

## ORDINANCE NO. 2363, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING CHAPTER 12.32 (RESTRICTIONS ON REMOVAL OF SIGNIFICANT TREES) WITHIN TITLE 12 (STREET, SIDEWALKS AND PUBLIC PLACES) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, AMENDING SECTION 17.20.040 (FORM AND CONTENTS) OF CHAPTER 17.20 (MAP REQUIREMENTS-FIVE OR MORE PARCELS) AND SECTION 17.24.030 (FORM AND CONTENT) OF CHAPTER 17.24 (MAP REQUIREMENTS-FOUR OR LESS PARCELS) WITHIN TITLE 17 (SUBDIVISIONS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING MINOR AMENDMENTS DUE TO INCONSISTENCIES, AND AMENDING TABLE 18.22-2 (DEVELOPMENT STANDARDS IN MIXED USE ZONING DISTRICTS) WITHIN SECTION 18.22.040 (DEVELOPMENT STANDARDS) OF CHAPTER 18.22 (MIXED USE ZONING DISTRICTS) WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL TO REMOVE THE MAXIMUM FLOOR AREA RATIO (FAR) AND BUILDING COVERAGE WITHIN THE (MIXED USE FLEX) MU-F ZONING DISTRICT

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

**Section 1.** Chapter 12.32 (Restrictions on Removal of Significant Trees) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended to read as follows:

### Chapter 12.32 PROTECTED AND SIGNIFICANT TREES

#### 12.32.010 Council determinations.

The city council finds and declares:

- A. The intent of promoting the preservation and establishment of a diverse, abundant tree canopy in the city is vital to the health and character of the community. 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 enhance the economic base through agricultural production, encouragement of tourism and enrichment of the living environment.

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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 ecology of the area and prevent undesirable changes to the natural and built 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. "Arborist" means any person certified in the professional care, examination, and maintenance of trees.
- B. "City" means the city of Morgan Hill, California, acting by and through its authorized representatives.
- C. "Community of trees" means a group of trees of any size which are ecologically or

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aesthetically related to each other, with a combined canopy cover of more than ten percent, and that loss of such community would cause a significant ecological, aesthetic, or environmental impact in the immediate area.

- D. "Development services director" means the development services director of the city, including their authorized or appointed representatives.
- E. "Diameter at breast height (DBH)" means the standard measurement for a tree trunk diameter, measured 4.5 feet above the average ground level.
- F. "Native tree" means any tree which is native to the Morgan Hill region. Such trees include, but are not limited to, oaks (all types), California Bays, Madrones, Sycamore, and Alder.
- G. "Nonnative tree" means any tree that is not native to the Morgan Hill region.
- H. "Person" means an individual, public agency, including the city and its departments, firms, associations, and corporations, and their employees, agents, or representatives.
- I. "Private property" means all property not owned by the city or any other public agency.
- J. "Prohibited tree" means any trees that become liabilities due to structural weaknesses, disease or insect susceptibility, short life, destructive root systems, or requiring excessive watering or maintenance as defined in Chapter 12.28.050.
- K. "Protected tree" means any native tree, significant tree, any tree designated for protecting during review and approval of a development project, public or street trees, and otherwise designated as significant status.
- L. "Prune" means the selective removal or modification of twenty-five percent or more of the tree branches, roots, buds, or limbs in such a manner that impacts the structure of the tree.
- M. "Public tree" means any tree located in any street, park, or public place or planted or maintained by the city.
- N. "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.
- O. "Significant Tree" means any live woody plant rising above the ground with a single stem or trunk a diameter at breast height (DBH) of thirteen inches or more for nonnative tree species and a diameter at breast height (DBH) of six inches or more for native tree species. All commercial tree farms and orchards (including individual fruit trees) are exempted from the definition of tree for the purpose of this chapter.
- P. "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 feet of a publicly accessible sidewalk adjacent to a public or private street in the case of a street without a landscape park strip.

