



APPEAL OF STREET TREE PERMIT

February 15, 2023

411 W. 5th St.



Quick Facts

Appellant: Joy Motts

Applicant: Diane Gibson-Gray

Reviewing Authority: Tree Committee

APN: 066-148-013

Zoning: Downtown Specific Plan

GP Land Use: Medium Density Residential

Project Description

The appellant has filed an appeal of the Tree Committee's decision approving a street tree removal permit request to remove two (2) London Plane trees at 411 W. 5th St. The appeal cites aesthetic concerns, violation of existing tree policy, and states that the removal is unnecessary and a detriment to the quality of life in the downtown neighborhood.

Requested Approvals

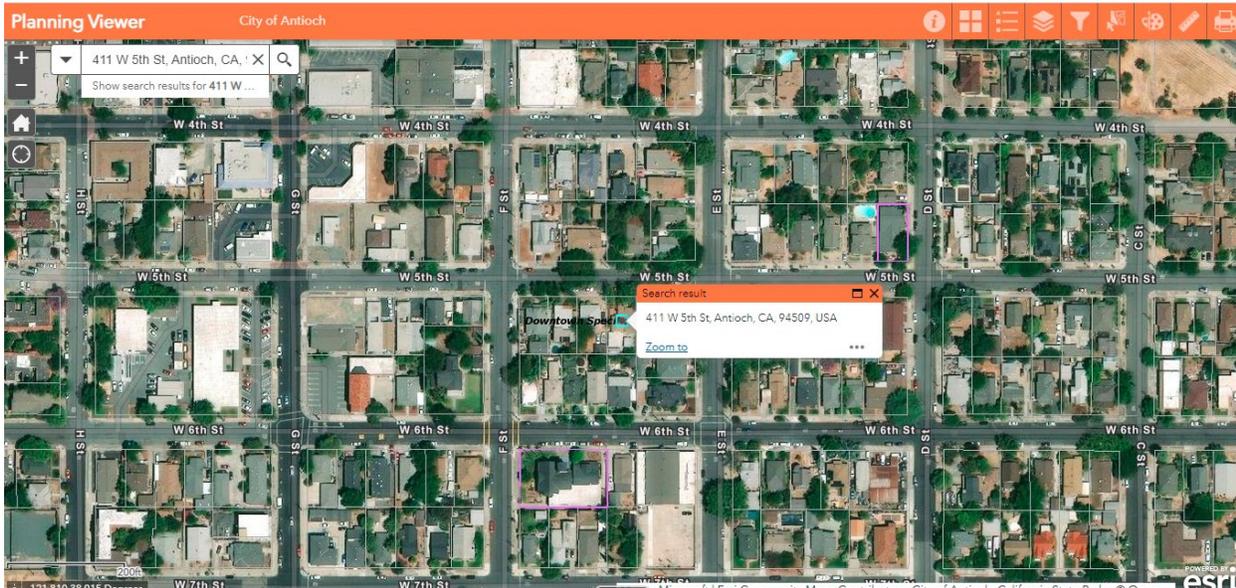
REVIEW THE APPEAL OF THE STREET TREE REMOVAL PERMIT

**PC RECOMMENDATION:
ADOPT THE RESOLUTION AUTHORIZING REMOVAL OF BOTH TREES
Last Review: 10/5/22**

BACKGROUND

Subject Site

The subject site is a 5,000 sq. ft. lot with an existing 1,931 sq. ft. two bedroom, one bathroom home constructed in 1941. The subject site is located in the Downtown Specific Plan area.



Project Timeline

- Original filing: February 23, 2022
- Date of Permit Approval: April 1, 2022
- Date of Appeal Filing: April 8, 2022
- Date of Notice Mailed: August 18, 2022
- Date of Planning Commission Appeal Hearing #1: September 7, 2022
- Date of Planning Commission Appeal Hearing #2: October 5, 2022
- Date of Planning Commission Appeal Hearing #3: February 15, 2023

Analysis

Overview

The appellant has filed an appeal of the Tree Committee's decision authorizing removal of two London Plane Street Trees at 411 W. 5th St.

