

ORDINANCE NO. , NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
AMENDING CHAPTER 12.23 (RESTRICTIONS ON
REMOVAL OF SIGNIFICANT TREES) OF TITLE 12
(STREETS, SIDEWALKS AND PUBLIC PLACE) OF THE
MORGAN HILL MUNICIPAL CODE TO ADD SEPARATE
SPECIFIC PROVISIONS FOR THE REMOVAL AND
REPLACEMENT OF STREET TREES**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES
HEREBY ORDAIN AS FOLLOWS:**

SECTION 1: Chapter 12.32 (Restrictions on Removal of Significant Trees) of Title 12 (Streets, Sidewalks and Public Places) of the Morgan Hill Municipal Code is hereby amended to read in its entirety as follows (additions in underline, deletions in ~~strikeout~~):

Chapter 12.32 - RESTRICTIONS ON REMOVAL OF SIGNIFICANT TREES

12.32.010 - Council determinations.

The city council finds and declares:

A. The existing and future trees and tree communities located in the city are a valuable and distinctive natural resource. The trees and tree communities of the city augment the economic base through agricultural production, encouragement of tourism and enhancement of the living environment. These resources are a major component of both the highly localized and area-wide environment.

B. The following environmental consequences are among those which could result from the indiscriminate removal or destruction of trees and tree communities in the city:

1. Modification of microclimates;
2. Change or elimination of animal habitat, possibly including habitats of endangered species;
3. Change in soil conditions, resulting in modified biological activity and erosion of soils;
4. Creation of increased susceptibility of flood hazards;
5. Increased risk of landslides;
6. Increased cost of construction and maintenance of drainage systems through increased flow and diversion of surface waters;
7. Degradation of the human habitat;

8. Loss of environmental benefits of trees in neighborhoods, such as noise reduction, oxygen replacement, carbon dioxide reduction, interception of particulates and aesthetic qualities; and/or

9. Potential for irreparable wind damage to adjacent trees.

C. The preservation and replacement of significant tree communities on private and public property is necessary to protect the natural beauty of the area, protect property values, and prevent undesirable changes in the environment.

D. It is necessary to enact the ordinance codified in this chapter for the reasons stated in this section and to promote the public health, safety, general welfare and prosperity of the city, while respecting and recognizing individual rights to develop, maintain and enjoy private property to the fullest possible extent, consistent with the public interest, convenience and necessity.

12.32.020 - Definitions.

For the purposes of this chapter, the following words shall have the meaning ascribed to them in this section:

A. "City" means the city of Morgan Hill, California, acting by and through its authorized representatives.

B. "Community development director" means the community development director of the city, including his or her authorized or appointed representatives.

C. "Community of trees" means a group of trees of any size which are ecologically or aesthetically related to each other such that loss of several of them would cause a significant ecological, aesthetic, or environmental impact in the immediate area.

D. "Person" means an individual, public agency, including the city and its departments, firms, associations, and corporations, and their employees, agents, or representatives.

E. "Private property" means all property not owned by the city or any other public agency.

F. "Public property" means all property owned by the city, and any other city, county, city and county, special district, or other public agency in the incorporated area of the city.

G. "Ordinance Sized Tree" means any live woody plant rising above the ground with a single stem or trunk of a circumference of forty (40) inches or more for nonindigenous species and eighteen (18) inches or more for indigenous species measured at four and one-half (4 1/2) feet vertically above the ground or immediately below the lowest branch, whichever is lower, and having the inherent capacity of naturally producing one (1) main axis continuing to grow more vigorously than the lateral axes. All commercial tree farms, nonindigenous tree species in residential zones and orchards (including individual fruit trees) are exempted from the definition of tree for the purpose of this chapter.

H. "Street Tree" is a tree, of any size, situated within the public street right-of-way or publicly accessible private street (e.g., trees within a landscape park strip), or within five (5) feet of a publicly accessible sidewalk adjacent to a public or private street in the case of a street without a landscape park strip.

I. "Indigenous tree" means any tree which is native to the Morgan Hill region. Such trees include, oaks (all types), California Bays, Madrones, Sycamore, and Alder.

12.32.030 - Permit—Required.

It is unlawful for any person to cut down, remove, poison, or otherwise kill or destroy, or cause to be removed, any ordinance sized tree, street tree, or a community of trees on any city or private property without first securing a permit as provided in this chapter; provided, however, that a permit shall not be required for the following:

- A. Developments which have been reviewed and approved by the planning commission or community development director and the tree removal conforms with the landscape plans of those developments.
- B. Commercial tree farms.
- C. Non-indigenous trees within a single-family residential zoning district that do not qualify as street trees.

