

CITY OF PALMDALE
COUNTY OF LOS ANGELES, CALIFORNIA
URGENCY ORDINANCE NO. 1556

**AN URGENCY ORDINANCE OF THE CITY OF PALMDALE AMENDING
CHAPTER 14.04 OF THE PALMDALE MUNICIPAL CODE (JOSHUA
TREE AND NATIVE DESERT VEGETATION PRESERVATION) TO
REQUIRE COMPLIANCE WITH CALIFORNIA ENDANGERED SPECIES
ACT, CONSISTENT WITH STATE LAW**

A. RECITALS

WHEREAS, URGENCY ORDINANCE NO. 1556 proposes to amend Chapter 14.04 of the Palmdale Municipal Code (PMC) (Joshua Tree and Native Desert Vegetation Preservation);

WHEREAS, at their September 22, 2020, meeting, the Fish and Game Commission voted to list the western Joshua tree (*Yucca brevifolia*) as a candidate species under California Endangered Species Act (CESA), effective October 9, 2020;

WHEREAS, the Fish and Game Commission approved a Special Order (2084) on December 10, 2020, which delegated authority to the City of Palmdale for the issuance of some permits pertaining to new and existing single-family residences on behalf of the California Department of Fish and Wildlife (CDFW); and,

WHEREAS, per PMC Section 1.06.070.E, ORDINANCE NO. 1556 is permissible as an Urgency Ordinance due to the Fish and Game Commission adopting a Special Order 2084 on December 10, 2020. Within this action CDFW recommended the City of Palmdale adopt a corresponding Urgency Ordinance to ensure its immediate effective date, avoiding potential delays when procession Incidental Take Permits on behalf of CDFW, in accordance with the Special Order 2084, and CESA;

WHEREAS, on December 15, 2020, the City Council of the City of Palmdale conducted a duly noticed public hearing on ORDINANCE No. 1556 and concluded said hearing on that date. Evidence, both written and oral, was duly presented and considered by the City Council at the aforesaid public hearing, including but not limited to, the staff report dated December 15, 2020.

B. ORDINANCE

THE CITY COUNCIL OF THE CITY OF PALMDALE DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 14.04 of the PMC is amended to read as follows:

14.04.030 Definitions.

For purposes of this Chapter, certain words and phrases shall be defined as follows unless the context clearly requires otherwise:

- C. “Desert vegetation” shall mean ~~Joshua Trees and~~ California Juniper as defined by this Chapter, and other living plants identified pursuant to the California Desert Native Plants Act (Food and Agricultural Code Section 80001, et seq.) as protected or designated on any state or federal rare and endangered species list.
- H. “Maintenance” shall mean all actions needed for the continued good health of ~~Joshua trees and~~ other desert vegetation, including but not limited to, insect control, spraying, and removal of dead wood.
- L. “Accessory structure” means a subordinate structure, the use of which is incidental to an existing single-family residence, and includes: an accessory dwelling unit, garage, carport, swimming pool, patio, greenhouse, storage shed, gazebo, septic tank, or gravel or paved driveway.
- M. “Desert native plant specialist” means:
 - 1. A certified arborist;
 - 2. An individual with a four-year college degree in ecology or fish and wildlife related biological science and at least two years of professional experience with relocation or restoration of native California desert vegetation; or
 - 3. An individual with at least five years of professional experience with relocation or restoration of native California desert vegetation.
- N. “Developed parcel” means a parcel with an existing single-family residence.
- O. “Project proponent” means the owner of a project site for a single-family residence or accessory structure or the owner’s agent or the public agency undertaking a public works project.
- P. “Project site” means the parcel or parcels on which a project proponent proposes to construct a single-family residence or accessory structure or on which a public agency proposes to undertake a public works project.
- Q. “Public Works project” means a project for the erection, construction, alteration, maintenance, or repair of any public structure, sewer connection, building, or road or other public improvement of any kind.

- R. "Single-family residence" means a single detached building that will be constructed or has already been constructed, regardless of whether it was constructed as part of a subdivision or development, and used as living facilities, including provisions for sleeping, eating, cooking, and sanitation as required by the California Building Code for not more than one household.
- S. "Size class" means the classification of western Joshua trees by the following two sizes:
1. Less than four meters in height; and,
 2. Four meters or greater in height.
- T. "Undeveloped parcel" means a parcel without an existing single-family residence.
- U. "Western Joshua tree" means an individual western Joshua tree (*Yucca brevifolia*) that has emerged from the ground, regardless of age or size, and that includes all stems that have emerged from the ground within a one-meter radius measured from a single point at the base of the largest stem.
- V. "Western Joshua Tree Mitigation Fund" means the fund established pursuant to California Department of Fish and Game.