September 7, 2022 Planning Commission Hearing

On September 7, 2022, the Planning Commission held a public hearing to consider the tree appeal. The Commission received testimony from the applicant, the appellant and the public. The Commission voted (4-1) to direct staff to continue the matter to a date certain of October 5, 2022 with the following findings:

- Approve removal of Tree B with the following Conditions of Approval
 - The tree must be removed in its entirety.
 - A suitable replacement tree must be planted. The exact species and size shall be as determined by the City Engineer.
 - The property owner acknowledges that they are responsible for the continued maintenance of the new tree.
- Deny removal of Tree A.

October 5, 2022 Planning Commission Hearing

On October 5, 2022, the Planning Commission reviewed the draft resolution and related findings. The Commission received correspondence from the applicant (See Attachment B) and revised their recommendation. The Commission voted by a 4-1 vote to:

- Prepare findings authorizing the removal of both trees
- Require replacement with new street trees from the City's Approved Street Tree list.

The Commission continued the matter to a date certain of October 19, 2022. This meeting was canceled due to a no decision vote to extend virtual meetings.

Environmental Analysis

This proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) under Article 19, Section 15304 Minor Alterations to Land.

ATTACHMENTS

- A. Resolution Authorizing Removal of Both Street Trees
- B. Applicant Letter dated October 4, 2022
- C. Approved Street Tree List
- D. Link: [September 7, 2022 Planning Commission Staff Report](#)
- E. Link: [October 5, 2022 Planning Commission Staff Report](#)

ATTACHMENT A
RESOLUTION OF THE PLANNING COMMISSION UPHOLDING THE DECISION OF THE
DECISION OF THE TREE REMOVAL COMMITTEE TO REMOVE TWO TREES AT 411 W. 5th
STREET
(SEPARATE PAGE)

**PLANNING COMMISSION
RESOLUTION # 2023-xx**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
APPROVING A TREE REMOVAL PERMIT FOR THE REMOVAL OF TWO STREET TREES
AT 411 W. 10th ST. (APN: 066-148-013)**

WHEREAS, Antioch Municipal Code Section 9-5.12 “Tree Preservation and Regulation” establishes permit requirements for tree removal in the City of Antioch; and

WHEREAS, the City of Antioch (“City”) received an application for a Tree Removal Permit on February 23, 2022 for the property located at 411 W 10th St. requesting approval to remove two (2) London Plane street trees; and

WHEREAS, the Tree Committee approved the Tree Removal Permit on April 1, 2022 based on findings prepared by an Arborist Report; and

WHEREAS, the appellant filed an appeal of the Tree Committee’s action to approve the Tree Removal Permit on April 8, 2022; and

WHEREAS, the City, as lead agency under the California Environmental Quality Act (“CEQA”), has determined the project to be Categorically Exempt from CEQA pursuant to Section 15304 “Minor Alterations to Land;” and

WHEREAS, a public hearing notice was published in the East County Times and posted in three public places pursuant to California Government Code Section 65090 on August 25, 2022 for the public hearing held on September 7, 2022; and

WHEREAS, the Planning Commission held a public hearing on September 7, 2022 and considered all public comments received, the presentation by City staff, the staff report, and all other pertinent documents regarding the proposed request; and

WHEREAS, the Planning Commission moved by a 5-0 vote to continue the matter to a date certain of October 5, 2022 and directed staff prepare findings partially approving the Tree Removal Permit; and

WHEREAS, the Planning Commission held a public hearing on October 5, 2022 and considered all public comments received, the presentation by City staff, the staff report, and all other pertinent documents regarding the proposed request;

WHEREAS, the Planning Commission moved by a 5-0 vote to continue the matter to a date certain of October 19, 2022 and directed staff to prepare findings authorizing the removal of both trees and requiring the planting of two new street trees from the approved street tree list;

WHEREAS, a public hearing notice was published in the East County Times and posted in three public places pursuant to California Government Code Section 65090 on February 3, 2023 for the public hearing held on February 15, 2023; and

WHEREAS, the Planning Commission held a public hearing on February 15, 2023 and considered all public comments received, the presentation by City staff, the staff report, and all other pertinent documents regarding the proposed request.

NOW, THEREFORE, BE IT RESOLVED AND DETERMINED, that the Planning Commission hereby make the following findings:

1. **Tree Committee Findings.** The Tree Committee acted to approve the Tree Removal Permit based on an independent analysis prepared by a licensed arborist and submitted as a formal Arborist Report. The Committee made findings pursuant to Antioch Municipal Code Section 9-5.1203 (B) (2) (b) "Criteria."
2. Pursuant to Section 9-5.1203 (B) (2) (b) "Criteria," the Planning Commission also finds that the removal of the tree satisfies the criteria as follows:

- a. The condition of the tree(s) with respect to its health, proximity to existing structure(s), and the likelihood of future damage to said structure(s) and nearby utilities should the tree(s) not be removed.

