



Staff Report

City of Manhattan Beach

TO: Members of the Parking and Public Improvements Commission

FROM: Neil Miller, Director of Public Works
Juan Price, Maintenance Superintendent *Neil Miller*

DATE: January 25, 2007

SUBJECT: Appeal of Existing Policy Prohibiting Plantings or Structures in Excess of 42"

RECOMMENDATION:

Staff recommends that the Parking and Public Improvements Commission deny the appeal of staff's decision to have a cluster of Norfolk Island pine trees removed from the public right of way west of 3404 The Strand in accordance with Council policy and Strand Gardens.

FISCAL IMPLICATION:

None at this time.

BACKGROUND:

Directly west of the Strand, between the Strand and the Los Angeles County bike path, lies an area commonly referred to as the "Strand Gardens". For many years, the plantings in this area consisted of a few fan palms and iceplant as groundcover. Over the years, residents began planting casual gardens in this area. Though not officially permitted, the gardens were not controversial or problematic to adjacent residents or Strand users. However, these plantings began evolving into unregulated landscape developments that included patios, structures, irrigation and fencing. Many residents have invested substantial sums into improving these areas, even though no official policy existed. These issues were brought into the public forum during the planning phase of the Strand Rehabilitation Project.

During the summer and fall of 2006, City staff was tasked with bringing the Strand Gardens into City Council mandated compliance. These policies were developed through public input and City Council discussion. These policies were incorporated as an integral part of the planning and construction of the Strand rehabilitation project. As the first phase of construction neared completion, staff inspected all Strand properties for non compliant plantings, structures and rights of way encroachments. Following the inspections, letters were mailed to property owners requesting voluntary adherence to the City Council directives related to plantings and structures.

In addition to internally generated compliance letters, staff also received several resident complaints requesting the removal of a cluster of Norfolk Island pine trees located on the public right of way west of 3404 The Strand. Staff responded to these requests with a letter dated December 11, 2006 (copy attached) informing the resident that these trees are in violation of

existing City Policy which prohibits plantings or fences over 42” in height in the area popularly known as the “Strand Gardens”. In addition, a Notice of Public Hearing was sent to all properties within 500’ of this location. To date, no response has been received.

DISCUSSION:

The California Coastal Commission determined that City property west of the Strand walkway is the inland extent of the beach. Pursuant to the City’s Local Coast Program (LCP), no permanent structures such as fences, patios, or walls are permitted because development seaward of the Strand interferes with public beach recreation, beach access and coastal views. This includes the continuous presence of some unpermitted vegetation along the Strand. Vegetation which blocks views of the beach and ocean from the Strand are considered to be in violation of the City’s LCP and the Coastal Act. Coastal views that are obstructed seals the public off from the beach thus limiting their enjoyment of the shore. The California Coastal Commission has suggested that the best way to resolve a violation of the City’s LCP and Coastal Act is to work with adjacent property owners to remove fences, patios, walls and substantial vegetation from the City property along the Strand.

In an effort to preserve the unique nature of the Strand Gardens and to comply with the wishes of the Coastal Commission, staff has been tasked with bringing plantings that are in gross violation of current policy into compliance. Residents have been notified and informed of their right to appeal staff decisions prior to field action in all cases. Most residents have voluntarily complied with the City Council directive, and this action is the first mandatory tree removal to be enacted. The requested compliance measures are at no cost to the adjacent residents, as the City has no record or tree planting permit on file. Resident notification is a courtesy, allowing residents to recover or modify any plantings, furnishings, or structures prior to City forces taking action.

CONCLUSION:

Based on the prior decision by both the California Coastal Commission and City Council to allow the removal of a tree for the purposes of view preservation at the Strand, staff’s position is that policy has been established and that there are no grounds for the appeal of this policy.

- Attachments:
- A. Copy of the City’s response letter dated December 11, 2006
 - B. Copy of the City’s notice to the resident of Public Hearing
 - C. Copy of West Coast Arborists, Inc. letter dated December 29, 2006
 - C. Several photos of the subject trees
 - D. Copy of California Coastal Commission letter dated April 19, 2006



City of Manhattan Beach

Public Works Department

Phone: (310) 802-5300

FAX: (310) 802-5301

TDD: (310) 546-3501

Notice to Residents Of Public Hearing

Re: Appeal of Existing Policy Prohibiting Plantings or Structures in Excess of 42”

Dear Resident/Property Owner:

This is your notice of a Public Hearing before the City’s Parking and Public Improvements Commission to be held:

Thursday, January 25th, 2007, 6:30 PM
City Council Chambers
1400 Highland Avenue
Manhattan Beach, California, 90266

The subject of the Public Hearing will be the appeal by several residents of an existing City Policy prohibiting trees or shrubs, or fencing over 42” in height in the area popularly known as the “Strand Gardens”. Specifically, the current request by several residents is for the removal of a cluster of Norfolk Island pine trees located on the public right of way west of 3404 Strand.

