

CITY OF SALEM
BEFORE THE HEARINGS OFFICER

AN APPEAL OF AN ENFORCEMENT ORDER)	
IN CASE NO 24-117042-CC IMPOSED UPON)	ENFORCEMENT ORDER
KATIE AND EDUARDO TREJO-ESTRADA)	NO. 24-117042-CC
FOR VIOLATION OF SRC 50.705, SRC 50.800,)	
AND SRC 50.805(a), NOXIOUS VEGETATION)	FINDINGS OF FACT.
CONSTITUTING A PUBLIC NUISANCE ON)	CONCLUSIONS OF LAW
PROPERTY LOCATED AT 4460 KALE ST. NE,)	AND DECISION
SALEM, OREGON)	

DATE AND PLACE OF HEARING

December 18, 2024, Salem City Council Chambers, 585 Liberty Street SE, Salem,
OR.

APPEARANCES AND EXHIBITS

For City:

Chris Russell, Code Enforcement Officer
Tom Bradly, Salem Arborist

Documents provided:
Exhibits A-C

For Appellant:

Katie Trejo-Estrada, Appellant

Documents provided:
Exhibits D-G

SUMMARY OF PROCEEDINGS

On December 18, 2024, the Salem Hearings Officer heard an appeal of enforcement order in Case No. 24-117042-CC for violations of SRC 50.705, SRC 50.800 and SRC 50.800(a). The appeal was filed by Katie and Eduardo Trejo-Estrada, hereinafter referred to as the "Appellants." The violations of the SRC were alleged to have occurred at 4460 Kale Street, NE, Salem, Oregon, hereinafter referred to as the "subject property."

At the hearing the Hearings Officer read the parties the prehearing notice required by SRC 20J.320. There were no questions from either party. The Hearings Officer informed the parties of the procedures for the hearing as set out in SRC 20J.330 and informed the parties that under SRC 20J.340, the burden of proof was on the City.

The witnesses for the parties were sworn in by the Hearings Officer. The parties provided opening statements, testimony, and evidence. All exhibits were entered into the record by the Hearings Officer, which included 3 exhibits introduced by the City. Included in the City's exhibits was an aerial photograph of the subject property and two-color photographs of the damaged tree taken on August 19, 2024. Also included with the exhibits were copies of applicable sections of the Salem Revised Code (SRC). The Appellants submitted a land use application (Permit 24 124764 00 PLMN) for the removal of a hazardous tree, an arborist report from Tim Jones, R & R Tree Service, Inc., an estimate from R & R Tree Service for the removal of the hazardous tree, and six undated, color photographs of the base of the tree.

FINDINGS OF FACT AND CONCLUSION

The following is a concise statement of the underlying facts:

1. Katie and Eduardo Trejo-Estrada, the Appellants, own the subject property, which is located within the corporate limits of the City of Salem. The subject property has an address of 4460 Kale Street, NE, Salem, Oregon.
2. On August 8, 2024, the City of Salem received a citizen complaint regarding a hazardous tree located on the subject property. On August 19, 2024, Enforcement Officer Chris Russell took a site view of the subject property and hazardous tree. From the right-of-way of Kale Street, Officer Russell observed a large Sequoia with browning at its top. The entire trunk of the tree was located on the subject property although its root system extended into the adjacent property. At this time Officer Russell took several photographs of the browned treetop. He subsequently sent a copy of these photos to Tom Bradly, a City of Salem arborist.
3. On August 21, 2024, Tom Bradly replied that the tree could be dangerous depending upon its root damage. At the hearing on this matter, Mr. Bradly opined that the browned top was potentially dangerous because of its susceptibility to fire and wind damage. He confirmed that he could not determine whether the tree would die unless he examined its root structure.
4. On August 22, 2024, Officer Russell sent the Appellants Enforcement Order No. 24-117042-CC for violations of SRC 50.705, noxious vegetation regarding the dead canopy of the tree; SRC 50.800, the prohibition of maintaining a public nuisance on private property; and SRC 50.805(a), a public nuisance that may become a detriment to the public health, welfare and safety.

5. The Enforcement Order was subsequently appealed by the Appellants.
6. At the public hearing, the Appellants presented evidence that suggested that the tree's poor health was likely caused by the over-pruning and the covering of its critical root zone with a fence and hard scape patio by the neighbor adjacent to the south.

The Appellants also presented evidence that they were attempting to comply with the enforcement order. In this regard, they had applied for a land use permit to remove the tree.¹ In addition, they had secured an arborist's report that stated that the tree hazard could not be alleviated by treatment or pruning and that recommended removal of the tree for safety reasons. Finally, the Appellants received an estimate for the cost of the tree removal and have scheduled its removal for late January of 2025.

SUBSTANCE OF THE APPEAL

In their appeal, the Appellants suggested they shouldn't have received an enforcement order because the poor health and hazardous condition of the tree was caused by their next-door neighbor.

DISCUSSION

The violations are addressed as follows:

SRC 50.705: Noxious vegetation prohibited.

SRC 50.705(a) states: "*No owner shall cause or permit noxious or rank vegetation upon premises or in the right-of-way of a street abutting any premises.*" "Noxious vegetation" is defined by SRC 50.025 to include "*dead vegetation*" and dangerous vegetation that is a health or fire hazard.

Testimony by the City's arborist and the independent arborist retained by the Appellants confirm that the tree suffers from about 30 percent dieback of its upper crown. Both arborists believe that the damaged crown is susceptible to fire and wind and that the tree must be removed because of safety concerns.

The trunk of the tree in question is wholly located on the subject property as is a majority of its critical root system. As owners of the subject property, the Appellants are therefore subject to the prohibitions of this Code provision.

SRC 50.805 Public Nuisances

¹ They were informed by Officer Russell that they didn't need a tree removal permit since they had received an enforcement order.

SRC 50.805 states that the following are specifically declared to be public nuisances ...

"(a) Any thing, condition, or act which is or may become a detriment or menace to the public health, welfare, and safety;"

Testimony by the City's arborist and the findings of R & R Tree Service's arborist support a finding that the dieback portion of the tree, by itself, is a safety hazard as it is vulnerable to wind and fire damage. The latter's analysis, which was based upon an assessment of the tree's critical root system, was that the tree was in such a state of poor health that prudence required that it be removed for safety concerns. Thus, the condition of the tree constituted a potential menace to public safety and therefore should be classified as a public nuisance.

SRC 50.800: Prohibited.

SRC 50.800 provides that *"No person shall cause, permit, or maintain a public nuisance on public or private property."* As defined by SRC 50.805(a), the tree, in its current condition, is a public nuisance located on private property. Thus, the enforcement order was properly issued on the basis that the tree constituted a prohibited public nuisance.

DECISION

Based upon the testimony and evidence presented, I find that Enforcement Order No. 24-117042-CC as it applies to the Appellants' violation of SRC 50.705, SRC 50.800 and SRC 80.805(a) is AFFIRMED and its appeal is DISMISSED.

Any party seeking to appeal this decision may do so by writ of review to the Circuit Court of Marion County, Oregon, as provided by ORS 34.010 – 34.100, and not otherwise.

Dated December 23, 2024.


Gary L. Darnielle, Hearings Officer