

## Removal of trees angers residents

By Mike Sprague, Staff Writer

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WHITTIER - A City Council decision in closed session last week to cut down three ficus trees has some residents in an uproar about the lack of notice and the loss of the trees.

The three 20- to 30-year-old fig trees in the 6200 block of Bright Avenue were cut down Thursday, two days after the council made its unanimous decision. But it was without the 10-day or even 30-day notice usually required, said Sabron Newton, who lives near the house where the trees, which were about 40 feet tall, once stood.

"A good deal of people are disgusted about that," Newton said. "It's spoiling the looks of a beautiful street. I thought they were supposed to post notices on trees giving the neighborhood a chance to present objections."

The council made its decision in response to a letter from Peter Lennihan, who had requested the trees in front of his house be cut down, saying they posed a danger to their 3-year-old son's health.

Lennihan said his son, Dylan, has a brain tumor and is now on chemotherapy making his immune system almost nonexistent.

His son has limited ability to walk and, as such, it's important to keep the area clean, he said.

"Our son has slipped and fallen in our driveway several times due to the countless figs that dropped from the trees," he stated in a letter to the city.

"We do not have a large yard for our son to play in," he stated. "The trees affect about 60 to 70 percent of the fenced-in area. This leaves our son without a safe place to play in the yard."

Lennihan also was supported by his son's doctor in a letter to the city.

"On several occasions I have noticed bruises from falls he has sustained while playing in his own yard and worry about such a young child putting the berries in his mouth and injuring himself more," said Dr. Willye Butcher Powell of Kaiser-Bellflower-Orchard Clinic in Downey.

Mayor Owen Newcomer said the council's unanimous decision was made in response to what the members saw as a unique situation.

"It was a hard decision," Newcomer said. "We were all sympathetic to said medical condition. It was very unusual. We don't see this as opening the floodgates."

Newcomer also defended the council's deliberating behind closed doors, saying there were legal ramifications. The item was only listed on the agenda as a potential litigation with no parties listed.

"Any time you're notified of a situation that could potentially put you in liability you have the potential for a lawsuit," Newcomer said on why it was discussed in closed session.

"Once we've been notified of a problem, if we don't take action and damages occur, we're liable," he said.

But Dorothea Boyd, a Whittier activist, said people should have been notified of the proposed cutting of trees.

"It's not fair to the public," Boyd said. "All of us feel our trees are in jeopardy."

"If we had known it was proposed, we would have said, 'Let's talk about it. Maybe there are other ways of handling it. We would have a say in it,'" she said.

There will be three new trees planted where the ficuses were felled, said Jim Kurkowski, director of parks.

Kurkowski said he is looking for up to five suitable varieties of replacement trees, including an orchid - purple or white, podocarpus or a purple or white trumpet.

He wasn't sure how soon they would be replanted.

[mike.sprague@sgvn.com](mailto:mike.sprague@sgvn.com) (562) 698-0955, Ext. 3022

## EDITORIAL

### Clear case for transparency

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TRANSPARENCY is a popular buzz word these days. Businesses promise it in the wake of corporate scandal; politicians vow to come clean. Weary people tired of being lied to repeatedly yearn for the truth.

Trust in 2008 seems predicated on clean sight lines focused on decisions that affect people's lives.

So when Broadway Street neighbors awoke last Thursday morning to the sounds of chain saws gnawing on three of the city's 40-foot ficus trees, they wondered what was happening.

Without warning, city crews were taking down fig trees that had adorned the street for between 20 and 30 years.

Two days prior the City Council met behind closed doors to discuss a letter sent by Peter and Tomoko Lennihan, by whose home the trees in question stood. The Lennihans' 3-year-old son, Dylan, is undergoing chemotherapy for a brain tumor and the family, with support from a doctor's note, asserted the trees' fallen figs were a health risk, covering a majority of the outdoor area where the tot could play.

"Our son has slipped and fallen in our driveway several times due to the countless figs that dropped from the trees," Lennihan's letter states.

"We are also greatly concerned that he will eat one or more of the rotting and fermenting figs in our yard ... he has a weakened immune system due to the chemotherapy. If he should eat those figs, his doctor believes he could become extremely sick."

Put on notice of the potential danger, our city fathers acted out of compassion for the boy. On a 5-0 vote, they rightly decided the trees must go.

We applaud the decision, but denounce the process.

If people in Whittier are anything, they're compassionate. If the council had explained the situation in an open forum, we'd bet neighbors on Broadway would be firing up their own chain saws on young Dylan's behalf.

But they didn't have enough faith in their own constituents, perhaps because they feared the wrath of environmentally minded residents or even a possible lawsuit over the decision.

The entire matter was cloaked in secrecy because of "potential litigation" in an "emergency situation."

Well, we submit that almost every decision the council makes could be so labeled. It seems to us it was an unreasonable use of the closed session provision of the Brown Act, which was established to ensure the public's business is done in public.

Lennihan's letter to the city received Jan. 10 makes no mention of possible litigation - a point of great interest to Jim Ewert, legal counsel for the California Newspaper Publishers Association.

"If they did not threaten litigation, then no way. It doesn't even meet the 'facts and circumstances' test required to go into closed session. It sounds like (the Lennihans) just made the city aware and made a plea like any constituent can do," Ewert said.

"How (the City Council) can take that and jump to anticipated litigation is way beyond me. They could use that exemption in the Brown Act to create and act on policy on any item because of the potential for litigation.

"Moreover, their interpretation of the exemption was far too broad and even potentially violates the state Constitution," Ewert said. "Specifically, Article 1, Section 3 which requires them to interpret any limitation on the public access to meetings and records to be done narrowly.

"This wasn't narrow."

Ewert called the council's actions "egregious."

And so do we.

"Maybe the outcome would have been the same, but the process they used to reach this decision was patronizing," he said.

So much for transparency, this time around.