If you have an opinion on this issue you are encouraged to attend the meeting and speak when this item is heard.

The decision of the Parking and Public Improvements Commission will be forwarded to the City Council for ratification.



City of Manhattan Beach

Public Works Department

Phone: (310) 802-5300
FAX: (310) 802-5301
TDD: (310) 546-3501

December 11, 2006

Lani G Bray
3404 The Strand
Manhattan Beach CA 90266-3350


Dear Ms. Bray,

I am writing you to inform you that the City of Manhattan Beach is requiring the removal of the Norfolk Island pine tree adjacent to your property located at 3404 The Strand. Norfolk Island pine trees are an excellent choice when planted in a sufficiently spacious location free of view obstructions. Unfortunately, Norfolk Island pines can grow to a height of 100' with a corresponding girth in excess of 50' and are not consistent with established City Council guidelines regarding plantings in the area popularly known as the "Strand Gardens".

The City has received several complaints regarding these trees, and several enforcement letters have been mailed requesting voluntary compliance with City Council directives. To date, Public Works has not received any reply from you. In an effort to bring this matter to a close, the City requests that you appear before the Parking and Public Improvement Committee (PPIC) no later than January 25, 2007. The City will delay any action on this tree until a decision is rendered. If you choose to forego the appeal process, the City will schedule removal of the tree to bring this area into compliance.

At your earliest convenience, please call me to discuss this matter or the Strand landscaping guidelines in general at (310) 802-5310.

Respectfully,


Juan E. Price
Maintenance Superintendent
enclosures



December 29, 2006

City of Manhattan Beach
ATTN: Mr. Juan Price
3621 Bell Avenue
Manhattan Beach, CA 90266

RE: 3404 The Strand – Norfolk Island Pine

Dear Mr. Price,

The following is a comment on the presence of Norfolk Island Pines (*Araucaria heterophylla*) located at 3404 The Strand in the City of Manhattan Beach. The purpose is to describe the nature of this species in relation to the specimens growing at this address. I visited the site on December 15, 2006, and all comments that follow are based on ground-level observations made while on site.

Observations: There are three young specimens growing from one base in a small landscaped garden in front of the boardwalk and facing the ocean (see Figures 1.1 & 1.2). The tallest is about 15' tall, and they all appear to be in good health (see Figure 1.3), although two of them are leaning away since they are in a sense crowding each other (see Figure 1.4).

Comments:

- 1.) Norfolk Island Pine is a tall growing exotic conifer species that is occasionally planted as a specimen tree. They are often sold as live Christmas trees (typically in a 5-gallon or 15-gallon nursery container), and many times these trees are eventually planted in residential gardens. Despite their small size when sold, they can become quite tall and imposing, with heights exceeding 100' and trunks exceeding 30" in diameter (see Figures 1.5 & 1.6). Even though they are native to a small south Pacific island east of Australia, they have shown an ability to adapt to our climate, and well-adjusted specimens can live for many years. It also produces a sizeable cone although it is smaller and therefore less dangerous than the large and formidable one produced by its close relative the Bunya-Bunya (*A. bidwillii*).
- 2.) Although it is unlikely that these three young specimens will ever attain the size shown in Figures 1.4 & 1.5 (due primarily to suppression by direct ocean influence and limited fertility in sandy soils), they can still reach a good height, especially if they receive regular irrigation and fertilizer. Thus their size may create view issues since they are growing immediately in front of residential properties. Bear in mind that only one tree can develop into a nice tall but imposing specimen, and so three specimens crowded together can eventually take up a lot of visual space and potentially obstruct a considerable amount of view.



3.) Therefore, I will suggest considering even half of the ultimate size potential of just one of these trees and then decide whether it would be worthwhile permitting this grouping to grow unimpeded at their present location. Also, because they are still relatively small I believe that it is still possible to transplant successfully these trees to a more suitable location within the city.

Should you have any questions or require additional information, please feel free to contact me at (714) 991-1900.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tony Uno', with a stylized flourish at the end.

