

PLANNING COMMISSION STAFF REPORT



APPEAL OF STREET TREE PERMIT

October 5, 2022

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

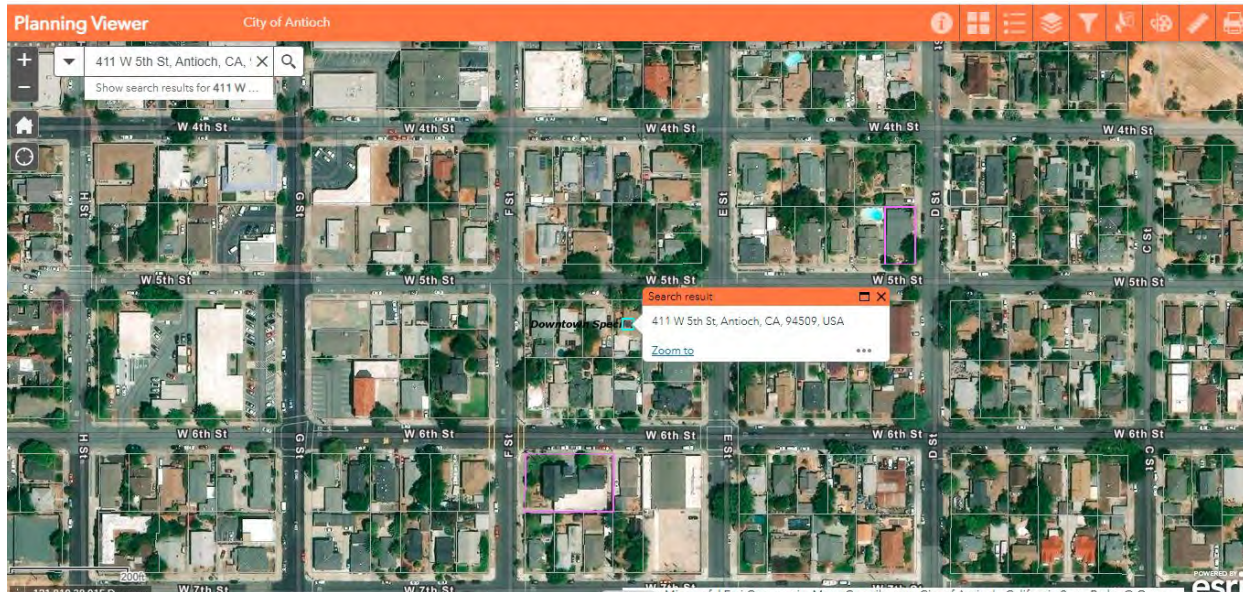
REVIEW THE APPEAL OF THE STREET TREE REMOVAL PERMIT

STAFF RECOMMENDATION: ADOPT THE RESOLUTION PARTIALLY APPROVING THE TREE REMOVAL PERMIT

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

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 Public Hearing

On September 7, 2022, the Planning Commission conducted a public hearing to consider the appeal. The Commission received testimony from the applicant, the appellant and the public and deliberated. The Commission voted (4-1) to direct staff to return with a resolution to accomplish the following:

- 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.

The agenda and staff report for the September 7, 2022 meeting are available at: <https://www.antiochca.gov/government/agendas-and-minutes/planning-commission/>

A draft resolution is provided that enacts the direction of the Planning Commission. Adoption of this resolution is final unless appealed to the City Council within 10 business days of this meeting.

Environmental Analysis

Page 4

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

ATTACHMENTS

A. Resolution

ATTACHMENT A
RESOLUTION FOR STREET TREE REMOVAL PERMIT AT 411 W. 5th ST.
(SEPARATE PAGE)

**PLANNING COMMISSION
RESOLUTION # 2022-xx**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
PARTIALLY 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 6-0 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.

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

Pursuant to Section 9-5.1203 (B) (2) (b) “Criteria,” the Planning Commission finds the following:

Tree A as referenced in the Arborist Report:

- 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: Tree A was found to be in fair condition by the Arborist Report. Its proximity to existing structures and the likelihood of future damage is comparable to other trees in the neighborhood.

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

Finding: Tree A does not need to be removed to reasonably use or enjoy the property. London Plane trees are located throughout the immediate neighborhood at other similar properties.

- 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: Tree A is part of an established uniform street tree pattern composed of other trees that are similar in size and species. Removal of Tree A would cause adverse aesthetic impacts as it would disrupt this established uniform street tree pattern.

Tree B as referenced in the Arborist Report:

- 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: Tree B was found to be in poor condition by the Arborist Report and is unlikely to return as a vigorous, healthy or attractive specimen. Its proximity to existing structures and the likelihood of future damage to is comparable to other trees in the neighborhood.

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

Finding: Tree B is not anticipated to thrive or present an attractive foliage or canopy due to the removal of key primary limbs. The owner cannot expect reasonable use or enjoyment of the property due to this condition.

- 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: Tree B has been severely pruned and is lacking major limbs. Though some foliage has returned, it is incapable of reproducing a strong structure or achieving an acceptable aesthetic condition. Though it contributes to a uniform street tree pattern, it is unique in its appearance due to its physical form.

