

TREE PERMIT DECISION**City of Oakland, Public Works Agency**

Tree Services Division, 7101 Edgewater Drive, Oakland, CA 94621, (510) 615-5934
Chapter 12.36, Oakland Municipal Code, Protected Trees Ordinance

Permit # ND21-108**Address: 0 Claremont Ave / Parcel 48H-7672-18****Expires: One year from date of issuance****Decision: 8/10/21****Applicant: Julian Tree Care Inc.****Permit Type: Non Development**

Removal Approved		Preservation Required		Replacement Tree Required	In Lieu Fee-\$619 per tree
Tree Quantity	Identified As	Tree Quantity	Identified As		
		7	Coast live Oak (#1) 32" DBH (#2) 20" DBH (#3) 22" DBH (#4) 23" DBH (#5) 16" DBH (#6) 16" DBH (#7) 36" DBH		
		1	Canary Island Pine (#8) 33" DBH		

SITE INSPECTION / FINDINGS

Tree Removal Permit ND21-108 for 0 Claremont Ave. Parcel 48H-7672-18 has been denied for the removal of 7 coast live oak trees and 1 Canary Island pine tree. The trees were listed in the arborist report as #1 as a 32" diameter at breast height (DBH) coast live oak, #2 as a 20" DBH coast live oak, #3 as a 22" DBH coast live oak, #4 as a 23" DBH, #5 as a 16" DBH coast live oak, #6 as a 16" DBH coast live oak, #7 as a 36" DBH coast live oak and #8 as a 33" DBH Canary Island pine.

The trees were denied for the following reasons:

- The number of trees being removed has not been clearly defined. There was an arborist report submitted with the application from Ricardo Terrazas, ISA Certified Arborist # WE-12200A that calls for 8 trees to be removed. The application list 2 trees for removal.
- Each tree being removed needs to have its own clear reasons for removal. The arborist report and the tree removal application make general statements concerning the status of the group of trees. The City of Oakland's Protected Trees Ordinance does not list fire prevention as a reason for tree removal. Therefore, Tree Services cannot approve trees to be removed for this reason. The trees are not dead, and this is a vacant lot with one potential building target on the neighboring property that is unlikely to be hit.
- The pine tree listed on the application appears to be on the neighboring property. Tree Services needs a survey map with a wet seal from a licensed surveyor showing the exact location of the trees or a signed statement from the adjacent property owner giving permission for the tree or trees to be removed.

- The Protected Trees Ordinance Section 12.36.050(B)2 calls for adequate provisions for drainage and erosion control. This is a steep slope and most of the parcel has been stripped of vegetation. There needs to be a drainage plan submitted with the application.

PERMIT REVIEW – FINDINGS 12.36.050(A)

The applicant's request accomplished the following objective(s):

- ☐ 1. Insured the public health and safety as it related to the health of the tree, potential hazard to life or property, proximity to existing or proposed structures, or interference with utilities or sewers.
- ☐ 2. Avoided an unconstitutional regulatory taking of property.
- ☐ 3. Took reasonable advantage of views, including such measures mandated by the resolution of a view claim in accordance with the view preservation ordinance (Chapter 15.52 of the Oakland Municipal Code).
- ☐ 4. Pursued accepted, professional practices of forestry or landscape design. Submission of a landscape plan acceptable to the Director of Public Works shall constitute compliance with this criterion.
- ☐ 5. Implemented the vegetation management prescriptions in the S-11 site development review zone.
- ☐ *None of the objectives above were accomplished by the proposed removal(s).*

PERMIT REVIEW – FINDINGS 12.36.050(B)

Any one of the following situations was grounds for permit denial, regardless of the findings in section (A) above:

- ☐ 1a. Removal could be avoided by reasonable redesign of the site plan, prior to construction.
- ☒ 1b. Removal could be avoided by trimming, thinning, tree surgery or other reasonable treatment.
- ☒ 2. Adequate provisions for drainage, erosion control, land stability or windscreen were not made.
- ☐ 3. The tree(s) were a member of a group of trees in which each tree was dependent upon the others for survival.
- ☐ *There were no grounds to deny the permit based on criteria listed in OMC 12.36.050(B)*

OAKLAND MUNICIPAL CODE SECTION 12.36.060 CONDITIONS OF APPROVAL

The following conditions were imposed. Conditions #11 - #13 were imposed if they were check marked:

- 1. Defense, Indemnification and Hold Harmless.** To the maximum extent permitted by law, the applicant and its contractor shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Public Works Agency and its respective agents, officers, employees and volunteers (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City for or on account of any damage to property or bodily injury, including death, or damage sustained or arising out of, related to or caused by in any way from the performance of work in this tree permit matter. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- 2. Defense, Indemnification and Hold Harmless.** To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Public Works Agency and its respective agents, officers, employees and volunteers (hereafter collectively called City) from any liability, damages,

claim, judgment, loss (direct or indirect), action, causes of action or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (a) an approval by the City relating to this tree permit matter, City's CEQA approvals and determination, and/or notices in the tree permit matter; or (b) implementation of such. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

