

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: GABE OSBURN, DIRECTOR
SUBJECT: PLANNING AND ECONOMIC DEVELOPMENT
BUNYA BUNYA TREE REMOVAL APPEAL
AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the Planning Commission and the Planning and Economic Development Department that the Council, by resolution, deny the Appeal and uphold the Planning Commission's denial of a Tree Permit to remove an approximately 125-foot Araucaria Bidwillii (Bunya Bunya tree) located at 1080 2nd Street.

EXECUTIVE SUMMARY

The Salvation Army (appellant) has submitted an application to remove a Bunya Bunya tree at 1080 2nd Street. The application, submitted in September 2022, was denied by the Director and appealed to the Planning Commission. On September 14, 2023, the Planning Commission voted 5-2 to uphold the Director's decision. On September 25, 2023, pursuant to City Code Chapter 17-24, the appellant submitted the subject Appeal application, appealing the Planning Commission's decision.

BACKGROUND

The Salvation Army Residences, Inc. (appellant) submitted a Tree Permit application requesting to remove an approximately 125-foot Bunya Bungy tree, citing safety concerns. An arborist's evaluation, prepared for the appellant by Chip Sandborn, Sandborn Tree Service, Inc., dated March 30, 2022, taken from the ground, found the tree to be an "imminent hazard" identifying codominant stems at the top of tree, falling cones, heavy branches, and falling and fallen debris. In a subsequent discussion with Mr. Sandborn, he agreed that cabling the three codominant stems at the top of the tree and regular maintenance to thin limbs, remove cones, and remove fallen debris would reduce the risk factor.

Vintage Tree Care, Inc., a firm under contract with the City, was contracted to conduct a second evaluation of the tree. An Arborist Report, prepared by Fred Frey, Vintage Tree Care, Inc., after climbing the tree for a full assessment, dated February 5, 2023,

concluded that the tree's overall risk rating is low, the tree is not an imminent threat and, with regular maintenance, any potential risks could be reduced.

A Risk Assessment conducted from the ground, prepared by James MacNair, MacNair & Associates, dated August 24, 2023, acknowledged both the Sandborn and Frey reports. The MacNair report identified the two primary risks of falling cones and the three secondary trunk structure in the upper crown. The report also stated that dangerous cones and the three secondary trunk structure in the upper crown "can likely be mitigated with a cable installation and pruning."

Project/Application History

- First Application:

On March 11, 1999, Planning staff approved the removal of the then 80-foot Bunya Bunya tree (TR99-014), which approval was appealed by a member of the public.

On April 29, 1999, the Planning Commission adopted Resolution No. 9507 (see Attachment 9) denying the appeal and approving the tree permit to remove the tree. This decision was also appealed to the City Council.

On June 8, 1999, the Council adopted Resolution No. 23993 (see Attachment 9), granting the Appeal of the Planning Commission's decision and denying the Tree Permit to remove the tree.

- Second Application:

On October 31, 2006, a second Tree Permit application was submitted and was denied; no appeal was submitted.

Letters addressed to various City staff, dated March 13 and March 19, 2008, disputing the denial because "the tree poses a grave health and safety risk because of the cones it sheds" were received. On May 29, 2008, the City Manager responded supporting staff's decision to deny the request to remove the tree (see Attachment 8).

- Third Application:

On May 24, 2019, a third Tree Permit application was submitted requesting removal of the Bunya Bunya tree, which request was denied on November 19, 2019.

An Appeal application was submitted on time, however, the appropriate fee was not included. The appeal deadline was extended until December 18, 2019, to allow additional time to pay the remaining balance, but it was never remitted.

- Current Application:

On September 1, 2022, the applicant submitted the fourth (subject) application requesting to remove the tree.

On March 3, 2023, the application was denied by the Planning and Economic Development Department.

On March 13, 2023, pursuant to [City Code Section 17-24.090](#), Appeals, the applicant submitted an Appeal of the Planning and Economic Development Department's decision.