NOW THEREFORE BE IT FURTHER RESOLVED that the Planning Commission hereby partially grants the appeal by denying a Tree Removal Permit for Tree A and approving a Tree Removal Permit for Tree B with the following Conditions of Approval:

1. **Tree B Removal.** Tree B shall be removed in its entirety, including all accessible root structures.

2. **Tree B replacement.** A replacement tree shall be planted in the same location. The species and size shall be as directed by the City Engineer to ensure compatibility.
3. **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 5th day of October, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

FORREST EBBS
Secretary to the Planning Commission

**ATTACHMENT B
TREE REMOVAL APPLICATION
(SEPARATE PAGE)**

Citizen Tree Removal / Permit Request

PUBLIC WORKS DEPARTMENT

1201 W 4th STREET, ANTIOCH, CA 94509 925-779-6950

P.O. BOX 5007, ANTIOCH, CA 94531-5007

I hereby certify that I am the owner of the property described below:

Name: C. Diane Gibson-Gray Phone: 925.325.9897
Address: 411 W. 5th ST Date: 2.23.22

I am requesting authorization to remove the following tree(s) from: ☐ City Property ☒ Private Property

Size and Type of tree(s): 2 Sycamores
Location of tree(s): between side walk & street
Reason for request: SAFETY - see emails & photos

Mature trees have a trunk diameter of 26 inches and/or 4 ½ feet above natural grade and **indigenous** trees of any size (see list below**):

1. On City property, trees will be replaced at staff discretion with respect to tree status and budget.
2. On private property, this form must be approved by the City of Antioch, Public Works Department prior to removal.

If replacement is approved the tree may not be replanted in its original location. The City will arrange to have the tree planted and will require use your hose and water the day it is planted. Thereafter it is your responsibility to keep the tree watered, trimmed and otherwise maintained in a healthy state.

Trees will not be replaced: in parking strips narrower than 3'; over a tree stump unless it is completely removed, or ground to a depth of 18 inches; over gas lines.

If the City authorizes a replacement for the removed tree, your preference will be considered in selecting a type/species. Using the list below*, please indicate the number assigned to the tree you prefer: _____

Landmark and/or Heritage trees have a trunk diameter of 48 inches and/or in excess of 40 feet above natural grade in height are protected trees and any activities related to these trees must be approved by the City's Tree Committee, for more information please contact publicworks@ci.antioch.ca.us or 925-779-6950.

BY SIGNING and/or SUBMITTING THIS CONSENT FORM, YOU AGREE TO AND UNDERSTAND THE PROVISIONS SET FORTH IN THIS DOCUMENT:

Applicant's Name/Signature: C. Gibson-Gray

If you have any questions regarding tree removal or replacement, please email publicworks@ci.antioch.ca.us.

DO NOT WRITE BELOW THIS LINE

Tree(s) verified in field (size/type) by: 2-45' tall Platanus Occidentalis Date: 3.2.22

Removal Approved by: [Signature] Removal Denied by: _____

Forwarded to Engineering for sidewalk work: ☐ YES ☐ NO If yes, date forwarded: _____

Following conditions were noted: 2-Approx 45' tall Sycamore trees planted in front of the homeowners right of way. The trees have begun to severely lift the sidewalk, causing a tripping hazard to the public. The other tree has developed to rot, causing large limbs to become weak, and fall to the ground at random times. Recommendation is remove trees, grind stumps and replace with Lagerstroemia Hybrid 'TNT'

**ATTACHMENT C
ARBORIST REPORT
(SEPARATE PAGE)**



Assessing Two London plane Trees at 411 West 5th Street in Antioch, CA

Tony Wayne Wolcott Consulting, Walnut Creek, CA

March 7, 2022

To; Carlos Zepeda
czepeda@antiochca.gov

Re: Two London plane street trees at 411 West 5th Street

Introduction

On March 3, 2022, I received a call from Patrick Stewart of Stewart Tree Service. Mr. Stewart asked me to assess the tree health of a London plane tree; the plane tree was a street tree in the Antioch public right-of-way abutting 411 West 5th Street. Carlos Zepeda, Deputy Director of Public Works for Antioch, requested the report through Patrick Stewart. The report expanded to two London plane trees (*Platanus X hispanica*) at the time of my inspection. My assignment was to inspect the two trees, take pertinent measurements, photograph the trees and the surrounding site, and give my opinions on the trees' condition. I included tree risk factors and concluded with mitigation measures, including removal.

I took all the photos for this report at my inspection on Friday, March 4, 2022. I am not aware of the tree maintenance history on these two trees. This arborist report is for the use of Carlos Zepeda and the City of Antioch. The purpose of the report is to give an accurate tree assessment of the two trees.



Photo #1 The view of both trees is presented, looking west along 5th street. The closest tree is Tree A, the easternmost tree, and the second tree, Tree B, is to the west.

Observations

The site surrounding the two plane trees tells a story. The 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. Wires run through Tree A's canopy. It appears that wires ran through Tree B's canopy. There is ivy growth in both tree basins. 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. Other trees on the 411 West Fifth Street block include a few *Quercus suber* (cork oak) of impressive size. The block features small tree basins with London plane trees and various utilities in the basins.

