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November 5, 2019

Ms. Elise Lowe, Director, Development Services  
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Ms. Mara Elliott, City Attorney  
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**SUBJECT: Code violations and extreme tree damage at 6670 Montezuma Road**

Dear Ms. Lowe and Ms. Elliott:

About 100 trees have been illegally “topped” in the Ralphs grocery store parking lot, 6670 Montezuma Rd. San Diego, CA 92115 (see attached photos). This is in violation of City code and national arboriculture standards. The work was done by an unlicensed contractor who was working for the property management contractor, who is under contract with Kroger Corporation.

## **Code Violations**

City code requires that trees in permitted developments be maintained in healthy condition. Trees in parking lots are covered by the City’s code relating to land development, Chapter 14: General Regulations, Article 2: General Development Regulations, Division 4: Landscape Regulations, §142.0403 General Planting and Irrigation Requirements, (b) Plant Material Requirements

<https://docs.sandiego.gov/municode/MuniCodeChapter14/Ch14Art02Division04.pdf>

(6) Plant material shall be maintained in a healthy, disease-free, growing condition at all times.

(7) All pruning shall comply with the standards of the National Arborist Association. *[Note: standards are not set by the National Arborist Association, but by the Tree Care Industry Association-TCIA and the Accredited Standards Committee (ASC) A300.]*

(8) Any plant material required by this division that dies within 3 years of installation shall be replaced within 30 calendar days of plant death with the same size and species of plant material shown on the approved plan.

(9) Trees required by this division shall be self-supporting, woody plants with at least one well defined trunk and shall normally attain a mature height and spread of at least 15 feet.

Trees were pruned under power lines, along Mohawk and 67th Streets. This violates state law and San Diego Gas & Electric requires that only their contractors trim trees under power lines.

## Responsible Parties and Violations

Property owners have an obligation to hire licensed contractors who follow industry standards and Federal, state and local laws and codes. The topping of trees by an unlicensed contractor is illegal, unethical and unprofessional action by the Corporation, the local store, the property manager, and the (unlicensed) contractor.

The following information was gained from phone calls by Ms. Robin Rivet (ISA Certified Arborist) and online searches.

**Property owner.** Kroger Corporation is the property owner, with California offices at 1100 W. Artesia Boulevard, Compton, CA 90220. When Ms. Rivet called their office, she was referred to Ian Conger, as their property manager. Conger works for 1045, Inc, which provides a range of real estate-related services, including property management, <http://www.1045llc.com/>.

**Company doing the tree work.** When Ms. Rivet spoke with Mr. Conger on October 28, he gave MiguelH as the contact for the tree trimming, at Angel's Janitorial Services. That company is listed as a business in the California database, # C3344370, with status as "FTB-Franchise Tax Board suspended." This firm is not listed with California Landscape Contractors Association, <http://member-clca.org/max/4DCGI/directory/Contractor/index.html>. In an October 31, 2019 email message to Ms. Rivet, Angel's Janitorial Services admitted they were unaware of ISA Certified Arborists, licensing and code requirements.

**City of San Diego.** When City resident Troy Murphree submitted the report of 100 topped trees in the Get It Done system (Report 02783587) on November 2, the case was closed on November 4. When she inquired about the reason, it was given as, "Street Division does not regulate privately owned trees." The report needs to be forwarded to Development Services, as the topped trees violate City code, §142.0403 General Planting and Irrigation Requirements, requires that trees be maintained on the permitted property in healthy condition and that trees be replaced if they die.

The developer would have prepared landscape plans for this commercial site, and these plans were not located during a November 1, 2019 inquiry at the Archives Division of Development Services. There were no building permits or landscape plans, only some unrelated permits (electrical, plumbing, new business).

## Remedies

The advice of four local ISA Certified Arborists is that most of the trees be removed, and that trees be replanted, perhaps with a different mix of species more appropriate to that site. Any attempt to restore tree health will involve annual pruning for many years, to develop dominant leaders and restore tree structure. This is expensive, may be inadvisable in the parking lot setting, and would require the City to regularly inspect for compliance.

Once the trees are "topped," they will never return to the same tree health condition. Topping removes too much foliate, stimulates new growth that is prone to breakage, and leave large exposed wounds that can become infested by insects and decay organisms. Many trees die and other become unsafe due to dangerous limb breakage or whole tree failure years later. Limbs weakened by decay may be unable to handle the weight of rapid re-growth, leaving new branches susceptible to breakage and falling. The International Society of Arboriculture outlines key reasons, "Why topping hurts trees," <https://www.treesaregood.org/portals/0/docs/treecare/WhyToppingHurts.pdf>.

## Penalties

Administrative abatement and/or civil penalties could be imposed. To do less would be to sanction the illegal and unsafe tree topping that (too) many property owners and managers are doing. In addition to removing and replanting most trees, Kroger Corporation could be required to plant and provide watering and young tree care to 400 street or park trees in the surrounding neighborhood, or pay for trees planted on private residential property. Financial penalties need to be substantial and highly publicized, so that other property owners and managers do not risk future illegal tree work.

An administrative citation would be inappropriate for the extent and irreversibility of this illegal action. The property owner (Kroger Corporation) is accountable, even as they contracted with a property management company that represents itself as experienced and professional, who then knowingly hired an unlicensed contractor who violated codes and industry standards.

## Broader Issues

Throughout the City (and in all cities throughout the country), illegal tree maintenance goes undetected, unreported and unresolved. Penalties are not considered, imposed, or collected. The City has no code compliance officer with responsibilities and professional certifications for tree-related compliance.

The City's Climate Action Plan commits to increasing tree canopy. At the very least, the City is obligated to protect the existing tree canopy, and one of the most cost-effective investments is the assurance that trees that planted on developments are maintained professionally and provide the shade and other benefits approved in their permits.

Neighborhoods need more healthy trees in parking lots and other commercial areas, to provide shade for vehicles and shoppers, urban cooling instead of heat radiating from large asphalt areas, and carbon sequestration to reduce global climate change. San Diego's residents and visitors are counting on this.

## Closing

The City code, §142.0403 General Planting and Irrigation Requirements, requires trees on commercial properties to be maintained in healthy condition and that trees be replaced if they die. Please consider this letter to be a formal complaint of code violations, on the property owned by Kroger Corporation, at 6670 Montezuma Road.

Sincerely,



Anne S. Fege, Ph.D.

Chair, Community Forest Advisory Board, City of San Diego  
Executive Board, San Diego Regional Urban Forests Council

Retired Forest Supervisor, Cleveland National Forest  
Ph.D., College of Forestry, University of Minnesota  
M.F.S., School of Forestry and Environmental Studies, Yale University

cc: Councilwoman Georgette Gomez; Kris McFadden and Brian Widener, Transportation and Stormwater Department; Cody Hooven, Sustainability Department; Community Forest Advisory Board



Tree Damage, October 31, 2019  
Ralphs Grocery Store  
6670 Montezuma Road



October 31, 2019



October 31, 2019



October 2012  
Image from  
September 2018 is  
similar but less clear