14.04.040 Requirements for Removal ~~Prohibition of Removal.~~

- C. The project proponent or its agent may remove a detached dead western Joshua tree or detached limb of a western Joshua tree. All other removals and all trimming of western Joshua trees authorized by permits issued pursuant to this subsection shall be completed by a desert native plant specialist. A permit may be issued, without payment of mitigation fees, provided that the dead western Joshua tree or the limb(s) to be removed:
- 1 Has fallen over and is within 30 feet of a structure;
 - 2 Is leaning against an existing structure; or
 - 3 Creates an imminent threat to public health or safety.
- D. Census.
1. The project proponent proposing to relocate or remove a western Joshua tree shall cause a census of western Joshua trees to be conducted on the project site. The census shall count all western Joshua trees on the project site and classify them by size class.

2. Prior to receiving take authorization from the participating agency, the project proponent shall submit to the participating agency a census report that shall include the following:
 - a. The name of the desert native plant specialist who conducted the census and the employer of the desert native plant specialist.
 - b. The name of the desert native plant specialist who will relocate western Joshua trees, if applicable, and the employer of the desert native plant specialist.
 - c. The date of the census.
 - d. The date or dates of the proposed relocation of western Joshua trees, if applicable.
 - e. A map of the project site that depicts: the location of the proposed single-family residence, accessory structure, or public works project; the number and location of all western Joshua trees on the project site; and the proposed placement of each relocated western Joshua tree.
 - f. Photographs of each western Joshua tree on the project site, including a visual representation of the scale of the height of each tree.
- E. Avoidance. To the maximum extent practicable, the project proponent shall avoid take of western Joshua trees on the project site.
- F. Minimization.
1. The project proponent shall avoid all ground-disturbing activities within 10 feet of any western Joshua tree if those activities will disturb the soil to a depth of greater than 12 inches.
 2. To the maximum extent feasible, the project proponent shall relocate all western Joshua trees that cannot be avoided to another location on the project site.
 3. For purposes of this subsection, relocation of a western Joshua tree shall be determined to be infeasible if either of the following applies:
 - a. Relocation of the western Joshua tree on the project site would pose a threat to public health or safety.
 - b. Relocation of the western Joshua tree on the project site would interfere with existing roadways, sidewalks, curbs, gutters, utility lines, sewer lines, drainage improvements, foundations, existing structures, or setbacks to any of those structures or improvements.
 - c. There is no location on the project site that satisfies the requirements listed above.
 4. The project proponent shall ensure that relocation of western Joshua trees pursuant to this section satisfies the following requirements:

- a. All western Joshua tree relocations shall be completed by a desert native plant specialist.
 - b. All western Joshua trees to be relocated shall be placed at least 25 feet from any existing or proposed structure or improvement and at least 10 feet from any other western Joshua tree.
 - c. Within 30 days of completing the relocation, the project proponent shall provide the participating agency with a map of the project site indicating where each western Joshua tree was relocated.
- G. Removal. A project proponent may remove western Joshua trees that cannot feasibly be avoided or relocated.
- H. Mitigation. Prior to receiving take authorization from the participating agency, the project proponent shall pay mitigation fees to the participating agency for deposit into the Western Joshua Tree Mitigation Fund as follows:
1. For single-family residential projects undertaken on undeveloped parcels and public works projects to erect or construct a new public structure, building, road, or improvement, the project proponent shall pay mitigation fees.
 2. For accessory structure projects undertaken on developed parcels and for public works projects to alter, maintain, or repair an existing public structure, building, road, or improvement, the project proponent shall pay mitigation fees.
- I. All projects not identified above will be required to obtain an Incidental Take Permit (2081) from the California Department of Fish and Wildlife.