On September 14, 2023, the Planning Commission voted 5-2 to uphold the decision of the Director and denied the Tree Permit.

On September 25, 2023, pursuant to [City Code Section 17-24.090](#), Appeals, the applicant appealed the Planning Commission's decision.

On February 27, 2024, the Appeal hearing was continued due to a defect in noticing.

PRIOR CITY COUNCIL REVIEW

See Background section of this report.

ANALYSIS

1. Tree Ordinance

The Tree Ordinance, [City Code Chapter 17-24](#), was enacted by the Council to protect trees that are an essential part of the City's heritage, while at the same time, recognizing an individual property owner's right to utilize privately owned land in a way that is otherwise allowed by law. The Council found that trees contribute greatly to the health, safety and general welfare of all of the City's citizens and that the preservation and proper maintenance of trees is a matter of citywide concern. The Council further found that it was necessary to enact regulations, the Tree Ordinance, that prohibited the unnecessary damage, removal, or destruction of trees. Pursuant to [City Code Section 17-24.040\(B\)](#), the Director shall make a determination as to the acceptability of the requested tree removal based on the following considerations:

- a. The overall condition of the tree, including any diseases and pests that may be attacking it, the tree's age with respect to its projected lifespan, the area the tree would hit if it, or any substantial part of it, were to fall, its

symmetry and aesthetics, its proximity to existing structures, and any interference it has caused with underground or overhead utility lines.

- b. The topography of land and the effect the tree alteration, removal, or relocation may have on possible erosion or soil retention problems or on increasing, g the flow or the diversion of surface waters.
- c. The number, species, size, and location of other existing trees in the area and the effect the requested action will have on shade areas, air pollution, historic values, scenic beauty, and the general welfare of the City.
- d. Whether the request is supported by good urban forestry practices and standards such as, but not limited to, the number of healthy trees that a given parcel of land will support.

The Bunya Bunya tree contributes to the area by providing aesthetic benefits, summer shade, and wildlife habitat. Trees of this significant size and maturity perform these functions for all persons living in their vicinity, not only on the property on which they are located. The tree is believed to have been planted by Luther Bank and nearby residents, business operators and visitors love the tree as demonstrated by public comments. If the tree remains, there will be no impact on drainage, and the subject site is not over-populated with other trees.



Figure 1: Site photo of subject Bunya Bunya tree.

The application materials included an arborist's evaluation of the tree, which was prepared for the applicant/appellant by Sandborn Tree Services, Inc, dated March 30, 2022. Based on a ground survey, the report concluded that the "tree is an imminent hazard" for the following reasons:

- The codominant stems [at the top of the tree] are split risks, at risk of failure targeting transmission lines, the city sidewalk and Second Street.
- Its branches are heavily weighted with foliage at their distal ends making them prone to failure.
- The leaves fall constantly, they are long (approximately 18") spirals of sharp pointed leaflets capable of inflicting wounds on passers-by and are noted to have done so in the past.
- The tree produces large cones weighing up to 24 lbs. on its uppermost branches. When the tree sheds its cones, which are currently forming, no

one and nothing is safe beneath the tree.

Given the history of the tree and the Appellant's continued attempts to remove it, a Notice of Application (NOA) was sent to residents of the Silvercrest Senior Housing facility and to owners and occupants of properties within 1,000 feet of the subject tree. Staff received several comments, via both email and telephone, all but one of which voiced concern about and objection to the removal of the tree, with one phone caller expressing concern about the falling cones.

