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May 3, 2019

Agenda Item VI(i)
MRCA
10/2/19

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

**ADDITIONAL INFORMATION REGARDING PROTECTED TREES AND SHRUBS
ORDINANCE; CF 13-1339**

On May 4, 2018, a report from the City Planning Commission (CPC) was transmitted to your Committee, which recommended approval of an ordinance that would expand protected-tree regulations to the Mexican Elderberry and Toyon shrubs and clarify certain provisions. At its public hearing, the CPC received conflicting testimony regarding the appropriate minimum size for these shrubs to be eligible for protection. Though the CPC took an action, it also instructed the Planning Department to continue a dialog with interested parties to find an amenable resolution prior to the matter being considered by the Planning and Land Use Management Committee.

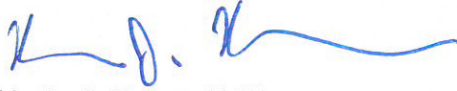
After numerous meetings with the interested parties, a partial compromise was reached regarding the appropriate minimum size for the shrubs to be eligible for protection. An agreement has been reached that the minimum size should be at least one stem that is 2 inches or more in diameter, rather than the 4 inches in the May 4, 2018 CPC report. However, the interested parties have not been able to come to full agreement on the height at which the diameter measurement is taken. City departments have agreed that height should remain at 4.5 feet above the ground, which is the industry standard and the height recommended by the Planning Commission. However, a letter to PLUM from the Community Forest Advisory Committee, dated January 29, 2019, recommends instead that the height at which the diameter measurement is taken should be 2.5 feet above the ground.

In addition, after the CPC's recommendation was transmitted to Council, additional sections of the L.A. Municipal Code (LAMC) were identified as requiring technical updates necessary for consistency with the CPC's policy recommendation. Therefore, the Planning Department recommends adoption of the attached revised ordinance, which reflects the consensus reached by the City departments regarding the appropriate minimum size for the Mexican Elderberry and Toyon shrubs to be eligible for protection and includes the technical correction needed to update the inadvertently omitted sections of the LAMC in accordance with the CPC's intent.

For questions regarding this report please contact Patrick Whalen at Patrick.Whalen@lacity.org
or (213) 978-1370.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning

A handwritten signature in blue ink, appearing to read 'K. J. Keller', with a long horizontal flourish extending to the right.

Kevin J. Keller, AICP
Executive Officer

VPB:KJK:ALV:TR:pw

Attachment: Revised Ordinance

Revised Ordinance, May 03, 2019

ORDINANCE NO. _____

An ordinance amending provisions of Sections 12.21, 17.02, 17.05, 17.06, [46.00](#), 46.01, 46.02, [46.03](#), [46.04](#), and [46.06](#) of the Los Angeles Municipal Code (LAMC) to modify provisions pertaining to "Protected Tree" to include the Mexican Elderberry (*Sambucus mexicana*) and Toyon (*Heteromeles arbutifolia*) and update regulations.

**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 as follows:

12. Protected Tree and Shrub Relocation and Replacement. All existing protected trees and shrubs and relocation and replacement trees and shrubs 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 or shrubs 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. The definition of Protected Tree in Section 17.02 of the Los Angeles Municipal Code is amended to read as follows:

Protected Tree or Shrub – Any of the following Southern California indigenous tree species, which measure four inches or more in cumulative diameter, four and one-half feet above the ground level at the base of the tree, or any of the following Southern California indigenous shrub species which contains at least one stem that measures ~~four~~[two](#) inches or more in diameter, four and one-half feet above the ground level at the base of the shrub:

Protected Trees:

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

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

(c) Western Sycamore (*Platanus racemosa*)

(d) California Bay (*Umbellularia californica*)

Protected Shrubs:

(a) Mexican Elderberry (*Sambucus mexicana*)

(b) Toyon (*Heteromeles arbutifolia*)

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

Sec. 3. The definition of Tree Expert in 17.02 of the Los Angeles Municipal Code is amended to read as follows:

Tree Expert – A person with at least four years of experience in the business of transplanting, moving, caring for and maintaining trees who is either (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 certified arborist with the International Society of Arboriculture and who is a licensed 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 as follows:

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 and shrubs, 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 and shrub 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 as follows:

R. Protected Tree or Shrub Regulations. No protected tree or shrub 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 or shrub to die, including but not limited to acts that inflict damage upon the root system or other parts of the tree or shrub 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 or shrub exists within a proposed subdivision, the tree or shrub 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 or shrub had been approved by the Advisory Agency; or

(ii) The property upon which the protected tree or shrub 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 or shrub's removal would be permissible; or

(iii) A building permit has been issued for the property upon which the protected tree or shrub 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 or shrub 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 or shrub 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 or shrub, 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 shrub; 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, shrubs 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 or shrub may be removed or relocated, the Advisory Agency may:

(a) Require relocation elsewhere on the same property where a protected tree or shrub has been approved for removal, and where the relocation is economically reasonable and favorable to the survival of the tree or shrub. 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 or shrub. In the event of relocation, the Advisory Agency may designate measures to be taken to mitigate adverse effects on the tree or shrub.

