

STAFF REPORT

DATE: May 1, 2018

RE: **Mallory Square-Sunset Celebration**

FROM: Karen DeMaria, City of Key West Urban Forestry Manager

In November 2017 a complaint was received regarding grease on and around a tree planter and the health status of the tree in the planter. Information received indicated that the grease was from the hot dog cart vendor who sets up during the Sunset Celebration at Mallory Square.

A subsequent investigation documented that a dead tree was located in a planter and grease was evident in and along the sides of the planter. The dead tree was a *Lignum vitae*, 2.8" diameter.

Additional research indicated that a Code case was initiated in March 2017 regarding the grease (copy of noticed attached). The Code case was closed in May 2017 after an inspection documented that the grease had been cleaned up.

The tree was a State listed endangered species tree that was owned by the City of Key West. *Lignum vitae* are on the City's protected tree list. It appears that the tree was killed by the placement of greasy, hot water in the root zone area. Hot greasy water tends to clog the soils and smother tree roots.



This and the next undated photo were submitted with the initial anonymous complaint.



Undated
photo
showing
grease.



November
2017 photo
showing dead
tree.



11/15/2017

Below is the sister tree to the lignum vitae that died.



Below are photos taken in February 2018 showing the tree gone and the hot dog vendor set up.



Recommendation: Recommend the hot dog vendor, Dave Sells, be required to purchase a replacement tree of the same size (2.8" diameter) for the City to plant, and/or require him to pay a fine.

Below are some prices and photos of lignum vitae trees taken from the web.



Above lignum vitae is a 7 gallon tree, <1" diameter. This tree had a price of \$125.



Lignum Vitae

The Lignum Vitae (Tree of Life) grow very slowly and are small in stature. It is a stunning tree which produces beautiful blue flowers, either solitary or in clusters. These flowers have five petals and usually measure just over a centimeter across. The capsules produced are a dull yellow that open to reveal a bright red fruit that add interest and color to the tree throughout the year. Very hard wood. The fruit attracts songbirds and this coastal small tree is well adapted to wind, salt and tough coastal conditions in nearly frost free locations.

Item

Availability: In Stock

[Local Delivery Available](#)

Quantity

- 1 +

\$175.00

[Add To Cart](#)

7 gallon
\$175.00

3 gallon
\$55

Recently Viewed



Lignum Vitae
Now \$55.00

Product Details

Customer Reviews

| | |
|------------------|-----------------------|
| Dimensions | 9-12 ft x 30-40 ft in |
| Genus | Gualacum |
| Size | 7 gallon |
| Cold Tolerance | Temp 30° to 35° F |
| Container Garden | Y |



This lignum vitae tree is close to the size of the tree that died. The price on this tree, field grown, was \$500.



THE CITY OF KEY WEST Code Compliance Division

P.O. BOX 1409
KEY WEST, FL 33041
(305) 809-3740

NOTICE OF CODE VIOLATION

DATE: March 26, 2017
RE: CASE NUMBER 17-00000378

CERTIFIED MAIL RECEIPT#: 7016 0600 0000 4259 5544

To: KWPM, LLC.
Jan J. Nelson (Registered Agent)
2601 S Roosevelt Blvd 113c
Key West, FL 33040

Subject Address: **Grease @**
Mallory Square
Key West, FL 33040

According to the records of The City of Key West, you are the current property owner/ representative or the business owner at the above-referenced property. You are hereby noticed that your property is in violation of the City of Key West Code of Ordinances for the following reason(s):

Count-1: Sec. 62-1. Deposits of oil, grease or other waste.

It shall be unlawful for any person to cause or allow to be caused any oil, grease or other waste matter to flow or otherwise be placed upon any right-of-way, street, alley, swale, public square or sidewalk within the city. Violations shall be punishable as provided in [section 7-15](#).

To wit: Responding to this complaint I conducted a site visit at the subject property on March 18, 2017. I observed and photographed the grease on the floor from the Hot Dog Cart of this business. I spoke with Dave and he stated he was going to clean it up within 3 days, I did a follow up inspection on March 25, 2017 and there is still grease on the floor as of this date.

Corrective action: Please clean up the grease.

Count-2: Sec.66-102. Dates due and delinquent; penalties.

(a) All licenses shall be sold by the city beginning August 1 of each year, are due and payable on or before September 30 of each year, and expire on September 30 of the succeeding year. If September 30 falls on a weekend or holiday, the tax is due and payable on or before the first working day following September 30. Licenses that are not renewed when due and payable are delinquent and subject to a delinquency penalty of ten percent for the month of October, plus an additional five percent penalty for each subsequent month of delinquency until paid. However, the total delinquency penalty may not exceed 25 percent of the business tax for the delinquent establishment.

28

(b) Any person who engages in or manages any business, occupation, or profession without first obtaining a local business tax receipt, if required, is subject to a penalty of 25 percent of the license due, in addition to any other penalty provided by law or ordinance.

(c) Any person who engages in any business, occupation, or profession covered by this article who does not pay the required business tax within 150 days after the initial notice of tax due and who does not obtain the required business tax receipt is subject to civil actions and penalties, including court costs, reasonable attorneys' fees, additional administrative costs incurred as a result of collection efforts, and a penalty of up to \$250.00.

To wit: The business license #16-00031946 has been delinquent since September 30, 2016.

Corrective action: Please contact the licensing department to renew the subject business license.

Florida Statutes Chapter 162 and Key West Code of Ordinances Article VI authorize code enforcement proceedings. **You have five (5) days after receipt of this notice to take corrective action on the above-described violation(s).** PLEASE CONTACT THE UNDERSIGNED CODE COMPLIANCE OFFICER so that we can assist you in achieving compliance and scheduling a re-inspection. **If corrective action is not taken within the specified 5 days, this matter will be referred to The Special Magistrate for an administrative non-criminal hearing concerning the alleged violation(s).**

The violation listed herein does not necessarily constitute all the violations that may exist with regard to this matter/property. Lack of enforcement proceedings at this time does not constitute a waiver of the right to any future notices of violations.

IF THE VIOLATION IS CORRECTED AND THEN RECURS OR IF THE VIOLATION IS NOT CORRECTED BY THE TIME SPECIFIED BY THE CODE OFFICER, THE CASE MIGHT BE PRESENTED TO THE SPECIAL MAGISTRATE EVEN IF THE VIOLATION HAS BEEN CORRECTED PRIOR TO THE HEARING DATE.

PER FLORIDA STATUTES SECTION 162.09, YOUR FAILURE TO CORRECT THE VIOLATION (S) MAY RESULT IN THE IMPOSITION OF A FINE OF UP TO \$250.00/DAY, AND \$500.00/DAY FOR A REPEAT VIOLATION. IF THE VIOLATION (S) IS IRREPARABLE OR IRREVERSIBLE, A FINE OF UP TO \$5000.00 MAY BE IMPOSED BY THE SPECIAL MAGISTRATE. FINES MAY BE IMPOSED ON A PER DAY/ PER VIOLATION BASIS.

FINES THAT ARE NOT PAID MAY BECOME LIENS UPON YOUR PROPERTY AND BE RECORDED IN THE PUBLIC RECORDS OF MONROE COUNTY.



Jorge Lopez
Code Compliance Officer

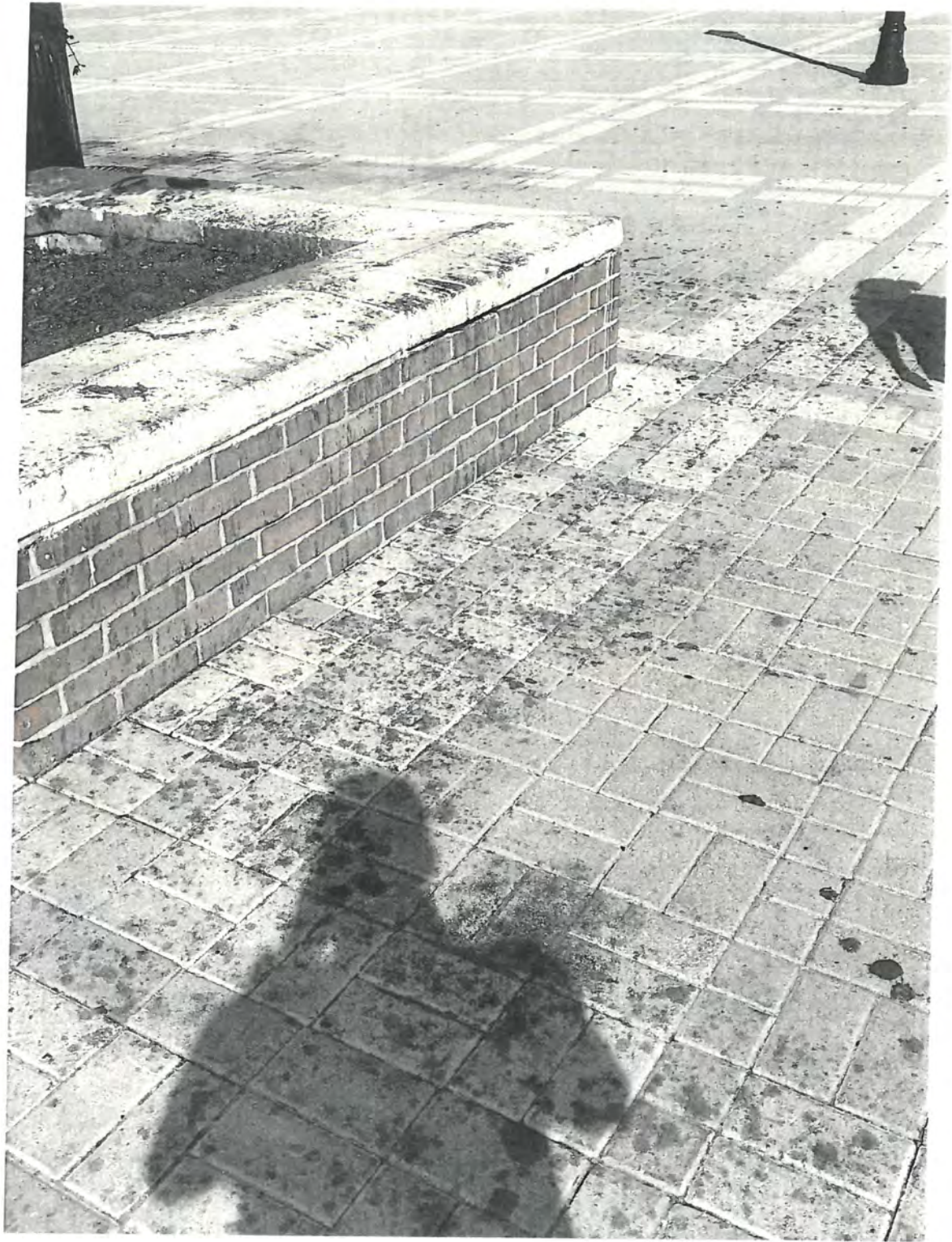
City of Key West

(305) 809-3735 Desk

jlopez@cityofkeywest-fl.gov

Working Schedule Wednesday-Sunday





Karen DeMaria

From: skschaal@gmail.com
Sent: Tuesday, December 12, 2017 11:19 PM
To: Karen DeMaria
Subject: RE: Mallory Square-Sunset Celebration Venders

I agree with your conclusion. Let me know what I can do to help. 305-923-4915
I'll look forward to hearing from you.
Susan

Sent from [Mail](#) for Windows 10

From: [Karen DeMaria](#)
Sent: Tuesday, December 12, 2017 4:15 PM
To: [skschaal@gmail.com](#); [Marilyn Wilbarger](#)
Cc: [Debbie Millett-Fowley](#)
Subject: RE: Mallory Square-Sunset Celebration Venders

From what I can tell, the grease being poured into that planter has killed the lignum vitae tree. Lignum vitae are endangered tree species and protected. This is tree abuse and a violation of City Ordinances.

Sincerely,

Karen

From: skschaal@gmail.com [mailto:skschaal@gmail.com]
Sent: Thursday, November 16, 2017 6:50 PM
To: Karen DeMaria <kdemaria@cityofkeywest-fl.gov>; Marilyn Wilbarger <mwilbarger@cityofkeywest-fl.gov>
Subject: RE: Mallory Square-Sunset Celebration Venders

Karen,
The vendors name is Dave Sells. I believe if you check with code enforcement you will find he was cited for improper disposal of cooking grease in that location.
I have had two conversations with him on this issue.
Susan

Sent from [Mail](#) for Windows 10

From: [Karen DeMaria](#)
Sent: Thursday, November 16, 2017 1:24 PM
To: [skschaal@gmail.com](#); [Marilyn Wilbarger](#)
Subject: RE: Mallory Square-Sunset Celebration Venders

There is definately a dead tree in a planter and it looks very suspicious. The tree was a lignum vitae tree, an endangered species tree. I did see evidence of grease in the planter.

Sincerely,

Karen

From: skschaal@gmail.com [<mailto:skschaal@gmail.com>]

Sent: Monday, November 13, 2017 9:53 PM

To: Karen DeMaria <kdemaria@cityofkeywest-fl.gov>; Marilyn Wilbarger <mwilbarger@cityofkeywest-fl.gov>

Subject: RE: Mallory Square-Sunset Celebration Venders

Hi Karen,

I am headed out of town for Wednesday and Thursday of this week but you are welcome to contact me on my cell phone. 305-923-4915. We are aware of the problem and I believe Code issued a citation about this vendor. I'll look forward to speaking with you.

Susan Schaal

Sent from [Mail](#) for Windows 10

From: [Karen DeMaria](#)

Sent: Monday, November 13, 2017 4:46 PM

To: [Marilyn Wilbarger](#)

Cc: [Susan Schaal \(skschaal@gmail.com\)](mailto:skschaal@gmail.com)

Subject: RE: Mallory Square-Sunset Celebration Venders

Great , thank you. I will be inspecting the area on Wednesday and will be able to talk to her about the situation at that time. Right now it's just a complaint but if valid, the tree will have to be replaced. Nothing should be poured onto the trees or any plants in the planters except clean water. Venders should be taking all their debris including liquid debris off sight with them or in proper authorized trash receptacles.

Sincerely,

Karen

From: Marilyn Wilbarger

Sent: Monday, November 13, 2017 4:37 PM

To: Karen DeMaria <kdemaria@cityofkeywest-fl.gov>

Cc: Susan Schaal (skschaal@gmail.com) <skschaal@gmail.com>

Subject: RE: Mallory Square-Sunset Celebration Venders

Please contact Susan Schaal, I have copied her above.

Marilyn D. Wilbarger, RPA,CCIM
City of Key West

(305) 809-3794

mwilbarger@cityofkeywest-fl.gov

From: Karen DeMaria

Sent: Monday, November 13, 2017 4:34 PM

To: Marilyn Wilbarger <mwilbarger@cityofkeywest-fl.gov>

Subject: Mallory Square-Sunset Celebration Venders

Marilyn:

I have a complaint that a food vender from the Sunset Celebration is pouring grease in the tree planters and has killed one of our trees. Who do I talk to about having the tree replaced if my investigation turns out to be true? Who watches over this group?

Sincerely,

Karen

Karen DeMaria
Urban Forestry Manager/Tree Commission
Certified Arborist
305-809-3768