



Process Review

The following timeline and information was prepared to review the process and decision making related to the removal of the walnut tree along 13th Street adjacent to the Oregon City Pool property. The following information is a compilation of multiple interviews reflecting recollections of events and discussion, questions related to the thought process for decisions made and a review of emails, the Oregon City Municipal Code and associated documents. The following is not a verbatim transcript of the interviews but rather the City Manager's summary of conversations based on the interviews, responses and document reviews. The Human Resources Director and City Manager met with the following Community Service Department employees to review and understand the process leading up to the decision to take down the walnut tree on the Oregon City Pool property.

- Community Services Director
- Assistant Parks and Recreation Director
- Parks Maintenance Manager
- Aquatics/Recreation Manager

The following represents the actions that were taken from the notification to the City of the tripping incident on the 13th Street sidewalk adjacent to the walnut tree to the approval of the Type I tree removal permit.

On June 24, 2019, Public Works fielded a call from a resident who reported that her child tripped and fell along the sidewalk on 13th Street adjacent to the Oregon City Pool. Public Works visited the site to view the sidewalk and noted the condition of the sidewalk, which included lifted, tilted and cracked sidewalk panels. Public Works notified the Aquatics/Recreation Manager about the incident. The Aquatics/Recreation Manager sent an email to Risk Management (HR Director) to notify and create a record of the incident. No liability claim has been filed based on the incident. To the City's knowledge, the child had a scraped up knee but otherwise was ok. Community Services initiated an evaluation of the incident and corresponding area, which included the walnut tree, hillside and sidewalk along 13th Street.

On June 25, 2019 the Asst. Parks and Recreation Director visited the site and confirmed that the lifting and cracking concrete panels created multiple hazards that do not meet the City's sidewalk standards. The sidewalk has raised edges of ¼ inch to 2¼ inches. The Asst. Parks and Recreation Director began researching options for sidewalk repair and/or replacement.

On June 26, 2019 The Community Services Director and the Aquatics/Recreation Manager met onsite to view the condition of the sidewalk and how the tree was situated. After initial observation, it was clear the tree was breaking up the sidewalk and causing trip hazards in multiple locations. The Aquatics/Recreation Manager painted the lifted areas with high visibility paint and contacted Davey Resources Group to complete an arborist report on the walnut tree adjacent to the sidewalk.

On June 27, 2019 The Community Services Director and Asst. Parks and Recreation Director met to discuss the sidewalk trip hazard and the best approach to address the sidewalk. The Asst. Parks and Recreation Director recommended to the Community Services Director that the City should repair the entire length of sidewalk on 13th Street, including curb, parts of which that are cracked or missing, sidewalk, tree wells and street trees. The Community Services Director and the Asst. Parks and Recreation Director discussed repairing only the impacted concrete panels. The Asst. Parks and Recreation Director noted minor sidewalk replacement is what has been done on the site in the past and would only continue to shift and would eventually not meet current standards for sidewalks. The new panels would continue to move, and the Asst. Parks and Recreation Director was concerned that they would not be able to successfully join edges effectively, in turn creating new tripping hazards and potentially not complying with the Americans with Disabilities Act. The Asst. Parks and Recreation Director's recommendation to the Community Services Director was that in order to properly address the hazardous sidewalk, expeditiously and cost efficiently, the City should remove the tree, which had roots lifting the sidewalk in multiple locations within and past the dripline, and replace the whole length of sidewalk to current code and construction standards. The Asst. Parks and Recreation Director indicated that there was no funding identified for the repairs. The Community Services Director directed the Asst. Parks and Recreation Director to research cost estimates based on her recommendation.

On June 29, 2019 the ISA Qualified Tree Risk Assessor with Davey Resource Group, visited the site to conduct an assessment of the walnut tree.

On July 1, 2019 the Davey Resources Group arborist sent an email to staff detailing the condition of the oak tree that were observed during the evaluation of the walnut tree on June 29, 2019. The arborist noted that a full blown infestation of oak carpenter moth was present as well as a common decay fungus in oaks that weakens the wood. Fencing the area and not allowing children to play directly under the tree was strongly recommended.

On July 2, 2019 staff barricaded off the area under the oak tree and notified recreation programming and the swim club not to use the area under the oak tree for fear of tree and/or limb failure.

On July 8, 2019 during a Community Services Leadership team meeting (Community Services Director, Asst. Parks and Recreation Director, Aquatics/Recreation Manager and Parks Maintenance Manager), the group discussed the oak tree, sidewalk and walnut tree located on the Pool property. After reviewing the updated email information from Davey Resource Group, it was clear the oak tree was a danger, infested and needed to be removed.