Tree A Observations

1. Species: *Platanus X hispanica* London Plane Tree
2. Diameter at 4.5 feet above grade: 20.5 inches
3. Height: 45 feet
4. Canopy spread: 34 feet and balanced



Photo #2 The Tree A view reveals a single trunk with a full canopy of branches.

Over the years, regular maintenance has included pruning. The canopy reveals some reduction cuts at various points. The tree responded with multiple branch growth. Some small (less than two inch-diameter) branches have died and hung up in the canopy. Electrical wires run through the tree's crown. There is some evidence of heartrot decay in the branches, with a trunk sounding somewhat hollow but typical of London plane trees.

The tree basin is seven feet long by three feet wide, with the ivy clump on the western side of the trunk. The 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. This tree's root system most likely causes sidewalk and driveway damage.



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.

Tree B Observations

1. Species: *Platanus X hispanica* London Plane Tree
2. Diameter at 4.5 feet above grade: 16 inches
3. Height: Canopy was removed.
4. Canopy spread: Before the cutting, the spread was more expansive than Tree A

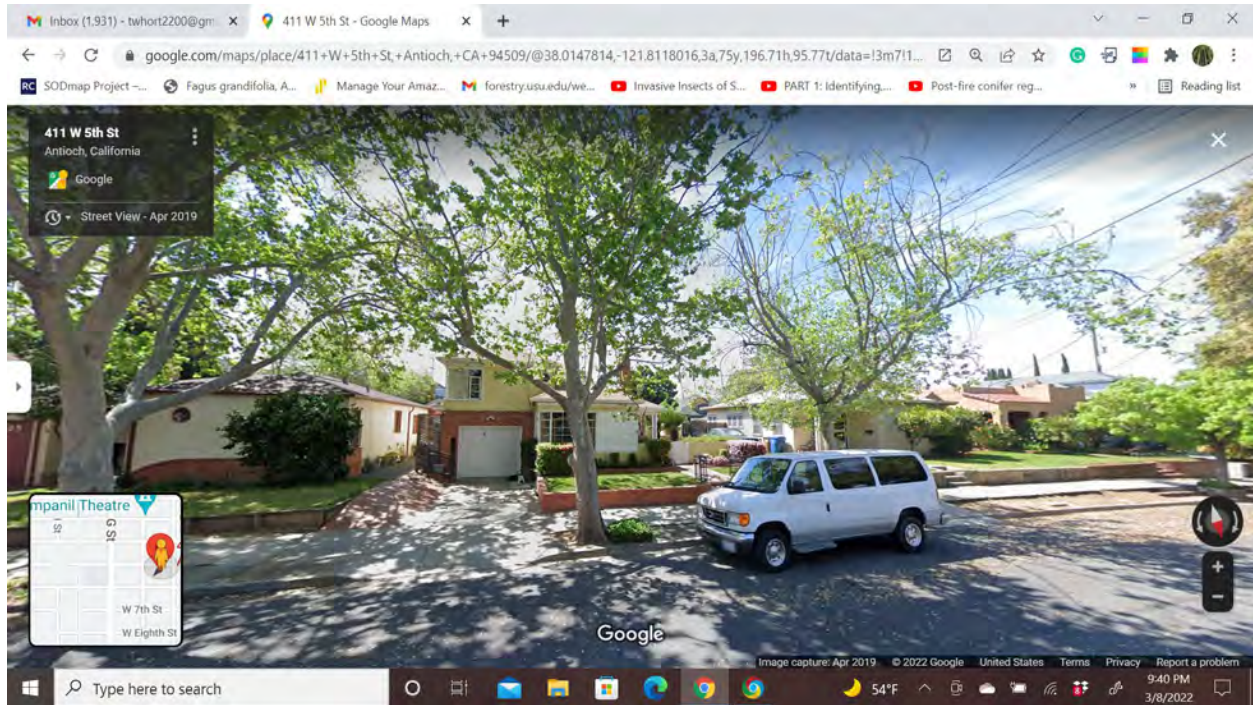


Photo #6 This photo from a Google search shows Tree B behind the white vehicle. The photo is dated April 2019.

The removal of Tree B's canopy happened a few weeks ago. The above photo gives us some idea of what Tree B might have looked like without removing the branches. The branch structure is comparable to Tree A's structure. The foliage is weak, with dead branch ends. This appearance indicates root problems; the roots cannot provide water and nutrients throughout the tree's crown.

The tree basin is nine feet by three feet, with the sewer cap two feet six inches to the tree. Some decay is evident in the stems; the trunk sounds hollow, similar to Tree A.

Discussion

In looking at Tree Condition, there are three factors—Health, Structure, and Form.

I put Health and Structure above Form in importance. The breakdown is 40% Health, 40% Structure, and 20% Form.

The Tree Condition of Tree A is **Fair**.

Tree A's Health is Poor. 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.

The Tree Condition of Tree B is **Poor**.

Tree B's Health is poor, with a lack of foliar vigor and decay evident in some branches. The problem with the roots may be a lack of soil volume or stress-related. The drought and lack of supplemental water are contributing abiotic factors. The Tree Structure is fair with some overextended branches and weak attachments. The wood sounds hollow but typical of the species. The vascular system of Tree B is still functioning, and the wood with the decay is still structurally sound. Tree B's Form is Poor; the branches are overextended, and the canopy is unbalanced with more dead branches on the left side.