A permit shall otherwise be required for the removal of or pruning of which would reduce the canopy area by more than twenty five percent (25%) of any trees as defined in subsection G of Section 12.32.020 of this chapter.

12.32.040 - Permit—Application.

Any person desiring to cut down, remove, destroy, or cause to be removed any tree regulated in this chapter shall apply to the community development department for a tree cutting permit on forms provided by the department. The application shall be accompanied by such drawings, written material, photographs, and other information as are necessary to provide necessary data concerning trees within the affected area and which shall include:

- A. The diameter and height of the tree;
- B. The type of trees (e.g. coniferous, evergreen hardwood and deciduous hardwood);
- C. A map or accurate sketch of location and trees proposed to be cut (showing other significant trees, shrubs, buildings or proposed buildings; photographs may be used to show the area);

- D. Method for marking the tree proposed to be cut down, removed, or destroyed;
- E. Description of method to be used in removing the tree;
- F. Description of tree planting or replacement program;
- G. Reasons for proposing removal of the tree;
- H. Address where tree is located;
- I. General health of tree to be cut down or removed (~~all diseased trees are to be inspected by an arborist or tree surgeon documenting extent and nature of disease~~); and
- J. Other pertinent information which the community development director may require.

12.32.050 - Permit—Public notice procedures.

Within five (5) days after submission of a completed application, the applicant shall cause a notice of application on a form provided by the community development department to be posted in at least two (2) conspicuous locations clearly visible to the public on or close to the property affected, indicating the date of the application, a brief description thereof, identification of the subject property, the address to which comments may be directed and from which further information may be obtained, and the final date for receipt of comments. No action shall be taken upon any application until the applicant has filed an affidavit that such posting has been done.

12.32.060 - Permit—Review and action.

The community development director or his or her designee shall review the application and, if necessary, inspect the site, and shall determine on the basis of the information provided, the site inspection, and the criteria contained in this chapter whether to grant, grant with conditions, or deny the permit. Such action shall be taken within twenty (20) days after receipt of the affidavit referred to in the preceding section. Upon taking action, the community development director or his or her designee shall provide the applicant with a written statement indicating the action taken, any conditions imposed, and the findings made in support thereof.

12.32.070 - Permit—Approval—Criteria.

The community development director or any other person or body charged with determining whether to grant, conditionally grant, or deny a tree cutting permit may approve a permit only if one or more of the following findings are made:

- A. Removal of the tree is warranted because the tree meets one of the following conditions:

1. Is diseased as demonstrated in a report provided by a qualified arborist or tree surgeon documenting the extent and nature of the disease and how the diseased conditions warrants the trees removal.

2. Could adversely affect the general public health and safety,

3. Could cause substantial damage,

4. Is a public nuisance,

5. Is in danger of falling,

6. Is too closely located to existing structures,

7. All practical design alternatives for site layout have been exhausted without being able to design around the tree(s), etc.,

8. Interferes with utility service,

9. Acts as a host for a plant which is parasitic to another species of tree which is in danger of being infested or exterminated by the parasite,

10. Is a substantial fire hazard,

11. Is necessary for the continuing agricultural use of the property, or

12. Is a street tree that is not identified on a list of Suitable Street Trees maintained by the community development director.

B. The required action is necessary:

1. To utilize the property in a manner which is of greater public value than any environmental degradation caused by the action, or

2. To allow reasonable economic or other enjoyment of the property.

C. The tree will be replaced by plantings approved by the community development director, unless special conditions indicate otherwise.

12.32.080 - Permit—Approval—Conditions.

In granting any permit as provided in this chapter, the community development director, planning commission, or city council may attach reasonable conditions to insure compliance with the intent and purpose of this chapter including, but not limited to,:

- A. Replacement of trees removed with plantings of trees acceptable to the community development director. In all cases, native trees shall be planted to replace native trees removed unless practical reasons preclude this option;
- B. Use of measures to effect erosion control, soil and water retention and diversion or control of increased flow of surface waters;
- C. Use of measures to insure that the contemplated action will not have adverse environmental effects relating to shade, noise buffers, protection from wind, air pollution and historic features; and/or
- D. Posting of a bond to insure maintenance of substitute landscaping pursuant to the requirements of Chapter 18.74 of this code.

