

PC RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA APPROVING MAJOR OAK TREE PERMIT (MAJOTP 12699-2019) FOR THE UNPERMITTED REMOVAL OF AN OAK TREE WITH A DIAMETER GREATER THAN EIGHT INCHES ON A RESIDENTIAL PROPERTY LOCATED AT 1598 SOUTH RESERVOIR STREET IN THE M-1 (LIGHT INDUSTRIAL) ZONING DISTRICT.

THE PLANNING COMMISSION OF THE CITY OF POMONA DOES RESOLVE AS FOLLOWS:

WHEREAS, an application has been submitted by Albert Caballero for the retroactive review of the unpermitted removal of an oak tree on a residential property located at 1598 S. Reservoir in the “M-1” (Light Industrial) Zoning District;

WHEREAS, the City Council adopted the Oak Tree Preservation Program on March 5, 2007 under Ordinance 4076;

WHEREAS, a Major Oak Tree Permit is required for removal or relocation of an oak tree on private property in the City of Pomona;

WHEREAS, a Major Oak Tree Permit was not obtained by the property owner prior to the removal of the Oak tree;

WHEREAS, upon observation, it is staff’s and the City Arborist’s assessment that the remaining Oak tree stump is no longer viable and is meeting the requirements for removal of an oak tree as outlined in the Oak Tree Preservation Program;

WHEREAS, the Planning Commission of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on November 13, 2019 concerning Major Oak Tree Permit 12699-2019;

WHEREAS, the proposed project, as conditioned, meets all applicable findings and mitigation requirements of Section .5809-23; and

WHEREAS, the Planning Commission has carefully considered all pertinent testimony and the staff report offered in the case as presented at the public hearing.

NOW, THEREFORE, BE IT HEREBY RESOLVED:

SECTION 1. The Planning Commission exercising their independent judgment has determined that pursuant to the Guidelines for Implementation of the California Environmental Quality Act (CEQA), that the project is Categorical Exempt under

Section 153304 (Class 4 – Minor Alterations to land), the proposed project described above hereby meets the guidelines for a Categorical Exemption.

SECTION 2. In any part, provision, or section of this resolution is determined by a court or other legal authority with jurisdiction over the subject matter of this resolution to be unenforceable or invalid, the remainder of the entirety of this resolution shall not be affected and shall continue in full force and effect. To this end, the provisions of this resolution are severable.

SECTION 3. Pursuant to Section .5809-23 of the Zoning Ordinance, the Planning Commission must make the findings listed below in order to grant Major Oak Tree Permit (MAJOTP 12699-2019). Based upon a consideration of the whole record before it including, but not limited to, the staff report, public testimony received at the public hearing on this matter, and evidence made part of the public record, the Planning Commission hereby finds as follows:

1. *The proposed relocation or removal of the Oak tree(s) will not result in soil erosion through the diversion or increased flow of surface waters which cannot be satisfactorily mitigated;*

A condition of approval has been included which requires the removal of the remaining Oak tree stump to be replaced with an Oak tree on-site in conjunction with any new site development plan for the property.

2. *The proposed relocation or removal of the Oak tree(s) is necessary as continued existence at the present location impedes the planned improvement or proposed use of the subject property to such an extent that:*
 - i.) *Alternative development plans cannot achieve the same permitted density or the cost of such alternative would be prohibitive, or*
 - ii.) *Placement of the Oak tree(s) precludes the reasonable and efficient use of such property for a use otherwise authorized;*

There is a future planned development of the land which will include the replacement of an on-site Oak tree and an additional off-site replacement requirement.

3. *The proposed relocation or removal of the Oak tree(s) will not be contrary to or in substantial conflict with the purpose and intent of the Oak Tree Permit process.*

The unpermitted removal of the oak tree has already occurred, without the benefit of a permit. The remaining tree stump is no longer viable and poses a safety concern.

4. *The Oak tree proposed for removal interferes with utility services or streets and highways, either within or outside of the subject property, and no reasonable alternative to such interference exists other than the relocation or removal of the Oak tree(s);*

The Oak tree that was removed did not interfere with utility services, but was in conflict with a proposed future site development plan. Therefore, as a condition of approval one of the two required replacement trees must be on site and contemplated within a future site development plan.