These two trees reveal some shortcomings to the initial planning of this area. The size of the planting strip is too small to accommodate a medium-size tree, let alone a London plane tree or cork oak. With concrete poured into the planting strip, the resulting tree basins are less likely to support a street tree for any significant time. The placement of utilities in the tree basins adds to the crowding.

Tree A has grown a full canopy, and Tree B has a decent branch structure with some green foliage. This picture says more about the London plane tree than the conditions for growth. This tree perseveres through heavy pruning, even to significant root pruning. However, decay often catches up to this tree in the long run.

Conclusions

There are several options to look at in this 411 West Fifth Street situation. First, in dealing with Tree B, there is no option. This tree requires removal. However, if we look at the tree before the canopy removal, one option would be to reduce the entire canopy down to healthy branches and allow the tree to remain until the tree dies. Once Tree B is gone, a replacement can fill the same spot but choose a smaller maturing tree, better suited for a small basin.

Tree A with a growing canopy offers several options. Here are some scenarios in no particular order.

- Remove Tree A. Reassess the species' choices for this area. Species diversity is essential, so recommend two or three species. The choices must make sense for such a restricted planting area—small maturing trees, drought-tolerant, and an upright habit.
- Prune Tree A. Reduce the height and side spread by about five feet. Clean out all dead wood and prune for clearance around the wires. Select single branches for retention and eliminate multiple branches from the old heading cuts. Some safety pruning may be necessary for heavily decayed branches.
- Do nothing. I don't think that this is an option for Tree B. However, the risk of Tree B failing and striking a target is very low. Tree A has some small dead branches, which may or may not come down through the canopy. The risk of any consequences from these branches is very low over the next ten years. 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.

Sources Used for this Arborist Report:

Costello, Laurence R., Jones, Katherine S., *Reducing Infrastructure Damage by Roots*, Western Chapter of the International Society of Arboriculture, 2003

Dujesiefkin, Dirk, Liese, Walter, *The Codit Principle Implications for Best Practices*, Martin One Source, Champaign, Illinois, US, 2015, ISBN: 978-1-881956-91-4

Dunster, Julian A, Smiley, Thomas E., Matheny, Nelda, Lilly, Sharon, *Tree Risk Assessment, Manual*, Second Edition, International Society of Arboriculture, 2017, ISBN: 978-1-881956-99-0

Gilman, Edward F., Lilly, Sharon J., *Best Management Practices, Tree Pruning*, International Society of Arboriculture, 2002

Matheny, Nelda P. and Clark, James R., *Evaluation of Hazard Trees in Urban Areas*, International Society of Arboriculture, 1991

Urban, James, *Up by Roots Healthy Soils and Trees in the Built Environment*, International Society of Arboriculture, 2008, ISBN: 1-881956-65-2

Submitted by Tony Wayne Wolcott

Registered Consulting Arborist #685 – American Society of Consulting
Arborist
Board Certified Master Arborist – WE 3284B ISA,
Risk Assessment Qualified

Signed: *Tony Wayne Wolcott*
959 Cheyenne Drive,
Walnut Creek, CA, 94598
Phone: 510.274.7367

Date: March 8, 2022

ATTACHMENT D
PUBLIC HEARING NOTICES DATED MARCH 11, 2022
(SEPARATE PAGE)



March 11, 2022

ATTN: Resident Adjacent to 411 W. Fifth Street,
Antioch, CA 94509

Dear Sir/Madame:

Please be advised, the City of Antioch received an application for a tree removal permit to remove two London plane (Sycamore) trees in the City of Antioch right of way, in front of 411 W. Fifth Street.

The purpose of this letter is to inform you that per Section 9-5.1203, Article B.4 of the City of Antioch Municipal, you have ten (10) days to provide feedback on this removal permit before action is taken to remove the trees at the above location. The ten (10) days begin with receipt of this notice.

Please contact the City of Antioch with any questions, concerns or suggestions at publicworks@antiochca.gov.

Respectfully,

A blue ink handwritten signature, likely of John Samuelson, written in a cursive style.

John Samuelson
Public Works Director/City Engineer



ATTACHMENT E
CORRESPONDENCE RECEIVED
(SEPARATE PAGE)

From: [Briceno, Brittney](#)
To: [Samuelson, John](#); [Zepeda, Carlos](#); [Ambriz, Ben](#)
Cc: [Public Works](#)
Subject: FW: 411 W 5th Street-Trees
Date: Monday, March 21, 2022 7:18:37 AM

Please see below.

Thanks!

From: Sheri Thompson <acaiithompson@gmail.com>
Sent: Friday, March 18, 2022 1:44 PM
To: Public Works <publicworks@antiochca.gov>
Cc: Ebbs, Forrest <febbs@ci.antioch.ca.us>
Subject: 411 W 5th Street-Trees

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thank you for reaching out to us neighbors about the trees at 411 W 5th St. This has been an ongoing problem with this owner since 2019. The owner was told by us neighbors and the city in 2019 that she needed a permit to remove those trees. (We do have proof of this conversation from text messages.) She waited until it was a holiday weekend (Presidents Day) to try to remove the trees knowing that the city offices would be closed. We did call ADP to come stop her but they told us to call the county offices (which were closed due to the holiday too). So us neighbors did tell the tree trimmers to stop and then the owner came to the house and was very upset with us because we told them to stop. She knew what she was doing was wrong and we reminded her of our conversation from 2019.

