

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the matter of:

Amending Portions of Chapter 12.12)
Tree Preservation to Correct)
References to Responsible Town)
Personnel (12.12.030 and 12.12.050),)
Update the Cost of an Appeal to)
Town Council (Section 12.12.130),)
and to Update Provisions for)
Enforcement of Code Violations)
(12.12.150 and 12.12.160) of the)
Moraga Municipal Code)

ORDINANCE NO. 256

WHEREAS, in October 1976 the Town Council adopted Ordinance 33 for the Preservation, Maintenance and Removal of Trees (Tree Ordinance), finding that trees contribute to Moraga's quality of life, local economy, and the health, safety and welfare of the community, and which Ordinance was incorporated into the Moraga Municipal Code as Chapter 12.12; and

WHEREAS, in 2000 the Town Council adopted Ordinance 182 amending Chapter 12.12 to modify certain requirements regarding types of protected trees, and exemptions from permit requirements; and

WHEREAS, in 2014, during discussion of prospective large scale tree removal by PG&E in conjunction with the Pipeline Pathways Project, the Town determined it had limited tools available for enforcement of violations of the Tree Ordinance, and directed staff to bring forward a proposed administrative fine or penalty for tree removal without a permit; and

WHEREAS, on June 11, 2014 the Town Council adopted Ordinance 245 updating and replacing Chapter 7.16 of the Municipal Code regarding Nuisance Abatement; and on September 10, 2014 the Town Council adopted Ordinance 249 adding Chapter 1.24 that includes provisions for Administrative Penalties for violations of the Moraga Municipal Code, and

WHEREAS, it is necessary to amend Chapter 12.12 to better align the enforcement provisions of the Tree Ordinance with Chapters 7.16 and Chapter 1.24, and to make other minor updates to Chapter 12.12 to reflect the cost of processing appeals and current Town staffing; and

WHEREAS, in recognition of the high value placed on protecting Moraga's trees, the Town Council finds it appropriate to levy a substantial penalty in the case of tree removal without first obtaining a permit; and

WHEREAS the amendments have been found to be exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines which allows an exemption 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, and pursuant to Section 15378, Project, because “project” under CEQA does not include organizational or administrative activities of government that will not result in direct or indirect physical changes in the environment.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MORAGA DOES ORDAIN AS FOLLOWS:

SECTION 1. Subsection (C) of section 12.12.030 of Chapter 12.12 Tree Preservation, is hereby deleted and replaced with the following:

“C. The removal of a tree located within the public right-of-way and deemed to be a hazard by the public works director or town manager.”

SECTION 2. Section 12.12.050 of Chapter 12.12 Tree Preservation, is hereby deleted and replaced with the following:

“12.12.050 - Emergency Tree Removal.

If on recommendation of the planning director, parks and recreation director and/or public works director, the town manager believes that a tree is in such a hazardous, dangerous or diseased condition so as to constitute a present threat to the safety of persons or structures, the town manager may take immediate action to cause removal of the tree, at the owner's expense.

In case of emergency caused by a tree being in a hazardous, dangerous or diseased condition requiring immediate action for the safety of structures or human life, such tree may be removed on the oral permission of the town manager or the staff person designated by the town manager, without formal application.”

SECTION 3. Section 12.12.130 of Chapter 12.12 Tree Preservation, is hereby deleted and replaced with the following:

“12.12.130 – Appeals.

The planning director's decision regarding a request for a tree removal permit, may be appealed to the town manager at no cost, the person aggrieved by the action may appeal the decision to the town council upon payment of a fee of one hundred and fifty dollars (\$150.00) . A person desiring to appeal a decision shall file notice of appeal in writing with the town manager within ten (10) days after the date of the decision being appealed. The notice shall briefly state the facts and the grounds of appeal. In other respects, the procedure for hearing the appeal and the formulation of the decision shall be as set forth in Section 1.16.010.”

SECTION 4. Section 12.12.150 of Chapter 12.12 Tree Preservation, is hereby deleted and replaced with the following:

“12.12.150 - Enforcement

A. A tree which is planted and maintained in violation of this chapter, is a public nuisance. A tree, which is not maintained as required in Sections 12.12.060 through 12.12.090 is a public nuisance. The town may take proceedings for the abatement of this nuisance as provided in Chapter 7.16.

B A person who violates the provisions of Section 12.12.030 shall be subject to an administrative fine not exceeding \$1,000 for each tree removed without obtaining the proper permit, and may be required to plant replacement trees in a ratio determined by the Planning Director.

C. Other Enforcement Remedies. A violation of this Chapter may be subject to any other civil and criminal procedures and fines as provided by the Town of Moraga Municipal Code and California State Law, including the Town’s administrative citation regulations set forth in Chapter 1.28, as may be amended from time to time.

D. Cumulative Remedies. The remedies set forth herein are cumulative and may be pursued alternatively or in combination with one another.”

SECTION 5. Section 12.12.160 of Chapter 12.12 Tree Preservation, is hereby deleted in its entirety.

SECTION 6. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the Ordinance. To this end, the provisions of this Ordinance are severable. This Town Council hereby declares that it would have adopted the Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 7. Publication.

The Town Clerk shall cause this Ordinance to be published in accordance with State Law.

SECTION 8. Effective date.

This Ordinance becomes effective thirty (30) days after its final passage and adoption.

The foregoing ordinance was introduced at a meeting of the Town Council of the Town of Moraga, California, held on September 9, 2015 and was passed and adopted at a meeting of the Town Council meeting held on October 14, 2015 by the following vote.

AYES: Mayor Wykle, Vice Mayor Metcalf, Councilmembers Arth, Onoda
and Trotter
NOES: None
ABSTAIN: None
ABSENT: None

Roger N. Wykle, Mayor

ATTEST:

Marty C. McInturf, Town Clerk