



City of Culver City

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Staff Report

File #: 23-898, **Version:** 1

Item #: PH-1

CC - PUBLIC HEARING: (1) Set Aside the City Council's Decision of October 11, 2021 Upholding the Appeal of the Public Works Director's Decision to Approve a Request for Removal of Two City-Owned Ficus Trees Located in the Galvin Street Parkway Adjacent to 10729-31 Northgate Street as Ordered on March 15, 2023 by the Los Angeles County Superior Court; (2) Reconsider the Appeal of the Public Works Director's Decision to Approve a Request to Remove Two City-Owned Ficus Trees Located in the Galvin Street Parkway Adjacent to 10729-31 Northgate Street as Ordered by the Court; and (3) Uphold the Appeal by Adopting a Resolution Containing Findings to Support Preservation of Both Trees.

Meeting Date: May 8, 2023

Contact Person/Dept.: Joe Susca, Public Works Department-Administration
Christina Burrows, Deputy City Attorney, CAO

Phone Number: 310-253-5662/5636

Fiscal Impact: Yes ☐ No ☒

General Fund: Yes ☐ No ☒

Attachments: Yes ☒ No ☐

Commission Action Required: Yes ☐ No ☒

Public Notification: (E-Mail) Meetings and Agendas - City Council (05/03/2023); The Applicant, the Appellant, and all members of the public who submitted written comments or pulled speaker cards on this matter during the City Council meetings of August 10, 2020 and October 11, 2021 (04/11/2023); (Hand Delivered) All residents within 100' of the two Ficus trees (04/11/2023)

Department Approval: Yanni Dimitri, Public Works Director/City Engineer (05/02/2023)

RECOMMENDATION

Staff recommends the City Council set aside and reconsider the Council's decision of October 11, 2021 upholding the appeal of the retired Public Works Director's decision to approve the request to remove the trees located at 10729-31 Northgate Street and either:

1. Affirm the decision of the retired Public Works Director to approve the Applicant's request for removal of two trees located at 10729-31 Northgate Street, and direct staff to prepare a Resolution with findings memorializing that decision for approval at a subsequent Council meeting;

or

2. Grant the appeal and overturn the decision of the retired Public Works Director, and adopt a Resolution setting aside the October 11, 2021 decision and adopting findings that, following reconsideration of the appeal and October 11, 2021 decision, substantial evidence supports the conclusion that the decision to approve the request to remove the trees located at 10729-31 Northgate Street was based on an error or disputed findings, thereby denying the Applicant's request to remove the trees.

PROCEDURE

1. Mayor calls on staff for a brief staff report and City Council poses questions to staff as desired.
2. Mayor seeks a motion to open the public hearing, providing the appellant the first opportunity to speak, followed by applicant, followed by the general public.
3. Mayor seeks a motion to close the public hearing after all testimony has been presented.
4. City Council discusses the matter and arrives at its decision.

BACKGROUND

Culver City Municipal Code ("CCMC") sections 9.08.200, et seq., pertain to the removal of City-owned trees in parkways. In accordance with Section 9.08.210.B, applicants have the option to request the discretionary removal of a City-owned parkway tree by submitting a written application to the Public Works Director and paying the applicable filing fee. Subsequent to the filing of the request for tree removal, the City Arborist assesses the request and the tree.

In accordance with the procedures set forth in CCMC section 9.08.210.C, the Public Works Director then reviews the application and supporting documentation, as well as the City Arborist's assessment, to determine whether to approve the requested removal of the particular tree(s). 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 Subsection C.1 or Subsection C.2 as follows:

CCMC section 9.08.210.C.1: If any one of the following criteria 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, see Section 9.08.215.

OR

CCMC section 9.08.210.C.2: If two or more other criteria are met:

- a. The tree is a known 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 occurs.
- c. The tree is creating a public or private nuisance.

Application to Remove Two Parkway Trees

On October 1, 2019, the property owner at 10729-31 Northgate Street (the “Applicant”) submitted a request for removal of two parkway trees (*Ficus Microcarpa Nitida*) on the Galvin Street side of the property (“Request,” Attachment 1). The Request asserted that the subject trees should be removed under CCMC section 9.08.210C.2, based on the Applicant’s assertion that:

- the 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.

The Applicant only sought removal of the trees under CCMC section 9.08.210.C.2, and did not assert that the trees should be removed under CCMC section 9.08.210.C.1.