Based on the public response to the NOA, the City requested that Vintage Tree Care, Inc., a tree company under contract with the City, evaluate the Tree. In an Arborist Report, prepared by Fred Frey, Vintage Tree Care, dated February 5, 2023, the following conclusions and recommendations were provided after Mr. Frey climbed the tree and conducted a more thorough investigation, making the following findings:

- The presence of a dominant stem, with subordinated limbs is a well-designed system for weight distribution and improved limb attachments at trunk. Multiple stems, especially those similar in diameter, which originate in one location, possess an increased likelihood for failure at the attachment point. These stems do not appear to possess a high weight load. These co-dominant stems are closely oriented to one another. In Mr. Frey's experience, this closeness minimizes exposure to load increasing elements, such as wind, rain, etc. and improves stem retention likelihood. While the load on these stems appears low, there persists a likelihood of failure at the point of attachment. In Mr. Frey's experience, a very effective method of managing the load on stems like these and minimizing their current risk for failure is a support cable system in the form of a triangle.
- Based on the current condition of the tree and processing it through the Tree Risk Assessment Qualifications (TRAQ) matrices, its overall risk rating is low, as it relates to likelihood for failure in addition to the likelihood for impact and consequences of failure to its target(s). While a rating of "low" is the lowest achievable through this industry accepted risk evaluation system, there are still options available to manage the current risk, including:
 - Additional risk management tools include cabling and thinning the crown in the portion(s) above the stems' point of attachment.
 - Continually monitor this tree for any changes from its current state, as well as manage the tree's weight distribution as appropriate.

The Tree Ordinance, City Code Section 20-24.040(B) the Director shall make a determination as to the acceptability of the requested tree alteration, removal, or

relocation based on the following considerations:

- The overall condition of the tree, including any diseases and pests that may be attacking it, the tree's age with respect to its projected lifespan, the area the tree would hit if it, or any substantial part of it, were to fall, its symmetry and aesthetics, its proximity to existing structures, and any interference it has caused with underground or overhead utility lines;
- The topography of land and the effect the tree alteration, removal, or relocation may have on possible erosion or soil retention problems or on increasing the flow or the diversion of surface waters;
- The number, species, size, and location of other existing trees in the area and the effect the requested action will have on shade areas, air pollution, historic values, scenic beauty, and the general welfare of the City; and
- Whether the request is supported by good urban forestry practices and standards such as, but not limited to, the number of healthy trees that a given parcel of land will support.

The application was denied by the Planning and Economic Development Department for two reasons:

- **The overall condition of the tree.** The necessity to remove the Tree because it is a hazard was not successfully demonstrated. Both arborists agree that cabling the three co-dominant leaders at the top of the Tree, coupled with regular maintenance, will reduce the level of hazard to “low”.
- **The number, species, size, and location of other existing trees in the area and the effect the requested action will have on shade areas, air pollution, historic values, scenic, beauty, and the general welfare of the City.** Staff has received several public comments via telephone, letter and email opposing removal of the subject Tree. The Tree is loved by the community because of its historic value and its beauty.

Prior to the September 14, 2023, Planning Commission hearing, a Risk Assessment (Assessment), dated August 24, 2023, prepared by James MacNair, MacNair & Associates, was provided by the appellant. The Assessment, attached as Attachment 14), drew the following conclusions:

- The likelihood of cones dropping from the tree is rated as probable.
- The likelihood of impact on people in the areas near the tree in the event of failure is medium to high, depending on the actual occupancy rate during the cone production season.

- The consequence of a tree part (cone) impacting a person is rated as severe due to the potential for serious injury or death.
- The risk rating of the tree is moderate to high.
- The risk of upper crown trunk failure and branch failure are not detailed in this report (Assessment) but are likely low.

In a subsequent memo dated September 1, 2023, copy attached as Attachment 15, Mr. MacNair agreed that removal of the cones early in their development as part of regular maintenance would reduce the risk factor. .

At the request of the City, Mr. Frey was asked to provide a response to Mr. MacNairs subsequent memo above, which is provided as Attachment 16. The biggest takeaway is that the period of time used for the assessment affects the outcome. In this case, it seems Mr. MacNair's assessment considered a three-year term, which provided a higher risk factor. Mr. Frey conducted a similar assessment using a one-year term and determined the risk factor was low. The response also noted that tree risk assessment is a subjective process and slight variations in interpretations are not uncommon among arborists.

