

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: December 4, 2023
Reviewed by: NA

SUBJECT: Appeal of Parks, Recreation, and Open Space Commission's Decision Regarding a Non-Emergency Street Tree Removal Application of a Street Tree at 1444 Portland Avenue

REPORT BY: John Hawkridge, Urban Forester
Mark Hurley, Public Works Director

SUMMARY

The issue before the Council is an appeal of the Parks, Recreation, and Open Space (PROS) Commission's decision to confirm the staff recommendation to deny a Non-Emergency Street Tree Removal Application for a street tree located in the public right-of-way at 1444 Portland Avenue (Tree ID #672). In response to the action by the PROS Commission, the property owner submitted an appeal of the action stating concerns about liability, property damage and the condition of the tree as basis for removing the tree.

Pursuant to the *City Tree Removal Policy and Procedures*, the Council, after considering a report from staff and public testimony, shall determine if the street tree removal application will be accepted or denied. The decision of the Council is final.

STAFF RECOMMENDATION

That the Council adopt Resolution No. 2023-77, accepting the Non-Emergency Street Tree Removal Application of a street tree located at 1444 Portland Avenue (Tree ID #672).

CALIFORNA ENVIRONMENTAL QUALITY ACT (CEQA):

The project is Categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 "Existing Facilities" and Section 15302 "Replacement or Reconstruction" of the CEQA Guidelines.

PARKS, RECREATION, AND OPEN SPACE COMMISSION ACTION

At the October 12, 2023 meeting, the PROS Commission considered a non-emergency street tree removal application to remove a mature American Sweetgum (*Liquidambar styraciflua*) tree located in the public right-of-way at 1444 Portland Avenue (Tree ID #672). The property owner applied to have the tree removed in January 2023 and cited repeated sidewalk damage, numerous limb failures including one on July 24, 2022 that damaged a vehicle, tree branches

impacting electrical service lines, and concerns about the overall health of the tree, and referring to a fungus on the trunk and splitting limbs.

The City's Urban Forester presented a staff report to the PROS Commission detailing the condition of the tree (Attachment 2). The staff report included a formal Tree Risk Assessment performed by HortScience/Bartlett Consulting. Using the International Society of Arboriculture's standards, the consultant evaluated the overall condition of the tree and assessed the risk associated with three failure modes. This approach looks at the likelihood of failure, likelihood of damage, and the consequences of damage for each failure mode.

The consultant found the tree to be in fair condition with overall good vigor. There were no apparent structural or branching issues with the tree. The risk rating for each of the three failure modes was assessed to be low. The consultant's recommendation was to preserve the tree. The recommendation also included options to address the issues raised by the property owner through pruning and sidewalk shaving.

Staff concurred with the consultant's findings and recommendations which served as the basis for the recommendation to the PROS Commission. The risk reduction pruning, including pruning of the branch leaning on the electrical service line, was completed in April 2023.

The property owner submitted a letter with photos to the PROS Commission for Public Comment as he was unable to attend the meeting in person (Attachment 3). The letter presents many of the issues raised in the original application and asks that the City take responsibility for future injury or damage caused by the tree if the removal application is denied.

After receiving the staff report and public comments, including the letter from the property owner, the Commission discussed the merits of the removal application. There appeared to be a consensus within the Commission to delay removing this tree until completion of the City's Street Tree Management Plan (STMP) as many of the mature Liquidambar trees throughout the city have similar issues. The expectation is that the STMP will have guidance for the removal and replacement of these mature trees.

After considering the information, the Commission voted 5-0, with 2 Commissioners absent, to support the staff recommendation to deny the tree removal application.

APPEAL OF PROS COMMISSION DECISION

The property owner notified staff of intent to appeal the PROS decision on October 26, 2023, and submitted an appeal form to the City Clerk on October 31, 2023. The property owner also included a memorandum with the appeal. It restates many of the issues included the original application and letter to PROC Commission. The appeal application is included as Attachment 4 to this report.

The property owner's basis for requesting removal also included a history of problems and concerns with the tree:

1. broken water line
2. downed power lines
3. repeated sidewalk repair
4. dead branches after recent pruning
5. damage to his vehicle due to a fallen limb last winter
6. roots pushing the gutter away from the curb
7. surface roots in the front yard of the property
8. concern regarding schoolchildren traveling along the sidewalk.

DISCUSSION

The following is a discussion of the key issues raised by the property owner in support of removing the tree.

Limb Failure and Pruning History

There have been 2 documented large limb failures in the recent past: one occurred in August 2017 and one in July 2022. The failed limbs had diameters in the 4-6-inch range and were approximately 10-feet long. The July 2022 failure landed on the property owner's vehicle which was parked next to the tree at the time. There were likely multiple smaller limb failures that were not reported to the City during this time frame, although failure of small limbs would not factor into the decision to remove a tree. In both large limb failures, staff removed the failed limbs and assessed the tree but found no additional immediate concerns.

