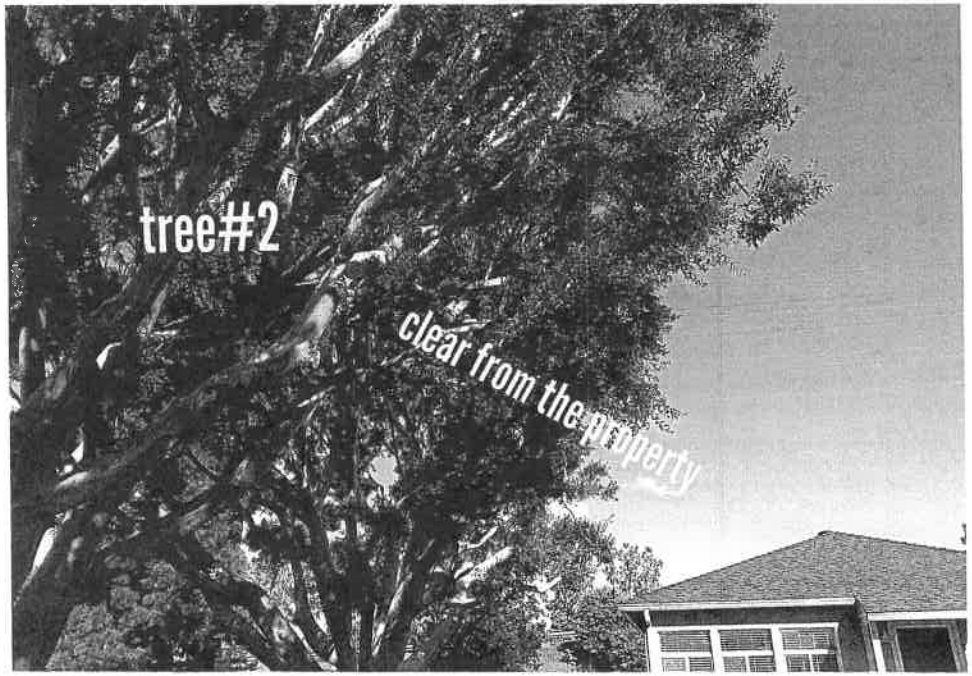

tree#1
root pruning

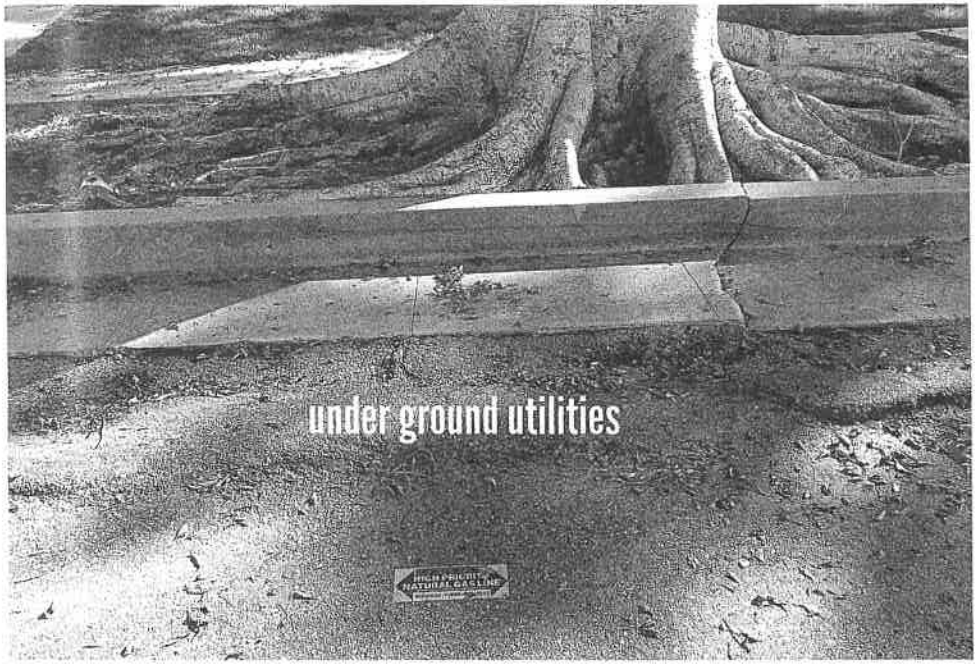

previous broken limb
tree#1

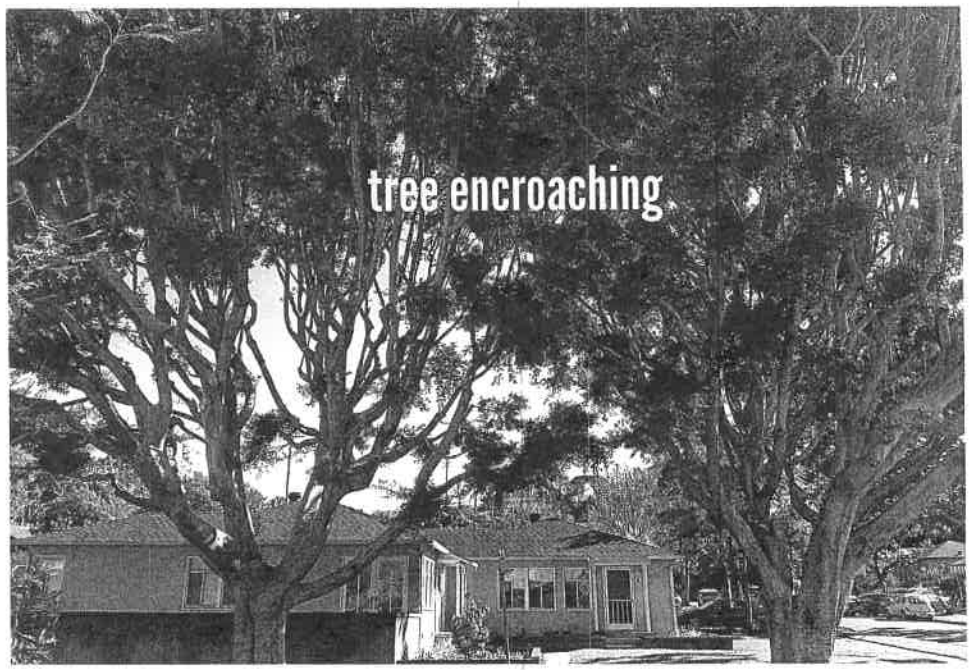
tree#2
damage the entire Street

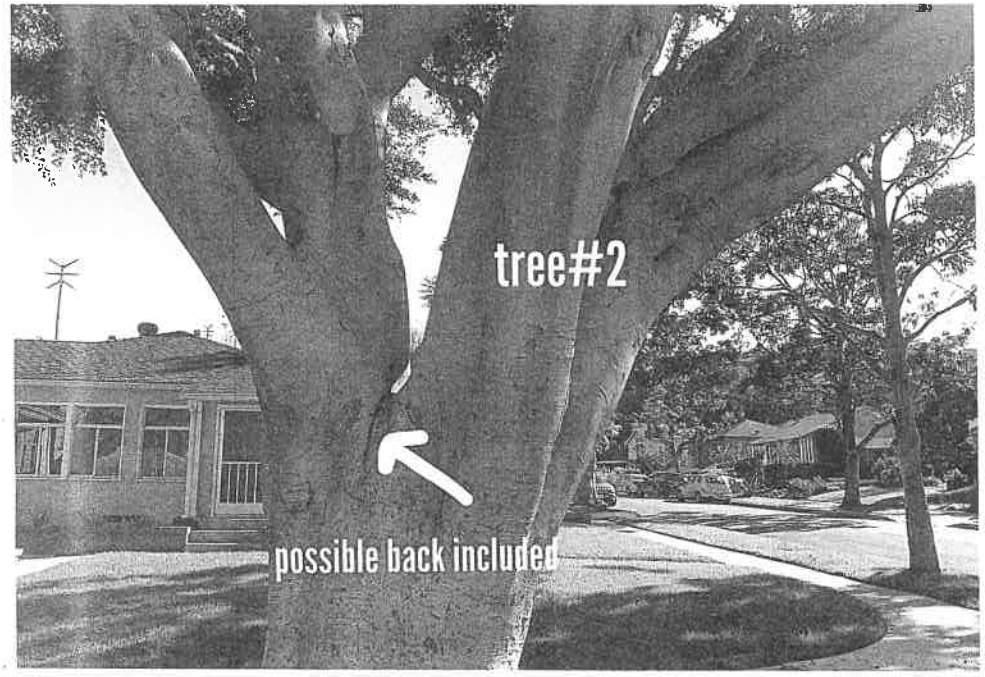

tree#2
sidewalk lifted

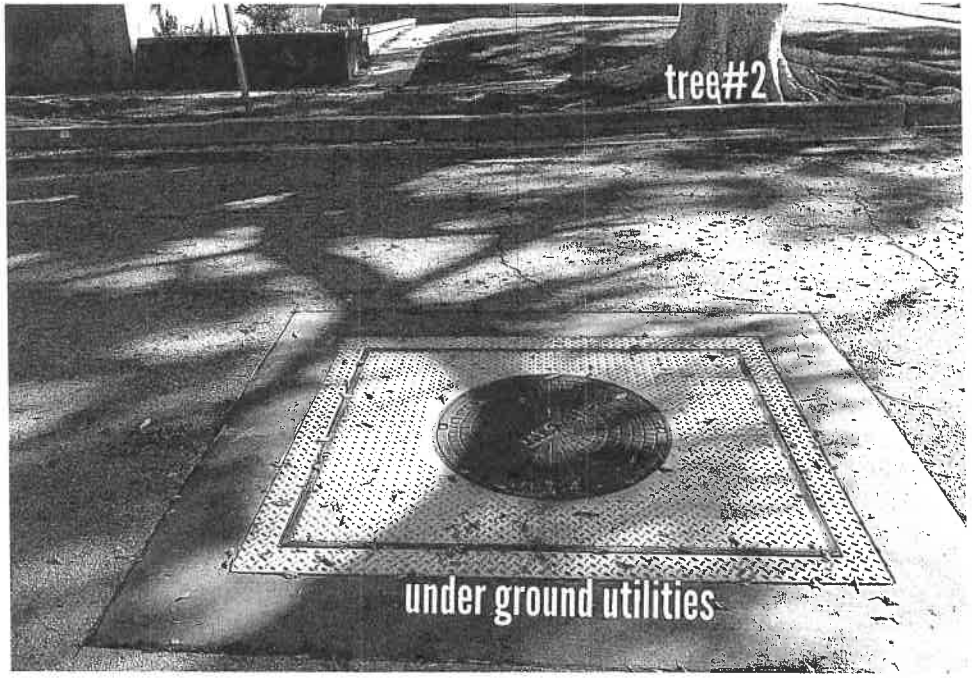

hit by traffic
8 feet of clearance


tree#2
clear from the property


under ground utilities


tree encroaching


tree#2
possible back included


tree#2
under ground utilities

A Photographic Guide to the Evaluation of Hazard Trees in Urban Areas

TREE HAZARD EVALUATION FORM 2nd Edition

Site/Address: 10731 Norhtgate St Tree # 2

Map/Location: Tract 14843 Lot 112 Block 10000

Owner: public X private ____ unknown ____ other ____

Date: 12/31/2019 Inspector: David Talavera

Date of last inspection: David Talavera

HAZARD RATING:

3	+	4	+	2	=	9
Failure Potential	+	Size of part	+	Target Rating	=	Hazard Rating

____ Immediate action needed

✓ Needs further inspection

____ Dead tree

TREE CHARACTERISTICS

Tree #: ____ **Species:** Ficus Microcarpa Nitida

DBH: 33" **# of trunks:** 1 **Height:** 48' **Spread:** 50

Form: ☒ generally symmetric ☐ minor asymmetry ☐ major asymmetry ☐ stump sprout ☐ stag-headed

Crown class: ☐ dominant ☒ co-dominant ☐ intermediate ☐ suppressed

Live crown ratio: 90 % **Age class:** ☐ young ☐ semi-mature ☒ mature ☐ over-mature/senescent

Pruning history: ☐ crown cleaned ☒ excessively thinned ☐ topped ☐ crown raised ☐ pollarded ☐ crown reduced ☐ flush cuts ☐ cabled/braced ☐ none ☐ multiple pruning events Approx. dates: illegal trimming

Special Value: ☐ specimen ☐ heritage/historic ☐ wildlife ☐ unusual ☒ street tree ☐ screen ☐ shade ☐ indigenous ☐ protected by gov. agency

TREE HEALTH

Foliage color: ☒ normal ☐ chlorotic ☐ necrotic **Epicormics?** Y N

Foliage density: ☒ normal ☐ sparse **Leaf size:** ☐ normal ☐ small

Annual shoot growth: ☐ excellent ☒ average ☐ poor **Twig Dieback?** Y N

Woundwood development: ☐ excellent ☒ average ☐ poor ☐ none

Vigor class: ☐ excellent ☒ average ☐ fair ☐ poor

Growth obstructions: ☐ stakes ☐ wire/ties ☐ signs ☐ cables ☐ curb/pavement ☐ guards ☒ other traffic

Major pests/diseases: None pests or diseases

SITE CONDITIONS

Site Character: ☒ residence ☐ commercial ☐ industrial ☐ park ☐ open space ☐ natural ☐ woodland/forest

Landscape type: ☒ parkway ☐ raised bed ☐ container ☐ mound ☐ lawn ☐ shrub border ☐ wind break

Irrigation: ☒ none ☐ adequate ☐ inadequate ☐ excessive ☐ trunk wettled

Recent site disturbance? Y (N) ☐ construction ☐ soil disturbance ☐ grade change ☐ line clearing ☐ site clearing

% dripline paved:	0%	10-25%	25-50%	50-75%	75-100%	**Pavement lifted?** Y N
% dripline w/ fill soil:	0%	10-25%	25-50%	50-75%	75-100%	
% dripline grade lowered:	0%	10-25%	25-50%	50-75%	75-100%	

Soil problems: ☐ drainage ☐ shallow ☐ compacted ☒ droughty ☐ saline ☐ alkaline ☐ acidic ☐ small volume ☐ disease center ☐ history of fail ☐ clay ☐ expansive ☐ slope ____° aspect: ____