The City Arborist assessed the trees and the site, and his assessment recommended the removal of both trees based on the justification provided by the Applicant. Based on the Applicant’s justification and the City Arborist’s assessment, the (now retired) Public Works Director (“Director”) approved the Applicant’s request to remove both trees based on the criteria of CCMC sections 9.08.210.C.2.a and C.2.b being satisfied. The Request was made on the justification that the subject trees are known problem species and have outgrown their planting area and the tree roots are causing damage to the public street and sidewalk. The Public Works Director did not find that the trees constituted a nuisance under CCMC section 9.08.210.C.2.c.

Appeal of Director’s Decision

On February 25, 2020, the Director’s decision was mailed to the Applicant and interested persons. CCMC section 9.08.210.E states that an appeal of the Public Works Director’s decision may be filed within 10 City Hall business days after the date set forth in the notice of decision. On March 2, 2020, the City received a timely letter from the property owner of 10740 Northgate Street (the “Appellant”) requesting an appeal of the decision to remove the trees (“Appeal,” Attachment 2). The reconsideration of that Appeal is the decision before the City Council at the May 8, 2023 public hearing.

CCMC Section 9.08.210.F provides that the City Council shall affirm the Director’s decision “unless the appellant demonstrates, by substantial evidence, that the decision is based on an error in fact or disputed findings.” On August 10, 2020, the City Council conducted a Public Hearing of the Appeal and upon its conclusion, rendered no decision on the matter and instead, instructed staff to explore the cost and feasibility of alternatives, which implementation would allow both trees to remain in

place.

On October 11, 2021, the Public Hearing for the Appeal was reopened, and staff presented a capital improvement project option that proposed preserving the Northgate/Galvin corner tree and removing the inner Galvin Street tree due to its close proximity to the Applicant's concrete wall, which had been repaired after cracking from tree root intrusion. This proposed capital improvement project had been developed by staff in coordination with the Applicant. The capital improvement project proposed to eliminate the adjacent curbside parking area on Galvin Street and convert the area into an expanded parkway. The result would significantly lengthen and widen the existing parkway and provide substantially more room for unimpeded tree root growth in the future. The capital project also proposed removal of the sidewalk located along the Applicant's property line on the Galvin Street side, thus eliminating the potential for future sidewalk damage.

As they had previously done at the 2020 hearing, many neighbors and other interested persons again appeared and offered written and oral comments at the 2021 hearing. All were opposed to the Request and to removing either of the trees, and expressed their disagreement both with the Director's findings and the factual basis for the initial decision to approve the Applicant's Request and to the proposed capital improvement project proposing to remove one of the trees. Those speakers emphasized, among other comments, the following:

- staff had not included neighbors and other persons who were opposed to removing the trees in the discussions leading to the development of the proposed capital improvement project;
- the damage asserted had been repaired and had not recurred;
- the damage asserted was not a substantial problem due to both the repairs and their location on a sparsely-used cul-de-sac;
- threats due to falling limbs could be easily addressed by appropriate thinning;
- some or all of the damage was due to overwatering and illegal trimming by the Applicant herself;
- the importance of the trees in terms of shading, cooling and carbon capture;
- removal of the trees would be inconsistent with the City's Urban Forest Master Plan and other City goals and policies favoring preservation of City trees;
- 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;
- replacement of mature trees is not always a reliable mitigation measure because replacement trees sometimes die due to lack of proper maintenance.

The Applicant and her attorney were the only speakers in support of the Request to remove the trees or the proposed alternative capital improvement project.

At the conclusion of the October 11, 2021 Public Hearing, the City Council deliberated. In response to questions from the Council, the former Public Works Director acknowledged that a capital project would be possible to safely and feasibly save both of the trees and to replace or repair the street, curb and sidewalk that were the subject of the Applicant's Request.

The City Council then decided to grant the Appeal. City Council comments during deliberations demonstrated that all members of the City Council wanted to save both trees if possible, and that at

least a majority of the City Council disputed the former Public Works Director's initial findings in support of his decision to grant the Request to remove the trees. The City Council directed the Public Works Director to modify and implement the proposed Galvin Street parkway expansion project to save both trees

Subsequently, in 2022 the City Council approved staff's request for funding for the \$100,000 capital project in the Adopted Budget for Fiscal Year 2022/2023 in CIP PS-022 *Galvin Street Parkway Expansion*. This capital project would preserve both trees in a manner that would allow for their safe growth and correct and replace the previously damaged street, curb and remove the sidewalk that were the focus of the Applicant's Request.