5. *The condition of the Oak tree proposed for removal with reference to seriously debilitating disease or danger of falling is such that it cannot be remedied through reasonable preservation procedures and practices.*

The City Arborist did not identify the remaining Oak tree stump with conditions of a debilitating disease or in danger of falling. However, due to the majority removal of the tree, the remaining tree stump is no longer viable and poses safety concerns.

6. *The proposed relocation or removal of the Oak tree(s) will not be contrary to or in substantial conflict with the purpose and intent of the Oak Tree Permit process.*

The removal of subject Oak tree will not be contrary or in substantial conflict to the Oak Tree Permit process in that the current Major Oak Tree Permit application is for the retroactive review of the unpermitted tree removal that took place.

SECTION 4. Based on the above findings, the Planning Commission hereby approves Major Oak Tree Permit (MAJOTP 12699-2019), subject to the following conditions:

1. The subject property shall be developed and/or used in a manner consistent with the project plans reviewed and approved by the Planning Commission on November 13, 2019, and as illustrated in the stamped approved plans dated November 13, 2019. Any major modifications to the approved project plans shall be reviewed and approved by the Planning Commission as part of a modification to the approved plans. Any minor modifications that do not affect the overall intent of the approved project, may be reviewed and approved by the Development Services Manager.
2. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the any action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the

California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action. In case of violation of any of the conditions of approval or City law, the property owner and tenant will be issued a Notice of Correction. If said violation is not remedied within a reasonable period of time and/or a subsequent violations of the conditions of approval and/or City law occurs within ninety days of any Notice of Correction, the property owner shall be held responsible to reimburse the City for all staff time directly attributable to enforcement of the conditions of approval and/or City law, including, but not limited to, revocation of the herein Major Oak Tree Permit.

3. The remaining Oak tree stump shall be removed and replaced on-site with a 36-inch box Cork Oak Tree (*Quercus suber*), as appropriate with the surroundings, on the subject property, subject to the review and approval of the Planning Manager and City Arborist and in conjunction with any new proposed development on the lot.
4. Should the applicant provide a replacement tree on the subject site in its current condition (legal nonconforming single-family dwelling), the replacement location shall be deemed appropriate by the Planning Manager and City Arborist.
5. The applicant shall plant a second replacement 36-inch box Cork Oak Tree (*Quercus suber*), at an approved nearby location, subject to the review and approval of the Planning Manager and City Arborist.
6. Should the applicant find that the appropriate planting location does not exist, the replacement trees, on a two-to-one basis, may be donated to the city or their monetary value may be paid to the City to the satisfaction of the City Arborist. Any monies paid shall be used to purchase an Oak tree(s) for planting within the City in location(s) recommended by the City Arborist.
7. The applicant shall plant both replacement trees, in accordance with the above stipulated conditions, within twelve (12) months of the approval date, November 13, 2019. If the applicant does not comply with the above stipulated conditions within twelve (12) months of the approval date, November 13, 2019, they will be subject to further action in accordance with Section .5809-23.I, "Penalties," of the Oak Tree Preservation Ordinance. The Planning Manager may extend this period for 30 days upon receipt of a written request.

8. If the new replacement Oak trees die within one year of replanting on-site, they shall be replaced with 24-inch box California Coast Live Oak (*Quercus grifolia*) until it grows to a diameter of at least eight (8) inches, as measured from 4.5 feet above the mean natural grade. If the replacement tree dies within one year of planting, it shall be replaced until a tree establishes itself and lives for a minimum of one year.
9. Written appeals may be filed with the Planning Division within ten (10) days of approval of Oak Tree Permit (MAJOTP 12699-2019).
10. If the oak trees are replaced on the premises, the permittee shall contact the Planning Division to request a final inspection within seventy-two (72) hours of the completion of relocation.

SECTION 5. The Secretary shall certify to the adoption of this Resolution and forward the original to the City Clerk.

APPROVED AND PASSED THIS 13TH DAY OF NOVEMBER 2019

DR. KYLE BROWN
PLANNING COMMISSION CHAIRPERSON

ATTEST:

GUSTAVO N. GONZALEZ, AICP
PLANNING COMMISSION SECRETARY

APPROVED AS TO FORM:

MARCO A. MARTINEZ
ASSISTANT CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF POMONA)

AYES:
NOES:
ABSTAIN:
ABSENT:

"Pursuant to Resolution No. 76-258 of the City of Pomona, the time in which judicial review of this action must be sought is governed by California Code of Civil Procedure Section 1094.6."