



## MEMORANDUM

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**TO:** Oregon City Mayor and City Commission  
**FROM:** Tony Konkol, City Manager  
**SUBJECT:** Walnut Tree Removal Review  
**DATE:** October 9, 2019

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### Summary

It is imperative, as City Manager, that while providing a safe community for our citizens, how we as a City make decisions must also meet the expectations of the City Commission and Community for which we serve. I also need to be responsive when the goals and expectations of the Commission, the Community and the City Manager are not met. In this instance, it is clear that the decision to remove the healthy walnut tree from the Pool property did not meet these expectations and has created a perception that the City does not follow its own standards and erodes the trust in the decisions being made by the City with the City Commission and the Community. It is also important to note that Staff did not violate the Oregon City Municipal code as it relates to the decision to remove the tree.

A review of the decision making process leading to the removal of the tree and the failure to obtain a tree removal permit in a timely matter demonstrates that the City failed to diligently consider the alternative options identified in the walnut tree arborist report and communicate effectively. This was due to several factors, including funding concerns, internal communication, past experience with tree failures, long-term maintenance impacts and the opinion that the proposed alternatives were ineffective as a permanent repair.

It is also apparent that staff was trying to respond expeditiously to a tripping accident at the pool, one of the most visited facilities in the City of Oregon City, in an effort to address the broken sidewalk, avoid future accidents and responsibly expend the limited funds available. The Oregon City Municipal Code does not prohibit the removal of a tree from public land and specifically allows for the removal of a tree to ensure public safety or to protect public infrastructure. In addition, the permit to remove the tree, which is a land use decision, is an over the counter permit utilized to determine the number of mitigation trees required to be planted and is not an approval or denial of the ability to remove a tree.

The decision to remove the walnut tree was a judgement call. It was also made without enough consideration of community perception, a thorough analysis of an alternative approach or sufficient documentation to make a well informed decision that would address the recommendations of the arborist report, concerns of the public and justify the removal of the tree. Staff failed to comprehend the impact that the removal of the walnut tree would have on the Community and did not meet the expectations of the City Commission or City Manager.

How the City moves forward with the lessons learned from this experience is also important. I will be directing Staff to work with Natural Resources Committee to prepare code amendments and/or policy that address the removal of trees on public property. The proposed code amendments and/or policy would address:

#### **Process Improvements**

- Utilizing the existing Heritage Tree type and size requirements, or other type and size requirements as determined through the review process, as a trigger for further analysis of alternative methods to retain healthy trees.
- Determining a public notification for the removal of trees on public property that meet the new requirements for further analysis.
- Determining an internal approval process for the removal of trees on public property that meet the new requirements for further analysis.
- Review the Public Works sidewalk standards to determine which alternative construction types and sidewalk re-routing would be acceptable.
- Staff in the Community Services Department, Public Works Department and Community Development Department have been updated on the current code requirements for tree removal and the land use application forms have been updated to reflect current code.
- Representatives from each department will be involved in the code amendment and/or policy creation and staff will be updated to the new procedures and policies once implemented.

#### **Staff Training**

- Management staff in the Community Services Department will be working with a leadership and organizational consultant to address communication and deficiencies within the Department.
- Appropriate training, clarification of expectations and as warranted, corrective action, will occur.

We work diligently as a City to protect the tree resources of our community and take seriously the task of maintaining a healthy tree canopy while balancing the needs of a safe community. I look forward to working with the Commission, the Community and Staff to make improvements to our process to better meet the expectations of each of us and rebuild the trust in the work we do.

## Findings

I need to be cognizant, as the City Manager, of the capacity and expectations put on each Department and Division and respect the emphasis staff put on maintaining a safe facility and considering costs while holding ourselves to our own standards and the expectations of the City Commission and Community. I also need to be responsive when the goals and expectations of the Commission and the Community are not met. Based on the interviews, review of the Oregon City Municipal Code and applicable material, and an understanding of the timeline, I have the following conclusions.