In June 2018, the City pruned the tree to thin the canopy and raise the crown for vehicle and pedestrian clearance. PG&E conducted clearance pruning for the overhead power lines in May 2022.

As recommended in the HortScience risk assessment, which was completed in March 2023, the City completed the recommended risk reduction pruning of the tree, including removing the branches that were impacting the electrical service lines, in April 2023.

In September or October 2023, an additional large limb failed. This limb was approximately 6-8-inches in diameter and 15-feet long and was hung up in the tree, so it was not readily apparent that there was an issue until it started showing signs of dieback. The property owner brought this to staff's attention in his letter to the PROS Commission on October 12, 2023, submitted the day of the tree removal hearing.

This was an unexpected failure as the risk reduction pruning is intended to limit these types of failures. Had staff known about this most recent failure prior to the October PROS meeting, the staff recommendation may have been revised to approve the removal application.

Sidewalk, Infrastructure & Property Damage

The property owner identified several instances of damage caused by the tree including the sidewalk, curb and gutter, electrical and water service line and within his property at 1444 Portland.

With respect to the sidewalk damage, the initial removal applications indicates that the sidewalk was replaced in August 2004 and again in May 2016 due to damage caused by the tree roots. In searching city records, staff found correspondence with the property owner in 2007 related to sidewalk damage and proposing that the property owner take advantage of the 50/50 sidewalk repair program that was active at that time. However, there is no permit history or photographs that support that the sidewalk was repaired at this time.

Nonetheless, the sidewalk was repaired as part of Phase 0 of the current sidewalk program. This work was confirmed as completed in May 2016 as reported by the property owner. Documentation of the work indicates that tree roots were pruned to prevent future damage to the sidewalk.

The sidewalk does show additional damage caused by the tree roots. In 2020, the City performed a comprehensive survey of the public right of way to help guide sidewalk repair work. This survey measured two vertical discontinuities of 0.6-inches and 1.0-inches associated with this tree. Current measurements show the discontinuities at a consistent 1.0". This section of sidewalk will require additional repairs to address the damage caused by the tree.

As pointed out by the property owner, the tree roots have impacted the pavement, curb and gutter, water meter, and front yard of the property. Liquidambar roots tend to be destructive to surrounding infrastructure and improvements.

Responsibility for the Tree

The property owner in his letter to the PROS Commission, as well as in conversation with staff, has stated that he wanted the City to take responsibility for injury and damage caused by the tree if his removal application is denied. This request is out of line with the City's current municipal code which assigns this responsibility to the property owner.

Note that the property owner first inquired about removing the tree in 2016 when the sidewalk was repaired in Phase 0 of the Sidewalk Program and has made additional inquiries over the years. Staff has worked with the property owner to address issues related to the tree in efforts to preserve it.

Staff Recommendation

Considering the discussion above, Staff now supports removal of this tree under the following non-emergency removal criteria contained in the City's City Tree Removal Policy and Procedures:

- 2.1.b: The City Tree, due to its own physical condition, is determined by the Urban Forester to be an unacceptable risk to the City.
- 2.1.c: The City Tree, at the time of the request for removal, has damaged the adjacent sidewalk to an extent that constitutes a tripping hazard and the City Tree has caused the property owner to repair the subject sidewalk on at least one (1) previous occasion, as proven by documentation or determined by the Urban Forester's inspection.
- 2.1.e: The City Tree is determined by the Parks, Recreation & Open Space Commission or the Urban Forester to be detrimental to the public safety or materially injurious to the property, improvements, or utility services in the vicinity.

Next Steps

If the Council decides to approve the removal application, staff, as with other removals, will engage a qualified tree contractor to remove the tree.

As per standard City process, the replacement tree will be determined by the adjacent property owners and the Urban Forester, selecting from the City's list of appropriate species for the location. The replacement tree will then be planted as part of the City's next annual planting project.

ENVIRONMENTAL CLEARANCE:

The project is Categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 "Existing Facilities" and Section 15302 "Replacement or Reconstruction" of the CEQA Guidelines.

SUSTAINABILITY CONSIDERATIONS

Should the tree in question be approved for removal, a replacement tree will be planted. The replacement tree will aim to be of similar features, with less negative impacts (such as extensive sidewalk damage, sudden limb drop, and spiky seed capsules that cause slip and fall hazards that are associated with the *Liquidambar*).

Per the Migratory Bird Treaty Act as well as California State Codes 3503 and 3503.5, bird nests are to be protected while there is active nesting. California Department of Fish and Wildlife has defined nesting season as February 1st through August 15th. Any approved tree removal will occur outside of the nesting period or after the completion of a bird nesting survey.

FINANCIAL CONSIDERATIONS

Tree removals and plantings are programmed into the existing operating budget for the Urban Forestry program.

Attachments:

1. Resolution No. 2023-77
2. PROS Commission Staff Report dated Oct 12, 2023
3. Letter to PROS Commission Received Oct 12, 2023
4. Tree Removal Appeal Form