

ORDINANCE NO.NS-217

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTE SERENO AMENDING TITLE 10, CHAPTER 10.15 TREE PRESERVATION, OF THE MONTE SERENO MUNICIPAL CODE BY MODIFYING THE REQUIREMENTS FOR A TREE REMOVAL PERMIT

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTE SERENO
as follows:

Section 1. Title 10, Chapter 10.15 is hereby amended to read as follows:

“Tree Preservation

Sections:

10.15.010- Purpose

10.15.015- Definitions

10.15.020- Significant Tree Removal; when prohibited; exceptions

10.15.030- Significant Tree; protection during construction

10.15.040- Significant Tree; removal; permit required

10.15.050- Permit; application; fee; notice and hearing

10.15.060- Permit; arborist; evaluation

10.15.070- Permit; application; review

10.15.080- Penalties

10.15.090- Appeal

10.15.010- Purpose.

It is the intent of this Chapter to establish regulations for the removal of significant trees within the City in order to retain as many trees as possible consistent with the purpose hereof and the reasonable enjoyment of private property. These regulations are adopted for the purpose of ensuring the preservation of natural scenic beauty throughout the City necessary to the public health and welfare of its citizens in the maintenance of a stable environment and in the prevention of soil erosion, flooding, landslides, air pollution, climactic changes and public and private expense for corrective measures resulting therefrom, and to also provide for better control of noise through protection for mature trees screening out noise.

10.15.015 – Definitions.

- A. "Significant Tree" means (1) Oaks or Redwood trees having a circumference greater than twenty (20) inches measured at a height of forty-eight (48) inches above natural grade; or (2) Any tree having a circumference greater than twenty-five (25) inches measured at a height of forty-eight (48) inches above natural grade.
- B. "Dead Tree" means a Significant Tree that is no longer alive, has been removed beyond repair, or is in an advanced state of decline (where an insufficient amount of live tissue, green leaves, limbs or branches exists to sustain life) and has been determined to be in such a state by a certified arborist during a non-dormant or other natural stage of the tree that would minimize the likelihood that the tree would be mistakenly identified as being in such a dead state.
- C. "Unsuitable Tree" means a live Significant Tree or dead tree on a lot that is used for any purpose, where the tree meets the following criteria:
1. On a lot used for a dwelling, the tree belongs to a species that has been determined by the City Council to be uniquely less compatible with the immediate environment because the species is invasive or non-native to the Monte Sereno region or is susceptible to disease. Such tree species include the following:
 - Eucalyptus, Blue.Gum (*Eucalyptus globulus*)
 - Eucalyptus, Red Gum (*Eucalyptus calimaldulensis*)
 - Black Acacia (*Acacia melonaxylon*)
 - Tree of Heaven (*Ailanthis altissima*)
 - Tulip Tree (*Liriodendron tulipifera*)
 - Palm (all species)
 - Privet (*Ligustrum*)
 - Monterey Pine (*Pinus Radiata*)
 - Fruit Trees
- D. "Remove" means eliminate, take away, uproot or destroy or top. For purposes of this Chapter, "remove" also means taking any action that reasonably and foreseeably will lead to the death of a tree or to permanent significant damage to the health or structural integrity of a tree. Such actions can include, without limitation and by way of example, excessive pruning, cutting, girding, poisoning, or watering of a tree; the unauthorized relocation or transportation of a tree; excessive excavation, alteration, or grading of the soil within the dripline of a tree, or excessively bruising, tearing or breaking the roots, bark, trunk or branches of a tree. For purposes of this Chapter, "top" means cutting the branches of an ordinance tree in a manner that destroys the existing symmetrical appearance or natural shape of the tree and involves the removal of main lateral branches and leaving the trunk of the tree or major branches of the tree with a stub appearance.

10.15.020 - Significant Tree removal; when prohibited; exceptions.

It is unlawful for any person to remove, or cause to be removed, any Significant Tree, Dead Tree or Unsuitable Tree from any parcel of property in the City without first complying with the requirements of this Chapter. The provisions of this Chapter shall not apply:

- A. In case of emergency when a Significant Tree is hazardous or dangerous to life or property and its removal has been approved by order of the City Manager or the Manager's designee.
- B. To any franchised public utility or representative of the City removing trees which interfere with the safe operation of the public service or public right-of-way for which they are responsible.

10.15.030 - Significant Tree; protection during, construction.