12.32.090 - Application constitutes permission to enter property.

Filing of an application for a tree cutting permit shall constitute a grant of permission for city personnel concerned with administering this part to enter the subject permit area during normal working hours from the date of application to the completion of any approved action for the purpose of inspecting the area for compliance with the provisions of this chapter and applicable law.

12.32.100 - Inspection—Notification of violations.

The community development department may cause sufficient inspections to be made of the permit area to assure compliance with the provisions of this chapter and the requirements of any applicable law. Upon completion of any inspection, the permittee shall be given a written notice of any violations observed at the time of inspection for correction thereof.

12.32.110 - Commencement of work—Time limitations.

If work authorized by an approved permit is not commenced within a period of one (1) year from the date of approval, the permit shall be considered void.

12.32.120 - Emergencies.

In case of emergency caused by the hazardous or dangerous condition of a tree and requiring immediate action for the safety of life or property, such necessary action may be taken to remove the tree or otherwise reduce or eliminate the hazard without complying with the other provisions of this chapter, except that the person responsible for the cutting or removal of the tree shall report such action to the community development director within five (5) working days thereafter.

12.32.130 - Appeal procedures.

The applicant or any other person who is aggrieved by the issuance or nonissuance of the permit or any conditions thereof may appeal in the manner set forth in this section. A statement by the appellant shall be required indicating how the appellant is aggrieved or adversely affected by the decision. At the time the appeal is heard, the planning commission shall rule upon the appellant's standing as an aggrieved party. If the planning commission rules that the appellant is not aggrieved, all further proceedings shall be stayed except that the appellant may appeal the planning commission decision on standing to the city council as provided in this chapter.

A. Permits considered and acted upon by the community development director may be appealed to the planning commission by filing a written notice of appeal with the secretary of the planning commission within ten (10) days of the issuance or denial of the permit. The planning commission shall hear such appeal within thirty (30) days of the date of filing of the written protest or at a date selected by mutual consent of the appellant and the planning commission. The planning commission shall render a decision on the appeal within fifteen (15) days of the public hearing. The community development director shall notify the affected parties of the action ~~as provided for in Section 12.32.050 of this chapter.~~

B. Permits considered and acted upon by the planning commission may be appealed to the city council by filing a written notice of appeal with the secretary of the planning commission within ten (10) days from the decision of the planning commission. The city council shall hear such appeal within sixty (60) days or at a date selected by mutual consent of the appellant and the city council and render a decision within fifteen (15) days following such hearing. The decision of the city council shall be final. The action taken by the city council shall be reported to the affected parties. ~~as provided for in Section 12.32.050 of this chapter.~~

12.32.140 - Removal or trimming without a permit deemed a misdemeanor.

Any property owner, lessee or his or her agent, or representative who engages in tree cutting or removal or conspires with another to engage in tree cutting or removal without a valid tree cutting permit is guilty of a misdemeanor. In addition, such party shall be liable to the city for a civil penalty in the amount of the cost of replacing the removed tree with a new tree as comparable to the removed tree as is reasonably feasible plus all attorney's fees.

12.32.150 - Violation—Penalty.

Violations of this chapter shall be punished as provided for in Chapter 18.68 of the city's zoning regulations.

SECTION 2. Environmental Determination. This Ordinance is exempt from environmental review under Section 15061(b)(3) of the State CEQA Guidelines. The proposed text amendments are covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed amendments are minor changes to text within the Municipal Code and will not result in any direct impact upon the physical environment. Any

tree removal or required replacement tree, as a result of a tree removal permit, subject to the revised standards will undergo an independent analysis pursuant to the requirements of CEQA.

SECTION 3. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 4. Effective Date; Publication. This ordinance shall take effect on _____, 2016. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Morgan Hill held on the ____ of ____, 2016 and was finally adopted at a meeting of said Council on the ____th day of ____, 2016 and said Ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:

ATTEST: **APPROVED:**

Irma Torrez, City Clerk

Steve Tate, Mayor

∞ **CERTIFICATE OF THE CITY CLERK** ∞

I, **Irma Torrez, City Clerk of the City of Morgan Hill, California**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. XXX, New Series, adopted by the City Council of the City of Morgan Hill, California at the meeting held on this ____ day of ____ 2016 and has been published pursuant to Government Code.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

Irma Torrez, City Clerk