

CITY STAFF'S RESPONSES TO OBJECTIONS TO PROPOSED RESOLUTION PRESENTED BY COUNSEL FOR APPLICANT

Staff responds to Applicant's objections to the proposed Resolution on the following grounds:

Applicant Objection # 1. *The Resolution does not comply with the terms of the Court's order of March 15, 2023, because it is not a reconsideration of the Council's October 11, 2021, decision based on the same evidence and argument. Instead, in violation of the Court's order, it is a new consideration that includes new evidence and new arguments not present or available at the October 11, 2021 hearing. As such, approval of this Resolution would place Culver City in contempt of the Court order, needlessly subjecting it to legal fees and liability.*

STAFF RESPONSE # 1. Staff disagrees. The Court's order, which we have attached to the staff report, requires only that the City Council reconsider its October 11, 2021 decision. It does **not** define the term "reconsider" or contain any language that constrains or limits the evidence the Council may consider, and it does **not** state that reconsideration may be based solely on the same evidence and arguments presented in 2020 and 2021. Under that circumstance, the law supports the conclusion that the term "reconsideration" allows the introduction of new evidence and arguments. (See, e.g., *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 526.) Moreover, Applicant's attorney relies on new evidence and arguments in his submittal (e.g., see Objection # 10.) It would be unfair for them to simultaneously object to and submit new evidence.

Applicant Objection # 2. *The documents made available to the public in support of this Resolution are incomplete and thus the City Council lacks authority. The Resolution cites to documents, including, but not limited to, an alleged inspection of the site by the City's Arborist on April 13, 2023, alleged determinations by the Public Works Director that the criteria required for removal under Culver City Municipal Code § 9.08.210(C)(2)(b)-(c) do not exist, and the alleged "Galvin Street Parkway Expansion" in the Fiscal Year 2022/2023 budget, that have not been made available for public consumption and review prior to this hearing.*

STAFF RESPONSE # 2. Staff disagrees. The draft Resolution properly refers to the Arborist's inspection and conclusion, the Public Works Director's determination and the Galvin Street Parkway Expansion Project. The Court's order does not require that evidence of such matters must be reflected in separate documents. Rather, findings may be based solely on facts presented in staff reports. Moreover, any documents that are referred to by the draft Resolution are available to the public upon request.

Applicant Objection # 3. *The City Council's reliance upon the alleged inspection by the City's Arborist on April 13, 2023, is improper because it is a violation of Culver City*

Municipal Code § 9.08.210(F) and because it does not demonstrate an error in fact or disputed finding in the Public Works Director's original decision.

STAFF RESPONSE # 3. Staff disagrees. The City Council's reliance upon the inspection by the City's Arborist on April 13, 2023, is proper because it demonstrates an error in fact or disputed finding in the Public Works Director's original decision under Culver City Municipal Code § 9.08.210(F).

Applicant Objection # 4. *The City Council's reliance upon alleged determinations by the Public Works Director that the criteria required for removal under Culver City Municipal Code § 9.08.210(C)(2)(b)-(c) do not exist is improper because it is a violation of Culver City Municipal Code § 9.08.210(F) and because it does not demonstrate an error in fact or disputed finding in the Public Works Director's original decision.*

STAFF RESPONSE # 4. Staff disagrees. The City Council's reliance upon determinations by the Public Works Director that the criteria required for removal under Culver City Municipal Code § 9.08.210(C)(2)(b)-(c) do not exist is proper under Culver City Municipal Code § 9.08.210(F) because it demonstrates an error in fact or disputed finding in the Public Works Director's original decision.

Applicant Objection # 5. *The City Council's reliance upon the alleged "Galvin Street Parkway Expansion" in the Fiscal Year 2022/2023 budget is improper under Culver City Municipal Code § 9.08.210(F) because it demonstrates an error in fact or disputed finding in the Public Works Director's original decision.*

STAFF RESPONSE # 5. Staff disagrees. The City Council's reliance upon the "Galvin Street Parkway Expansion" project in the Fiscal Year 2022/2023 budget is proper under Culver City Municipal Code § 9.08.210(F) and because it demonstrates an error in fact or disputed finding in the Public Works Director's original decision.

Applicant Objection # 6. *The alleged inspection by the City's Arborist on April 13, 2023, does not comply with Culver City Municipal Code § 9.08.210(C), which states that the Public Works Director, not the City's Arborist, is the proper person to determine "whether the removal or replacement is in the best interest of the City and the public health, safety and welfare."*

STAFF RESPONSE # 6. Staff disagrees. The staff report and Resolution are clear that the Public Works Director relied on and considered the inspection by the City's Arborist on April 13, 2023. Doing so is consistent with and is not prohibited by Culver City Municipal Code § 9.08.210(C), which states that the Public Works Director is the proper person to determine "whether the removal or replacement is in the best interest of the City and the public health, safety and welfare."