During any construction work being carried on in close proximity to any Significant Tree, the owner of the real property on which the Significant Tree is located shall install and maintain a protective fence, all parts of which fence shall be not less than five (5) feet from the trunk of the Significant Tree. If, for any reason, the protective fencing cannot be constructed no less than five (5) feet from the tree trunk, the City Manager or Manager's designee, after viewing the Significant Tree may set the minimum distance from the trunk of the Significant Tree to be used in installing the fence.

10.15.040 - Significant Tree; removal; permit required.

Except as provided in Section 10.15.020, it shall be unlawful for any person to remove, or cause to be removed, any Significant Tree, Dead Tree or Unsuitable Tree from any parcel of property in the City without first applying for and obtaining a permit for the removal from the City Manager or City Planner for Dead or Undesirable Trees, or the City's Site and Architecture Commission or City Council for all other Significant Trees.

10.15.050 - Permit; application; fee; notice and hearing.

- A. The application for a permit shall be made on forms provided for the purpose by the City Clerk and shall state among other things the number and location of the Significant Trees, Dead Trees or Unsuitable Trees to be removed by type and the reason for removal for each.
- B. Each application for a permit shall be accompanied by payment of an application fee in the amount fixed by a resolution of the City Council.
- C. Upon receipt of a complete application for the removal of a Significant Tree, the City shall cause notice of the time and place at which all interested persons may appear before the Site and Architecture Commission to be sent to the applicant

and his/her agents and all property owners within three hundred (300) feet of the proposed project and shall thereafter hold a hearing at the time and place specified.

- D. Upon receipt of a complete application for the removal of a Dead Tree or an Unsuitable Tree, the City Manager or City Planner shall consider the application and provide a written decision on the request.

10.15.060 - Permit; arborist; evaluation.

In the event an applicant desires to remove a Significant Tree due to disease, danger of falling or threat to owner or surrounding residents or to remove a Dead Tree, the City may require, at the cost of the applicant for the permit, an inspection and evaluation of any tree or trees proposed to be removed by an arborist who has been prequalified by the City. The arborist shall inspect and evaluate the tree or trees. The arborist shall also prepare a written report detailing the condition of the tree, and any remedial measure that could be taken to minimize the disease or threat to the owner or surrounding residents. The arborist's report shall be considered when evaluating the request for a permit. Unsuitable to provide proof of species. In the event an applicant desires to remove an Unsuitable Tree, the City may require, at the cost of the applicant for the permit, verification of the species of the tree.

10.15.070 - Permit; application; review.

Each application shall be reviewed to determine the condition of the tree or trees with respect to disease, danger of falling, proximity to existing or proposed structures and interference with utility services. With respect to Dead Trees or Unsuitable Trees, each application shall be reviewed to validate the health of the tree and/or species. In addition, in the case of a Significant Tree the following shall be determined:

- A. The Significant Tree or Trees need to be removed to allow reasonable economic enjoyment of the property or the Significant Tree or Trees need to be removed due to disease, danger of falling or threat to owner or surrounding residents;
- B. If the topography of the land and the effect of the removal of the Significant Tree will have a significant effect on erosion, soil retention and diversion or increased flow of surface waters;
- C. The number of trees existing in the neighborhood on improved property and the effect the removal would have on the established standard of the area and the property values; and
- D. The number of trees the particular parcel can adequately support according to good forestry practices.

In reviewing applications, the City Manager or City Planner, and the Site and Architecture Commission shall give priority to those based on hazard or danger of disease and may refer any application to the City Engineer or other officer of the City for a report and recommendation.

10.15.080 - Penalties.

Any person who unlawfully removes a Significant Tree without having first obtained a permit for its removal may be subject to a citation in the amount of \$1,000.00. Any person who unlawfully removes a Significant Tree, Dead Tree or Unsuitable shall be required to apply for and obtain a tree removal permit from the Site and Architecture Commission at double the application fee.

Additionally, and in addition to any other penalty provided by this Code, any person who unlawfully removes a Significant Tree without having first obtained a permit for its removal issued by the City shall be subject to the following requirement which shall be imposed by the Site and Architecture Commission:

- A. Replace the tree so removed with one (1) or more new trees which in the opinion of the Site and Architecture Commission will provide equivalent aesthetic quality in terms of size, height, location, appearance, and other characteristics of the unlawfully removed tree.
- B. If replacement trees will not, in the opinion of the Site and Architecture Commission following a hearing on the matter, provide equivalent aesthetic quality because of the size, age, or other characteristic of the removed tree, the City Manager shall calculate the value of the removed tree in accordance with the latest edition of the Guide Establishing Values of Trees and Other Plants, as prepared by the Council of Tree and Landscape Appraisers. Upon the determination of such a value, the Site and Architecture Commission may require either a cash payment to the City or the planting of replacement trees as designated by the City, or any combination thereof, in accordance with the following:
 1. Any cash payment required by the Site and Architecture Commission shall be doubled to reflect the estimated installation costs that would be incurred if replacement trees are planted.