Obstructions: ☐ lights ☐ signage ☐ line-of-sight ☐ view ☐ overhead lines ☒ underground utilities ☐ traffic ☐ adjacent veg. ☐ ____

Exposure to wind: ☐ single tree ☐ below canopy ☐ above canopy ☒ recently exposed ☐ windward, canopy edge ☐ area prone to windthrow

Prevailing wind direction: N/E Occurrence of snow/ice storms ☒ never ☐ seldom ☐ regularly

TARGET

Use Under Tree: ☐ building ☒ parking ☒ traffic ☒ pedestrian ☐ recreation ☒ landscape ☐ hardscape ☐ small features ☐ utility lines

Can target be moved? Y (N) **Can use be restricted?** Y (N)

Occupancy: ☐ occasional use ☐ intermittent use ☒ frequent use ☐ constant use

The International Society of Arboriculture assumes no responsibility for conclusions or recommendations derived from use of this form.

TREE DEFECTS Tree #2

ROOT DEFECTS:

Suspect root rot: Y [N] **Mushroom/conk/bracket present:** Y [N] **ID:** _____

Exposed roots: [X] severe ☐ moderate ☐ low **Undermined:** ☐ severe ☐ moderate ☐ low

Root pruned: 10 distance from trunk **Root area affected:** 25 % **Buttress wounded:** Y N **When:** _____

Restricted root area: [X] severe ☐ moderate ☐ low **Potential for root failure:** ☐ severe ☐ moderate ☐ low

LEAN: 0 deg. from vertical ☐ natural ☐ unnatural ☐ self-corrected **Soil heaving:** Y N

Decay in plane of lean: Y [N] **Roots broken** Y [N] **Soil cracking:** Y N

Compounding factors: None pests or diseases **Lean severity:** ☐ severe ☐ moderate ☐ low

CROWN DEFECTS: Indicate presence of individual defects and rate their severity (s = severe, m = moderate, l = low) N=negative

DEFECT	ROOT CROWN	TRUNK	SCAFFOLDS	BRANCHES
Poor taper				L
Bow, sweep				L
Codominants/forks			S	
Multiple attachments			S	S
Included bark			M	
Excessive end weight			S	S
Cracks/splits			N	N
Hangers			N	
Girdling	N			
Wounds/seam	N	S	S	S
Decay	N	N		
Cavity	N	N	N	
Conks/mushrooms/bracket	N	N	N	
Bleeding/sap flow	N		N	
Loose/cracked bark		N		N
Nesting hole/bee hive				N
Deadwood/stubs				L
Borers/termites/ants	N		N	
Cankers/galls/burls	N		N	
Previous failure				N

HAZARD RATING

Tree part most likely to fail: Big Scaffold

Inspection period: X annual ____ biannual ____ other ____

Failure Potential + Size of Part + Target Rating = Hazard Rating

3 + 4 + 2 = 9

Failure potential: 1 - low; 2 - medium; 3 - high; 4 - severe
Size of part: 1 - <6" (15 cm); 2 - 6-18" (15-45 cm); 3 - 18-30" (45-75 cm); 4 - >30" (75 cm)
Target rating: 1 - occasional use; 2 intermittent use; 3 - frequent use; 4 - constant use

HAZARD ABATEMENT

Prune: [X] remove defective part ☐ reduce end weight ☐ crown clean ☐ thin ☐ raise canopy ☐ crown reduce ☐ restructure ☐ shape

Cable/Brace: _____ **Inspect further:** ☐ root crown ☐ decay ☐ aerial ☐ monitor

Remove tree: [Y] N **Replace?** [Y] N **Move target:** Y [N] **Other:** _____

Effect on adjacent trees: ☐ none [X] evaluate side walk and crurb damage by the tree roots.

