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June 28, 2005

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

Council File Numbers: 03-1459 and 03-1459-S1

**RULE 38 RESPONSE FOR A DRAFT ORDINANCE AMENDING OAK TREE CODE PROVISIONS**

The latest version of the draft ordinance submitted for review (second review) does not include the comments made by the Department of Building and Safety in response (first review) to the City Attorney's letter of August 11, 2004, and therefore, pursuant to Council Rule 38, the Department of Building and Safety (LADBS) has again reviewed the proposed draft ordinance amending the oak tree code provisions and have the following comments:

Page 1, Section 1 of the ordinance. Currently, the permit application does not have a "reverse side" where a plot plan is shown. Please remove the phrase "on the reverse side of any" and replace it with "attached to the" since the automation of building permits, all plot plans are now attached to the building permits.

Page 1, Section 1 of the ordinance. It is not clear how the City's Chief Forester (George Gonzalez) is to notify the Department of Building and Safety prior to the issuance of a Certificate of Occupancy. To be assured that all the conditions set forth by the Advisory Agency are met and that the Department of Building and Safety is able to issue the Certificate of Occupancy, please replace the last sentence of the paragraph in Subsection 12 of Section 12.21 A with the following procedure:

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) obtain from the Advisory Agency in consultation with the City's Chief Forester, prior to the final inspection for the

construction, a written document signed certifying that all the conditions set forth by the Advisory Agency relative to protected trees have been met.

Page 2, Section 3 of the ordinance. The proper name in accordance with the California Department of Pesticide Regulation is "Agricultural Pest Control Advisor," therefore, please add the word "control" between the words "pest" and "advisor" so that, the definition of the term "Tree Expert" reads: "A person ....who holds a valid California license as an Agricultural Pest Control Advisor or ..."

Page 2, Section 5 of the ordinance. For clarity since both terms are used in this subsection, please add the word "removed" to the second sentence of the first paragraph, so that it reads:

The terms "removed" or "removal" shall include any act which will cause a protected tree to die ....

Page 2, Section 5 of the ordinance. The title of the first numbered paragraph "Required Determinations" of Subsection R should be in bold text.

Page 3, Section 5 of the ordinance. Please replace the upper case (I) with lower case (i) in two places on this page and fix the format of the first (i) paragraph on the page to be consistent with the other paragraphs.

Page 3, Section 5 of the ordinance. Items (i), (ii) and (iii) of Subdivision 1 (a) of Subsection R of Section 17.05 refers to "effective date of this Code Section." Please clarify the "effective date" between the effective date of the ordinance of 6/14/62, which added the Code Section 17.05, and the effective date of the ordinance of 4/12/80, which added the Subsection R of Section 17.05 (regarding oak trees). In either case, you may want to replace the term "effective date of this Code Section" with one of the dates, so long as the intent is clear.

Page 3, Subdivision 1 (b) of Section 5 of the ordinance. The first paragraph refers to "The removal of the protected tree would not result in an undesirable, irreversible soil erosion ...which cannot be mitigated to the satisfaction of the City..." It is not clear as to who in the "City" needs to be satisfied. Is there a specific department of the City? Chief Forester? Inspector from LADBS? Please indicate the intent, by specifying who in the "City" needs to be satisfied.

Page 4, Subdivision 3 of Section 5 of the ordinance. Is the word "accept" the correct term? What is the intent of the phrase "accept as to Subsection R1(b) (iii) above," mean? Is the intent to keep the existing protected tree where it is if it is a Historical Monument, unless the tree "is in danger of falling due to an existing and irreversible condition"? If so, than please reword the sentence to convey the intent.

Page 4, Subdivision 3 of Section 5 of the ordinance. Please explain the difference between a protected tree "officially designated as an Historical Monument" (Subsection R3) versus a protected tree "subject to historical preservation requirements" (Subsection R1)? Please explain the logic between the first sentence of Subsections R1 and R3, these two subsections seems to

contradict each other.

Page 4, Subdivision 4(a) of Section 5 of the ordinance. The property is to replace one protected tree with "at least two protected trees..." The definition of the term "protected tree" states in part "...native tree species which measures four inches or more ...four and one-half feet above the ground..." and the second sentence states, "Each replacement tree shall be ...one inch or more in diameter at a point one foot above the base..." seem to be in conflict.