Tony Uno
Consulting Arborist
West Coast Arborists, Inc.



Figure 1.1 (above), a grouping of Norfolk Island Pines in front of the ocean; Figure 1.2 (below), they are growing in front of beachfront residential properties.

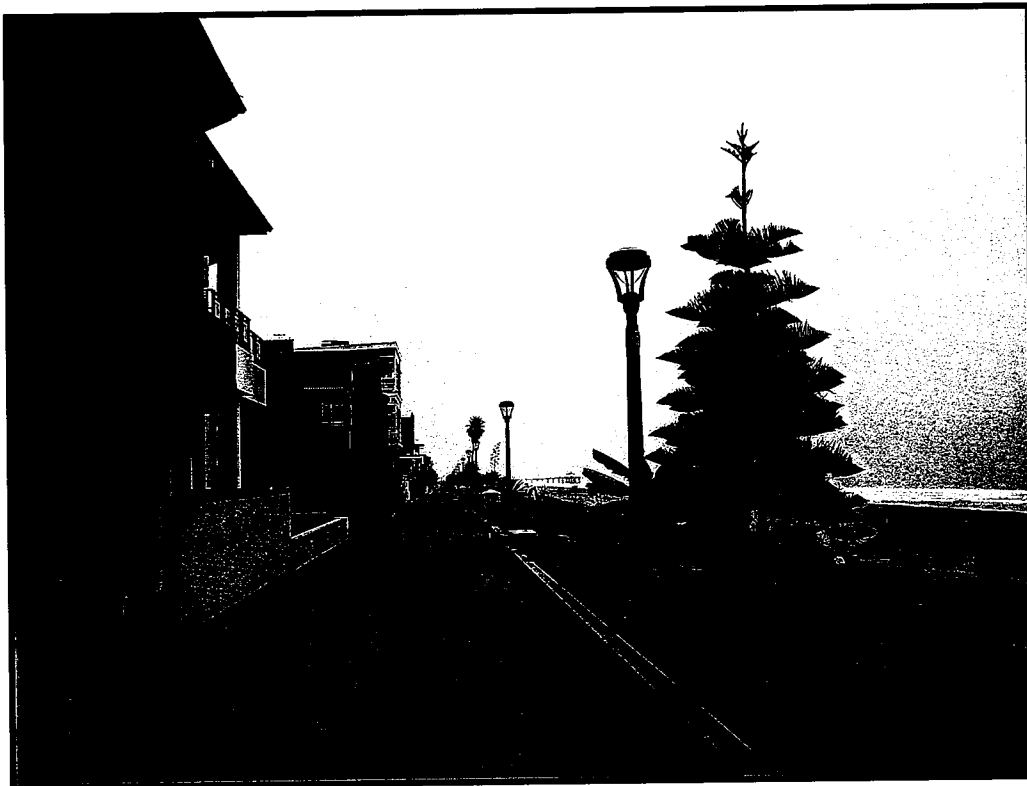




Figure 1.3 (above), despite growing with daily ocean winds, the trees appear healthy; Figure 1.4 (below), normally this tree develops a single trunk, and so this is merely a grouping of three specimens, which can become quite a formidable trio in time.





Figure I.5 (above), FILE PHOTO of a mature Norfolk Island Pine; this specimen is about 95' tall; Figure I.6 (below), FILE PHOTO of the trunk of the same specimen.