The decision on how to proceed with the walnut tree and 13th Street sidewalk repairs was discussed. In the Asst. Parks and Recreation Director's opinion, developed through experience with trees, facility maintenance and construction, the walnut tree should be removed and the 13th Street sidewalk should be replaced. The Asst. Parks and Recreation Director referenced the failure of the tree in front of the Ermatinger House as an example of a sidewalk repair that included root cutting. The Asst. Parks and Recreation Director also indicated that grinding the sidewalk would not comply with the Public Works thresholds allowed for the grinding down of sidewalk edges ($\frac{1}{2}$ inch edge allowed to be grounded down). The Asst. Parks and Recreation Director and the Parks Maintenance Manager both identified the presence of debris from the tree on the sidewalk as a continual maintenance and potential issue. After considering budget implications and the identification of funds to use for the project, the Asst. Parks and Recreation Director's recommendation to the Community Services Director was the most cost efficient, would eliminate the risk of future sidewalk hazards and would provide a long term fix. The Parks Maintenance Manager concurred with the assessment and agreed the tree should be removed. In his experience, construction stress and root cutting would negatively impact the tree and cause destabilization. Recommended waiting until October to remove the walnut tree once the leaves had dropped.

The Community Services Director concurred with the recommendation and directed staff to begin the process of tree removal and sidewalk replacement. It was understood that the Asst. Parks and Recreation Director was responsible for the sidewalk contract and work and that the Parks Maintenance Manager was responsible for the tree removal contract and work. The Community Services Director instructed the Asst. Parks and Recreation Director to work with the Aquatics/Recreation Manager to coordinate the work. According to the Community Services Director this did not occur.

The Aquatics/Recreation Manager indicated that she brought up preparing information for the public, as she was aware of a citizen that frequented the pool and had shown an interest in the past of nominating the walnut tree and oak tree as potential Heritage Trees. It was determined that providing information about the tree removal was not necessary at this time.

The Aquatics/Recreation Manager indicated in the interview that she felt that the decision to remove the tree and replace the sidewalk was determined and that alternative ideas would not be considered. The Asst. Parks and Recreation Director indicated in the interview that she felt that the tree was the wrong

tree in the wrong place, but that the decision to remove the tree was not her responsibility and that she was not involved in making the decision.

On July 18, 2019 the tree service contractor provided a proposal to the Parks Maintenance Manager for the removal of the oak tree. The removal of the oak tree at the Pool property with the contractor was scheduled for August 29, 2019 and August 30, 2019.

On July 19, 2019 the Aquatics/Recreation Manager received the walnut tree arborist report prepared by Davey Resources Group, which was forwarded to the leadership team (Community Services Director, Asst. Parks and Recreation Director and Parks Maintenance Manager). During the interview process, the Community Services Director, the Asst. Parks and Recreation Director, the Parks Maintenance Manager and the Aquatics/Recreation Manager indicated that they read the walnut tree arborist report.

The Community Services Director and the Asst. Parks and Recreation Director met and discussed the options presented in the walnut tree arborist report. The following is an excerpt from the Davey Resource Group walnut tree arborist report (pg 4):

Tree Preservation Potential

The tree is a good candidate for preservation. If necessary some root pruning is acceptable to install new sidewalk. If root pruning is conducted, it should be scheduled by a Certified Arborist and photo documented. The following design options should be considered to increase preservation potential:

- 1. Sidewalk re-routing closer to the road in the vicinity of the tree*
- 2. Ramping the sidewalk slightly to allow reconstruction with minimal root pruning*
- 3. Installation of a 2" construction-grade Styrofoam layer between the gravel pad and concrete pad*
- 4. Top-stop sidewalk hinges that allow sidewalk to bend horizontally but not become displaced vertically or at an angle.*

Tree Preservation Methods

- 1. Throughout construction, protect trunk with straw waddle to root flare and trunk up to 6' above sidewalk grade.*
- 2. Install tree protection fencing one foot back from the sidewalk and do not allow construction equipment on the soil area to avoid soil compaction. For this case, orange plastic mesh attached at 10' intervals to t-stakes is acceptable.*
- 3. Carefully remove 15' of pavement with pre-bars and hand tool, rather than jackhammers. Heavy equipment is not recommended as it can crack, compact and break root, and resulting injury can be site of infection and promote decay.*
- 4. Root pruning (if necessary) should be conducted by an arborist or with arborist supervision with a sharp saw and at an angle that minimizes the size.*

Summary and Recommendation

The inspection revealed the walnut tree to be in good condition with high preservation potential. The tree has minor visible defects in the trunk and branches. The species is relatively tolerant of construction impacts. The construction may impact 10-40% of the critical root zone, but are unlikely to destabilize the tree unless significant root pruning occurs. Supervision of construction is recommended and the tree may be recommended for removal if roots are found to be decayed, or significant root pruning occurs. The species is a locally adapted tree that can live for hundreds of years.