14.04.060 Joshua Tree Relocation Methodology Desert Vegetation Preservation Criteria.

- A. A tree spade shall be used to prepare the transplant site and excavate the Joshua tree and root system. Soil profile can influence Joshua tree root mass and should be taken into consideration when selecting tree spade size. General tree spade sizing guidelines as follows;
- a. 42-inch spade for western Joshua trees under one meter in height.
 - b. 54-inch spade for western Joshua trees one to two meters in height.
 - c. 90-inch spade for western Joshua trees two to four and one half +/- meters in height.

- B. Joshua trees to be transplanted shall be prepared by creating earthen berms around the perimeter of the tree for pre-soaking operations.
- C. The northern face of each tree shall be marked at the base with spray paint to aid in proper orientation during transplanting. The trees shall be orientated at the receiving site in the same direction as the original location.
- D. Only trees less than or equal to 15 feet in height, and in good condition are recommended for transplanting. Each western Joshua tree that is transplanted shall have tree inventory data collected according to the tree inventory technical specifications.
- E. A water regimen shall be conducted to insure survivability. All trees shall receive a pre-soaking approximately one week prior to transplanting. Each tree shall have an earthen berm built around the perimeter, large enough to accommodate 20 gallons of water to ensure the root ball will hold together and to minimize transplant shock.
- F. Each tree shall be placed in the receiving hole in the appropriate geographic orientation and backfilled with native or mineral amended soil. The original soil line on the trunk should be slightly higher than adjacent grade to allow the transplanted tree to settle to the appropriate grade. The hole shall be filled with water and the tree will be slightly agitated to dislodge any air bubbles that could create root rot.
- G. Earthen berms shall be created around each tree after transplant to ensure western Joshua trees can receive up to five gallons of water per watering event. Each western Joshua tree will be hand watered (top to bottom) every two weeks for up to six weeks following transplanting. All trees shall be watered for one year: The trees should be watered three times in the spring, one time in the summer, and one time in the fall with three gallons of water per watering event. The proponent must notify the Landscape Superintendent, City Arborist or appointed designee in advance of each watering event to ensure compliance with the watering regimen maintenance period.
- H. A daily pre-transplant operation safety briefing shall be conducted to ensure all applicable safety regulatory requirements have been met. All personnel working in and around equipment shall wear hard hats, reflective safety vests and protective eye wear.

- I. Protection of Public and Private Property. The proponent shall be responsible for the protection of all public and private property and improvements within and adjacent to all work areas including but not limited to: plant material, lawns, sprinkler systems, drains, fencing, block walls, brick or masonry work, sidewalks, street paving, street lights, traffic signals, utility pedestals and all other public or private improvements.
- J. Restitution for Public or Private Property Damage. Any improvements removed or damaged, other than those scheduled for removal shall be replaced in kind at the proponents expense to the absolute satisfaction of the Grounds & Green Spaces Superintendent and/or private property owner. Replacement shall take place no later than five working days from the date of damage, unless otherwise authorized by the Grounds & Green Spaces Superintendent.
- K. Underground Service Alert. The proponent shall be responsible for contacting Underground Service alert, securing a dig-alert ticket, and allowing the time required by law for members to respond and mark their underground infrastructure prior to conducting any western Joshua tree transplanting operations. The proponent shall analyze and respect all utility markings and transplant western Joshua trees with care to avoid contact with any underground infrastructure within the transplant zone.

14.04.0760 Desert Vegetation Preservation Criteria.

All development proposals for land which contains desert vegetation shall be subject to the following provisions regarding the preservation of native desert vegetation both on- and off-site:

- A. The minimum standard of preservation shall be:
 - 1. Two ~~Joshua Trees or~~ California Junipers per gross acre, averages for the gross site area covered by the development application, or
 - 2. Where soil conditions or conditions of the ~~Joshua Trees or~~ California Juniper prohibit the preservation of two trees per acre, or where the total number of healthy trees per gross acre is not equal to two per acre, the minimum standard of preservation will be determined by a desert native plant specialist and confirmed by the City's Landscape Architect, or in-lieu thereof, the Director of Public Works' designee, in accordance with the following criteria:

