

COUNCIL FILE 16-0461
ESTABLISHMENT OF TREE REPLACEMENT IN-LIEU FEE

The Neighborhood Council Sustainability Alliance (NCSA) Trees Committee has reviewed the Mayor’s proposed draft ordinance adding Section 62.177 to the Los Angeles Municipal Code to establish a tree replacement in-lieu fee to satisfy the City’s tree planting requirements. We participated in city staff’s ordinance review process and carefully considered staff’s issues and objectives. We reviewed tree policy in other major cities.

There are a number of shortcomings in the proposed subject draft ordinance that are not supportive of a strong urban forestry resource as part of City government.

The city of Los Angeles Urban Forestry Division (UFD) has been hampered by challenges such as inconsistent management approaches, lack of funding, weak linkages with other resource management programs and inadequate planning that fails to consider surrounding ecosystem, the community and the global warming context.

The Tree Ordinance update is a focal point for upgrading Los Angeles’s effort to promote and protect the City’s tree canopy and should be augmented by community input and a comprehensive plan that strengthens the City’s protection and stewardship of our urban forest.

We have the following areas of concern and recommended changes:

1. AN AD-HOC POLICY INCONSISTENT WITH MAJOR CITIES AND POTENTIALLY DAMAGING. Tree replacement in-lieu fees are used in other major U.S. cities that have a long-term Urban Forest

Management Plan with strong visions for a healthy urban forest, strict tree protections and adequate funding for maintaining and planting urban trees to increase the urban tree canopy. But, unlike other major cities, Los Angeles does NOT have a comprehensive Urban Forest Management Plan. Establishing a replacement tree in-lieu fee without a comprehensive plan could lead to the loss of urban tree canopy cover and health, and to shifts or loss of species that would diminish the quality of the urban environment and numerous ecosystem services derived from trees and urban forests. These potential changes could increase environmental management and human health costs, as well as decrease the quality of life of Angelenos.

Recommendation: Before Adopting An In-Lieu Fee, Do The Work That Other Major Cities Are Taking Seriously!

Establish a comprehensive Urban Forest Management Plan informed by a professional census to assess the current composition of the city's trees while mapping potential new tree planting locations as done in other major cities like San Francisco (http://www.sf-planning.org/ftp/files/plans-and-programs/planning-for-the-city/urban-forest-plan/UrbanForestPlan-121814_Final_WEB.pdf).

Unlike “NavigateLA”, the Bureau of Engineering & Department of Public Works mapping application, a professional tree census addresses the health of trees (many of LA's trees are at the end of their life expectancy, and we should be working on plans to replace them) and their associated ecosystem services. A professional tree census is also required to qualify for grants to help fund the serious work of establishing a comprehensive Urban Forest Management Plan.

2. IDENTITY OF TREES SUBJECT TO IN-LIEU FEE IS NOT DEFINED & IT'S NOT CLEAR THAT PROTECTED TREES ARE EXCLUDED. As proposed, the ordinance does not identify the trees

that would come under regulation of the ordinance. Nor, does it specifically exclude the City's protected trees from the replacement in-lieu fee.

Recommendation: The ordinance should specifically identify or define the class of trees regulated and the protected trees excluded from the in-lieu fee. Language should be amended to deny a permit in-lieu fee for protected tree removal.

3. THE FEE IS INADEQUATE & FAILS TO REFLECT ADVANCES. The proposed fee is too low, based on an outdated accounting practice that does not take all fair, reasonable and foreseeable costs of trees and advances in ecosystem services valuation into account as follows:

(a) The fee ignores replacement tree mortality rates. In the study about Los Angeles' million tree program (*E. Gregory McPherson, et al., Los Angeles 1-Million tree canopy cover assessment. USDA Forest Service, Pacific Southwest Research Station, GTR-207 (2008)*), a low mortality scenario projected that 17% of newly planted trees would be dead after 35 years, and a high mortality scenario projected 56% mortality.