- In response to a tripping accident on the sidewalk adjacent to the pool, one of the most visited facilities in the City of Oregon City, staff felt an urgency to fix the situation and avoid future accidents.
- The Tree Preservation Potential and Tree Preservation Methods identified in the walnut tree arborist report were dismissed without sufficient discussion, critical analysis or challenging of preconceived positions and opinions. The methods were dismissed as too expensive, ineffective and destined to fail without any serious discussion, second opinion or investigation into any alternative other than tree removal. The decision to remove the walnut tree was made prior to the walnut tree arborist report, and once the arborist report was received, there was no serious consideration of an alternative, other than a brief conversation, and no staff member thought that it was worthwhile to spend any significant time considering an alternative.

The management team of the Community Services Department, all who indicated they read the walnut tree arborist report, failed to apply the critical analysis expected when a report prepared by a professional arborist, from whom professional input was sought, has identified an option that does not support the direction that was recommended and ultimately approved.

- The communication and working relationship between staff members was ineffective and resulted in the suppression of any critical analysis of the decision to remove the tree during the Leadership Team meeting, once the recommendations of the walnut tree arborist report were known and whether the citizens that had shown a previous interest in nominating the walnut tree as a Heritage Tree prior to removal should occur, even though it is not required.
- Staff failed to comprehend the impact that the removal of the walnut tree would have on the community and did not meet the expectations of the City Commission or City Manager to improve communication and transparency with the community.
- Staff failed to obtain the necessary permit for the removal of the two trees on the site prior to removal. This was not done to avoid the permit process but was the result of not providing clear communication of the project status on the hand off of the project from one staff member to the next. While obtaining the permit in a timely manner would not have changed the decision to remove the trees nor prevented the trees from being removed, it does create the perception that

the City does not follow its own standards and contributes to an erosion in the trust and decisions being made by staff with the City Commission and Community.

- City staff contacted a tree service provider on August 22, 2019, seven days prior to the scheduled removal of the oak tree, to request that the walnut tree be removed at the same time. The decision to remove the walnut tree was not made on August 29, 2019 because the tree service contractor was on site nor was the walnut tree offered to the contractor to receive a reduced price to have it removed. It is standard practice that when a tree is removed for the contractor to take the wood, debris and clean the site. There are no Oregon City Municipal Code requirements or policies that indicated the city should retain the wood of a tree that has been removed.
- The Community Development Department did not update the tree removal permit to accurately reflect the code amendments concerning public trees adopted by the City Commission that went into effect on August 2, 2019. This oversight resulted in the necessity to issue a new permit and contributed to the confusion concerning the status of the tree.
- The Oregon City Municipal Code does not prohibit the removal of a tree, but rather is designed to be a disincentive to tree removal. Section 12.08.030 of the Oregon City Municipal Code specifically allows for the removal of trees on public property as necessary to ensure public safety. The section continues, indicating that any tree that is injurious to above or below-grade public utilities, structures or other public improvements may be removed. The Public Works Department Safe Sidewalks brochure indicates that sidewalks with a displacement of greater than ½ inch may not grind the edge down, but rather the entire panel shall be replaced. The 13<sup>th</sup> Street sidewalk in the section adjacent to the walnut tree had edges lifting between ¼ inch and 2¼ inches, was a tripping hazard and was injurious to a public improvement. City staff did not violate the municipal code by removing the walnut tree.
- The Oregon City Municipal Code does not require a public notice process for the removal of a public tree. The required permit to remove a public tree is a Type I land use decision, which is an over the counter permit utilized to determine the number of mitigation trees required to be planted and is not an approval or denial of the ability to remove a tree nor does the permit process provide for a public notice or comment period.

### **Process Improvements**

The City Manager will be working with Staff and the Natural Resources Committee to prepare code amendments and/or policy that address the removal of trees on public property. The proposed code amendments and/or policy would address:

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