Moreover, Applicant has consistently relied on the Arborist's first inspection, which the Public Works Director relied on and considered in making the first decision to allow the trees' removal. It is unfair to simultaneously rely on only one of the Arborist's inspections and recommendations and object to the other.

Applicant Objection # 7. *The alleged inspection by the City's Arborist on April 13, 2023, does not comply with Culver City Municipal Code § 9.08.210(C)(2)(a), which states that the Public Works Director, not the City's Arborist, is the proper person to determine whether "[t]he 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."*

STAFF RESPONSE # 7. Staff disagrees. See Staff Response # 6 above.

Applicant Objection # 8. *The alleged inspection by the City's Arborist on April 13, 2023, does not comply with Culver City Municipal Code § 9.08.210(C)(2)(b), which states that the Public Works Director, not the City's Arborist, is the proper person to determine whether "[t]he tree roots are creating extensive and repeated damage to public and/or private infrastructure, including sidewalks, sewer lines, or other utility lines."*

STAFF RESPONSE # 8. Staff disagrees. See Staff Response # 6 above.

Applicant Objection # 9. *The alleged inspection by the City's Arborist on April 13, 2023, does not comply with Culver City Municipal Code § 9.08.210(C)(2)(c), which states that the Public Works Director, not the City's Arborist, is the proper person to determine whether "[t]he tree is creating a public or private nuisance."*

STAFF RESPONSE # 9. Staff disagrees. See Staff Response # 6 above.

Applicant Objection # 10. *The alleged conclusions of the City's Arborist on April 13, 2023, are erroneous and not supported by the facts, which are that (1) there is evidence of new damage at the site; (2) the previous asphalt repairs were not successful and there is evidence that the prior damage has recurred; (3) the cracks in the concrete wall that were repaired have reappeared and visible damage to the wall is apparent; and (4) there has been additional sidewalk damage and lifting over the past two years.*

STAFF RESPONSE # 10. Staff disagrees, as noted in the staff report. However, the Council continued the hearing on this matter to allow Applicant and her attorney to show staff its new evidence and to allow staff to evaluate it. As noted in the staff report, staff inspected the property and the public right of way on May 16th. In addition, staff reviewed the photographs provided by the Applicant's attorney and compared them to prior photographs taken in 2021. As is discussed in the staff report, staff's conclusions did not change.

Applicant Objection # 11. *Appellant has not satisfied Culver City Municipal Code § 9.08.210(F) by demonstrating by substantial evidence that the original decision by the Public Works Director was based on an error in fact or disputed findings.*

STAFF RESPONSE # 11. Staff disagrees, as set forth in the staff report and Resolution.

Applicant Objection # 12. *Appellant has not satisfied Culver City Municipal Code § 9.08.210(C)(2)(a) and § 9.08.210(F) by demonstrating by substantial evidence that trees at issue are not “a known problem species or otherwise found to be an undesirable species for [their] location based on tree size relative to available area for tree growth.”*

STAFF RESPONSE # 12. It is unclear what this objection refers to. Staff does not contend in the staff report or otherwise that the trees at issue are not “a known problem species or otherwise found to be an undesirable species for [their] location based on tree size relative to available area for tree growth.”

However, that single factor alone does not warrant removal of the trees because the other criteria required under CCMC section 9.08.210 C.2.b. and c. are not satisfied, as the staff report explains.

Applicant Objection # 13. *Appellant has not satisfied Culver City Municipal Code § 9.08.210(C)(2)(b) and § 9.08.210(F) by demonstrating by substantial evidence that trees at issue are not “creating extensive and repeated damage to public and/or private infrastructure, including sidewalks, sewer lines, or other utility lines.”*

STAFF RESPONSE # 13. Staff disagrees, as explained in the staff report.

Applicant Objection # 14. *Appellant has not satisfied Culver City Municipal Code § 9.08.210(C)(2)(c) and § 9.08.210(F) by demonstrating by substantial evidence that trees at issue are not “creating a public or private nuisance.”*

STAFF RESPONSE #14. Staff disagrees, as explained in the staff report.

Applicant Objection # 15. *The City Council’s definition of “extensive” provided in the Resolution is improper because it is inconsistent with, and contradicts, previous definitions of the term used by the City Council in other decisions.*

STAFF RESPONSE # 15. Staff disagrees. Staff also notes that this objection itself relies on new evidence and arguments and does not specify the other decisions it refers to.