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Q. “Trimming” means the removal of less than twenty-five percent of the canopy, including overgrown or obstructing branches from a tree to maintain the shape and health of the tree, and to protect nearby structures or utilities.

#### **12.32.030 Permit—Required.**

It is unlawful for any person to cut down, prune, remove, poison, or otherwise kill or destroy, or cause to be removed, any protected tree, significant tree, street tree, public tree, or a community of trees on any public or private property without first securing a permit as provided in this chapter; provided, however, that a permit shall not be required for commercial tree farms.

#### **12.32.040 Permit—Application.**

Any person desiring to cut down, prune, remove, destroy, or cause to be removed any tree regulated in this chapter shall apply to the development services department for a tree removal permit application provided by the department. The application shall be accompanied by such drawings including a site plan, written material such as a statement of request, photographs, arborist report, and other necessary information concerning trees within the affected area and which shall include:

- A. The diameter and height of the tree;
- B. The species of each tree;
- C. A site plan or accurate sketch of location and trees proposed to be cut down, pruned, removed, or destroyed (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, pruned, removed, or destroyed;
- E. Description of methods to be used in cutting down, pruning, removing, or destroying the tree;
- F. Description of tree planting or replacement program;
- G. Reasons for proposing to cut down, prune, remove, or destroy the tree;
- H. Address where tree is located;
- I. Percentage of tree canopy to be removed or pruned;
- J. Arborist report indicating general health of tree to be cut down, pruned, removed, or destroyed; and
- K. Other information or materials which the development services director may require.
- L. Payment of fees shall be due upon submittal of a tree removal application as designated on the current fee schedule. The date of submittal shall be designated by receipt of payment.

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### **12.32.050 Permit—Public notice procedures.**

Within five days after submission of a completed application, the applicant shall post a public notice of the tree removal or pruning application request, provided by the development services department, in at least two 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 completed and posted for ten days.

### **12.32.060 Permit—Review and action.**

The development services director or their 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 thirty days after receipt of the affidavit referred to in the preceding section and after the expiration of the ten-day public noticing period. Upon taking action, the development services director or their designee shall provide the applicant with a written statement indicating the action taken, any conditions of approval imposed, and the findings made in support thereof.

### **12.32.070 Permit—Approval—Criteria.**

The development services director or any other person or body charged with determining whether to grant, conditionally grant, or deny a tree removal 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 (e.g., obstructing the public right-of-way),
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,

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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 development services 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 development services director, unless special conditions indicate otherwise.

**12.32.080 Permit—Approval—Conditions.**

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

- A. All protected or significant trees proposed for removal shall be replaced at a 1:1 ratio with a similar native tree species of at least minimum 15-gallon in size. In the case of nonnative trees to be removed, the replacement tree shall be a native species and at least minimum 15-gallon in size. The development services director may require additional replacement trees as necessary to mitigate the impact from the loss of tree canopy.
- B. Use of measures to affect erosion control, soil and water retention and diversion or control of increased flow of surface waters;
- C. Use of measures to ensure 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 ensure maintenance of substitute landscaping pursuant to the requirements of Chapter 18.64 (Landscaping) of this code.

**12.32.090 Application constitutes permission to enter property.**

Filing of an application for a tree removal 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 development services 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 development services director within five working days thereafter and provide retroactive payment of the tree removal permit fee.

**12.32.130 Appeal procedures.**

The applicant or any other person who is aggrieved by the issuance or denial of the permit or any conditions thereof may appeal in the manner set forth in Chapter 18.112 (Appeals).

**12.32.140 Removal or pruning without a permit unlawful.**

It is unlawful for any property owner, lessee, their agent, or representative to engage in removal or pruning or any other action that would result in tree removal or pruning without a valid tree removal permit. In addition to any other remedies that may exist by law, such party shall be liable to the city for an administrative penalty to be determined by the development services director as follows:

1. A fine equal to three times the valuation of the removed tree, as determined by a certified arborist; or
2. The amount of the cost of replacing a removed public tree with a new tree as comparable to the removed tree as is reasonably feasible; or
3. A fine equal to three times the amount of the current tree removal application permit fee.