For Tree A we do **not** approve of it being removed. It can be

professionally trimmed so as to not kill it like the other one.

As for Tree B since it was damaged badly enough to not grow back she should be fined for knowingly trying to cut down a heritage tree without a permit. So for this tree we are ok with it being removed and a new tree in its place.

I do believe that if it wasn't for us neighbors stopping this homeowner then we would have lost 2 beautiful trees and no one from the city would have noticed.

All our trees downtown are a big part of the esthetics in our beautiful Rivertown. They are big, old and beautiful. They make living down here nice and offer shade on hot days.

Antioch is a City of Trees yet the city of Antioch does not take care of them. I do believe that the city should take a bigger role in making sure the trees in our historical Rivertown are taken care of. A yearly pruning by the city would help preserve these trees and make sure they will last for many years. It will also help the city know what trees have failing health or should be removed , the damage caused by the trees and if one was removed without a permit.

Sincerely,

Tracy & Sheri Thompson
414 W 5th Street

ATTACHMENT F
PERMIT APPROVAL LETTER TO PROPERTY OWNER
(SEPARATE PAGE)



April 1, 2022

Diane Gibson-Gray
411 W. Fifth St
Antioch, CA 94509

Dear Ms. Gibson-Gray:

Your permit request submitted on February 23, 2022, to remove two london plane (sycamore) trees in the City of Antioch right of way, in front of 411 W. Fifth St., has been approved subject to the following conditions:

1. Trees must be removed below ground level.
2. Two new suitable trees for the parking strip area shall be planted. City must approve tree selection prior to planting.
3. All future maintenance of the trees shall be the sole responsibility of the homeowner.

Section 1-4.01 of the City of Antioch Municipal Code (AMC) allows *"any person excepting to any administrative decision made by any official of the city.... may appeal in writing to the Board of Administrative Appeals..."* Section 1-4.02 of the AMC states, *"Appeals are required to be filled within 10 calendar days after the action appealed from has been taken."* As such, **removal of the trees may not occur until after April 12th** if no appeal has been received by the City.

If you have further concerns or questions, please contact me at jsamuelson@antiochca.gov.

Respectfully,

A handwritten signature in blue ink, appearing to read "JS", with a stylized flourish.

John Samuelson
Public Works Director/City Engineer



ATTACHMENT F
PERMIT APPROVAL LETTER TO NEIGHBORS
(SEPARATE PAGE)



April 1, 2022

ATTN: Resident Adjacent to 411 W. Fifth Street,
Antioch, CA 94509

Dear Sir/Madame:

On March 11, 2022, the City of Antioch sent you a letter notifying you that an application for a tree removal permit to remove two london plane (sycamore) trees in the City of Antioch right of way, in front of 411 W. Fifth Street was submitted.

After the completion of the ten (10) day public notification period, the Tree Committee comprised of the Parks and Recreation Director, Community Development Director and Public Works Director/City Engineer, reviewed the arborist report and the responses from adjacent residents. The Tree Committee has made the decision to grant the request to remove the two london plane (sycamore) trees subject to the following conditions:

1. Trees must be removed below ground level.
2. Two new suitable trees for the parking strip area shall be planted. City must approve tree selection prior to planting.
3. All future maintenance of the trees shall be the sole responsibility of the homeowner.

Section 1-4.01 of the City of Antioch Municipal Code (AMC) allows *"any person excepting to any administrative decision made by any official of the city.... may appeal in writing to the Board of Administrative Appeals..."* Section 1-4.02 of the AMC states, *"Appeals are required to be filled within 10 calendar days after the action appealed from has been taken."* As such, **appeals to this decision must be received by April 11th.**

Please contact the City of Antioch with any questions at publicworks@antiochca.gov.

Respectfully,

A blue ink handwritten signature, likely of John Samuelson, written over a horizontal line.

John Samuelson
Public Works Director/City Engineer



**ATTACHMENT H
APPEAL APPLICATION
(SEPARATE PAGE)**



Decision Appeal Application

CITY OF ANTIOCH
ATTN: CITY CLERK
P.O. BOX 5007
ANTIOCH, CA 94531-5007
(925) 779-7009

Date of Decision:4/01/2022

Name:Joy Motts

Property Address: Appeal is regarding the approval by the City Tree Committee to allow the removal of landmark trees on the public sidewalks in front of 411 W. 5th Street.

Mailing Address:419 W. 5th Street, Antioch, 94509

Home Phone: () **Work Phone:** () **Cell Phone:** () 925-813-0036

Email: joymotts@gmail.com

REASON FOR APPEAL

The 400 block of 5th Street is requesting that the decision by the City of Antioch to allow the removal of landmark trees on the public sidewalk in front of 411 W. 5th Street be overturned.

Although the tree committee's decision allowing removal of the two London Plane Landmark trees does mandate replacement, it does not take into consideration the esthetic loss to the neighborhood given their mature nature and the decades required to achieve their elegance and stature.

