

**MICHAEL N. FEUER**  
CITY ATTORNEY

REPORT NO. R 18 - 0 0 7 4

**MAR 1 5 2018**

**REPORT RE:**

**REVISED DRAFT ORDINANCE ADDING SECTION 62.177 TO THE LOS ANGELES MUNICIPAL CODE ESTABLISHING AN IN LIEU FEE TO ALLOW THE CITY TO PLANT REPLACEMENT TREES IN THE PUBLIC RIGHT-OF-WAY WHEN A PROPERTY OWNER IS UNABLE TO PLANT ON-SITE THE REQUISITE NUMBER OF TREES REQUIRED BY THE CITY'S TREE PLANING REQUIREMENTS**

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

Council File No. 16-0461

Honorable Members:

Pursuant to your request, this Office has prepared and now transmits for your consideration the enclosed revised draft ordinance, approved as to form and legality. The revised draft ordinance incorporates changes to the previous draft ordinance (accompanied by City Attorney Report No. R18-0023) consistent with the original request by City Council and as requested by the Public Works and Gang Reduction Committee at its meeting on February 7, 2018.

The revised draft ordinance would add Section 62.177 to the Los Angeles Municipal Code (LAMC) to establish a tree replacement and planting in-lieu fee. The in-lieu fee established in this draft ordinance will be collected by the Department of Public Works and used solely to procure, plant and provide water and maintenance for the

required trees. The location of trees planted using the in-lieu fee will be selected by the Board of Public Works (Board), and are expected to be primarily in the public right-of-way.

The in lieu fee will be available in two distinct situations for the purpose of allowing a property owner to satisfy the City's tree planting requirements when the City has determined that a required tree cannot feasibly be planted on-site.

The first situation involves the tree planting requirement under LAMC Section 12.21(G)(2)(a)(3), which requires at least one 24-inch box tree to be provided for every four dwelling units. Under the draft ordinance, if any required tree cannot be feasibly planted on-site, the in-lieu fee may be used to satisfy the tree planting requirement, subject to approval by a Director's Decision under LAMC Section 12.21(G)(3).

The second situation involves the tree planting requirement imposed as a condition by the Board under LAMC Section 62.169 when the Board approves a permit for the removal of a street tree. As a condition of a permit to remove a street tree, the Board can require the permittee to replace the subject tree, typically on a 2:1 basis. Under the draft ordinance, if any required replacement tree cannot be feasibly planted on-site, the in-lieu fee may be used to satisfy the tree planting requirement, subject to approval by the Board.

The in-lieu fee will be used by the Board to procure, plant, and provide water and maintenance for other trees planted by the City. The City provides water and maintenance using in-lieu fees for three years until the tree is established.

Lastly, under the draft ordinance, the in-lieu fee associated with any replacement tree required by the Board is reduced for residential properties with four or fewer dwelling units. Funding to cover the costs incurred by the City to procure, plant and provide water to trees under the reduced in-lieu fee is expected to come from the General Fund.

It should be noted that the Board has prepared a fee study, dated November 20, 2017, which analyzed the City's total estimated cost to procure, plant in the public right-of-way, and provide water and maintenance for three years until a tree is well established.

#### Fee Notice Requirement

We note that because this draft ordinance would establish a new fee, notice of its proposed adoption should be given in accordance with the provisions of California Government Code Sections 66018 and 6062a. Those sections of State law require that, prior to adoption of a new or increased fee, a public hearing be held and notice of that hearing be published in a newspaper with two publications at least five days apart

over a ten-day period. The notice period begins the first day of publication, and there must be at least five days intervening between the first and the second publications, not counting the dates of publication.

Council Rule 38 Referral

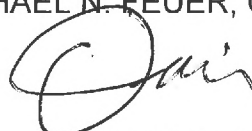
A copy of the revised draft ordinance was sent, pursuant to Council Rule 38, to the Planning Department and the Department of Public Works - Bureau of Street Services with a request that all comments, if any, be presented directly to the City Council when this matter is considered.

If you have any questions regarding this matter, please contact Assistant City Attorney Edward Jordan at (213) 978-8199. He or another member of this Office will be present when you consider this matter to answer questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON  
Chief Assistant City Attorney

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Transmittal