Finding: The trees were found to be in fair condition and in poor condition by the Arborist Report. The root structure of the trees has caused damage to nearby sewer systems and has uplifted the adjacent sidewalk. Continued damage is expected if the trees are not removed.

- b. The necessity to remove the tree(s) for reasonable use and/or enjoyment of the property.

Finding: The use of the property is not impacted by these trees, though the continuing damage to sewer lines will impact enjoyment of the property due to the cost of necessary repairs.

- c. The aesthetic impacts of tree removal in relation to the size and species of the subject and nearby tree(s). Typically the city will encourage the preservation of uniform street tree patterns where such patterns have long been established.

Finding: The trees were heavily pruned prior to application for a Tree Removal Permit. As such, aesthetic impacts have already occurred. The current trees and their anticipated growth are not expected to produce a balanced or handsome tree coverage. The applicant is required to replace these two trees with two new specimens that are appropriately sized for this location and thrive in this environment. Ultimately, the new trees will be an aesthetic improvement

NOW THEREFORE BE IT FURTHER RESOLVED that the Planning Commission hereby upholds the decision of the Tree Committee with the following Conditions of Approval:

1. **Street Tree Replacement.** Street trees shall be replaced with two new street trees. The tree species shall be selected from the Approved Street Tree List.

2. **Maintenance.** The owner of the adjacent property shall be responsible for maintenance of the replacement tree as required by the Antioch Municipal Code.

I **HEREBY CERTIFY** that the foregoing resolution was adopted by the Planning Commission of the City of Antioch at a regular meeting thereof held on the 15th day of February, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

FORREST EBBS
Secretary to the Planning Commission

ATTACHMENT B
APPLICANT LETTER DATED OCTOBER 4, 2022
(SEPARATE PAGE)

Public Comment to Planning Commissioners sent via email 10/4/22.

Diane Gibson-Gray, owner, TREE REMOVAL PERMIT request for 411 W. 5th Street

First of all, I apologize for the length of this communication. At the September meeting I had had surgery in the morning and I didn't want to reschedule the meeting as I wanted to resolve the issue and the arborist and city staff both agreed that the trees were not appropriate for the 3 ft. planting area. As such, I was not at my best, and would like to present additional information for consideration before a final decision is made. I am out of town until Friday and while it is my intention to attend the October 5th meeting, via zoom, this correspondence ensures my side of the story is in the record.

BACKGROUND

After purchasing the home in 2014, there has been at least 6 calls for service to clear out the sewer system. Around 2017-18, A plumber cut through the concrete to replace some of the pipe and clear the pipes as best as could be done without cutting out more concrete. The cost was around \$5,000. Calls were reduced, but at least once per year, pipes were cleared due to sewer backup.

My intention was to cut down the trees, replace sidewalk (lifting due to roots) and plant two new trees. The sidewalk was especially dangerous to the 93 year old who lived there and used a walker. He was concerned about the damage of the branches falling on him and his car. In addition, I was concerned that the roots would eventually cause structural damage to the beautiful brick retaining wall.

Below are the reasons and photos presented to city staff to support the Tree Removal Permit request.



- 1. The sidewalk areas are impacted by the roots and I'm concerned about potential injury / liability issues.*
- 2. Large holes in the branches are destroying the tree(s) from the inside out. I didn't know about this until the first tree branches were cut.*

3. Large branches from the top are falling and daily twigs (large and small) have been flying down during windy days, creating the possibility of injury / liability. See Photos below.

The tipping point causing me to make the decision to hire a tree removal company was a branch, the length of the front lawn in the first photo fell off. The thought of any size branch falling on my elderly bonus parents, a child or a car is horrifying. Unfortunately, I didn't think to take a photo before I had the gardener cut it up. I've already had to replace part of the sewer line, part of the driveway and paid for many "rooting" services due to roots in the pipes. I am concerned the water line will be next. In addition, there is a beautiful brick retaining wall around the front and I would be devastated if the roots went under the bricks and caused it to warp/pull apart.

Photos of tree during removal process before work stoppage and brick retaining wall.



TREE REMOVAL PERMIT PROCESS BACKGROUND

The city website <https://www.antiochca.gov/fc/public-works/Tree-Removal-Permit-Request.pdf> does not refer to https://codelibrary.amlegal.com/codes/antioch/latest/antioch_ca/0-0-0-29020 (Ord. 897-C-S, passed 10-25-94; Am. Ord. 928-C-S, passed 11-26-96).

ARBORIST REPORT

Summary related to requested tree removal with financial considerations in yellow:

- Concrete sidewalk lifts and falls in several places. Different concrete colors reveal several previous repairs.
- The artificial lawn and raised brick retaining wall offer little root space and no water.
- The 411 driveway shows cracking as well as lifting.
- Both tree trunks are up against the sidewalk, with Tree B's trunk growing over the sidewalk.
- The tree basin is seven feet long by three feet wide, with water meter is in the tree basin one foot from the tree's trunk.
- A sewer line runs from the house to the street through the driveway. However, the sewer line is two feet from the tree basin and three feet nine inches from Tree A's trunk.
- Photos # 4 and #5 The Tree A decay into the heartwood is evident in the left photo. The photo on the right shows the water meter location with the concrete and the tree trunk.



- There is decay from split-off branches, which runs unchecked up and down the tree. The lack of appropriate soil volume harms the roots. The tree structure is Fair, with a balanced canopy and growth response to pruning— however, the apparent decay and dead branches are a structural concern. I rate the Form as Good with a distinct look for a London plane street tree
- However, there is more risk of larger branches breaking off due to heartrot decay. These failures have the potential for hitting wires, vehicles, even pedestrians. The risk rating is still low over the next ten years. The chance of complete tree failure with subsequent significant damage is also very low for the ten years. The risk of tree roots damaging infrastructure is unknown.

These impacts may have already happened with subsequent repairs. It seems likely that roots continue to disrupt the utilities and lift concrete sidewalks and driveways.

MUNICIPAL CODE

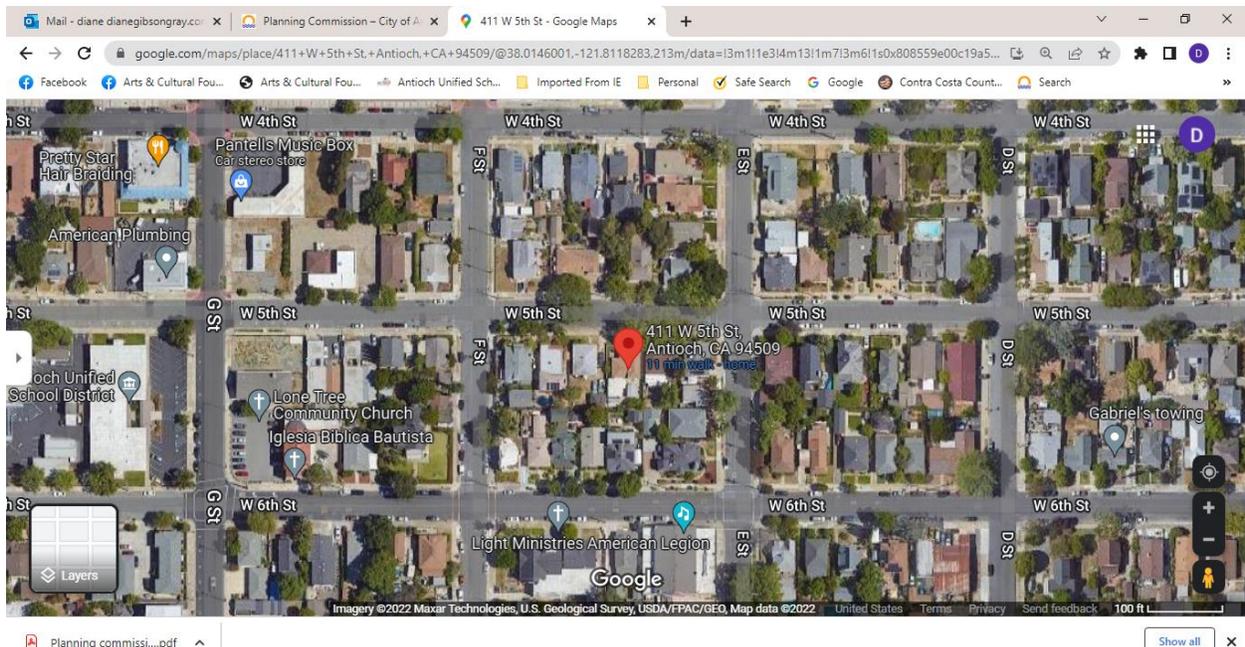
Article 12: Tree Preservation and Regulation has not been followed for at least 20 years. I spoke with various employees with tenure ranging from 2 years to 20 years who were unaware of the code. Part of the regulation is recognizing individuals' property rights and in this case, property rights have not been given enough consideration. Article 12 is not a policy that has been in place and adhered to since 1994, it's been brought forward to apply to this property only. The rules the neighbors want applied is more of a Home Owners Association (HOA) issue. A reason to act in the interest of the neighbors who demand a consistent aesthetic appeal, is not in the 1994 ordinance.