Notification: [X] owner ☐ manager [X] governing agency **Date:** illegal trimming

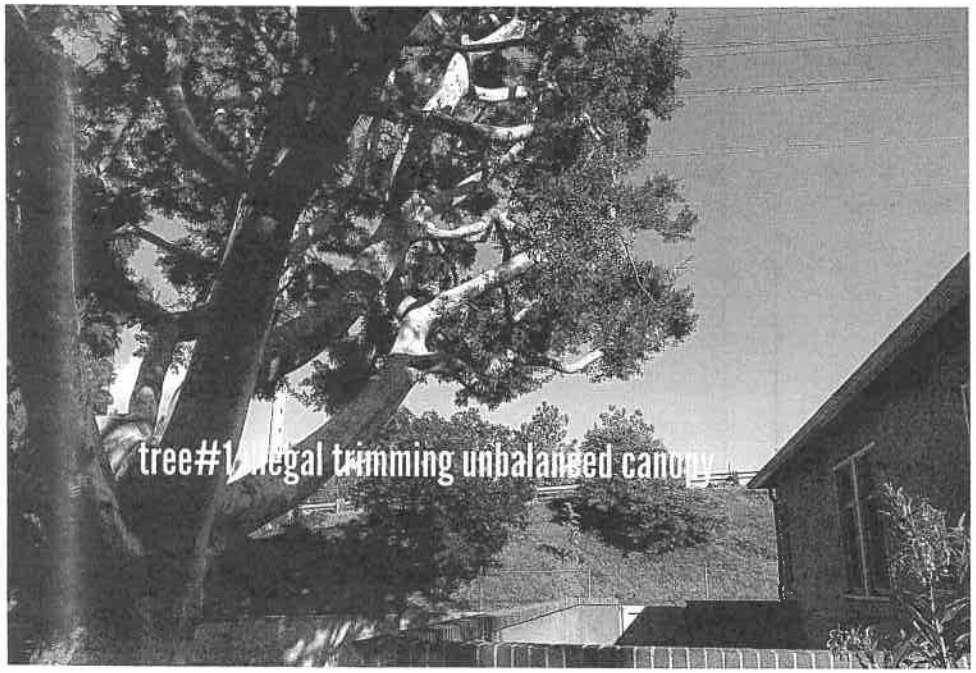
COMMENTS include bark hazard condition at this time tree