Given the relatively low amount of infrastructure repair required by their growth in comparison with other similarly aged street trees, the fact that these trees are part of a row of continuous trees of the same variety, nor the arborist's evaluation that these trees had at least another decade of non-problematical life in them was considered in this decision. Nor were the wishes of the neighborhood that took the time to email the City asking that these

While the tree committee's ruling that the trees would need to be replaced is appreciated, we ask that the committee's decision be overturned as the removal is and was warrantless, arbitrary, and in violation of existing tree policy, and most importantly, the removal is unnecessary and a detriment to the quality of our downtown neighborhood.

Joann E. Math

4/8/22

***PLEASE NOTE:** A \$50.00 Board of Administrative Appeals Fee is also due when filing your appeal as per our City of Antioch's Master Fee Schedule located on our City's Website under the following link: Master Fee Schedules – City of Antioch, California (antiochca.gov).

ATTACHMENT I
AMC 9-5.12
TREE PRESERVATION & REGULATION
(SEPARATE PAGE)

ARTICLE 12: TREE PRESERVATION AND REGULATION

§ 9-5.1201 PURPOSE AND INTENT.

(A) Within the city there exists many native and non-native trees that greatly add to the aesthetic quality of the city. The older parts of the city adjacent to the San Joaquin River contain several horticultural trees planted by early settlers that have since become landmarks. In addition, recent annexations have added areas of oak woodland worthy of protection.

(B) The city recognizes that the retention of existing trees enhance the built environment, thus beautifying the community and benefiting the city with increased property values. It is the intent of this chapter to regulate the removal of trees, with the goal of retaining as many trees as possible while recognizing individuals' property rights.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.1202 APPROVAL REQUIRED TO REMOVE TREES.

(A) *Permit or development application.* Except as provided below, it is unlawful to destroy or remove any established tree on any property within the city without either:

- (1) Obtaining a tree removal permit from the Department of Parks, Leisure and Community Services; or
- (2) Receiving approval to remove such trees as part of the regular development application process.

(B) *Penalty.* A person who either removes or destroys an established tree prior to obtaining the required permits and/or approvals, or deliberately damages an established tree so that its removal is then necessitated for public safety, is subject to the penalties of this chapter and code.

(C) *Exceptions.* The following trees may be removed without either a tree removal permit and/or regular development application:

- (1) If the condition of any tree presents an immediate hazard to life and/or property its removal may be authorized by the City Engineer.
- (2) Other than for protected trees as defined by this article, trees on developed residential properties may be removed without a permit.

(Ord. 897-C-S, passed 10-25-94) Penalty, see § 9-5.2904

§ 9-5.1203 TREE REMOVAL PERMIT APPLICATIONS; DEVELOPED PROPERTY.

(A) It is the purpose of this section to regulate the removal of protected trees on developed property, when such removal is not associated with a regular development application.

(B) Such requests are typically related to routine maintenance and/or re-landscaping.

(1) *Application required.* An application shall be made in writing on a form furnished by the Department of Parks, Leisure and Community Services and shall be accompanied by the following information:

- (a) A sketch showing the location(s), size (in diameter and approximate height), and species of tree(s).
- (b) The applicant and/or property owner's name, address and telephone number.
- (c) The name of the company or individual designated to remove the tree(s), their address, phone number (and business license number if applicable).

(2) Decision regarding permit application.

(a) *Time of decision.* The Department of Parks, Leisure and Community Services shall render a decision regarding the permit application within 10 working days after filing of a complete application.

(b) *Criteria.* In deciding whether to issue a permit, the Department of Parks, Leisure and Community Services shall consider the following criteria:

1. 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.
2. The necessity to remove the tree(s) for reasonable use and/or enjoyment of the property.
3. 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.

(3) *Requirement for street tree replacement.* In allowing for the removal of a street tree, the Department of Parks, Leisure and Community Services will require that a replacement street tree be planted. The property owner may select the species of the replacement tree, with tree selection subject to city approval.

(4) *Special concern for landmark trees.* Applications to remove landmark trees as defined by this section will require the mailed noticing of said application to all adjacent property owners. Decisions on landmark trees are to be made by the tree committee, which shall provide a 10 day comment period to allow neighbors to respond to the notice.

(5) *Appeal.* A person aggrieved or affected by the decision of the Department of Parks, Leisure and Community Services may ask that the city's standing Tree Committee, as defined by this chapter, review the permit applications. Should the Tree Committee not grant the permission to remove the tree(s), a further appeal may be filed with the Board of Administrative Appeals pursuant to § 1-4.01 of this code.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.1204 RESTRICTIONS ON REMOVAL OF ESTABLISHED TREES FROM UNDEVELOPED PROPERTY.

(A) The city discourages the removal of trees from undeveloped property as defined by this chapter.

(B) Over the past years, the city has needlessly lost many valuable established trees that could have been incorporated into proposed developments had the tree(s) not been previously removed.

(1) *Special circumstances to allow tree removal.* Unless the subject established tree(s) is deemed to cause imminent potential harm to the public, neighboring property, and/or adjacent streets and utilities if it is not removed, decisions regarding potential tree removal are to be deferred to the time of regular development application. Should a property owner wish to remove a tree(s) from undeveloped property, an application shall be submitted to the Department of Parks, Leisure and Community Services as described in this chapter.