ASSUMPTIONS AND LIMITING CONDITIONS

1. Care has been taken to obtain all information from reliable sources. All data has been verified insofar as possible; however, the Consultant can neither guarantee nor be responsible for the accuracy of information provided by others.
2. The Consultant will not be required to give testimony or to attend court by reason of this report unless subsequent contractual arrangements are made, including payment of an additional fee for such services as described in the fee schedule and contract of engagement.
3. Loss or alteration of any part of this report invalidates the entire report.
4. Possession of this report or a copy thereof does not imply right of publication or use for any purpose by any other than the person to whom it is addressed, without the prior written consent of the Consultant.
5. This report and any values expressed herein represent the opinion of the Consultant, and the Consultant's fee is in no way contingent upon the reporting of a stipulated result, a specified value, the occurrence of a subsequent event, nor upon any finding to be reported.
6. Unless expressed otherwise: 1) information contained in this report covers only those items that were examined and reflects the condition of those items at the time of inspection; and 2) the inspection is limited to visual examination of accessible items without dissection, excavation, or coring. There is no warranty or guarantee, expressed or implied, that problems or deficiencies of the tree(s) or property in question may not arise in the future.
7. Arborists are tree specialists who use their education, knowledge, training, and experience to examine trees, recommend measures to enhance the beauty and health of trees, and attempt to reduce the risk of living near trees. It is highly recommended that you follow the arborist recommendations; however, you may choose to accept or disregard the recommendations and/or seek additional advice.
8. Arborists cannot detect every condition that could possibly lead to the structural failure of a tree. Trees are living organisms that fail in ways we do not fully understand. Conditions are often hidden within trees and below ground. Arborists cannot guarantee that a tree will be healthy or safe under all circumstances, or for a specific period of time. Likewise, remedial treatments performed cannot be guaranteed.
9. Any recommendations and/or performed treatments (including, but not limited to, pruning or removal) of trees may involve considerations beyond the scope of the arborist's services, such as property boundaries, property ownership, site lines, disputes between neighbors, and any other related issues. Arborists cannot take such considerations into account unless complete and accurate information is disclosed to the arborist. An arborist can then be expected to consider and reasonably rely on the completeness and accuracy of the information provided.
10. Trees can be managed, but they cannot be controlled. To live near trees is to accept some degree of risk. Trees carry risk. The only way to eliminate all risks associated with trees is to eliminate all trees.

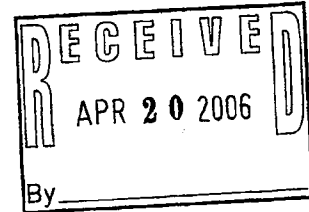
CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



April 19, 2006

Richard Thompson
Director of Community Development
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266



Property Location: City property seaward of the Strand walkway

Unpermitted Development: Permanent placement of decks, fences, private benches, patios, retaining walls and non-native landscaping

Dear Mr. Thompson:

Thank you for taking time on March 6, 2006, to discuss the private development on the City property seaward of the Strand walkway. As we discussed during our conversation, our staff has confirmed reports from concerned citizens that development consisting of the permanent placement of decks, fences, private benches, patios, retaining walls and non-native landscaping has occurred on City property, which is located within the coastal zone of the City of Manhattan Beach, as well as the Coastal Commission appeal jurisdiction. Section 30603(a)(1) of the Coastal Act establishes the site as being appealable by its location between the sea and first public road and the fact the site is within 300 feet of the inland extent of the beach. The development referenced above requires a coastal development permit pursuant to the policies and ordinances of the certified Local Coastal Program (LCP) for the City of Manhattan Beach, as well as the Coastal Act. Specifically, pursuant to Section A.96.040 of the Zoning Ordinance of the City of Manhattan Beach Coastal Zone, any person wishing to perform or undertake development in the coastal zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Section A.96.030(I) of the Zoning Ordinance in relevant part as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure... construction, reconstruction, demolition, or alteration of the size of any structure....

However, our records indicate that the City has not issued a coastal development permit for any of the development described above.

The purpose of this letter is to identify unpermitted development along the Strand and to request clarification from the City regarding its intention to address the unpermitted development along the Strand. The City's LCP incorporates land use policies that are designed to guide review of applications for authorization of development in the City's coastal zone. These policies are relevant in determining whether the construction of decks, fences, and retaining walls and

placement of vegetation are consistent with the City's LCP. For instance, LCP policy II.B.4 states in part:

The beach shall be preserved for public beach recreation. No permanent structures, with the exception of bikeways, walkways, and restrooms shall be permitted on the beach.

In addition, Coastal Act resource protection policies protect public access to the beach. This is significant because pursuant to Section A.96.160 (B)(1) of the Zoning Ordinance,

The ground for appeal to the Commission of a final local approval shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of Chapter 3.

Sections of the Coastal Act that protect public access to the beach include, but are not limited to, Sections 30210 and 30211. Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use of legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Development seaward of the Strand interferes with public beach recreation, beach access, and coastal views and is likely to further reduce beach recreation, coastal views, and beach access in the future. Taken separately, much of this development may seem minor, but the cumulative negative impact of a mile-long stretch of unpermitted development on public access to the shore and on the amount of beach available to the public is significant. The fences, private patios, and seemingly private gardens physically inhibit pedestrians from using the public land adjacent to the walkway to view and enjoy the ocean (please see photographs 1-7). The development also creates a visual and psychological wall between the Strand walkway and the public beach. Literally, it is a visual wall because some of the vegetation blocks views of the beach and ocean from the Strand (please see photographs 8-11); it is psychological in the sense that the subject development generates the impression of a private strip of land, or boundary, between the public beach and the Strand. This visual and psychological wall seals the public off from the beach, thus limiting their enjoyment of the shore. In the future, the existence of private encroachments will present potential conflict if vertical accessways or amenities are proposed for public use on the City property west of the Strand walkway. Over time, private encroachments adjacent to the Strand, including both present and potential encroachments, diminish the ease with which the City could install or reconfigure accessways to the shore. This conflict between the privatization of public land and the public's use of that land limits public access to the beach, consequently interfering with beach recreation.