The retail cost of a replacement tree shall be offset against the value of the removed tree.
 3. Any person required to plant replacement trees shall covenant in writing to maintain such trees in a good and healthy condition.

The amount of any cash payments imposed pursuant to this Chapter shall constitute a debt to the City and any person required to make such a payment shall be

subject to an action in the name of the City in any court of competent jurisdiction for the collection of the amount of the cash payment.

10.15.090 - Appeal of Permit.

Any action taken by the Site and Architecture Commission pursuant to this Chapter to grant, conditionally grant or deny a tree removal permit may be appealed to the City Council by filing, with the City Clerk, a written notice of appeal within ten (10) calendar days after a copy of the decision of the Commission has been placed in the mail to the applicant. The applicant, any property owner or tenant of property within three hundred (300) feet of the subject site, a City Council member or the City Manager may file such a notice of appeal. When such notice has been accepted by the City Clerk for filing the following shall occur:

- A. *Notice and time of the hearing.* The City Clerk shall, subject to the rules of the City Council, set a date for the public hearing which shall be held by the City Council. The date of hearing shall be not less than ten (10), nor more than sixty (60) calendar days after the notice of appeal was received by the City Clerk.
- B. *Information provided to City Council.* The City Manager or his/her designee shall provide a report to the City Council summarizing the project and outlining the decision and findings of the Commission. In addition thereto, the City Manager or his/her designee shall file with the City Council at its hearing all relevant papers, documents and exhibits which are part of the file.
- C. *Hearing.* The City Council shall hold a public hearing to consider the appeal at the time and place set by the City Clerk. The City Council shall hear the matter de novo. The City Council shall hear and consider only those issues which were presented to the Commission, except for any new issues which could not have been known at the time of the Commission hearing.
- D. After hearing and considering all the evidence, the City Council shall uphold the decision of the Commission, reverse the decision of the Commission or modify the decision of the Commission. Nothing in this Chapter shall preclude the City Council from modifying, adding or deleting any condition of the tree removal permit in order to protect the public peace, health, safety and welfare.
- E. *Findings and decision.* Within a reasonable time after the City Council has concluded its hearing, it shall, by resolution, set forth its findings and decision on the matter. The decision of the City Council shall be final. The decision of the City Council shall be mailed to the applicant and his/her agent, at the addresses shown on the application and the appellant, at the address shown on the notice of appeal.

Any action taken by the City Manager or the City Planner related to a permit for a Dead or Unsuitable Tree is final, with the exception that the applicant may submit

an application to be heard before the Site and Architecture Commission should they disagree with the decision of the City Manager or the City Planner with respect to their original application.”

Section 2. **CEQA Compliance.** The City Council finds and determines that the enactment of this Ordinance is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15307).

Section 3. **Effective Date. Posting.** This Ordinance shall be in full force and effect thirty (30) days from and after its passage and shall be posted within the City of Monte Sereno in three (3) public places.

Section 4. **Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision of such Ordinance and shall not affect the validity of the remaining portions thereof.

This Ordinance was introduced on the 4th day of December, 2018, and passed and adopted on the 18th day of December, 2018, at a duly held meeting of the City Council of the City of Monte Sereno by the following votes:

- AYES: Council Members Anstandig, Craig, Turner, Wolsheimer and Mayor Rogers
- NOES: None
- ABSENT: None

Approved: _____
Rowena Turner, Vice Mayor

Attest: _____
Andrea Chelemengos, City Clerk

Approved as to Form:

A TRUE AND CORRECT COPY OF THIS ORDINANCE NS-217 HAS BEEN POSTED/PUBLISHED PURSUANT TO LAW THIS 20th DAY OF DECEMBER 2018.

Andrea M. Chelemengos

Monte Sereno City Clerk

Kirsten M. Powell, City Attorney

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THIS ORDINANCE NS-217 HAS BEEN
POSTED/PUBLISHED PURSUANT TO
LAW THIS 20th DAY OF DECEMBER
2018.

Andrea M. Chelemengos