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

3. **Historical Monuments.** The Advisory Agency, except as to Subdivision 1.(b)(iii) above, shall require retention of a protected tree or shrub at its existing location, if the tree or shrub 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 or shrub may be removed or relocated, the Advisory Agency shall require that:

(a) The protected tree or shrub be replaced within the property by at least four specimens of a protected variety included within the definition set forth in Section 17.02 of this article, except where the protected species is relocated pursuant to Subdivision 2(a) above. A protected tree shall only be replaced by other protected tree varieties and shall not be replaced by shrubs. A protected shrub shall only be replaced by other protected shrub varieties and shall not be replaced by trees. 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 and shrub preservation.

(c) The subdivider provide protected tree and shrub 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 and shrubs required to be replaced or permitted or required to be relocated, in a manner to assure the existence of continuously living trees and shrubs at the approved replacement or relocation site for three years from the date that the trees or shrubs 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 shrub or of the tree or shrub 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 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 or shrub.

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

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

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

C. Protected Tree and Shrub Reports for Tentative Tract Maps No application for a tentative tract map approval for a subdivision where a protected tree or shrub 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 or shrub and evaluates the subdivider's proposals for the preservation, removal, replacement or relocation of the tree or shrub. The report shall be prepared by a tree expert and shall include all protected trees and shrubs 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 or shrub referred to in the report, or proposes to relocate or remove any protected tree or shrub, the report shall also evaluate any mitigation measures proposed by the subdivider and their anticipated effectiveness in preserving the tree or shrub.

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

D. Protected Tree or Shrub Reports for Parcel Maps. No application for a preliminary parcel map approval for a parcel where a protected tree or shrub is located shall be considered complete unless it includes a report pertaining to preserving the tree or shrub. The report shall be prepared by a tree expert and shall evaluate the subdivider's proposals for protected tree or shrub 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 or shrub referred to in the report, or proposes to relocate or remove any tree or shrub, the report shall also evaluate any mitigation measures proposed by the subdivider and the anticipated effectiveness in preserving the tree or shrub.

Sec. 9. Section 46.00 of the Los Angeles Municipal Code is amended to read as follows:

Sec. 46.00. PROTECTED TREE AND SHRUB REGULATIONS.

No protected tree or shrub 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 or shrub to die, including but not limited to acts that inflict damage upon the root system or other part of the tree or shrub 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. 10. Section 46.01 of the Los Angeles Municipal Code is amended to read as follows:

Sec. 46.01. DEFINITION.

"PROTECTED TREE OR SHRUB" means any of the following Southern California indigenous 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, or any of the following Southern California indigenous shrub species, which contains at least one stem that measures ~~four~~ two inches in diameter, four and one-half feet above the ground level at the base of the shrub: Protected Trees:

- (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 berberidifolia*).
- (b) Southern California Black Walnut (*Juglans californica*)
- (c) Western Sycamore (*Platanus racemosa*)
- (d) California Bay (*Umeallularia californica*)

Protected Shrubs:

(a) Mexican Elderberry (*Sambucus mexicana*)

(b) Toyon (*Heteromeles arbutifolia*)

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

Sec. 11. Section 46.02 of the Los Angeles Municipal Code is amended to read as follows:

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

No person shall relocate or remove any protected tree or shrub, as that term is defined in Section 46.01, where the protected tree or shrub 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 or shrub, and shall identify each protected tree or shrub proposed to be retained, relocated or removed. If any grading is proposed that may affect the protected tree or shrub, 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 or shrub where the Board is satisfied that:

1. The proposed relocation or removal of the protected tree or shrub 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 or shrub 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 or shrub'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 or shrub, unless otherwise provided in this section or unless the tree or shrub 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 or shrub 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 or shrub because its continued existence at the location prevents the reasonable development of the subject property; or

2. The protected tree or shrub 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 or shrub, the tree or shrub is in danger of falling, notwithstanding the tree or shrub 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 or shrub, that the permittee replace the tree or shrub within the same property boundaries by at least four specimens of a protected variety included within the definition set forth in Section 46.01 of this Code, in a manner acceptable to the Board. A protected tree shall only be replaced by other protected tree varieties and shall not be replaced by shrubs. A protected shrub shall only be replaced by other protected shrub varieties and shall not be replaced by trees. In size, each replacement tree shall be at least 15-gallon, or larger, 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 or shrubs shall approximate the value of the tree or shrub to be replaced.

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

3. Permit a protected tree or shrub 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 or shrub, and there is a reasonable probability that the tree or shrub will survive.

Sec. 12. Subsection A of Section 46.03 of the Los Angeles Municipal Code is amended to read as follows:

Sec. 46.03. PERMIT CONDITIONS.

(a) A permit issued pursuant to this article shall (1) specify and approve the location or locations to which said tree or shrub may be relocated, (2) designate the species, number, and size of any replacement ~~tree or trees~~ or shrubs, and (3) set forth any other conditions or requirements deemed necessary by the Board of Public Works, or its authorized officer or employee, to implement the provisions of this article.

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

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 or shrubs. 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. Section 46.06 of the Los Angeles Municipal Code is amended to read as follows:

Sec. 46.06. WITHHOLDING OR REVOCATION OF BUILDING PERMITS FOR ILLEGAL REMOVAL OR RELOCATION OF PROTECTED TREES AND SHRUBS.

(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 or shrub 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 or shrub. 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 or shrub 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 or shrub 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 and/or shrubs removed or relocated, the size and age of the trees or shrubs 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 and shrubs. 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. The City Clerk shall certify that...