2. General Plan

The property is located in an area designated as Office on the General Plan Land Use Diagram, which is intended for administrative, financial, business, professional, medical, and public offices. While there are no specific policies relating to the removal of trees when the removal is not associated with proposed development, there is a clear emphasis on protecting Santa Rosa's mature trees.

3. Zoning

The property is zoned PD (Planned Development). The Policy Statement, attached, does not make any reference to tree removals.

The Zoning Code is not applicable; tree removal is governed by City Code Chapter 17-24 and is discussed in the Tree Ordinance section of this report (above).

4. Grounds for Appeal

The following grounds for appeal were provided by the appellant (see Attachment 2 for a detailed summary of each); a staff response for each has been provided:

- a. Serious known and documented risk to health and safety.

Staff Response: Falling branches and cones are a maintenance issue. Like most large trees, regular maintenance is necessary for the health and safety of the tree and its surroundings. Over the years, several arborists have evaluated the tree, including the three involved in the permitting process, all of which have provided similar preventative maintenance measures (refer to attachments 4, 5, 14, 15 and 16). As identified in the Arborist Report, prepared by Fred Frey, Vintage Tree Care, dated February 5, 2023, if the tree is maintained properly, including the removal of cones, reduction of limb growth, removal of fallen debris, and cabling of the co-dominant leaders at the top of the tree, the tree does not present a serious safety issue.

- b. The City is requiring the owner's unwanted continued exposure to premises liability.

Staff Response: As noted above, several arborists have evaluated the Tree, all of which have provided similar preventative maintenance measures to reduce the risk of falling branches and cones. With regular maintenance by the property owner, it has been determined that the Tree does not present a safety issue.

- c. The maintenance and mitigation efforts will not guarantee safety.

Staff Response: While safety cannot be guaranteed, as noted, by both the City's and appellant's arborist, regular maintenance would minimize risk from falling branches and cones.

- d. The costs to maintain the tree are unreasonable.

Staff Response: Property owners Citywide are required to maintain trees on private property at their own expense. Trees on City-owned properties, including Bunya Bunya trees in Railroad Square and Courthouse Square, are maintained by the City. Roots lifting sidewalks is a maintenance issue that occurs citywide when trees are located adjacent to sidewalks. It is the property owner's responsibility to maintain sidewalks when adjacent to private property.

- e. The City's policies in its Tree Ordinance can be met by a replacement tree.

Staff Response: If the requested Tree Removal Permit were to be approved, the applicant would be required to replace the tree. However, as noted in this report, both City staff and the Planning Commission found that the tree should not be removed for the following reasons:

- The Bunya Bunya tree is of significant size and maturity and provides great aesthetic benefit to all persons living in the vicinity.
 - The Bunya Bunya tree is one of a few existing mature specimens in Santa Rosa and that careless treatment and arbitrary removal of the tree would detract from the quality and attractiveness of the neighborhood.
 - Retaining the mature Bunya Bunya tree would be consistent with the City's Tree Ordinance in that protection of certain trees is essential to the maintenance of Santa Rosa's aesthetic value and heritage.
- f. The tree is not a heritage tree and is not on the approved street tree list.

Staff Response: While the Bunya Bunya tree is not included in the City's list of heritage trees ([City Code Section 17-24.020](#)), it is also not included in the list of exempt trees, see [City Code Section 17-24.030\(A\)\(5\)](#). Because the tree is not exempt from the Ordinance, a permit is required for removal.