Lawsuit

Following the City Council decision to grant the Appeal, the Applicant filed suit on various grounds, challenging the City Council's October 2021 decision to grant the Appeal. After briefing and oral argument, the court ruled in favor of the City on some of the Applicant's contentions, and in favor of the Applicant on the argument that the City Council was required to, but did not make, written findings to satisfy CCMC section 9.08.210.F. The Court remanded the matter back to the City Council to (1) set aside its October 11, 2021 decision and (2) reconsider its decision consistent with the Court's ruling. ("Court Opinion" Attachment 3.)

DISCUSSION

The May 8, 2023 Public Hearing is being held for the City Council to reconsider the Appeal as ordered by the Court. The Court's ruling was premised on its conclusion that the City Council should have, but did not, memorialize its October 2021 decision with written findings explaining the basis for the City Council's decision under the applicable City ordinance, CCMC section 9.08.210. The Court did not limit the City Council's discretion on reconsideration of the Appeal, or direct the City Council to reach any particular conclusion on the Appeal.

Thus, after it conducts a public hearing and reconsiders the Appeal to remove the trees, the City Council may either (1) deny the Appeal (resulting in the removal of both trees) or (2) grant the Appeal (resulting in the preservation of the trees) on the basis of a finding by the City Council that the decision of the former Director was based on an error in fact or disputed findings pursuant to CCMC 9.08.210.F. In so doing the City Council must adopt a Resolution ("Resolution" Attachment 4) containing written findings that memorialize and explain the basis for whatever decision the City Council makes.

Subsequent Inspection in April 2023

On April 13, 2023, the City's Arborist again inspected the site to ascertain whether the damage that the Applicant asserted in her Request had repeated or grown worse. On the basis of that re-inspection, the City Arborist determined there is no evidence of new or repeated damage, or worsening of the previous damage. The City's Arborist noted the following:

- the asphalt repairs 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 part of the basis for the Applicant's Request to remove the trees and that were repaired prior to the October 2021 hearing have not reappeared and no visible damage to the wall is apparent as of the Arborist's March 2023 re-inspection.
- Although the sidewalk will be removed as part of the capital project described above and approved by the City Council on June 27, 2022, the City Arborist also observed 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 time, there is no reason to remove either tree.

Current Public Works Director's Determination

In light of the results of the City Arborist's April 13, 2023 re-inspection and the *Galvin Street Parkway Expansion* project, by which both trees will be feasibly and safely preserved while the parkway is expanded, and in light also of the fact that the former Director acknowledged on questioning from the City Council at the October 2021 hearing that such a capital project would be feasible and effective, the current Director believes the former Director's decision on the Request was based on errors of fact and disputed findings, and that removal of the trees is unnecessary and contrary to the City's best interests and welfare.

The current Director thus supports the Appeal and has determined that both trees should remain. Neither tree is dead or dying, nor are they leaning, and due to their maturity and good health, they have a combined estimated value of \$140,000. Staff believes the City Council can make the following findings to grant the Appeal:

1. *Finding Pursuant to CCMC Section 9.08.210.C.2.b: The tree roots are not creating extensive and repeated damage to public and/or private infrastructure, including sidewalks, sewer lines, or other utility lines.*

This finding relates only to tree roots. Discussion about tree branch and trunk/bark issues is not relevant to this finding. In any event, any branch and trunk issues can and will be safely and feasibly addressed through tree cutting, trimming and pruning; without removing the trees.

This finding also requires that the tree roots "are creating extensive and repeated damage". Staff interprets the use of the "are creating" language to require that root damage must be current and ongoing. The finding also requires that damage from the tree roots be "extensive" and "repeated".

Public Works staff has determined, the Arborist's 2023 re-inspection has confirmed, and the evidence presented at the previous hearings establishes, that the damage to the wall, sidewalk and street has not substantially reappeared or continued following repairs. Moreover, with the implementation of the *Galvin Street Parkway Expansion* project, the damage is not likely to repeat, recur or continue as required for removal under 9.08.210.C.2.b. Public Works staff concludes that the root damage is not ongoing (repeated) under 9.08.210.C.2.b because the City can feasibly address any root problem, and thereby save both trees. Where necessary, filling lifted sidewalks is routine in nature and low in cost, and a safe and effective measure for pedestrians.

With respect to the Applicant's assertion in the Request that the trees' roots were threatening natural gas lines, Public Works staff concludes the assertion is unsupported. On April 11, 2023 Southern California Gas confirmed that there is no evidence of root intrusion in their natural gas line under the existing roadway. Similar evidence was presented during the previous hearings in 2020 and 2021, and the Applicant did not present contrary evidence to support her initial assertion.