4. To enhance the likelihood of survival, native desert vegetation that cannot be fenced and left undisturbed, will not be left in place while grading. The options for preserving trees on-site after grading are the following:
 - a. Move the vegetation slated to remain on site to a holding area. After grading has been completed, move vegetation once again to a permanent location.
 - ~~b. Remove vegetation per options in subsection (B)(2) of this section. After grading, import new Joshua trees to a landscaped area,~~
 - b. Grade in phases. Ready the area to receive vegetation first, then transplant and complete grading.
- B. The quantity of ~~Joshua Trees or~~ California Junipers calculated under the minimum standard of preservation as determined above shall be preserved by any combination of the following means:
- ~~2. Of the total number of Joshua trees required to be preserved under the two trees per acre required under subsection (A)(1) of this section, the Joshua trees which are not preserved on-site shall be preserved by the following means, and shall count towards the required two trees per acre or other minimum standard of preservation:~~
 - ~~a. The development proposal shall make available to the City for transplantation any Joshua trees identified by the City's Landscape Architect, or in lieu thereof, the Director of Public Works' designee, as suitable for use in landscaping any City property or facility,~~
 - ~~b. The development proposal shall include an offer to make available to other commercial, industrial or residential development projects, native desert vegetation that can be incorporated into another development proposal's landscaping,~~
 - ~~c. The development proposal shall include an offer to make available native desert vegetation to the public for use as landscaping. The native desert vegetation taken from the site may be used for landscaping. Vegetation from the site shall remain available to the public for a minimum of 30 days after appropriate public notice as determined by the Planning Director,~~
 - ~~i. The development proposal will provide for public notice of the availability of Joshua trees or other desert vegetation or transplantation to other suitable property. The public notice shall be in a form prescribed by the Director of Planning and shall~~

~~generally conform to the Government Code Sections 65090 and 65091, although direct mail notice shall not be required. The public notice shall provide at least a 30-day period during which transplantation may occur;~~

- ~~ii. The proponent of the development proposal may require reasonable security and/or indemnification before permitting persons to enter upon the property for transplantation;~~
- ~~iii. The proponent of the development proposal may not impose any fee or other charge upon persons entering upon the property for any purpose relating to the transplantation of native vegetation;~~
- ~~iv. The proponent of the development proposal shall use all reasonable efforts to encourage and permit transplantation to occur to the maximum possible extent;~~

~~d. Any Joshua trees, which are required to be preserved and remain after the previous options have been pursued, may be transplanted to an off-site location, approved by the City's Landscape Architect, or in lieu thereof, the Director of Public Works' designee, at the expense of the proponent of the development proposal. Identifying a suitable off-site location shall be the responsibility of the developer. The City shall provide areas for off-site tree banks. The City-administered tree banks that are identified will be made available for this use. This measure shall be viewed as an interim solution with the ultimate goal of relocating this native desert vegetation to permanent locations as can be found. Maintenance of vegetation transplanted to a City-administered tree bank is the responsibility of the City. The proponent of the development proposal shall be responsible for retaining a qualified consultant to provide initial watering of trees after transplantation to a tree bank as required by the City Landscape Architect, or in lieu thereof, the Director of Public Works' designee, at the expense of the proponent of the development proposal;~~

32. Only after all other options are exhausted, proponents may pay an in-lieu fee to the City to fulfill their obligation of preservation of native desert vegetation. The fee will be used to provide partial funding for the maintenance and coordination of the native desert vegetation banks and preserves. The in-lieu fee will be accepted only when preservation of western Joshua and/or California juniper trees is not possible due to site constraints that preclude the feasible preservation of desert vegetation, and no alternative preservation options remain. When a proponent must pay an in-lieu fee, the fee shall be calculated on the minimum standard of

two trees per acre, less any trees preserved by other means. The in-lieu fee amount shall be determined by resolution of the City Council;

a. Where California junipers are retained on-site, they shall be credited toward the minimum standard or two trees per acre. However, where they cannot be retained undisturbed on-site, no in-lieu fee is required;

43. Any native desert vegetation in excess of the minimum standard for preservation may be removed after the public has had the opportunity to transplant native desert vegetation per subsection (B)(3)(a) of this section, and after the native desert vegetation preservation plan and native desert vegetation removal permit has been approved by the City, or if applicable, after the payment of the in-lieu fee.