tree encroaching with tree #1

Under ground utility, roots over the lawnscape area

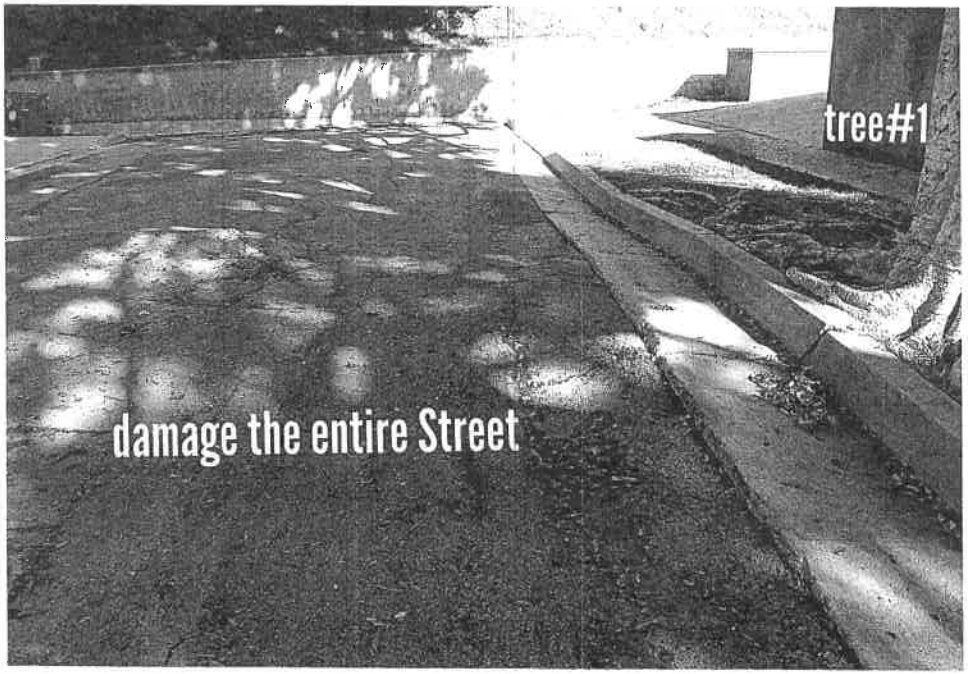
Recomendation remove and replace

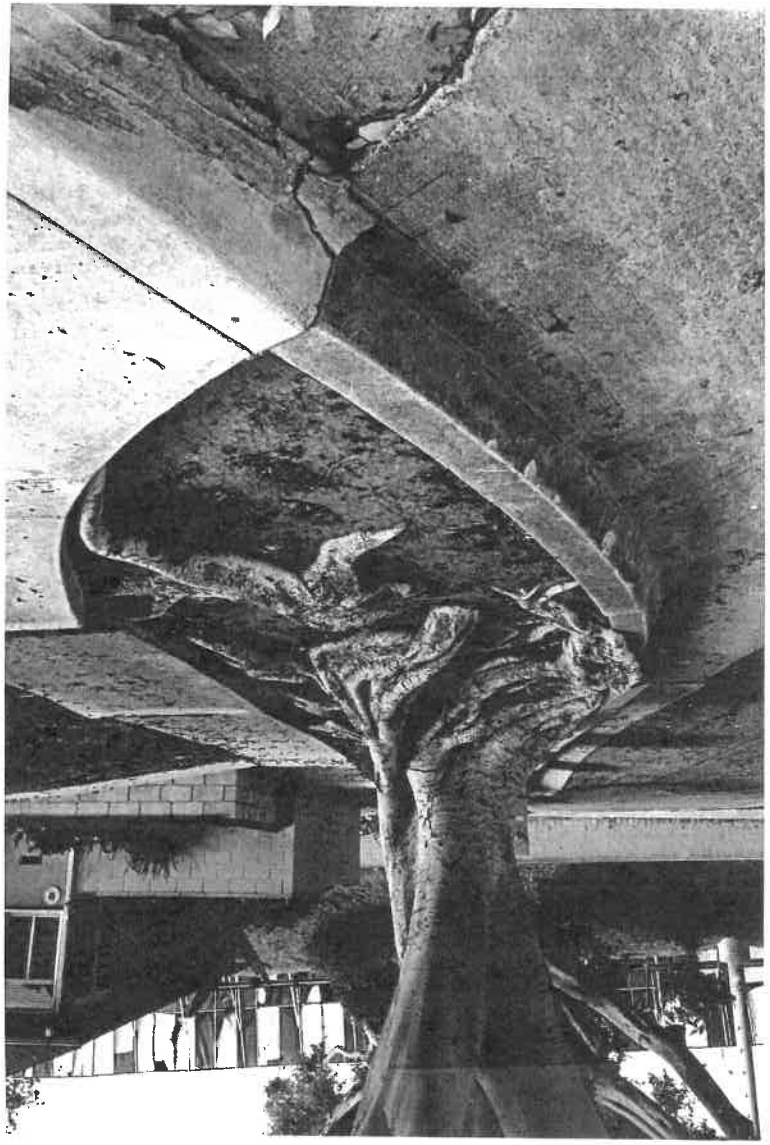
Note; same condition to tree #1

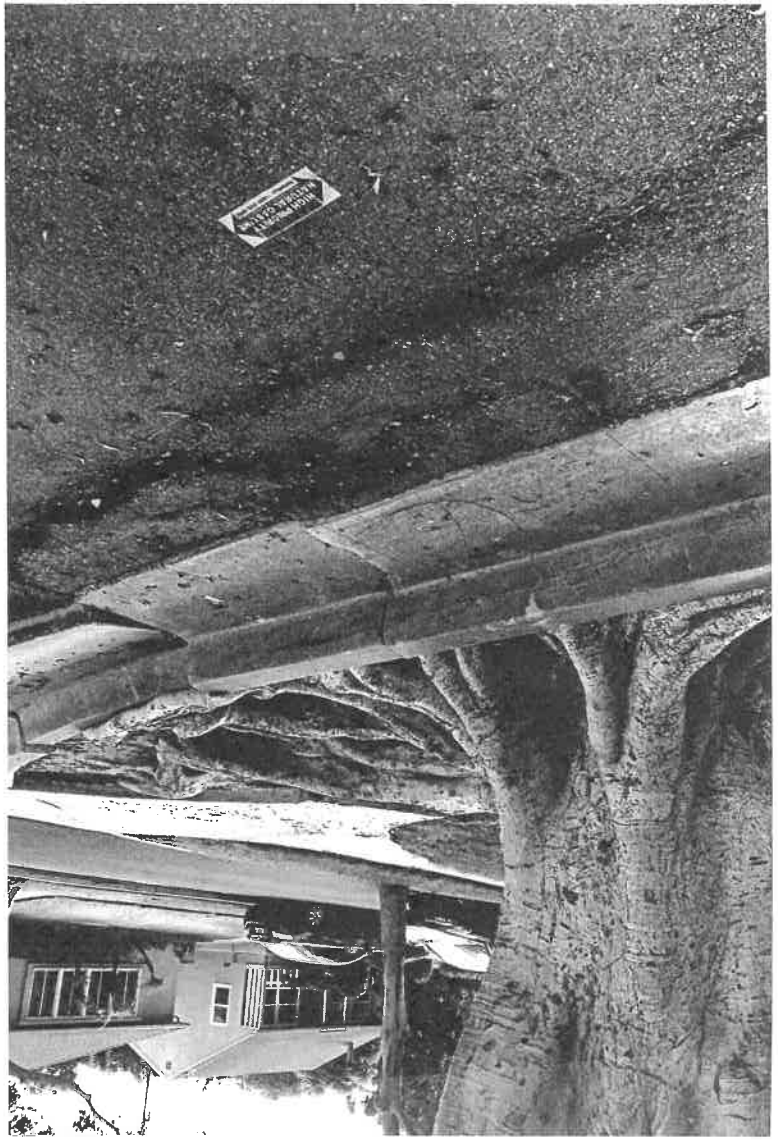

tree#1 illegal trimming unbalanced canopy

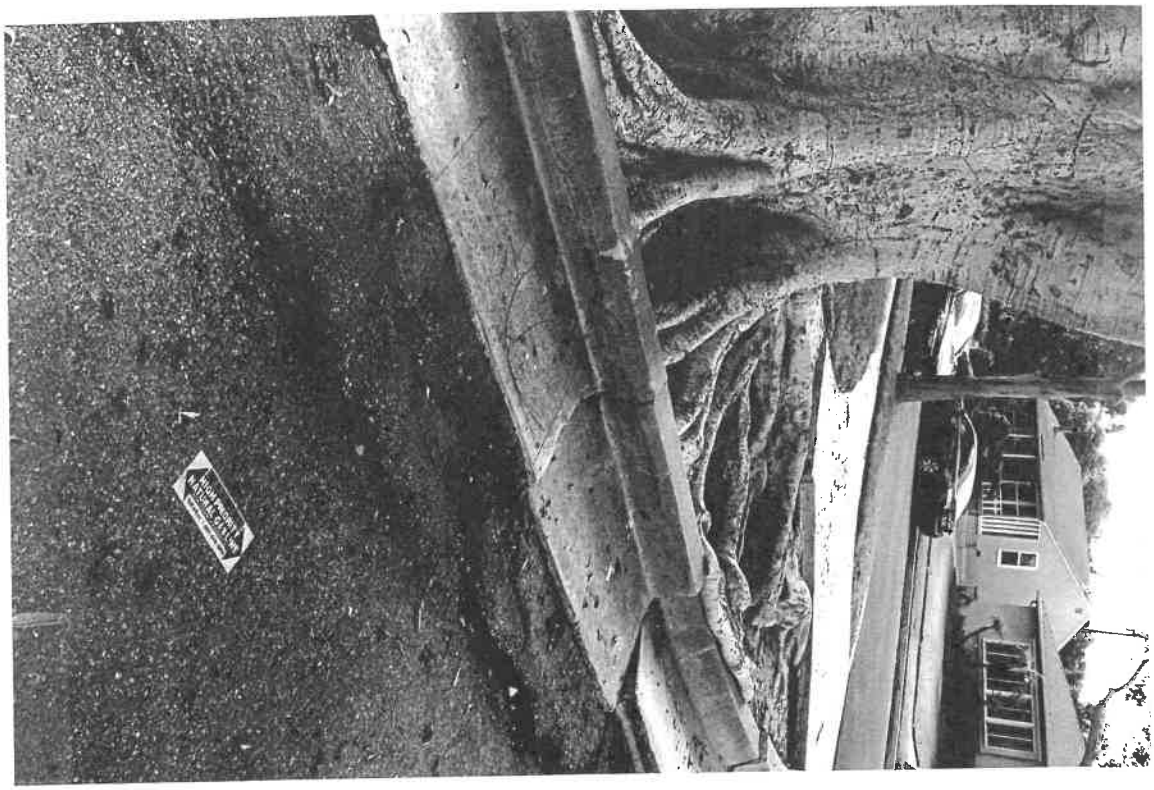
tree#1 clear from property but unbalaneed canopy

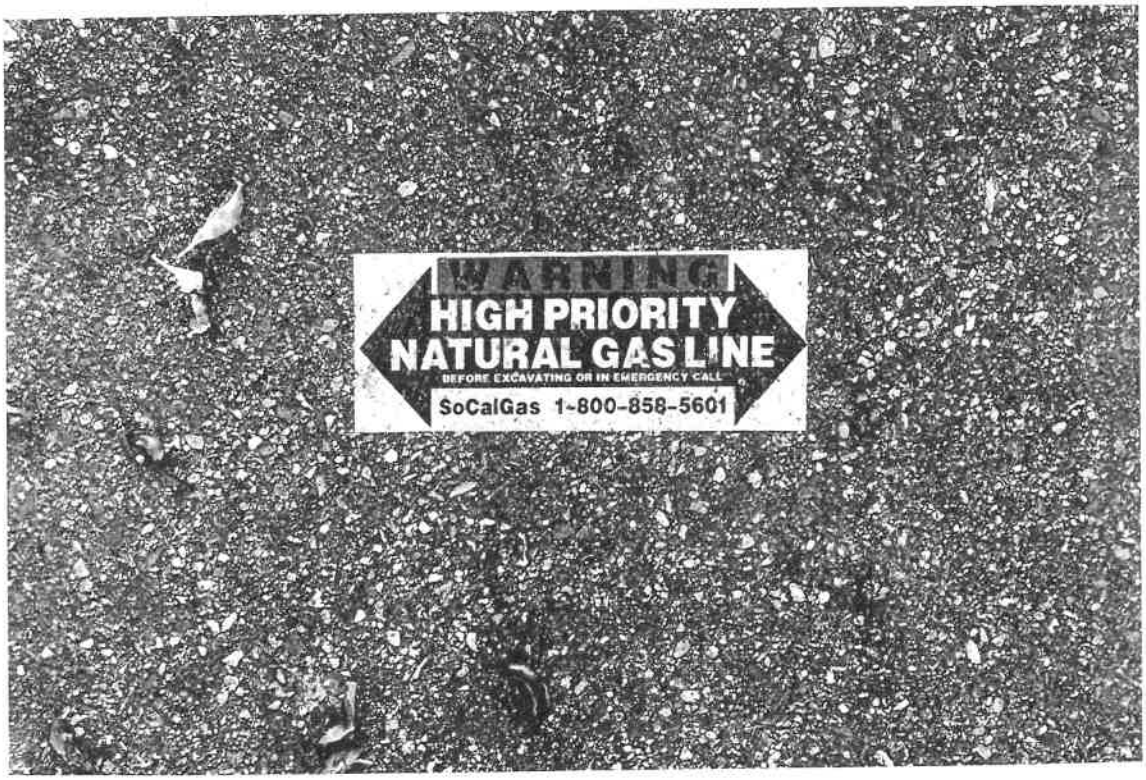
tree #1
tree#2
10731 Northgate St


tree#1
damage the entire Street








WARNING
HIGH PRIORITY
NATURAL GAS LINE
BEFORE EXCAVATING OR IN EMERGENCY CALL
SoCalGas 1-800-858-5601

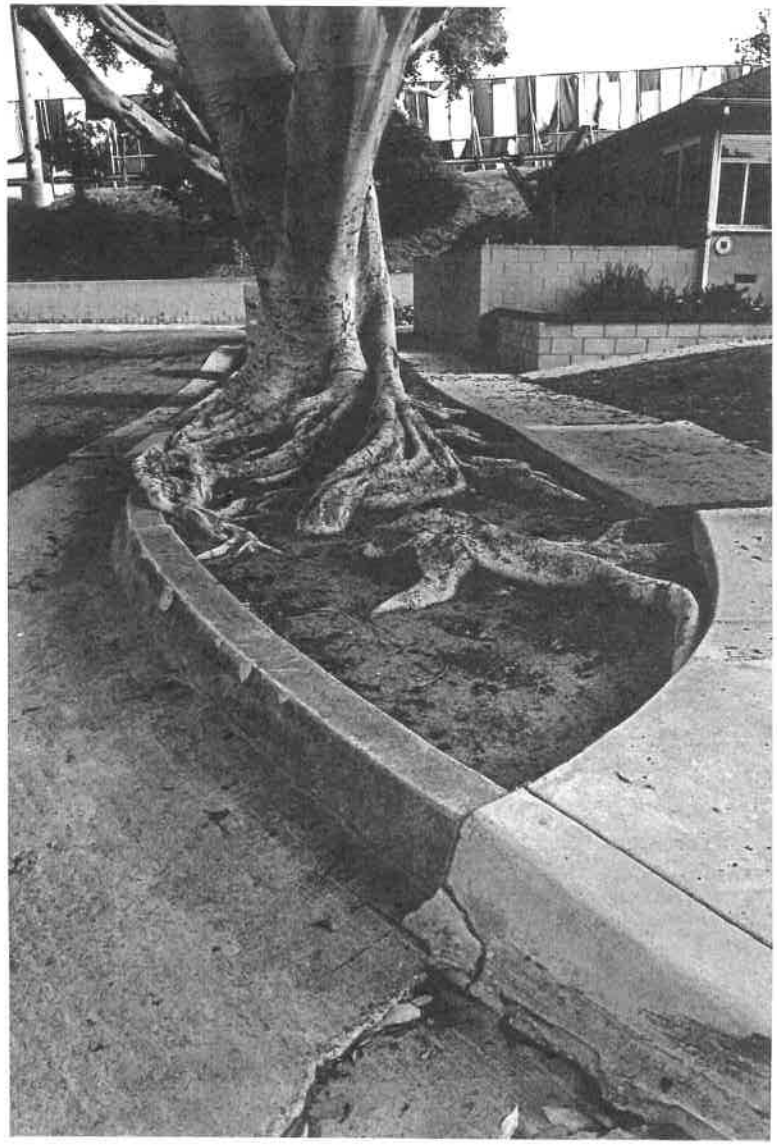


EXHIBIT 2

Craig R. Jablin

Culver City, CA 90230

RECEIVED

2020 MAR -2 PM 5: 15

CITY CLERK
CITY OF CULVER CITY

March 2, 2020

Mr. Charles D. Herbertson
Public Works Director/City Engineer
City of Culver City
9770 Culver Boulevard
Culver City, CA 90232

RE: Tree Removal – Corner of Galvin Street and Northgate Street, Culver Crest

Dear Mr. Herbertson,

Pursuant to your notification letter dated February 25, 2020 (please see attached), I would like to file a formal appeal with the City of Culver City (the "City") not to go forward with the tree removal on the corner of Galvin Street and Northgate Street in the Culver Crest.