The City property west of the Strand walkway is the inland extent of the beach. As quoted above, pursuant to the City's LCP, no permanent structures such as fences, patios, or walls are

permitted. The continuous presence of some unpermitted vegetation along the Strand renders the vegetation essentially permanent. Thus, the subject construction of decks, fences, and retaining walls and placement of vegetation is inconsistent with policy II.B.4 of the City's LCP and, for the reasons stated above, the public access policies of the Coastal Act.

Any development undertaken in the coastal zone without a valid coastal development permit or that is not consistent with the policies of the City's LCP or the Coastal Act constitutes a violation of the City's LCP and the Coastal Act. Perhaps the best way to resolve this violation of the City's LCP and Coastal Act is to work with adjacent property owners to remove fences, patios, walls, and substantial vegetation from the City property along the Strand. In addition, the City may wish to install signage along the Strand walkway that advises the public that the Strand gardens remaining after removal of all substantial vegetation are public gardens open to all of the public and not for the exclusive use of adjacent property owners. The placement of such signage would require authorization through a coastal development permit. We would like to coordinate and cooperate with the City in addressing this unpermitted development. However, if the City is unable to take action to enforce the provisions of the LCP, if the City declines to take action to resolve the violation, or if the City is a party to the violation, the Coastal Act provides that the Commission may take primary responsibility for enforcement of the LCP.

Thank you again for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (562) 590-5071. Commission staff is more than willing to meet with you and/or your staff to discuss this matter. Please advise me as to whether the City intends to address the unpermitted development, or if you are interested in scheduling a meeting with our staff to discuss further.

Sincerely,



Andrew Willis
District Enforcement Analyst

cc: **Lisa Haage, Chief of Enforcement**
Pat Veasart, Southern California Enforcement Supervisor
Teresa Henry, South Coast District Manager
Pam Emerson, Los Angeles County Permit Supervisor
Charles Posner, Coastal Program Analyst

Whenever in this chapter the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions:

- A. "City" shall mean the City of Manhattan Beach.
- B. "Public Works Director" shall mean the Public Works Director of the City of Manhattan Beach or his authorized agent.
- C. "Street or highway" shall include all lands lying between the so-called property lines on either side of all public streets, roads, boulevards and alleys.
- D. "Street trees" shall mean trees or shrubs in public places along City streets, roads, boulevards and alleys.
- E. "Trees and shrubs" shall include all woody vegetation now or hereafter growing, planted or to be planted on any public place or area.
- F. "Parkway" shall mean that portion of the street, or highway other than the roadway or sidewalk.
- G. "Public place or area" shall include all those streets and highways within the City and all other properties owned by the City of Manhattan Beach.

7.32.030 Enforcement.

The Public Works Director shall have jurisdiction and control of the kind and type of planting, setting out, location, trimming, maintenance and removal of all trees and shrubs on City property and public places, and the supervision of all trees planted or growing in such places.

7.32.040 Permits.

- A. It shall be unlawful, and it is hereby prohibited for any person, firm, association, corporation or franchisee of the City to plant, move, remove, destroy, cut, trim, deface, injure, or replace any tree or shrub in, upon or along any public street or other public place of the City or to cause the same to be done without first obtaining a written permit from the Public Works Director. This permit shall specifically describe the work to be done.
- B. Application for a tree permit shall be made to the Public Works Director at least five (5) days in advance of the time the work is to be done. The work shall be done within thirty (30) days from the date the permit is issued unless otherwise stated.
- C. The Public Works Director shall inspect the work in progress and make a final inspection upon completion of the work.
- D. It shall be unlawful and is hereby prohibited for any person, firm, corporation franchisee maintaining any overhead wires or pipes or underground conduits along or across any street, avenue, highway, park, parkway or public place within the City to have any tree or shrub trimmed or removed from any public place or area without first obtaining a written permit from the Public Works Director for the specific work to be done.
- E. The Public Works Director may issue a permit for the removal of a street tree where it is in nonconformance with the street tree plan, or has been classified as a public nuisance according to Section 7.32.070, or is in such a condition as to present a threat to the maintenance of any overhead wires or pipes or underground conduits along or across any street.
- F. A fee, established by the Council under separate resolution, shall be required for a permit to remove a tree. The fee shall be refunded in the event the property owner replaces the removed tree within ninety (90) days with an approved tree. In the event the property owner does not replace the tree, the City will install a replacement tree, retain the fee, and bill the property owner for the balance of the actual cost.
(§ 26, Ord. 1458, eff. June 17, 1976)