(b) The fee assumes value equals the cost of production and that replacement trees are an equitable trade-off. However, the International Society of Arboriculture (ISA) endorses the benefit-based tree valuation approach to monetize benefits that single trees do and will produce. In 2008, the California Department of Water Resources published an Economic Analysis Guidebook, which included an entire chapter on ecosystem service valuation, including valuation methods and monetization strategies (Cowdin, 2008). The monetary and social costs of public benefits, such as carbon sequestration and air quality, must be taken seriously and accounted for when mature trees are replaced with saplings or built structure.

(c) The selection of tree species budgeted for replacement allow for large trees that provide significant ecosystem services to be replaced

with small tree species that provide reduced ecosystem services. The replacement tree ratio of 2:1 or 4:1 was born out of guess-work. There is simply no science that supports the replacement ratios as a sufficient mitigation or trade-off of a large tree species for 2 or 4 small tree species.

(d) The fee fails to cover horticulturally sound maintenance practices necessary to successfully establish a tree and avoid high mortality rates.

(e) The proposed ordinance exempts residential property of 4 or fewer dwelling units from the full tree replacement cost identified in NBS’s fee study. The reduced fee of \$267 is not included in the NBS study nor is there a written justification for the reduced fee. As proposed, \$2,345 of residential replacement tree costs identified in the NBS fee study will go unfunded for properties of 4 or fewer units, representing a vast amount of residential development and exempting “McMansions”. As proposed, it will cost the City \$2,345 to plant a residential replacement tree, according to the NBS fee study.

(f) The draft ordinance ignores recommendations from NBS on their report that state the fee should be re-evaluated within 1 to 2 years because it is inevitable that costs will change due to cost inflation, advances and climate change.

Recommendation: A reasonable cost should be factored-in to account for replacement tree plantings to cover mortality rates, mortality replacement tree plantings, and a new five year maintenance establishment period.

Recommendation: Adopt the Benefit-Based Tree Valuation endorsed by ISA and Ecosystem Services Valuation used by the State of California to account for fair and reasonable value.

Recommendation: Adopt replacement tree practices which use ecosystem services and canopy size to factor in carbon sequestration and other aspects when putting a dollar value on tree replacements.

Recommendation: Budget for at least 5 years of maintenance and monitoring including at least 5 years of watering with additional watering needed during extreme droughts factored-in, and pruning for young and juvenile trees (trees that receive the appropriate pruning measures during their formative years will require less corrective pruning as they mature).

Recommendation: Do not reduce the fee for residential properties.

Recommendation: Adopted fee amounts should be adjusted on an annual basis to keep pace with cost inflation, advances and a changing climate, as proposed by the NBS study. Language should be added to the proposed ordinance that requires the Department to revisit the fee analysis after collecting data (number of trees planted, costs to plant) for 1 year followed by a comprehensive analysis every 1 to 2 years.

Recommendation: Use fees and fines from non-compliance (illegal tree cutting) to help fund enforcement and a replacement tree planting and maintenance fund.

4. IMPLEMENTATION, REPLACEMENT AND MITIGATIONS ARE MADE OPTIONAL. The proposed ordinance states that fees will be collected but what fund monies will be deposited into is not described. Implementation of tree replacement, mitigation for tree removals and equity are not described.

Recommendation: The ordinance should clearly state that tree replacement and mitigation are required. The new language should specify a hierarchy of mitigation measures. A reasonable time period

should be specified for replacement tree planting. In-lieu fee permits should NOT be granted for removal of Mitigation trees (trees that have been provided as mitigation for removal of other trees as part of a permit for another project)

5. INADEQUATE & ARBITRARY CRITERIA. The proposed ordinance gives the “Director” far too much discretion to take an in-lieu fee. There is no weighting of factors or consideration of superior alternatives nor definition of “feasible”. Requiring that the decision be simply based on lack of onsite space will allow an in-lieu fee for many trees that could otherwise be planted off-site, moved or preserved. When a tree “cannot feasibly be planted on-site” is not adequate criteria to collect an in-lieu fee and the term “feasible” is ambiguous.