(2) *Tree Committee review of all applications on undeveloped property.* All applications concerning trees on undeveloped property shall be reviewed by the Tree Committee as defined by this chapter. Factors to be considered are the trees' age, size, and the presence of imminent risks as documented by a certified arborist. The city may commission a certified arborist, at the applicant's expense, to provide information on the health of the tree. Typically, healthy trees may not be removed from undeveloped property.

(3) *Special concern for landmark trees.* Applications for removal of landmark trees as defined by this section shall be subject to the same noticing requirement as is required for a use permit.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.1205 ESTABLISHED TREE PRESERVATION AND/OR REMOVAL IN CONJUNCTION WITH PROPERTY DEVELOPMENT.

It is the purpose of this section to encourage the preservation of existing trees and outline the conditions which allow for the removal of trees in conjunction with property development.

(A) *Request for tree removal incorporated into regular development application.* If any established trees are on the subject property, the following information shall be provided with the regular development application.

- (1) A site plan showing the existing topography with location of all established trees, clearly labeling those trees which are proposed for either saving or removal.
- (2) A description of all established trees on the property, including the size (in diameter), estimated height, species, and relative condition (i.e., healthy vs. in decline).
- (3) A written statement requesting permission to remove the subject tree(s) providing the reason for the request.

(B) *Action on tree removal request by decision-making body.* Approval or denial of the tree removal request will be made as part of the regular development application process. As part of the discretionary project review process, the decision-making body may require the preservation of a tree proposed for removal and conversely may condition the removal of a tree. Decisions to preserve and/or remove will be based on the following factors:

- (1) The highest priority will be placed on the preservation of landmark and indigenous trees as defined by this chapter. Mature and established trees shall generally be preserved in respective order, although tree appearance, species and aesthetic compatibility with the proposed project are additional factors to be considered.
 - (2) Permission to remove tree(s) species that do not or will not contribute to the aesthetic value of the proposed project may typically be granted. The provision of shade and context of the landscape design are both to be considered.
 - (3) While the city may require some more modifications to a proposed site plan, if the retention of a tree would severely limit the development potential of a property when compared to neighboring property, its removal may be permitted. In order for such tree removal to be granted, the applicant must document, with alternative plans and cost estimates, how the tree preservation would unduly burden the property and development.
- (C) *Need of an expert opinion.* Anytime during the project review process, the city may commission a certified arborist, at the applicant's expense, to provide a report on the health of a tree that the applicant requests permission to remove solely for reasons based on the alleged health of the tree such as the creation of a hazard to future circulation, buildings and/or utilities. Other factors may include the relative health and the age of the tree and its likelihood of long term survival.
- (D) *Appeal.* As with all discretionary approvals and/or conditions of the Zoning Administrator, Planning Commission and the Design Review Board, requirements for tree preservation and/or removal may be appealed as stipulated in this chapter.
- (E) *Required plus prior to initiating development.* Prior to the granting of a building and/or grading permit, the applicant shall provide a site plan showing all protected trees as defined by this chapter. There is to be no excavation within the drip line of such trees with the drip line to be clearly shown in all grading and layout plans.
- (F) *Special circumstances to allow grading within the drip line.* Although it is always preferable to avoid grading within the drip line, there may be special circumstances where grading may be permitted, such as when the preservation of a tree would otherwise not be possible. The permission to grade within the drip line is not to be seen as a routine procedure for protected trees, but as an alternative to removing trees that would otherwise be removed.

(1) *Required plans and additional arborist studies.* There is to be no excavation within the drip line of such trees unless specific plans are to be submitted to the Department of Community Development staff that indicates how grading within the drip is to be carried out without critically harming the tree. Additional arborist's studies must be provided to support the grading proposed.

(2) *Bonding for protected trees where grading will occur within the drip line.* Prior to the granting of a building and/or grading permit, the developer shall post a bond for each protected tree at which grading will occur within the drip line. The bonding schedule will be as listed under section "bonds and penalties." The city will conduct ongoing inspections during the course of the grading to assure adherence to approved plans. Should the tree(s) die "during the course of property development" as defined by this chapter, the bond shall be forfeited to the city and used for tree replacement. A percentage of the bond will be retained in either case to assure tree survival for up to five years after the issuance of a certificate of occupancy.

(G) *Protection of trees during construction.* Unless specific exceptions are granted prior to the initiation of construction, all construction activity and traffic shall be prohibited from the area within the drip line of a protected tree. Should the tree(s) die "during the course of property development" as defined by this chapter, the applicable penalties of this chapter shall be levied.

(H) *Damage of protected tree during construction.* Should a protected tree be damaged during site development, the developer shall administer all reasonable methods of treatments as approved by the Director of Community Development. The repair of the damage shall be at the expense of the developer. In addition, the city may require the posting of a bond pursuant to the requirements of this section.

(I) *Need for re-hearing of a project.* Any time after initial approval of a site plan by either the Zoning Administrator, Planning Commission and/or City Council, an applicant's request to remove a "protected tree" as shown on the approved site plan will require a hearing. A new public hearing will be held on the issue of tree removal and the applicant will be required to re-notice the surrounding property owners as stipulated in this chapter.