Staff would also point out that each decision is unique, and nothing in CCMC section 9.08.210 imposes a requirement on the Council that it must approve every tree removal after approving one.

Applicant Objection # 16. *The findings in Section 1 are improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director’s original determination.*

STAFF RESPONSE # 16. Staff disagrees. The findings in Section 1 provide background and context, as well a substantive support for the recommended Council decision. Nothing in Culver City Municipal Code § 9.08.210 precludes or prohibits that.

Applicant Objection # 17. *The City Council's reliance upon the findings in Section 1 is improper, in violation of Culver City Municipal Code § 9.08.210, and does not provide a basis for determining that there was substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination.*

STAFF RESPONSE # 17. Staff disagrees. See staff response # 16 above.

Applicant Objection # 18. *The findings in Section 3 are improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination.*

STAFF RESPONSE # 18. Staff disagrees, as explained above and in the staff report and Resolution.

Applicant Objection # 19. *The City Council's reliance upon the findings in Section 3 is improper, in violation of Culver City Municipal Code § 9.08.210, and does not provide a basis for determining that there was substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination.*

STAFF RESPONSE # 19. Staff disagrees, as explained above and in the staff report and Resolution.

Applicant Objection # 20. *The findings in Section 3(A) are improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination.*

STAFF RESPONSE # 20. Staff disagrees, as explained above and in the staff report and Resolution.

Applicant Objection # 21. *The City Council's reliance upon the findings in Section 3(A) is improper, in violation of Culver City Municipal Code § 9.08.210, and does not provide a basis for determining that there was substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination.*

STAFF RESPONSE # 21. Staff disagrees, as explained above and in the staff report and Resolution.

Applicant Objection # 22. *The findings in Section 3(B) are improper, in violation of Culver City Municipal Code § 9.08.210, not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination, and not relevant because the Public Works Director's original determination did not rely on the criteria set forth in Culver City Municipal Code § 9.08.210(C)(2)(c).*

STAFF RESPONSE # 22. Staff disagrees, as explained above and in the staff report and Resolution.

Applicant Objection # 23. *The City Council's reliance upon the determinations in Section 3(B) is improper, in violation of Culver City Municipal Code § 9.08.210, does not provide a basis for determining that there was substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination, and based on irrelevant matters because the Public Works Director's original determination did not rely on the criteria set forth in Culver City Municipal Code § 9.08.210(C)(2)(c).*

STAFF RESPONSE # 23. Staff disagrees, as explained above and in the staff report and Resolution.

Applicant Objection # 24. *The findings in Section 3(C) are improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination.*

STAFF RESPONSE # 24. Staff disagrees, as explained above and in the staff report and Resolution.

Applicant Objection # 25. *The City Council's reliance upon the findings in Section 3(C) is improper, in violation of Culver City Municipal Code § 9.08.210, and does not provide a basis for determining that there was substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination.*

STAFF RESPONSE # 25. Staff disagrees, as explained above and in the staff report and Resolution.

Applicant Objection # 26. *The findings in Section 3(D) are improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination.*

STAFF RESPONSE # 26. Staff disagrees, as explained above and in the staff report and Resolution.

Applicant Objection # 27. *The City Council's reliance upon the findings in Section 3(D) is improper, in violation of Culver City Municipal Code § 9.08.210, and does not provide a basis for determining that there was substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination.*

STAFF RESPONSE # 27. Staff disagrees, as explained above and in the staff report and Resolution.

Applicant Objection # 28. *The findings in Section 4 are improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination.*

STAFF RESPONSE # 28. Staff disagrees, as explained above and in the staff report and Resolution.

Applicant Objection # 29. *The City Council's reliance upon the findings in Section 4 is improper, in violation of Culver City Municipal Code § 9.08.210, and does not provide a basis for determining that there was substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination.*

STAFF RESPONSE # 29. Staff disagrees, as explained above and in the staff report and Resolution.

Applicant Objection # 30. *The findings in Section 5 are improper and in violation of Culver City Municipal Code §§ 9.08.200 et seq.*

STAFF RESPONSE # 30. Staff disagrees, as explained above and in the staff report and Resolution.

Applicant Objection # 31. *The City Council's reliance upon the findings in Section 5 is improper and in violation of Culver City Municipal Code §§ 9.08.200 et seq.*

STAFF RESPONSE # 31. Staff disagrees, as explained above and in the staff report and Resolution.