



OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

REPORT NO. R 0 5 - 0 2 8 8

AUG 1 6 2005

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 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 which might include withholding of development permits for periods of time. On May 10, 2004, the Council's Planning and Land Use Committee (PLUM) met to consider various modifications to existing ordinances as directed by these motions. Both matters were continued for additional modifications by staff.



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 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 early comments were incorporated into the language of the current draft ordinance. They have been asked by this office's most recent letter to make their comments directly to the Council's Planning and Land Use Committee.

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


DAVID MICHAELSON
Chief Assistant City Attorney

DM:KP (#105209)

Enclosure

ORDINANCE NO. _____

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

Section 1. Subsection 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:

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*)

nursery, or trees planted or grown as a part of a tree planting program.

Sec. 3. Section 17.02 of the Los Angeles Municipal Code is amended by replacing the paragraph defining "Tree Expert" in Section 17.02 with the following paragraph:

Tree Expert - A person with at least four years 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 such a 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 Article 7 of Chapter I or Article 6 of Chapter IV of this Code. The term "removed" or "removal" shall include any act which will cause a protected tree to die, including but not limited to acts which 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 herein at Subdivision 3 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:

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

(i) The removal of the tree had been approved by the Advisory Agency prior to the effective date of the ordinance that amends this subsection of the Code; or

(ii) The property upon which the protected tree is located has been the subject of a determination by the City Planning Commission, the Area Planning Commission, the City Council, a Zoning Administrator, or the Appeal Board prior to the effective date of the ordinance that amends this subsection of the Code, the appeal period established by this Code with respect to said determination has expired, the determination is still in effect, and pursuant thereto the oak tree's removal would be permissible; or

(iii) A building permit has been issued prior to the effective date of this subsection of the Code, for the property upon which the protected tree is located, the permit is still in effect, and such removal or relocation is not prohibited thereby.

(b) The removal of the protected tree would 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'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.

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 said 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 thereon. 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 such event, the Advisory Agency may require a greater number of replacement trees.

3. **Historical Monuments.** The Advisory Agency, except as to Subsection R1(b)(iii) above, shall require retention of a protected tree at its existing location, if said 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 said property by at least two trees of a protected variety included within the definition set forth in Section 17.02 of this Code, except where the protected tree is relocated pursuant to Section 17.05-R2(a). Each replacement tree shall be a 15-gallon, or larger, specimen in size, 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 such a fashion as to assure the existence of continuously living trees at the approved replacement or relocation site for three years from the date that such trees are replaced or relocated. The City Engineer shall use the provisions of Section 17.08-G as its procedural guide in satisfaction of said 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 which 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 plantsmen 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 such 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 wherein 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 thereof. 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 such tree, the report shall also evaluate any mitigation measures proposed by the subdivider and their anticipated effectiveness in preserving such tree.

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

D. Protected Tree Reports for Parcel Maps. No application for a preliminary parcel map approval for a parcel wherein a protected tree is located shall be considered complete unless it includes a report pertaining to preserving said 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 such tree, the report shall also evaluate any mitigation measures proposed by the subdivider and the anticipated effectiveness thereof in preserving such tree.

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

I. When a protected tree exists on a proposed parcel, the preservation thereof at its existing location, its relocation for preservation purposes, or the removal of said 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 hereby 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 Article 6 of Chapter IV of this Code. The term "removed" or "removal" shall include any act which will cause a protected tree to die, including but not limited to acts which 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:

1. 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*).
2. Southern California Black Walnut (*Juglans californica* var. *californica*)
3. Western Sycamore (*Platanus racemosa*)

4. 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 said 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 herein.

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 which may affect such a 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 said 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 has been approved by the Advisory Agency prior to the effective date of the ordinance that amends this Code Section; 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 prior to the effective date of the ordinance that amends this Code Section, the appeal period established by this Code with respect to said determination has expired, the determination is still in effect, and pursuant thereto the protected tree's removal would be permissible; or

3. A building permit has been issued for any property prior to the effective date of the ordinance that amends this Code Section and is still in effect with respect to the property under consideration and its implementation would necessitate such 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 herein or unless said tree is officially designated as an Historical Monument or as part of an Historic Preservation Overlay Zone, if said 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 said 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 said 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 said 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. Each replacement tree shall be at least a 15-gallon, or larger, specimen in size, 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 such 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 said 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 hereby 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 fees herein 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. NON-ISSUANCE OR REVOCATION OF BUILDING PERMIT FOR ILLEGAL REMOVAL OR DESTRUCTION OF PROTECTED TREES.

(a) The Bureau of Street Services shall have the authority to request the Superintendent of Building to withhold a building permit, except for permits which are required by law or necessary to comply with a Department of Building and Safety order, if the Bureau determines that a protected tree was removed or relocated in violation of Section 46.00 of this Code. Said request shall be made in writing from the Director of the Bureau of Street Services or his/her designee and shall specify the start date and end date of the period for which a building permit is withheld in accordance with this Section.

Further, the Bureau of Street Services, after notice and hearing pursuant to Subsections (b) and (c) of this Section, shall have the authority to request to the Superintendent of Building to withhold issuance of a building permit, except for permits which are required by law or necessary to comply with a Department of Building and Safety order, for a period of time up to a maximum of 10 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 in violation of Section 46.00 of this Code. Said request shall be made in writing by the Bureau Chief or his/her designee and shall specifically state the period of time the Bureau or the Board on appeal, have deemed necessary pursuant to Subsection (c) of this Section. Such period shall commence on the date the Bureau first becomes aware of the removal of such 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 of any protected trees and prior to the recordation of the notice of intent as provided for in subsection (b) of this Section.

The Board of Building and Safety Commissioners does not have the authority to hear appeals regarding the withholding of any building permit

pursuant to 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 such 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 said property as revealed by a title search with respect thereto. A copy of said notice shall also be recorded 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 said hearing 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 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 in violation of Section 46.00 of this Code, it shall recommend to the Superintendent of Building the length of time the issuance of a building permit shall be withheld. In so recommending, the Bureau shall consider the following factors: the number of trees removed, the size and age of the trees removed, the knowledge and intent of the owners of the property with respect to such removal and prior violations of law with respect to protected trees removal. The applicant or permittee shall be notified in writing of the Bureau's recommendation within 30 days thereafter.

(d) The applicant or permittee may appeal to the Board of Public Works any determination by the Bureau to revoke or withhold issuance of a building permit, 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, that 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 recommendation of the Bureau, or the Board on appeal, to refuse to issue a permit or revoke a permit shall be set forth in an affidavit which shall be recorded with the County Recorder. No such affidavit shall be recorded, however, until any legal challenge to the Bureau's or Board's action has been concluded and then only in a manner consistent with any final legal 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 of the Los Angeles Municipal Code shall apply. The declaration shall also authorize the Bureau of Street Services within the Department of Public Works to verify such information by entry upon the subject property. A fee may be collected for any inspection required to verify the declaration.

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 in the Main Street lobby to the City Hall; one copy on the bulletin board at the Main Street entrance to 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
Deputy City Attorney

Date: Aug. 10, 2005

File No. 03-1459 and 03-1459-S1

#101794