Recommendation: To avoid ambiguity, the ordinance should use objective factors to define what’s considered “feasible” and provide a hierarchy of mitigation measures that need to be exhausted prior to collecting a fee, as required by CEQA. Language should be incorporated to include, “the city shall require modification of design of projects to avoid the removal or damage to city and protected trees”.

Recommendation: Add language that “an applicant shall provide documentation, such as qualified architects’ plans, certifying that alternative plans have been considered to avoid tree removal.

6. IRRESPONSIBLE IN THE FACE OF CLIMATE CHANGE. The proposed ordinance ignores California’s climate goals which emphasize the need to grow the city’s tree canopy, especially in neighborhoods where tree canopy is at its lowest.

Recommendation: The proposed ordinance should include specific acknowledgement of climate goals and factor in carbon sequestration when putting a dollar value on trees.

7. CEQA REVIEW OF PROPOSED ORDINANCE IS REQUIRED. The proposed ordinance would trigger the need for an Environmental Impact Report (EIR) because it relaxes existing standards, thereby allowing environmental degradation, as follows:

(a) The current code requires replacement trees where a permit is given to remove a tree. The new draft ordinance makes replacement tree decisions optional by the “Director”, thereby relaxing the existing standard and allowing environmental degradation by effectively suspending replacement tree planting at an indeterminate later date. This is called a deferred mitigation and is not allowed under CEQA.

(b) Not planting a replacement tree, changes the environment, and is the least environmentally responsible alternative.

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report except in very limited circumstances. *See, e.g.*, Cal. Pub. Res. Code § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109. CEQA applies to agency projects that may have an adverse environmental impact. *Friends of Mammoth v. Board of Supervisors*, 8 Cal.3d 247, 259 (1972); *Friends of B Street v. City of Hayward*, 106 Cal.App.3d 988, 1003 (1980) (project that included removal of trees caused significant effect on environment). CEQA has two broad purposes: 1) avoiding, reducing or preventing environmental damage by requiring alternatives and mitigation measures (14 Cal. Code Regs. § 15002(a)(2)-(3) (hereinafter “**CEQA Guidelines**”)); and 2) providing information to decision makers and the public concerning the environmental effects of the proposed project. CEQA Guidelines § 15002(a)(1).

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. CEQA Guidelines § 15002(k); *Comm. to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185 – 86. First, if a project falls into an exempt category, or it can be seen with certainty that the activity in question will not have a significant effect on the environment, no further agency evaluation is required. *Id.* Second, if there is a possibility the project will have a significant effect on the environment, the agency must perform a threshold initial study. *Id.*; CEQA Guidelines § 15063(a). If the study indicates that there is no substantial evidence that the project may cause a significant effect on the environment the agency may issue a negative declaration. *Id.*, CEQA Guidelines §§ 15063(b)(2), 15070. Finally, if the project will have a significant effect on the environment, an environmental impact report (“**EIR**”) is required. *Id.*

Here, the City is considering adopting the Ordinance without any CEQA findings whatsoever, failing to consider whether or not environmental review is even required. CEQA applies when a public agency has "approved" a project. [Pub Res C §21080\(a\)](#). An approval occurs when an agency commits to a definite course of action, for example, through issuance of financial assistance or a permit or other entitlement for use of the project. 14 Cal Code Regs §15352. CEQA applies to agency decisions that are discretionary. Pub Res C §21080(a); 14 Cal Code Regs §15002(i). As defined in 14 Cal Code Regs §15357, a discretionary project requires the decision maker to exercise judgment or deliberation in determining whether to approve the project. In general, a decision is discretionary if an agency has the power to shape a project in ways that are responsive to environmental concerns. *Friends of Juana Briones House v City of Palo Alto* (2010) 190 CA4th 286, 301.

Recommendation: Perform EIR prior to adopting this ordinance as required by CEQA.

In summary, as proposed by city staff, the draft ordinance before you

would require a CEQA review and remedy of the many shortcomings.