Page 4, Subdivision 4 (b) of Section 5 of the ordinance. Does the covenant and agreement (C/A) have to be approved by the Advisory Agency or someone from City Planning, prior to recording the C/A? If so, then should it be mentioned in the ordinance? Also, is the C/A on a form provided by either Advisory Agency or City Planning? If so, then should that be mentioned as well?

Page 5, Section 6 of the ordinance. Why is it necessary to show the location of "large trees"? Is there a definition of what is considered a "large tree"?

Page 6, Section 8 of the ordinance. For clarity, the term "removed" should be added to the last sentence of paragraph, so that it reads:

The terms "removed" or "removal" shall include any act which will cause a protected tree to die ....

Page 6, Section 10 of the ordinance. Please clarify what type of permit is referenced in Section 46.02 by amending the title of Section 46.02 to read:

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

Page 6, Section 10 of the ordinance. Is the last sentence of the second paragraph referring to a plan which shows all the grading work in compliance with Division 70 of Article 1 of Chapter IX of this Code being proposed to obtain from LADBS a permit to do grading work? If so, then please provide a definition of the term "grading permit plan."

Page 8, Section 11 of the ordinance. This amendment to Section 46.04 appears to increase the fees by applying the fees of Section 12.37 I.1 to include three other variety of trees, besides the oak tree. This amendment would require a fiscal impact report and may require this ordinance to be heard in Budget and Finance Committee, if it is to remain.

Pages 8 and 9, Section 12 of the ordinance. Please replace the misspell word "Superintendant" with "Superintendent of Building" and remove "of the Department of Building and Safety."

Pages 8 and 9, Section 12 of the ordinance. Please make the following changes to Subsections A and D of Section 46.06 as shown below. It would be very difficult to effectively enforce the intent of this ordinance unless the following changes are made to the procedure of these

Subsections. The changes are shown in underline/strikeout format (underline text is new language and strikeout shows text to be removed).

**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 Chief 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 recommend to the Superintendant Superintendent of Building of the Department of Building and Safety 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 unless expired, for which rights have not been obtained 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.

D. The applicant or permittee may appeal to the Board of Public Works any ~~determination recommendation~~ 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 recommendation~~ as provided for in Subsection C above. Further, that any action by the Department of Building and Safety resulting from any of the provision of this Section, including building permit revocation, shall not be appealable to the Board of Building and Safety Commissioners.

4606, because it is impossible for anyone, especially LADBS, to be aware not to issue a building permit for the "period **preceding**"(?) the hearing, determination or appeal, since no one can predict the future.

Page 9, Section 12 of the ordinance. Please delete the third sentence of Subsection C of Section 4606, because it is redundant with Subsection A of this Section.

Page 9, Section 12 of the ordinance. In Subsection E of Section 4606, it refers to an affidavit to be recorded with the County Recorder. What is the purpose of the affidavit? Would the affidavit state that the "Bureau recommends to refuse to issue Public Works permit for the relocation or removal of Protected Trees"? Or, does the affidavit state that the owner will not obtain a building permit to construct a building on the lot for the next 10 years from year "one" to year "ten" as described in Subsection A of this section? If this affidavit is recorded, then is there a method in which LADBS will be either given a copy of the recorded affidavit or somehow notified by the Bureau of its "final action"? Please remove the last sentence of this subsection, since the issuance of the building permit is already mentioned in Subsection A of this Section.

Page 10, Section 13 of the ordinance. To effectively enforce this provision a "Tree expert" such as someone from the Bureau of Street Services, Street Trees should do the verification inspection. Please replace the word "Department" with "Bureau of Street Services, Department of Public Works" in the third sentence of Item 5 of Section 96.303 and modify the last sentence by removing the phrase "as specified in Section 98.0412 (a) of the Municipal Code" and "by the Department" so the sentence will read:

A fee shall be collected for any inspection required to verify the declaration.

Please contact me at (213) 482-0440 or Steve Ikkanda at (213) 482-6715 should you have any questions regarding this letter.

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General Manager



NICOLINO G. DELLI QUADRI, Chief  
Engineering Bureau

NDQ:SSI

C: Keith Pritsker, Deputy City Attorney  
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