I am the owner of the property located at 10740 Northgate Street, which is across the street from the subject trees. The two trees in question are beautiful, mature trees, that have recently undergone a large scale (and I am certain costly) pruning, and provide both shade and character to our portion of Culver Crest.

It is evident that the trees, over many years, have caused damage to the road surface and the sidewalk and meet the criteria in the City code for potential removal. However, there is absolutely no detail in the February 25 notice letter as to what the City plans to do as it relates to road repair, sidewalk repair, and most importantly tree replacement. Until a detailed street repair and tree replacement plan by the City is presented to residents, I am asking that the subject tree removal be indefinitely postponed.

It is my opinion that the subject trees provide an important aesthetic to the neighborhood and the replacement with mature trees would be a mandatory requirement should this removal go forward.

Please feel free to call me at your earliest opportunity should you wish to discuss further and let me know what the next steps are in my appeal.

Thank you in advance for your consideration.

Sincerely,

Craig Jablin

Enclosure

EXHIBIT 3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

21STCP04028 January 31, 2023
CYNTHIA MABUS vs CULVER CITY, et al. 9:30 AM

Judge: Honorable Mary H. Strobel CSR: None
Judicial Assistant: N DiGiambattista ERM: None
Courtroom Assistant: R Monterroso Deputy Sheriff: None

APPEARANCES:

For Petitioner(s): Jeffery Weber (Telephonic) BY: Peter Sunukjian (x)

For Respondent(s): Stephen Anthony McEwen and Thomas Brown (x) (Telephonic)

NATURE OF PROCEEDINGS: HEARING ON PETITION FOR WRIT OF MANDATE

Matter comes on for hearing and is argued.
.
Petitioner's exhibit 1 (administrative record) is admitted into evidence.
.
The court adopts its tentative ruling as the order of the court and is set forth in this minute order.

Petitioner Cynthia Mabus ("Petitioner") petitions for a writ of administrative mandate directing Respondents Culver City ("City") and Culver City Council ("Council"; collectively, "Respondents") to set aside the Council's decision to overturn the decision of the Public Workers Director's to remove two trees located on the city parkway located at 10729/10731 Northgate St., Culver City, CA.

Judicial Notice

Petitioner's Request for Judicial Notice ("RJN") Exhibit 1 – Granted.

Respondents' RJN Exhibit 1 – Granted.

Respondents' RJN Exhibit 2 – Denied. Council did not rely on the Urban Forest Master Plan in its decision, and this material is not part of the administrative record. Respondents have not moved to augment the record with the Urban Forest Master Plan or shown that the requirements to do so are met. (CCP § 1094.5(e).) The requirements to submit extra-record evidence under section 1094.5(e) are "stringent" and the court lacks discretion to augment the record if the requirements are not met. (Pomona Valley Hosp. Med. Ctr. v. Superior Court (1997) 55 Cal.App.4th 93, 102.) A request for judicial notice cannot be used to circumvent the rules constraining the admission of extra-record evidence. (Ballona Wetlands Land Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455, 475, fn. 10.)

Background and Procedural History

Public Works Director Grants Petitioner's Request for Parkway Tree Removal

Petitioner owns a house at 10729/10731 Northgate St., Culver City, CA ("Property"), which is on a cul-de-sac. (See AR 1, 9.) On October 1, 2019, Petitioner applied to remove two ficus trees on the parkway next to the Property. (AR 1.)

City's Municipal Code ("CCMC") section 9.08.210.C sets forth the criteria the Public Works Director ("Director") must consider in determining whether to grant a tree removal application. Because it is important to this writ petition, the court quotes subdivision C in full:

C. …. In determining whether any tree in or on the parkway shall be removed or replaced, the Public Works Director shall determine whether the removal or replacement is in the best interest of the City and the public health, safety and welfare. Such determination shall be based on the criteria set forth in either Subsection C.1 or Subsection C.2 as follows:
1. If any one of the following criterion is met:
a. The tree is dead, dying, or weakened by disease, age, storm, fire or other injuries so as to pose an existing or potential danger to persons, properties, improvements or other trees; or
b. The removal is necessary for construction of a Street improvement project or other public improvement/repair work; or
c. The removal is necessary for a private improvement or development project….
2. If two or more other criteria are met:
a. The tree is a known problem species or is otherwise found to be an undesirable species for its location based on tree size relative to available area for tree growth.
b. The tree roots are creating extensive and repeated damage to public and/or private infrastructure, including sidewalks, sewer lines, or other utility lines. A history of sewer line blockages from tree roots does not alone provide sufficient reason for tree removal, but rather suggests the need for sewer repair to stop leaks and the accompanying root intrusion that results.
c. The tree is creating a public or private nuisance.

(CMC § 9.08.210.C.)

Culver City's Urban Forester, David Talavera, examined the two ficus trees at issue and recommended that both trees be removed and replaced. For the first tree, Talavera noted a history of previous broken limbs; damage to the entire street and curb caused by the tree's roots; low scaffold limbs that were only 8 feet high and had been hit by traffic; and that illegal pruning

had created unbalanced crown canopy. (AR 3.) For the second tree, Talavera noted side walk and curb damage caused by tree roots; illegal trimming; a bark hazard condition; and roots near underground utilities and landscape area. (AR 8.) Talavera submitted photos and tree hazard evaluation forms in support of his tree removal recommendation. (AR 1-12.)

On February 4, 2020, the Director determined that the two ficus trees met the statutory standard for removal. Director wrote: "Both trees exhibit potential for major branch failure. Extensive street and sidewalk damage creating hazards and cannot be repaired without tree removal. History of previous [illegible]. Traffic damage from street (8'). Potential to impact high priority gas line." (AR 1.) At the administrative hearings, Director stated that he determined the trees should be removed based on the criteria in section 9.08.210.C.2.a and b, specifically that ficus trees are "known problem trees" and that the two trees at issue had caused extensive damage to public streets, sidewalks, and the street in this case. (AR 102, 300.)

Director gave notice of his determination and the relevant appeal procedure to nearby landowners on February 25, 2020. (AR 13.)

Appeal Procedure

In relevant part, CCMC section 9.08.210.E and F state the following appeal procedure for a Director's determination to grant a request to remove parkway trees:

E. The decision of the Public Works Director is final, unless appealed by the applicant, a member of the City Council or an interested person. Appeals shall be submitted in writing and filed with the City Clerk within 10 days after the decision date identified in the notice of decision…. An appeal shall include a general statement, specifying the basis for the appeal, shall be based on an error in fact or dispute of the findings of the decision, and must be accompanied by supporting evidence substantiating the basis for the appeal….

F. Appeals shall be heard by the City Council, which shall affirm the decision of the Public Works Director, unless the appellant demonstrates, by substantial evidence, that the decision is based on an error in fact or disputed findings. The decision of the City Council on an appeal shall be final.

(See https://codelibrary.amlegal.com/codes/culvercity/latest/culvercity_ca/0-0-0-70191#JD_9.08.210; see also AR 14.)

Nearby Landowner Appeals the Director's Determination

On March 2, 2020, Craig Jablin, a nearby landowner, appealed the Director's determination that the two ficus trees should be removed. Jablin's appeal stated in pertinent part:

The two trees in question are beautiful, mature trees, that have recently undergone a large scale (and I am certain costly) pruning, and provide both shade and character to our portion of Culver Crest.

It is evident that the trees, over many years, have caused damage to the road surface and the sidewalk and meet the criteria in the City code for potential removal. However, there is absolutely no detail in the February 25 notice letter as to what the City plans to do as it relates to road repair, sidewalk repair, and most importantly tree replacement. Until a detailed street repair and tree replacement plan by the City is presented to residents, I am asking that the subject tree removal be indefinitely postponed.

It is my opinion that the subject trees provide an important aesthetic to the neighborhood and the replacement with mature trees would be a mandatory requirement should this removal go forward.

(AR 15.)

No additional written evidence was submitted with Jablin's appeal. (See AR 15, 44.)

Staff Report for Appeal

In a staff report for the appeal, City staff wrote that the appeal "is primarily based on the aesthetic value the trees provide to the neighborhood." (AR 29.) City staff recommended that the Council take one of the following two actions:

1. Affirm the decision of the Public Works Director to approve the applicant's request for removal of two trees located at 10729-31 Northgate Street; or
2. Overturn the decision of the Public Works Director, finding that the decision to approve the request to remove the trees located at 10729-31 Northgate Street was based on an error in fact or disputed finding; thereby, denying applicant's request to remove the trees.

(AR 29.)