This finding under Section 9.08.210.C.2.b also requires that root damage from the trees be "extensive", a term that the CCMC does not define, leaving interpretation to the Director and City Council. There are several factors that staff considered 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.

Staff's repairs to the sidewalk and asphalt on Galvin Street have allowed the continued functionality of both. In addition, the damage here is relatively limited in its size and impact. This is especially so given that it is located on a scarcely-used cul-de-sac. The sidewalk only serves a single parcel. Pedestrian use and parking have not been impacted by any damage. As was discussed above, sidewalk lifting, cracking in the wall, and asphalt damage have not worsened or recurred since previously repaired. 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 repeated.

2. Finding Pursuant to CCMC Section 9.08.210.C.2.b: Neither tree is creating a public or private nuisance.

As noted above, the Applicant asserted in the Request that nuisance is caused by the trees sitting on a high priority natural gas line, that the tree damage does not allow for parking, and that limbs fall and are dangerous. On April 11, 2023, Southern California Gas Company confirmed that there is no root intrusion in the natural gas line under Galvin Street. The City repaired damage to the asphalt on Galvin Street on March 3, 2021, and no damage has recurred. Risk of tree limbs falling can be mitigated through maintenance of the tree. The Appeal and the evidence support a finding that neither tree is creating a public or private nuisance.

3. Finding Pursuant to CCMC Section 9.08.210.F: The Appellant has demonstrated by substantial evidence that the Public Works Director's decision was based on either an error in fact or disputed findings.

The Appeal satisfies this criterion for all of the reasons set forth above. Specifically, the appeal establishes that the retired Public Works Director erred factually in determining that the trees' roots

“are causing” “extensive” and “repeated” damage.

Staff does not construe the appeal requirements in 9.08.210 as creating a mandatory requirement that the written appeal must be accompanied by the evidence supporting the appeal. Staff construes 9.08.210.E as simply requiring a timely written appeal.

The notice to the neighbors did not specify that anything else 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. Staff also believes that the purpose of allowing an appeal of decisions to destroy City trees is better advanced by allowing appellants, applicants and the public to present facts and develop arguments at, and in connection with, the public hearing on the appeal.

Staff also deems it appropriate to point out that the City Council has previously stated that the City has a strong interest in preserving City-owned parkway trees. By way of example, 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.)

Resolution:

In compliance with the Court’s ruling, staff has prepared and recommends the attached Resolution for the City Council’s consideration. The Court’s ruling requires the City Council to set aside its October 11, 2021 decision upholding the Appeal, and to reconsider the Appeal consistent with the Court’s ruling. Again, the Court’s ruling does not limit the Council’s discretion or require the Council to decide the Appeal in any particular way.

If the City Council decides to uphold the Appeal and preserve both trees in conjunction with completion of the capital project described above, the attached Resolution contains language by which the Council may satisfy the Court’s ruling. By adopting the Resolution, the Council will both set aside the Council’s October 11, 2021 decision, and adopt written findings to satisfy CCMC section 9.08.210.F.

If the City Council decides to adopt the attached Resolution, staff will proceed to implement CIP PS-022 *Galvin Street Parkway Expansion* project to widen and lengthen the Galvin Street parkway and to remove its adjacent sidewalk.

FISCAL ANALYSIS

There is no fiscal impact in conducting this public hearing.

The cost to complete the \$100,000 capital project to expand the parkway is included in the Adopted Budget for Fiscal Year 2022/2023 in CIP PS-022 *Galvin Street Parkway Expansion*.

ATTACHMENTS

1. 2023-05-08 ATT1 Tree Removal Request
2. 2023-05-08 ATT2 Tree Removal Appeal
3. 2023-05-08 ATT3 Court Opinion
4. 2023-05-08 ATT4 Proposed Resolution

MOTION

That the City Council:

Set aside and reconsider the Council's decision of October 11, 2021 upholding the appeal of the retired Public Works Director's decision to approve the request to remove the trees located at 10729-31 Northgate Street and **either**:

1. Affirm the decision of the retired Public Works Director to approve the Applicant's request for removal of two trees located at 10729-31 Northgate Street, and direct staff to prepare a Resolution with findings memorializing that decision for approval at a subsequent Council meeting;

or

2. Grant the appeal and overturn the decision of the retired Public Works Director, and adopt a Resolution setting aside the October 11, 2021 decision and adopting findings that, following reconsideration of the appeal and October 11, 2021 decision, substantial evidence supports the conclusion that the decision to approve the request to remove the trees located at 10729-31 Northgate Street was based on an error or disputed findings, thereby, denying the Applicant's request to remove the trees.