The appellant also asserts that the tree is not included in the City's approved street tree list, and therefore would not be permitted in its current location. However, the Bunya Bunya tree is not a "street tree" as defined by the Tree Ordinance, and, as such, is not subject to the street tree list. [City Code Section 17-24.020](#) states "'street tree' means any tree having a single trunk circumference greater than six and one-quarter inches or a diameter greater than two inches, a height of more than six feet, and one half **or more of its trunk is within a public right-of-way or within five feet of the paved portion of a City street or a public sidewalk** (emphasis added)." As provided in the Arborist Report, dated February 5, 2023, prepared by Fredrick Frey, the tree is located approximately 10 feet from the public sidewalk, and approximately 15 feet from the public roadway.

- g. The City's action amounts to a taking.

Staff Response: Adoption, implementation, and enforcement of a land use regulation such as the City's Tree Ordinance constitutes a permissible exercise of the police power granted to the City under Article XI, Section 7 of the California Constitution and does not violate the takings clause of the Fifth Amendment of the US Constitution or comparable provisions of the California Constitution. As a general matter, land use regulations are upheld as constitutional where the regulations are rationally related to legitimate state concerns and do not deprive the owner of all economically viable uses of their property. The City's Tree Ordinance was properly

enacted to prohibit unnecessary damage, removal or destruction of trees which have been determined to be important to the health, safety and general welfare of all the City's citizens ([City Code Section 17-24.010](#)). There is no evidence that the Tree Ordinance has denied the appellant of economically viable use of their property, and, in any event, land use regulations do not constitute a taking simply where they narrow a property owner's options or limit a property owner's rights.

FISCAL IMPACT

Action on this request will not have an effect on the General Fund.

ENVIRONMENTAL IMPACT

The project has been reviewed in compliance with the California Environmental Quality Act (CEQA). Pursuant to CEQA Guidelines Section 15061(b)(3), the project is exempt from CEQA because it can be seen with certainty that there is no possibility that the City Council's action to deny the permit to remove the Bunya Bunya tree and preserve the status quo will have a significant effect on the environment.

NOTIFICATION

The item was noticed as a public hearing pursuant to the requirements of Chapter 20-66 of the City Code. Notification was provided by posting two onsite signs, publishing a notice in the Press Democrat, mailing a notice to surrounding property owners and occupants within 1,000 feet of the subject site, sending an electronic notice to parties that had expressed interest in projects taking place in this geographic area of Santa Rosa, and posting notices on bulletin boards at City Hall and on the City website. Pursuant to Government Code Section 65091, where necessary, the City has incorporated noticing procedures to the blind, aged, and disabled communities. These procedures include audio amplifier/assistive listening device support at public meetings, closed captioning, and optical character recognition conversion of electronic notices.

ATTACHMENTS

- Attachment 1: Disclosure Form
- Attachment 2: Appeal Application
- Attachment 3: 2023 Denial Letter & Tree Application
- Attachment 4: Arborist Report, prepared by Sandborn Tree Service, Inc., date-stamped received August 31, 2022, and correspondence.
- Attachment 5: Arborist Report, prepared by Vintage Tree Care, dated February 5, 2023, with photos
- Attachment 6: Tree Ordinance (City Code Chapter 17-24)
- Attachment 7: 2019 Denial Letter and related correspondence
- Attachment 8: 2008 Denial Letter
- Attachment 9: 1999 Council and Planning Commission minutes, resolutions,

and staff report

- Attachment 10: Policy Statement
 - Attachment 11: Location & Neighborhood Context Map
 - Attachment 12: Public Correspondence
 - Attachment 13: Request for more information
 - Attachment 14: Risk Assessment, dated August 24, 2023
 - Attachment 15: Bunya Pine Risk Response September 1, 2023
 - Attachment 16: Arborist Response (Frey, September 8, 2023)
 - Attachment 17: September 14, 2023 Planning Commission Minutes
 - Attachment 18: Planning Commission Resolution No PC-2023-021
 - Attachment 19: Public Correspondence
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- Resolution: Deny Appeal/Deny Tree Permit

PRESENTER

Susie Murray, Supervising Planner