3. **Letter of Agreement.** Within ten (10) calendar days of the filing of any Action as specified in conditions 1 or 2 above, the applicant and/or its contractor shall execute a Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter of Agreement does not relieve the applicant of any of the obligations contained in this Section or any other requirements or conditions of approval that may be imposed by the City.
4. **Debris.** All debris created as a result of any tree removal work shall be removed from the property by the applicant within two weeks of debris creation, and such debris shall be properly disposed of by the applicant in accordance with all applicable laws, ordinances, and regulations.
5. **Hazards.** The removal of extremely hazardous, diseased, and/or dead trees shall be required where such trees have been identified by the City Arborist.
6. **Insurance.** Workers compensation, public liability, and property damage insurance shall be provided by any person(s) performing tree removal work authorized by a tree removal permit.
7. **Nesting Birds.** To the extent feasible, removal of any tree and/or other vegetation suitable for nesting of raptors shall not occur during the breeding season of March 15 and August 15. If tree removal must occur during the breeding season, all sites shall be surveyed by a qualified biologist to verify the presence or absence of nesting raptors or other birds. Pre-removal surveys shall be conducted within 15 days prior to start of work from March 15 through May 31, and within 30 days prior to the start of work from June 1 through August 15. The pre-removal surveys shall be submitted to the Planning and Zoning Division and the Tree Services Division of the Public Works Agency. If the survey indicates the potential presences of nesting raptors or other birds, the biologist shall determine an appropriately sized buffer around the nest in which no work will be allowed until the young have successfully fledged. The size of the nest buffer will be determined by the biologist in consultation with the CDFG, and will be based to a large extent on the nesting species and its sensitivity to disturbance. In general, buffer sizes of 200 feet for raptors and 50 feet for other birds should suffice to prevent disturbance to birds nesting in the urban environment, but these buffers may be increased or decreased, as appropriate, depending on the bird species and the level of disturbance anticipated near the nest.
8. **Permit.** Tree removal, as defined in the Protected Trees Ordinance, Section 12.36.020 of the Oakland Municipal Code, may not start unless and until the applicant has received this permit from Tree Services.
9. **Posting.** The applicant shall post a copy of the tree removal permit in plain view on site while tree removal work is underway.
10. **Tree Damage.** If any damage to a protected tree should occur during or as a result of work on the site, the applicant shall immediately notify the Tree Services Division of such damage. If, in the professional opinion of the City Arborist, such tree cannot be preserved in a healthy state, the Arborist shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Arborist to compensate for the loss of the tree that is removed.
- ☐ 11. **In Lieu Fee.** If replacement trees are required, but cannot be planted due to site constraints, an in lieu fee as determined by the City's master fee schedule may be substituted for required replacement plantings. The permit is valid and issued only after payment is received by Tree Services.

- ☐ **12. Replacement Trees.** The property owner shall plant ____ replacement trees on the property. The replacement trees shall be excellent quality nursery stock and maintained by the applicant until established. Any replacement planting which fails to become established within one year of installation shall be replanted at the applicant's expense. Plantings shall be installed within 30 days of tree removal. A photograph of the replacement trees, installed in the landscape of the property, shall be mailed or emailed to Tree Services within one week of the replacement trees being installed.
- ☐ a. The minimum size replacement tree shall be a twenty-four (24) inch box, except that three, fifteen (15) gallon size trees may be substituted for each twenty-four (24) inch box size tree where appropriate, if approved by the City Arborist.
 - ☐ b. Replacement tree species shall consist of *Sequoia sempervirens* (coast redwood), *Quercus agrifolia* (coast live oak), *Arbutus menziesii* (madrone, *Arbutus* 'Marina' can be substituted), *Aesculus californica* (California buckeye) or *Umbellularia californica* (California bay laurel).
- ☐ **13. Sidewalks.** The damaged sidewalk shall be repaired in compliance with the rules and regulations of the City of Oakland. A sidewalk repair permit is required if more than 25 square feet of sidewalk will be repaired. Contact the Sidewalk Division at 238-3499 for more information.

 8/10/21

Tod Lawsen
Arboricultural Inspector
Certified Arborist ® WE-6321A
ISA Tree Risk Assessment Qualified

 8-10-21

David Moore
Senior Forester
Certified Arborist ® NY-5626A
ISA Tree Risk Assessment Qualified

**This decision of the Public Works Agency, Tree Services Section, may be appealed by the applicant, or the owner of any "adjoining" or "confronting" property, to the Parks and Recreation Advisory Commission within five (5) working days after the date of this decision and by 3:30 p.m., otherwise the permit is effective. The term "adjoining" means immediately next to, and the term "confronting" means in front of or in back of. An appeal shall be on a form prescribed by and filed with Tree Services, at 7101 Edgewater Drive, Building #4. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the City or wherein such decision is not supported by the evidence in the record. There is a \$732.76 fee to file an appeal. Failure to timely appeal this decision and raise any and all issues in your appeal may preclude you from challenging this determination in court. If the appeal is not finally disposed of by the Park and Recreation Advisory Commission within thirty (30) working days of the date of the decision by the Tree Services Section, the decision shall be deemed affirmed, and the permit appeal denied.*