(J) *Replacement of trees that were legally removed.*

- (1) All trees that are legally removed shall be replaced according to the following schedule:
 - (a) Each established tree: two 24 inch box trees.
 - (b) Each mature tree: two 48 inch box trees.
 - (2) Legally removed indigenous and land-mark trees shall be replaced by boxed specimens at a rate and size to be established by the decision-making body at the time of regular development application approval.
- (K) *Requirement of subsequent owners to maintain trees.* All future owners of parcels on which trees were required to be maintained, (as a condition of approval) shall be responsible for continued maintenance of such trees. Buyers of property with such trees, as well as buyers of new all single-family homes, shall be given disclosure notices from the owner and/or developer of this requirement, and all other responsibility of tree management and/or preservation as required by this chapter.

(L) *Previously approved projects.* Projects having tentative map, final development plan, use permit, and/or design review approval prior to the effective date of this chapter are not subject to this section of the chapter, unless those pre-existing approvals expire.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.1206 BONDS AND PENALTIES.

(A) *Payment required.*

(1) *Payment amount.* Payments in the amounts as listed by the following table will be collected by the city pursuant to the requirements for bonds and/or penalties as mandated by this chapter:

Tree Size (Diameter)	Bond Amount
10 to 17 inches	\$1,000
18 to 25 inches	\$2,000
26 to 36 inches	\$3,500
37 to 48 inches	\$5,000
48 and larger	\$10,000

(2) *Acceptable methods of payments.* All payments made for penalties and or bonds shall be cash, or equivalent security, as approved by the City Attorney.

(3) *Maximum bond amount per development parcel.* The property owners' and/or developers' obligation for cash or other security deposit shall not exceed a maximum of \$25,000 per development parcel.

(B) *Refund of bond security.* At the end of the course of property development as defined by this chapter, the city shall make a determination as to the health of the protected tree(s) for which a security deposit was made. Unless the tree(s) shows obvious signs of ill health, the deposit shall be returned to the developer and/or property owner. Should the tree be in poor condition, the city may either:

- (1) Extend the length of time the bond is held; or
- (2) Require that the bond be forfeited and used for tree replacement.

(C) *Use of penalties and forfeited bonds.* The money acquired by the city under this section shall be used as follows:

(1) Money collected in conjunction with property development shall be used in the following order or preference, at the direction of the Director of Community Development:

- (a) To replace trees that have died during the course of property development with a tree of the same species and as close in size as reasonably possible.
- (b) To provide additional landscaping on the developers' or property owners' property.
- (c) To upgrade and/or landscape public places in the vicinity of the property.

(2) Money collected by the payment of penalties for failure to obtain a tree removal permit from the Department of Parks, Leisure and Community Services (independent from site development) shall be used for neighborhood beautification project as per the discretion of the Director of Parks, Leisure and Community Services.

(D) *Exemption from fine.* No penalty shall be paid and/or security deposit bond forfeited if a tree dies during the course of property development but for reasons beyond the developer's reasonable control. In order for this exception to be granted, all grading and construction must be consistent with approved plans.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.1207 TREE PLANTING RESTRICTIONS.

In order to protect underground utilities and sidewalks, it is necessary for the city to place restrictions on the location and species of trees to be planted.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.1208 DEFINITION OF RESTRICTED TREES.

The following trees are to be restricted due to their evasive root systems.

(A) The Salix species, which includes all willows except for "Australian willow" (*Geijera perviflora*) which has non-evasive roots and may be planted without restrictions.

(B) The populus species, which includes all cottonwoods, poplars and aspens.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.1209 REGULATIONS OF PLANTING RESTRICTED TREES.

It shall be unlawful to plant any restricted trees as defined by this article anywhere in the city, unless the City Engineer first approves the proposed site as one where the roots will not likely interfere with underground utilities.

(Ord. 897-C-S, passed 10-25-94) Penalty, see § 9-5.2904

§ 9-5.1210 REGULATIONS ON TREE LOCATIONS.

Trees planted on private property, outside of a city right-of-way, shall be at least five feet from the sidewalk. Branches from such trees shall be trimmed to clear the sidewalk by at least seven feet and to clear the street by at least 14 feet.

(Ord. 897-C-S, passed 10-25-94; Am. Ord. 926-C-S, passed 7-23-96) Penalty, see § 9-5.2904

§ 9-5.1211 DECLARATION OF PUBLIC NUISANCE.

Any tree or shrub growing on private property, which tree or shrub is endangering or in any way may endanger the security or usefulness of any public street, sewer, sidewalk, or other public facility, is hereby declared to be a public nuisance.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.1212 REQUIRED ABATEMENT OF PUBLIC NUISANCE.

(A) The property owner is required to abate the tree and or shrub declared a public nuisance. The city may remove or trim such tree or shrub on private property. Failure of the property owner to remove or trim such tree or shrub after 10 days' notice by the City Engineer shall be deemed a violation of the provisions of this chapter.

(B) Nothing contained in this chapter shall be deemed to impose any liability upon the city or its officers or employees, nor to relieve the owner of any private property from the duty to keep any tree or shrub upon his property, or under his control, in such condition as to prevent such tree or shrub from constituting a public nuisance as set forth in this section.

(Ord. 897-C-S, passed 10-25-94) Penalty, see § 9-5.2904