14.04.0870 Maintenance Requirements.

Upon completion of construction of the development proposal and after final inspection and acceptance by the City, the following standards relative to on-going maintenance of native desert vegetation shall apply:

- A. Provisions shall be made assuring, at the expense of the proponent of the development, that ~~the Joshua Trees and other~~ desert vegetation preserved on site, in landscape easements, or landscape assessment districts are maintained in a healthy condition for a minimum of two growing seasons.
- B. After one year, an inspection and evaluation of ~~Joshua Trees and other~~ desert vegetation retained on site will be performed by a desert native plant expert, at the expense of the proponent of the development. Based upon this evaluation, if it is determined that any quantity of ~~Joshua Trees or other~~ desert vegetation have died, it will be the responsibility of the proponent to provide replacement desert vegetation as determined by the City Landscape Architect, or in lieu thereof, the Director of Public Works' designee.

~~14.04.090 Exceptions to Provisions.~~

~~The following activities are exempt from the provisions of this chapter:~~

- ~~A. Development proposals upon which the City has taken final action before the effective date of this chapter;~~
- ~~B. Construction of one single-family home on a lot or parcel;~~
- ~~C. Additions to existing single-family homes;~~

- ~~D. Cases of emergency where the Director of Housing, or his or her designee, or any member of a law enforcement agency or the Los Angeles County fire protection district, in the performance of his or her duties, determines that desert vegetation poses an imminent threat to the public safety;~~
- ~~E. Removal or relocation of native desert vegetation necessary to obtain adequate line-of-site distance as required by the City Traffic Engineer;~~
- ~~F. Removal of street trees from within the public right-of-way, which, in the opinion of the Director of Public Works or his or her designee, will or may cause damage to public improvements;~~
- ~~G. Action taken for the protection of existing electrical power or communication lines or other property of a public utility;~~
- ~~H. Routine maintenance of a Joshua tree or other desert vegetation intended to ensure its continued health;~~
- ~~I. Joshua trees or other desert vegetation planted, grown and/or held for sale by a licensed nursery.~~

14.04.090 Unlawful ~~a~~Activities ~~p~~Prohibited.

- A. Except as provided in this chapter, it is unlawful for any person to damage any desert vegetation as defined in this code.
- B. It is unlawful for any person to falsify any oral statement, paper or document issued to give permission for any person to remove desert vegetation or fail to comply with all conditions or stipulations of this chapter. (Ord. 952 § 2, 1992)

14.04.100 Violation – Penalty.

Penalties for violations of this chapter shall be as specified in Chapter 1.12 of the PMC.

- A. In addition to other penalties imposed by this code, any person, company, organization, firm or corporation shall be required to replace any damaged, illegally cut, destroyed, killed, removed, mutilated or harvested ~~Joshua trees,~~ California junipers, or other desert vegetation pursuant to the recommendation of an authorized desert native plant specialist, to be retained at the expense of the violator. Such specialist shall determine the appropriate number, size, species, location and make written recommendations regarding the replacement of said trees or other desert vegetation. Replacement shall be in sufficient quantities to revegetate the illegally disturbed area either on-site or off-site within six months of adjudication.

- B. Should the person, company, organization, firm or corporation who committed the violation fail to replace the damaged, cut, destroyed, killed, removed, mutilated or harvested ~~Joshua trees or other~~ desert vegetation within six months after adjudication, the City may contract to have such plants replaced and the violator shall be charged the replacement costs. Said costs may be placed as a lien on real property.

14.04.1~~2010~~ Compliance with other laws and regulations.

Nothing in the provisions of this chapter shall relieve nor be interpreted to exempt a proponent of a development proposal from complying with the requirements of the California Desert Native Plants Act, Food and Agricultural Code Section 80001, et seq., and/or any applicable federal laws and regulations. Nor shall any provision of this chapter be construed so as to conflict with, duplicate, or otherwise interfere with general law preemptive of local regulation.

SECTION 2. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, or invalid, or ineffective, provided the basic purposes of this Ordinance and the benefits to the City and the public are not substantially impaired.

SECTION 3. Certification. The City Clerk shall certify to the adoption of this ordinance and shall cause this ordinance to be published or posted as required by law.

SECTION 4. Effective Date. This Urgency Ordinance shall take effect immediately after its adoption.

PASSED, APPROVED and ADOPTED this 15th day of December, 2020.

Approved as to form:

Steven D. Hofbauer
Mayor

ATTEST:

Christopher L. Beck
City Attorney

Shanae Smith
City Clerk

I, Shanae Smith, City Clerk of Palmdale, California, do hereby certify that the foregoing resolution was duly passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the 15th day of December, 2020 by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____ ABSENT: _____

Date: _____

Shanae Smith, City Clerk