7.32.050 Maintenance.

A. It is hereby made the duty of all owners and persons having possession and control of real property within the City to cultivate and care for and provide complete maintenance of all trees, shrubs, lawns and ground covers now or hereafter planted or set out within any of the streets, avenues, highways and parkways adjacent to their real properties. This paragraph when applied to those certain residents and property owners designated in Manhattan Beach City Ordinance No. 916 shall not be construed to preclude access of vehicles for the planting, cutting, pruning, or removal of such trees, shrubs, lawns and ground covers provided that permission

is first obtained from the Public Works Director for such access.

B. It shall be the duty of all owners and persons having possession or control of real property within the City promptly to notify the Public Works Director of any tree or shrub in a public area immediately adjacent to his property which is in such condition as to be a menace to public safety or dangerous to life or property.

7.32.060 Abuse or mutilation of trees.

It shall be unlawful for any person to:

- A. Damage, cut, carve, etch, hew or engrave or injure the bark of any street tree;
- B. Allow any gaseous, liquid or solid substance harmful to trees to come in contact with any part of any street tree;
- C. Deposit, place, store or maintain upon any public area any stone, brick, concrete, or other materials which may impede the free passage of air, water and fertilizer to the roots of any tree or shrub growing therein, except by written permit of the Public Works Director;
- D. Except as may be authorized by the provisions of Section 7.32.040, damage, tear up or destroy any plantings, grass, flowers, shrubs, or trees planted upon or in any public place or area in the City; and
- E. Paint, tack, paste, post or otherwise attach or place any advertisement, notice, card or announcement or any printed or written matter or any wire, board, platform or injurious material of any kind upon any tree or shrub situated in any public place or area in the City.

7.32.070 Public nuisance.

The Council, pursuant to the power and authority vested in it to do so under the provisions of Sections 38771 and 38773 of the Government Code of the State, does hereby find and declare that any of the following is apt to cause injury or damage to persons or property, or constitutes a then present menace or threat to life or property, or constitutes and is a nuisance, and shall be subject to abatement as such by civil action or summarily as provided by law:

- A. Any dead, diseased, infested; leaning or dying trees on private property so near to any street as to constitute a danger to street trees, or streets, sidewalks, or portions thereof, or the life, health or safety of the public.
- B. Any tree, shrub or plant on any private property or in a parkway of a type of species apt to destroy, impair or otherwise interfere with any street improvement, sidewalk, curb, approved street tree, gutter, sewer or other public improvements including water utilities or services.
- C. Any tree or shrub or parts thereof growing upon private property but overhanging or interfering with the use of any street, parkway, sidewalk or public place of the City such that in the opinion of the Public Works Director endangers the life, health, safety or property of the public.
- D. The existence of any branches or foliage on private or public property which interferes with visibility on, or free use of, or access to any portion of any street improved for vehicular or pedestrian travel.
- E. Trees on public property which constitute a public nuisance shall be removed, replaced or trimmed at the expense of the adjoining property owner as ordered by the Director of Public Works. If a tree on public property is ordered replaced under this section, the City shall pay the cost of the replacement tree, as established by the Council under separate resolution.
- F. It shall be the duty of all owners and persons having possession and control of real property within the City to abate any public nuisances referred to in this section that occur on their real properties.
- G. The procedures for notice, service of notice, hearing, abatement and removal by the City, and collection of the cost of the work by tax lien as provided in Section 9.64.030 through 9.64.130 of this Code shall be utilized. Said sections are incorporated herein by reference and made a part of this chapter.
(as amended by § 1, Ord. 1247, eff. August 5, 1971; § 1, Ord. 1290, eff. August 4, 1972; § 27, Ord. 1458, eff. June 17, 1976)

7.32.080 General provisions.

- A. Species or varieties of street trees: