



OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

REPORT NO. R 0 6 - 0 0 4 2
FEB 0 8 2006

REPORT RE:

**DRAFT ORDINANCE AMENDING VARIOUS PROVISIONS OF ARTICLES 2 AND 7
OF CHAPTER I AND ARTICLE 6 OF CHAPTER IV OF THE LOS ANGELES
MUNICIPAL CODE AND SECTION 96.303.5 TO ASSURE THE PROTECTION OF,
AND TO FURTHER REGULATE THE REMOVAL OF PROTECTED TREES**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Council File Nos.: 03-1459 and 03-1459-S1

Honorable Members:

This Office has prepared and now transmits for your action the attached draft ordinance, approved as to form and legality. This draft ordinance revises the provisions of the Los Angeles Municipal Code to provide for additional protections of certain native trees.

Background

On July 8, 2003, the Council adopted a motion which instructed the Departments of Public Works, Planning and Environmental Affairs to "work with the City Attorney's office to investigate appropriate revisions to the City's Oak Tree ordinances to enable City Arborists to preserve native species that share common ecosystems while maintaining a more diverse species base." The motion was referred to the Council's Planning and Land Use Management Committee for further action. Moreover, on September 19, 2003, the Council adopted a motion directing the Public Works and Building and Safety Departments with the assistance of the Office of the City Attorney to report to the Council's Planning and Land Use Committee on possible revisions to the Oak Tree Protection Ordinance that might include withholding of development permits for periods of time. On May 10, 2004, the Council's Planning and Land Use

Management Committee (PLUM) met to consider various modifications to existing ordinances as directed by these motions. Both matters were continued for additional modifications by staff. PLUM met on October 3, 2005, to consider additional modifications to the draft ordinance. The matter was then referred to the City's Planning Commission, which met on this matter in December 18, 2005, and January 13, 2006. The Commission issued a report to the City Council on January 18, 2006, seeking additional clarifications. There are two items in the Planning Commission's action that are not included in this ordinance. The first relates to a procedural matter of the Department of Building and Safety. Inasmuch as that can be handled by the Department and does not need ordinance authority, we have not included that in the ordinance. The second issue regards a fee to ensure maintenance of relocated or replaced protected trees. This matter is still the subject of discussion with the departments. In order to bring this ordinance forward for Council action as soon as possible, we bring you the attached draft. If, with further discussion, the remainder of the issues needs to be addressed by ordinance, we will transmit another draft ordinance to you.

Summary of Ordinance Provisions

The new ordinance expands the number of species protected from one to four. It eliminates the minimal lot size provision for effected parcels. The ordinance decreases the size of protected trees from eight to four inches in diameter and includes multitrunk trees by measuring "cumulative diameter." It allows for the non-issuance or revocation of building permits for up to ten years on parcels where a protected tree has been removed or destroyed. The ordinance more narrowly defines who may be considered a tree expert under the Municipal Code. Lastly, it requires the City's Advisory Agency to consult with the City's Chief Forester before making determinations that relate to protected trees.

Council Rule 38 Referral

A copy of the draft ordinance was sent twice, pursuant to Council Rule 38, to the Departments of Building and Safety, Environmental Affairs, Planning and Public Works. Their comments have been incorporated into the language of the current draft ordinance.

California Environmental Quality Act (CEQA)

This ordinance is exempt from the requirements of CEQA under the general exemption found in the City CEQA Guidelines Article 2, Section 1 because there is no possibility of it having a significant adverse effect on the environment. Consequently,

The Honorable City Council
of the City of Los Angeles
Page 3

should the Council approve the ordinance it should also find that it is exempt from CEQA pursuant to the City Guidelines.

If you have any questions, please contact Deputy City Attorney Keith Pritsker at (213) 978-8141. Either he or another member of this Office will be available when you consider this matter to answer any questions that you may have.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By *Claudia Culling*
CLAUDIA CULLING
Senior Assistant City Attorney

CC:KP:fa (#105209)

ORDINANCE NO. _____

An ordinance amending various provisions of Articles 2 and 7 of Chapter I and Article 6 of Chapter IV and Section 96.303.5 of the Los Angeles Municipal Code to assure the protection of, and to further regulate the removal of, protected trees

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Subdivision 12 of Subsection A of Section 12.21 of the Los Angeles Municipal Code is amended to read:

12. Protected Tree Relocation and Replacement. All existing protected trees and relocation and replacement trees specified by the Advisory Agency in accordance with Sections 17.02, 17.05, 17.06, 17.51 and 17.52 of this Code shall be indicated on a plot plan attached to the building permit issued pursuant to this Code. In addition, the trees shall be identified and described by map and documentation as required by the Advisory Agency. A Certificate of Occupancy may be issued by the Department of Building and Safety, provided the owner of the property or authorized person representing the owner of the property (licensed contractor) obtains from the Advisory Agency in consultation with the City's Chief Forester, prior to the final inspection for the construction, a written or electronic document certifying that all the conditions set forth by the Advisory Agency relative to protected trees have been met.

Sec. 2. Section 17.02 of the Los Angeles Municipal Code is amended by deleting the paragraph defining "Oak Tree" in Section 17.02 and adding the following paragraph to read:

Protected Tree - Any of the following Southern California native tree species, which measures four inches or more in cumulative diameter, four and one-half feet above the ground level at the base of the tree:

(a) Oak tree including Valley Oak (*Quercus lobata*) and California Live Oak (*Quercus agrifolia*), or any other tree of the oak genus indigenous to California but excluding the Scrub Oak (*Quercus dumosa*).

(b) Southern California Black Walnut (*Juglans californica* var. *californica*)

(c) Western Sycamore (*Platanus racemosa*)

(d) California Bay (*Umbellularia californica*)

This definition shall not include any tree grown or held for sale by a licensed nursery, or trees planted or grown as a part of a tree planting program.

Sec. 3. The term "Tree Expert" set forth in Section 17.02 of the Los Angeles Municipal Code is amended to read:

Tree Expert - A person with at least four years of experience in the business of transplanting, moving, caring for and maintaining trees and who is (a) a certified arborist with the International Society of Arboriculture and who holds a valid California license as an agricultural pest control advisor or (b) a landscape architect or (c) a registered consulting arborist with the American Society of Consulting Arborists.

Sec. 4. Subdivision 7 of Subsection H of Section 17.05 of the Los Angeles Municipal Code is amended to read:

7. Where the Advisory Agency finds the project is consistent with the dwelling unit density permitted by the General Plan, and that the public health, safety or welfare and good subdivision design will be promoted by the preservation of protected trees, the Advisory Agency may permit the required area of one or more of the lots in a subdivision in an "RA," "RE," "RS" or "R1" Zone to be reduced by an amount sufficient to provide for protected tree preservation in accordance with Section 17.05 R of this Code. Provided, however, that in no event shall the reduction exceed 50 percent of the required lot area; no "RA" or "RE" lot shall be reduced below 50 feet in width; no "RS" or "R1" lot shall be reduced below 40 feet in width; and no lot in a designated "K" Horsekeeping District shall be reduced below 17,500 square feet.

Sec. 5. Subsection R of Section 17.05 of the Los Angeles Municipal Code is amended to read:

R. Protected Tree Regulations. No protected tree may be relocated or removed except as provided in this article or Article 6 of Chapter IV of this Code. The term "removed" or "removal" shall include any act that will cause a protected tree to die, including but not limited to acts that inflict damage upon the root system or other parts of the tree by fire, application of toxic substances, operation of equipment or machinery, or by changing the natural grade of land by excavation or filling the drip line area around the trunk.

1. Required Determinations. Subject to historical preservation requirements set forth in Subdivision 3 of this subsection, when a protected tree exists within a proposed subdivision, the tree may be relocated or removed if the Advisory Agency, in consultation with the City's Chief Forester, determines the existence of either (a) or (b) below:

(a) There has been prior applicable government action in which:

(i) The removal of the tree had been approved by the Advisory Agency; or

(ii) The property upon which the protected tree is located has been the subject of a determination by the City Planning Commission, the City Council, a Zoning Administrator, or an Area Planning Commission, the appeal period established by this Code with respect to the determination has expired, the determination is still in effect, and pursuant to the

determination, the protected tree's removal would be permissible; or

(iii) A building permit has been issued for the property upon which the protected tree is located, the permit is still in effect, and the removal or relocation is not prohibited by the permit.

(b) The removal of the protected tree would not result in an undesirable, irreversible soil erosion through diversion or increased flow of surface waters that cannot be mitigated to the satisfaction of the City's Chief Forester, and the physical condition or location of the tree is such that:

(i) Its continued presence in its existing location prevents the reasonable development of the property; or

(ii) According to a report required pursuant to Section 17.06 C, acceptable to the Advisory Agency and prepared by a tree expert, there is a substantial decline from a condition of normal health and vigor of the tree, and its restoration through appropriate and economically reasonable preservation procedures and practices is not advisable; or

(iii) It is in danger of falling due to an existing and irreversible condition.

(iv) Its continued presence at its existing location interferes with proposed utility services or roadways within or without the subject property, and the only reasonable alternative to the interference is the removal of the tree; or

(v) It has no apparent aesthetic value, which will contribute to the appearance and design of the proposed subdivision; or it is not located with reference to other trees or monuments in such a way as to acquire a distinctive significance at the location.

2. Supplemental Authority. In the event the Advisory Agency, in consultation with the City's Chief Forester, determines pursuant to Subdivision 1(b) above, that a protected tree may be removed or relocated, the Advisory Agency may:

(a) Require relocation elsewhere on the same property where a protected tree has been approved for removal, and where the relocation is economically reasonable and favorable to the survival of the tree. Relocation to a site other than upon the same property may be permitted where there is no available or appropriate location on the property and the owner of the proposed off-site relocation site consents to the placement of a tree. In the event of relocation, the Advisory Agency may designate measures to be taken to mitigate adverse effects on the tree.

(b) Permit protected trees of a lesser size, or trees of a different species, to be planted as replacement trees for protected trees permitted by this Code to be removed or relocated, if replacement trees required pursuant to this Code are not available. In that event, the Advisory Agency may require a greater number of replacement trees.

3. Historical Monuments. The Advisory Agency, except as to Subdivision 1(b)(iii) above, shall require retention of a protected tree at its existing location, if the tree is officially designated as an Historical Monument or as part of an Historic Preservation Overlay Zone.

4. Requirements. In the event the Advisory Agency, in consultation with the City's Chief Forester, determines pursuant to Subdivision 1(b) above that a protected tree may be removed or relocated, the Advisory Agency shall require that:

(a) The protected tree be replaced within the property by at least two trees of a protected variety included within the definition set forth in Section 17.02 of this article, except where the protected tree is relocated pursuant to Subdivision 2(a) above. The size of each replacement tree shall be a 15-gallon, or larger, specimen, measuring one inch or more in diameter at a point one foot above the base, and not less than seven feet in height, measured from the base. The size and number of replacement trees shall approximate the value of the tree to be replaced.

(b) The subdivider record those covenants and agreements approved by the Advisory Agency necessary to assure compliance with conditions imposed by the Advisory Agency and to assure protected tree preservation.

(c) The subdivider provide protected tree maintenance information to purchasers of lots within the proposed subdivision.

(d) The subdivider post a bond or other assurance acceptable to the City Engineer to guarantee the survival of trees required to be replaced or permitted or required to be relocated, in a manner to assure the existence of continuously living trees at the approved replacement or relocation site for three years from the date that the trees are replaced or relocated. The City Engineer shall use the provisions of Section 17.08 G as its procedural guide in satisfaction of the bond requirements and processing. Any bond required shall be in a sum estimated by the City Engineer to be equal to the dollar value of the replacement tree or of the tree that is to be relocated. In determining value for these purposes, the City Engineer shall consult with the Advisory Agency, the City's Chief Forester, the evaluation of trees guidelines approved and adopted for professional plantmen by the International Society of Arboriculture, the American Society of Consulting Arborists, the National Arborists Association and the American Association of Nurserymen, and other available, local information or guidelines.

5. Grading. The Advisory Agency is authorized to prohibit grading or other construction activity within the drip line of a protected tree.

Sec. 6. Subdivision 13 of Subsection B of Section 17.06 of the Los Angeles Municipal Code is amended to read:

13. The approximate location and general description of any large or historically significant trees and of any protected trees and an indication as to the proposed retention or destruction of the trees.

Sec. 7. Subsection C of Section 17.06 of the Los Angeles Municipal Code is amended to read:

C. Protected Tree Reports for Tentative Tract Maps. No application for a tentative tract map approval for a subdivision where a protected tree is located shall be considered complete unless it includes a report, in a form acceptable to the Advisory Agency and the City's Chief Forester, which pertains to preserving the tree and evaluates the subdivider's proposals for the preservation, removal, replacement or relocation of the tree. The report shall be prepared by a tree expert and shall include all protected trees identified pursuant to Section 17.06 B 13 of this Code.

In the event the subdivider proposes any grading, land movement, or other activity within the drip line of a protected tree referred to in the report, or proposes to relocate or remove any protected tree, the report shall also evaluate any mitigation measures proposed by the subdivider and their anticipated effectiveness in preserving the tree.

Sec. 8. Subsection D of Section 17.51 of the Los Angeles Municipal Code is amended to read:

D. Protected Tree Reports for Parcel Maps. No application for a preliminary parcel map approval for a parcel where a protected tree is located shall be considered complete unless it includes a report pertaining to preserving the tree. The report shall be prepared by a tree expert and shall evaluate the subdivider's proposals for protected tree preservation, removal, replacement and/or relocation. In the event the subdivider proposes any grading, land movement, or other activity within the drip line of any protected tree referred to in the report, or proposes to relocate or remove any tree, the report shall also evaluate any mitigation measures proposed by the subdivider and the anticipated effectiveness in preserving the tree.

Sec. 9. Subsection I of Section 17.52 of the Los Angeles Municipal Code is amended to read:

I. When a protected tree exists on a proposed parcel, the preservation of the tree at its existing location, its relocation for preservation purposes, or the removal of the tree shall be regulated in the same manner as that provided under subdivision

regulations set forth in this chapter.

Sec. 10. Article 6 of Chapter IV of the Los Angeles Municipal Code is amended by amending the title and Section 46.00 to read:

ARTICLE 6

PRESERVATION OF PROTECTED TREES

SEC. 46.00. PROTECTED TREE REGULATIONS.

No protected tree may be relocated or removed except as provided in Article 7 of Chapter 1 or this article. The term "removed" or "removal" shall include any act that will cause a protected tree to die, including but not limited to acts that inflict damage upon the root system or other part of the tree by fire, application of toxic substances, operation of equipment or machinery, or by changing the natural grade of land by excavation or filling the drip line area around the trunk.

Sec. 11. Section 46.01 of the Los Angeles Municipal Code is amended to read:

SEC. 46.01. DEFINITION.

"PROTECTED TREE" means any of the following Southern California native tree species which measures four inches or more in cumulative diameter, four and one-half feet above the ground level at the base of the tree:

- (a) Oak tree including Valley Oak (*Quercus lobata*) and California Live Oak (*Quercus agrifolia*), or any other tree of the oak genus indigenous to California but excluding the Scrub Oak (*Quercus dumosa*).
- (b) Southern California Black Walnut (*Juglans californica* var. *californica*)
- (c) Western Sycamore (*Platanus racemosa*)
- (d) California Bay (*Umbellularia californica*)

This definition shall not include any tree grown or held for sale by a licensed nursery, or trees planted or grown as a part of a tree planting program.

Sec. 12. Section 46.02 of the Los Angeles Municipal Code is amended to read:

SEC. 46.02. REQUIREMENTS FOR PUBLIC WORKS PERMITS TO RELOCATE OR REMOVE PROTECTED TREES.

No person shall relocate or remove any protected tree, as that term is defined in Section 46.01, where the protected tree is not regulated pursuant to Article 7 of Chapter I of this Code, without first having applied for and obtained a permit from the Board of

Public Works or its designated officer or employee, except as otherwise provided in this section.

An application for a permit shall indicate, in a manner acceptable to the Board of Public Works, by number on a plot plan, the location of each protected tree, and shall identify each protected tree proposed to be retained, relocated or removed. If any grading is proposed that may affect the protected tree, a copy of the grading permit plan in compliance with Division 70 of Article 1 of Chapter IX of this Code shall be submitted with the application.

(a) Exemptions. The Board of Public Works shall exempt from and not require issuance of a permit for the relocation or removal of a protected tree where the Board is satisfied that:

1. The proposed relocation or removal of the protected tree has been approved by the Advisory Agency pursuant to Article 7 of Chapter I of this Code; or

2. The land upon which the protected tree is located has been the subject of a determination by the City Planning Commission, the City Council, a Zoning Administrator or an Area Planning Commission, the appeal period established by this Code with respect to the determination has expired, the determination is still in effect, and pursuant to the determination the protected tree's removal would be permissible; or

3. A building permit has been issued for any property and is still in effect with respect to the property under consideration and its implementation would necessitate the removal or relocation.

(b) Board Authority. The Board of Public Works may grant a permit for the relocation or removal of a protected tree, unless otherwise provided in this section or unless the tree is officially designated as an Historical Monument or as part of an Historic Preservation Overlay Zone, if the Board determines that the removal of the protected tree will not result in an undesirable, irreversible soil erosion through diversion or increased flow of surface waters, which cannot be mitigated to the satisfaction of the City; and

1. It is necessary to remove the protected tree because its continued existence at the location prevents the reasonable development of the subject property; or

2. The protected tree shows a substantial decline from a condition of normal health and vigor, and restoration, through appropriate and economically reasonable preservation procedures and practices, is not advisable; or

3. Because of an existing and irreversible adverse condition of the

protected tree, the tree is in danger of falling, notwithstanding the tree having been designated an Historical Monument or as part of an Historic Preservation Overlay Zone.

(c) Additional Authority. The Board of Public Works or its authorized officer or employee may:

1. Require as a condition of a grant of permit for the relocation or removal of a protected tree, that the permittee replace the tree within the same property boundaries by at least two trees of a protected variety included within the definition set forth in Section 46.01 of this Code, in a manner acceptable to the Board. In size, each replacement tree shall be at least a 15-gallon, or larger, specimen, measuring one inch or more in diameter one foot above the base, and be not less than seven feet in height measured from the base. The size and number of replacement trees shall approximate the value of the tree to be replaced.

2. Permit protected trees of a lesser size or trees of a different species to be planted as replacement trees, if replacement trees of the size and species otherwise required pursuant to this Code are not available. In that event, a greater number of replacement trees may be required.

3. Permit a protected tree to be moved to another location on the property, provided that the environmental conditions of the new location are favorable to the survival of the tree and there is a reasonable probability that the tree will survive.

Sec. 13. Section 46.04 of the Los Angeles Municipal Code is amended to read:

SEC. 46.04. FEES.

A fee shall be charged for issuance of any permit pursuant to this article, which permits the removal of one or more protected trees. The fee shall be determined and adopted in the same manner as provided in Section 12.37 I 1 of the Los Angeles Municipal Code for establishing fees.

Sec. 14. A new Section 46.06 is added to the Los Angeles Municipal Code to read:

SEC. 46.06. WITHHOLDING OR REVOCATION OF BUILDING PERMITS FOR ILLEGAL REMOVAL OR RELOCATION OF PROTECTED TREES.

(a) The Bureau of Street Services, after notice and hearing pursuant to Subsections (b) and (c) of this section, shall have the authority to request the Superintendent of Building to withhold issuance of building permits, except for permits that are necessary to comply with a Department of Building and Safety order, for a period of time up to a maximum of ten years as requested by the Bureau and to revoke

any building permit issued for which construction has not commenced with respect to any property on which any protected tree has been removed or relocated in violation of Section 46.00 of this Code.

The request shall be made in writing by the Director of the Bureau of Street Services or his/her designee and shall specifically state the start date and end date of the period of time the Bureau, or the Board of Public Works on appeal, have deemed necessary pursuant to Subsection (c) of this section. The period shall commence on the date the Bureau first becomes aware of the removal of the tree. Provided, however, the authority of the Bureau to act shall not apply to a purchaser, or to his or her agent, who in good faith and for valuable consideration has acquired title to the property subsequent to the illegal removal or relocation of any protected trees and prior to the recordation of the notice of intent as provided for in Subsection (b) of this section.

(b) The Bureau shall notify the applicant or permittee in writing of its intent to act pursuant to this section. The notice shall state that the applicant or permittee may submit any evidence it deems relevant on this matter, the hearing to be held on a date specified in the notice. A copy of the notice shall also be mailed to the owner of the property, if different from the applicant or permittee, as shown on the last equalized assessment roll, and to any person holding a deed of trust, mortgage or other security interest in the property as revealed by a title search with respect to the property. A copy of the notice shall also be recorded by the Bureau with the County Recorder.

(c) The Bureau hearing shall be set on a date no earlier than 20 days after the date of the mailing of the notice provided for in Subsection (b) above. At the hearing, if the facts indicate, the Bureau shall make a finding that the applicant or permittee is not a purchaser in good faith and for valuable consideration who acquired title to the property subsequent to the illegal removal or relocation of the protected tree and prior to the recordation of the notice of intent as provided for in Subsection (b) above. In the event the Bureau finds that a protected tree was removed or relocated in violation of Section 46.00 of this Code, it shall specify to the Superintendent of Building the length of time the issuance of building permits shall be withheld and whether building permits for which construction has not commenced shall be revoked. In making its determination, the Bureau shall consider the following factors: the number of trees removed or relocated, the size and age of the trees removed or relocated, the knowledge and intent of the owners of the property with respect to the removal or relocation and prior violations of law with respect to removal or relocation of protected trees. The applicant or permittee shall be notified in writing of the Bureau's determination within 30 days of the hearing.

(d) The applicant or permittee may appeal to the Board of Public Works any determination by the Bureau to request the Superintendent of Building to revoke or withhold issuance of building permits, including the length of time imposed. The appeal must be filed with the Board of Public Works within 30 days of the date of mailing of the notice of determination as provided for in Subsection (c) above. Further, any action by the Department of Building and Safety resulting from any of the provisions of this section, including building permit revocation, shall not be appealable to the Board of

Building and Safety Commissioners.

(e) Any final determination of the Bureau or the Board of Public Works on appeal, to request the Superintendent of Building to withhold issuance of building permits or to revoke a building permit, shall be forwarded to the Superintendent within ten days of the Bureau or Board's determination and shall also be set forth in an affidavit, which shall be recorded by the Bureau with the County Recorder within ten days of the Bureau or Board's determination.

Sec. 15. Subsection 5. of Section 96.303 of the Los Angeles Municipal Code is amended to read:

5. The owner must also provide a declaration under penalty of perjury that he or she has inspected the property for the existence of protected trees and the number of protected trees, if any, located on the subject property. For the purposes of this section, the definition of "protected tree" set forth in Section 46.01 this Code shall apply. The declaration shall also authorize the Bureau of Street Services within the Department of Public Works to verify this information by entry upon the subject property. A fee may be collected for any inspection required to verify the declaration. The fee shall be determined and adopted in the same manner as provided in Section 12.37 | 1 of this Code for establishing fees.

Sec. 16. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

FRANK T. MARTINEZ, City Clerk

By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By Keith W. Pritsker
KEITH W. PRITSKER
Deputy City Attorney

Date: Feb. 8, 2006

Pursuant to Charter Section 559, I approve this ordinance on behalf of the City Planning Commission and recommend it be adopted

EB.S, 2006

see attached report.

Mark Winogrand
Mark Winogrand
Interim Director of Planning

File Nos. 03-1459 and 03-1459-S1