August 10, 2020, Council Hearing

On August 10, 2020, Council conducted a hearing on the appeal. Multiple written comments were submitted to the City for consideration at the hearing; all were in support of the appeal and opposed to removing the trees. (AR 54-99.) In addition, several persons appeared at the hearing and opposed removal of the trees. Petitioner was the only person in favor. (AR 115-134.) The written and oral comments raised a number of concerns about removing the trees, including their beauty, health, environmental benefits, and desirability. (AR 54-99, 115-134.) After closing the hearing, the Council deliberated, and discussed alternatives to the trees' removal. (AR 134-147.) At the conclusion, the Council voted unanimously to defer the decision on the appeal to allow the Director to evaluate alternative solutions proposed during the deliberations. (AR 145-147, 182.)

Director's Revised Approval of Tree Removal

On September 28, 2021, the Director issued his revised determination in response to the Council's direction. In his "revised approval" letter, Director stated the following:

The recommended alternative solution to removing both trees, includes removal of only one of the two trees. In addition, the Director recommends planting two new trees further from the property line of the affected property, as follows:

The large Ficus tree located at the intersection of Northgate/Galvin would remain in place; the Galvin Street Ficus tree closest to the property owner's block wall would be removed and be replaced by two 36" box Lophostemon Confertus (Brisbane Box) trees, which species are recommended in the City's Urban Forest Master Plan due to their carbon capture, large crown, deep rooting and shading characteristics (see images and characteristics of this specie on page 4 of this letter.) The proposed solution also includes substantially expanding the length and width of the Galvin Street parkway to accommodate tree root growth for the remaining Ficus tree on the corner and to provide ample room for the two replacement trees to flourish (see the draft/proposed parkway design plans on Page 5 of this letter.)

The proposed recommendation to remove only one of the trees has been agreed to by the Applicant. The proposal is contingent on City Council approval of approximately $80,000 in Capital Improvement Project funds in the 2022-2023 Fiscal Year, to reconfigure the parkway.

(AR 193-194.)

October 11, 2021, Council Hearing and Decision

On October 11, 2021, the Council held a second hearing on Jablin's appeal. The staff report described the hearing as follows:

1) Reopening of Public Hearing from August 10, 2020 Regarding an Appeal of the Public Works Director's Prior Decision to Approve the Request for Removal of Two City-Owned Parkway Trees Located at 10729-31 Northgate Street; 2) Consideration of a Revised Decision by the Public Works Director to Preserve One of the Two Trees Provided a Capital Improvement Project is Approved to Substantially Widen and Lengthen the Galvin Street Parkway; and (3) Direction to the City Manager as Deemed Appropriate. (AR 210.)

Several written comments were submitted in support of the appeal and preserving both trees. (AR 244-256.) At the hearing, several members of the public spoke in favor of the appeal. Some speakers also opined that the $80,000 revised plan of the Director was not justifiable. (AR 259-290.)

The Council then deliberated. Two councilmembers opined, at least initially, that there was no evidence that the Director had erred in his tree removal determination. (AR 294:15-295:13 [McMorrin]; AR 306:23-25 [Lee].) Other councilmembers opined that tree removal was not warranted. (AR 291-312 [Vera, Eriksson, Fisch].) After deliberation, Vice Mayor Lee moved to overturn the Director's determination. Mayor Lee did not specify in his motion whether Council was voting to overturn Director's original determination to remove both trees; his revised "alternative" determination to remove one tree; or both determinations. Mayor Fisch added to the motion "to direct the Public Works director to look at public space alterations to save the two trees," and Lee accepted that addition to the motion. (AR 316-317.) The motion passed unanimously. (AR 316-318, 364.)

Writ Proceedings

On December 10, 2021, Petitioner filed her verified petition for writ of administrative mandate challenging Council's decision. Respondents answered.

On December 5, 2022, Petitioner filed her opening brief in support of the petition. The court has received Respondents' opposition, Petitioner's reply, and the administrative record.

Standard of Review

Petitioner seeks a writ of administrative mandate pursuant to CCP section 1094.5. Under section

1094.5(b), the pertinent issues are whether the respondent has proceeded without jurisdiction, whether there was a fair trial, and whether there was a prejudicial abuse of discretion. An abuse of discretion is established if the agency has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. (CCP § 1094.5(b).)

In cases reviewing decisions that do not affect a fundamental vested right, as in this one, the court is directed to review the record for substantial evidence supporting the administrative findings. (JKH Enterprises, Inc. v. Dept. of Industrial Relations (2006) 142 Cal.App.4th 1046, 1057; see Toigo v. Town of Ross (1998) 70 Cal.App.4th 309, 317 [land use decisions reviewed for substantial evidence].) Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board (2002) 104 Cal. App. 4th 575, 584-85), or evidence of ponderable legal significance which is reasonable in nature, credible, and of solid value. (Mohilef v. Janovici (1996) 51 Cal. App. 4th 267, 305 n. 28.) "Courts may reverse an [administrative] decision only if, based on the evidence …, a reasonable person could not reach the conclusion reached by the agency." (Sierra Club v. California Coastal Com. (1993) 12 Cal.App.4th 602, 610.)

"[A] trial court must afford a strong presumption of correctness concerning the administrative findings." (Fukuda v. City of Angels (1999) 20 Cal. 4th 805, 817; see also Evid. Code § 664.) Petitioner bears the burden of proof to demonstrate, by citation to the administrative record, that substantial evidence does not support the administrative findings. (Strumsky v. San Diego County Employees Retirement Assn. (1974) 11 Cal.3d 28, 32; Steele v. Los Angeles County Civil Service Commission (1958) 166 Cal. App. 2d 129, 137; see Local Rule 3.231(i)(2).) A reviewing court "will not act as counsel for either party to an appeal and will not assume the task of initiating and prosecuting a search of the record for any purpose of discovering errors not pointed out in the briefs." (Fox v. Erickson (1950) 99 Cal.App.2d 740, 742.) When an appellant challenges "'the sufficiency of the evidence, all material evidence on the point must be set forth and not merely [his] own evidence." (Toigo v. Town of Ross (1998) 70 Cal.App.4th 309, 317.)

"'On questions of law arising in mandate proceedings, [the court] exercise[s] independent judgment.' …. Interpretation of a statute or regulation is a question of law." (Christensen v. Lightbourne (2017) 15 Cal.App.5th 1239, 1251.)

Analysis

Did The Council Proceed in the Manner Required by CCMC Section 9.08.210.E and F?

Council Had Authority to Consider Jablin's Appeal

Petitioner contends that Jablin's appeal conceded the requirements for tree removal were met, and that Jablin's request for a detailed replacement plan did not fall within the scope of appeal in section 9.08.210.E. Thus, Petitioner contends that Council exceeded its authority when it accepted and considered the appeal. (Opening Brief ("OB") 15.)

As the parties agree, Council was required by law to follow the procedures set forth in its municipal code. (See Oppo. 5, fn. 3.) This rule applies regardless of whether a city is a charter city or general law city. (See West Chandler Boulevard Neighborhood Assn. v. City of Los Angeles (2011) 198 Cal.App.4th 1506, 1521 [writ issued because City Council of Los Angeles, a charter city, failed to make findings required by its municipal code].)

On February 4, 2020, the Director determined that the two ficus trees should be removed based on the criteria in section 9.08.210.C.2.a and b. (AR 1, 102, 300.) Specifically, he found that ficus trees are known problem species, and that the trees "are causing extensive damage to public streets, sidewalks, and street in this case." (AR 102.)

In his appeal, Jablin did not allege an error of fact in this determination of the Director. Nor did Jablin dispute either of these two specific findings. Jablin conceded that "the trees, over many years, have caused damage to the road surface and the sidewalk and meet the criteria in the City code for potential removal." (AR 15.) Rather, Jablin appealed the Director's determination on the grounds that the subject trees "provide an important aesthetic to the neighborhood" and that City had yet to propose "a detailed street repair and tree replacement plan" to the residents. (AR 15.)

Petitioner argues that "there is no requirement anywhere in Culver City's Tree Removal Code, CCMC Sections 9.03.200 -9.08.230, that a tree removal determination include a detailed replacement plan." (OB 15.) Petitioner also argues that aesthetics were not a proper basis for appeal under section 9.08.210.C. (See OB 1:16-25, 11:19-25; Reply 3-4.) Respondents do not address Petitioner's first argument about a requirement for the Director to include a tree replacement plan. With respect to the second argument, Respondents contend that Director was permitted by the ordinance to consider the aesthetics of the trees. (Oppo. 1, 6.)

The parties raise questions of statutory construction. "To determine legislative intent, we turn first to the words of the statute, giving them their usual and ordinary meaning. When the language of a statute is clear, we need go no further. However, when the language is susceptible of more than one reasonable interpretation, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy,

contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (Nolan v. City of Anaheim (2004) 33 Cal.4th 335, 340.) When interpreting a statute, the court must construe the statute, if possible to achieve harmony among its parts. (People v. Hull (1991) 1 Cal. 4th 266, 272.) "[I]nterpretations which render any part of a statute superfluous are to be avoided." (Young v. McCoy (2007) 147 Cal.App.4th 1078, 1083.) The court "must select the construction … with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." (People v. Jenkins (1995) 10 Cal.4th 234, 246.)