**Section 2.** Subsection b of Subsection 7 of Subsection B of Section 17.20.040 (Form and Contents) of Chapter 17.20 (Map Requirements-Five or More Parcels) of Title 17 (Subdivisions) is hereby amended to read as follows:

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b. Type, diameter at breast height, and canopy of any protected trees, significant trees, street trees, public trees, or a community of trees as defined by Chapter 12.32 (Protected and Significant Trees) on public and private property. Any trees proposed to be removed shall be so indicated and shall obtain a permit as required by Chapter 12.32 (Protected and Significant Trees),

**Section 3.** Subsection b of Subsection 7 of Subsection A of Section 17.24.030 (Form and Content) of Chapter 17.24 (Map Requirements-Four or Less Parcels) of Title 17 (Subdivisions) is hereby amended to read as follows:

b. Type, diameter at breast height, and canopy of any protected trees, significant trees, street trees, public trees, or a community of trees as defined by Chapter 12.32 (Protected and Significant Trees) on public and private property. Any trees proposed to be removed shall be so indicated and shall obtain a permit as required by Chapter 12.32 (Protected and Significant Trees);

**Section 4.** Table 18.22-2 (Development Standards in Mixed Use Zoning Districts) within Section 18.22.040 (Development Standards) of Chapter 18.22 (Mixed Use Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows:

Table 18.22-2: Development Standards in Mixed Use Zoning Districts

	MU-D	MU-N	MU-F	Additional Standards
<b>Site Requirements</b>				
Lot Area, Minimum	3,500 sq. ft.	6,000 sq. ft.	6,000 sq. ft.	
Lot Width, Minimum	40 ft.	60 ft.	60 ft.	
Lot Depth, Minimum	80 ft.	100 ft.	100 ft.	
Floor Area Ratio, Maximum	2.0 [1]	1.0	None	
Residential Density				
Minimum	None	8 du/acre	7 du/acre	
Maximum	None	20 du/acre	24 du/acre	
Building Coverage, Maximum	None	75%	None	

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Structure Requirements				
Setbacks	See Table 18.22-3			18.56.030
Height, Maximum	3 stories and 45 ft. [2]	35 ft. [3,4]	35 ft. [3]	18.56.020

Notes:

- [1] 2.25 FAR permitted on sites 22,000 sq. ft. or more.
- [2] Four stories and 55 ft. permitted on sites 22,000 sq. ft. or more.
- [3] 45 ft. permitted with a minimum of 10 ft. devoted to a roof element.
- [4] 40 ft. allowed for vertical mixed use, regardless of roof form.

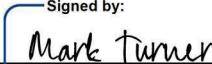
**Section 5. Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

**Section 6. Effective Date; Posting.** This Ordinance shall take effect on the 31<sup>st</sup> day following adoption. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

**THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 19TH DAY OF FEBRUARY, 2025, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 5TH DAY OF MARCH, 2025, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:**

**AYES: COUNCIL MEMBERS:** Mark Turner, Marilyn Librers, Miriam Vega  
 Soraida Iwanaga, Yvonne Martinez Beltran  
**NOES: COUNCIL MEMBERS:** None  
**ABSTAIN: COUNCIL MEMBERS:** None  
**ABSENT: COUNCIL MEMBERS:** None

**APPROVED:**

Signed by:  
  
 MARK TURNER, Mayor

**ATTEST:**

Signed by:  
  
 MICHELE BIGELOW, City Clerk

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**CERTIFICATE OF THE CITY CLERK**

**I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2363, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 5th day of March, 2025.

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

DATE: 3/11/2025

Signed by:  
  
**MICHELLE BIGELOW, City Clerk**