In my case, I believe I am being held to a higher standard than any other property owner, because I live on the street occupied by the Motts family and members of the Rivertown Preservation Society, and clearly neighbors who discriminate against property owners who don't reside in their neighborhood. Three of the five public comments were by Motts / related Motts and two do not live on 5th Street.

- Appellant, Joy Motts
- Rachel Motts, Joy Motts's daughter who lives on 6th Street
- Rick Stradtlander, Joy Motts's brother-in-law who lives on E Street

The purchase of this home was to give my brother who, due to medical reasons, had a short period of life remaining. He complained about the tree and so did my bonus dad, who also had a limited time remaining due to age and the current resident is 87. Both my brother and father died frustrated with the condition of the tree.

Many trees have been removed in the downtown area as shown in the small section of the area by 5th Street. On 5th Street two homes do not have shade trees as shown on the google map below. Homes that intersect with 5th Street (F and E Streets) do not have shade trees or have had them replaced, probably due to the same reasons I want to replace them.



ENFORCING ARTICLE 12

The Tree Preservation and Regulation, as written today, is not ready for implementation. There is conflicting language, such as the appeal process and noticing process. Notices are to go to adjoining properties, which using a reasonable standard, is to the right and left, and possibly directly across the Street. Those neighbors did not file an objection .

Appealing to the Board of Administrative Appeals is listed, yet the appeal was directed by the city attorney to the planning commission. Appealing a planning commission decision to the city council, in this case is \$2,340.00 and nonrefundable. I am unsure what the fee is to appeal Board of Administrative Appeals decision, but surely not a high, non-refundable fee. Planning Commission appeals are typically made by developers and businesses.

In this case, the cost to cut down the tree and pay the penalty is \$2,000 penalty based on the size of the tree, rather than go forward with an appeal. I've tried to pay the penalty to avoid the neighborhood drama; it can only be paid after the tree is removed. As the last plumbing repair was close to \$5,000 it is cheaper in the long run to pay the penalty.

One of the commissioners at the last meeting was concerned the decision may set a precedent. I agree and I request that you don't use this situation for that precedent and take the opportunity to review the 1994 municipal code and bring it up to date in the near future. If neighbor's consideration owner occupied status is part of the updated municipal code, as it should be, but it is not spelled out in the current code.

Appellant Joy Motts, who is also running for City Council, District 1, stated in comments, "The decision to buy a property in an older neighborhood, as its owner has done, comes with responsibility to maintain the essential character and standards of the neighborhood. The decision to willfully ignore this and the opinions and desires of their neighbors shows a lack of regard for our community. All of us that reside in the Rivertown District understand this and take our responsibilities seriously. Repair of city sidewalks and public infrastructure is just part of the bargain for us, for residents and for the city if someone does not want to have the expenditures. Their infrastructure and maintenance of an older property then I suggest they don't buy an investment property in an older neighborhood. In Kerry Motts, (signature "Planning Commissioner") and his bringing up the matter in the April Planning Commission Meeting, suggests that this ordinance will be applied to homes in "the Historic Rivertown/Downtown" neighborhoods, but it needs due process and a public hearing. Homeowners, regardless if they occupy the property, should have an opportunity to comment before the municipal code is updated and evenly and consistently applied. Not be blindsided with an outdated ordinance as I was in this situation.