Section 9.08.210.A states that the Director "shall have sole authority to cut, trim, prune, replace or remove any tree in or on any parkway in the City." Section 9.08.210.C states that the Director determines whether "any tree in or on the parkway shall be removed or replaced." If the Director determines that a tree must be removed, the Director also has discretion under the ordinance to replace the tree. However, the statute does not require the Director to include a tree replacement plan if he or she determines that a tree must be removed. Respondents develop no argument to the contrary. (See Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc. (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is "equivalent to a concession"].)

Section 9.08.210.C states that the Director "shall determine whether the removal or replacement is in the best interest of the City and the public health, safety and welfare." That requirement is conditioned by the next sentence, which states that "such determination shall be based on the criteria set forth in either Subsection C.1 or Subsection C.2 as follows …." (bold italics added.) "[T]he word 'shall' in a statute is ordinarily deemed mandatory." (Tran v. County of Los Angeles (2022) 74 Cal.App.5th 154, 165.) Furthermore, specific language in a statute controls over general language that is inconsistent with it. (CCP § 1859.) Given the use of mandatory language, and express reference to "criteria" set forth in Subsections C.1 and C.2, the most reasonable interpretation of the ordinance is that the Director was required to determine whether the tree removal was in the best interest of the City and public welfare based on the criteria set forth in Subsections C.1 and C.2. The court is not persuaded by Respondents' argument that the ordinance authorized the Director or City Council to apply generic concepts of "best interest" or "public welfare" not connected to criteria set forth in Subsections C.1 and C.2. Neither of the cases cited by Respondents support an interpretation of the ordinance to incorporate generic concepts of best interests or public welfare not specified in the statutory text. (Oppo. 1, 6, citing Desmond v. County of Contra Costa (1993) 21 Cal.App.4th 330, 337- 338; Guinnane v. San Francisco City Planning Com. (1989) 209 Cal.App.3d 732, 741, 743.)

Did Council Fail to Proceed as Required by Law When it Processed the Appeal?
Petitioner does not show that Council lacked authority to consider the appeal because Jablin

allegedly did not submit written evidence. In contrast to the use of the word "shall" for other parts of the appeal procedure, the ordinance states that the appeal "must be accompanied by supporting evidence substantiating the basis for the appeal." The ordinance does not state any consequence if written evidence is not submitted with the appeal. Because the ordinance uses the word "must" and does not state any consequence for failing to submit evidence, the written evidence requirement is reasonably interpreted to be directory in nature. While the Council certainly could have considered the lack of written evidence in analyzing the appeal, Jablin's alleged failure to submit written evidence did not divest Council of authority to consider the appeal. (Tran v. County of Los Angeles (2022) 74 Cal.App.5th 154, 165-166 ["'If the failure to comply with a particular procedural step does not invalidate the action ultimately taken, ... the procedural requirement is referred to as 'directory'"].)

Based on the foregoing, Petitioner does not show that the Council failed to proceed as required by law when it set Jablin's appeal for hearing and considered the appeal.

Did Council Fail to Proceed as Required by Law When it Delayed a Decision on the Appeal and Ordered the Director to "Evaluate" Alternatives?; and Did Petitioner Invite Any Error?

Petitioner contends that section 9.08.210 "did not permit the City Council to delay its decision while it explored 'creative engineering solutions," and "Council exceeded its authority … by ordering the Director to prepare a second, alternate determination." (OB 15-16.) Respondents contend that section 9.08.210 and the City Charter place "no limits on the City Council's ability to seek alternatives to the destruction of the City's trees." Respondents point out that CCMC section 9.08.205 states that the Council, and not the Director, has the authority provided to the "Board" under the Tree Planting Act of 1931 (Cal. Sts. & High. Code §§ 22000 et seq.) (Oppo. 8.)

Respondents' reliance on the Tree Planting Act of 1931 is not persuasive. Section 22031 of that statute provides that the board "may establish rules and regulations relating to the planting, maintenance and removal of the said trees and may recommend to the city council the enactment of any ordinances the board deems necessary to protect such trees." Here, consistent with this authority, City has enacted municipal ordinances governing tree removal. Section 9.08.205 states that "[t]he Public Works Director shall have authority over the City's public right-of-way and shall be in charge of and have control over the planting, trimming, and removal of trees in parkways and other public places within the City." Section 9.08.210 sets forth the Director's authority to determine whether to approve a request to remove a parkway tree. Director's determination may be appealed to the Council, but Council's authority over the appeal is limited by section 9.08.210.E and F. Further the Municipal code itself provides that in the event of a

conflict between the City's Tree Removal ordinance and the Tree Planting Act of 1931, the ordinance prevails. (See section 9.08.230.)

A city council is bound by the appeal procedures in its municipal code. (See Jackson v. City of Pomona (1979) 100 Cal.App.3d 438, 448-452.) Here, Council was required to affirm the Director's findings unless the Council found that the appellant demonstrated, by substantial evidence, that the decision is based on an error in fact or disputed findings. (§ 9.08.210.F.) Section 9.08.210.F does not authorize the Council to order the Director to make a new determination of tree removal prior to the Council making the required findings to overturn the Director's decision.

However, there is some ambiguity in the record whether the Council, at the August 10, 2020 hearing, actually ordered the Director to make a new determination of whether to remove the trees. At the conclusion of the hearing, the Council voted unanimously to defer the decision on the appeal and "refer back to Public Works to come back with a validation of the different suggestions that has been brought up by council for alternative solutions." (AR 145-147, 182.) This motion followed advice from a city attorney that Council could "delay your decision … until you get the information back from [the Director]." (AR 146.) As summarized by Petitioner, the motion also followed various comments by Councilmembers who were in favor of "postponing" a decision and obtaining further information from Director about alternatives. (OB 9-10, citing AR 135-141.) Consistent with this discussion, minutes of the meeting state that Council voted to "delay the decision" on the appeal "until such time the Public Works Director can return to the City Council with an evaluation of alternative solutions proposed by the City Council." (AR 182.) Section 9.08.210.E and F set no time limit for Council to decide the appeal and did not preclude Council from delaying a decision until it could obtain further information from the Director about the feasibility of alternatives to destruction of the trees. To the extent Council simply delayed the hearing to obtain information from Director about the feasibility of alternatives, Petitioner does not show that Council failed to proceed as required by law.

Respondents argue that Petitioner actively participated in developing the Director's alternative plan and therefore is barred from attacking Council's decision to delay the appeal for more information from Director under the doctrine of invited error. (Oppo. 8-9.) "Under the doctrine of invited error, when a party by its own conduct induces the commission of error, it may not claim on appeal that the judgment should be reversed because of that error…. But the doctrine does not apply when a party, while making the appropriate objections, acquiesces in a judicial determination…. An attorney who submits to the authority of an erroneous, adverse ruling after making appropriate objections or motions, does not waive the error in the ruling by proceeding in accordance therewith and endeavoring to make the best of a bad situation for which he was not

responsible." (Mary M. v. City of Los Angeles (1991) 54 Cal.3d 202, 212-213.)

Respondent does not present a strong case for the application of the invited error doctrine here. While Petitioner participated in the subsequent actions by the Director, as argued by Petitioner, "the City Council did not raise the possibility of delay and investigation until after the public portion of the hearing was closed." (Reply 9.) While it is true Petitioner could have objected in writing after the August 10, 2020, hearing or orally at the start of the October 2021 hearing to preserve her objection for writ review, Respondent points to no action by Petitioner that induced the Council to decide to delay the decision. In any event, the court need not resolve this issue as it finds the delay to seek addition information was not error.

Based on the foregoing, Petitioner does not show that Council failed to proceed as required by law when it delayed the appeal hearing and requested information from the Director about alternatives to destroying both trees.

Did Director Revise or Revoke his Original Determination to Remove Both Trees?

Petitioner argues that Council "ordered" the Director to amend his determination, and that Director complied with that order. (OB 10.) As discussed above, Council's motion did not order Director to revise his determination, but rather to evaluate alternatives and produce a report to Council. However, to Petitioner's second point, it is unclear whether Director interpreted Council as directing him to revise his tree removal determination.

The motion stated in the minutes was quoted in the Director's revised determination. (AR 193.) As discussed, the motion only required Director to "evaluate" alternative solutions, not change his tree removal determination. Director's September 28, 2021, letter stated both that Director was "amending his determination," but also that he was "recommending" an "alternative solution to removing both trees." (AR 193-194 [bold italics added].) This letter also stated that the alternative was "contingent on City Council approval of approximately $80,000 … to reconfigure the parkway." (AR 194.) The Director's revised decision is consistent with Director maintaining his original determination to remove both trees, but also recommending as an alternative a plan to remove only one tree contingent upon Council approval of the $80,000 for the alternative plan. However, at the October 11, 2021, hearing, the Director stated that in light of the Council's request, his "recommendation has been revised to removing one tree, not two trees." (AR 296-297.) 1 Director was obligated by section 9.08.210 to make a determination, not a recommendation, of whether to approve the tree removal request.

While the Director's statements on this issue were not always clear or consistent, the court

interprets the Director's revised approval as an alternative to his original determination to remove both trees, but not as superseding his original determination to remove both trees if Council did not affirm the alternative proposal and $80,000 in funding. The court finds support for this conclusion in the language highlighted above, including that the revised approval was an "alternative" and was contingent upon funding. Since Director still found one tree needed to be removed, and conditioned saving the other tree on Council's approval of $80,000 in funding, it appears that Director intended to maintain his original determination as well if the Council did not approve the alternative plan.

