

RESOLUTION NO. 21-69

Resolution Of The City Council Of The City Of Emeryville Finding That The Trees on the West Side of Horton Street From Sherwin Avenue to 46th Street (as Addressed in Conditions of Approval SW VTM 8357 III.A.3.b.i.k” , “FDP 17-002 IV.A.1.d” , and “FDP-17002IV.D.1” for the Sherwin Williams development) Are Nuisance Trees As Defined in Emeryville Municipal Code Section 7-10.03(h) and Directing the Public Works Director to Send Notice to Property Owner As Prescribed In Emeryville Municipal Code 7-10.07(a).

WHEREAS, on November 1, 2016 the Emeryville City Council approved a Planned Unit Development (PUD)/Preliminary Development Plan (PDP) (Ordinance No. 16-006) for LMC Emeryville I Investor LLC ("Applicant") to construct a mixed use project comprised of up to 500 multi-family residential units, a minimum of 2,000 square feet and a maximum of 8,000 square feet of ground floor retail/restaurant/office space, 74,000 square feet of office space, parking garages, open, space, infrastructure and landscaping on the former Sherwin Williams paint factory parcel and adjacent City-owned parcel bounded by Sherwin Avenue to the south, the Union Pacific Railroad tracks to the west, Horton Street to the east, and Temescal Creek to the north ("Project"); and

WHEREAS, the Planning Commission then approved a Tentative Map (SUBDIV17- 001) on May 25, 2017, a Final Development Plan (FDP) for Public Park and Open Space (FDP17-002) on December 14, 2017, and an FDP for four new buildings (FDP17- 001) on February 22, 2018 and the approved PUD/PDP plan set included a Landscape Plan that called for the retention of 11 existing street trees on the west side of Horton Street between Sherwin Avenue and the new 46th Street; and

WHEREAS, the developer subsequently applied for a PUD/PDP amendment for the Project to allow all of the street trees on the west side of Horton Street to be removed; and the City Council chose not to approve the PUD/PDP amendment as submitted, but instead approved an amendment that allowed for the removal of four trees on the west side of Horton Street; and

WHEREAS, an arborist's report prepared by arborist John Leffingwell of Hortscience/Bartlett Consulting concludes that preservation of the Japanese pagoda trees on the west side of Horton Street is not practical due to shallow roots, inadequate soil volume and construction activities that will cause irreparable damage to the trees, and that preservation of the trees would result in future sidewalk, curb and gutter displacement, new pedestrian and bicycle hazards, and an increased potential for whole tree failures; and

WHEREAS, the developer of the Project has indicated that there is an extremely high risk that future removal of trees after they have failed will destabilize the sides of the installed joint trenches which are filled with sand per PG&E requirements, causing trench or pipe failures;

WHEREAS, the Public Works Department has reviewed the developer's arborist report, consulted the City arborist, reviewed the improvement plans and CalOSHA trench safety

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Sherwin Williams Project; Horton Street Trees, EMC Title 7, Chapter 10

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guidelines and concurs with the recommendation to immediately remove the trees, now, therefore, be it

RESOLVED, by the City Council of the City of Emeryville that the trees on the west side of Horton Street from Sherwin Avenue to 46th Street (as Addressed in Conditions of Approval SW VTM 8357 III.A.3.b.i.k", "FDP 17-002 IV.A.1.d", and "FDP-17002IV.D.1" for the Sherwin Williams development) are determined to be "Nuisance Trees" as defined in Emeryville Municipal Code Section 7-10.03(h) and the Public Works Director is directed to send notice to the Property Owner as prescribed in Emeryville Municipal Code Section 7-10.07(a), including the replacement of five trees on Park Avenue as directed by the Public Works Department.

ADOPTED by the City Council of the City of Emeryville at a special meeting held Tuesday, June 15, 2021, by the following vote:

AYES:	<u>3</u>	<u>Mayor Martinez and Council Members Medina and Patz</u>
NOES:	<u>1</u>	<u>Vice Mayor Donahue</u>
ABSTAIN:	<u>0</u>	<u></u>
ABSENT:	<u>0</u>	<u></u>
RECUSED:	<u>1</u>	<u>Council Member Bauters</u>

DocuSigned by:

Dianne Martinez

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MAYOR

ATTEST:

DocuSigned by:

Sheri Hartz

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CITY CLERK

APPROVED AS TO FORM:

DocuSigned by:

Andrea Visveshwara

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INTERIM CITY ATTORNEY