The Asst. Parks and Recreation Director indicated that the construction options presented in the report would not be a long-term fix. In her opinion the sidewalk would continue to move and crack. In the Asst. Parks and Recreation Director's assessment of the walnut tree and construction zone, the impact to the roots system would be 30% to 40% and exceed an acceptable amount and almost certainly cause the tree to become unstable and eventually fall or die. The Asst. Parks and Recreation Director noted that the construction options identified in the arborist report are costly and/or often result in additional sidewalk failures and/or loss of the adjacent tree. In her opinion, the ongoing maintenance and cost of alternate approaches outweighed removing the tree that is causing the hazardous conditions and she did not want to create a new liability risk of an unstable tree. The Community Services Director concurred and directed the Asst. Parks and Recreation Director to move forward with the plan to remove the walnut tree in order to effectively replace the sidewalk to code.

On August 7th, the Aquatics/Recreation Manager asked the Parks Maintenance Manager about when he might expect the walnut tree to be removed and if it might happen along with the removal of the oak tree.

On August 8th, 2019 the Parks Maintenance Manager responded to the Aquatics/Recreation Manager that the walnut would be removed and that it was tentatively planned for some time after the leaves drop from the tree (estimated for October, 2019). As of August 8th, no specific date had been set for the removal of the walnut tree.

On August 22, 2019 The Community Services Director and the Parks Maintenance Manager discussed the option to add the walnut tree removal to the scheduled oak tree removal project. The decision to take down the walnut tree at the same time as the oak tree was based on an effort to be efficient, to minimize impacts associated with sidewalk and street closures and to minimize costs since the arborist would already be mobilized onsite. At the direction of the Parks Maintenance Manager, a Parks staff member contacted the contractor to coordinate the removal of the walnut tree at the same time as the oak tree.

On August 23, 2019 the Parks Maintenance Manager left for a two week vacation. The Parks Maintenance Manager passed along information about the project to the Parks staff member. The Parks Maintenance Manager had not applied for a tree removal permit prior to leaving and did not convey to his staff member the need to obtain a permit for the project.

On August 28, 2019 the tree service contractor confirmed with the Parks staff member that the walnut tree could be removed at the same time. The additional cost for the removal of the walnut tree was \$3,500.

On August 29, 2019 and August 30, 2019 both trees were removed from the pool property.

On August 30, 2019 the Planning department received a call inquiring if there was a permit related to the trees. The Planner did not find that a permit had been submitted. The Planner called the Community Services Director to notify him that a Permit had not been filed and one was needed. The Community Services Director directed the Asst. Parks and Recreation Director to connect with the Planning Department, and although after the fact, complete a Public Tree Removal/Replanting Permit. A Type I permit was issued August 30, 2019 for the removal and mitigation of the trees.

On September 10, 2019 the August 30, 2019 Type I permit was revoked and a new Type I permit for the removal and mitigation of the trees was issued.

Oregon City Municipal Code

Oregon City Municipal Code (OCMC) Section 12.08.030 regulates the Public Property Tree Maintenance. The relevant sections states:

The City shall have the right to plant, prune, maintain and remove trees, plants and shrubs in all public rights-of-way and public grounds, as may be necessary to ensure public safety or to preserve and enhance the symmetry or other desirable characteristics of such public areas. The Public Works Department and Parks and Recreation Department may recommend to the Community Development Director the removal of any tree or part thereof which is in an unsafe condition or may be injurious to above or below-ground public utilities, structures or other public improvements. Removed trees shall be replaced in accordance with this chapter or the mitigation requirements of the OCMC 17.49 – Natural Resources Overlay District (NROD), if the tree to be removed is within the NROD.

OCMC 12.08.035 regulates Tree Removal and Replacement. The relevant section states:

Existing street trees, trees in the right-of-way and trees on public property shall be retained and protected during development unless removal is specified as part of a land

use approval or in conjunction with a public capital improvement project, in accordance with OCMC 17.41.

OCMC 17.41.060.B – Tree Removal and Replanting - Mitigation. The relevant section states:

The applicant shall determine the number of trees to be mitigated on the site by counting all of the trees six-inch DBH (minimum found and one-half from the ground) or larger on the entire site and either:

- 1. Trees that are removed outside of the construction area shall be replanted with the number of trees specified in Column 1 of Table 17.41.060-1. Trees that are removed within the construction area shall be replanted with the number of replacement trees required in Column 2;*

OCMC 17.04.230 – Construction Area

Defined as right-of-way, public utility easements, and within the building footprint of a building site for any mixed-use, commercial or industrial development, or if a residential development, within the allowable building footprint permitted by the setback requirements of the zone district.

OCMC 17.04.300 – Development

“Development” means a building or grading operation, making a material change in the use of appearance of a structure or land, dividing land into two or more parcels, partitioning or subdividing of land as provided in ORS 92.010 to 92.285 or the creation or termination of an access right.

Oregon City Public Works Department – Safe Sidewalks brochure

If a sidewalk panel is raised less than ½ inch, you may be able to grind the sidewalk to repair it. If it is raised more than ½ inch, full panel replacement is required.