Given the ambiguity in Director's "revised approval," Counsel may further address this issue at the hearing. Subject to discussion, however, the court does not find the issue to be dispositive for reasons discussed below as to the sufficiency of Council's findings.

Did Council Refuse to Rule on the Appeal of the Director's Original Determination?

Petitioner contends that Council "violated CCMC Section 9.08.210.F on October 11, 2021 when it failed to consider and affirm the original determination." (OB 16.) Respondents contend that the Council indeed "voted to overturn the original determination and save both trees." (Oppo. 9.)

The court finds ambiguity in the record as to whether Council intended to overturn Director's original determination to remove both trees; his revised determination to remove one tree, contingent on approval of $80,000 in funding; or both determinations. Vice Mayor Lee's motion and the subsequent minutes did not specify whether Council was overturing the Director's original or revised determination, or both. (AR 316-318, 364.) The court finds it unnecessary to opine further on Council's intent because, as discussed next, Council did not issue sufficient findings to satisfy CCMC section 9.08.210 and the Topanga decision.

Council Did Not Issue Findings As Required by CCMC Section 9.08.210 and Topanga

Throughout his writ briefs and in his petition, Petitioner asserts, in effect, that Council did not not make the findings required by CCMC section 9.08.210 to overturn the Director's determination to approve a tree removal request. (See e.g. OB 1-2, 10-13; Reply 10; Pet. ¶¶ 17-18) Petitioner also argues that "even if there was substantial evidence of an error in the Public Works Director's facts or findings, the city council did not comply with its obligation under Topanga to identify that evidence and explain why it supported reversal of the Public Works Director's decision." (OB 17; Reply 10.) Both arguments are persuasive.

As discussed above, section 9.08.210.F states that, on appeal, Council "shall affirm the decision

of the Public Works Director, unless the appellant demonstrates, by substantial evidence, that the decision is based on an error in fact or disputed findings." 2 Regardless of whether Council was reviewing the Director's original or revised determination, or both, Council did not make the findings required by section 9.08.210.F to overturn the Director's tree removal determination. Specifically, in the motion that was approved on October 11, 2021, and in its minutes, Council did not find "by substantial evidence, that the decision is based on an error in fact or disputed findings." (See AR 316-318, 364.) Because there are two alternative findings for overturning a Director's decision, the court cannot imply that Council made either one of these findings. Moreover, Council did not identify any error in fact or disputed findings. Accordingly, Council did not comply with its municipal code and the decision must be remanded for reconsideration. (West Chandler Blvd. Neighborhood Ass'n vs. City of Los Angeles (2011) 198 Cal.App.4th 1506, 1521-23 [remanding for findings required by municipal code].)

Council was also required to comply with the findings requirement of CCP section 1094.5 and the Topanga decision. Under CCP section 1094.5(b), an abuse of discretion is established if the decision is not supported by the findings, or the findings are not supported by the evidence. (CCP § 1094.5(b).) In Topanga Assn. for a Scenic Community v. County of Los Angeles, (1974) 11 Cal. 3d 506, 515, the Supreme Court held that "implicit in [Code of Civil Procedure] section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." The court explained that "among other functions, … findings enable the reviewing court to trace and examine the agency's mode of analysis.… Absent such roadsigns, a reviewing court would be forced into unguided and resource-consuming explorations; it would have to grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision of the agency…. Moreover, properly constituted findings enable the parties to the agency proceeding to determine whether and on what basis they should seek review. [Citations.] They also serve a public relations function by helping to persuade the parties that administrative decision-making is careful, reasoned, and equitable." (11 Cal. 3d at 516-517 [fns. Omitted].)

"Administrative agency findings are generally permitted considerable latitude with regard to their precision, formality, and matters reasonably implied therein." (Southern Pacific Transportation Co. v. State Bd. of Equalization (1987) 191 Cal.App.3d 938, 954.) The agency's findings may "be determined to be sufficient if a court has no trouble under the circumstances discerning the analytic route the administrative agency traveled from evidence to action." (West Chandler Blvd. Neighborhood Ass'n vs. City of Los Angeles (2011) 198 Cal.App.4th 1506, 1521-22.) However, "mere conclusory findings without reference to the record are inadequate." (Id. at 1521.) If the court "cannot discern the analytic route the city council traveled from

evidence to action," the decision does not comply with Topanga. (Ibid.)

"The nature of the statute, ordinance, or rule being applied by that agency is also relevant to the analysis of the adequacy of an administrative agency's findings." (Young v. City of Coronado (2017) 10 Cal.App.5th 408, 421.) The findings must be sufficient to allow "meaningful judicial review of the challenged administrative decisions." (Glendale Memorial Hosp. & Health Center v. Department of Mental Health (2001) 91 Cal.App.4th 129, 139.) "When the administrative agency's findings are not adequate, an appropriate remedy is to remand the matter so that proper findings can be made." (Id. at 140.)

Council's decision does not comply with Topanga. Vice Mayor Lee's motion to overturn the Director's decision did not include any findings that were voted on by the entire Council. (AR 316-317.) The minutes also do not include any findings. (AR 364.)

The transcript and minutes show two possible findings, but it is unclear if Council adopted them and neither complies with Topanga in any event. Before Lee's motion, when asked by a city attorney for clarification on his position that the decision should be overturned, Mayor Fisch stated: "The reason, others can offer, but the one that jumped out to me is that there's evidence that the wall, since being repaired, has not suffered further damage, and so it may be stabilizing based on the -- the record that's before us." The Council did not vote to adopt that statement of Mayor Fisch as a basis for the decision. Moreover, even if Council found the wall has been repaired and "may be stabilizing," that does not address the Director's finding under section 2.08.210C.2.b that the tree roots are creating extensive and repeated damage to public infrastructure, including the city street and sidewalks. (AR 102.)

Before the motion, Vice Mayor Lee also proposed the following finding: "Well, I -- I mean, it was speculation, but and, you know, I think there is a lot that we do know about sort of (indiscernible) that comes from oil extraction as well that I think, you know, could have factored into damage, you know, all around Culver City, particularly in the Crest area. So that was persuasive." (AR 316.) Council did not move to adopt this statement as a finding. Even if Council intended to, Lee admitted the evidence was speculative, and he did not explain how the possibility that oil extraction "factored into damage" established any deficiency in the Director's findings. To the extent Vice Mayor Lee's statement was adopted as a finding, it does not satisfy Topanga.

In their opposition brief, Respondents argue that Council overturned the Director's decision "based on a disputed best interest finding." (Oppo. 10:1.) However, Respondents do not cite to any such finding that was made by Council. Further, as discussed above, Council was not

authorized to overturn the decision based on a generalized finding of "best interest."

The court has considered Respondents' other arguments concerning Topanga and finds them all unpersuasive. (Oppo. 12-15.) Contrary to Respondents' assertion, the absence of findings is clearly prejudicial. For reasons discussed at length above, neither the court nor Petitioner can reasonably discern the Council's "mode of analysis," let alone the basis upon which it overturned the Director's decision under section 9.08.210.F or the evidence upon which it relied.

Because the Council did not make sufficient findings, the court will grant the petition and remand the case for reconsideration.
Remaining Contentions

In light of the court's decision that remand is required for further findings, the court need not address any other contentions made by the parties that are not analyzed above.

However, for oral argument and guidance of the parties, the court disagrees with Respondents' argument that Council has discretion under section 9.08.210.D to overturn a Director's tree removal decision by finding a lack of funding. (Oppo. 10:2-7.) As argued by Petitioner in reply, section 9.08.210.D only gives the City discretion to schedule the determined removal according to the availability of resources. (Reply 9.) This sub-provision is not reasonably interpreted to allow the City to deny an approved tree removal solely based on lack of funding. Notably, section 9.08.210.D also allows affected landowners to pay for removal themselves if the City cannot take action quickly enough. While not necessary to the court's decision, the court finds Petitioner's arguments with respect to section 9.08.210.D more persuasive.

Attorney Fees

If Petitioner's counsel seeks attorneys' fees, he must file a separate motion. (Reply 10.)

Conclusion

The petition is GRANTED. The court will issue a writ directing Council to set aside its decision dated October 11, 2021, to reconsider the case in light of the court's ruling, and to make findings that satisfy CCMC section 9.08.210.F and Topanga. (See CCP § 1094.5(f) and West Chandler Blvd. Neighborhood Ass'n vs. City of Los Angeles (2011) 198 Cal.App.4th 1506, 1521-23.)
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Petitioner's exhibit 1 is ordered returned forthwith to the party who lodged it, to be preserved unaltered until a final judgment is rendered in this case and is to be forwarded to the court of

appeal in the event of an appeal.
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Counsel for petitioner is to give notice and is to prepare, serve and lodge the proposed judgment and proposed writ. The court will hold the proposed documents ten days for objections unless approved by opposing counsel as to form.
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FOOTNOTES:

1- Parts of the first line of each page of the hearing transcripts are covered with additional text and are illegible, including at AR 296-297. While Counsel should address that issue at the hearing, the court presently has no reason to believe any of the illegible text is necessary for the court to decide the petition.
2- To the extent Respondents suggest that Council could overturn Director's decision simply by finding that there was a "disputed finding," see Oppo. 9-10, the court disagrees. To overturn a decision, the ordinance expressly requires Council to find "by substantial evidence" either that the decision was based on an error or a disputed finding.