Planning Commission

From the city's website, "The Antioch Planning Commission is a seven (7) member advisory body that makes recommendations to the City Council on the physical development of the City. The Commission reviews and makes recommendations on all provisions of the General Plan, land subdivisions, and zoning as specified by the Zoning Code and as set forth in the State Government Code and by the California Environmental Quality Act. Planning Commissioners are appointed by the Mayor to four (4) year terms".

The role of the Planning Commission is not to "enforce", it is to plan. . The city attorney's and city clerk's decision to move the decision to the Planning Commission, in my opinion is wrong. The

Planning Commission is not an enforcement arm of the city. Should the commission be enforcing a 1994 ordinance that blindsides city staff and residents? Does the body take on the role of a Home Owners Association to keep the same look and standards in the Rivertown/Downtown area? Is this situation discriminatory and targets one particular situation in time? The Planning Commission needs to look closely at Article 12 and define the difference between developers and residents and make the appeal process go to the administrative body, not a planning body.

CLOSING

I ask you to allow the continuation of the removal of the trees at 411 W. 5th Street, then bring the municipal code language back to the Planning Commission for an update, public hearing and link it to the Tree Removal Permit, and apply the code with consistency. If the decision of the commission remains the same, and the tree remains standing, there will not be two trees of the same type and size in front of the home, and that could possibly impact the resale value.

Going forward, will the city or neighbors pay for my future plumbing and sidewalk issues which the arborist states it is “... *likely that roots continue to disrupt the utilities and lift concrete sidewalks and driveways*”?

If I decide to remove the tree and pay the penalty, the city will not take an advance payment. Without a receipt showing payment of the \$2,000 penalty, will the police department be called again?

Will the Mayor and City Council District 1 Member be called / emailed to stop the tree crew while they are cutting down the tree again?

Will a car be placed under the tree to stop the process?

Remember, it is cheaper to cut the tree down and pay the \$2,000 and think about what you would do if you were in my position?

Appellant / city council candidate Joy Motts and Planning Commission Kerry Motts want to apply Article 12 to the Rivertown/Downtown District and as written. Should the planning commission be the enforcement body? The Planning Commission decision at the October 5th meeting has the potential to take away the property rights of current and future residents.

Please consider the impact of your decision today and the Rivertown / downtown community that it will impact in the future.

Thank you for your consideration.

**ATTACHMENT C
APPROVED STREET TREE LIST
(SEPARATE PAGE)**

CITY OF ANTIOCH
APPROVED STREET TREE LIST

For Planter Areas Between 3' and 5' Wide

	TREES	COMMON NAME	APPROVED VARIETIES	TYPE
	Acer buergerianum	Maple	Trident Maple	Deciduous
7	Acer campestre	Maple	Streetside	Deciduous
	Acer rubrum	Red Maple	Redpointe, Bowhall, Armstrong	Deciduous
6	Cercis canadensis	Eastern Redbud	Eastern Redbud	Deciduous
5	Ginkgo biloba	Maidenhair Tree	Princeton Sentry	Deciduous
1	Lagerstroemia indica x fauriei	Crape Myrtle	Cherokee, Arapaho, Muskogee, Tuscarora, Zuni	Deciduous
	Laurus nobilis	Sweet Bay	Saratoga	Evergreen
	Ligustrum lucidum	Glossy Privet	Glossy Privet	Evergreen
	Liquidambar styraciflua	Sweet Gum	Palo Alto	Deciduous
2	Magnolia grandiflora	Compact Southern Magnolia	Little Gem, St Mary's	Evergreen
3	Pistacia chinensis	Chinese Pistache	Keith Davey	Deciduous
4	Podocarpus gracilior	Fern Pine	Fern Pine	Evergreen
	Prunus cerasifera	Purple-Leaf Flowering Plum	Krauter Vesuvius	Deciduous
	Pyrus calleryana	Bradford Pear	Aristocrat, Chanticleer, Red Spire	Deciduous
	Quercus macrocarpa	Oak	Urban Pinnacle	Deciduous
	Tilia cordata	Little-Leaf Linden	Greenspire	Deciduous
	Tristania conferta (Lophostemon)	Brisbane Box	Brisbane Box	Evergreen
	Ulmus hybrid	Elm	Frontier	Semi-Evergreen
	Ulmus propinqua	Elm	Emerald Sunshine	Deciduous
	Zelkova serrata	Zelkova	City Sprite, Musashino	Deciduous